REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

SUMISETSU PHILIPPINES, INC., ***Petitioner,***	**C.T.A. CASE NO. 8076**
	Members:
-versus-	BAUTISTA, Chairperson, PALANCA-ENRIQUEZ, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** NOV 13 2012 ABFernando 2:15 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Sumisetsu Philippines, Inc. (hereafter "petitioner") praying for the refund or issuance of a tax credit certificate (TCC) in the total amount of P18,872,767.00, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2007.

THE PARTIES

Petitioner is a corporation duly organized under Philippine laws and engaged in the business of providing electrical and mechanical services for electrical transmission and distribution systems, air conditioning and ventilation systems, telephone and communications systems, and other allied services, with principal office located at the 4th/Floor, Glass Tower, 115 C. Palanca St., Legaspi Village, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She may be served with summons, pleadings and other legal processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The facts of the case, as stipulated by the parties, are as follows:

On April 14, 2008, petitioner filed, through the BIR's Electronic Filing and Payment System, its Annual Income Tax Return for taxable year 2007 with Reference No. 12080002182860.

On April 15, 2008, petitioner manually filed with the BIR its Annual Income Tax Return for taxable year 2007.

On July 30, 2008, petitioner filed a written claim for issuance of a TCC with the BIR.

In order to preserve its right and to toll the running of the prescriptive period for its judicial claim, on April 14, 2010, petitioner filed the instant Petition for Review.

In her Answer, respondent alleged by way of special and affirmative defenses:

> "xxx xxx
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> 5. Assuming but without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;
>
> 6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
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> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
>
> 8. It is incumbent upon petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;
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> 9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (Emmanuel &

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> Zenaida Aguilar v. Commissioner, CA-GR. No. SP 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206);
>
> 12. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such; they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

Petitioner presented Leonard Lyle M. Tabalon, Rissa R. Ornedo, Barbara Q. Bigay and Cecilia S. Magalona, as witnesses, and documentary evidence, marked as Exhibits "A" to "BBB-1", inclusive of their sub-markings, which were admitted by the Court in its Resolution dated November 4, 2011.

On the other hand, respondent waived her right to present evidence and submitted the case for decision.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich the case shall be deemed submitted for decision.

On March 9, 2012, petitioner filed its "Memorandum". Respondent failed to file her memorandum within the prescribed period; hence, in a Resolution dated March 20, 2012, the case was deemed submitted for decision.

ISSUES

As stipulated by the parties, the following are the issues for this Court's consideration:

I

WHETHER THE INCOME PAYMENTS FROM WHICH THE TAXES WERE WITHHELD WERE INCLUDED IN SUMISETSU'S GROSS INCOME FOR THE YEAR 2007.

II

WHETHER SUMISETSU HAS EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAX FOR THE YEAR 2007 IN THE AMOUNT OF P18,872,767.00.

III

WHETHER SUMISETSU HAS CARRIED OVER TO THE SUCCEEDING TAXABLE YEARS THE ALLEGED EXCESS CREDITABLE WITHHOLDING TAX FOR THE YEAR 2007.

IV

WHETHER SUMISETSU'S RIGHT TO CLAIM A REFUND OF THE ALLEGED EXCESS/UNUTILIZED CREDITABLE WITHHOLDING TAX FOR THE YEAR 2007 IS DULY SUBSTANTIATED.

V

WHETHER SUMISETSU IS ENTITLED TO A REFUND OR ISSUANCE OF THE TAX CREDIT CERTIFICATE IN THE AMOUNT OF P18,872,767.00 FOR ITS EXCESS AND/OR UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR THE YEAR 2007.

Principal Issue

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a refund or issuance of a TCC in the aggregate amount of P18,872,767.00, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2007.

THE COURT'S RULING

The Court finds no merit in the petition.

Petitioner anchors its claim on the provisions of *Section 76 of the NIRC of 1997, as amended,* in relation to *Sections 204 and 229 of the same Code. Section 76 of the NIRC of 1997, as amended,* 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**

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taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor." *(Emphasis supplied)*

Pursuant to the above provision, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded or carried over/applied to the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period.

A perusal of petitioner's Annual Income Tax Return[1] for taxable year 2007 shows that petitioner had total tax credits in the amount of P36,727,530.00, which consisted of the prior year's excess credits in the amount of P17,854,763.00 and creditable taxes withheld during the year in the amount of P18,872,767.00, to wit:

Prior Year's Excess Credits		P 17,854,763.00[2]
Creditable Taxes Withheld		
for the First Three Quarters	P 14,990,418.00	
for the Fourth Quarter	3,882,349.00	18,872,767.00
Total Tax Credits		**P 36,727,530.00**

The prior year's excess credits of P17,854,763.00 was applied against petitioner's income tax due for the year 2007 in the amount of

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[1] Exhibits "A" and "B".

[2] ICPA noted on page 2, Exhibit "T" of his Report that the Company erroneously placed the prior years' excess credits amounting to P17,854,763.00 in the line 28B (Tax payments for the first three quarters) of the annual income tax return (presented as ***Exhibit "A"***) instead of line 28A (Prior years' excess credits other than MCIT). However, the Company correctly placed the prior years' excess credits amounting to P17,854,763.00 in the line 28A of the manually filed annual income tax return (presented as ***Exhibit "B"***). Moreover, the three quarterly income tax returns filed for the CY 2007 (i.e. 1st to 3rd quarter of 2007) disclosed no quarterly payment of income tax due.

P6,654,501.35,[3] leaving the amount of P11,200,261.65, representing prior year's excess credits and the amount of P18,872,767.00, representing creditable taxes withheld during the year 2007 or a total tax credit of P30,073,028.65[4] unutilized as of December 31, 2007, as shown below:

Prior Year's Excess Credits		P 17,854,763.00
Less:	Income Tax Due	6,654,501.35
Balance of Prior Year's Excess Credits		P 11,200,261.65
Add:	Creditable Taxes Withheld During the Year	18,872,767.00
Unutilized Excess Tax Credits as of December 31, 2007		**P 30,073,028.65**

Inasmuch as petitioner marked the option "To be issued a Tax Credit Certificate" in its Annual Income Tax Return for taxable year 2007 and reflected only the amount of P11,200,262.00 as "Prior Year's Excess Credits" in its Annual Income Tax Return[5] for taxable year 2008, the unutilized creditable withholding taxes for taxable year 2007 in the amount of P18,872,767.00 may be the subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

Settled is the rule that a taxpayer's excess withholding tax credits for the taxable year shall automatically be allowed as a refund or tax credit for purposes of filing his income tax return for the taxable year succeeding the taxable year in which the aforesaid excess credit arose.

[3] Line 27, Exhibit "A".
[4] Line 31, Exhibit "A".
[5] Line 28A, Exhibit "N".

This right to refund or credit, however, is not automatic, the taxpayer must be able to prove the same by substantial evidence, in compliance with the prescribed requirements set forth in our Tax Code and related laws.

In order to be entitled to a claim for refund or issuance of a TCC, the taxpayer must satisfy the three conditions for the grant of a claim for refund of creditable withholding tax, to wit:

1) That the claim is filed with the CIR, within the two (2) year period from the date of payment of the tax;

2) That 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; and

3) That it is shown on the return of the recipient that the income payment received was declared as part of the gross income *(Banco Filipino Savings and Mortgage Bank vs. CA, et al., 519 SCRA 93).*

First Requisite – Claim for Refund was filed within the two-year prescriptive period.

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide:

"**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes**. - The Commissioner may -

(A) xxx xxx

(B) 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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> "**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, 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.
>
> xxx xxx."

Clearly, the two (2)-year prescriptive period for the filing of a claim for refund under *Section 204 (C),* in relation to *Section 229 of the NIRC of 1997, as amended,* commences from the date of filing of the final adjustment return *(ACCRA Investments Corp.vs. Court of Appeals, 204 SCRA 957).* It bears emphasis at this point that the rationale in computing the two (2)-year prescriptive period with respect to petitioner's claim for refund from the time it filed its final adjustment return is the fact that it

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was only then that petitioner could ascertain whether it made profits or incurred losses in its business operations.

Records show that petitioner filed its ITR for calendar year ending December 31, 2007 on April 14, 2008. Counting from April 14, 2008, petitioner had until April 14, 2010, within which to file its claim for refund/TCC both administratively and judicially. Therefore, petitioner's administrative claim for refund filed on July 30, 2008 and judicial claim filed on April 14, 2010 were both filed within the two (2)-year prescriptive period allowed by law. Clearly, the first requirement has been complied with.

Second and Third Requisites –

As regards the second and third requisites, *Section 10 of Revenue Regulation No. 12-94* provides:

> "SEC. 10. Claim for Tax Credit or Refund. –
>
> (a) Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course **only when it is shown on the return that the income payment received 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 of tax withheld therefrom.**" *(Emphasis supplied)*

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Pursuant to the above provision, petitioner must be able to show that the income payments it received have been declared as part of its gross income and that the fact of withholding must be established by substantial evidence.

Second Requisite – Taxes withheld are duly supported by certificates of tax withheld.

To prove the fact of withholding of creditable taxes withheld for taxable year 2007 in the amount of P18,872,767.00, petitioner presented Certificates of Creditable Tax Withheld at Source duly issued to it by various withholding agents for the same year *(Exhibits "W-1" to "W-225")*, which were examined by the Court-Commissioned Independent Certified Public Accountant (ICPA), Mr. Edwin F. Ramos.

In his report, Mr. Ramos summarized his findings, as follows:

	Findings	*Reference*		*Taxes Withheld*
1	Creditable withholding tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 1-A	P	14,729,350.52
2	CWT duly supported by original BIR Form 2307 without Company's address indicated therein	Annex 1-B		882,106.37
3	CWT duly supported by original BIR Form 2307 with different address indicated therein	Annex 1-C		2,837,342.68
	Sub-total		***P***	***18,448,799.57***
	Other findings			
4	CWT duly supported by original BIR Form 2307 but with erasure on the date and without countersignature indicated therein	Annex 1-D	P	3,608.00
5	CWT supported by photocopy of BIR Form 2307 stamped "received" by the BIR	Annex 1-E		204,760.40
6	CWT supported by photocopy of BIR Form 2307 stamped "received" by the BIR, without Company's address indicated therein	Annex 1-F		37,399.42

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7	CWT duly supported by original BIR Form 2307 but with different Company's name indicated therein	Annex 1-G		32,000.00
8	CWT duly supported by original BIR Form 2307 but with different TIN indicated therein	Annex 1-H		88,218.00
9	CWT duly supported by original BIR Form 2307 but without Company's TIN and address indicated therein	Annex 1-I		9,428.00
10	CWT supported by photocopy of BIR Form 2307 stamped "received" by the BIR and without Company's TIN and address indicated therein	Annex 1-J		47,171.20
11	CWT supported by photocopy of BIR Form 2307 stamped "received" by the BIR but determined to be an over claim	Annex 1-K		1,360.00
	Sub-total		***P***	***423,945.02***
	GRAND TOTAL Company-prepared schedule of creditable withholding taxes	Exhibit U	**P**	**18,872,744.59** **18,872,764.59**
	Difference		**P**	**(20.00)**

Based from the foregoing, the amount of P423,945.02 under the caption "Other Findings" must be disallowed for the reasons stated therein. In addition, after a careful examination of petitioner's documentary evidence, the Court finds that the following certificates of creditable withholding taxes in the amount of P435,223.36[6] shall likewise be disallowed since the supporting certificate bears a TIN not belonging to petitioner.[7]

Therefore, petitioner was able to substantiate, by proper withholding tax certificates, only the CWT in the amount of P18,013,576.21[8] for taxable year 2007.

Third Requisite –The income withheld made part of petitioner's gross income.

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[6] Exhibit "W-114", under Annex 1-A.
[7] Indicated TIN is 000-693-400-000., while petitioner's TIN is 000-169-334-000.
[8] P18,448,799.57 less P435,223.36.

A perusal of the evidence on record shows that the revenue under the "Contract Price" account per petitioner's general ledger for 2006[9], 2007[10] and 2008[11] tallied with the total revenue reported in the Annual Income Tax Returns for 2006[12], 2007[13] and 2008[14].

To account for the income related to the claimed CWT, the Court-Commissioned ICPA presented two separate reports, dated May 16, 2011[15] and July 1, 2011.[16] In his report dated May 16, 2011, the Court-Commissioned ICPA summarized his findings, as follows:[17]

Findings		*Reference*	*Amount*	
			Tax Base	*Tax Withheld*
A.	**Creditable withholding taxes with related income included in the Company's general ledgers and income tax returns**			
1	Creditable withholding tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307); the related income of which was included in the Company's Annual Income Tax Return as traced to general ledgers of prepaid taxes and contract price accounts and to sales invoice or official receipt	Annex 2-A	P 214,683,741.26	P 4,494,249.81
2	CWT duly supported by original BIR Form 2307; the related income of which was included in the Company's Annual Income Tax Return as traced to general ledgers of prepaid taxes, accrued accounts receivables, advances received and contract price			

[9] Exhibit "MM".
[10] Exhibit "Z".
[11] Exhibit "WW".
[12] Exhibit "NN".
[13] Exhibits "A" and "B".
[14] Exhibits "N" and "O".
[15] Exhibit "T".
[16] Exhibit "AAA"
[17] Exhibit "T", pp. 8-11 of final ICPA report or Annex 2.

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	accounts and to sales invoice or official Receipt	Annex 2-B	436,483,873.39	8,667,508.76
3	CWT duly supported by original BIR Form 2307 but without Company's address indicated therein; the related income of which was included in the Company's Annual Income Tax Return as traced to general ledgers of prepaid taxes and contract price accounts and to sales invoice or official receipt	Annex 2-C	23,526,577.12	470,531.54
4	CWT duly supported by original BIR Form 2307 without Company's address indicated therein; the related income of which was included in the Company's Annual Income Tax Return as traced to general ledgers of prepaid taxes, accrued accounts receivable, advances received and contract price accounts and to sales invoice	Annex 2-D	15,738,270.96	314,765.42
5	CWT duly supported by original BIR Form 2307 with different address indicated therein; the related income of which was included in the Company's Annual Income Tax Return as traced to general ledgers of prepaid taxes, accrued accounts receivable, advances received and contract price accounts and to sales invoice or official Receipt	Annex 2-E	141,867,134.00	2,837,342.68
	Sub-total		***P 832,299,596.73***[18]	***P 16,784,398.21***[19]
B.	**Other Findings**			
1	CWT duly supported by original BIR Form 2307 but with erasures on the date and without countersignature indicated therein; the related income of which was included in the Company's Annual Income Tax Return as traced to general ledgers of prepaid taxes and contract price accounts and to sales invoice	Annex 2-F	P 8,900.00	P 178.00
2	CWT duly supported by original BIR Form 2307 but with erasures on the date and without countersignature indicated therein; the related income of			

[18] Erroneously summed up by ICPA in the amount of P832,479,996.73 (Exhibit "T", p. 9 of final ICPA report and Annex 2).
[19] Erroneously summed up by ICPA in the amount of P16,788,006.21 (Exhibit "T", p. 9 of final ICPA report and Annex 2).

	which was included in the Company's Annual Income Tax Return as traced to general ledgers of prepaid taxes, accrued accounts receivable, advances received and contract price accounts and to sales invoice	Annex 2-G	171,500.00	3,430.00
3	CWT duly supported by original BIR Form 2307; the related income of which was included in the Company's Annual Income Tax Return as partially traced to general ledgers of prepaid taxes, accrued accounts receivables, advances received and contract price accounts and to sales invoice or official Receipts	Annex 2-H	78,722,097.29	1,570,751.95
4	CWT duly supported by original BIR Form 2307 without Company's address indicated therein; the related income of which was included in the Company's Annual Income Tax Return as partially traced to general ledgers of prepaid taxes, accrued accounts receivable, advances received and contract price accounts and to sales invoice or official Receipt	Annex 2-I	4,682,470.63	93,649.41
5	CWT supported by photocopy of BIR Form 2307; the related income of which was included in the Company's Annual Income Tax Return as traced to general ledgers of prepaid taxes and contract price accounts and to sales invoice	Annex 2-J	2,639,320.00	52,786.40
6	CWT supported by photocopy of BIR Form 2307; the related income of which was included in the Company's Annual Income Tax Return as partially traced to general ledgers of prepaid taxes, accrued account receivable, advances received and contract price accounts and to sales invoice or official Receipt	Annex 2-K	7,598,700.00	151,974.00
7	CWT supported by photocopy of BIR form 2307 without Company's address indicated therein; the related income of which was included in the Company's Annual Income Tax return as traced to general ledgers of prepaid taxes and contract price accounts and to sales invoice or official receipt	Annex 2-L	1,378,171.12	27,563.42
8	CWT supported by photocopy of BIR			

	form 2307 without Company's address indicated therein; the related income of which was included in the Company's Annual Income Tax return as traced to general ledgers of prepaid taxes, accrued accounts receivable, advances received and contract price accounts and to sales invoice	Annex 2-M	491,800.00	9,836.00
9	CWT duly supported by original BIR Form 2307 with different Company name indicated therein; the related income of which was included in the Company's Annual Income Tax Return as traced to general ledgers of prepaid taxes and contract price accounts and to sales invoice	Annex 2-N	1,600,000.00	32,000.00
10	CWT duly supported by original BIR Form 2307 but with different TIN indicated therein	Annex 1-H	-	88,218.00
11	CWT duly supported by original BIR Form 2307 but without Company's TIN and address indicated therein	Annex 1-I	-	9,428.00
12	CWT supported by photocopy of BIR Form 2307 but without Company's TIN and address indicated therein	Annex 1-J	-	47,171.20
13	CWT supported by photocopy of BIR Form 2307 but determined to be an over claim	Annex 1-K	-	1,360.00
Sub-total			***P 97,292,959.04***[20]	***P 2,088,346.38***
GRAND TOTAL			**P 929,592,555.77**[21]	**P 18,872,744.59**

In relation to Annexes 2-H and 2-I under "Other Findings" mentioned above, the Court-Commissioned ICPA added in his Supplemental Report dated July 1, 2011, the following findings:[22]

Findings		*Reference*	*Amount*	
			Tax Base	*Tax Withheld*
A.	**Creditable withholding taxes with related income included in the Company's general ledgers and income tax returns**			
1	Creditable withholding tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR			

[20] Erroneously summed up by ICPA in the amount of P907,292,959.04 (Exhibit "T", p. 11).
[21] Erroneously summed up by ICPA in the amount of P935,584,105.77 (Exhibit "T", p. 11).
[22] Exhibit "AAA", p. 2 of supplemental ICPA report or Annex 1.

Form 2307); the related income of which was included in the Company's Annual Income Tax Return (ITR) as traced to general ledgers (GL) of prepaid taxes, accrued accounts receivable, advances received and contract price accounts and to sales/billing invoice	Annex 1-A	P 67,231,910.50	P 1,340,948.21
2 CWT duly supported by original BIR Form 2307 but without Company's address indicated therein; the related income of which was included in the Company's Annual ITR as traced to GL of prepaid taxes, accrued accounts receivables, advances received and contract price accounts and to sales/billing invoice	Annex 1-B	4,281,470.63	85,629.41
Sub-total		***P 71,513,381.13***	***P 1,426,577.62***
B. Other Findings			
3 CWT duly supported by original BIR Form 2307; the related income of which was included in the Company's Annual ITR as partially traced to GL of prepaid taxes, accrued accounts receivables, advances received and contract price accounts and to sales/billing invoice	Annex 1-C	P 11,891,186.79	P 237,823.74
TOTAL		**P 83,404,567.92**	**P 1,664,401.36**

Based from the foregoing tables, the creditable taxes of P18,013,576.21[23] were withheld on income payments received by petitioner amounting to P893,942,996.65[24].

To further support its claim, petitioner submitted its Quarterly[25]/Annual[26] Income Tax Returns for the years 2007, 2008 and 2009; Audited Financial Statements[27] for the years 2007 and 2008;

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[23] P16,784,398.21(letter A of the Findings in Exhibit "T", p. 9) plus P1,664,401.36 (Exhibit "AAA", p. 2 and Annex 1) less P435,223.36 (cwt with different TIN).
[24] P832,299,596.73 (letter A of the Findings in Exhibit "T", p. 9) plus P83,404,567.92 (Exhibit "AAA", p. 2 and Annex 1) less P21,761,168.00 (income of cwt with different TIN).
[25] Exhibits "H", "I", "J", "EE", "FF", "GG", "K", "L", "M", "II", "JJ", and "KK".
[26] Exhibits "SS", "NN", "A", "B", "N", "O" and "HH".
[27] Exhibits "DD" and "YY".

General Ledger of Contract Price for 2006[28], 2007[29] and 2008[30]; General Ledger of Prepaid Taxes for 2007[31] and 1st quarter of 2008[32]; company prepared schedule of prepaid taxes for 2007[33]; General Ledger of Advances Received for 2007[34]; General Ledger of Accrued Accounts Receivable for 2006, 2007 and 2008[35]; Schedule of Advances received before and after amortization for 2007[36]; Masterlist of project codes for 2006, 2007 and 2008[37]; company prepared additional schedule[38]; and various official receipts and invoices[39] issued by petitioner. However, a perusal of these documents and the reports of the ICPA[40] shows that petitioner was able to establish only the income payment of P243,995,418.10, upon which the corresponding creditable taxes of P4,880,451.20 were withheld, were shown hereunder:

Per Exh. "T" attached as	CWT Certificate Exhibit No.	CLIENT	INCOME VERIFIED	CREDITABLE WITHHOLDING TAX
Annex 2-A	W- 2	ANDO PHILIPPINES CORPORATION	P 2,168,750.00	P 43,375.00
Annex 2-A	W- 3	ANDO PHILIPPINES CORPORATION	20,027,425.17	400,548.50

[28] Exhibit "MM".
[29] Exhibit "Z".
[30] Exhibit "WW".
[31] Exhibit "X".
[32] Exhibit "OO".
[33] Exhibit "Y".
[34] Exhibit "AA".
[35] Exhibits "LL", "BB" and "XX".
[36] Exhibits "PP-1" to "PP-4".
[37] Exhibits "QQ-2", "QQ-1" and "ZZ".
[38] Exhibit "VV".
[39] Exhibits "F", "G", "CC-1" to "CC-1045", "CC-1046" to "CC-1048", "CC-1051", "CC-1055", "CC-1058", "CC-1060", "CC-1063", "CC-1065"and "CC-1069" to "CC-1078".
[40] Annex 2 of Exhibit "T" and Annex 1 of Exhibit "AAA".

Annex 2-A	W- 8	CCT CONSTRUCTORS CORPORATION	357,142.86	7,142.86
Annex 2-A	W- 10	CEBU MITSUMI INC.	3,966,700.00	79,334.00
Annex 2-A	W- 12	CEBU MITSUMI INC.	12,031,100.00	240,622.00
Annex 2-A	W- 13	CEBU YMTECHNOLOGY, INC.	61,400.00	1,228.00
Annex 2-A	W- 14	CEBU YMTECHNOLOGY, INC.	680,000.00	13,600.00
Annex 2-A	W- 15	CEBU YMTECHNOLOGY, INC.	597,500.00	11,950.00
Annex 2-A	W- 17	CEBU YMTECHNOLOGY, INC.	48,300.00	966.00
Annex 2-A	W- 19	CEBU YMTECHNOLOGY, INC.	33,500.00	670.00
Annex 2-A	W- 20	CEBU YMTECHNOLOGY, INC.	548,500.00	10,970.00
Annex 2-A	W- 21	CEBU YUSHIN INC.	16,200.00	324.00
Annex 2-A	W- 21	CEBU YUSHIN INC.	27,800.00	556.00
Annex 2-A	W- 22	DAIKOKU ELECTRONICS (PHILS), INC.	719,000.00	14,380.00
Annex 2-A	W- 23	EAST CERAMIC PHILIPPINES CORP	400,000.00	8,000.00
Annex 2-A	W- 24	EAST CERAMIC PHILIPPINES CORP	15,000.00	300.00
Annex 2-A	W- 25	EAST CERAMIC PHILIPPINES CORP	36,400.00	728.00
Annex 2-A	W- 26	EAST CERAMIC PHILIPPINES CORP	138,900.00	2,778.00
Annex 2-A	W- 27	EAST CERAMIC PHILIPPINES CORP	6,300.00	126.00
Annex 2-A	W- 28	EAST CERAMIC PHILIPPINES CORP	6,600.00	132.00
Annex 2-A	W- 29	EAST CERAMIC PHILIPPINES CORP	29,100.00	582.00
Annex 2-A	W- 30	EAST CERAMIC PHILIPPINES CORP	30,000.00	600.00
Annex 2-A	W- 31	EAST CERAMIC PHILIPPINES CORP	35,000.00	700.00
Annex 2-A	W- 32	EDS MANUFACTURING INC.	269,400.00	5,388.00
Annex 2-A	W- 33	EDS MANUFACTURING INC.	13,500.00	270.00
Annex 2-A	W- 34	EDS MANUFACTURING INC.	330,000.00	6,600.00
Annex 2-A	W- 36	EPSON PRECISION (PHILS). INC.	2,717,387.00	54,347.74
Annex 2-A	W- 37	EPSON PRECISION (PHILS). INC.	1,210,800.00	24,216.00
Annex 2-A	W- 42	FIRST SUMIDEN CIRCUITS, INC	185,500.00	3,710.00
Annex 2-A	W- 43	FUJITA PHILS CONSt. AND DEV'T INC.	420,000.00	8,400.00
Annex 2-A	W- 49	INT'L ELECTRIC WIRES PHILS.	38,000.00	760.00
Annex 2-A	W- 50	INT'L ELECTRIC WIRES PHILS.	51,300.00	1,026.00
Annex 2-A	W- 51	INT'L ELECTRIC WIRES PHILS.	95,000.00	1,900.00
Annex 2-A	W- 56	LAGUNA DAI-ICHI, INC.	26,000.00	520.00
Annex 2-A	W- 58	LAGUNA DAI-ICHI, INC.	246,800.00	4,936.00
Annex 2-A	W- 59	MAHLE FILTER SYSTEMS PHILS, CORP	166,700.00	3,334.00
Annex 2-A	W- 60	NANBU PHILIPPINES, INCORPORATED	289,000.00	5,780.00
Annex 2-A	W- 61	NANBU PHILIPPINES, INCORPORATED	240,000.00	4,800.00
Annex 2-A	W- 62	NANBU PHILIPPINES, INCORPORATED	100,000.00	2,000.00
Annex 2-A	W- 63	NANBU PHILIPPINES, INCORPORATED	85,000.00	1,700.00
Annex 2-A	W- 64	NANBU PHILIPPINES, INCORPORATED	487,900.00	9,758.00
Annex 2-A	W- 65	NANBU PHILIPPINES, INCORPORATED	30,000.00	600.00
Annex 2-A	W- 66	NANBU PHILIPPINES, INCORPORATED	2,000,000.00	40,000.00
Annex 2-A	W- 68	NANOX PHILIPPINES, INC.	3,360,000.00	67,200.00
Annex 2-A	W- 69	NANOX PHILIPPINES, INC.	635,000.00	12,700.00
Annex 2-A	W- 70	NANOX PHILIPPINES, INC.	370,000.00	7,400.00
Annex 2-A	W- 70	NANOX PHILIPPINES, INC.	297,000.00	5,940.00
Annex 2-A	W- 73	NEC TOKIN ELECTRONICS (PHILS) INC.	33,300.00	666.00
Annex 2-A	W- 74	NEC TOKIN ELECTRONICS (PHILS) INC.	54,945.00	1,098.90
Annex 2-A	W- 75	NEC TOKIN ELECTRONICS (PHILS) INC.	201,965.00	4,039.30

Annex 2-A	W- 77	N. T. PHILIPPINES, INC.	79,000.00	1,580.00
Annex 2-A	W- 80	PENTA SHIMIZU TOA JOINT VENTURE	2,419,266.00	48,385.32
Annex 2-A	W- 81	PENTA SHIMIZU TOA JOINT VENTURE	14,492,136.50	289,842.73
Annex 2-A	W- 82	PENTA SHIMIZU TOA JOINT VENTURE	13,475,636.50	269,512.73
Annex 2-A	W- 83	PENTA SHIMIZU TOA JOINT VENTURE	14,849,446.50	296,988.93
Annex 2-A	W- 85	PHILIPPINES EPSON OPTICAL, INC.	3,054,240.00	61,084.80
Annex 2-A	W- 86	PHILIPPINES EPSON OPTICAL, INC.	520,000.00	10,400.00
Annex 2-A	W- 86	PHILIPPINES EPSON OPTICAL, INC.	561,000.00	11,220.00
Annex 2-A	W- 88	PHILIPPINE TONAN CORPORATION	1,140,000.00	22,800.00
Annex 2-A	W- 98	SANYO SEMICONDUCTOR MFTG PHILS CORP	1,069,100.00	21,382.00
Annex 2-A	W- 100	SANYO SEMICONDUCTOR MFTG PHILS CORP	26,000.00	520.00
Annex 2-A	W- 100	SANYO SEMICONDUCTOR MFTG PHILS CORP	23,000.00	460.00
Annex 2-A	W- 100	SANYO SEMICONDUCTOR MFTG PHILS CORP	20,000.00	400.00
Annex 2-A	W- 104	SHIMIZU PHIL. CONTRACTORS INC.	1,507,708.44	30,154.16
Annex 2-A	W- 105	SHIMIZU PHIL. CONTRACTORS INC.	11,485,329.51	229,706.59
Annex 2-A	W- 106	SOHBI KOHGEI (PHILS), INC.	115,000.00	2,300.00
Annex 2-A	W- 109	TAISEI SHIMIZU JOINT VENTURE	276,785.00	5,535.70
Annex 2-A	W- 121	TAIYO YUDEN (PHILS), INC.	98,400.00	1,968.00
Annex 2-A	W- 122	TAIYO YUDEN (PHILS), INC.	275,000.00	5,500.00
Annex 2-A	W- 124	TAKENAKA CORP. PHIL. BRANCH	1,444,076.00	28,881.52
Annex 2-A	W- 124	TAKENAKA CORP. PHIL. BRANCH	8,683,811.00	173,676.22
Annex 2-A	W- 125	TAKENAKA CORP. PHIL. BRANCH	5,128,357.00	102,567.14
Annex 2-A	W- 126	TAKENAKA CORP. PHIL. BRANCH	12,330,965.00	246,619.30
Annex 2-A	W- 127	TAKENAKA CORP. PHIL. BRANCH	4,363,697.00	87,273.94
Annex 2-A	W- 128	TAS PLAN, INC.	16,964.50	339.29
Annex 2-A	W- 131	TOBISHIMA PHILIPPINES, INC.	5,089,285.71	101,785.71
Annex 2-A	W- 132	TOBISHIMA PHILIPPINES, INC.	327,857.14	6,557.14
Annex 2-A	W- 7	CCT CONSTRUCTORS CORPORATION	250,000.00	5,000.00
Annex 2-A	W- 76	N. T. PHILIPPINES, INC.	1,663,200.00	33,264.00
Annex 2-A	W- 91	PILIPINAS KYORITSU INC.	6,491,000.00	129,820.00
Annex 2-A	W- 194	TOKYO STEEL PHILS. CORP.	195,000.00	3,900.00
Annex 2-B	W- 5	ATOMED CEBU, INC.	114,100.00	2,282.00
Annex 2-B	W- 6	ATOMED CEBU, INC.	124,600.00	2,492.00
Annex 2-B	W- 11	CEBU MITSUMI INC.	1,261,500.00	25,230.00
Annex 2-B	W- 11	CEBU MITSUMI INC.	1,298,300.00	25,966.00
Annex 2-B	W- 16	CEBU YMTECHNOLOGY, INC.	120,200.00	2,404.00
Annex 2-B	W- 20	CEBU YUSHIN INC.	76,100.00	1,522.00
Annex 2-B	W- 35	ENOMOTO PHILIPPINE MFG. INC	59,300.00	1,186.00
Annex 2-B	W- 39	FIRST SUMIDEN CIRCUITS, INC	485,800.00	9,716.00
Annex 2-B	W- 44	FUJITA PHILS. CONSTRUCTION &	3,910,000.00	78,200.00
Annex 2-B	W- 45	IBIDEN PHILIPPINES, INC.	489,210.00	9,784.20
Annex 2-B	W- 47	IBIDEN PHILIPPINES, INC.	1,026,500.00	21,430.00
Annex 2-B	W- 48	IBIDEN PHILIPPINES, INC.	45,000.00	900.00
Annex 2-B	W- 48	IBIDEN PHILIPPINES, INC.	263,500.00	5,270.00
Annex 2-B	W- 52	KAJIMA PHILIPPINES INC.	9,270,000.00	185,400.00
Annex 2-B	W- 57	LAGUNA DAI-ICHI, INC.	1,495,000.00	29,900.00
Annex 2-B	W- 67	NANOX PHILIPPINES, INC.	114,000.00	2,280.00
Annex 2-B	W- 71	NEC TOKIN ELECTRONICS (PHILS) INC.	1,724,830.00	34,496.60

Annex 2-B	W- 72	NEC TOKIN ELECTRONICS (PHILS) INC.	377,450.00	7,549.00
Annex 2-B	W- 84	PHILIPPINES EPSON OPTICAL, INC.	1,720,000.00	34,400.00
Annex 2-B	W- 92	SANNO PHILIPPINES MFTG. CORP.	211,000.00	4,220.00
Annex 2-B	W- 94	SANYO CAPACITOR (PHILS.) CORP.	30,000.00	600.00
Annex 2-B	W- 94	SANYO CAPACITOR (PHILS.) CORP.	1,700,000.00	34,000.00
Annex 2-B	W- 95	SANYO CAPACITOR (PHILS.) CORP.	500,000.00	10,000.00
Annex 2-B	W- 102	SHIMIZU PHIL. CONTRACTORS INC.	1,300,000.00	26,000.00
Annex 2-B	W- 102	SHIMIZU PHIL. CONTRACTORS INC.	35,714.29	357.14
Annex 2-B	W- 103	SHIMIZU PHIL. CONTRACTORS INC.	69,357.17	1,387.14
Annex 2-B	W- 103	SHIMIZU PHIL. CONTRACTORS INC.	6,301.76	126.04
Annex 2-B	W- 134	TSUNEISHI HEAVY INDUSTRIES (CEBU), INC.	2,370,000.00	47,400.00
Annex 2-B	W- 195	TOKYO STEEL PHILS. CORP.	158,000.00	3,160.00
Annex 2-C	W- 140	CORREA ZENITAKA, INC.	27,000.00	540.00
Annex 2-C	W- 141	CORREA ZENITAKA, INC.	105,000.00	2,100.00
Annex 2-C	W- 142	CORREA ZENITAKA, INC.	50,000.00	1,000.00
Annex 2-C	W- 143	CORREA ZENITAKA, INC.	7,000.00	140.00
Annex 2-C	W- 145	CORREA ZENITAKA, INC.	100,000.00	2,000.00
Annex 2-C	W- 146	CORREA ZENITAKA, INC.	140,000.00	2,800.00
Annex 2-C	W- 148	CORREA ZENITAKA, INC.	50,000.00	1,000.00
Annex 2-C	W- 149	CORREA ZENITAKA, INC.	20,000.00	400.00
Annex 2-C	W- 152	CORREA ZENITAKA, INC.	70,000.00	1,400.00
Annex 2-C	W- 153	CORREA ZENITAKA, INC.	1,025,000.00	20,500.00
Annex 2-C	W- 155	HALSANGZ PLATING CEBU CORP	726,800.00	14,536.00
Annex 2-C	W- 156	HALSANGZ PLATING CEBU CORP	63,200.00	1,264.00
Annex 2-C	W- 157	INT'L WIRING SYSTEMS (PHILS.) CORP.	2,292,000.00	45,840.00
Annex 2-C	W- 163	JAPANESE ASSOCIATION MANILA INC.	252,000.00	5,040.00
Annex 2-C	W- 165	JAE PHILIPPINES, INC.	1,300,000.00	26,000.00
Annex 2-C	W- 167	KOHZAN CAVITE, INC.	95,600.00	1,912.00
Annex 2-C	W- 168	KOHZAN CAVITE, INC.	12,600.00	252.00
Annex 2-C	W- 169	MACTAN PARTS TECHNOLOGY, INC.	63,000.00	1,260.00
Annex 2-C	W- 170	MACTAN PARTS TECHNOLOGY, INC.	174,350.00	3,487.00
Annex 2-C	W- 171	MARUWA ELECTRONICS (PHILS.), INC.	29,000.00	580.00
Annex 2-C	W- 175	MITSUMI PHILIPPINES, INC.	804,999.61	16,099.99
Annex 2-C	W- 176	MITSUMI PHILIPPINES, INC.	343,000.00	6,860.00
Annex 2-C	W- 177	MITSUMI PHILIPPINES, INC.	720,000.00	14,400.00
Annex 2-C	W- 184	RIOFIL CORPORATION	578,571.51	11,571.43
Annex 2-C	W- 185	RIOFIL CORPORATION	64,285.50	1,285.71
Annex 2-C	W- 186	TAKASAGO PHILS. INC.	169,300.00	3,386.00
Annex 2-C	W- 187	TAKASAGO PHILS. INC.	64,400.00	1,288.00
Annex 2-C	W- 188	TAKASAGO PHILS. INC.	14,000.00	280.00
Annex 2-C	W- 189	TAKASAGO PHILS. INC.	38,100.00	762.00
Annex 2-D	W- 136	CORREA ZENITAKA, INC.	256,821.43	5,136.43
Annex 2-D	W- 137	CORREA ZENITAKA, INC.	45,000.00	900.00
Annex 2-D	W- 139	CORREA ZENITAKA, INC.	700,000.00	14,000.00
Annex 2-D	W- 159	INT'L WIRING SYSTEMS (PHILS.) CORP.	955,000.00	19,100.00
Annex 2-D	W- 166	KOHZAN CAVITE, INC.	209,000.00	4,180.00
Annex 2-E	W- 193	TAISEI PHILIPPINE CONSTRUCTION, INC.	9,053,571.50	181,071.43
Annex 2-E	W- 193	TAISEI PHILIPPINE CONSTRUCTION, INC.	24,227,678.50	484,553.57

Per Exh "AAA" attached as				
Annex 1-A	W- 99	SANYO SEMICONDUCTOR MFTG PHILS CORP	1,387,000.00	27,740.00
		TOTAL	**P 243,995,418.10**	**P 4,880,451.20**

On the other hand, the CWT of P13,992,315.80, the related income of which amounts to P685,597,137.67, shall be disallowed since the schedules provided by the ICPA[41] show some discrepancies between the total income per schedule and per certificates. Petitioner should have presented a schedule or any other document reconciling said discrepancies. Furthermore, there were income payments allegedly traced by the ICPA to the general ledger; however, upon a careful examination of the ledger shows that said income payments cannot be found in the general ledger.

In sum, petitioner has complied with the third requisite, but only in the amount of P4,880,451.20.

The Court will now proceed to determine whether the said CWT of P4,880,451.20 remains unutilized and may be the proper subject of a claim for refund or issuance of a TCC, pursuant to *Section 76 of the NIRC of 1997, as amended.*

A careful perusal of the 2007 ITR reveals that the prior year's excess tax credit of P17,854,763.00 represents the prior year's excess

[41] Annex 2, Exhibit "T" and Annex 1, Exhibit "AAA".

credits reflected in the 2005 ITR amounting to P21,385,658.00 and the creditable withholding taxes of P9,114,374.00 for the same year 2005 against which the income taxes due for the years 2005 and 2006 were applied, as illustrated below:

Prior Year's excess Credits as reflected in 2005 ITR[42]		P 21,385,658.00
Add: CWT for the year 2005[43]		9,114,374.00
Total		P 30,500,032.00
Less: Taxes Due		
For Year 2005	P 1,461,367.06[44]	
For Year 2006	11,183,902.00[45]	12,645,269.06
Prior Year's excess Credits as reflected in 2007 ITR		P 17,854,763.00

Petitioner, likewise, utilized its prior year's excess tax credit to pay its income tax liability for taxable year 2007 in the amount of P6,654,501.35. However, petitioner must still prove the existence of its prior year's excess credits from which the tax due for year 2007 may be offset or credited.

In support thereof, petitioner presented various CWT certificates, but only for the year 2005. Out of the reported 2005 CWT of P9,114,374.00, petitioner was able to substantiate only the amount of P6,662,857.36.[46] However, the same is not sufficient to cover the tax liabilities for the years 2005 and 2006 in the aggregate amount of

[42] Line 27A, Exhibit "SS".
[43] Sum of line 27C and 27D, Exhibit "SS".
[44] Line 26, Exhibit "SS".
[45] Line 27, Exhibit "NN".
[46] Annex 5, Exhibit "T".

P12,645,269.06. Thus, there were no more prior year's excess tax credits against which the tax liability of P6,654,501.35 for the year 2007 may be offset or credited. In effect, the tax due for the year 2007 shall be deducted from its claim.

Therefore, considering that petitioner's substantiated claim of P4,880,451.20 is likewise not sufficient to cover its 2007 income tax due of P6,654,501.35; petitioner's present claim must, therefore, be denied.

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice