REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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AZ CONTRACTING SYSTEM SERVICE, INC., Petitioner,	**CTA Case No. 9558**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUN 30 2020 9:32 a.m.

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DECISION

UY, J.:

Before this Court is a *Petition for Review* filed on March 30, 2017 by petitioner, AZ Contracting System Service, Inc., praying that judgment be rendered ordering respondent, Commissioner of Internal Revenue (CIR), to refund in favor of petitioner the amount of ₱15,352,600.00, allegedly representing unutilized creditable withholding tax (CWT) for calendar year (CY) ended December 31, 2014.

THE FACTS

As culled from the records and evidence presented in this case, the facts are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, primarily engaged in the business of sub-contracting/job contracting of all types of work or services including promotion of goods and the supply of manpower services (except recruitment activities).[1] It is registered with the

[1] Exhibit "P-2", Amended Articles of Incorporation, Docket - Vol. 2, p. 574.

Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 216-677-401-000, and with registered address at Unit 3 & 4 Best Century 88 Building, National Road, Barangay Maduya, Carmona, Cavite. [2]

On the other hand, respondent CIR is empowered to perform the duties of his office, including acting upon on protests cases and approval of claims for refund or tax credit as provided by law and implementing regulations. He can be served with pleadings, notices, and other processes at BIR National Office Bldg., BIR Road, Diliman, Quezon City.[3]

Petitioner filed its income tax returns for CY 2014 on the following dates:

Period	Tax Return	Date of Filing	Exhibit
TY 2014	Original Annual Income Tax Return	April 14, 2015	"P-4"
TY 2014	Amended Annual Income Tax Return	May 6, 2016	"P-5"
1Q 2015	Quarterly Income Tax Return	May 25, 2015	"P-6"
2Q 2015	Quarterly Income Tax Return	August 27, 2015	"P-7"
3Q 2015	Quarterly Income Tax Return	November 23, 2015	"P-8"
TY 2015	Amended Annual Income Tax Return	April 25, 2016	"P-9"

As shown above, petitioner filed its original Annual Income Tax Return (AITR)[4] for CY2014 on April 14, 2015, which was later amended on May 6, 2016. In its 2014 Amended AITR,[5] petitioner declared a total income tax credits in the amount of ₱85,156,016.00[6] and an overpayment of ₱73,693,074.00[7], as follows:

Total Income Tax Due	₱ 11,462,942.00
Less: Total Tax Credits	(85,156,016.00)
Total Overpayments	**(₱73,693,074.00)**

[2] Exhibit "P-3", Certificate of Registration, Docket – Vol. 2, p. 582.
[3] Petition for Review, par. 3, p. 11.
[4] Exhibit "P-4", Docket – Vol. 2, pp. 583 to 590.
[5] Exhibit "P-5", Docket – Vol. 2, pp. 591 to 598.
[6] Exhibit "P-5", Docket – Vol. 2, p. 591, Line 17.
[7] Exhibit "P-5", Docket – Vol. 2, p. 591, Line 20.

Petitioner indicated in its Original and Amended AITR for CY 2014 its option to be refunded for its excess and unutilized CWT for CY 2014.[8]

On January 26, 2017, petitioner filed its Administrative Claim for Refund, with Application for Tax Refund (BIR Form No. 1914)[9], requesting for the refund of the excess and unutilized creditable withholding taxes for CY 2014 amounting to ₱15,352,600.00.

For failure of respondent to act on the said claim, petitioner filed the instant *Petition for Review* on March 30, 2017[10].

On April 6, 2017, the Court issued *Summons,*[11] giving respondent a period of fifteen (15) days to file his *Answer* to the *Petition for Review.* On April 10, 2017, *Summons* was served by personal service upon respondent Commissioner of Internal Revenue[12], and another one, upon the Solicitor General on April 11, 2017.[13]

On July 28, 2017, petitioner filed a "*Motion to Declare Respondent in Default*"[14] stating that respondent was served with summons and a copy of the *Petition for Review* together with its annexes, on April 10, 2017; and that respondent failed to file his Answer within the period specified in the Revised Rules of the Court of Tax Appeals (RRCTA). Thus, petitioner moved that respondent be declared in default.

On August 14, 2017, the Court's Judicial Records Division issued a Records Verification Report[15] stating that respondent failed to file his *Answer* in this case.

In the *Resolution* dated August 22, 2017,[16] respondent was declared in default pursuant to *Section 3, Rule 9 of the Rules of Court.* This Court ruled that all the elements of a valid declaration of default are present, namely: (1) the court has validly acquired

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[8] Exhibits "P-4" and "P-5", Docket – Vol. 2, pp. 583 and 591, Line 21.
[9] Exhibit "P-10", Docket-Vol. 2, pp. 613 to 635.
[10] Docket – Vol. 1, pp. 10 to 29.
[11] Docket – Vol. 1, p. 165.
[12] Stamped-received by the Bureau of Internal Revenue (BIR-NOB-Litigation Division) on April 10, 2017, Docket – Vol. 1, p. 165.
[13] Stamped-received by the Office of the Solicitor General on April 11, 2017, Docket – Vol. 1, p. 165.
[14] Docket – Vol. 1, pp. 167 to 170.
[15] Docket – Vol. 1. p. 171.
[16] Docket – Vol. 1, pp. 173 to 175.

jurisdiction over the person of the defending party either by service of summons or voluntary appearance; (2) the defending party failed to file the answer within the time allowed therefor; and (3) a motion to declare the defending party in default has been filed by the claiming party with notice to the defending party. In the same Resolution the Court allowed petitioner to present its evidence *ex parte* on November 27, 2017.

On October 3, 2017, respondent filed a *Motion to Lift Order of Default and Admit the Attached Answer*,[17] with the attached *Answer*[18], manifesting that he has no intention to file his Answer belatedly nor to violate the mandate of the Court; and that the BIR records were only forwarded to the Litigation Division on September 22, 2017 despite several follow-up requests, oral and in writing; and praying that the Order of Default be lifted and the attached *Answer* be admitted.

In its *Comment/Opposition (Re: Motion to Lift Order of Default and Admit Attached Answer)*[19] filed on November 3, 2017, petitioner alleges that respondent did not challenge the propriety of the Order of Default issued by the Court. Such failure to challenge the same is an implied admission that all the requisites necessary before a court of competent jurisdiction renders a party in default are present in this case. Hence, the Order of Default was correctly issued. Allegedly, respondent's Motion does not sufficiently show that the failure to file the Answer on time was due to excusable negligence. The justification that respondent has yet to receive the complete BIR records before drafting the Answer, does not prohibit them from filing the necessary *Motion for Extension of Time to File Answer*; and that respondent could have filed an *Opposition* to petitioner's Motion to Declare Respondent in Default. However respondent chose not to file any *Comment/ Opposition* against the said pleading.

In the *Resolution* dated November 9, 2017,[20] this Court denied respondent's *Motion to Lift Order of Default and Admit Attached Answer* and ruled that the order of default may only be lifted if respondent was able to show that his failure to Answer was due to excusable negligence. According to the Court, respondent's failure to file answer was not due to excusable negligence.

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[17] Docket – Vol. 1, pp. 176 to 187.
[18] Docket – Vol. 1, pp. 200 to 207.
[19] Docket – Vol. 1, pp. 210 to 214.
[20] Docket – Vol. 1, pp. 216 to 219.

In view of the manifestation of respondent's counsel during the hearing held on November 27, 2017 that she intends to file a Motion for Reconsideration of the Resolution dated November 9, 2017[21], the Court reset the initial presentation of petitioner's evidence to March 20, 2018.

On November 29, 2017, respondent filed a *Motion for Reconsideration (Re: Resolution dated November 9, 2017)",*[22] alleging that respondent's failure to file an Answer was due to excusable negligence; that he can no longer ask for an extension of time because the period to file an Answer had already lapsed when the case was assigned to respondent's counsel. Thus, respondent moved that the Resolution dated November 9, 2017 be reversed and set aside.

In the *Comment/Opposition (Re: Motion for Reconsideration)* filed on December 21, 2017,[23] petitioner alleges that respondent's Motion for Reconsideration must be denied for lack of factual and legal merit; and that the Motion is a mere reiteration of the arguments already considered by the Court. Allegedly, respondent's plea for liberal application must fail since no reasonable circumstance was established to justify respondent's failure to file the Answer.

In the Resolution dated January 10, 2018,[24] the Court denied respondent's *Motion for Reconsideration (Re: Resolution dated November 9, 2017)* for lack of merit.

Thereafter, respondent filed a *Petition for Certiorari*[25] dated March 16, 2018 with the Supreme Court (SC), which was docketed as G.R. No. 238093, seeking to annul and set aside the Resolution dated January 10, 2018, issued by this Court. On September 12, 2019, this Court received a *Notice*[26] from the First Division of the SC, notifying this Court that a Resolution was issued on June 18, 2018, requiring AZ System Service, Inc., to file its Comment on the Petition for Certiorari. Petitioner filed the *Comment*[27] dated October 2, 2018. On February 6, 2019, the Court received another *Notice*[28] from the

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[21] Minutes of the Hearing dated November 27, 2017, Docket – Vol. 1, p. 299.
[22] Docket – Vol. 1, pp. 301 to 309.
[23] Docket – Vol. 1, pp. 314 to 317.
[24] Docket – Vol. 1, pp. 320 to 323.
[25] Docket- Vol. 1, pp. 349 to 373.
[26] Docket- Vol. 2, p. 636.
[27] Docket- Vol. 2, pp. 637 to 651.
[28] Docket- Vol. 2, p. 691.

First Division of the SC, stating that a Resolution dated October 17, 2018 was issued requiring the CIR to file a *Reply*.

Meanwhile, on March 14, 2018, petitioner filed a *Motion to Commission (An Independent Certified Public Accountant)*[29] praying that Emmanuel Y. Mendoza be commissioned as Independent Certified Public Accountant (ICPA) pursuant to Rule 13 of the Revised Rules of the CTA (RRCTA). The said Motion was granted by the Court during the hearing held on March 20, 2018.[30] Thereafter, the ICPA submitted his ICPA Report[31] on April 13, 2018.[32]

During trial, petitioner presented its witnesses, Bienvenida De Villa[33] and Emmanuel Y. Mendoza.[34]

On August 7, 2018,[35] this Court ordered petitioner to file its Formal Offer of Evidence (FOE). In compliance thereto, petitioner filed its *Formal Offer of Evidence*[36] on September 10, 2018.

In the *Resolution* dated December 4, 2018,[37] this Court admitted some of petitioner's exhibits but denied some exhibits[38] for not being found in the records of the case.

On December 19, 2018, petitioner filed a *Motion for Partial Reconsideration*[39] praying that Court re-consider the previously denied exhibits stating that the said documents were identified by the commissioned ICPA in the ICPA report submitted to the Court.

In the *Resolution* dated March 15, 2019,[40] this Court granted petitioner's *Motion for Partial Reconsideration*; and admitted all the denied exhibits subject to final evaluation, relevancy and probative

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[29] Docket – Vol. 1, pp. 324 to 325.
[30] Minutes of the Hearing dated November 27, 2017, Docket – Vol. 1, p. 345.
[31] Docket- Vol. 2, pp. 463 to 527.
[32] Transmittal Memo, Docket – Vol. 2, p. 462.
[33] Exhibit P-11, Docket – Vol. 1, pp. 224 to 237.
[34] Exhibit P-23, Docket – Vol. 2, pp. 535 to 539.
[35] Minutes of the Hearing dated August 7, 2018, Docket-Vol. 2, p 553.
[36] Docket-Vol. 2, pp. 559 to 570.
[37] Docket – Vol. 2, pp. 677 to 678.
[38] Exhibits "P-14-A120-6" to "P-14-A120-8", "P-14-A120-10", "P-14-B121-2", "P-14-B126", "P-16-A4-31", "P-14-B21", "P-21-A52", "P-21-B77-1", "P-21-A81", "P-21-B81", "P-21-A118", and "P-21-A181".
[39] Docket – Vol. 2, pp. 679 to 682.
[40] Docket – Vol. 2, pp. 719 to 720.

value to the issues involved in this case. In the same Resolution, petitioner was ordered to file its *Memorandum*.

In the *Resolution* dated May 9, 2019,[41] this case was submitted for decision, taking into consideration the *Memorandum* of petitioner filed on April 30, 2019.[42] Hence, this Decision.

ISSUE

WHETHER PETITIONER IS ENTITLED FOR TAX REFUND FOR THE UNUTILIZED CREDITABLE WITHHOLDING TAX (CWT) FOR THE YEAR 2014 AMOUNTING TO ₱15,352,600.00.[43]

Petitioner's arguments:

Petitioner contends that its claim for refund should be granted considering that it has satisfied and established all the requirements necessary for tax refund. According to petitioner, both its administrative and judicial claims were filed within the two (2)-year prescriptive period provided under Section 229 of the Tax Code.

Allegedly, the fact of withholding can be established by the Certificates of Creditable Tax Withheld at Source issued by the different payors of petitioner; and that Court-commissioned ICPA had already ascertained the existence of the said certificates. Moreover, considering that the amount of income per Alphalist Schedule of Creditable Withholding Tax and the amount of income per ITR and general ledger were fully reconciled, it has complied with the requirement that the income upon which the taxes were withheld were included in the ITR.

Lastly, petitioner emphasizes that the court commissioned ICPA has recommended that the claim for refund be granted.

THE COURT'S RULING

Petitioner's claim for refund of its excess and unutilized CWT is anchored on Section 76 of the NIRC of 1997, which provides:

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[41] Docket – Vol. 2, p. 748.
[42] Docket – Vol. 2, pp. 725 to 743.
[43] Docket-Vol. 1, Petitioner's Memorandum, pp. 731 to 732.

> "**SEC. 76. -** ***Final Adjustment Return.*** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
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> (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. <u>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</u> for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor**." *(Emphasis supplied.)*

In interpreting the foregoing provision, the Supreme Court, in *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*,[44] held that a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a TCC or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period. 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.[45]

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[44] G.R. No. 176290, September 21, 2007.

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

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 ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.[46]

In the instant case, petitioner opted to be refunded of its excess CWT for CY 2014 having marked the option "To be refunded" in its Original[47] and Amended[48] AITR for CY2014.

A perusal of its 2014 Amended AITR shows that petitioner had total tax credits in the amount of ₱85,156,016.00[49] consisting of prior year's excess credits amounting to ₱69,803,416.00[50] and CWTs accumulated during the four (4) quarters of CY 2014 amounting to ₱15,352,600.00 (₱11,320,708.00 plus ₱4,031,892.00)[51].

Petitioner's income tax due amounting to ₱11,462,942.00[52] was paid using a portion of its prior year's excess credits of ₱69,803,416.00; thus, leaving a balance of the prior year's excess credits in the amount of ₱58,340,474.00, and CWT during CY2014 in the amount of ₱15,532,600.00, totaling to ₱73,693,074.00 excess tax credits as of December 31, 2014, as shown below:

Prior Year's Excess Credit		₱69,803,416.00
Less: Income Tax Due		11,462,942.00
Balance of Prior Year Excess Credit		₱58,340,474.00
Add: Creditable Tax Withheld during CY2014		
From previous quarters	₱11,320,708.00	
For the fourth quarter	4,031,892.00	15,352,600.00
Excess Tax Credits as of December 31, 2014		**₱73,693,074.00**

Considering that petitioner opted to be refunded of its excess tax credits and since only the balance of prior year's excess credits in the amount of ₱58,340,473.22[53] were carried-over to the subsequent

[46] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.
[47] Exhibit "P-4", Line 21, Docket – Vol. 2, p. 583.
[48] Exhibit "P-5", Line 21, Docket – Vol. 2, p. 591.
[49] Exhibit "P-5", Line 17, Docket – Vol. 2, p. 591.
[50] Exhibit "P-5", Schedule 7, Line 1, Docket – Vol. 2, p. 596.
[51] Exhibit "P-5", Schedule 7, Lines 5 and 6, Docket – Vol. 2, p. 596.
[52] Exhibit "P-5", Line 16, Docket – Vol. 2, p. 591.
[53] ₱0.78 rounding off difference; Per computation, the balance of prior year's excess credits is ₱58,340,474.00.

quarters of CY 2015 and reflected as "Prior Year's Excess Credits" in its 2015 Quarterly ITRs[54] and 2015 AITR[55], the excess CWTs in CY2014 in the amount of ₱15,352,600.00 may be the proper subject of a claim for refund under Section 76 of the NIRC of 1997.

However, in order to be entitled to its refund claim, petitioner must satisfy the following requirements:

1. That the claim for refund was filed within the two-year prescriptive period as provided under Section 204 (C) in relation to Section 229 of the NIRC of 1997, as amended;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom;[56] and

3. That the income upon which the taxes were withheld was included in the return of the recipient, i.e., declared as part of the gross income.[57]

First requirement:

The *first requirement* is anchored on Sections 204(C) and 229 of the NIRC of 1997, as amended, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* -The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in**

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[54] Exhibit "P-6", "P-7" and "P-8, Line 31A, Docket – Vol. 2, pp. 599 to 604.
[55] Exhibits "P-9", Schedule 7, Line 1, Docket – Vol. 2, p. 610.
[56] Section 2.58.3 (B) of Revenue Regulations No. 2-98.
[57] *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue*, G.R. No. 151857, April 28, 2005

> **writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **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 supplied)*

Based on the foregoing provisions, both the administrative and judicial claims must be filed within two (2) years from the date of payment of the tax. Timeliness of the filing of the claim is mandatory and jurisdictional. The court cannot take cognizance of a judicial claim for refund either prematurely or out of time.[58]

It must be emphasized that the two-year prescriptive period within which to claim a refund commences to run at the earliest, on the date of the filing of the adjusted final tax return.[59] This must be so because it is only on such date when it can be finally ascertained if

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[58] *Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, G.R. No. 209776, December 7, 2016.
[59] *ACCRA Investments Corporation vs. Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax.[60]

In the instant case, petitioner originally filed its AITR for CY 2014 on April 14, 2015.[61] Thus, counting two years therefrom, petitioner had until April 14, 2017 to file both its administrative claim and judicial claim.

It appearing that petitioner's administrative claim was filed on January 26, 2017[62], while the judicial claim via the instant *Petition for Review* was filed on March 30, 2017, it is clear that both the administrative and the judicial claims for refund were timely filed. Hence, the Court has jurisdiction to entertain the instant petition.

Second and Third requirements:

As for the *second and third requirements*, the basis therefor is Section 2.58.3 (B) of RR No. 2-98[63], as amended, which states:

> "Sec. 2.58.3. Claim for tax credit or refund. —
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments **shall be given due course only when <u>it is shown that the income payment has been</u> declared as part of the gross income and <u>the fact of withholding is established by a copy of the withholding tax statement</u>** duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom." *(Emphasis supplied)*

In *Commissioner of Internal Revenue v. Philippine National Bank,*[64] the Supreme Court ruled as follows:

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[60] *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.*, G.R. No. 83736, January 15, 1992.
[61] Exhibit "P-4", Docket – Vol. 2, pp. 583 to 590.
[62] Exhibit "P-10", Docket Vol. 2, pp. 613 to 635.
[63] 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.*
[64] G.R. No. 180290, September 29, 2014.

"**The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld.** It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates. *(Emphasis supplied)*

Based on the foregoing provision and jurisprudence, the fact of withholding may be 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. Thus, to prove compliance with the *second requirement,* petitioner must present the pertinent certificates of creditable tax withheld at source, which are complete in their relevant details and with a written statement that they were made under the penalties of perjury.

Relative thereto, petitioner presented Certificates of Creditable Tax Withheld at Source[65](BIR Form No. 2307) issued to it by various withholding agents for the year 2014. In the ICPA Report dated April 13, 2018[66], ICPA Mendoza summarized his findings as follows:

Particulars	**Amount**	
	Tax Base	**Tax Withheld**
A. Properly Substantiated		
Sales that were subjected to CWT were supported by Official Receipts while the CWT were supported by BIR Form 2307 issued by petitioner's customers	₱668,770,469.61	₱13,365,793.16
Sales that were subjected to CWT were supported by Official Receipts but the amount of CWT per BIR Form 2307 was less that the tax withheld	91,706,377.40	1,834,127.55
Subtotal of Properly Substantiated	**₱760,476,847.01**	**₱15,199,920.71**
B. Not Properly Substantiated		
Difference of Creditable Withholding Tax per BIR Form 2307 and Creditable Withholding Tax per Official Receipts	₱994,155.82	₱28,986.84
Creditable Withholding Tax claimed without supporting documents	6,184,609.73	123,692.19
Subtotal of not Properly Substantiated	**7,178,765.55**	**152,679.03**
Total Creditable Withholding Tax	**₱767,655,612.56**	**₱15,352,599.74**

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[65] Exhibits "P-14-C1" to "P-16-C19"
[66] Exhibit "P-13", Docket – Vol. 2, pp. 463 to 527.

We take note of the ICPA's findings that out of the total claim for refund of ₱15,352,599.74, only the amount of ₱15,199,920.71 was properly supported by BIR Form 2307.

Upon further verification however, the Court finds that CWTs amounting to **₱364,317.60** should be disallowed on the ground that the pertinent CWT certificates indicate a different TIN of petitioner. Details are as follows:

Payor's Name	Exhibit No.	Income payments	Taxes withheld
L AND K INDUSTRIES PHILIPPINES INC	P-14-C33	₱ 4,632,987.60	₱ 92,659.75
L AND K INDUSTRIES PHILIPPINES INC	P-14-C77	3,662,910.65	73,258.21
L AND K INDUSTRIES PHILIPPINES INC	P-14-C119	1,272,385.50	25,447.71
L AND K INDUSTRIES PHILIPPINES INC	P-14-C120	4,191,370.05	83,827.40
L AND K INDUSTRIES PHILIPPINES INC	P-14-C167	4,456,226.13	89,124.52
TOTAL		**₱18,215,879.93**	**₱364,317.60**

Hence, petitioner was able to satisfy the *second requirement* but only up to the extent of **₱14,835,603.11**, computed as follows:

Amount of claimed CWT	₱15,532,599.74
Less: Disallowances	
Per ICPA report	152,679.03
Per this Court's further verification	364,317.60
Claimed CWT with proper BIR Forms No. 2307	**₱14,835,603.11**

Anent the *third requirement*, petitioner must prove that the income payments from which the substantiated CWTs of **₱14,835,603.11** were withheld were declared as part of its gross income.

In determining compliance with the *third requirement,* it becomes necessary to trace the revenues recorded in the general ledger book to ascertain that the related income was duly reported as revenues in CY 2014. We adopt the findings of the ICPA that there is a discrepancy of **₱76,270,736.10,** as shown below:

Gross Sales Subject to Withholding Tax per Schedule	Sales per General Ledger/Annual Income Tax Return	Difference
₱767,655,613.30	**₱843,926,349.00**	**(₱76,270,736.10)**

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The ICPA accounted for the said discrepancy as follows:

Description	Total
Sales per General Ledger /ITR	₱ 843,926,349.00
Reconciling items:	
a. Income recorded and reported in 2013 ITR and collected in 2014	**33,897,560.04**
b. Income recorded and reported in 2014 ITR and collected in 2015	(52,335,307.80)
c. Reimbursable charges subjected by clients to withholding tax at 2%	**30,033,905.64**
d. Reimbursable charges subjected by clients to withholding tax at 1%	**51,250.00**
e. Revenue not subjected to withholding tax by petitioner's clients	(87,863,727.84)
f. Over/under deduction of withholding tax (net)	(1,760.67)
g. Unpaid revenue	(3,977.04)
h. Amounts reported in the Official Receipts were different from the amount reported in the CWT Alpha list	(48,682.59)
i. Difference due to rounding off	4.56
Reconciled amount(Sales subjected to withholding tax)	**₱767,655,613.30**

Items (b), (e), (f), (g) and (h) relate to sales/revenues that were not subjected to withholding tax in CY 2014, and the corresponding CWTs on these items were not included as part of the subject claim in this case. As such, these reconciling items shall no longer be discussed.

With respect to item (a) amounting to **₱33,897,560.04**, this amount refers to income recorded and reported in CY 2013 and subsequently collected in CY 2014. Hence the said income was not included as part of income in CY 2014. As noted by ICPA Mendoza, the related certificates of withholding taxes were dated and issued by petitioner's client in CY 2014.

However, upon further verification of the evidence submitted by petitioner and ICPA Mendoza, the Court cannot trace and verify whether the said income was indeed reported and declared as part of income in CY 2013. Accordingly, for failure of petitioner to sufficiently establish that the said income formed part of petitioner's declared income, the corresponding 2% CWT pertinent thereto amounting to **₱677,951.20** shall be disallowed.

As to items (c) and (d) amounting to **₱30,033,905.64** and **₱51,250.00,** respectively, it appears that these refer to the billings and collections that were classified by petitioner as reimbursement charges and were not included in petitioner's taxable income. Accordingly, for failure of petitioner to establish that these income payments complied with the third requirement, the corresponding CWTs on these income payments amounting to **₱600,678.11** (2% CWT) and **₱512.50** (1% CWT), shall likewise be disallowed.

It bears emphasis that actions for tax refund, 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.[67]

Thus, for failure to comply with the *third requirement*, the following shall be disallowed:

Untraceable income reported in CY2013	₱ 677,951.20
Reimbursable charges -2%	600,678.11
Reimbursable charges -1%	512.50
Total	**₱1,279,141.81**

To recapitulate, out of the total claimed CWT of ₱15,352,600.00, petitioner has sufficiently proven its entitlement to the refund, representing unutilized excess CWT for CY 2014 in the reduced amount of **₱13,556,461.56**, computed as follows:

Creditable Withholding Tax Per Claim		₱15,352,600.00
Less: Disallowances		
Not properly substantiated CWTs per ICPA	₱ 152,679.03	
Not supported by proper BIR Form 2307	364,317.60	
Untraceable income declared in CY2013	677,951.20	
Reimbursable charges-2%	600,678.11	
Reimbursable charges-1%	512.50	1,796,138.44
Refundable Excess CWT		**₱13,556,461.56**

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the total amount of **₱13,556,461.56** representing petitioner's excess and unutilized

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[67] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

Creditable Withholding Tax for the calendar year ended December 31, 2014.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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
Associate Justice
Chairperson, 3rd Division

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