REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

BETHLEHEM HOLDINGS, INC.,	**CTA Case No. 10050**
Petitioner,	*Members:*
- versus -	**DEL ROSARIO**, *P.J., Chairperson, and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUL 07 2021 10:07am

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DECISION

DEL ROSARIO, P.J.:

Before this Court is a Petition for Review[1] filed on March 22, 2019 by petitioner Bethlehem Holdings, Inc. against respondent Commissioner of Internal Revenue (CIR), praying for the refund of the amount of ₱7,859,319.00, representing its excess and unutilized creditable withholding tax (CWT) for calendar year (CY) ended December 31, 2016.

THE PARTIES

Petitioner Bethlehem Holdings, Inc. is a domestic corporation, duly organized and existing under Philippine laws, with principal office at 3F Globe Telecom Tower 1, Pioneer corner Madison Streets, Mandaluyong City.[2] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 41, with Taxpayer Identification No. 006-731-601-000. Prior thereto, petitioner was registered with BIR RDO No. 43-A.[3]

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[1] CTA Docket, pp. 10-17.
[2] Par. 2, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket, p. 231; Exhibit "P-1", CTA Docket, pp. 397-411.
[3] Par. 3, Stipulated Facts, JSFI, CTA Docket, p. 232; Exhibit "P-2", CTA Docket, p. 412.

Respondent is the duly appointed CIR vested under the law with authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide, approve and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He may be served with summons, pleadings, and other processes at his office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

THE FACTS

On March 24, 2017, petitioner filed with the BIR, through the electronic Filing and Payment System (eFPS), its Annual Income Tax Return (ITR) for CY 2016.[5]

On October 3, 2017, petitioner filed with the BIR, through the eFPS, its amended Annual ITR for CY 2016.[6]

In both its original and amended Annual ITRs for CY 2016, petitioner indicated therein its option to be refunded for its tax overpayments for CY 2016.

On February 22, 2019, petitioner filed with the BIR RDO No. 41 an administrative claim for its excess and unutilized CWT for CY 2016 in the amount of ₱7,859,319.00.[7]

Due to the inaction of respondent, and in order to preserve its right to judicially claim for refund its alleged excess and unutilized CWT for CY 2016 within the prescribed two (2)-year period, petitioner filed the present Petition for Review before this Court on March 22, 2019.

On June 24, 2019, within the extended period,[8] respondent filed his Answer,[9] with the following special and affirmative defenses: (i) the Petition for Review is premature for failure to exhaust administrative remedies; (ii) petitioner is in bad faith for filing its administrative claim one (1) month before its claim for refund prescribes; (iii) petitioner did not submit any evidence to prove that it has excess CWT for CY 2016; and, (iv) petitioner is estopped from claiming refund due to the fact that

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[4] Par. 1, Stipulated Facts, JSFI, CTA Docket, p. 231.
[5] Exhibit "P-3", CTA Docket, pp. 413-420.
[6] Exhibit "P-3-A", CTA Docket, pp. 421-428; CTA Docket, pp. 421-428.
[7] Exhibits "P-12" and "P-12-A", CTA Docket, pp. 494-495.
[8] CTA Docket, pp. 66 and 74.
[9] CTA Docket, pp. 75-80.

although it signified its option to refund its excess CWT, petitioner carried over said excess CWT to the succeeding taxable year.

Respondent's Pre-Trial Brief[10] was filed on August 15, 2019, while Petitioner's Pre-Trial Brief[11] was filed on August 16, 2019. Thereafter, a Pre-Trial Conference was held on August 22, 2019.[12]

On September 5, 2019, the parties filed their Joint Stipulation of Facts and Issues[13] which was approved by the Court in its Resolution dated September 13, 2019 thereby terminating the Pre-Trial.[14] On September 25, 2019, the Court issued a Pre-Trial Order.[15]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Mr. James Kenneth Venta,[16] petitioner's Comptroller and Administrative Head; and, Mr. Glenn Ian D. Villanueva,[17] the Court-commissioned Independent Certified Public Accountant (ICPA).

On February 21, 2020, petitioner filed its Formal Offer of Evidence.[18] Petitioner's exhibits were admitted in evidence in the Resolution[19] dated July 14, 2020, save for Exhibits "P-27" to "P-28", for petitioner's failure to present their originals for comparison.

Considering respondent's manifestation that he will not present documentary and testimonial evidence,[20] the Court directed the parties to file their respective memoranda within thirty (30) days from receipt of the July 14, 2020 Resolution.

Petitioner filed its Memorandum[21] on August 14, 2020, while respondent failed to file his memorandum.[22] Thereafter, the case was submitted for decision on October 1, 2020.[23]

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[10] CTA Docket, pp. 85-87.
[11] CTA Docket, pp. 88-100.
[12] CTA Docket, pp. 218-221.
[13] CTA Docket, pp. 231-237.
[14] CTA Docket, pp. 244-245.
[15] CTA Docket, pp. 272-279.
[16] Exhibit "P-13", CTA Docket, pp. 104-117; and Minutes of Hearing dated October 22, 2019, CTA Docket, p. 306.
[17] Exhibit "P-14", CTA Docket, pp. 353-363; and Minutes of Hearing dated February 13, 2020, CTA Docket, pp. 371-373.
[18] CTA Docket, pp. 380-396.
[19] CTA Docket, pp. 503-504.
[20] CTA Docket, pp. 235.
[21] CTA Docket, pp. 505-519.
[22] CTA Docket, p. 522.
[23] CTA Docket, p. 524.

ISSUE

The parties stipulated the following issue for the Court's resolution:

> Whether or not petitioner is entitled to its claim for refund in the amount of ₱7,859,319.00, representing petitioner's excess and unutilized CWT for CY 2016.[24]

PARTIES' ARGUMENTS

Petitioner argues that: (i) it has complied with all the requirements for claiming a refund of or issuance of a TCC for its excess and unutilized CWT for CY 2016; (ii) its administrative and judicial claims for refund were filed within the two (2)-year prescriptive period provided under Section 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended; (iii) its CWT for CY 2016 are duly supported by Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by payor as withholding agents, showing the amount paid and the amount of tax withheld therefrom; (iv) the income upon which withholding was made was included as part of the gross income declared in its ITR; and, (v) it did not exercise the option to carry over its excess and unutilized CWT for CY 2016 to the succeeding taxable periods.

On the other hand, respondent in his Answer, counter-argues that: (i) the Petition for Review is premature for petitioner's failure to exhaust administrative remedies; (ii) petitioner is in bad faith for filing its administrative claim one (1) month before its claim for refund prescribes; (iii) petitioner did not submit any evidence to prove that it has excess CWT for CY 2016; and, (iv) petitioner is estopped from claiming a refund due to the fact that although it signified its option to refund its excess CWT, it carried over the same to the succeeding taxable year.

THE COURT'S RULING

In its Amended Annual Income Tax Return (ITR) for CY 2016,[25] petitioner had total tax credits of ₱85,299,780.00, broken down as follows:

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[24] Issue, JSFI, CTA Docket, p. 232.
[25] Exhibit "P-3-A", CTA Docket, pp. 421-430.

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Particulars	Amount
Prior Year's Excess Credits other than MCIT	₱ 77,440,461.00
Creditable Tax Withheld from Previous Quarter/s per BIR Form No. 2307	6,084,963.00
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	1,774,356.00
Total Tax Credits/Payments	**₱ 85,299,780.00**

Petitioner claims that it incurred a net loss in the amount of ₱6,946,871.00 for CY 2016.[26] For purposes of determining the Minimum Corporate Income Tax (MCIT) due, petitioner reported a total gross income of ₱48,481,602.00.[27] Thus, petitioner was liable for MCIT in the amount of ₱969,632.00.[28] The MCIT due was paid for using a portion of the "Prior Year's Excess Credits other than MCIT." Deducting the amount of MCIT due of ₱969,632.00 from the "Prior Year's Excess Credits other than MCIT" amounting to ₱77,440,461.00, the latter now has a balance of ₱76,470,828.00[29] which was carried over to CY 2017.[30] Thus, the total income tax overpayment of petitioner as of December 31, 2016 stands at ₱84,330,148.00, as shown below:

Particulars	Amount
Prior Year's Excess Credits other than MCIT	₱ 77,440,461.00
Less: Income Tax Due (MCIT) for CY 2016	969,632.00
Balance of Prior Year's Excess Credits	76,470,829.00
Add: Creditable Taxes Withheld for CY 2016	7,859,319.00
Excess Creditable Withholding Taxes as of December 31, 2016	**₱ 84,330,148.00**

In support of its claim for refund, petitioner offered in evidence its Original[31] and Amended[32] Annual ITR for CY 2016, Original[33] and Amended[34] Quarterly ITRs for CY 2016, Audited Financial Statements (AFS) for CY 2015,[35] Certificates of Creditable Tax Withheld at Source

[26] Line 39, Exhibit "P-3-A", CTA Docket, p. 422.
[27] Line 34, Exhibit "P-3-A", CTA Docket, p. 422.
[28] Line 43, Exhibit "P-3-A", CTA Docket, p. 422.
[29] The amount stated in the Amended 1st Quarterly ITR for CY 2017 is ₱76,470,828.68. The difference of ₱.68 is deemed immaterial.
[30] Exhibit "P-8-A", CTA Docket, pp. 476-477.
[31] Exhibit "P-3", CTA Docket, pp. 413-420.
[32] Exhibit "P-3-A", CTA Docket, pp. 421-428.
[33] Exhibits "P-4", CTA Docket, pp. 429-430 (for 1st Quarter); "P-5", CTA Docket, pp. 433-434 (for 2nd Quarter); and "P-6", CTA Docket, pp. 437-438 (for 3rd Quarter)
[34] Exhibits "P-4-A", CTA Docket, pp. 431-432 (for 1st Quarter); "P-5-A", CTA Docket, pp. 435-436 (for 2nd Quarter); and "P-6-A", CTA Docket, pp. 439-440 (for 3rd Quarter).
[35] Exhibit "P-7", CTA Docket, pp. 441-473.

(BIR Form 2307) issued by its clients,[36] Summary Alphalist of Withholding Taxes (SAWT),[37] Summary of Creditable Withholding Taxes,[38] and General Ledger (GL) print-outs.[39]

Petitioner's compliance with Section 76 of the 1997 NIRC, as amended

Pertinent to the resolution of the present case is Section 76 of the NIRC of 1997, as amended, which 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."

Pursuant to the above-mentioned provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid essentially has two (2) options, either: (a) to carry-over the excess credit and apply the same against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year; or (2) to apply for a cash refund or issuance of a TCC within the prescribed period. If the carry-over option is selected, such is irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.[40]

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[36] Exhibits "P-122" to "P-129".
[37] Exhibits "P-141" to "P-144".
[38] Exhibit "P-145".
[39] Exhibits "P-146" to "P-147".
[40] *University Physicians Services Inc.-Management, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205955, March 7, 2018.

In exercising its option, the corporation must signify in its Annual ITR (by marking the option box provided therein) its intention, either to carry over the excess credit or to claim a refund.[41] To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.

An examination of petitioner's Original and Amended Annual ITRs for CY 2016 shows that petitioner chose the option to be refunded.[42]

Likewise, a perusal of petitioner's Annual ITR for CY 2017 shows that the amount of ₱7,859,319.00 representing its excess and unutilized CWTs requested to be refunded has not been carried over to the succeeding taxable periods. The presentation of the annual ITR would suffice in proving that prior year's excess credits were not utilized for the taxable year in order to make a final determination of the total tax due.[43]

The "Prior Year's Excess Credits Other Than MCIT" found in petitioner's Annual ITR for CY 2017[44] shows a balance of ₱76,740,828.00. This amount reflects the prior year's credit that was partially utilized to pay for the MCIT due for CY 2016, as computed above. Thus, the amount prayed to be refunded in this case has not been carried over to the succeeding CY 2017. The unutilized CWTs for CY 2016 in the amount of ₱7,859,319.00 may accordingly be the subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

Petitioner's compliance with the other requisites to claim a tax credit or refund of excess and unutilized CWT

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the prescriptive period in the filing of the administrative and judicial claims for refund or recovery of tax erroneously or illegally collected, respectively, to wit:

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[41] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.
[42] Exhibits "P-3" and "P-3-A", CTA Docket, pp. 413-428.
[43] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.
[44] Exhibit "P-11", CTA Docket, pp. 486-493.

"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 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.

xxx xxx xxx

SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected.*** – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, 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."

Based on the foregoing provisions, a claimant for refund must first file an administrative claim for refund before the respondent, prior to filing a judicial claim before the Court. Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription.[45]

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[45] *Metropolitan Bank & Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.

While the law provides that the two (2)-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two (2)-year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, thus, reflecting the results of the operations of a business enterprise.[46]

In addition to the foregoing, Section 2.58.3(B) of Revenue Regulations (RR) No. 2-98, as amended, provides for the procedure in claiming for tax credit or refund of CWT, as follows:

> "*Sec. 2.58.3. **Claim for tax credit or refund. –***
>
> (A) 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**. xxx" *(Boldfacing supplied)*

In fine, petitioner must satisfy the following three (3) essential requisites for the grant of a claim for refund of creditable withholding income tax, to wit:

(1) The claim must be filed within the two (2)-year period from the date of payment of the tax; and/or the filing of the Annual ITR;

(2) 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 tax withheld; and

(3) It must be shown on the return of the recipient that the income received was declared as part of the gross income.[47]

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[46] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019.
[47] *Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013.

First requisite: The administrative and judicial claims for refund were filed on time

Records show that petitioner filed its Original Annual ITR for CY 2016 on March 24, 2017[48] and its Amended Annual ITR for CY 2017 on October 3, 2017.[49] The two (2)-year period shall commence on the date the Original Annual ITR for CY 2016 was filed on March 24, 2017. Thus, petitioner had until March 24, 2019 within which to file both its administrative and judicial claims for refund. The administrative claim was filed by petitioner on February 22, 2019 as evidenced by its Application for Tax Credits/Refunds[50] and its Cover Letter dated February 21, 2019 addressed to respondent.[51] Without waiting for the decision of the respondent on its application, petitioner filed the subject Petition for Review on March 22, 2019. Both the administrative and judicial claims were timely filed within the two (2)-year prescriptive period in accordance with Sections 204(C) and 229 of the NIRC of 1997, as amended.

Second requisite: Fact of withholding is established by copies of withholding statements duly issued by the payor

The second requisite mandates petitioner to prove the fact of withholding of the claimed CWT by a copy of the statement duly issued by the payor, acting as the withholding agent, to the payee, showing the names of the payor and payee, the income payment, the amount of tax withheld, and the nature of the tax paid.

As held by the Supreme Court in *Commissioner of Internal Revenue vs. Philippine National Bank*,[52] the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) is competent proof to establish the fact of withholding, *viz.*:

> **"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**

[48] Exhibit "P-3", CTA Docket, pp. 413-420.
[49] Exhibit "P-3-A", CTA Docket, pp. 421-428.
[50] Exhibit "P-12-A", CTA Docket, p. 495.
[51] Exhibit "P-12", CTA Docket, p. 494.
[52] G.R. No. 180290, September 29, 2014.

certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.

In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, this court declared that **a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes**:

> In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
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> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes. xxx

Moreover, as correctly held by the Court of Tax Appeals *En Banc*, **the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury**, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, which reads:

> SEC. 267. *Declaration under Penalties of Perjury.* – Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

Thus, upon **presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury**, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly." (*Boldfacing supplied*)

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To prove compliance with the second requisite, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by its income payors during CY 2016.[53] A perusal thereof shows that the refund claim in the amount of ₱7,859,319.00 is supported by duly accomplished CWT certificates, as follows:

Exhibit Ref. No.	Client	Income Payment	CWT
P-122	Altimax Broadcasting Co., Inc.	₱ 9,432,133.02	₱ 1,414,819.95
P-123	Altimax Broadcasting Co., Inc.	9,432,133.02	1,414,819.95
P-124	Altimax Broadcasting Co., Inc.	9,432,133.02	1,414,819.95
P-125	Altimax Broadcasting Co., Inc.	8,599,619.72	1,289,942.96
Subtotal - Altimax		**₱ 36,896,018.78**	**₱ 5,534,402.81**
P-126	Broadcast Enterprises and Affiliation Media (BEAM), Inc.	4,090,006.92	613,501.04
P-127	BEAM, Inc.	4,090,006.91	613,501.04
P-128	BEAM, Inc.	4,090,006.91	613,501.04
P-129	BEAM, Inc.	3,229,417.85	484,412.68
Subtotal - BEAM		**₱ 15,499,438.59**	**₱ 2,324,915.80**
Total CWT for CY 2016		**₱ 52,395,457.37**	**₱ 7,859,318.61**

Third Requisite: The income received was declared as part of the gross income

The third requisite mandates petitioner to prove that the income subjected to CWT was reported or declared as part of its gross income for the period. To prove such fact, the income payments appearing in each of the CWT certificates were individually traced to the Summary of Creditable Withholding Taxes and SAWT. The total balance in the Summary of Creditable Withholding Taxes for CY 2016 and the total balance in the SAWT correspond to the total of the amounts recorded in the GL for Management Fee-Altimax[54] and GL for Management Fee-BEAM.[55] The amounts recorded in the GLs were then reported in the AFS and Amended Annual ITR for CY 2016.

[53] Exhibits "P-122" to "P-129".
[54] Exhibit "P-146".
[55] Exhibit "P-147".

To be sure, petitioner declared in its Amended ITR for CY 2016 net sales/revenues/receipts/fees in the amount of ₱52,395,458.00. The same amount was reported in the AFS, particularly in the Statements of Comprehensive Income[56] as "Management fees (Note 16)." Perusal of Note 16 shows that petitioner earned management fees of ₱36,896,018.78 and ₱15,499,438.59 from its clients Altimax and Broadcast Enterprises and Affiliated Media (BEAM), Inc., respectively. The total amount of ₱52,395,458.00 was ultimately reported in the Amended Annual ITR for CY 2016. The procedure shows that the total income payments as shown in the CWT certificates tally with the total revenues of petitioner as recorded in its GL and as reported and declared in its AFS and Amended Annual ITR for CY 2016, as follows:

Income Payments	Altimax	BEAM	Total
Per CWT certificates	₱ 36,896,018.78	₱ 15,499,438.59	₱ 52,395,457.37
Per GL	₱ 36,896,018.78	₱ 15,499,438.59	₱ 52,395,457.37
Per AFS (Management fees)			₱ 52,395,457.37
Per Amended Annual ITR for CY 2016 (Line 30)			₱ 52,395,458.00

Thus, petitioner was able to establish that the income payments upon which the taxes were withheld were properly reported and formed part of the gross income declared in its Annual ITR for CY 2016.

Determination of Refundable Amount

In its Amended Annual ITR for CY 2016, petitioner reported total MCIT due of ₱969,632.00. The total tax credits claimed for the period was ₱85,229,780.00 composed of ₱77,440,461.00 representing "Prior Year's Excess Credits other than MCIT" and creditable taxes withheld during CY 2016 of ₱7,859,319.00, which is the subject of the refund claim herein. Thus, to offset the MCIT due, it is necessary to determine the veracity of the "Prior Year's Excess Credits other than MCIT".

A review of petitioner's Annual ITR for CY 2015[57] shows that petitioner had total tax credits for CY 2015 in the amount of ₱86,416,585.00 composed of ₱78,412,007.00 representing "Prior Year's Excess Credits other than MCIT" and creditable taxes withheld for the four (4) quarters in the total amount of ₱8,004,578.00. Petitioner chose the option to be refunded the amount of ₱8,004,578.00 for CY 2015. For CY 2015, petitioner reported MCIT due of ₱971,547.00.

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[56] Exhibit "P-7", CTA Docket, p. 445.
[57] Exhibit "P-139".

Deducting this amount from the "Prior Year's Excess Credits other than MCIT" of ₱78,412,007.00, there remains a balance of ₱77,440,460.00[58] in the "Prior Year's Excess Credits other than MCIT" account which was effectively carried over to the succeeding taxable year/quarter.

Verily, the "Prior Year's Excess Credits other than MCIT" that was utilized by petitioner in CY 2015 was sourced from the tax overpayments made by petitioner during CY 2014, as evidenced by its Amended Annual ITR for CY 2014.[59] Review of the Amended Annual ITR for CY 2014 shows that petitioner had total tax credits of ₱80,218,288.00 which was utilized to pay off its total income tax due of ₱1,806,281.00, thus leaving a balance of ₱78,412,007.00. In its Annual ITR for CY 2014, petitioner chose the box corresponding to the carry-over option, thus, as was shown, the balance of ₱78,412,007.00 was carried over to CY 2015 and reported therein as "Prior Year's Excess Credits other than MCIT".

The Court finds the submission of petitioner's Annual ITRs for CYs 2014 and 2015 sufficient to prove petitioner's "Prior Year's Excess Credits other than MCIT" in CY 2016 in the amount of ₱77,440,460.00.

Respondent never refuted or questioned the truthfulness and existence of petitioner's prior year's excess credits. Since respondent ought to know the tax records of all taxpayers, respondent could have easily disproved petitioner's claim that it has prior year's excess credits. Instead, respondent chose not to question or disprove the same. In fact, respondent failed to make any objection to petitioner's offer of its Annual ITRs for CYs 2014 and 2015 to prove the existence of petitioner's prior year's excess credits despite the opportunity given him. Respondent's failure to object to the evidence offered by petitioner renders the same admissible, and this Court cannot, on its own, disregard such evidence.[60]

As oft-repeated, Section 76 of the NIRC of 1997, as amended, provides that a corporate taxpayer may choose to carry-over the excess amount shown on its final adjustment return or Annual ITR and credit the same against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years.

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[58] The Amended Annual ITR for CY 2016, however, shows the amount of ₱77,440,461.00.
[59] Exhibit "P-137".
[60] *Asian Construction and Development Corporation vs. COMFAC Corporation*, G.R. No. 163915, October 12, 2006.

Section 2.58.3 of RR No. 2-98, as amended, provides the procedure for the carry-over option, *viz*:

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

The carry-over option, once chosen, thus acts as an automatic credit against the income tax due for the taxable quarters immediately succeeding the taxable quarters in which the tax credits arose. Such automatic credit may be availed only upon compliance by the taxpayer with the following requisites:

(1) The taxpayer submits a copy of the first page of his ITR for the previous taxable period showing the amount of his excess withholding tax credits; and,

(2) The ITR shows that taxpayer has not opted for a cash refund or tax credit certificate.

Petitioner complied with the abovementioned requisites. Petitioner submitted in evidence a copy of its Amended Annual ITR for CY 2014[61] which shows the balance of ₱78,412,007.00 representing its income tax overpayments for the period. This amount was carried over in CY 2015. The Annual ITR for CY 2015 utilized the said balance as its "Prior Year's Credit Other than MCIT" to pay off its income tax due for the period. Thus, the amount of ₱77,440,461.00[62]—representing the balance of petitioner's total tax credits for CY 2015, net of the CWTs for the year which were chosen by petitioner to be refunded—may be carried over and allowed as a credit for the income tax due for CY 2016.

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[61] Exhibit "P-137".
[62] Prior Year's Credit other than MCIT of ₱78,412,007.00 less MCIT due for CY 2015 of ₱971,547.00.

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Under Section 76 of the NIRC of 1997, as amended, once the carry-over option has been chosen, such shall be irrevocable and the unutilized excess tax credits will remain in the taxpayer's account and may be carried over and applied to succeeding taxable years until fully utilized. As the Supreme Court elucidated in *Asiaworld Properties Philippine Corporation vs. Commissioner of Internal Revenue*:[63]

> Section 76 of the NIRC of 1997 clearly states: "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 therefore." Section 76 expressly states that "the option shall be considered irrevocable for that taxable period" – referring to the period comprising the "succeeding taxable years." Section 76 further states that "no application for cash refund or issuance of a tax credit certificate shall be allowed therefore" – referring to "that taxable period" comprising the "succeeding taxable years."
>
> Section 76 of the NIRC of 1997 is different from the old provision, Section 69 of the 1977 NIRC, which reads:
>
>> SEC. 69. Final Adjustment Return. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
>>
>> (a) Pay the excess tax still due; or
>>
>> (b) Be refunded the excess amount paid, as the case may be.
>>
>> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.
>
> Under this old provision, the option to carry-over the excess or overpaid income tax for a given taxable year is limited to the immediately succeeding taxable year only. In contrast, **under Section 76 of the NIRC of 1997, the application of the option to carry-over the excess creditable tax is not limited only to the immediately following taxable year but extends to the next succeeding taxable years. The clear intent in the amendment**

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[63] G.R. No. 171766, July 29, 2010.

> **under Section 76 is to make the option, once exercised, irrevocable for the "succeeding taxable years."**
>
> Thus, **once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years**, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. **The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized**. (*Boldfacing supplied*)

Here, petitioner exercised the carry-over option as reflected in its Amended Annual ITR for CY 2014. Thus, the balance of its income tax overpayments for CY 2014 in the amount of ₱78,412,007.00 may be utilized not just for the succeeding CY 2015, but also for succeeding periods until fully utilized. Such unutilized balance in the amount of ₱77,440,461.00 was validly used by petitioner in CY 2016 to pay off its MCIT due for the period. Considering that the "Prior Year's Excess Credits other than MCIT" in the amount of ₱77,440,461.00 is sufficient to cover the current MCIT due of ₱969,632.00, petitioner's excess and unutilized CWTs for CY 2016 amounting to ₱7,859,319.00 shall not be reduced further and may thus be refunded in its entirety.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[64] 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 exemption.[65] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[66]

In fine, petitioner has sufficiently proven that it is entitled to a refund in the amount of ₱7,859,319.00 representing its excess and unutilized creditable withholding taxes for CY 2016.

WHEREFORE, premises considered, the present Petition for Review is **GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** in favor of petitioner Bethlehem Holdings, Inc. the amount of **₱7,859,319.00** representing

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[64] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[65] *Commissioner of Internal Revenue vs. Interpublic Group of Companies, Inc.*, G.R. No. 207039, August 14, 2019.
[66] *Kepco Philippines Corp. vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.

its excess and unutilized creditable withholding taxes for taxable year 2016.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice