REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SONY PHILIPPINES, INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10585

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

APR 2 4 2025

10:15 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The *Petition for Review* prays that the Court render judgment ordering respondent Commissioner of Internal Revenue to refund to petitioner the amount of ₱60,157,273.00 representing unutilized creditable withholding taxes (CWT) for the fiscal year (FY) ended March 31, 2019.[1]

THE PARTIES

Petitioner Sony Philippines, Incorporated is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 12/F Inoza Tower, 40th Street Bonifacio Global City, Fort Bonifacio, Taguig City.[2] It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 005-338-777-00000.[3]

Respondent Commissioner of Internal Revenue is the chief of the BIR who, under the law, is empowered to perform the duties of said office including, among others, the power to assess and collect all national internal

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[1] Statement of the Case, Pre-Trial Order dated September 12, 2022, Docket – Vol. IV, p. 1711.
[2] Exhibits "P-1", "P-1-1" and "P-2", Docket – Vol. 5, pp. 2196 to 2223.
[3] Exhibits "P-3" and "P-4", Docket – Vol. 5, pp. 2224 to 2226.

revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith.[4]

THE FACTS

On July 12, 2019, petitioner filed its *Annual Income Tax Return* (BIR Form No. 1702-RT) (Annual ITR) for FY ended March 31, 2019,[5] which reflected the following Tax Credits/Payments:[6]

Schedule 7 - Tax Credits/Payments	
Prior Year's Excess Credits Other Than Minimum Corporate Income Tax (MCIT)	₱ 221,845,356.00
Creditable Tax Withheld from Previous Quarter/s per BIR Form No. 2307	48,322,530.00
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	11,834,743.00
Total Tax Credits/Payments	**₱ 282,002,629.00**

Petitioner's Annual ITR for FY ended March 31, 2019 also reflected an overpayment of ₱255,012,863.00, computed as follows:[7]

Part II – Total Tax Payable	
Total Income Tax Due (Overpayment)	₱ 26,989,766.00
Less: Total Tax Credits/Payments	282,002,629.00
Total Amount Payable (Overpayment)	**₱ (255,012,863.00)**

In the said Annual ITR, petitioner also marked the option *"To be refunded"* for overpayment.[8]

On July 6, 2021, petitioner filed with the BIR Regular Large Taxpayer Audit Division I, the letter of even date,[9] together with the *Application for Tax Credits/Refunds* (BIR Form No. 1914),[10] requesting for the refund of unutilized CWT for FY ended March 31, 2019, in the amount of ₱60,157,273.00.

Petitioner filed the present *Petition for Review* on July 9, 2021.[11]

On February 2, 2022, respondent filed his *Answer*,[12] interposing the following special and affirmative defenses, to wit: (1) petitioner failed to exhaust administrative remedies; (2) petitioner is not entitled to the claim for

[4] Par. 1, Admitted Facts, *Joint Stipulation of Facts & Issues* (JSFI), Docket – Vol. IV, p. 1695.
[5] Exhibit "P-6", Docket – Vol. 5, pp. 2230 to 2237.
[6] Exhibit "P-6", Schedule 7 - Tax Credits/Payments, Docket – Vol. 5, p. 2235.
[7] Exhibit "P-6", Part II – Total Tax Payable, Docket – Vol. 5, p. 2230.
[8] Exhibit "P-6", Line 21 (offered as Exhibit "P-6-C"), Docket – Vol. 5, p. 2230.
[9] Exhibit "P-11", Docket – Vol. 5, pp. 2272 to 2280.
[10] Exhibit "P-12", Docket – Vol. 5, p. 2281.
[11] Docket – Vol. I, pp. 1 to 32.
[12] Docket – Vol. IV, pp. 1604 to 1613.

refund of alleged unutilized CWT; (3) it is incumbent upon petitioner to prove that the alleged claim for refund was filed within the two (2)-year period provided under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended; (4) petitioner failed to prove that income related to CWT was declared in the Annual ITR; and (5) the instant claim for tax refund is tainted with procedural infirmity due to petitioner's failure to submit complete documents to support its administrative claim for refund.

After due proceedings and trial, the present case was considered submitted for decision on August 15, 2024.[13]

THE ISSUE

The parties submit the following issue for this Court's resolution:

> "1. Whether or not Petitioner is entitled to refund of alleged unutilized creditable withholding taxes for fiscal year ending 31 March 2019 in the amount of P60,157,273.00."[14]

Petitioner's arguments:

Petitioner argues that it is entitled to a tax refund pertaining to unutilized excess creditable taxes withheld and remitted to the respondent as: (1) the claim for refund was filed within the two (2)-year prescriptive period; (2) the income payments where the taxes were withheld were included as part of the gross income declared in the 2019 Annual ITR; (3) the fact of withholding is substantiated by the BIR Form No. 2307 issued by the income payor to petitioner; (4) petitioner elected to refund the excess CWT in the 2019 Annual ITR; and (5) the amount claimed for refund was not carried over or applied to the succeeding year.

Respondent's counter-arguments:

Respondent contends that petitioner failed to exhaust administrative remedies; that petitioner is not entitled to the claim for refund of alleged unutilized CWT; that it is incumbent upon petitioner to prove that the alleged claim for refund was filed within the two (2)-year period provided under Section 229 of the National Internal Revenue Code of 1997, as amended (1997 NIRC); that petitioner failed to prove that income related to CWT was declared in the Annual ITR; and that the instant claim for tax refund is tainted with procedural infirmity due to petitioner's failure to submit complete documents to support its administrative claim for refund.

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[13] Minute Resolution dated August 15, 2024, Docket – Vol. 5, p. 2640.
[14] Stipulated Issues, JSFI, Docket – Vol. IV, p. 1696.

THE COURT'S RULING

The present *Petition for Review* must be denied.

Petitioner complied with Section 76 of the NIRC of 1997, and has not carried over the excess CWT being claimed for refund.

Section 76 of the 1997 NIRC states:

> "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:
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> (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.
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> 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."

The above provision discusses the two (2) options of a taxable corporation whose total quarterly income tax payments in 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/years until it is fully utilized, or (2) file a claim for refund in the form of cash or tax credit certificate. However, once the carry-over option is taken actually or constructively it becomes irrevocable for that taxable period.[15] The phrase "*for that taxable period*"

[15] *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018, citing the case of *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015; *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 & 162004, December 14, 2005; *Systra Philippines, Inc vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[16]

In exercising its option, the corporation must signify in its annual corporate adjustment return (*by marking the option box provided in the BIR form*) its intention, 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.[17]

A perusal of its Annual ITR for FY 2019[18] shows that petitioner had total tax credits of ₱282,002,629.00,[19] which is determined as follows:

Prior Year's Excess Credits other than MCIT		₱ 221,845,356.00
Add: Creditable Taxes Withheld – FY 2019		
Creditable tax withheld for the first three quarters	₱ 48,322,530.00	
Creditable tax withheld per BIR Form 2307 for the 4th quarter	11,834,743.00	60,157,273.00
Total tax credits		**₱282,002,629.00**

Petitioner claims that its income tax due for FY 2019 in the amount of ₱26,989,766.00[20] was paid using a portion of its prior year's excess credits of ₱221,845,356.00, thus leaving the prior year's excess credits in the amount of ₱194,855,590.00 and the creditable taxes withheld during the FY 2019 in the amount of ₱60,157,273.00, or a total of ₱255,012,863.00 unutilized as of March 31, 2019, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 221,845,356.00
Less: Tax Due (MCIT)	26,989,766.00
Balance of Prior Year's Excess Credits	₱ 194,855,590.00
Add: Creditable Taxes Withheld – FY 2019	60,157,273.00
Excess Creditable Withholding Taxes as of March 31, 2019	**₱255,012,863.00**

Since petitioner marked the box corresponding to the option ***"To be refunded"***[21] in its Annual ITR for FY 2019, the CWT for that year in the amount of ₱60,157,273.00 may be a proper subject of a claim for refund under Section 76 of the NIRC of 1997.

[16] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),* G.R. No. 188016, January 14, 2015; *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.

[17] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.

[18] Exhibit "P-6", Docket – Vol. 5, pp. 2230 to 2237.

[19] Exhibit "P-6", Schedule 7, Docket – Vol. 5, p. 2235.

[20] Exhibit "P-6", Line 44, Docket – Vol. 5, p. 2231.

[21] Exhibit "P-6", Line 21 (offered as Exhibit "P-6-C"), Docket – Vol. 5, p. 2230.

This refund option was further affirmed by petitioner when it carried over only the amount of ₱194,855,590.00 as prior year's excess tax credits other than MCIT in its Annual ITR for FY 2020.[22] Said amount already excluded the CWT being claimed for refund in this case amounting to ₱60,157,273.00.

Requisites to claim a tax credit or refund of excess and unutilized CWT.

In addition to the requisites provided under Section 76 of the NIRC of 1997, jurisprudence and pertinent BIR issuances provide that in order for a taxpayer to be entitled to a refund or an issuance of tax credit certificate for unutilized excess CWT, the following three (3) requisites must be further complied with, *viz.*:

1. The claim for refund must be filed within the two (2)-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.[23]

Petitioner must establish the foregoing requisites for the grant of the refund claimed.

Petitioner's administrative and judicial claims for refund were timely filed.

Anent the *first* requisite, the pertinent provisions are Sections 204(C) and 229 of the 1997 NIRC, which provide as follows:

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

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[22] Exhibits "P-9" and "P-10", Schedule 7, Line 1, Docket – Vol. 5, pp. 2259 and 2268, respectively.

[23] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; *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; Section 2.58, Revenue Regulations No. 2-98, as amended.

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." *(Emphasis added)*

"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." *(Emphases added)*

The above-stated provisions mandate that the administrative and judicial remedies of filing a claim for refund of erroneously or excessively paid tax must be done within two (2) years from the date of payment of the tax.

It is well settled that the two (2)-year prescriptive period for claiming a refund of overpaid income tax/CWT commences to run on the date of filing of the Final Adjustment Return[24] (or Annual ITR). This is so because 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.[25] In other words, 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

[24] *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., et al.*, 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.

[25] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.

possible to determine whether the corporate taxpayer paid an amount exceeding its annual income tax liability.[26]

Petitioner filed its Annual ITR for FY ended March 31, 2019 *via* the electronic filing and payment system or eFPS of the BIR on July 12, 2019.[27] Thus, counting from July 12, 2019, petitioner had until July 12, 2021,[28] within which to file both its administrative and judicial claims.

Considering that petitioner filed its administrative claim for refund with BIR on July 6, 2021,[29] while the present judicial claim was filed on July 9, 2021,[30] both claims for refund of unutilized/excess CWTs were seasonably filed within the two (2)-year prescriptive period.

Be that as it may, respondent contends that petitioner failed to exhaust administrative remedies as petitioner filed its administrative claim for refund on July 6, 2021, and barely three (3) days from the filing thereof, or on July 9, 2021, petitioner filed the present *Petition for Review.*

This Court, however, disagrees with respondent.

In *Commissioner of Internal Revenue vs. Carrier Air Conditioning Philippines, Inc.*,[31] the Supreme Court held as follows:

> "A closer reading of Sections 204 and 229 of the 1997 National Internal Revenue Code, in conjunction with Section 7 of Republic Act No. 9282, reveals a problem of what is considered a 'reasonable period' for the Commissioner of Internal Revenue to act on a claim for refund of taxes.
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> **Section 229, which requires a prior administrative claim before a judicial claim is filed, recognizes the Commissioner of Internal Revenue's primary jurisdiction to decide refunds of internal revenue taxes.** It gives the Commissioner 'an opportunity to consider [their] mistake, if mistake has been committed,' or to investigate and ascertain the veracity of the claim, before they are sued. This Court in *CBK Power Company*,[32] citing *P.J. Kiener*,[33] held that the **primary purpose of filing an administrative claim is to serve as a *notice or warning* to the Commissioner that *court action would follow unless the tax or penalty is refunded.*** **This necessarily**

[26] *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.
[27] Exhibit "P-6", Docket – Vol. 5, pp. 2230 to 2237.
[28] Docket – Vol. I, pp. 1 to 32.
[29] Exhibits "P-11"and "P-12", Docket – Vol. 5, pp. 2272 to 2281.
[30] Docket – Vol. I, pp. 1 to 32.
[31] G.R. No. 226592, July 27, 2021.
[32] That is, *CBK Power Company Limited vs. Commissioner of Internal Revenue*, 750 Phil. 748 (2015) [Per *J.* Perlas-Bernabe, First Division].
[33] That is, *P.J. Kiener Company, Ltd. vs. David*, 92 Phil. 945 (1953) [Per *J.* Tuason, *En Banc*].

implies that the Commissioner has sufficient time to examine, evaluate, and act on the matter within their jurisdiction.

On the other hand, Section 7 of Republic Act No. 9282 grants the Court of Tax Appeals exclusive appellate jurisdiction over a decision or 'inaction deemed denial' of the Commissioner in a claim for refund. Under its clear wording, the Court of Tax Appeals can take cognizance of appeals in cases of the Commissioner's 'inaction' only where the 1997 National Internal Revenue Code specifically provides a period for the Commissioner to act on a claim for refund. However, unlike in claims for refund of input value-added tax, **the 1997 National Internal Revenue Code does not prescribe a specific period within which the Commissioner must resolve the claim for refund or credit of erroneously paid taxes.**

Sections 204 and 229 fixed the same period of two years for filing an administrative claim for refund before the Bureau of Internal Revenue and to sue before the Court of Tax Appeals. *CBK Power Company* explained that as long as these two acts fall within the two-year period, there is no legal impediment to the judicial claim for refund.

Consequently, from the plain language of the law, <u>it does not matter how far apart the administrative and judicial claims were filed</u>, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, <u>so long as both claims were filed within the two-year prescriptive period</u>.

Thus, in *CBK Power Company*, as with subsequent cases, this Court upheld the propriety of the taxpayer's judicial claim instituted as early as five[34] and 13[35] days after the administrative claim had been filed, on the ground that both claims were filed within the two-year prescriptive period.

The Court of Tax Appeals likewise allowed judicial claims filed simultaneously, or one to 28 days from the administrative claim's filing, on the same ground that both claims were filed within the two-year prescriptive period.

In much earlier cases, however, it was the Commissioner who was considered long delayed in resolving the administrative claims. Hence, this Court has held that the taxpayer need not wait for the Commissioner's decision, and may file its judicial claim when the two-year prescriptive period is about to lapse.

For instance, in *P.J. Kiener*, the taxpayer filed its administrative claim for refund four months after the last payment of the tax sought to be refunded. Yet, the then Collector of Internal Revenue took their

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[34] *Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, 802 Phil. 636 (2016) [Per *J.* Brion, Second Division].

[35] *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*, 792 Phil. 484 (2016) [Per *J.* Perlas-Bernabe, First Division].

time—*more than two years*—to decide on the claim, so much so that when the taxpayer filed its appeal, its action had already prescribed. This Court held: '*Having filed his claim* ***and the Collector of Internal Revenue having had ample time to study it****, the claimant may, indeed should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision.*'

In *Collector of Internal Revenue v. Court of Tax Appeals and Hume Pipe & Asbestos Co., Inc.*,[36] this Court deemed *two months* as ample time for the Collector to have decided the claim for refund of overpaid income tax. Hence, in that case, it upheld the taxpayer's filing of a petition for review before the Court of Tax Appeals without waiting for the Collector's decision, since the two-year prescriptive period was already about to expire.

In *Commissioner of Customs and Commissioner of Internal Revenue v. The Honorable Court of Tax Appeals and Planters Products, Inc.*,[37] *eight months and 10 days* had lapsed from the taxpayer's filing of an administrative claim, but the Commissioner had not acted on it. Ruling in the taxpayer's favor, this Court, quoting a ruling of the tax court, said:

> **The taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect.**
>
> . . . .
>
> **It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector [(now Commissioner)] of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the [Commissioner], would have, at his personal convenience, given his go signal.**

In these cases, the written claim for refund was duly filed at the administrative level, but the claim had not been acted upon by the Commissioner (then Collector) of Internal Revenue. Since the two-year period was about to lapse, the taxpayer was held justified in filing its judicial claim, without waiting for the Commissioner's decision, to protect its interest. Otherwise, should the Commissioner render an adverse decision after the two-year period, the taxpayer would be barred, to its prejudice, from pursuing its appeal to the Court of Tax Appeals.

These cases show that the lack of a specific period fixed by the law within which the Commissioner must decide the claim

[36] 110 Phil. 680 (1961) [Per *J.* Dizon, *En Banc*].
[37] 253 Phil. 339 (1989) [Per *J.* Griño-Aquino, First Division].

> **has led to delays, to the taxpayer's prejudice. On the other hand, there were instances when the Commissioner was deprived of the opportunity to act on the matter within their jurisdiction because of the short interval between the filing of the administrative claim and the filing of the judicial claim. This is so because the law merely provides two years for a taxpayer to file the administrative claim and judicial claim, with the former required to be filed first.**
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> Nonetheless, the silence or insufficiency in the law on the reasonable period for the Commissioner's action is one that can be addressed not by judicial pronouncement, but by appropriate legislation." *(Emphases and underscoring added)*

Section 229 of the NIRC of 1997 only requires that an administrative claim be priorly filed primarily to give notice or warning to respondent that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. Hence, as long as the filing of both administrative and judicial claim fall within the two (2)-year prescriptive period, there is no legal impediment to the judicial claim for refund.

Since the two (2)-year prescriptive period was about to lapse, petitioner was justified in filing its judicial claim, without waiting for the respondent's decision, to protect its interest. It should be stressed that petitioner need not await the final resolution of its administrative claim for refund, since doing so would be tantamount to the petitioner's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed. Hence, petitioner's judicial claim filed within the two (2)-year prescriptive period is proper and cannot be dismissed on the ground of failure to exhaust administrative remedies.

Petitioner established the fact of withholding, but only to the extent of ₱41,511,626.30.

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

The *second* requisite mandates petitioner to prove the fact of withholding of the claimed CWT through 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 therefrom.

In *Commissioner of Internal Revenue vs. Philippine National Bank,*[38] the Supreme Court held that the *Certificate of Creditable Tax Withheld at Source* (BIR Form No. 2307), complete in relevant details, is the competent proof to establish the fact that taxes are withheld.

In this case, petitioner submitted various *Certificates of Creditable Tax Withheld at Source* (BIR Form No. 2307)[39] issued by its various withholding agents covering the subject period, as well as the *Schedule of Creditable Income Tax Withheld*[40] for FY 2019 reflecting CWT in the total amount of ₱60,157,272.55, with related income payments of ₱6,015,727,255.00, which were duly examined by the Court-commissioned ICPA, Mr. Joseph Cedric V. Calica, as summarized below:

REGISTERED NAME	AMOUNT OF INCOME PAYMENT	AMOUNT OF TAX WITHHELD	EXHIBIT NO.
ABENSON LIBERTY APPL INC	₱ 20,686,469.00	₱ 206,864.69	"P-1166-A-1" to "P-1166-A-2"
ABENSON VENTURES INC	799,017,664.00	7,990,176.64	"P-1166-A-3" to "P-1166-A-6"
ADDESSA CORPORATION	12,180,424.00	121,804.24	None
AEROPHONE ENTERPRISES AND CO	1,550,919.00	15,509.19	"P-1166-A-7" to "P-1166-A-8"
ALTURAS ABENSON APPL BOHOL INC	20,941,529.00	209,415.29	"P-1166-A-9" to "P-1166-A-11"
ANSON @ HOME INC	16,660,897.00	166,608.97	"P-1166-A-12" to "P-1166-A-35"
ANSON EMPORIUM CORP	101,227,531.00	1,012,275.31	"P-1166-A-36" to "P-1166-A-45"
ANSON MARKETING AND COMMERCIAL INC	52,056,990.00	520,569.90	"P-1166-A-46" to "P-1166-A-55"
APPLIANCE CENTRUM BACOLOD	28,632,603.00	286,326.03	None
APPLIANCE CENTRUM ILOILO	852,800.00	8,528.00	None
ASIAN HOME APPL MAGALLANES	27,644,062.00	276,440.62	None
AUDIO VIDEO SOLUTION CORPORATION	744,987.00	7,449.87	None
AUTOMATIC APPLIANCES INC	106,675,683.00	1,066,756.83	"P-1166-A-56" to "P-1166-A-73"
AV SURFER SUBIC CORP	13,045,683.00	130,456.83	None
AVID SALES CORPORATION	557,475,065.00	5,574,750.65	"P-1166-A-74" to "P-1166-A-76"

[38] G.R. No. 180290, September 29, 2014.
[39] Exhibits "P-1166-A-1" to "P-1166-A-1010", USB.
[40] Exhibit "P-1166", Docket – Vol. IV, p. 1750.

AVLS ALL VISUAL AND LIGHTS SYSTEMS	816,835.00	8,168.35	"P-1166-A-77" to "P-1166-A-82"
AXN NETWORKS PHILS INC	262,661.00	2,626.61	"P-1166-A-83" to "P-1166-A-84"
BANBROS COMMERCIAL INC	58,648,608.00	586,486.08	"P-1166-A-85" to "P-1166-A-93"
BONIFACIO ART FOUNDATION INC	793,750.00	7,937.50	"P-1166-A-94"
CABLE ACCESS TECHNOLOGIES INC	79,987,746.00	799,877.46	"P-1166-A-95" to "P-1166-A-99"
CAMERAHAUS INC	16,598,614.00	165,986.14	"P-1166-A-100" to "P-1166-A-118"
CAMERASOUND INC MALATE MAIN	4,759,621.00	47,596.21	"P-1166-A-119" to "P-1166-A-126"
CENTRAL QUALITY APPL CAGAYAN	62,690,351.00	626,903.51	"P-1166-A-127" to "P-1166-A-130"
CITY SUPERMARKET INC	60,555,811.00	605,558.11	"P-1166-A-131" to "P-1166-A-154"
CITYSUPER ALABANG INC	57,192.00	571.92	None
CITYSUPER INCORPORATED	910,134.00	9,101.34	None
COLOURS FOTOSHOP	16,306,262.00	163,062.62	"P-1166-A-155" to "P-1166-A-176"
DAVAO IMPORT DIST INC	10,044,606.00	100,446.06	"P-1166-A-177" to "P-1166-A-199"
DBK ELECTRONICS TOTAL	38,960,903.00	389,609.03	"P-1166-A-200" to "P-1166-A-244"
DES APPLIANCE OROQUIETA	52,296,416.00	522,964.16	"P-1166-A-245" to "P-1166-A-383"
DESMARK CORPORATION CAPTAIN ROA	210,879,161.00	2,108,791.61	"P-1166-A-384" to "P-1166-A-476"
DGTE APPLIANCE CENTRUM	5,463,018.00	54,630.18	"P-1166-A-477" to "P-1166-A-493"
DIGI KADEN INC	61,794,860.00	617,948.60	"P-1166-A-494" to "P-1166-A-581"
DU EK SAM INC LESSAGE	254,871,781.00	2,548,717.81	"P-1166-A-582" to "P-1166-A-600"
DUTY FREE PHILS	103,813,770.00	1,038,137.70	"P-1166-A-601" to "P-1166-A-619"
ELECTROWORLD INC	9,346,328.00	93,463.28	"P-1166-A-620" to "P-1166-A-621"
ETON PROPERTIES PHILS INC	124,943.00	1,249.43	"P-1166-A-622" to "P-1166-A-623"
EXTRAORDINARY PRODUCTS TRADE & MKTG	1,375,183.00	13,751.83	"P-1166-A-624" to "P-1166-A-626"
FIESTA APPLIANCECENTER INC	36,367,380.00	363,673.80	None
GREATWORLD APPLIANCE CENTER INC	408,900.00	4,089.00	None
GUANZON MERCHANDISING CORPORATION	1,356,554.00	13,565.54	None
HENRYS PROFESSIONAL PHOTO MKTG	37,791,280.00	377,912.80	"P-1166-A-627" to "P-1166-A-629"
HOTEL PHILIPPINE PLAZA	1,230,530.00	12,305.30	"P-1166-A-630" to "P-1166-A-631"
IMPERIAL APPL PLAZA	811,796,231.00	8,117,962.31	"P-1166-A-632" to "P-1166-A-664"
INNOVE COMMUNICATIONS INC	13,902.00	139.02	None
J AND R ELECTRONICS BINONDO	3,463,765.00	34,637.65	None
JUAN TY FULE/GEC STATIONERY & GEN MERC	496,871.00	4,968.71	None

KEY LARGO CAR ACCESSORIES CENTER	384,982.00	3,849.82	"P-1166-A-665" to "P-1166-A-668"
LYCEUM OF THE PHIL UNIVERSITY INC	4,158,738.00	41,587.38	None
MAGIC APPLIANCES DAGUPAN	41,395,997.00	413,959.97	"P-1166-A-669" to "P-1166-A-708"
MEGA CELLULAR NETWORK INC	18,245,265.00	182,452.65	"P-1166-A-709" to "P-1166-A-753"
MELCO RESORTS LEISURE PHP CORP	10,843,188.00	108,431.88	None
METRO ILOCOS APPLIANCE INC	3,476,516.00	34,765.16	None
METRO PLAZA DAVAO	48,536,420.00	485,364.20	"P-1166-A-754" to "P-1166-A-789"
MIKE S DEPT STORE	87,001.00	870.01	None
OMNI SOLID SERVICES INC	1,763.00	17.63	None
PAN APPLIANCE CORPORATION	3,104,429.00	31,044.29	None
PHILIPPINES AIR ASIA INCORPORATED	165,681.00	1,656.81	"P-1166-A-790"
PINNACLE APPLIANCE INC	8,933,693.00	89,336.93	"P-1166-A-791" to "P-1166-A-792"
PO S MARKETING BACOLOD	6,409,974.00	64,099.74	None
POUNDIT INC	835.00	8.35	None
PROGRESSIVE WIRELESS COMMUNICATION	55,624.00	556.24	None
PROTON MICROSYTEMS INC	3,783,234.00	37,832.34	"P-1166-A-793" to "P-1166-A-794"
RJ HOMES MAIN	93,698,275.00	936,982.75	"P-1166-A-795" to "P-1166-A-797"
RL APPLIANCE INC TACLOBAN	64,852,180.00	648,521.80	"P-1166-A-798" to "P-1166-A-828"
ROBINSONS APPL CORP NOVALICHES	208,211,934.00	2,082,119.34	"P-1166-A-829" to "P-1166-A-831"
ROYAL STAR APPLS MKTG INC	4,481,183.00	44,811.83	"P-1166-A-832" to "P-1166-A-833"
S AND J CALEON MARKETING INC	4,078,131.00	40,781.31	None
S1 TECHNOLOGIES INC	36,329.00	363.29	"P-1166-A-834"
SAVER S TAR TARLAC MAC ENT INC	50,123,215.00	501,232.15	"P-1166-A-835" to "P-1166-A-886"
SAVERS ELECTRONIC WORLD INC	14,860,045.00	148,600.45	"P-1166-A-887" to "P-1166-A-888"
SCAN AND PRINT GRAPHIC HOUSE INC	22,163,904.00	221,639.04	"P-1166-A-889" to "P-1166-A-890"
SCRAP SALES	15,964.00	159.64	None
SILICON VALLEY COMPUTER GROUP PHILS	21,295,521.00	212,955.21	"P-1166-A-891" to "P-1166-A-892"
SOLID ELECTRONICS CORP	114,496,050.00	1,144,960.50	"P-1166-A-893" to "P-1166-A-894"
SOLID VIDEO CORPORATION	7,226,872.00	72,268.72	"P-1166-A-895" to "P-1166-A-951"
SPH CREDIT CONTROL CLEARING ACCNT	- 135,605.00	- 1,356.05	None
STAR APPLIANCE CENTER INC	1,348,478,546.00	13,484,785.46	"P-1166-A-952" to "P-1166-A-957"
SUPER EAST ASIA ENT INC	88,512,591.00	885,125.91	"P-1166-A-958" to "P-1166-A-998"
TAGUM FIESTA APPLIANCE INC	10,651,013.00	106,510.13	None
THE LANDMARK CORPORATION	1,927,253.00	19,272.53	"P-1166-A-999"
URQUAN INC	2,430,192.00	24,301.92	None
WATERFRONT CEBU CITY CASINO HOTEL	823,065.00	8,230.65	None

WAVE MOBILE INC / PLAYTELCOM	4,733,338.00	47,333.38	None
WESTERN GRAND CENTRAL CO INC	52,227,464.00	522,274.64	"P-1166-A-1000" to "P-1166-A-1002"
WESTERN MARKETING CORP	39,937,027.00	399,370.27	"P-1166-A-1003" to "P-1166-A-1005"
WILLY AND SONS CORP	5,128,504.00	51,285.04	"P-1166-A-1006" to "P-1166-A-1009"
WRENLEYS APPLIANCE PLAZA	2,213,651.00	22,136.51	"P-1166-A-1010"
Grand Total	**₱6,015,727,255.00**	**₱60,157,272.55**	

In his Report,[41] the ICPA further summarized his findings as follows:

Total Amount of Claim for Tax Refund	₱ 60,157,273.00
Total Amount of Creditable Income Taxes Withheld indicated in the SAWT	60,157,272.55
Discrepancies in the amount claim vs. amount per SAWT	₱ 0.45
Less: Exceptions noted on Creditable Withholding Taxes pr BIR Form 2307	
No BIR Form 2307 submitted (Exhibit "P-1167-A")	18,645,646.25
Total Amount of Unutilized Creditable Income Taxes Withheld Valid for Claim	**₱ 41,511,626.30**

We find the foregoing findings of the ICPA in order. As such, out of the total claim for refund of ₱60,157,273.00, only the amount of ₱41,511,626.30 was properly supported by BIR Form No. 2307. Accordingly, petitioner was able to satisfy the *second requisite* but only to the extent of the duly substantiated CWTs amounting to **₱41,511,626.30**.

Proof of actual remittance is not indispensable.

Respondent further contends that it is incumbent upon the claimant to prove actual remittance of the same alleged withheld taxes to the BIR. Hence, respondent claims that petitioner should have presented evidence to prove actual remittance of the same alleged taxes to the BIR. Respondent allegedly is not obliged to prove before the Court non-remittance of the alleged withheld taxes, it is the duty of the petitioner to prove otherwise. Respondent contends that proof of actual remittance of the taxes withheld to the BIR is indispensable in a claim for refund of excess CWT.

We again disagree with respondent.

[41] Exhibit "P-1162", Docket – Vol. IV, p. 1745.

In *Commissioner of Internal Revenue vs. Philippine National Bank*,[42] the Supreme Court ruled as follows:

> "Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with responsibility of withholding and remitting income taxes.**
>
> This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*,[43] citing the Court of Tax Appeals' explanation, is instructive:
>
>> **. . . 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 so 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 Section 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 . . . 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.**" *(Emphases and underscoring added)*

Thus, respondent's contention that proof of actual remittance of the taxes withheld to the BIR is indispensable lacks merit.

[42] G.R. No. 180290, September 29, 2014.
[43] G.R. No. 179617, January 19, 2011.

Petitioner failed to prove that the income payments from which taxes were withheld were declared as part of its gross income in its Annual ITR.

Anent the *third requisite*, petitioner must prove that the income payments from which the substantiated CWT were withheld were declared as part of its gross income. Correspondingly, it becomes necessary to trace the revenues recorded in the general ledger book to ascertain that the related income was duly reported as revenues for FY 2019.

A perusal of petitioner's *Schedule of Creditable Income Tax Withheld*[44] reveals that the claimed CWT of ₱60,157,273.00 were withheld from income payments of ₱6,015,727,255.00, which is lower as compared to the income of ₱6,069,302,659.00 reported in petitioner's FY 2019 AITR,[45] to wit:

Sale of Goods/Properties	₱ 6,281,690,402.00
Sale of Services	99,226,696.00
Total	₱ 6,380,917,098.00
Less: Sales Returns, Allowances and Discounts	311,614,439.00
Net Sales/Revenues/Receipts/Fees	**₱ 6,069,302,659.00**
Amount of income payments per Schedule of Creditable Income Tax Withheld	6,015,727,255.00
Total Income	**₱ 53,575,404.00**

In his *Report*, the ICPA ascertained that the difference in the amount of ₱53,575,404.00 is due to the fact that some of petitioner's income payors are not part of those corporations which are required to withhold 1% on the regular purchase of goods.[46] The ICPA further concluded that the income payments received by petitioner from its transactions subject to withholding tax were completely and correctly declared as part of the gross income of petitioner in the Audited Financial Statements (AFS) and Annual ITR for FY 2019.[47] He described the procedures performed to arrive at such conclusion as follows:[48]

"3. **Examination of Petitioner's Income Upon which the Taxes were Withheld**

a) We tied up the amount of income upon which the taxes were withheld and declared in the return of the taxpayer for the fiscal year ended March 31, 2019 with the Company's annual

[44] Exhibit "P-1166-A", Docket – Vol. IV, pp. 1751 to 1813.
[45] Exhibit "P-6", Schedule 1, Docket – Vol. 5, p. 2232.
[46] Exhibit "P-1162", Docket – Vol. IV, p. 1746.
[47] Exhibit "P-1162", Docket – Vol. IV, p. 1748.
[48] Exhibit "P-1162", Docket – Vol. IV, p. 1742.

sales in the audited financial statements and AITR (see Exhibits 'P-1166', 'P-6', and 'P-43').

b) We ascertained that the income upon which the taxes were withheld were included as part of the gross income, properly recorded in the Company's books of accounts, in relation to the sales found in the AITR and audited financial statements (see Exhibits 'P-6' to 'P-43')."

The Court, however, emphasizes that it is not bound by the findings of the ICPA, as provided under Section 3, Rule 13 of the Revised Rules of Court of Tax Appeals, which states:

> "SEC. 3. *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party processing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**" *(Emphasis added)*

Based on the foregoing, the ICPA's findings are not conclusive upon this Court as the same are subject to its verification, to determine its accuracy, veracity and merit. The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification. It is essential for the petitioner to present evidence to support its compliance with the requirements of the law in order to pursue its claim for credit or refund.

Upon review of the ICPA's *Report*, the Court observes that while the ICPA categorically finds for the proper recording of income in petitioner's books, there was no mention of the tracing of such income in the general ledger books of petitioner, or of determining the actual itemized composition of the sales reported in the Annual ITR and AFS. Instead, the ICPA merely made a general statement that he tied up the amounts of income and ascertained that the income payments were indeed reported.

While there was a reference to Exhibits "P-1166", "P-6", and "P-43" (*i.e. Schedule of Creditable Income Tax Withheld*, Annual ITR, and AFS, respectively), there was no mention of petitioner's submission of any general ledger account under which the reported sales were recorded, or any other documents that would somehow aid the Court in verifying whether the income payments related to the claimed CWT were indeed declared in the Annual ITR for FY 2019 of petitioner. Thus, We are unable to determine the veracity of petitioner's claim on having duly reported the sales related to the subject claimed withholding taxes, and thus, We cannot definitely rule that petitioner complied with the *third* requisite for entitlement to a refund or an issuance of tax credit certificate for unutilized excess CWT.

Petitioner's non-compliance with the *third* requisite is fatal to its claim. A claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[49] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[50] Considering petitioner's failure to discharge such burden of proof, the present claim for tax refund must necessarily fail.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[49] *Citibank, N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997.
[50] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

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.

MA. BELEN M. RINGPIS-LIBAN
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