REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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MERCK SHARP & DOHME (I.A.) LLC - PHILIPPINE BRANCH , Petitioner,	**CTA Case No. 9803**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUN 25 2021 11:08 a.m.

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DECISION

UY, *J*.:

Before this Court is a *Petition for Review* filed by Merck Sharp & Dohme (I.A.) Philippine Branch, petitioner, against the Commissioner of Internal Revenue, respondent, praying for the refund of the unutilized and excess creditable expanded withholding tax in the amount of ₱75,361,296.00 for calendar year (CY) 2015.

THE FACTS

Petitioner is a foreign corporation duly organized and existing under the laws of the State of Delaware, United States of America and licensed to do business in the Philippines as a branch office, with principal office at the 26th Floor Philamlife Tower, 8767 Paseo de Roxas, Makati City.[1] It is engaged in the wholesale of

[1] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issue (JSFI), Docket – Vol. 1, p. 290.

pharmaceutical products and in rendering management services to affiliated companies.

Petitioner is registered as a taxpayer of Revenue District Office No. 116 – Regular LT Division I having been issued a Certificate of Registration OCN:8RC0000907266E dated March 14, 2017[2] with Tax Identification Number 004-474-947-00000.[3]

On the other hand, Respondent is the duly appointed Commissioner of Internal Revenue with office address at Bureau of Internal Revenue Building, Diliman, Quezon City where he may be served with summons, processes, orders and notices.[4]

During the taxable year 2015, petitioner was registered as a taxpayer of Revenue District Office No. 122 – LT Division Makati having been issued a Certificate of Registration OCN: 8RC0000070774 dated May 27, 2015.[5]

Petitioner filed its income tax returns for CY 2015 on the following dates:

Tax Return	Date of Filing	Exhibit
Original Annual Income Tax Return	April 15, 2016	Exhibit "P-4" [6]
Amended Annual Income Tax Return	July 28, 2016	Exhibit "P-5" [7]

In its Amended Annual Income Tax Return (AITR), petitioner declared a total income tax credits in the amount of ₱230,620,304.00[8] and an overpayment of ₱117,344,930.00[9] as follows:

Total Income Tax Due	₱113,275,374.00
Less: Total Tax Credits	(230,620,304.00)
Total Overpayments	(117,344,930.00)

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[2] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 290.
[3] Exhibit "P-2".
[4] Par. 1, Admitted Facts, JSFI, Docket – Vol. 1, p. 290.
[5] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 291.
[6] Exhibit "P-4", Docket – Vol. 1, pp. 465 to 473.
[7] Exhibit "P-5", Docket – Vol. 1, pp. 474 to 482.
[8] Exhibit "P-5", Line 17, Docket – Vol. 1, p. 475.
[9] Exhibit "P-5", Line 20, Docket – Vol. 1, p. 475.

Petitioner indicated in its Original and Amended AITR for CY 2015 its option to be refunded for its excess and unutilized CWT for CY 2015.[10]

On April 25, 2017, petitioner filed the Letter dated 14 February 2017[11] addressed to Salina B. Marinduque, Division Chief, Large Taxpayer Assistant Division of the Bureau of Internal Revenue, requesting for the refund of the excess and unused creditable withholding tax (CWT) credits withheld by its customers during the taxable year 2015 in the amount of ₱75,361,296.00 and submitted supporting documents.[12]

Thereafter, petitioner filed with respondent on April 26, 2017 an Application for Tax Credits/Refunds (BIR Form No. 1914)[13] indicating therein as its legal basis for the claim for refund, Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended.[14]

Due to the inaction of respondent on petitioner's claim for refund,[15] petitioner filed the instant Petition for Review before this Court on April 10, 2018.[16]

Respondent filed his Answer on June 19, 2018,[17] interposing, among others, the following special and affirmative defenses :

1) It is incumbent upon petitioner to prove that the alleged claim for refund was filed within the two (2) year prescriptive period provided under Section 229 of the NIRC of 1997;

2) Petitioner failed to prove that income related to creditable withholding tax was declared in the Annual Income Tax Return because petitioner did not provide supporting documents to show that income from which creditable withholding tax being claimed in the amount of P75,361,296.00 was declared in the Annual Income Tax Return (AITR), and that there is no direct linkage between the creditable withholding tax and the income as reflected in the AITR;

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[10] Exhibits "P-4" and "P-5", Line 21, Docket – Vol. 1, pp. 466 and 475.
[11] Exhibit "P-6", Docket – Vol. 1, pp. 483
[12] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 291.
[13] Exhibit "P-8", Docket – Vol. 1, 493 to 494.
[14] Par. 6, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 291.
[15] Par. 7, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 291.
[16] Docket – Vol. 1, pp. 10 to 17.
[17] Docket – Vol. 1, pp. 66 to 78.

3) The instant claim for tax refund is tainted with procedural infirmity due to petitioner's failure to submit complete documents in support of its administrative claim for refund. Simply stated, petitioner must prove compliance with Revenue Memorandum Order (RMO) 53-98 and Revenue Regulation (RR) 2-2006 to give support to the validity of its claim for unutilized creditable withholding tax for taxable year 2015. In this case, petitioner miserably failed to substantiate its administrative claim for refund as it failed to submit the complete requirements under RMO No. RMO 53-98 and there is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund which is a requirement established by law and jurisprudence;

4) Petitioner miserably failed to exhaust administrative remedies before elevating the case to the Court of Tax Appeals. Allegedly, the filing of the instant petition for review must be due to the denial by respondent of petitioner's claim or respondent's inaction which is tantamount to a denial of said claim. Absent these circumstance, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in elevating the taxpayer's claim for refund; and

5) Claims for refund are construed strictly against the taxpayer and in favor of the government.

After the *Pre-Trial Conference* held on January 15, 2019,[18] the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on February 4, 2019.[19] Upon approval of the JSFI, the Court issued a *Pre-Trial Order* on March 6, 2019.[20]

During trial, petitioner presented two (2) witnesses, namely, Estela B. Valenzuela,[21] petitioner's Finance Controller, and Katherine O. Constantino,[22] the Court-commissioned Independent Certified Public Accountant (ICPA).

Thereafter, petitioner filed its *Formal Offer of Evidence* on July 12, 2019.[23] In the *Resolutions* dated October 15, 2019[24] and June

[18] Minutes of Hearing ad Order dated January 15, 2019, Docket – Vol. 1, pp. 285 and 288 to 289.
[19] Docket – Vol. 1, pp. 290 to 294.
[20] Docket – Vol. 1, pp. 380 to 385.
[21] Exhibit "P-11", Docket – Vol. 1, pp. 138 to 155.
[22] Exhibit "P-13", Docket – Vol., pp. 391 to 403.
[23] Docket – Vol. 1, pp. 416 to 425.
[24] Docket – Vol. 1, pp. 504 to 505.

16, 2020,[25] the Court admitted all of petitioner's documentary evidence.

On the part of respondent, the latter's counsel manifested during the hearing held on July 2, 2019 that respondent will not present evidence in this case.[26] Thereafter, the parties were given thirty (30) days by the Court to file their respective Memoranda.

On July 30, 2020, the instant case was submitted for Decision,[27] taking into consideration respondent's *Memorandum* filed on November 15, 2019[28] and petitioner's *Memorandum* filed on July 27, 2020.[29] Hence, this Decision.

THE ISSUE

The sole issue stipulated by the parties is as follows:

> "Whether or not petitioner is entitled to a refund in the total amount of ₱75,361,296.00 representing petitioner's unutilized and excess CWT withheld by its customers for the taxable year 2015." [30]

Petitioner's arguments:

Petitioner argues that it is entitled to refund any excess and unused CWT pursuant to Section 76 of the NIRC of 1997 and Revenue Regulations (RR) No. 2-98.

The instant refund claim allegedly arose from income payments made by its customers to petitioner which were subjected by the customers to CWT and for which, the customers issued the corresponding CWT certificates, in compliance with withholding tax laws and regulations. Allegedly, the court-commissioned independent

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[25] Docket – Vol. 2, pp. 556 to 558.
[26] Minutes of the hearing and Order dated July 2, 2019, Docket – Vol. 1, pp. 406 to 408.
[27] Docket – Vol. 2, p. 583.
[28] Docket – Vol. 2, pp. 524 to 535.
[29] Docket – Vol. 2, pp. 559 to 580.
[30] Stipulation of Issue, JSFI, Docket – Vol. 1, p. 291.

certified public accountant or ICPA verified that the Prior Year's Excess Credit appearing Schedule 7 of petitioner's 2015 Annual Income Tax Return were properly supported by Certificates of Creditable Tax Withheld at Source (BIR Form 2307) and were sufficient to pay off the income tax due on the prior years.

Moreover, petitioner contends that said income payments were reported by petitioner as part of its gross income for the taxable year 2015 in its Income Tax Return, and that these were duly recorded in petitioner's books of accounts and audited financial statements as of year ended December 31, 2015. Petitioner also states that it did not carry over the excess and unutilized CWT subject of its claim for refund to the succeeding quarter or year.

Lastly, petitioner contends that its claim for refund was filed within the two-year prescriptive period from the filing of petitioner's Annual Income Tax Return for CY 2015 on April 15, 2016.

Respondent's counter-arguments:

Respondent counter-argues that petitioner did not provide supporting documents to show that the income from which the CWT being claimed in the amount of ₱75,361,296.00 was declared in the AITR and that there is no linkage between the creditable withholding tax and the income as reflected in the AITR.

Allegedly, petitioner failed to comply with the prescribed checklist of requirements to be submitted involving claims for unutilized creditable withholding tax pursuant to Revenue Memorandum Order (RMO) No. 53-98.

Respondent also stresses that it is incumbent upon the claimant to prove actual remittance of the alleged withheld taxes to the BIR; that proof of actual remittance of the taxes withheld to the BIR is indispensable in a claim for refund of excess creditable withholding taxes.

According to respondent, there is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Hence, petitioner miserably failed to substantiate its administrative claim for refund, for it failed to submit the complete requirements under RMO No. 53-98 and RR No. 2-2006.

Moreover, petitioner failed to exhaust administrative remedies before elevating the case to the CTA; that petitioner's claim for refund is subject to administrative investigation/examination by respondent. Pending the closure of the investigation, no grant of refund may be given to petitioner based on the filed claim.

Lastly, respondent argues that claims for refund are construed strictly against the taxpayer and in favor of the government.

THE COURT'S RULING

A taxpayer who intends to file a refund claim or issuance of a tax credit certificate representing any excess or unutilized creditable withholding tax, must show compliance with the following essential basic conditions set forth under pertinent provisions of law and existing jurisprudential declarations, namely:

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;[31] 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.[32]

The ***first condition*** is pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended, viz:

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

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[31] Section 2.58.3 (B) of Revenue Regulations No. 2-98.

[32] *Calamba Steel Center. Inc. v. Commissioner of Internal Revenue*, G.R. No. 151857, April 28, 2005.

(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."

"**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 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."

The ***second and third conditions*** are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98,[33] which provides as follows:

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[33] 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 on Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.*

"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 declared as part of the gross income and 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 and underscoring supplied*)

In addition to the aforementioned conditions, it is also necessary for the taxpayer claimant to strictly observe the concept of irrevocability rule mentioned under Section 76 of the NIRC of 1997, as amended, quoted hereunder for easy reference:

"**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

(B) Carry-over the excess credit; or

(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. <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

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application for cash refund or issuance of a tax credit certificate shall be allowed therefor." (*Emphasis supplied.*)

Relative to the foregoing provision, the Supreme Court, in the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*,[34] 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 tax credit certificate (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.[35]

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.[36]

In the instant case, petitioner opted to be refunded of its excess CWT for TY 2015 having marked the option "*To be refunded*" in its Original[37] and Amended[38] AITR for CY 2015.

A perusal of petitioner's 2015 Amended AITR shows that petitioner had total tax credits in the amount of ₱230,620,304.00[39] consisting of prior year's excess credits amounting to ₱155,259,008.00[40] and CWTs accumulated during the four (4) quarters of CY 2015 amounting to ₱75,361,296.00 (₱53,452,408.00[41] plus ₱21,908,888.00[42]).

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[34] G.R. No. 176290, September 21, 2007.
[35] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.
[36] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.,* G.R. No. 112024, January 28, 1999.
[37] Exhibit "P-4", Line 21, Docket-Vol. 1, p. 466.
[38] Exhibit "P-5", Line 21, Docket-Vol. 1, p. 475.
[39] Exhibit "P-5", Line 17, Docket-Vol. 1, p. 476,
[40] Exhibit "P-5", Schedule 7 Line 1, Docket-Vol. 1, p. 480.
[41] Exhibit "P-5", Schedule 7 Line 5, Docket-Vol. 1, p. 480.
[42] Exhibit "P-5", Schedule 7 Line 6, Docket-Vol. 1, p. 480.

Petitioner's income tax due amounting to ₱113,275,374.00[43] was paid using a portion of its prior year's excess credits of ₱155,259,008.00 (petitioner submitted BIR Form 2307[44] for the years 2012, 2013 and 2014); thus, leaving a balance of the prior year's excess credits in the amount of ₱41,983,634.00 and CWT during CY2015 in the amount of ₱75,361,296.00, totaling to ₱117,344,930.00[45] excess tax credits as of December 31, 2015, as shown below:

Prior Year's Excess Credit		155,259,008.00
Less: Income Tax Due		113,275,374.00
Balance of Prior Year Excess Credit		41,983,634.00
Add: Creditable Tax Withheld During 2015		
From Previous Quarters	53,452,408.00	
For the Fourth Quarter	21,908,888.00	75,361,296.00
Excess Tax Credits as of Dec. 31, 2015		**117,344,930.00**

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 ₱41,983,634.00 were carried-over to the subsequent quarters of CY 2016 and reflected as "Prior Year's Excess Credits" in its 2016 original AITR[46] and 2016 amended AITR,[47] the excess CWTs in CY2015 in the amount of **₱75,361,296.00** may be the proper subject of a claim for refund under Section 76 of the NIRC of 1997.

Hence, the Court shall now make a determination as to whether or not petitioner has complied with the aforementioned three (3) essential conditions for the grant of its refund of its excess and unutilized CWT in the amount of ₱75,361,296.00.

First condition

The ***first condition*** necessitates that both the administrative and judicial claims be filed within two (2) years from the date of payment of the tax. Timeliness of the filing of the claim is mandatory

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[43] Exhibit "P-5", Line 16, Docket-Vol. 1, p. 476,
[44] Exhibits "P-782" to "P-789"; "P-727" to "P-752"; "P-706 to "P-726".
[45] Exhibit "P-5", Line 20, Docket-Vol. 1, p.475.
[46] Exhibit "P-770", Schedule 7, Line 1.
[47] Exhibit "P-771", Schedule 7, Line 1.

and jurisdictional. The court cannot take cognizance of a judicial claim for refund either prematurely or out of time.[48]

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.[49] This must be so because it is only on such date when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax.[50]

In the instant case, petitioner filed its AITR for CY 2015 on April 15, 2016.[51] Thus, counting two years therefrom, petitioner had until April 15, 2018 to file both its administrative claim and judicial claim.

It appearing that petitioner's administrative claim was filed on April 26, 2017,[52] while the judicial claim via the instant *Petition for Review* was filed on April 10, 2018, it is clear that both the administrative and the judicial claims for refund were timely filed.

Petitioner having complied with the ***first condition,*** this Court therefore has jurisdiction to entertain the instant petition.

Petitioner did not fail to exhaust administrative remedies

At this juncture, the Court deems it necessary to first address respondent's assertion that petitioner failed to exhaust administrative remedies before elevating the case to this Court. Allegedly, pending closure of their investigation of petitioner's claim, no grant of refund may be given to petitioner based on the filed claim.

In the case of *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*[53] (*Univation Motors* case), the Supreme Court explained that for as long as the administrative and judicial claims for

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[48] *Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative,* G.R. No. 209776, December 7, 2016.
[49] *ACCRA Investments Corporation vs. Court of Appeals, et al.,* G.R. No. 96322, December 20, 1991.
[50] *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.,* G.R. No. 83736, January 15, 1992.
[51] Exhibit "P-4", Docket-Vol. 1, p. 465.
[52] Exhibit "P-8", Docket-Vol. 1, p. 493.
[53] G.R. No. 231581, April 10, 2019. MO

refund were filed within the two-year reglementary period, there is no violation of the doctrine of exhaustion of administrative remedies, even if the taxpayer-claimant did not wait for the action of the CIR on its refund claim before filing its judicial claim with this Court, to wit:

> "**The law only requires that an administrative claim be priorly filed. That is, to give the BIR at the administrative level an opportunity to act on said claim. In other words, for as long as the administrative claim and the judicial claim were filed within the two-year prescriptive period, then there was exhaustion of the administrative remedies**.
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> At any rate, Section 7 of Republic Act No. 9282, amending Republic Act No. 1125, provides that the CTA has exclusive appellate jurisdiction over tax refund claims in case the Commissioner fails to act on them:
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> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> xxx xxx xxx
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
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> xxx xxx xxx
>
> This means that while the Commissioner has the right to hear a refund claim first, if he or she fails to act on it, it will only be treated as a denial of the refund, and the CTA is the only entity that may review this ruling. Respondent need not wait for the Commissioner to act on its administrative claim for refund. x x x" *(Emphasis supplied)*

Thus, in the instant case, there is no showing that respondent ever acted upon petitioner's administrative claim for refund from the time it was filed on April 26, 2017[54] up to the filing of its judicial claim on April 10, 2018.[55] Considering that the two-year prescriptive period was about to end, petitioner properly elevated its judicial claim within the said two-year prescriptive period under Section 229 of the NIRC of 1997.

Second and Third Conditions

The ***second condition*** requires that the fact of withholding be established by a copy of the withholding tax statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

According to respondent however, proof of actual remittance is indispensable in petitioner's claim for refund or issuance of a TCC for its unutilized excess CWT for taxable year 2015.

We do not agree.

The certificates of creditable taxes withheld accomplished by petitioner's withholding agents showing the amount deducted and withheld from its income in support of the claim for tax refund, constitute competent and conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income as held in *Commissioner of Internal Revenue v. Philippine National Bank,*[56] to wit:

> "**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.
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> xxx xxx xxx
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> **Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a**

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[54] Exhibit "P-8", Docket – Vol. 1, 493 to 494.
[55] Docket – Vol. 1, pp. 10 to 17.
[56] G.R. No. 180290, September 29, 2014.

> **written statement that it was made under the penalties of perjury, the burden of evidence 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.**
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> **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** (petitioner in this case), **who is vested with the responsibility of withholding and remitting income taxes.**" (*Emphasis supplied, citations omitted*)

Clearly from the foregoing, compliance with the *second* condition is sufficient upon presentation of 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.

In the instant case, to prove its compliance thereon, petitioner submitted *Certificates of Creditable Tax Withheld at Source*[57](BIR Form No. 2307) issued to it by various withholding agents for the year 2015. In the ICPA Report dated February 14, 2019,[58] ICPA Constantino summarized the following findings, to wit:

Summary of Findings	Annex	Income Payment	CWT Amount
CWT duly supported by Original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 3-a	₱2,269,172,882.83	₱55,411,884.37
CWT duly supported by BIR certified true copy of Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 3-b	1,991,593,194.03	19,949,412.07
TOTAL		**₱4,260,766,076.86**	**₱75,361,296.44**

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[57] Exhibits "P-22" to "P-53".
[58] Exhibit "P-12", ICPA Report, par. 3, Docket – Vol. 1, p. 321.

After careful evaluation and review, We adopt the findings of the ICPA that the total CWT amounting to ₱75,361,296.44[59] were properly supported by BIR Form 2307.

However, upon further scrutiny and verification, the Court finds that the CWTs amounting to **₱20,749,354.79** should be disallowed on the basis of the reasons stated below, to wit:

Customer Name	Exhibit	Income Payment	EWT Amount	Reasons
Bayer Philippines, Inc.	"P-27"	8,828,966.80	88,289.67	Dated Outside the Period of Claim
Organon Philippines, Inc.	"P-29"	30,788,963.27	4,618,344.49	Incorrect TIN of the Petitioner
Organon Philippines, Inc.	"P-31"	26,402,682.47	3,960,402.37	Incorrect TIN of the Petitioner
Organon Philippines, Inc.	"P-32"	23,539,596.47	3,530,939.47	Incorrect TIN of the Petitioner
Organon Philippines, Inc.	"P-35"	25,923,987.07	3,888,598.06	Incorrect TIN of the Petitioner
Mercury Drug Corporation	"P-40"	466,278,073.00	4,662,780.73	BIR Form 2307 Not Readable
		581,762,269.08	20,749,354.79	

In sum, petitioner was able to satisfy the *second* condition only up to the extent of **₱54,611,941.65**, computed herein as follows:

Amount of Claimed CWT	₱75,361,296.44
Less: Disallowances	
Per this Court's Further Verification	20,749,354.79
Claimed CWT with Proper BIR Forms 2307	**₱56,611,941.65**

As for the ***third* condition**, petitioner must prove that the income payments from which the substantiated CWTs of **₱56,611,941.21** were withheld, were declared as part of its gross income.

To determine compliance therewith, We traced the revenues recorded in the general ledger book to ascertain that the related income was duly reported as revenues in CY 2015.

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[59] Rounding Off Difference of 0.44.

In doing so, We looked into petitioner's Summary of Reference Numbers,[60] containing a summary of the claimed CWT with its corresponding reference numbers. By using the reference numbers found under the columns, namely - Billing Invoice, Invoice Group, Other Reference and Clearing Document, the Court traced the same to petitioner's general ledgers (GL) [61] to determine whether the related income was reported therein.

After comparison of the foregoing documents, the Court finds that only the total CWT of ₱35,005,705.38 with the corresponding total income payments of ₱1,721,728,193.28 were traced and verified by the Court, broken down as follows:

Exhibit	Customer Name	Income Payment	Tax Withheld
"P-24"	Shering Plough	436,966.00	4,369.66
"P-25"	Bayer Philippines	24,392,660.40	243,926.60
"P-26"	Bayer Philippines	47,965,076.80	479,650.77
"P-30"	Essex Pharmaceuticals	29,099,178.67	4,364,876.80
"P-33"	Essex Pharmaceuticals	29,784,737.40	4,467,710.61
"P-34"	Essex Pharmaceuticals	37,064,506.87	5,559,676.03
"P-36"	Essex Pharmaceuticals	31,111,744.61	4,666,761.69
"P-37"	Globo Asiatico	1,949,363.05	19,493.63
"P-38"	Globo Asiatico	3,256,362.32	32,563.62
"P-39"	Globo Asiatico	10,919,678.14	109,196.78
"P-41"	Globo Asiatico	132,579.24	1,325.79
"P-43"	Globo Asiatico	1,633,670.04	16,336.70
"P-44"	Mercury Drug	358,010,728.00	3,580,107.28
"P-45"	Mercury Drug	399,846,755.00	3,998,467.55
"P-46"	Bayer Philippines	20,075,035.60	200,750.36
"P-48"	Mercury Drug	546,103,535.00	5,461,035.35
"P-49"	A. Menarini	155,177,926.00	1,551,779.26
"P-50"	Euro Med Lab	11,151,473.06	111,514.73
"P-51"	Euro Med Lab	2,181,230.00	21,812.30
"P-52"	Euro Med Lab	11,434,987.08	114,349.87
		1,721,728,193.28	35,005,705.38*

*rounding-off difference of 0.45

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[60] Exhibit "P-59".

[61] Exhibits "P-56", "P-57", "P-58", "P-790, "P-791 and "P-792".

Meanwhile, the total CWTs amounting to ₱19,606,236.28 with the corresponding total income payment of ₱1,957,275,614.50, cannot be traced and verified whether the said income was indeed reported and declared as part of income in CY 2015. Notably, different reference numbers were reflected in petitioner's general ledger[62] and failed to match those indicated in the Summary of Reference Numbers[63] under columns- Billing Invoice numbers, Invoice Group numbers, Other Reference numbers and/or Clearing Document numbers.

Accordingly, for failure of petitioner to sufficiently establish that the said income formed part of petitioner's declared income, the corresponding CWT amounting to ₱19,606,236.28 shall be disallowed. The computation of which is as follows:

Exhibit	Customer Name	Income Payment	CWT Amount
"P-22"	Zuellig Pharma Corp.	362,884,093.00	3,628,840.93
"P-23"	Zuellig Pharma Corp.	494,192,499.00	4,941,924.99
"P-28"	Zuellig Pharma Corp.	493,843,186.00	4,938,431.86
"P-42"	Globo Asiatico	93,785.00	937.85
"P-47"	A. Menarini	3,348,013.50	66,960.27
"P-53"	Zuellig Pharma Corp.	602,914,038.00	6,029,140.38
TOTAL		**1,957,275,614.50**	**19,606,236.28**

It bears stressing 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.[64]

In sum, out of the total claimed CWT of ₱75,361,296.00, petitioner has sufficiently proven its entitlement to the refund, representing unutilized excess CWT for CY 2015 in the reduced amount of **₱35,005,704.93**, with the corresponding computation:

Creditable Withholding Tax Per Claim		₱75,361,296.00
Less: Disallowances		
Not Supported by Proper BIR Form 2307	₱20,749,354.79	

[62] Exhibits "P-56", "P-57", "P-58", "P-790", "P-791" and "P-792".
[63] Exhibit "P-59".
[64] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

Untraceable Income Declared in CY2015	19,606,236.28	40,355,591.07
Refundable Excess CWT		**₱35,005,704.93**

The non-submission of complete documents enumerated under RMO No. 53-98 and RR No. 2-2006 at the administrative level is not fatal to a claim for refund at the judicial level.

Respondent argues that the instant claim for tax refund should be denied for petitioner's failure to comply with RMO No. 53-98 and RR No. 2-2006.

We do not agree.

Revenue Memorandum Order No. 53-98 issued June 25, 1998 prescribes the documents required for submission by a taxpayer upon audit of his tax liabilities per type of tax, as well as the different mandatory audit reporting requirements to be prepared, submitted and attached to a tax audit docket by a Revenue Officer.

As regards Revenue Regulation No. 2-2006 issued on January 5, 2006, the same prescribes the mandatory attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to tax returns with claimed tax credits due to Creditable Tax Withheld at Source and of the Monthly Alphalist of Payees (MAP) whose income received have been subjected to withholding tax to the withholding tax remittance return filed by the withholding agent/payor of income payments.

As held by the Supreme Court in the *Univation Motors*[65] case, the failure to submit the complete documents at the administrative level is not fatal to a claim for refund at the judicial level brought about by the inaction of the CIR. The pertinent ruling of the said case states:

> "Petitioner CIR argued that failure of the respondent to submit the required complete documents as required by Revenue Memorandum Order No. 53-98 and

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[65] Supra at 53.

Revenue Regulations No. 2-2006 rendered the petition with the CTA dismissible on the ground of lack of jurisdiction. It reasoned out that when a taxpayer prematurely filed a judicial claim with the CTA, the latter has no jurisdiction over the appeal.

In the instant case, **respondent's failure to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction**. At this point, it is necessary to determine the grounds relied upon by a taxpayer in filing its judicial claim with the CTA. The case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* is instructive, thus:

> **<u>A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents.</u>** If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

> **<u>In this case, it was the inaction of petitioner CIR which prompted respondent to seek judicial</u>**

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<u>recourse with the CTA</u>. Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. As a matter of fact, petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.

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

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

The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. **Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.**

Cases filed in the CTA are litigated *de novo* as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim. Consequently, the CTA may give credence to all evidence presented by respondent, including those

that may not have been submitted to the CIR as the case is being essentially decided in the first instance." (Emphasis supplied)

Similar to the above-mentioned case, petitioner filed the instant Petition for Review due to the inaction of respondent. Thus, applying the foregoing, it is clear that respondent cannot simply invoke the alleged non-compliance with RMO No. 53-98 and RR No. 2-2006 as legal basis for the Court to deny the instant claim for tax refund or credit.

It bears stressing that the CTA is a court of record, cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of its case.[66] The Court is not precluded from considering petitioner's evidence that was not presented in the administrative claim with the BIR. The question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[67]

Moreover, the Court notes that a cursory reading of RMO No. 53-98[68] and RR No. 2-2006[69] shows that nowhere is it stated in said RMO and RR, that the non-submission of the documents enumerated therein would *ipso facto* result to the denial of the claim for tax refund or credit. Further, it bears noting that RR No. 2-2006 merely imposes a penalty of fine for non-submission of the information or statement required therein, but not the outright denial of the claim for tax refund or credit.

The Supreme Court, in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,*[70] citing *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual*

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[66] *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

[67] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.

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

[69] *Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld At Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.*

[70] G.R. No. 207112, December 8, 2015.

Corporation),[71] pointed out that there is nothing under RMO No. 53-98 that requires the submission of complete documents for a grant of a refund or credit, *to wit*:

> "As can be gleaned from the above, **RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess VAT.** As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (*formerly Mirant Sual Corporation):
>
> The CIR's reliance on RMO 53-98 is misplaced. <u>There is nothing</u> in Section 112 of the NIRC, RR 3-88 or <u>RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT.</u> The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities x x x.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable'.
>
> xxx xxx xxx
>
> <u>**Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT.**</u> This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within

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[71] G.R. No. 205055, July 18, 2014.

the sound discretion and judgment of the Court. (*Emphasis and underscoring supplied)*

While it appears that the foregoing case involves a claim for tax refund or credit of unutilized VAT, We find the principle enunciated therein, applicable in a claim for tax refund or issuance of TCC of unutilized CWT.

Based on the afore-cited jurisprudence, RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities and is never intended as a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund. It is further stated that the failure of the taxpayer to submit the requirements listed under RMO No. 53-98 is not fatal to the taxpayer's claim for tax credit or refund.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the total amount of **₱35,005,704.93** representing petitioner's excess and unutilized Creditable Withholding Tax for the calendar year ended December 31, 2015.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN 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