22-000254-0044

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10869

GLOBAL BUSINESS POWER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. BRYAN ANTHONY C. DIEGO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
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ROMULO MABANTA BUENAVENTURA SAYOC & DE LOS ANGELES
21st Floor, AIA Tower (formerly Philamlife Tower)
8767 Paseo de Roxas, Makati City

GREETINGS:

You are hereby notified by these presents that on **November 18, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 20, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

GLOBAL BUSINESS POWER CORPORATION, *Petitioner,*	**CTA CASE NO. 10869** *Members:*
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 18 2024 2:30PM

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review,*[1] which seeks the refund or issuance of a tax credit certificate in the amount of ₱11,254,080.00, allegedly representing petitioner's excess and unutilized creditable expanded withholding tax (CWT) for taxable year (TY) 2019.[2]

THE PARTIES

Petitioner Global Business Power Corporation, is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at Tower 1, Rockwell Business Center, Ortigas Avenue, Pasig City.[3] It is a holding company with a primary purpose of investing in, holding, purchasing, importing, acquiring (except land), or leasing any and all real and personal properties of every kind and description.[4] It is registered as a taxpayer of Revenue

[1] Docket, pp. 6–14.
[2] *Id.* at 13, Prayer; 386, Pre-Trial Order dated January 4, 2023, Summary of the Case.
[3] *Id.* at 360, *Joint Stipulation of Facts and Issues* (JSFI), Stipulated Facts, par. 1; 229–264, Exhibits "P-1" & "P-2".
[4] *Id.* at 360, JSFI, Stipulated Facts, par. 2.

District Office No. 125 – Regular LT Division II having been issued a Certificate of Registration OCN: 8RC0001197758E dated September 18, 2017.[5]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), with office address at the Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City.[6]

THE FACTS

On June 1, 2020, within the extended period for filing as allowed under Revenue Regulations (RR) No. 11-2020 due to the COVID-19 lockdown, petitioner filed its Annual Income Tax Return (ITR) for the TY ending December 31, 2019, through the BIR's Electronic Filing and Payment System (eFPS). The ITR reflected an overpayment of income tax amounting to ₱31,249,900.00.[7]

On February 15, 2022, petitioner submitted a letter to respondent, applying for a refund of excess and unused CWT credits withheld by its customers during TY 2019 in the amount of ₱11,254,080.00.[8] The letter was accompanied by an Application for Tax Credits/Refunds (BIR Form No. 1914),[9] citing Section 204(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, as the legal basis for the claim for refund, along with other supporting documents.[10]

To date, respondent has not acted on the claim for refund.[11]

On May 30, 2022, petitioner filed the present *Petition for Review.*[12]

Respondent filed his *Answer (Re: Petition for Review dated 30 May 2022)* on July 15, 2022,[13] within the period granted by the Court,[14] interposing the following special and affirmative defenses: (a) that petitioner failed to exhaust administrative

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5 *Id.* at 360–361, JSFI, Stipulated Facts, par. 3; 265–269, Exhibits "P-3" & "P-4".
6 *Id.* at 360, JSFI, Stipulated Facts, par. 1.
7 *Id.* at 361, JSFI, Stipulated Facts, par. 4; 484–491, Exhibit "P-5".
8 *Id.* at 284, Exhibit "P-7-A". The amount indicated in the said letter is ₱11,254,080.72
9 *Id.* at 285–286, Exhibit "P-8".
10 *Id.* at 361, JSFI, Stipulated Facts, par. 8.
11 *Id.* at 361, JSFI, Stipulated Facts, par. 9.
12 *Supra* note 1.
13 Docket, pp. 162–172.
14 *Id.* at 157–159, Respondent's *Motion for Extension of Time to File Answer* dated July 7, 2022; 161, Order dated July 11, 2022.

remedies before elevating the case to this Court; and, (b) that petitioner is not entitled to the claim for refund of CWTs.

On September 19, 2022, respondent transmitted to this Court the *BIR Records* for this case, consisting of 163 pages, in one (1) folder.[15]

A Pre-Trial Conference was set and held on October 13, 2022.[16] *Respondent's Pre-Trial Brief* was filed on September 27, 2022;[17] and petitioner's *Pre-Trial Brief* was submitted on October 7, 2022.[18]

On October 26, 2022, the parties submitted a *Joint Stipulation of Facts and Issues*,[19] which the Court admitted in its Resolution dated November 11, 2022,[20] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 4, 2023 was then issued.[21]

The trial then ensued.

Petitioner presented the testimonies of the following witnesses: (1) Ms. Reymonda Aida B. Obrero,[22] petitioner's Financial Operations Head, and (2) Mr. Nikkolai F. Canceran,[23] the Court-commissioned Independent Certified Public Accountant (ICPA).[24]

The *Report* of the ICPA was submitted on May 15, 2023.[25]

On October 13, 2023, petitioner filed its *Formal Offer of Evidence*,[26] to which respondent filed a *Comment with Manifestation (Re: Formal Offer of Evidence dated 13 October 2023)* on October 24, 2023.[27] In a Resolution dated December 28, 2023,[28] the Court admitted petitioner's offered exhibits, and noted respondent's *Manifestation*, stating that there was no

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15 *Id.* at 183–185, Respondent's *Compliance* dated September 19, 2022.
16 *Id.* at 181–182, Notice of Pre-Trial Conference dated September 12, 2022; 357–359, Minutes of the hearing held on, and Order dated, October 13, 2022.
17 *Id.* at 188–191.
18 *Id.* at 194–205.
19 *Id.* at 360–364.
20 *Id.* at 366.
21 *Id.* at 386–390.
22 *Id.* at 215–228, Exhibit "P-11"; 469–471, Order dated October 3, 2023.
23 *Id.* at 452–459, Exhibit "P-13"; 469–471, Order dated October 3, 2023.
24 *Id.* at 395, *Oath of Commission* dated March 16, 2023; 396–398, Minutes of the hearing held on, and Order dated, March 16, 2023.
25 *Id.* at 408–446, Exhibit "P-12".
26 *Id.* at 473–483.
27 *Id.* at 501–503.
28 *Id.* at 509–510.

report of investigation on petitioner's administrative claim for refund. Hence, respondent will not be presenting any documentary or testimonial evidence in this case.

On January 19, 2024, respondent filed another *Manifestation*,[29] stating that he would adopt the arguments presented in his Answer dated July 15, 2022, as his *Memorandum*, given that all arguments had been fully discussed therein. Petitioner filed its *Memorandum* on February 8, 2024.[30]

This case was submitted for decision on February 19, 2024.[31]

THE ISSUE

As stipulated by the parties, the issue for the Court's resolution is as follows:[32]

> Whether or not petitioner is entitled to a refund in the amount of ₱11,254,080.00 representing petitioner's unutilized and excess CWT withheld by its customers for the taxable year 2019.

Petitioner's arguments:

Petitioner argues that the claim for refund was filed within the two (2)-year prescriptive period provided under Section 229 of the Tax Code; that the withholding by its customers is established by *Certificates of Creditable Tax Withheld at Source*, which indicate the income payments and the corresponding tax withheld; that the income payments subjected to CWT by its customers were reported as part of its gross income in its ITR for TY 2019; and, that it did not carry over the excess and unutilized CWT subject of the claim for refund to the succeeding quarter or year.

[29] *Id.* at 511–513.
[30] *Id.* at 517–535.
[31] *Id.* at unpaged, Resolution dated February 19, 2024 (Notice).
[32] *Id.* at 361, JSFI, Stipulated Issue.

Respondent's counter-arguments:

Respondent contends that petitioner failed to exhaust administrative remedies before elevating the case to the Court and that petitioner is not entitled to a refund of the CWTs.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

The Court has jurisdiction over this case.

Given the timely filing of the instant *Petition for Review*, as discussed below, the Court has jurisdiction to take cognizance of this case pursuant to Section 3(a)(2), Rule 4[33] of the Revised Rules of the Court of Tax Appeals (RRCTA).

Petitioner's failure to submit the documents required under Revenue Memorandum Order (RMO) No. 53-98 does not render its refund claim dismissible.

Before delving into the merits of this case, this Court shall first address respondent's argument that petitioner must prove compliance with RMO No. 53-98[34] and RR No. 2-2006,[35] to give

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[33] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
...
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

[34] SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket, June 1, 1998.

[35] SUBJECT: Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to

support to the validity of its claim for unutilized creditable withholding tax for TY 201[9].[36] Respondent contends that there is no record of petitioner submitting complete documents to substantiate its administrative claim for refund, which is a requirement established by law and jurisprudence.[37]

The Court disagrees with respondent's assertion.

In *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.)*,[38] the Supreme Court held that failure to submit "complete documents" as required by RMO No. 53-98 and RR No. 2-2006 does not render a petition before this Court dismissible for lack of jurisdiction. Moreover, respondent's inaction on a refund claim does not preclude this Court from considering evidence not presented in the administrative claim with the BIR. The pertinent portion of the decision is hereunder quoted:

> Petitioner CIR argued that failure of the respondent to submit the required complete documents as required by Revenue Memorandum Order No. 53-98 and Revenue Regulations No. 2-2006 rendered the petition with the CTA dismissible on the ground of lack of jurisdiction. It reasoned out that when a taxpayer prematurely filed a judicial claim with the CTA, the latter has no jurisdiction over the appeal.
>
> In the instant case, **respondent's failure to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction.** At this point, it is necessary to determine the grounds relied upon by a taxpayer in filing its judicial claim with the CTA. The case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[39] is instructive, thus:
>
>> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to

Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments, December 1, 2005.

[36] Docket, p. 168.
[37] *Id.* at 169, *Answer (Re: Petition for Review dated 30 May 2022)*, par. 29.
[38] G.R. No. 231581, April 10, 2019 [Per J. Reyes, Jr., J., Second Division].
[39] 774 Phil. 473 (2015) [Per J. Mendoza, *En Banc*].

> substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

In this case, it was the inaction of petitioner CIR which prompted respondent to seek judicial recourse with the CTA. Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. As a matter of fact, petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.

Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR. Thus, RA No. 1125 states:

> Section 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not

> limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.
>
> Cases filed in the CTA are litigated *de novo* as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim.' Consequently, **the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.**" (*Emphasis added*)

Accordingly, there is no merit in respondent's contention that the failure of petitioner to submit relevant documents, particularly those required under RMO No. 53-98 and RR No. 2-2006, on the administrative level makes its claim for tax refund dismissible.

Petitioner complied with Section 76 of the NIRC of 1997, as amended.

Relevant to the resolution of this case is Section 76 of the NIRC of 1997, as amended, which provides as follows, *viz.*:

> 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 the 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.

The above provision outlines two (2) options for a taxable corporation when its total quarterly income tax payments for a given taxable year exceed its total income tax due. The taxpayer may either (1) carry over the excess amount to the succeeding taxable quarters or years until fully utilized, or (2) file a claim for a refund in the form of cash or a tax credit certificate. However, once the carry-over option is chosen, either actually or constructively, it becomes irrevocable for that taxable period.[40] The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[41]

In exercising this option, the corporation must signify its intention on its annual corporate adjustment return by marking the option box provided in the BIR form—either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[42]

A perusal of petitioner's Annual ITR for calendar year (CY) 2019[43] shows that it had income tax credits in the total amount of ₱34,671,535.00, consisting of the prior year's excess tax credits and CWTs accumulated over the four (4) quarters of the said TY, to wit:[44]

Prior Year's Excess Credits other than Minimum Corporate Income Tax (MCIT)		₱ 23,417,455.00
Add: Creditable Taxes Withheld – TY 2019		
Creditable Tax Withheld from Previous Quarter/s	₱6,250,771.00	
Creditable Tax Withheld for the 4th Quarter	5,003,309.00	11,254,080.00
Excess CWTs as of December 31, 2018		**₱34,671,535.00**

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40 *Rhombus Energy, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018 [Per J. Bersamin, Third Division], citing *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation*, G.R. No. 188016, January 14, 2015 [Per J. Bersamin, First Division]; *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007 [Per J. Corona, First Division]; *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 156637 & 162004, December 14, 2005 [Per J. Panganiban, Third Division].

41 *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009 [Per J. Chico-Nazario, Third Division].

42 *Philippine Bank of Communications v. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999 [Per J. Quisumbing, Second Division].

43 Docket, pp. 484–491, Exhibit "P-5".

44 *Id.* at 489, Exhibit "P-5", Schedule 7.

Petitioner states that its income tax due for 2019, in the amount of ₱3,421,635.00,[45] was paid using a portion of its prior year's excess credits of ₱23,417,455.00. This leaves a balance of ₱19,995,820.00 in prior year's excess credits, along with ₱11,254,080.00 in CWTs for 2019, for a total unutilized amount of ₱31,249,900.00 as of December 31, 2019, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 23,417,455.00
Less: Tax Due (MCIT)	3,421,635.00
Balance of Prior Year's Excess Credits	19,995,820.00
Add: Creditable Taxes Withheld – 2019	11,254,080.00
Excess CWTs as of December 31, 2019	**₱ 31,249,900.00**

Verily, in line with Section 2.58.3 of RR No. 2-98,[46] as quoted below, the submission of petitioner's Annual ITR for TY 2018 is sufficient to prove its "Prior Year's Excess Credits other than MCIT" in the amount of ₱23,417,455.00:

> SEC. 2.58.3. *Claim for tax credit or refund.* —
>
> ....
>
> (C) Excess Credits. – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall **automatically be allowed as a credit** against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, **provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits**, and on which return he has not opted for a cash refund or tax credit certificate. (*Emphasis added*)

Here, petitioner presented its Annual ITR for TY 2018,[47] showing excess tax credits amounting to ₱33,939,055.00, consisting of the prior year's excess credits of ₱23,417,454.00 and CWTs for TY 2018 amounting to ₱10,521,601.00. Accordingly, the prior year's excess credits of ₱23,417,454.00[48] were carried over to TY 2019 and automatically applied as tax credits against its income tax due of ₱3,421,635.00 for that year

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[45] *Id.* at 485, Exhibit "P-5", Line 44.

[46] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes, April 17, 1998.

[47] Exhibit "P-14", Part II-Line 16–20 and Schedule 7, USB.

[48] With noted discrepancy of ₱1.00 as against the actual amount of ₱23,417,455.00 carried over in the Annual ITR for CY 2019.

(TY 2019). Thus, the CWTs for TY 2019 in the amount of ₱11,254,080.00 remained unutilized as of the end of the period.

Considering that petitioner opted for a refund of its excess CWTs for TY 2019 by marking "To be refunded" in its Annual ITR for TY 2019,[49] and these CWTs were not carried over to subsequent taxable periods (as the amount carried over in the Annual ITR and 1st Quarterly ITR for TY 2020 included only the balance of the prior year's excess credits of ₱19,995,819.00, calculated by deducting the income tax due of ₱3,421,635.00 from prior year's excess credits of ₱23,417,454.00),[50] the excess and unutilized CWTs for TY 2019 amounting to ₱11,254,080.00 may, therefore, be properly claimed for credit or refund under Section 76 of the NIRC of 1997, as amended.

Additional requirements to claim a refund or credit for excess and unutilized CWTs.

To successfully claim a refund or tax credit certificate for excess and unutilized CWTs, compliance with the afore-quoted Section 76 of the NIRC of 1997, as amended, must be shown alongside three (3) additional requirements established by relevant jurisprudence and BIR regulations, to wit:

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;

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.[51]

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[49] Exhibit "P-5", Line 21, Docket, p. 484.

[50] Exhibits "P-6" (Part IV-Line 44) and "P-7" (Line 31A), Docket, pp. 279 and 493, respectively (with noted discrepancy of ₱1.00 as against the actual excess amount of ₱19,995,820.00 per Annual ITR for CY 2019).

[51] *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015 [Per J. Bersamin, First Division]; *United International Pictures AB v. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012 [Per J. Peralta, Third Division]; *Citibank N.A. v. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997 [Per J. Panganiban, Third Division]; *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991 [Per J. Gutierrez, Jr. Third Division]; Revenue Regulations No. 2-98, as amended, sec. 2.58.

Thus, it behooves petitioner to establish each of these requirements.

i. Petitioner's administrative and judicial claims were timely filed.

Anent the *first* requirement, Sections 204(C) and 229 of the NIRC of 1997, as amended, provide that the two (2)-year prescriptive period for claiming a refund or credit of overpaid income tax or CWTs commences on the date of filing the Final Adjustment Return[52] (or Annual ITR). This is so because it is only upon filing the Final Adjustment Return, which covers the entire taxable year, that the taxpayer would know if a tax is still due or a refund can be claimed based on the adjusted and audited figures.[53] Thus, it is only logical to reckon the two (2)-year prescriptive period from the time the Final Adjustment Return or the Annual ITR was filed since it is only at that time that it would be possible to determine whether the corporate taxpayer paid an amount exceeding its annual income tax liability.[54]

The pertinent provisions of Sections 204(C) and 229 of the NIRC of 1997, as amended, are quoted below:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> ....
>
> (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

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[52] *Commissioner of Internal Revenue v. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, May 29, 1995 [Per J. Romero, Third Division]; *Commissioner of Internal Revenue v. TMX Sales, Inc., et al.*, G.R. No. 83736, January 15, 1992 [Per J. Gutierrez, Jr., *En Banc*]; *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991 [Per J. Gutierrez, Jr. Third Division].

[53] *Commissioner of Internal Revenue v. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992 [Per J. Gutierrez, Jr., *En Banc*].

[54] *Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017 [Per J. Perlas-Bernabe, First Division].

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

In this case, petitioner filed its Annual ITR for CY 2019 via eFPS of the BIR on June 1, 2020.[55] Counting two (2) years, petitioner had until June 1, 2022, to file its administrative and judicial claims.

Since petitioner filed its administrative claim for refund with the BIR on February 15, 2022,[56] and the present judicial claim on May 30, 2022,[57] both claims were seasonably filed within the two (2)-year prescriptive period.

Respondent argues, however, that even if petitioner is entitled to a tax refund, the claim has yet to undergo administrative investigation or examination. He points out that petitioner filed the judicial claim for a refund before he could render a decision on its administrative claim.

This argument is misplaced.

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[55] Docket, p. 361, JSFI, Stipulated Facts, par. 4; 484–491, Exhibit "P-5".
[56] *Id.* at 361, JSFI, Stipulated Facts, par. 8.
[57] *Id.* at 6–19.

In *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.,*[58] the Supreme Court held that a taxpayer does not need to wait for the administrative claim's resolution before filing a judicial claim, as this could result in missing the two (2)-year deadline, *viz.*:

> Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, **Section 229 of the Tax Code** – [then Section 306 of the old Tax Code] – **however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed.** In *CBK Power Company, Ltd. v. CIR,*[59] the Court enunciated:
>
>> In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David (Kiener),* wherein it was held that in **no wise does the law,** *i.e.,* Section 306 of the old Tax Code (now, Section 229 of the NIRC), **imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action.** In *Kiener,* the Court went on to say that **the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow** ...
>
> In the case at bar, records show that both the administrative and judicial claims for refund of respondent for its erroneous withholding and remittance of FWT were indubitably filed within the two-year prescriptive period. Notably, **Section 229 of the Tax Code, as worded, only required that an administrative claim should first be filed. It bears stressing that respondent could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had respondent awaited the action of petitioner knowing fully well that the prescriptive period was about to lapse, it would have resultantly forfeited its right to seek a judicial review of its claim, thereby suffering irreparable damage.** (*Emphasis added*)

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[58] G.R. No. 216130, August 3, 2016 [Per J. Perlas-Bernabe, First Division].
[59] G.R. Nos. 193383–84 & 193407–08, January 14, 2015 [Per J. Perlas-Bernabe, First Division].

If petitioner were to await the resolution of its administrative claim beyond the two (2)-year prescriptive period, it would lose the right to seek judicial recourse upon its expiration. Hence, petitioner's filing of the judicial claim *via* the present *Petition for Review* on May 30, 2022, is proper.

ii. The fact of withholding is established by certificates of creditable tax withheld at source (BIR Form No. 2307).

With regard to the *second* and *third* requirements, Section 2.58.3(B) of RR No. 2-98, as amended, states:

> SEC. 2.58.3. *Claim for tax credit or refund.* —
>
> ...
>
> (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 added*)

The *second* requirement mandates petitioner to establish the fact of withholding of the claimed CWTs by presenting a copy of the statement duly issued by the payor (withholding agent) to the payee, showing the names of the payor and payee, the income payment and the amount of tax withheld.

BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) serves as the competent proof to establish the fact of withholding.[60] It is a withholding statement duly issued by the payor to the payee that reflects the amount paid and tax withheld, as described in Section 2.58.3(B) of RR No. 2-98.

To prove the withholding of the claimed CWTs for CY 2019 in the amount of ₱11,254,080.00, petitioner submitted Certificates of Creditable Tax Withheld at Source issued by its withholding agents for that period, detailed as follows:

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[60] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014 [Per J. Leonen, Second Division].

Exhibit No.[61]	Name of Payor	Income Payment	Tax Withheld
"P-57"	GBH Power Resources Incorporated	₱ 266,667.00	₱ 5,333.34
"P-58A"	Global Formosa Power Holdings, Inc.	63,194.55	1,263.89
"P-58B"	Global Formosa Power Holdings, Inc.	56,389.17	1,127.78
"P-59"	Global Trade Energy Resources Corp	427,034.50	8,540.69
"P-60"	GBH Power Resources Incorporated	1,723,901.56	34,478.03
"P-61"	Panay Energy Development Corporation	115,318,400.00	2,306,368.00
"P-62"	Panay Power Corporation	9,898,862.50	197,977.25
"P-63"	Toledo Power Company	67,662,795.00	1,353,255.90
"P-64"	GBH Power Resources Incorporated	1,138,011.77	22,760.23
"P-65"	Global Trade Energy Resources, Corp.	255,270.00	5,105.40
"P-66"	Panay Energy Development Corporation	69,191,040.00	1,383,820.80
"P-67"	Panay Power Corporation	1,979,772.50	39,595.45
"P-68"	Panay Power Corporation	1,979,772.50	39,595.45
"P-69"	Panay Power Corporation	1,979,772.50	39,595.45
"P-70"	Toledo Power Company	40,597,677.00	811,953.54
"P-71"	Cebu Energy Development Corporation	77,175,780.00	1,543,515.60
"P-72"	Global Energy Supply Corporation	29,881,309.00	597,626.18
"P-73"	GBH Power Resources Incorporated	91,269.50	1,825.39
"P-74"	GBH Power Resources Incorporated	940,052.00	18,801.04
"P-75"	Global Trade Energy Resources, Corp.	12,336,350.00	246,727.00
"P-76"	Panay Energy Development Corporation	77,568,910.00	1,551,378.20
"P-77"	Panay Power Corporation	6,658,472.00	133,169.44
"P-78"	Toledo Power Corporation	45,513,336.00	910,266.72
	Total	**₱562,704,039.05**	**₱11,254,080.77**[62]

The Court examined the aforesaid BIR Forms No. 2307 and found no notable exceptions. With petitioner's excess CWTs of ₱11,254,080.00 for CY 2019 duly substantiated by these forms, the Court finds that petitioner has satisfactorily met the *second* requirement.

[61] USB marked as Exhibit "P-12-B".
[62] With ₱0.77 difference.

iii. The income payments upon which the substantiated CWTs were withheld were properly traced and reported in the 2019 Annual ITR, except for the amount of ₱265,252.28.

As for the *third* requirement, petitioner must prove that the income payments, from which the claimed CWTs of ₱11,254,080.00 were withheld, were declared and reported as part of petitioner's gross income in its Annual ITR.

As can be gleaned from the BIR Forms No. 2307 for CY 2019, the corresponding income payments of the claimed CWTs amounted to ₱562,704,039.05. In its Annual ITR for CY 2019,[63] petitioner declared net sales/revenues of ₱560,655,920.00 and other taxable income not subject to final tax of ₱2,362,926.00, or a total of ₱563,018,846.00 in revenues, which tallies with the revenue summary (service level agreement fees and other taxable income) per the Summary of Revenues and Other Income (*Annex B* of ICPA Report)[64] for the same period as lifted from petitioner's general ledgers (GLs).

To ascertain that the income payments of ₱562,704,039.05 were declared as part of gross income in the Annual ITR, the ICPA examined related official receipts (OR), sales invoices (SI), billing statements (BS), journal vouchers (JV) and credit memos (CM)[65] linked to the submitted BIR Forms No. 2307. The amounts were then traced back to the Breakdown of Service Agreement Fees and Other Taxable Income for CY 2019[66] from the GL.

The ICPA's examination[67] shows that the income payments corresponding to the substantiated CWTs were properly traced and reported in the 2019 Annual ITR, except for the amount of ₱265,252.28 (as detailed below), with

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63 Docket, p. 485, Exhibit "P-5", Part IV – Lines 30 and 33.
64 *Id.* at 425, Exhibit "P-12".
65 Exhibits "P-57-1", "P-58-1", "P-59-1", "P-60-1" to "P-60-5", "P-61-1" to "P-61-5", "P-62-1 to "P-62-2", "P-63-1" to "P-63-10", "P-64-1" to "P-64-5", "P-65-1" to "P-65-2", "P-66-1" to "P-66-6", "P-67-1", "P-68-1", "P-69-1", "P-70-1" to "P-70-6", "P-71-1" to "P-71-9", "P-72-1" to "P-72-4", "P-73-1" to "P-73-2", "P-74-1" to "P-74-4", "P-75-1" to "P-75-10", "P-76-1" to "P-76-7", "P-77-1" to "P-77-4" and "P-78-1" to "P-78-3", inclusive of sub-markings, USB marked as Exhibit "P-12-B".
66 Docket, pp. 426–437, Annexes B.1, B.2 and B.3 of the ICPA Report (Exhibit "P-12").
67 See *Annex D* of ICPA Report (Exhibit "P-12", Docket, pp. 444 to 446) for the detailed results of examination.

corresponding CWTs of ₱5,305.05, which could not be traced to revenue entries in the GL, as follows:[68]

Per BIR Form No. 2307				Per BS, JV, CM, or SI			
Exhibit No.	**Name of Payor**	**Income Payment (a)**	**Tax Withheld**	**Exhibit No.**	**Revenue Amount (b)**	**Difference (a-b)**	**CWT credits**
"P-73"	GBH Power Resources Incorporated	₱ 91,269.50	₱ 1,825.39	"P-73-1"	-	₱91,269.50	₱1,825.39
				"P-73-2"			
"P-75"	Global Trade Energy Resources, Corp.	12,336,350.50	246,727.00	"P-75-1-1-1"	₱962,142.89	173,982.78	3,479.66
				"P-75-1-1-2"			
				"P-75-1-2-1"	962,142.89		
				"P-75-1-2-2"			
				"P-75-1-3-1"	962,142.89		
				"P-75-1-3-2"			
				"P-75-2-1-1"	962,142.89		
				"P-75-2-1-2"			
				"P-75-2-2-1"	962,142.89		
				"P-75-2-2-2"			
				"P-75-2-3-1"	962,142.89		
				"P-75-2-3-2"			
				"P-75-3-1-1"	962,142.89		
				"P-75-3-1-2"			
				"P-75-3-2-1"	962,142.89		
				"P-75-3-2-2"			
				"P-75-3-3-1"	962,142.89		
				"P-75-3-3-2"			
				"P-75-4-1"	962,142.91		
				"P-75-5-1"	962,142.91		
				"P-75-6-1"	962,142.91		
				"P-75-7-1"	528,235.32		
				"P-75-8"	-		
				"P-75-9"	-		
				"P-75-10"	88,417.66		
				Total	**₱12,162,367.72**	**₱265,252.28**	**₱5,305.05**

The Court concurs with the foregoing findings of the ICPA, noting a minimal adjustment (₱0.50 reduction) of ₱0.50 to account for a discrepancy between the actual income payment amount of ₱12,336,350.00 for Global Trade Energy Resources, Corp. per BIR Form No. 2307 and the income payment amount of ₱12,336,350.50 used by the ICPA. As such, the income payments not traced as part of the income declared in the ITR for CY 2019 actually amount to ₱265,251.78 (₱265,252.28 less ₱0.50), with corresponding CWTs of ₱5,305.04 (2% of ₱265,251.78).

[68] Docket, p. 444, *Annex D.1* of ICPA Report (Exhibit "P-12).

Accordingly, out of the substantiated CWTs of ₱11,254,080.00, only ₱11,248,774.96 satisfies the *third* requirement, as summarized below:

Duly substantiated CWTs	₱11,254,080.00
Less: CWT, the income payments of which were not traced to the GL and ITR for CY 2019	5,305.04
Refundable Unutilized CWT	**₱11,248,774.96**

In sum, petitioner has sufficiently proven its entitlement to a refund for its excess and unutilized CWTs for CY 2019, but only to the extent of ₱11,248,774.96.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, the amount of **₱11,248,774.96**, representing the latter's excess and unutilized CWTs for taxable year 2019.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice