REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILIPPINE NATIONAL BANK, Petitioner,	**CTA CASE NO. 8268**
	Members:
- versus -	**UY,** *Chairperson, and* **FABON-VICTORINO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	MAY 06 2016 ; 2:56 pm.

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AMENDED DECISION

UY, *J.*:

Before this Court is petitioner's **Motion for Reconsideration (With Motion to Reopen Trial)**, filed on January 20, 2014, with respondent's **Comment [To Petitioner's Motion for Reconsideration (with Motion to Reopen Trial) dated 20 January 2014]**, filed on February 28, 2014, and petitioner's **Reply (to Respondent's Comment dated 28 February 2014)**, filed on March 18, 2014.

On May 2, 2014, the Court granted the *Motion to Reopen Trial* and held in abeyance the resolution of the *Motion for Reconsideration*.[1] Thereafter, petitioner presented its witness, the Independent Certified Public Accountant (ICPA), Mr. Fredieric B. Landicho,[2] and submitted its Supplemental Formal Offer of Evidence[3].

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1 Resolution, docket, pp. 3725 to 3733.
2 Docket, pp. 3825 to 3826.
3 Docket, pp. 3830 to 3842.

On February 29, 2016, petitioner's Motion for Reconsideration was submitted for resolution after taking into consideration respondent's Manifestation[4] posted on January 12, 2016 and petitioner's Supplemental Memorandum[5], filed on February 24, 2016.[6]

To recall, the Petition for Review filed by petitioner on April 13, 2011 seeking the refund/issuance of tax credit certificate (TCC) in the amount of ₱209,333,247.65 allegedly representing its excess CWT for taxable year 2008 was denied due to insufficiency of evidence.

Hence, petitioner filed the instant Motion for Reconsideration seeking reconsideration of the Court's Decision promulgated on December 10, 2013 (assailed Decision), the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.
>
> **SO ORDERED.**"[7]

Petitioner anchors its arguments on the following grounds:

1. Petitioner has submitted sufficient and substantial evidence to prove that the income from which the Creditable Withholding Tax (CWT) being claimed were withheld was included as part of the total revenue reported by petitioner in the Audited Financial Statements (AFS) and Annual Income Tax Return (ITR) for the taxable year 2008;

2. Petitioner's proof of its entitlement to a tax refund was consistent with jurisprudential standards for tax refunds, including previous decisions of this Court on exactly the same issues and involving the same petitioner;

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[4] Docket, pp. 3887 to 3888.
[5] Docket, pp. 3900 to 3920.
[6] Docket, p. 3921.
[7] Docket, p. 3662.

3. It is sufficiently shown on petitioner's return that the income payments subjected to withholding tax was declared as part of the gross income;

4. The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom; and

5. Claims for refund of excess or unutilized CWT are in the nature of civil cases and necessitate only preponderance of evidence.

On the other hand, respondent counters as follows:

1. The Court is correct when it points out that petitioner failed to comply with the second and third requisites for a valid claim for refund;

2. CTA Case No. 7444 is not on all fours with the present petition;

3. The absence of any entry in the reflected "Creditable Tax Withheld" column is to the effect, or at the very least, may be taken to mean, that no part of the gross income reported was ever subjected to CWT;

4. Petitioner should not be allowed to reopen trial or move for new trial. According to respondent, the additional verification procedures and documents contemplated by petitioner are not newly discovered evidence that warrants time to be heard by this Court; and

5. Tax refunds, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[8]

[8] Docket, pp. 3698 to 3704.

The Court finds petitioner's Motion for Reconsideration partly meritorious.

In the recent case of *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils.) Operations Corporation]*,[9] the Supreme Court reiterated the three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax; (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (3) 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.

As regards the first condition, both the administrative and judicial claims were timely filed. The Court already ruled in the assailed Decision that "petitioner's administrative claim filed on January 14, 2011 and the amendment thereto, which was filed on March 29, 2011, as well as the judicial claim filed via Petition for Review on April 13, 2011, were all made within the two-year prescriptive period provided by law"[10].

The Court likewise found that "the amount of ₱5,391,883.48, xxx, shall be disallowed outright for petitioner's failure to meet the second and third requisites"[11]. Thus, "out of the total claimed creditable withholding taxes of ₱209,333,247.65, only the amount of ₱203,941,364.17 (₱209,333,247.65 less ₱5,391,883.48) appears to be a valid claim"[12]. However, the Court could not verify whether the income payments from which the CWT of ₱203,941,364.17 were withheld, were included as part of petitioner's total revenue reported in the AFS and Annual ITR for taxable year 2008. Thus, the Petition for Review was denied.

Now, in support of petitioner's Motion for Reconsideration and in order to prove its entitlement to refund of excess CWT, petitioner presented additional documentary and testimonial evidence such as the Trial Balance for the year 2008[13], Reconciliation of Income per

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[9] G.R. No. 179260, April 2, 2014, citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals,* 548 Phil. 32, 36-37 (2007).
[10] Decision, docket, p. 3658.
[11] Decision, docket, p. 3659.
[12] Decision, docket, p. 3660.
[13] Exhibits GGG-1 to GGG-24.

Audited Financial Statements against Income per Income Tax Return[14], testimony of the new Court-commissioned ICPA, Atty. Fredieric B. Landicho[15], and Supplemental ICPA Report[16] dated March 27, 2015, among others.

After careful evaluation of the additional evidence presented, this Court finds that petitioner's income upon which the taxes were withheld were properly reported and formed part of its gross income declared in the Annual ITR for taxable year 2008.

The income payments appearing in each CWT certificates (BIR Form No. 2307)[17] were checked against the relevant documents such as Transaction Tickets/Input Sheets and Deeds of Sale[18]. Said income payments appearing in the documents were individually traced to the specific General Ledger[19] of the relevant income account to ascertain whether the same were properly posted. The ending balances of the General Ledger of income accounts from which the taxes were withheld correspond with the amounts reported in the Trial Balance[20].

Thereafter, the income accounts in the Adjusted Trial Balance were compared against the amounts reported in the AFS. Upon comparison, minimal discrepancies appeared due to rounding off, to wit:

Revenue	Amount per Adjusted Trial Balance	Amount per Audited Financial Statements	Difference
Interest Income on:			
Loans and Receivables	₱ 6,188,697,927.75	₱ 6,188,698,000.00	₱ (72.25)
Trading and Investments Securities	4,078,628,437.54	4,078,628,000.00	437.54
Interbank Loans Receivable	-	-	-
Deposits with Banks and Others	999,921,206.23	999,921,000.00	206.23
Subtotal	***11,267,247,571.52***	***11,267,247,000.00***	***571.52***
Non-interest Income			
Service Charges, Fees, and Commissions	1,766,373,107.08	1,766,373,000.00	107.08
Foreign Exchange	2,049,682,822.31	2,049,683,000.00	(177.69)
Trading and Investment Security Gains (losses)	(937,826,582.63)	(937,827,000.00)	417.37
Miscellaneous Income	1,537,824,602.80	1,537,825,000.00	(397.20)

[14] Exhibits LLL-1 to LLL-2.
[15] Exhibit MMM, docket, pp. 3811 to 3824.
[16] Exhibit EEE.
[17] Exhibits FF-1 to FF-2647.
[18] Exhibits FFF-1a to FF-2647a.
[19] Exhibits FFF-1 to FFF-945 (GL of Interest Income) and Exhibit VV (GL of PLASE and Rental).
[20] Exhibits GGG-1 to GGG-24.

Subtotal	***4,416,053,949.56***	***4,416,054,000.00***	***(50.44)***
TOTAL	**₱15,683,301,521.08**	**₱15,683,301,000.00**	**₱ 521.08**

As per Reconciliation of Income per Audited Financial Statements against Income per Income Tax Return[21], it shows that the income payments upon which the taxes were withheld were properly reported and formed part of the gross income declared in its ITR for the taxable year 2008, We quote:

	Interest Income	**Service Charges, Fees and Commissions**	**Foreign Exchange**	**Trading & Investment Securities Gains**	**Miscellaneous Income**	**Total**
Income per AFS	**11,267,247,571.52**	**1,766,373,107.08**	**2,049,682,822.31**	**(937,826,582.63)**	**1,537,824,602.80**	**15,683,301,521.08**
FCDU Income per AFS	2,382,596,508.01	30,221,712.61	801,504,461.88	(130,893,121.84)	2,124,282.19	3,085,553,842.85
RBU Income per AFS	**8,884,651,063.51**	**1,736,151,394.47**	**1,248,178,360.43**	**(806,933,460.79)**	**1,535,700,320.61**	**12,597,747,678.23**
Add (deduct) reconciling items:						
Accretion of Interest Income from Impaired Loans	(6,911,817.54)					(6,911,817.54)
Interest Income Subject to Final Tax	(2,446,644,445.68)					(2,446,644,445.68)
Tax-Exempt Interest Income	(1,213,806,932.54)					(1,213,806,932.54)
Classified as "Other Income" per ITR, "Service Charges and Commissions" per AFS		(172,818,423.40)			172,818,423.40	-
Revaluation on Mark to forward			(272,839,903.55)			(272,839,903.55)
Trading Loss classified as "Trading & Investment Gains" per AFS, "Miscellaneous" per ITR				806,933,460.79	(806,933,460.79)	-
Mark to Market					1,316,477,144.41	1,316,477,144.41
Non-Taxable Other Income (e.g. Dividends)					(426,550,311.74)	(426,550,311.74)
Advance Rental on Deposits					533,656.72	533,656.72
Realized Gain on SCR Collections					118,585,316.68	118,585,316.68
Total	(3,667,363,195.76)	(172,818,423.40)	(272,839,903.55)	806,933,460.79	374,930,768.68	(2,931,157,293.24)
Income per 2008 ITR	**5,217,287,867.75**	**1,563,332,971.07**	**975,338,456.88**	**-**	**1,910,631,089.29**	**9,666,590,384.99**

Further, as found by the ICPA in his Report, not all the income payments per CWT certificates were traced to the General Ledger, and it cannot be ascertained whether the same were reported in petitioner's ITR. The findings of the ICPA are summarized as follows:

Findings	**CWT**	**Income Payments**
a) Summary of Creditable Withholding Taxes Supported with Original CWTs, Transaction Tickets/Input Sheets and Deed of Sale dated 2008; With Income reported in 2008 (*Annex A of the ICPA Report*)	₱ 112,518,775.02	3,155,458,618.86

[21] Exhibits LLL- 1 to LLL-2.

b) Summary of Creditable Withholding Taxes Supported with Original CWTs, Transaction Tickets/Input Sheets and Deed of Sale dated 2008; With Loss or No Income recognized in 2008 (*Annex B of the ICPA Report*)	15,875,294.96	264,588,249.33
c) Summary of Creditable Withholding Taxes Supported with Original CWT and Deed of Sale dated 2008 with Transaction Tickets/Input Sheets dated outside 2008; With UPASE balances closed to PLASE prior to 2008 which were not claimed in other years (*Annex C of the ICPA Report*)	4,206,511.32	70,108,522.00
d) Summary of Creditable Withholding Taxes Supported with Original CWTs and Transaction Tickets/ Input Sheets dated 2008 with income partly traced to 2008 General Ledger (*Annex D of the ICPA Report*)		
d.1 - Traced to General Ledger[22]	514,367.09	24,317,369.85
d.2 - Not traced to General Ledger	468,561.12	21,658,640.12
e) Summary of Creditable Withholding Taxes Supported with Original CWTs and Deed of Sale dated 2008 and Transaction Tickets/Input Sheets dated 2008; With Income not traceable to 2008 General Ledger (*Annex E of the ICPA Report*)	6,195,150.82	109,686,375.74
f) Summary of Creditable Withholding Taxes Supported with Original CWTs and Deed of Sale dated 2008 but Transaction Tickets/Input Sheets are dated outside 2008; With Income reported outside 2008 which were not claimed in other years (*Annex F of the ICPA Report*)	49,548,669.03	618,249,255.26
g) Summary of Creditable Withholding Taxes Supported with Original CWTs dated 2008 but Deed of Sale and Transaction Tickets/Input Sheets are dated Outside 2008; with Income reported outside 2008 which were not claimed in other years (*Annex G of the ICPA Report*)	840,855.00	14,014,250.00
h) Summary of Creditable Withholding Taxes Supported with Original CWTs dated 2008 but without Transaction Tickets/Input Sheets or Deed of Sale; Original CWT dated outside 2008; And	12,874,824.90	246,198,002.56

[22] Out of the total withholding taxes of ₱982,928.21, only the amount of ₱514,367.09 was traced to the General Ledger [₱982,928.21 - 514,367.09 = ₱468,561.12].

not Supported with Original CWTs (*Annex H of the ICPA Report*)		
i) Summary of Creditable Withholding Taxes Supported with Original CWTs and Transaction Ticket/Input Sheets dated 2008 which were claimed twice (*Annex I of the ICPA Report*)	1,217,533.39	20,292,223.17
j) Summary of Creditable Withholding Taxes Supported with Original CWTs and Transaction Ticket/Input Sheets dated 2008 but pertains to Business Taxes (*Annex J of the ICPA Report*)	441,855.80	14,728,526.22
k) Summary of Creditable Withholding Taxes With Income not traced since the General Ledger of the Income Account related to the transactions were not provided (*Annex K of the ICPA Report*)	4,630,849.20	146,694,311.27
Total Creditable Withholding Taxes	**₱ 209,333,247.65**	**₱ 4,705,994,344.38**

Considering the above findings together with the submitted documents, schedules and reconciliation, this Court finds the Supplemental ICPA Report in order. Consequently, after excluding items d.2, e, h, i, j and k abovementioned, only the CWT in the amount of ₱183,504,472.42 which are duly supported by certificates and of which the related income payments of ₱4,146,736,265.30 were traced to General Ledger and thereafter reported in the Audited FS and Annual ITR for taxable year 2008 shall be refunded, to wit:

Findings	**CWT**	**Income Payments**
a) Summary of Creditable Withholding Taxes supported with Original CWTs, Transaction Tickets/Input Sheets and Deed of Sale dated 2008; With Income reported in 2008 (*Annex A of the ICPA Report*)	₱ 112,518,775.02	₱ 3,155,458,618.86
b) Summary of Creditable Withholding Taxes supported with Original CWTs, Transaction Tickets/Input Sheets and Deed of Sale dated 2008; With Loss or No Income recognized in 2008 (*Annex B of the ICPA Report*)	15,875,294.96	264,588,249.33
c) Summary of Creditable Withholding Taxes supported with Original CWT and Deed of Sale dated 2008 with Transaction Tickets/Input Sheets dated outside 2008; With UPASE balances closed to PLASE prior to 2008	4,206,511.32	70,108,522.00

which were not claimed in other years (*Annex C of the ICPA Report*)		
d) Summary of Creditable Withholding Taxes supported with Original CWTs and Transaction Tickets/ Input Sheets dated 2008 with income partly traced to 2008 General Ledger (*Annex D of the ICPA Report*) - Traced to General Ledger	514,367.09	24,317,369.85
e) Summary of Creditable Withholding Taxes supported with Original CWTs and Deed of Sale dated 2008 but Transaction Tickets/Input Sheets are dated outside 2008; With Income reported outside 2008 which were not claimed in other years (*Annex F of the ICPA Report*)	49,548,669.03	618,249,255.26
f) Summary of Creditable Withholding Taxes supported with Original CWTs dated 2008 but Deed of Sale and Transaction Tickets/Input Sheets are dated Outside 2008; with Income reported outside 2008 which were not claimed in other years (*Annex G of the ICPA Report*)	840,855.00	14,014,250.00
Total	**₱ 183,504,472.42**	**₱ 4,146,736,265.30**

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Philippine National Bank the reduced amount of **ONE HUNDRED EIGHTY-THREE MILLION FIVE HUNDRED FOUR THOUSAND FOUR HUNDRED SEVENTY-TWO AND 42/100 (₱183,504,472.42)**, representing petitioner's excess creditable withholding taxes (CWT) for taxable year 2008.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
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.

ERLINDA P. UY
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.

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice