REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AYALA CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8262

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

NOV 1 1 2013

x - x

1:50 p.m.

DECISION

CASTAÑEDA, JR., *J.*:

This case involves a Petition for Review filed by Ayala Corporation (petitioner) to seek the issuance of tax credit certificate (TCC) in the amount of ₱102,210,569.00, allegedly representing petitioner's excess or unutilized creditable withholding tax (CWT) for calendar years 2008 and 2009.

Petitioner Ayala Corporation is a domestic corporation duly organized and existing under Philippine laws, with principal place of business at 33rd Floor, Tower One Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City. It is registered with the Bureau of Internal Revenue (BIR) as a large taxpayer with Tax Identification Number (TIN) 000-153-610-000. As a large taxpayer, petitioner is required to file its Quarterly and Annual Income Tax Returns through the Electronic Filing and Payment System (EFPS).[1]

[1] Pars. 1 and 3, Joint Stipulation of Facts, Joint Stipulation, docket, pp. 83-84.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds or tax credits of overpaid or erroneously paid or collected internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

On April 15, 2009, petitioner filed its Annual Income Tax Return (ITR) for calendar year (CY) 2008 through the EFPS, declaring a total overpayment of ₱92,002,780.22, computed as follows:[2]

Taxable Income		(₱1,481,007,742.00)
Tax Rate		35%
Income Tax		-
MCIT		₱8,908,985.78
Aggregate Income Tax Due		8,908,985.78
Less: Tax Credits/Payments		
Prior Year's Credits	₱ 56,622,901.00	
CWT 1st to 3rd Quarters	21,728,394.00	
CWT 4th Quarter	22,560,471.00	
Total	₱100,911,766.00	100,911,766.00
Total Overpayment		(₱92,002,780.22)

On the same date, petitioner manually filed its Annual ITR for CY 2008 with the BIR Large Taxpayer Service reporting the same amounts.

Petitioner filed its Annual ITR for CY 2009 through the EFPS on April 13, 2010 and manually filed with the BIR Large Taxpayer Service on April 15, 2010, showing a tax overpayment of ₱94,329,072.30, detailed as follows:[3]

Taxable Income		(₱1,175,136,741.00)
Tax Rate		30%
Income Tax		-
MCIT		₱11,306,546.70
Aggregate Income Tax Due		11,306,546.70
Less: Tax Credits/Payments		
Prior Year's Credits	₱ 47,713,915.00	
CWT 1st to 3rd Quarters	27,753,060.00	
CWT 4th Quarter	30,168,644.00	
Total	₱105,635,619.00	105,635,619.00

[2] Par. 4, Joint Stipulation of Facts, Joint Stipulation, docket, p. 84.
[3] Pars. 6 and 7, Joint Stipulation of Facts, Joint Stipulation, docket, pp. 84-85.

Total Overpayment		(₱94,329,072.30)

On February 8, 2011, petitioner filed with the BIR Large Taxpayer Division its administrative claim for issuance of TCC pertaining to its alleged unutilized CWT for calendar years 2008 and 2009 amounting to ₱102,210,569.00.[4]

In order to stop the running of the two-year prescriptive period and to preserve its judicial remedy, petitioner filed the instant Petition for Review with this Court on April 7, 2011.

In her Answer[5] filed on June 7, 2011, respondent interposed the following Special and Affirmative Defenses:

> "9. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.
>
> 10. Petitioner miserably failed to show that the amount One hundred Two Million Two Hundred Ten Thousand and Five Hundred Sixty Nine Pesos (Php102,210,569.00) for calendar years 2008-2009, being claimed by petitioner pertains to excess or unutilized creditable withholding tax (CWT.
>
> 11. Petitioner is not entitled to a refund because it failed to comply with the requisites for refund of CWT under Section 204 and 229 of the National Internal Revenue Code (NIRC) of 1997.
>
> **Section 229 *(Recovery of Tax Erroneously or Illegally Collected)* of the NIRC states that:**
>
> > '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

[4] Exhibits "F" and "F-1".
[5] Docket, pp. 51-57.

> 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 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 event that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefore, 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.'

Section 204 *(Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes)* likewise provides the following:

'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 filed in writing with the Commissioner a claim for credit or refund within two (2) years after 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.

xxx xxx xxx

12. There are three conditions for the grant of a claim for refund of creditable withholding tax: 1.) the

claim is filed with the CIR within the two-year period from the date of payment of the tax; 2.) it is shown in the return of the recipient that the income payment received was declared as part of the gross income; 3.) the fact of withholding is established by a copy of statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom. ***(BANCO FILIPINO vs. CA, CTA and CIR, G.R. No. 155682, March 27, 2007.)***

13. Petitioner stated in its petition before this Honorable Court that the subject of its claim for issuance of Tax Credit Certificate are alleged unutilized CWT of Forty Four Million Two Hundred Eighty Eight Thousand Eight Hundred Sixty Five Pesos (Php44,288,865.00) for the first, second, third and fourth quarters of 2008 and unutilized CWT in the amount of Fifty Seven Million Nine Hundred Twenty One Thousand Seven Hundred Four Pesos (Php57,921,704.00) for 2009. Corollary thereto, it filed its administrative claim for refund with respondent on February 08, 2011 covering the CY 2008 and 2009, in an aggregate amount of One hundred Two Million Two Hundred Ten Thousand and Five Hundred Sixty Nine Pesos (Php102,210,569.00) while the Judicial claim was filed on April 6, 2011.

14. Petitioner must show that it has fully complied with the requisites to sustain a claim for refund or tax credit of unutilized creditable tax credits as ruled by the Honorable Supreme Court in ***F. JACINTO GROUP, INC. VS. CIR*** **(CTA CASE NO. 4971, APRIL 5, 1995)** ***AND CITIBANK N.A. VS. COURT OF APPEALS, ET AL.*** **(345 PHIL. 695. 1997)** These requisites are as follows:

a). That the claim for refund was filed within the two-year period;

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 in the return of the recipient.

15. Petitioner must prove that it has complied with the provisions of Section 229, in relation to Section 204, of the National Internal Revenue Code (NIRC) of 1997, as amended.

16. Section 2.58.3 (B) of Revenue Regulation provides that 'claims for refund or tax credit shall be given due course upon showing that income payment has been declared as part of gross income and the fact of withholding is established'.

17. Moreover, 'claims for refund or tax credit,' to say the least, 'are strictly construed against the claimant for the same partake the nature of exemption from taxation' ***(COMMISSIONER OF INTERNAL REVENUE VS. LEDESMA, 31 SCRA 95)*** and as such, they are looked upon with disfavor' ***(WESTERN MINOLCO CORP. vs. COMMISSIONER OF INTERNAL REVENUE, 124 SCRA 121).***

18. The taxpayer bears the burden of proof to establish not only that a refund is justified under the law but also that the amount that should be refunded is correct. ***(CIR vs. ASIAN TRANSMISSION CORPORATION, G.R. No. 179617, January 19, 2011)***

19. In an action for refund/tax credit, the ***onus probandi*** is on the taxpayer to establish its right to refund/tax credit, and failure to sustain the burden is fatal to its claim for refund/tax credit ***(ASIAN PETROLEUM CO. VS. LLANES, 49 PHIL. 466 cited in COLLECTOR OF INTERNAL REVENUE VS. MANILA JOCKEY CLUB, INC., 98 PHIL. 670).***

> 20. Claims for refund are construct ***stictissimi juris*** against the claimant for the same partake the nature of exemption from taxation ***(COMMISSIONER OF INTERNAL REVENUE vs. LEDESMA, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(WESTERN MINOLCO COPR. vs. COMMISSIONER OF INTERNAL REVENUE, 124 SCRA 121).***"

During trial, petitioner presented and formally offered its testimonial and documentary evidence. On the other hand, respondent, through counsel, manifested that she will no longer present evidence and that she will be submitting the case for decision. The parties' counsels were given thirty (30) days within which to file their respective Memorandum.[6]

On July 31, 2013, the case was submitted for decision after respondent filed her Memorandum on July 15, 2013 and petitioner filed its Memorandum on July 29, 2013.[7]

The following are the issues[8] submitted by the parties for this Court's resolution:

> "1. Whether or not Petitioner's claim for issuance of TCC in the total amount of ₱102,210,569.00 is duly substantiated by sufficient evidence showing that these excess or unutilized CWTs were generated in CYs 2008 and 2009?
>
> 2. Whether or not Petitioner's claim for issuance of TCC was filed within the two-year prescriptive period?
>
> 3. Whether or not Petitioner's claim for issuance of TCC in the total amount of ₱102,210,569.00 was carried over to CY 2010?
>
> 4. Whether or not Petitioner is entitled to the issuance of TCC in the total amount of ₱102,210,569.00

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[6] Docket, p. 258.
[7] Docket, p. 307.
[8] Docket, p. 85.

> pertaining to its excess or unutilized CWTs for CYs 2008 and 2009?"

The enumerated issues can be summarized as follows:

"Whether or not petitioner is entitled to the issuance of tax credit certificate in the amount of ₱102,210,569.00, representing its purported excess and unutilized creditable withholding tax for calendar years 2008 and 2009."

In claiming unutilized creditable withholding taxes, Section 76 of the NIRC of 1997, as amended, provides specific requirements before a refund/tax credit certificate may be issued, to wit:

> "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."

Based on the afore-quoted provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid in a given taxable year 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 and no application for cash refund or issuance of tax credit certificate shall be allowed.[9]

The corporation must signify in its Annual Corporate Adjustment Return (by marking the option box provided in the BIR Form) its intention, whether to request a refund or to claim an automatic tax credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.[10]

A perusal of petitioner's Annual ITRs for calendar years 2008[11] and 2009[12] shows that petitioner's Minimum Corporate Income Tax (MCIT) due in the respective amounts of ₱8,908,985.78 and ₱11,306,546.70 totaling ₱20,215,532.48 were offset against the reported prior year's (2007) excess credits of ₱56,622,901.00, leaving the balance of the prior year's (2007) excess credits of ₱36,407,368.30[13] and creditable taxes withheld in 2008 and 2009 in the respective amounts of ₱44,288,865.00 and ₱57,921,704.00 or in the total amount of ₱102,210,569.00 unutilized as of December 31, 2009, as shown below:

	CY 2008 *(Exhibit "C")*	**CY 2009** *(Exhibit "D")*
Sales/Revenues/Receipts/Fees	₱ 183,941,619.00	₱ 197,025,096.00
Less: Costs Sales/Services	161,684,707.00	161,340,370.00
Gross Income from Operation	₱ 22,256,912.00	₱ 35,684,726.00
Add: Non-Operating & Taxable Other Income	423,192,377.00	529,642,609.00
Total Gross Income	₱ 445,449,289.00	₱ 565,327,335.00
Less: Deductions	1,926,457,031.00	1,740,464,076.00
Net Loss	₱(1,481,007,742.00)	₱(1,175,136,741.00)

[9] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 176290, September 21, 2007; *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corporation, et al.,* G.R. Nos. 171742 and 176165, June 15, 2011.
[10] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.,* G.R. No. 112024, January 28, 1999.
[11] Exhibit "C".
[12] Exhibit "D".
[13] Should be ₱36,407,368.52.

Prior Year's Excess Credits	₱ 56,622,901.00	₱ 47,713,915.00
Less: Minimum Corporate Income Tax (MCIT) Due	8,908,985.78	11,306,546.70
Balance of Prior Year's Excess Credits	**₱ 47,713,915.22**	**₱ 36,407,368.30**
Add: Creditable Taxes W/held During The Year		
Creditable Taxes W/held for the First Three Quarters	₱ 21,728,394.00	₱ 27,753,060.00
Creditable Taxes W/held for the Fourth Quarter	22,560,471.00	30,168,644.00
Total	**₱ 44,288,865.00**	**₱ 57,921,704.00**
Total Excess Tax Credits as of December 31	₱ 92,002,780.22	₱ 94,329,072.30

Petitioner opted to be issued a tax credit certificate for its excess CWT for calendar years 2008 and 2009 by marking the box corresponding to the said choice in its Annual ITRs[14] for the said years. Since only the excess tax credits from taxable year 2007 were carried over by petitioner in its Quarterly Income Tax Returns[15] and Annual Income Tax Returns[16] for calendar years 2009 and 2010, the excess creditable withholding taxes for calendar years 2008 and 2009 in the respective amounts of ₱44,288,865.00 and ₱57,921,704.00 or in the sum of ₱102,210,569.00 may be a proper subject of a claim for issuance of tax credit certificate pursuant to Section 76 of the NIRC of 1997, as amended.

In addition to the requisite provided under Section 76 of the NIRC of 1997, a taxpayer must satisfy the following requirements in order to be entitled to a refund or issuance of tax credit certificate for excess/unapplied CWT:

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

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

[14] Exhibits "C" and "D", Line 31.
[15] Exhibits "D-2-a","D-3-a", "D-4-a", "E-2-a", "E-3-a", and "E-4-a", Line 30A.
[16] Exhibits "D" and "E", Line 30A.

3. The income upon which the taxes were withheld must be included in the return of the recipient.[17]

Anent the first requisite, the applicable provisions of the NIRC of 1997 are as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> "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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[17] Section 2.58, Revenue Regulations No. 2-98, as amended; *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

It is well-settled in our jurisprudence that the reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit of excess income tax paid/withheld, both in the administrative and judicial levels, commences from the date of filing of the Final Adjustment Return.[18] It is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[19]

The present claim covers calendar years 2008 and 2009 for which petitioner filed its Annual Income Tax Returns on April 15, 2009[20] and April 13, 2010[21], respectively. Counting two years from these dates, petitioner's administrative claim filed on February 8, 2011[22], and the subsequent appeal via Petition for Review filed before this Court on April 7, 2011 fell within the two-year prescriptive period. Clearly, the first requirement has been satisfied.

As regards petitioner's compliance with the second requisite, the Court of Tax Appeals *En Banc* in the case of *Mermac, Inc. vs. Commissioner of Internal Revenue*[23] ruled that claims for refund involving creditable tax withheld shall only be given due course upon submission of BIR Form No. 2307 issued by the income-payor to the recipient-payee, to wit:

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[18] *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, May 29, 1995.
[19] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992.
[20] Exhibit "C".
[21] Exhibit "D".
[22] Exhibit "F-1".
[23] CTA EB No. 699, July 27, 2011.

"On the outset, the third condition is imposed by Section 2.58.3 (B) of Revenue Regulations (RR) No. 2-98, which states:

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

xxx xxx xxx

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

Corollary to the condition set forth, the same RR No. 2-98 establishes the requirement on the part of the payor to furnish the payee the withholding tax statement using the prescribed form (BIR Form No. 2307), which shows the income payments made and the amount of taxes withheld. Otherwise, the failure of the payor to furnish the same shall be a ground for mandatory audit, *viz.*:

Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. -

xxx xxx xxx

(B) Withholding tax statement for taxes withheld. - **Every payor required to deduct and withhold taxes under these regulations shall furnish, in triplicate, each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form No. 2307) showing the income payments made and the amount of taxes withheld therefrom**, for every month of the quarter, within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. The payor, nonetheless, should always retain a copy of duly issued BIR Form 2307. Failure to furnish the same shall be a ground for the mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee.

xxx xxx xxx

The rules are clear. The income-payor, as the withholding agent, is required to furnish the recipient-payee of the statement of withholding or BIR Form No. 2307. And for purposes of claims for refund or tax credit of creditable income tax, the claim shall only be given due course when the income and withholding are established by a copy of the withholding tax statement or BIR Form No. 2307 issued by the income-payor to the recipient-payee." *(Emphasis supplied)*

The Court-commissioned Independent Certified Public Accountant (CPA) provided a summary of petitioner's claimed creditable withholding taxes for calendar years 2008 and 2009 in the respective amounts of ₱44,288,865.00 and ₱57,921,704.00, to wit:[24]

Exhibit	Findings	CY 2008	CY 2009
"J"	Supported with original BIR Form No. 2307 in Petitioner's name stamped "Received" by BIR's Large Taxpayers Assistance Division	₱ 28,211,444.36	₱ 28,480,287.58
"K"	Supported with original BIR Form No. 2307 in the Petitioner's name stamped "Received" by BIR RDO 50	16,147,763.46	-
"L"	Supported with BIR Form No. 2307 in the Petitioner's name and included in the alphalist stamped "Received" by BIR's Large Taxpayers Assistance Division	-	28,968,469.61
"M"	Supported with original BIR Form No. 2307 not in the Petitioner's name stamped "Received" by BIR's Large Taxpayers Assistance Division	15,000.00	405,000.00
"N"	Supported with original BIR Form No. 2307 not in the Petitioner's name stamped "Received" by BIR's RDO 50	255,000.00	
"O"	Supported with original BIR Form No. 2306 not in the Petitioner's name stamped "Received" by BIR's Large Taxpayers Assistance Division	33,000.00	62,250.00

[24] Exhibit "AAA", pp. 6 and 7.

"P"	Supported with original BIR Form No. 2306 not in the Petitioner's name stamped "Received" by BIR RDO 50	22,500.00	
"Q"	Supported with BIR Form No. 1606	902,944.08	
"R"	Not supported with BIR Form No. 2307,2306 or 1606	153,788.67	966.35
	Differences as explained in paragraph 5 above (not claimed in 2008 and mainly foreign exchange differentials in 2009)	(1,452,575.57)	4,730.46
	TOTAL	**₱44,288,865.00**	**₱57,921,704.00**

Based on the above findings and the Court's ruling on strict compliance with the required Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 in claiming for CWT refund, petitioner was able to satisfy the second requirement in the amount of ₱101,807,965.01, broken down as follows:

Exhibit	Findings	CY 2008	CY 2009	Total
"J"	Supported with original BIR Form No. 2307 in Petitioner's name stamped "Received" by BIR's Large Taxpayers Assistance Division	₱ 28,211,444.36	₱ 28,480,287.58	₱ 56,691,731.94
"K"	Supported with original BIR Form No. 2307 in the Petitioner's name stamped "Received" by BIR RDO 50	16,147,763.46		16,147,763.46
"L"	Supported with BIR Form No. 2307 in the Petitioner's name and included in the alphalist stamped "Received" by BIR's Large Taxpayers Assistance Division		28,968,469.61	28,968,469.61
	Total CWT with valid BIR Forms No. 2307	₱ 44,359,207.82	₱ 57,448,757.19	₱ 101,807,965.01
	Less: Discrepancy between the CWTs reflected per Schedule of Creditable Taxes Withheld *vis-à-vis* the CWTs shown per petitioner's Annual Income Tax Return for 2008 Per Schedule *(Exhibit "I")* ₱45,741,440.57 Per AITR *(Exhibit "C")* 44,288,865.00 Discrepancy ₱ 1,452,575.57	(1,452,575.57)		(1,452,575.57)
	Claimed CWT with valid BIR Form No. 2307	**₱42,906,632.25**	**₱57,448,757.19**	**₱100,355,389.44**

Notice that the amount of ₱1,452,575.57 was deducted from the CWT of ₱44,359,207.82 with valid BIR Form No. 2307 for CY

2008. As found by the Independent CPA, the amount of ₱1,452,575.57 represents CWTs supported with BIR Form No. 2307 but were not claimed by petitioner.[25] Petitioner did not provide a detailed breakdown of the amount of ₱1,452,575.57; thus, it cannot be ascertained which portion thereof formed part of the CWT of ₱44,359,207.82. Considering that petitioner cannot claim beyond what was declared in its Annual Income Tax Return and what was prayed for in the Petition for Review, the amount of ₱1,452,575.57 is a proper deduction from petitioner's claim for CY 2008.

In order to comply with the third requisite of proving that the income upon which the subject taxes were withheld was included and reported in its Annual Income Tax Returns for calendar years 2008 and 2009, petitioner presented its General Ledger[26], Schedules of Creditable Taxes Withheld on Sale of Services and Properties and Lease of Properties[27], Summary of Rental Income[28], Summary of Directors' Fees[29], Summary of Other Income[30], Summary of Proceeds from Sale of Land, Net of Cost[31], Summary of Proceeds from Sale - Other Assets, Net of Cost[32], Schedule of Comparison of Payor's Name and Amount of Income Payment Between Schedule of Creditable Tax Withheld At Source and Summaries of Rental Income, Directors' Fees, Other Income, Proceeds from Sale – Land, and Proceeds from Sale - Other Assets[33], Schedule of Comparison of Payors' Name and Amount of Income Payment Between Summaries of Rental Income, Directors' Fees, Other Income, Proceeds from Sale - Land and Proceeds from Sale - Other Asset, and Official Receipts, Credit Memo and Bank Statements[34], Schedule of Computation of Taxable Income for CY 2008[35], and Schedule of Computation of Taxable Income for CY 2009[36].

A perusal of petitioner's Annual Income Tax Returns for calendar years 2008 and 2009 shows that petitioner reflected the following gross income:

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[25] Exhibit "AAA".
[26] Exhibits "U-1", "W-1", "X-1", "Y-1"," Z-1", "AA-1", "BB-1", and "CC-1".
[27] Exhibits "J", "K", and "L".
[28] Exhibits "V" and "AA".
[29] Exhibits "W" and "BB".
[30] Exhibits "X" and "CC".
[31] Exhibit "Y".
[32] Exhibits "Z" and "DD".
[33] Exhibit "EE".
[34] Exhibit "FF".
[35] Exhibit "GG".
[36] Exhibit "HH".

	CY 2008	CY 2009
Sales/Revenues/Receipts/Fees		
Sale of Services	₱ 22,380,000.00	₱ 25,450,000.00
Lease of Properties	161,561,619.00	171,575,096.00
Total Sales/Revenues/Receipts/Fees	₱ 183,941,619.00	₱ 197,025,096.00
Non-Operating & Taxable Other Income		
Interest Income	₱ 101,478,918.00	₱ 121,927,891.00
Gain on Sale of Assets	46,954,108.00	23,453,198.00
Other Income	274,759,351.00	384,261,520.00
Total Non-Operating & Taxable Other Income	423,192,377.00	529,642,609.00
TOTAL INCOME	**₱607,133,996.00**	**₱726,667,705.00**

Petitioner's reported gross income from sale of services, lease of properties and other income tallies with the total income reflected in the Summary of Rental Income[37], Summary of Directors' Fees[38], and Summary of Other Income[39] for calendar years 2008 and 2009.

However, there were income payments per Schedules of Creditable Taxes Withheld on Sale of Services and Properties and Lease of Properties[40] that cannot be found or differ with the income amounts indicated in the Summary of Rental Income[41], Summary of Directors' Fees[42], and Summary of Other Income[43] for calendar years 2008 and 2009. Since petitioner failed to explain the discrepancies and this Court cannot ascertain whether the said income payments pertain to the same transactions, the related CWT in the amount of ₱35,384,746.22 shall be disallowed, detailed as follows:

Exhibit	Period Covered	Payor	Income Payment	Income Tax Withheld
CY 2008				
J7	1st quarter	HR Mall Inc.	₱ 33,819.84	₱ 676.40
J14	1st quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,281,032.59	64,051.63
J15	1st quarter	Isuzu Cebu Inc. - Isuzu Cebu	1,108,611.00	55,430.55
J16	1st quarter	Manila Water Company	16,768,089.60	2,515,213.44
J19	2nd quarter	HR Mall Inc.	33,281.46	665.63
J21	3rd quarter	Honda Cars Alabang	70,513.50	1,410.27
J41	4th quarter	Honda Cars Makati Incorporated	29,679,569.77	1,483,978.49
J48	4th quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,366,798.00	68,339.90
J51	4th quarter	Isuzu Cebu Inc. - Isuzu Cebu	806,702.80	40,335.14

[37] Exhibits "V" and "AA".
[38] Exhibits "W" and "BB".
[39] Exhibits "X" and "CC".
[40] Exhibits "J", "K", and "L".
[41] Exhibits "V" and "AA".
[42] Exhibits "W" and "BB".
[43] Exhibits "X" and "CC".

J55	4th quarter	Manila Water Company	29,270,631.32	4,390,594.70
K12	2nd quarter	Honda Makati	10,019,276.20	500,963.81
K16	2nd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,276,605.49	63,830.27
K17	2nd quarter	Isuzu Cebu Inc. - Isuzu Cebu	891,622.20	44,581.11
K34	3rd quarter	Honda Cars	31,925,545.20	1,596,277.26
K36	3rd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,338,945.20	66,947.26
K37	3rd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,160,176.80	58,008.84
K38	3rd quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,390,825.40	69,541.27
K39	3rd quarter	Isuzu Cebu Inc. - Isuzu Cebu	931,895.40	46,594.77
K40	3rd quarter	Manila Water Company	52,022,765.72	7,803,404.86
TOTAL - CY 2008			**₱181,376,707.49**	**₱18,870,845.60**
CY 2009				
J75	1st quarter	Honda Cars Makati, Inc.	₱ 36,023,978.28	₱ 1,801,198.91
J89	2nd quarter	Honda Cars Makati, Inc.	33,462,593.04	1,672,272.13
J94	2nd quarter	Isuzu Cebu Inc. - Isuzu Cebu	776,869.20	38,843.66
J95	2nd quarter	Manila Water Company	41,805,416.66	6,270,812.50
J124	3rd quarter	Manila Water Company	29,945,007.45	4,491,751.02
L5	4th quarter	Asiacom Philippines Inc.	107,249.28	9,547.46
L19	4th quarter	Bank of the Philippine Islands	200,000.00	4,000.00
L26	4th quarter	Honda Cars Makati, Inc.	38,770,738.40	2,168,097.81
L30	4th quarter	Isuzu Automotive Dealership, Inc. - Isuzu Alabang	1,135,542.60	56,777.13
L36	4th quarter	John Clements Consultants Inc.	30,000.00	600.00
TOTAL – CY 2009			**₱182,257,394.91**	**₱16,513,900.62**
Grand Total – CYs 2008 and 2009			**₱363,634,102.40**	**₱35,384,746.22**

In sum, out of the amount of ₱100,355,389.44, which was properly supported with BIR Form No. 2307, only the amount of ₱64,970,643.22 CWT shall be granted inasmuch as this is the amount that corresponds to the income payments which were verified to have been included in petitioner's taxable gross income per its Annual Income Tax Returns for calendar years 2008 and 2009, in compliance with the third requisite. The refundable excess CWT in the amount of ₱64,970,643.22 is computed as follows:

	CY 2008	CY 2009	Total
Claimed CWT with valid BIR Forms No. 2307	₱ 42,906,632.25	₱ 57,448,757.19	₱ 100,355,389.44
Less: CWT, the related income payments of which per Schedules of Creditable Taxes Withheld on Sale of Services and Properties and Lease of Properties differ with the income payments reflected in the Summary of Rental Income, Summary of Directors' Fees and Summary of Other Income	18,870,845.60	16,513,900.62	35,384,746.22
Refundable Excess CWT	**₱24,035,786.65**	**₱40,934,856.57**	**₱64,970,643.22**

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WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱64,970,643.22, representing petitioner's unutilized and excess creditable withholding taxes for calendar years 2008 and 2009.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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.

ROMAN G. DEL ROSARIO
Presiding Justice