REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SERVICE RESOURCES, INC.,
Petitioner,

CTA Case No. 9978

Members:

- versus -

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: JAN 04 2021

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4:30 p.m.

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by Service Resources, Inc. **(petitioner)** pursuant to Rule 8, Section 3(a)[2], in relation to Rule 4, Section 3(a)(2)[3] of the Revised Rules of the Court of Tax Appeals[4]

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[1] Filed on 22 November 2018, Division Docket, Volume I, pp. 10-22.

[2] **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

(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

(RRCTA). It seeks the refund of ₱16,683,795.71, representing unutilized creditable withholding taxes (**CWTs**) for taxable year (**TY**) 2016.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address located at Ground Floor, First Capitol Place, 1st St., corner Philam St., Bo. Kapitolyo, Pasig City, Metro Manila, Philippines.[5]

Respondent Commissioner of Internal Revenue (**respondent/CIR**) is the chief of the Bureau of Internal Revenue (**BIR**), the government agency vested with the authority to administer and enforce national internal revenue taxes, including, among others, the power to credit or refund internal revenue taxes erroneously or excessively or illegally paid, assessed or collected.[6]

FACTS OF THE CASE

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (**SEC**) with Company Registration No. 87995 on 22 August 1979.[7] Based on its Amended Articles of Incorporation, petitioner was formed to primarily establish and operate a manpower service which will undertake, conduct and supply services for individuals, offices, stores, domestic commercial and industrial concerns of all kinds.[8]

Petitioner is also registered with the BIR on 30 June 1996, as shown in its Certificate of Registration OCN 3RC0000466898, with Tax Identification Number (**TIN**) 000-144-056-000.[9]

On 12 April 2017, petitioner filed its Annual Income Tax Return (**ITR**) for TY 2016, which reflected an overpayment of ₱47,543,794.00, computed as follows:

Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

4 A.M. No. 05-11-07-CTA dated 22 November 2005.

5 Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, p. 745.

6 Id.

7 Exhibit "P-1", id., p. 404.

8 Exhibit "P-2", id., p. 405.

9 Exhibit "P-4", id., p. 414.

Total income tax due		₱10,702,739.00
Less: Total tax credits/payments		
Prior year's excess credits other than MCIT	₱41,562,737.00	
Creditable tax withheld from previous quarter/s per BIR Form No. 2307	12,359,451.00	
Creditable tax withheld per BIR Form No. 2307 for the fourth (4^{th}) quarter	4,324,345.00	58,246,533.00
Total amount payable		**(₱47,543,794.00)**

Petitioner manifested its option to refund the same by checking the appropriate box in the Annual ITR for TY 2016.[10]

Out of the ₱10,702,739.00 income tax (**IT**) due for TY 2016, petitioner applied the portion of the prior year's excess credits of ₱41,562,737.00 against it, leaving an unutilized prior year's excess credits of ₱30,859,998.00. This remaining amount of unutilized prior year's excess credits was carried over to the following year as shown in petitioner's Quarterly ITRs[11] and Annual ITR[12] for TY 2017.

For petitioner's excess tax payments for TY 2016 resulting from the taxes withheld by its payors in the total amount of ₱16,683,795.71, it opted to refund the same.

On 03 August 2017, petitioner filed[13] with Revenue District Office (**RDO**) No. 43 its claim for refund or issuance of tax credit certificate (**TCC**) of the unutilized CWTs for TY 2016 in the same amount of ₱16,683,795.71.[14]

PROCEEDINGS BEFORE THIS COURT

With no decision from respondent on its claim for refund, petitioner filed the instant Petition for Review[15] with this Court on 22 November 2018.

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10 Exhibit "P-5", id., Volume III, pp. 864-871.
11 Exhibits "P-6" to "P-8", id., pp. 897-902.
12 Exhibits "P-9", id., pp. 903-911.
13 Exhibit "P-14", id., Volume II, pp. 710-714.
14 JSFI, id., p. 746.
15 Supra at note 1.

On 12 February 2019, respondent filed his Answer[16] and both parties filed their respective Pre-Trial Briefs.[17] After respondent's submission of the tax refund docket of this case consisting of one (1) folder with 980 pages[18] (**BIR Records**), the pre-trial conference proceeded where the parties were given a period of fifteen (15) days within which to file their Joint Stipulation of Facts and Issues[19] (**JSFI**). After the parties submitted their JSFI on 26 April 2019, the Court then issued the Pre-Trial Order dated 16 May 2019.[20]

On 22 May 2019, petitioner presented two (2) witnesses, namely: (1) Catherine A. Aquino (**Aquino**); and, (2) Madonna Mia S. Dayego (**Dayego**), for her commissioning as Independent Certified Public Accountant (**ICPA**).

On the witness stand, Aquino testified through her Judicial Affidavit[21] that: (1) she closely assisted in the preparation of the Petition for Review; (2) she is petitioner's Finance Manager and is responsible for, among others, the preparation of petitioner's ITRs and financial statements as well as the computations, documents or attachments in support thereof; (3) she has access to petitioner's registration documents and papers; (4) out of the ₱10,702,739.00 IT due for TY 2016, petitioner applied the portion of the prior year's excess credits of ₱41,562,737.00 against it, leaving an unutilized prior year's excess credits of ₱30,859,998.00 and this remaining amount of unutilized prior year's excess credits was carried over to the following year; (5) for petitioner's excess tax payments for TY 2016 resulting from the taxes withheld by its payors in the amount of ₱16,683,795.71, it opted to refund the same by checking the appropriate box in the Annual ITR; (6) the excess tax payments of ₱16,683,795.71 are shown in petitioner's Summary Alphalist of Withholding Tax Agents[22] (**SAWT**) and were declared as part of its gross income; (7) petitioner's payors issued Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 to prove the fact of their withholding; (8) the excess tax payments of ₱16,683,795.71 were declared as part of petitioner's gross

[16] Division Docket, Volume I, pp. 347-350.
[17] Filed on 08 March 2019; Respondent's Pre-Trial Brief, id., pp. 357-359; Petitioner's Pre-Trial Brief, id., pp. 360-369.
[18] Letter dated 22 March 2019, id., p. 378.
[19] Id., Volume II, pp. 745-749.
[20] Id., pp. 756-760.
[21] Exhibit "P-16", id., pp. 388-403.
[22] Exhibit "P-10", id., Volume III, p. 918.

income, as reflected in the Breakdown of Gross Income per Client Reflected in BIR Form No. 2307[23] showing that the aggregate amount of gross income upon which the tax was withheld in 2016 is ₱834,189,784.50 (which is less than the gross amount declared in the Annual ITR in the amount of ₱1,126,702,769.00); (9) the administrative claim for refund was filed on 03 August 2017; and, (10) the BIR did not decide on petitioner's administrative claim for refund.

On cross examination, Aquino testified that: (1) she received the document entitled Amended Notice for Informal Conference (**NIC**) on 07 November 2018; (2) petitioner already replied to the first NIC before the Amended NIC was received; and, (3) prior to the receipt of the Letter of Authority (**LOA**), petitioner already decided to file the claim with this Court before the prescriptive period.[24]

On re-direct examination, Aquino confirmed that the BIR did not decide on petitioner's claim.[25] No re-cross examination was conducted.[26]

Dayego was presented as petitioner's second witness. She testified through her Judicial Affidavit[27] that: (1) after her appointment as ICPA, she proceeded to secure from petitioner all relevant and available documents necessary for her examination and likewise interviewed petitioner's management and personnel to determine its relevant policies in reporting its transactions; (2) she completed her examination and submitted her Report[28] on the results of the audit that she conducted[29]; (3) she also submitted a Revised ICPA Report[30] modifying some of the summaries of exhibits and to mark additional documents previously examined but were not marked; (4) to ascertain whether petitioner was entitled to the refund, she determined if the amount of CWT claimed for refund was applied against petitioner's income tax liability or if the said amount of claim was carried over or applied against IT liability for TY 2017; (5) she checked if the amount of

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23 Exhibit "P-13", id., p. 986.
24 TSN of 22 May 2019, pp. 6-7.
25 Id., p. 8.
26 Id., p. 9. Although the TSN of 22 May 2019 states "re-direct", it is understood that the same actually refers to re-cross examination.
27 Exhibit "P-56", Division Docket, Volume II, pp. 796-831.
28 Exhibit "P-53".
29 Report submitted on 21 June 2019.
30 Exhibit "P-54".

claim was properly supported by original CWTs (BIR Form No. 2307) and whether the related income payments were also declared as part of gross income; (6) with respect to prior year's excess credits, she verified if these were properly supported by original CWTs; and, (7) based on her study and examination of petitioner's documents, she recommended the refund of ₱16,563,946.56 and not ₱16,683,795.69 as claimed. Respondent did not conduct any cross examination.[31]

Petitioner thereafter filed its Formal Offer of Evidence (**FOE**) on 17 July 2019[32], offering in evidence Exhibits "P-1" to "P-56", inclusive of the sub-markings. Without respondent's comment[33], the Court, through its Resolution dated 03 September 2019[34], admitted all of the said documents except Exhibits "P-31-1444"[35], for not being found in the records, and "P-33-123"[36], "P-33-125"[37], "P-33-126"[38] and "P-33-503"[39], for being blurred and unreadable. The Court further noted that, while Exhibit "P-12" was offered and identified as "Schedule of income payments made and taxes withheld on such income by petitioner's payors", the duly marked document submitted is entitled "Inventory of BIR Form 2307 (Based on Actual Certificate) For Taxable Period 2016".

On 09 September 2019[40], before respondent presented its lone witness, Revenue Officer Ronald B. Enciso (**RO Enciso**), petitioner moved for the reconsideration of the denied exhibits, which the Court granted and thus allowed petitioner to present said denied exhibits in a commissioner's hearing.

The presentation of RO Enciso thereafter ensued where he testified *via* his Judicial Affidavit[41] that: (1) as RO, he is tasked, among others, to investigate/audit the books of accounts and other accounting records of taxpayers to ascertain their tax compliance and determine their tax liabilities, if any; (2) he is the RO assigned to conduct an audit investigation on petitioner's claim for refund; (3) he

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31 TSN of 08 July 2019, p. 9.
32 Division Docket, Volume III, pp. 846-863.
33 See Records Verification, id., p. 991.
34 Id., pp. 989-990.
35 Billing Statement No. 3738, id., p. 1033.
36 Official Receipt (OR) No. 3801, id., between pp. 1033 and 1034.
37 OR No. 3817, id., p. 1034.
38 OR No. 3818, id., p. 1035.
39 OR No. 3803, id., p. 1036.
40 See Order, Division Docket, Volume III, pp. 1017-1018.
41 Exhibit "R-9", id., pp. 994-998.

followed up and sent notices to petitioner as to the submission of the required documents which petitioner complied; (4) petitioner was furnished with the NIC; (5) upon further evaluation, his audit resulted in the assessment of deficiency taxes and prepared the Amended NIC which was furnished to petitioner; (6) he noted that the total net pay *per* payroll is higher than the net pay *per* voucher by the amount of ₱91,097,020.44 and the same is to be considered as unaccounted cost with corresponding undeclared income of ₱9,109,702.04; (7) there was a noted discrepancy between the amount of remittance of mandatory contribution (SSS, PhilHealth and HDMF contributions) as against the remittance *per* voucher as the same was higher than the one declared in the Audited Financial Statements (**AFS**) by the amount of ₱12,583,403.31; (8) there were employees with invalid/incorrect TIN; (9) the total actual collection, as supported by official receipts, amounted to ₱1,223,722,668.53, net of Value-Added Tax (**VAT**); (10) a re-computation of the actual gross revenue after considering the beginning and ending trade receivables disclosed that the petitioner's actual revenues for TY 2016 is ₱1,219,107,365.85 which means that it has undeclared revenues in the amount of ₱98,595,558.85; (11) petitioner is found liable to pay deficiency IT in the amount of ₱23,070,369.22; and, (12) he forwarded petitioner's case docket to the Assessment Division for consolidation with another LOA assigned to RO Troy Dela Cruz for the issuance of the Preliminary Assessment Notice (**PAN**).

When asked during his cross examination if there are other decisions or notices which the BIR issued with respect to petitioner's claim for refund, RO Enciso only referred to the Amended NIC.[42]

In the *interim*, petitioner filed on 20 September 2019[43] its Supplemental FOE with respect to the initially denied exhibits.

Respondent likewise filed his own FOE on 23 September 2019[44] offering in evidence Exhibits "R-1" to "R-9-A", inclusive of sub-markings. Petitioner filed its Comment thereto on 02 October 2019.[45]

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42 TSN of 09 September 2019, p. 8.
43 Division Docket, Volume III, pp. 1028-1032.
44 Id., pp. 1037-1039.
45 Id., pp. 1040-1043.

Later, the Court issued a Resolution dated 17 October 2019[46], admitting into evidence Exhibits P-31-1444", "P-33-123", "P-33-125" and "P-33-126" but still denied the admission of Exhibit "P-33-503", for failure of the exhibit formally offered to correspond to the duly marked document. On the other hand, the Court admitted all of respondent's documentary evidence. The parties were thus given the period of thirty (30) days within which to submit their respective memoranda.

On 27 November 2019, petitioner filed its Memorandum[47] while respondent failed to file his own[48]; hence, the case was submitted for decision on 27 December 2019.[49]

ISSUES

As the parties so stipulated, the issues for this Court's determination are the following:[50]

I

WHETHER THE FILING OF THE PETITION FOR REVIEW WITH THIS COURT IS PREMATURE; AND,

II

WHETHER PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF ITS UNUTILIZED CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2016 IN THE AMOUNT OF ₱16,683,795.71.

RULING OF THE COURT

Petitioner's claim for refund of its excess and unutilized CWT is anchored on Section 76 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which provides:

...

Sec. 76. *Final Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return

46 Id., pp. 1046-1048.
47 Id., pp. 1049-1068.
48 Records Verification dated 17 December 2019, id., p. 1069.
49 See Resolution, id., p. 1070.
50 JSFI, id., Volume II, p. 746.

> 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. 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.[51]
>
> ...

In interpreting said provision, the Supreme Court, in *Systra Philippines, Inc. v. Commissioner of Internal Revenue*[52], 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" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer.[53]

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.[54]

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[51] Emphasis supplied.
[52] G.R. No. 176290, 21 September 2007.
[53] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 07 July 2009.
[54] *Philippine Bank of Communications v. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, 28 January 1999.

In the case at bar, petitioner opted to refund the unutilized CWT by marking the option "To be refunded" in its Annual ITR for TY 2016.[55]

A perusal of petitioner's annual ITR for TY 2016 reveals that it had a total IT due of ₱10,702,739.00. The said amount was paid using its IT credits in the amount of ₱58,246,533.00, consisting of the following: (**a**) prior year's excess tax credits in the amount of ₱41,562,737.00; and, (**b**) accumulated CWT during the four (4) quarters of TY 2016 in the amount of ₱16,683,796.00; thus, leaving a balance of the prior year's excess credits in the amount of ₱30,859,998.00, and CWTs during TY 2016 in the amount of ₱16,683,796.00, totaling to ₱47,543,794.00 excess tax credits as of 31 December 2016, as shown below:

Prior Year's Excess Credit		₱41,562,737.00
Less: Income Tax Due		10,702,739.00
Balance of Prior Year Excess Credit		30,859,998.00
Add: Creditable Tax Withheld during TY 2016		
From previous quarters	12,359,451.00	
For the fourth quarter	4,324,345.00	16,683,796.00
Excess Tax Credits as of December 31, 2016		**₱47,543,794.00**

The balance of ₱30,859,998.00 was subsequently carried over and reflected as "Prior Year's Excess Credits" in petitioner's Quarterly ITRs[56] and Annual ITR for TY 2017.[57] Thus, the CWTs for TY 2016 in the amount of ₱16,683,796.00, which is the subject of petitioner's claim for refund, may be the proper subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation [formerly Mirant (Phils.) Energy Corporation]*[58], the Supreme Court laid down the following requirements for entitlement of a corporate taxpayer to a refund or issuance of TCC involving excess withholding taxes:

55 Exhibit "P-5", Division Docket, Volume III, pp. 864-872.
56 Exhibit "P-6" to "P-8", id., pp. 897-902.
57 Exhibit "P-9", id., pp. 903-911.
58 G.R. No. 188016, 14 January 2015.

> ...
>
> 1. The claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the NIRC;
>
> 2. It is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and,
>
> 3. 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 income tax withheld from that amount.
>
> ...

Anent the *first requisite*, Sections 204(C) and 229 of the NIRC of 1997, as amended, provide that claims for refund must be filed within two (2) years after the payment of the tax:

> ...
>
> **Sec. 204**. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> ...
>
> (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 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.[59]
>
> ...

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. Significantly, 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.[60] This must be so because it is only on such date when it can be finally ascertained if the taxpayer still has to pay additional income tax or if he is entitled to a refund of overpaid income tax.[61]

The present claim for refund pertains to TY 2016 for which petitioner filed its Annual ITR on 12 April 2017. Counting two (2) years from this date, petitioner had until 12 April 2019 within which to file a claim for refund of its excess CWT both in the administrative and judicial levels. Petitioner filed its administrative claim on 03 August 2017[62] and its judicial claim through the instant Petition for Review on 22 November 2018.[63]

In his Answer[64], however, respondent contends that petitioner's claim for refund is still subject to the administrative routinary investigation/examination[65] and, thus, the filing of the instant Petition for Review was premature since he was not given ample opportunity to examine its claim for refund.[66]

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59 Emphasis supplied.
60 *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 96322, 20 December 1991, citing *Commissioner of Internal Revenue v. Asia Australia Express, Ltd.*, G.R. No. 85956, 10 April 1989.
61 *Commissioner of Internal Revenue v. TMX Sales, Inc., et al.*, G.R. No. 83736, 15 January 1992.
62 Exhibit "P-15", Division Docket, Volume II, p. 715.
63 Supra at note 1.
64 Division Docket, Volume II, pp. 347-352.
65 Paragraph 7 of the Answer, id., p. 348.
66 Paragraph 19 of the Answer, id., p. 349.

We do not agree.

As the records show, respondent failed to decide on petitioner's claim for almost *sixteen (16) months* from the time the latter filed an administrative claim (on 03 August 2017) until it filed its judicial claim (on 22 November 2018). Surely, he had more than sufficient time to examine the latter's claim for refund yet it did not take action.

Thus, in *CBK Power Company Limited v. Commissioner of Internal Revenue*[67], the Supreme Court ruled that Section 229 of the NIRC of 1997, as amended, only requires that an administrative claim be priorly filed, *viz*:

> ...
>
> With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. **Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.**
>
> Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. **There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.**
>
> In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David* (Kiener), wherein it was held that **in no wise does the law**, *i.e.*, Section 306 of the old Tax Code **(now, Section 229 of the NIRC), imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action**. In Kiener, the Court went on to say that **the**

[67] G.R. Nos. 193383-84, 14 January 2015; Citations omitted and emphasis supplied.

> **claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow...**
>
> ...

The same was reiterated in *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*[68], where it was argued that by filing the administrative and judicial claims only 13 days apart, in effect, what was pursued is an empty remedy before the BIR, and thereby deprived the latter of the opportunity to ascertain the validity of the claim. The Supreme Court found no merit in the said argument and ruled that:

> ...
>
> Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. **To clarify, Section 229 of the Tax Code** – [then Section 306 of the old Tax Code] – **however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed.**
>
> ...
>
> Thus, in view of the aforesaid circumstances, respondent correctly and timely sought judicial redress, **notwithstanding that its administrative and judicial claims were filed only 13 days apart.**
>
> ...

It is evident from the testimonies of both parties' witnesses that respondent failed to render a decision on petitioner's administrative claim.

Petitioner's witness, Aquino, stated in her Judicial Affidavit[69] that respondent did not issue any decision granting or denying petitioner's claim for refund, to wit:

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68 G.R. No. 216130, 03 August 2016; Emphasis supplied.
69 Exhibit "P-16", Division Docket, Volume II, pp. 388-403.

...

42. Q: What happened, if any, after you filed the letter-request for administrative claim for refund and Application for Tax Credits/Refund (BIR Form No. 1914)?

A: Our claim for administrative refund was not decided upon by the BIR. Due to this, petitioner filed its judicial claim on November 22, 2018 because the two-year period to file a judicial claim is about to lapse.

...

Aquino reiterated the same during her re-direct examination on 22 May 2019[70] as follows:

...

ATTY. BUTED: Ms. Aquino, in your Answer on page 11 of your Judicial Affidavit, Answer 42, you mentioned about the Bureau of Internal Revenue's action upon the Letter Request Administrative Claim for Refund, do you confirm that the Bureau of Internal Revenue did not decide or did not issue any decision on [your] administrative claim for refund?

A: The Bureau of Internal Revenue did not decide.

...

Respondent's own witness, RO Enciso, likewise confirmed this during his cross-examination on 09 September 2019[71], *viz*:

...

ATTY. BUTED:
Q. I just have one question, in your Answer No. 21 of your Judicial Affidavit, you mentioned that there was an amended notice of informal conference?

MR. ENCISO:
A. Yes.

ATTY. BUTED:
Q. Which was issued to petitioner?

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[70] TSN of 22 May 2019, p. 8.
[71] TSN of 09 September 2010, p. 8.

MR. ENCISO:
A. Yes.

ATTY. BUTED:
Q. Other than this, are there other decisions or notices which were made by the BIR with respect to the claim for refund of petitioner?

MR. ENCISO:
A. After the amended notice of informal conference, I have no other... After this amended notice, I have no other documents.

...

In fact, even if this Court would consider the Amended NIC as respondent's denial of petitioner's administrative claim for refund, still, petitioner was able to file its judicial claim within thirty (30) days from receipt of such Amended NIC on 07 November 2018 (as it filed the instant Petition for Review on 22 November 2018).

Since petitioner priorly filed the administrative claim (and respondent clearly failed to decide thereon before the judicial claim, both within the two-year prescriptive period, petitioner's filing of the instant Petition for Review is not premature as respondent so insisted. Hence, the Court has jurisdiction to entertain the instant petition.

With regard to the *second and third requisites*, Section 2.58.3(B) of Revenue Regulations (RR) No. 2-98[72], as amended, is instructive, *viz*:

...

SEC. 2.58.3. *Claim for tax credit or refund.* —

...

(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**

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72 *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.*

> **tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.**[73]
>
> ...

Thus, in relation to the *second requisite*, petitioner must prove that the income payments from which the substantiated CWTs of ₱16,476,547.76 were declared as part of its gross income subject to IT in TY 2016.

Petitioner's Annual ITR for TY 2016 reported under the line "Sales/Revenues/Receipts/Fees" shows the total amount of ₱1,126,702,769.00.[74] As the ICPA found, the subject claim amounting to ₱16,683,795.69 taxes withheld corresponds to the total income payments of ₱834,190,444.26.

To ascertain whether the income payments related to the CWTs being claimed for refund were reported as part of gross income subject to IT in TY 2016, petitioner submitted its billing statements[75], journal vouchers[76] and general ledger (GL Account No. 1400-01 - Service Income)[77] for the said period.

The ICPA noted, however, that there had been service income billed and recorded in the general ledger in TY 2015 which were collected only in TY 2016. Likewise, the related CWT certificates were issued by the payors to petitioner in TY 2016.[78] Nonetheless, the ICPA considered the same to be valid income payments which formed part of the gross income within the period of claim.

Contrary to the ICPA's findings above, Section 2.58.3(A) of RR 2-98 requires the following in order that tax credits may be validly allowed against IT liability:

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73 Emphasis supplied.
74 Line 30, Part IV of the Annual ITR, Exhibit "P-5", Division Docket, Volume III, p. 864.
75 Exhibits "P-31-1" to "P-31-2806".
76 Exhibits "P-31-2807" to "P-31-2815.
77 Exhibits "P-32-2" and "P-32-2-1".
78 See Revised ICPA Report, p. 10.

...

SEC. 2.58.3. *Claim for Tax Credit or Refund.* —

(A) The amount of creditable tax withheld shall be allowed as **a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.**[79]

...

It can be gleaned from the above-cited provision that it is not enough that the related income earned or received be declared as part of the gross income. Equally important in claiming the tax credits is proof that the **declaration of income earned or received is made in the same period with the claiming of the related tax credit.**[80]

In the case of *PNOC Development and Management Corporation v. Commissioner of Internal Revenue*[81], this Court disallowed the claim for creditable withholding tax since the Court could not ascertain if the recognition of income arising from such withholding was properly recorded and declared as income in the same period when the related tax credit is claimed.

Further, in *Philippine National Bank v. Commissioner of Internal Revenue*[82], this Court denied PNB's claim for issuance of TCC for its 2007 excess and unutilized creditable withholding taxes because the Court could not determine with certainty that the income payments related to the claimed creditable withholding taxes indeed formed part of its gross taxable income in its 2007 Annual ITR.

Guided by the foregoing, the Court traced the income payments as provided in the summary of income payments with its corresponding billing statements[83] to the general ledger for TY 2015.[84] Correspondingly, it was found that there were transactions pertaining to TY 2015 which were earned and duly reported in petitioner's Annual ITR for TY 2015.[85] Said income payments already formed part of the

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79 Emphasis supplied.
80 *Commissioner of Internal Revenue v. Ayala Property Management Corporation*, CTA EB No. 2053, 07 July 2020.
81 CTA Case No. 8649, 22 January 2016.
82 CTA Case No. 8077, 19 November 2013.
83 Exhibit "P-31".
84 Exhibit "P-32-1".
85 Exhibit "P-27-5".

gross income subject to IT in TY 2015 and as a result, petitioner cannot belatedly claim in TY 2016 the tax credits related to the income properly recognized and declared in TY 2015. Hence, based on this Court's independent verification, the amount of ₱360,828.39 with the related income payments of ₱18,041,420.99 should be disallowed, as broken down below:

Exhibit No.	BS No.	Date	Customer	Amount of Income Payment	Equivalent Taxes Withheld
P-31-38	0255	01/06/2016	Brother Industries Phils. Inc.	₱1,845,431.59	₱36,908.63
P-31-246	2518	01/11/2016	Fukui Food Philippines, Inc.	63,950.08	1,279.00
P-31-358	0227	01/07/2016	JAE Phils. Inc.	8,638,772.14	172,775.44
P-31-360	0228	01/20/2016	JAE Phils. Inc.	412,930.05	8,258.60
P-31-486	2516	01/08/2016	NYK Auto Logistics Philippines Inc.	408,627.22	8,172.54
P-31-245	2510	12/22/2015	Fukui Food Philippines, Inc.	97,368.09	1,947.36
P-31-258	0257	12/21/2015	IM Digital Philippines, Inc.	2,336,586.54	46,731.73
P-31-259	0258	12/31/2015	IM Digital Philippines, Inc.	425,792.65	8,515.85
P-31-2761	0250	12/29/2015	Yusen Logistics Center Inc.	204,776.71	4,095.53
P-31-2782	0246	12/14/2015	Yusen Logistics Philippines Inc.	398,755.74	7,975.11
P-31-2783	0249	12/29/2015	Yusen Logistics Philippines Inc.	312,354.60	6,247.09
P-31-457	2515	01/07/2016	NEC Tokin Electronics Phils. Inc.	11,693.76	233.88
P-31-543	2563	01/05/2016	Pricon Microelectronics Inc.	6,272.79	125.46
P-31-544	2564	01/05/2016	Pricon Microelectronics Inc.	6,042.20	120.84
P-31-545	2565	01/05/2016	Pricon Microelectronics Inc.	29,509.79	590.20
P-31-546	2566	01/05/2016	Pricon Microelectronics Inc.	30,236.90	604.74
P-31-547	2567	01/05/2016	Pricon Microelectronics Inc.	440.36	8.81
P-31-548	2568	01/05/2016	Pricon Microelectronics Inc.	3,590.24	71.80
P-31-549	2569	01/05/2016	Pricon Microelectronics Inc.	8,682.30	173.65
P-31-550	2570	01/05/2016	Pricon Microelectronics Inc.	12,541.92	250.84
P-31-551	2571	01/05/2016	Pricon Microelectronics Inc.	4,478.51	89.57
P-31-552	2572	01/05/2016	Pricon Microelectronics Inc.	2,872.75	57.46
P-31-553	2573	01/05/2016	Pricon Microelectronics Inc.	9,189.15	183.78
P-31-554	2574	01/05/2016	Pricon Microelectronics Inc.	14,386.04	287.72
P-31-555	2575	01/05/2016	Pricon Microelectronics Inc.	18,698.12	373.96
P-31-556	2576	01/05/2016	Pricon Microelectronics Inc.	166,588.38	3,331.77
P-31-557	2577	01/05/2016	Pricon Microelectronics Inc.	44,363.14	887.26
P-31-558	2578	01/05/2016	Pricon Microelectronics Inc.	49,877.59	997.55
P-31-559	2579	01/05/2016	Pricon Microelectronics Inc.	24,331.99	486.64
P-31-560	2580	01/05/2016	Pricon Microelectronics Inc.	53,466.74	1,069.33
P-31-561	2581	01/05/2016	Pricon Microelectronics Inc.	80,253.53	1,605.07
P-31-562	2582	01/05/2016	Pricon Microelectronics Inc.	9,709.94	194.20
P-31-563	2583	01/05/2016	Pricon Microelectronics Inc.	82,681.61	1,653.63
P-31-564	2584	01/05/2016	Pricon Microelectronics Inc.	2,280.27	45.61
P-31-565	2585	01/05/2016	Pricon Microelectronics Inc.	9,694.15	193.88
P-31-566	2586	01/05/2016	Pricon Microelectronics Inc.	9,953.92	199.08
P-31-567	2587	01/05/2016	Pricon Microelectronics Inc.	2,222.62	44.45
P-31-568	2588	01/05/2016	Pricon Microelectronics Inc.	2,642.16	52.84
P-31-569	2589	01/05/2016	Pricon Microelectronics Inc.	4,700.48	94.01
P-31-2560	2519	01/12/2016	Smart Electronics Mfg. Service Phils. Inc.	2,194,674.23	43,893.48
			TOTAL	₱18,041,420.99	₱360,828.39

Anent the *third requisite*, the Supreme Court, in *Commissioner of Internal Revenue v. Philippine National Bank*[86], affirmed that a certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld and that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits, 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.
>
> ...
>
> **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.**
>
> Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits.** Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, **it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.**
>
> This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:
>
> ...
>
> > ...**The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents.**
>
> ...

[86] G.R. No. 180290, 29 September 2014; Citations omitted and emphasis supplied.

Based on the foregoing, it is undeniable that the fact of withholding may be established by presenting the pertinent certificates of creditable tax withheld at source where the amount paid and the amount of tax withheld therefrom are reflected.

To prove its compliance with the *third requisite*, petitioner submitted the Certificates of Creditable Tax Withheld at Source (BIR Form No 2307)[87] and the Summary of Creditable Taxes Withheld.[88] It was examined by the ICPA and presented the results of verification in the Revised ICPA Report[89] dated 27 June 2019, as follows:

Exhibit No.	Particulars	Amount
P-28	Per Schedule of CWT prepared by Petitioner	₱16,683,795.69
P-29	Per Summary of CWT Supported by Original Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) Issued in the Petitioner's Name	16,683,795.72
	Rounding-off difference	**(₱0.03)**

As the ICPA found, the subject claim for refund of ₱16,683,795.71 is fully substantiated by valid and original CWT certificates issued in petitioner's name.

In addition, the ICPA also ascertained that the total amount of CWT for the period claim *per* Schedule of CWT prepared by the petitioner essentially matches with the amount declared in petitioner's Annual ITR for TY 2016, as shown below:

Exhibit No.	Particulars	Amount
P-26-3	Per TY 2016 Annual ITR	₱16,683,796.00
P-28	Per Schedule of CWT prepared by Petitioner	16,683,795.69
	Rounding-off difference	**₱0.31**

87 Exhibit "P-29-1" to "P-29-265".
88 Exhibit "P-28".
89 Exhibit "P-54".

While the Court agrees that the CWT *per* schedule and *per* ITR substantially tally, after further perusal and verification of petitioner's CWT certificates, We are inclined to disallow a portion of the ICPA's findings and recommendation. Out of the ₱16,683,796.00 found by the ICPA to be duly supported by original BIR Form No. 2307, the amount of ₱207,247.93, broken down below, should be disallowed for the following reasons:

Payor's Name	Exhibit No.	Income Payments	WTC	Tax Rate	Taxes Withheld
CWTs supported by original BIR Form No. 2307 issued in petitioner's name but petitioner's address is not indicated therein					
Fuji Industries	P-29-103	₱2,486,001.50	WC120	2%	₱49,720.03
	P-29-104	1,482,579.50	WC120	2%	29,651.59
	P-29-105	6,193,385.51	WC120	2%	123,867.71
Subtotal		*₱10,161,966.51*			*₱203,239.33*
CWT supported by original BIR Form No. 2307 but with incorrect TIN					
Pasig First Capitol Realty Corp	P-29-173	200,430.00	WC120	2%	4,008.60
Subtotal		*₱200,430.00*			*₱4,008.60*
TOTAL		**₱10,362,396.51**			**₱207,247.93**

It is worth pointing out that in this case, respondent attempted to prove that petitioner is not entitled to the refund being claimed considering that based on the BIR's evaluation of supporting documents submitted by it, petitioner still has deficiency basic IT due in the amount of ₱39,754,164.93[90] resulting from supposed undeclared sales/receipts in the amount of ₱98,595,558.85.[91]

However, assuming for the sake of argument that petitioner is indeed liable for deficiency IT for such amount of ₱39,754,164.93, the same could be sufficiently covered by petitioner's excess credits prior to TY 2016 amounting to ₱41,562,737.00[92] as well as the CWTs for the same year, as shown in the following table:

---

90 See Amended NIC, Exhibit "R-5", Division Docket, Volume III, p. 1006.
91 See Results of the Investigation, Amended NIC, Exhibit "P-5", id., p. 1007.
92 See Line 1 of Schedule 7, Annual ITR, Exhibit "P-5", id., p. 869.

Excess credits prior to TY 2016	₱41,562,737.00
CWT during TY 2016	16,683,796.00
Total tax credits for TY 2016	58,246,533.00
Less: Basic deficiency IT per Amended NIC	39,754,164.93
Excess credits after considering the basic deficiency IT	**₱18,492,368.07**

As a result, petitioner would still have excess CWT for the subject TY which it could claim for refund under Section 76 of the NIRC of 1997, as amended.

To recapitulate, out of the total claim of ₱16,683,795.71, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC representing unutilized excess CWT for TY 2016 in the reduced amount of ₱16,115,719.39, computed as follows:

CWT *per* claim		₱16,683,795.71
Less: Disallowances		
Per this Court's independent verification:		
Income reported in TY 2015	₱360,828.39	
Disallowed BIR Form No. 2307	207,247.93	568,076.32
Total Amount of Refundable CWT		**₱16,115,719.39**

WHEREFORE, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Service Resources, Inc. in the reduced amount of **₱16,115,719.39**, representing unutilized creditable withholding taxes for the taxable year 2016.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice