REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DOOSAN HEAVY INDUSTRIES & CONSTRUCTION CO. LTD., Petitioner,	**CTA CASE NO. 8796**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **COTANGCO-MANALASTAS, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 16 2015 10:30 a.m.

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DECISION

CASTAÑEDA, JR., ***J.***:

This Petition for Review filed by petitioner Doosan Heavy Industries & Construction Co. Ltd., seeks to refund the total amount of ₱5,863,855.60, representing its excess creditable withholding taxes for calendar years 2011 and 2012.

THE FACTS

Petitioner is a foreign company organized and existing under the laws of Republic of Korea and was duly licensed by the Securities and Exchange Commission in accordance with the Corporation Code of the Philippines (Batas [sic.] Pambansa Blg. 68) approved on May 1, 1980 and the Foreign Investments Act of 1991 (Republic Act No. 7042, as amended) approved on June 13, 1991,[1] with registered

[1] Admitted Facts, Joint Stipulation of Facts & Issues (JSFI), Docket, p. 281.

offices at Unit Nos. 1109 and 1110, Ayala Tower One, Ayala Triangle, Ayala Avenue, Makati City.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 10, 2007, petitioner entered into a Construction Contract with Kepco SPC Power Corporation (Kepco) for the construction of its Cebu Coal Fired Power Plant,[3] which construction project was finally completed on December 31, 2011.[4]

Petitioner filed its Annual Income Tax Returns (ITR) for calendar years (CY) 2011 and 2012 on the following dates, respectively:

Exhibit	Calendar Year Ended	Date of Filing of Return
P-1	December 31, 2011	April 13, 2012
P-5	December 31, 2012	April 15, 2013

On January 23, 2014,[5] petitioner filed with the Revenue District Office No. 083 a formal written administrative application to refund [sic.] its excess creditable withholding taxes (CWT) in the total amount of ₱5,863,855.60 for taxable years ending December 31, 2011 and 2012.[6]

However, respondent failed to act on petitioner's administrative claim. Thus, on April 10, 2014, petitioner filed the instant Petition for Review.

In her Answer,[7] respondent raised the following Special and Affirmative Defenses:

[2] Petition for Review, Docket, p. 1.
[3] Exhibit "P-16".
[4] Exhibit "P-1-10", Notes to Financial Statements, December 31, 2011 and 2010, under Note 3.2(a).
[5] Exhibit "P-38".
[6] Admitted Facts, JSFI, p. 282.
[7] Docket, pp. 169-175.

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of P5,863,855.60 allegedly representing excess creditable withholding taxes for calendar years 2011 and 2012 was not properly documented.

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

7. The instant case involves a claim for refund of alleged excess creditable withholding taxes for calendar years 2011 and 2012. Thus, it is incumbent upon petitioner to discharge its burden of proving entitlement thereto, which basically must include the fact of withholding of taxes and its subsequent remittance to the BIR.

8. Petitioner must prove that it has complied with the following requisites as ruled by the Supreme Court and the Honorable Court in a number of cases, to wit: (a) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax; (b) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (c) 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.

9. Petitioner must likewise prove that it has not exercised the option to carry over any excess credits in the succeeding quarters as provided under Section 76 of the National Internal Revenue Code of 1997 (NIRC of 1997) which provides thus:

xxx xxx xxx"

In support of its petition, petitioner presented the following witnesses: Ms. Emma A. Bacus[8] – Accountant of petitioner since year 2008; and Ms. Luisa A. Caleon[9] - Court commissioned Independent Certified Public Accountant (ICPA). Likewise, petitioner filed its Formal Offer of Evidence[10] on November 19, 2014, where all the pieces of evidence presented were admitted by the Court in the Resolution[11] dated December 19, 2014.

On the other hand, respondent's counsel manifested during the hearing held on January 21, 2015[12] that she has no witness to present. In the same hearing, the Court required the parties to file their memoranda within 30 days therefrom and after which, the case shall be deemed submitted for Decision.

On February 20, 2015, petitioner[13] and respondent[14] filed their Memorandum, respectively. Hence, on February 24, 2015, the Court issued a Resolution[15] submitting the case for decision.

Hence, this Decision.

THE ISSUES

The parties submitted this issue for the consideration of the Court:

> "Whether or not Petitioner is entitled to a refund or issuance of tax credit certificate in the total amount of Five Million Eight Hundred Sixty Three Thousand Eight Hundred Fifty Five and Sixty Centavos (P5,863,855.60) representing its alleged unutilized excess creditable withholding tax for the taxable years 2011 and 2012."[16]

THE RULING

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[8] Exhibit "P-41", Judicial Affiavit of Emma A. Bacus, Docket, pp. 209-245; Minutes of the Hearing dated September 24, 2014, Docket, p. 311.
[9] Exhibit "P-43", Judicial Affidavit of Luisa Caleon, Docket, pp. 353-365; Minutes of the Hearing dated October 20, 2014, Docket, p. 366.
[10] Docket, pp. 371-404.
[11] Docket, pp. 410-411.
[12] Minutes of the Hearing dated January 21, 2015, Docket, p. 412.
[13] Docket, pp. 420-444.
[14] Docket, pp. 413-419.
[15] Docket, p. 445.
[16] Proposed Issue for Trial, JSFI, Docket, p. 282.

Section 76 of the National Internal Revenue Code of 1997, as amended (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 taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

There are two options available to a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. The taxpayer may either file a tax refund (either in the form of cash or tax credit certificate) or avail of a tax credit. However, once the carry-over option is taken actually or constructively, it becomes irrevocable for that taxable period.[17] The phrase "for that taxable period" merely identifies the excess income tax subject of the option, by referring to the taxable period when it was acquired by the taxpayer.[18]

[17] *Philam Asset Management, Inc., v. Commissioner of Internal Revenue,* G.R. Nos. 156637/162004, December 14, 2005; *Systra Philippines, Inc., v. Commissioner of Internal Revenue,* G.R. No. 176290, September 21, 2007.

[18] *Commissioner of Internal Revenue v. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.

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 for a refund or claim for 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.[19]

In its Annual ITRs for CYs 2011 and 2012 filed on April 13, 2012[20] and April 15, 2013, [21] respectively, petitioner declared no income tax liability either at the regular rate of thirty percent (30%) or Minimum Corporate Income Tax rate of two percent (2%). This is due to the fact that petitioner incurred a net loss amounting to ₱318,164,666.15 and a gross loss of ₱254,490,808.42 in CY 2011, while it incurred a net loss amounting to ₱23,682,193.00 and a gross loss of ₱13,582,269.00 in CY 2012. Thus, the creditable tax withheld during the CY 2011 in the amount of ₱2,249,240.80 remained unutilized as of December 31, 2011; and the creditable tax withheld during the CY 2012 in the amount of ₱3,614,614.80 remained unutilized as of December 31, 2012, as shown below:

	CY 2011	CY 2012
Sales/Revenues/Receipts	₱ 203,765,161.62	
Less: Cost of Sales/Services	469,394,269.46	13,582,269.00
Gross Income from Operation	₱ (265,629,107.84)	₱ (13,582,269.00)
Add: Other Taxable Income not Subjected to Final Tax	11,138,299.42	-
Total Gross Income	**₱ (254,490,808.42)**	**₱ (13,582,269.00)**
Less: Regular Allowable Itemized Deductions	63,673,857.73	10,099,924.00
Net Taxable Income	**₱ (318,164,666.15)**	**₱ (23,682,193.00)**
Income Tax Due	-	-
Less: Tax Credits		
Creditable Tax Withheld for the First Three Quarters	₱ 2,249,240.80	₱ 3,614,614.80
Creditable Tax Withheld for the Fourth Quarter	-	-
Total Tax Credits	**₱ 2,249,240.80**	**₱ 3,614,614.80**
Tax Overpayment	**₱ (2,249,240.80)**	**₱ (3,614,614.80)**

For its tax overpayment for both years, petitioner marked the option "To be refunded"[22] in its Annual ITRs. Further, the total overpayment in CY 2011 was no longer carried over in petitioner's Annual and Quarterly ITRs[23] for CY 2012 while the total overpayment in CY 2012 was no longer carried over in its Annual ITR for CY

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[19] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, et al., G.R. No. 112024, January 28, 1999.
[20] Exhibit "P-1".
[21] Exhibit "P-5".
[22] Exhibits "P-1-9" and "P-5-9".
[23] Exhibits "P-6" to "P-8".

2013.[24] Therefore, the creditable taxes withheld for CYs 2011 and 2012 in the respective amounts of ₱2,249,240.80 and ₱3,614,614.80 or in the total amount of ₱5,863,855.60, may be the proper subject of a claim for refund pursuant to Section 76 of the NIRC of 1997, as amended.

In addition to the requirement provided under Section 76 of the NIRC of 1997, as amended, petitioner must likewise satisfy the following requirements in order to be entitled to a refund of its excess/unapplied CWT:[25]

> 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
>
> 3. The income upon which the taxes were withheld must be included in the return of the recipient.[26]

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

> "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, xxx
>
> No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the

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[24] Exhibit "P-9".

[25] Section 2.58, Revenue Regulations No. 2-98, as amended; *Citibank N.A. v. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

[26] *United International Pictures AB v. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; *Citibank N.A. v. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; Section 2.58, Revenue Regulations No. 2-98, as amended.

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.

A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable.

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, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

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

In *ACCRA Investments Corporation v. The Honorable Court of Appeals, et. al.,*[27] the Supreme Court held that the two-year prescriptive period for claiming a refund commences to run on the date of filing of the Final Adjustment Return. Moreover, in the case of *Commissioner of Internal Revenue v. TMX Sales, Inc. and the Court of Tax Appeals,*[28] the Supreme Court held that "it is only when the

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[27] Id.
[28] G.R. No. 83736, 15 January 1992.

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."

Based from the foregoing, petitioner has two years from the filing of its Annual ITRs, or from April 13, 2012[29] and April 15, 2013,[30] respectively, within which to file both its administrative and judicial claims for refund. In other words, petitioner had until April 13, 2014 and April 15, 2015, respectively, to file its claims.

Petitioner filed with the BIR its letter claim for refund and the corresponding BIR Forms No. 1914 on January 23, 2014,[31] covering its excess CWT for both taxable years 2011 and 2012. Moreover, on February 10, 2014, petitioner submitted separate letter requests for its claims for refund for the said taxable years.[32] Consequently, on April 10, 2014, petitioner filed its judicial claim.[33] Thus, petitioner timely filed both its claims within the two-year prescriptive period.

With regard to the second and third requisites, Section 2.58.3(B) of Revenue Regulations (R.R.) No. 2-98, as amended, provides:

> "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 supplied)*

With respect to the second requisite, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Forms No.

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[29] Exhibit "P-1".
[30] Exhibit "P-5".
[31] Exhibits "P-38", "P-38-3" and "P-38-4".
[32] Exhibits "P-38-6" and "P-38-7".
[33] Petition for Review, Docket, Vol. I, pp. 17 to 23.

2307) duly issued to it by its client, Kepco SPC Power Corporation (Kepco), for the CYs 2011 and 2012. It showed creditable withholding taxes in the amounts of ₱2,249,240.80 and ₱3,614,614.80, respectively, or in the aggregate sum of ₱5,863,855.60, detailed as follows:

Exhibit No.	Period Covered	Income Payments	Tax Withheld
P-1-12	January 2011	₱ 21,262,440.00	₱ 425,248.80
P-1-13	February 2011	21,262,440.00	425,248.80
P-1-14	March 2011	15,808,460.00	316,169.20
P-1-15	April 2011	10,631,219.50	212,624.39
P-1-16	May 2011	7,087,480.50	141,749.61
P-1-17	August 2011	36,410,000.00	728,200.00
Subtotal		***112,462,040.00***	***2,249,240.80***
P-5-12	April to June 2012	***180,730,740.00***	***3,614,614.80***
TOTAL		**₱ 293,192,780.00**	**₱ 5,863,855.60**

On this score, respondent contends that the law and the BIR issuances provide that in order for any claim for refund to prosper, it is incumbent upon the claimant to prove actual remittance of the taxes withheld to the BIR.

Likewise, respondent asserts that petitioner failed, in the administrative level, to submit the BIR copies of the withholding tax certificates which could have shown its entitlement to refund. It was only before this Court when petitioner presented the same.

In the case of *Commissioner of Internal Revenue v. Doosan Heavy Industries & Construction Co. Ltd. (Philippine Branch),*[34] the Court *En Banc* held that petitioner need not prove that there is an actual remittance of the taxes withheld, as follows:

> "As pronounced by the Court in Division in the assailed Resolution, respondent Doosan need not prove that there was an actual remittance of the taxes withheld to the BIR. Pursuant to Section 2.58.3 of RR No. 2-98, the remittance of the taxes withheld to the BIR is the responsibility of the withholding agent and not the payee. On this point, the pronouncement of the Supreme Court

[34] CTA EB No. 1090 (CTA Case No. 8462), August 4, 2014, penned by Presiding Justice Roman G. Del Rosario.

in *Commissioner of Internal Revenue vs. Asian Transmission Corporation*, is instructive:

> "xxx **proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner**. Section 2.58.3 (B) of Revenue Regulations No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes withheld, **such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority**. Moreover, pursuant to Sections 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent, x x x has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents. **We stress that the pertinent provisions of law and established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR**." *(Citation Omitted)*

In other words, proof of actual remittance of the taxes withheld to the BIR is not indispensable in a claim for refund of excess CWTs. Respondent Doosan is only required to establish the fact of withholding through the withholding tax certificates (BIR Form No. 2307) duly issued by its payors. This· notwithstanding, respondent Doosan even presented as Exhibit "O" the Certification of Remittances issued by the BIR RAD."

On the other hand, contrary to respondent's claim, petitioner submitted the pertinent BIR certificates at the time the letter claims were filed on January 23, 2014 and February 6, 2014, respectively. In the said letters, petitioner indicated that it enclosed, among others, the Annual ITRs for CY 2011 and 2012 including the attachments (Audited Financial Statements, Certificates of Creditable Tax Withheld at Source and SAWT).

Considering the foregoing, the Court finds that petitioner satisfied the second requisite, *i.e.*, the fact of withholding of CWT for CYs 2011 and 2012 in the total amount of ₱5,863,855.60.

As to the third requisite, *i.e.*, that the income upon which the taxes were withheld must be included in the return of the recipient, petitioner entered into a construction contract on December 10, 2007[35] with Kepco for the construction and installation of the latter's Cebu Coal Fire Power Plant to be completed by June 30, 2011. The original contract price amounted to ₱3,968,988,800.00 inclusive of VAT, but was subsequently adjusted by the issuance of Change Orders[36] for additional scope of services not covered in the original contract or reduction in scope of services originally agreed.

Petitioner used the percentage of completion (POC) method in computing its contract revenues under Section 48 of the NIRC of 1997, as amended, to report its revenues for long term contracts. It provides:

> "SEC. 48. *Accounting for Long-Term Contracts.* - Income from long-term contracts shall be reported for tax purposes in the manner as provided in this Section.
>
> As used herein, the term 'long-term contracts' means building, installation or construction contracts covering a period in excess of one (1) year. *Je*

[35] See Note 3.
[36] Exhibits "P-17" to "P-21-2".

> Persons whose gross income is derived in whole or in part from such contracts shall report such income upon the basis of percentage of completion.
>
> The return should be accompanied by a return certificate of architects or engineers showing the percentage of completion during the taxable year of the entire work performed under contract.
>
> There should be deducted from such gross income all expenditures made during the taxable year on account of the contract, account being taken of the material and supplies on hand at the beginning and end of the taxable period for use in connection with the work under the contract but not yet so applied.
>
> If upon completion of a contract, it is found that the taxable net income arising thereunder has not been clearly reflected for any year or years, the Commissioner may permit or require an amended return."

As indicated in the Progress Rate for Construction Work,[37] the cumulative percentage of completion of the construction contracts are as follows:

Year	Percentage of Completion
December 31, 2008	11.596%
December 31, 2009	54.235%
December 31, 2010	95.310%
December 31, 2011	100.000%
December 31, 2012	-

Meanwhile, petitioner's Audited Financial Statements (AFS)[38] for the year ended December 31, 2011 show that, indeed, the construction project was already completed by December 31, 2011.

Incorporating the Change Orders and the corresponding revenues recognized in the previous years, the ICPA verified petitioner's computed contract revenues for CY 2011 in the amount of ₱203,763,161.58, as follows[39]:

[37] Exhibit "P-38-5-2".
[38] See Note 3.
[39] Exhibit "P-42", Findings and Ob servations – Procedure 2, Docket, p. 320.

Conract Price (inclusive of VAT)	₱ 3,968,988,800.00
Less: VAT	425,248,800.00
Net of VAT	**₱3,543,740,000.00**
Add: Adjustments	
Change Orders dated:	
9/15/2009[40]	1,866,981.00
3/23/2009[41]	(10,832,285.71)
11/19/2009[42]	(1,306,430.57)
2/15/2011[43]	1,633,500.00
5/25/2011[44]	36,410,000.00
Adjusted Contract Price at December 31, 2011	**₱ 3,571,511,764.72**
Progress Rate as of December 31, 2011	100%
Total Realized Contract Revenue to Date	**₱ 3,571,511,764.72**
Less: Previous Years' Realized Revenues	
2008[45]	(410,932,090.40)
2009[46]	(1,512,027,855.74)
2010[47]	(1,444,788,657.00)
Current Year Realized Contract Revenue, 2011	**₱ 203,763,161.58**
Contract Revenues per 2011 AITR	**₱ 203,765,161.62**
Difference	₱ 2,000.04

For CY 2012, petitioner did not recognize any revenue from the construction project due to its completion in 2011, as shown below:

Conract Price (inclusive of VAT)	₱ 3,968,988,800.00
Less: VAT	425,248,800.00
Net of VAT	**₱ 3,543,740,000.00**
Add: Adjustments	
Change Orders dated:	
9/15/2009	1,866,981.00
3/23/2009	(10,832,285.71)
11/19/2009	(1,306,430.57)
2/15/2011	1,633,500.00
5/25/2011	36,410,000.00
Adjusted Contract Price at December 31, 2011	**₱ 3,571,511,764.72**
Progress Rate as of December 31, 2011	100%
Total Realized Contract Revenue to Date	**₱ 3,571,511,764.72**
Less: Previous Years' Realized Revenues	
2008	(410,932,090.40)

[40] Exhibit "P-17".
[41] Exhibit "P-18".
[42] Exhibit "P-19".
[43] Exhibit "P-20".
[44] Exhibit "P-21".
[45] Exhibit "P-22-3".
[46] Exhibit "P-23-3".
[47] Exhibit "P-24-4-3".

2009		(1,512,027,855.74)
2010		(1,444,788,657.00)
2011		(203,765,161.62)
Current Year Realized Contract Revenue, 2012	**₱**	**(2,000.04)**
Contract Revenues per 2012 AITR	**₱**	**-**
Difference	₱	2,000.04

The Court notes that there is a ₱2,000.04 difference between the contract revenues as computed by petitioner in its Schedule of Sales,[48] as against the revenues declared per Annual ITR for CY 2011. According to the ICPA[49], this amount was due to the rounding-off differences in recording the yearly contract revenues based on percentages of completion.

On the other hand, there are apparent discrepancies between the income payments reflected per BIR Forms No. 2307 and the revenues declared per the Annual ITRs for CYs 2011 and 2012, as shown below:

	CY 2011	**CY 2012**
Income Payments Per BIR Forms No. 2307	₱112,462,040.00	₱180,730,740.00
Realized Revenues declared per Annual ITR	203,765,161.62	-
Difference /Income per Annual ITR is (higher)/lower	(91,303,121.62)	180,730,740.00

The amount of ₱91,303,121.62 difference in income for CY 2011 pertains to uncollected realized revenues as of December 31, 2011 which, together with the Accounts Receivable Trade balance of ₱89,430,061.00[50] as of December 31, 2010 in the total amount of ₱180,733,182.62, were collected and subjected to CWT in the CY 2012. However, the income payments received/collected by petitioner in CY 2012 per BIR Forms No. 2307 in the amount of ₱180,730,740.00 were lower by ₱2,442.62.

Meanwhile, the Court observes that considering the total adjusted contract price in the amount of ₱3,571,511,764.72 had been fully reported in petitioner's Annual ITRs for CYs 2008, 2009, 2010 and 2011 when the construction project was 100% completed, the Accounts Receivable Trade balance as of December 31, 2010 in the

[48] Exhibit "P-15".
[49] Exhibit "P-42", Findings and Observations-Procedure 2, p. 10, Docket, p. 321.
[50] Exhibit "P-1-10-2", Notes to Financial Statements, December 31, 2011 and 2010, Note 7.

amount of ₱89,430,061.00 (included in the total collections of ₱180,730,740.00 in the CY 2012) is deemed to form part of petitioner's reported contract revenues in years prior to 2011.

Thus, petitioner proved that it declared in its Annual ITRs for CY 2011 and in prior years, the income payments related to the claimed creditable withholding taxes for CYs 2011 and 2012 amounting to ₱2,249,240.80 and ₱3,614,614.80, respectively, or in the total amount of ₱5,863,855.60.

To conclude, petitioner was able to show this Court that it is entitled to its claim for refund. Hence, the refund of the total amount of ₱5,863,855.60 representing petitioner's excess creditable withholding taxes for CYs 2011 and 2012, is in order.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby ordered to refund to petitioner the amount of ₱5,863,855.60, representing excess creditable withholding taxes for CYs 2011 and 2012.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Leave)
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.
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