CTA Form No. 8

20-000146-0072

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10287

NOVABALA JV CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. WILMER B. DEKIT
ATTY. FELY ROSE R. DAGANTA
Legal Division - Revenue Region 8B-South NCR
2nd Floor, BIR Regional Office Building,
No. 313 Sen. Gil Puyat Avenue, Makati City

VIOVICENTE & PEREZ-VIOVICENTE LAW OFFICE
Unit 810, One Corporate Centre
Julia Vargas corner Meralco Avenue
Ortigas Center, 1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **January 4, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 5, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

NOVABALA JV CORP., *Petitioner,*	**CTA Case No. 10287**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 04 2024; 3:00PM

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DECISION

MANAHAN, *J.*:

Before the Court is a Petition for Review, praying that judgment be rendered ordering respondent to refund petitioner the amount of ₱20,381,132.00, allegedly representing erroneously collected creditable withholding taxes (CWTs) for taxable years 2017 and 2018, amounting to ₱17,527,898.00 and ₱2,853,234.00, respectively.[1]

THE FACTS

Petitioner Novabala JV Corp. is a corporation duly organized and existing under the laws of the Philippines, with principal office address at Building 4, First Balfour Bldg., Km. 19, West Service Road, Marcelo Green Village, Fourth District, City of Parañaque.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 009-749-118-000.[3]

Respondent Commissioner of Internal Revenue is the government official vested with the power and authority to

[1] Prayer, *Petition for Review*, Docket – Vol. I, p. 37.
[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues (JSFI)*, Docket – Vol. II, p. 952; Exhibit "P-3," Docket – Vol. I, pp. 402 to 415.
[3] Exhibit "P-9," USB marked as Exhibit "P-105." cm

refund any internal revenue tax erroneously or illegally assessed or collected under the National Internal Revenue Code (NIRC), as amended.[4]

On June 28, 2018, petitioner registered with the Board of Investments (BOI) its service contract with Manila Water Company, Inc. for the Novaliches-Balara Aqueduct 4 (NBAQ4) Project, as evidenced by **Certificate of Registration (COR) No. 2018-134 dated June 28, 2018**,[5] with *Pioneer* status as "New Services Provider for Design and Construction – State-of-the-Art Engineering, Procurement and Construction (Tunnel Boring Services)."[6]

On December 13, 2018, the BIR issued a Certificate of Tax Exemption (CTE) to petitioner, exempting it from payment of income tax and creditable withholding tax on its revenues directly attributable to its BOI-registered project, *i.e.*, the Design and Construction-State-of-the-Art Engineering, Procurement and Construction (Tunnel Boring Services) Novaliches-Balara Aqueduct 4 located at Balara Commonwealth Avenue and La Mesa Watershed Reservation.[7]

In its original and amended 2017 Annual Income Tax Return (ITR), petitioner ticked the box, "*To be carried over as tax credit next year/quarter.*" This was allegedly due to the fact that at the time the return was filed, its COR No. 2018-134 was not yet issued, although the application was already filed and pending.[8]

In its letter dated June 18, 2019,[9] petitioner requested for the approval of its claim for income tax refund of the following alleged erroneous overpayments:

Excess from erroneous withholding in 2017	₱ 17,527,898.00
Unapplied erroneous withholding in 2018	2,853,234.00
Total	**₱ 20,381,132.00**

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[4] Par. 2, Summary of Admitted Facts, *JSFI*, Docket – Vol. II, p. 952.
[5] Exhibit "P-15," Docket – Vol. I, p. 473.
[6] Exhibit "P-14," Docket – Vol. I, p. 472.
[7] Par. 23, *Petition for Review*, Docket – Vol. I, p.11 *vis-à-vis* par. 10, *Answer*, Docket – Vol. II, p. 714. *See also* Exhibit "P-19", Docket – Vol. I, p. 489.
[8] Par. 35, *Petition for Review*, Docket – Vol. I, pp. 15 to 16 vis-à-vis par. 12, *Answer*, Docket – Vol. II, p. 714.
[9] Exhibits "P-7," and "P-7-a" to "P-7-k," Docket – Vol. I, pp. 452 to 463.

The said administrative claim was filed with the BIR Revenue District Office No. 52 in Parañaque City. Petitioner also filed the corresponding BIR Form No. 1914.[10]

On July 25, 2019, the BIR issued Letter of Authority No. eLA201600070445 / LOA-052-2019-00000625, authorizing Revenue Officer (RO) - Cherry Mae Sanchez / Group Supervisor - Nestor Chan "to examine the books" of petitioner "and other accounting records for income taxes for the period January 1, 2018 to December 31, 2018."[11]

However, the BIR has not ruled upon the administrative claim.[12] Hence, on June 29, 2020, petitioner filed the instant *Petition for Review*.[13]

Respondent posted his *Answer* on December 1, 2020, interposing special and affirmative defenses.[14]

The Pre-Trial Conference was set and held on March 4, 2021.[15] Prior thereto, on March 1, 2021, petitioner's *Pre-Trial Brief*,[16] and *Respondent's Pre-Trial Brief (With Attached Special Power of Attorney for Respondent)*,[17] were separately filed. On even date, respondent transmitted the BIR Records for this case, consisting of five hundred sixty-one (561) pages in one (1) folder.[18]

On March 24, 2021, the parties submitted, via email and via courier, their *Joint Stipulation of Facts and Issues*,[19] which the Court noted and approved during the hearing held on May 27, 2021.[20] Subsequently, the *Pre-Trial Order* dated October 7, 2021 was issued.[21]

Trial ensued, with the parties presenting and offering their respective evidence.

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[10] Exhibit "P-8," Docket – Vol. 1, p. 464; Exhibit "R-2," BIR Records, p. 163.
[11] Par. 3, Summary of Admitted Facts, *JSFI*, Docket – Vol. II, p. 953.
[12] Par. 4, *Id.*
[13] Docket – Vol. I, pp. 7 to 40.
[14] Docket – Vol. II, pp. 712 to 727.
[15] Notice of Pre-trial Conference dated January 12, 2021, Docket – Vol. II, pp. 731 to 733; Order dated March 4, 2021, Docket – Vol. II, pp. 937 to 943.
[16] Docket – Vol. II, pp. 736 to 770.
[17] Docket – Vol. II, pp. 840 to 849.
[18] Respondent's *Compliance with Manifestation* dated February 26, 2021, Docket – Vol. II, pp. 852 to 856.
[19] Docket – Vol. II, pp. 945 to 963.
[20] Minutes of the hearing held on, and Order dated, May 27, 2021, Docket – Vol. II, pp. 977 to 988.
[21] Docket – Vol. II, pp. 1232 to 1259.

Petitioner offered the testimonies of the following: (1) Ms. Arlene M. Moriles,[22] Head of petitioner's Finance and Accounting Department; (2) Engr. Teodorico L. Cuarto,[23] Senior Cost Engineer of the Novaliches Balara Acquaduct 4 Project; (3) Ernesto L. Viovicente,[24] Senior Cost Engineer of Novaliches Balara Acquaduct 4 Project; (4) Mr. Emmanuel Y. Mendoza,[25] the Court-commissioned Independent Certified Public Accountant (ICPA);[26] and (5) Mr. Karl B. Tabarangao,[27] petitioner's Accounting and Reporting Officer. The *Report* of the ICPA was submitted to the Court on October 26, 2021.[28]

Petitioner's *Formal Offer of Evidence* was filed on December 13, 2021.[29] Respondent failed to file his comment thereon.[30] In a Resolution dated May 11, 2022,[31] the Court admitted petitioner's offered exhibits.

For his part, respondent orally offered Exhibits "R-1" to "R-6" during the hearing on October 4, 2022.[32] In the same hearing, petitioner presented Exhibit "P-107" as rebuttal evidence.[33] Said exhibits were admitted by this Court.[34]

Respondent's *Memorandum* was posted on November 2, 2022,[35] while petitioner's *Memorandum* was posted on November 3, 2022.[36]

The instant case was submitted for decision on December 15, 2022.[37]

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[22] Exhibit "P-91," Docket – Vol. I, pp. 355 to 400; Minutes of the hearing held on, and Order dated, May 27, 2021, Docket – Vol. II, pp. 977 to 988.
[23] Exhibit "P-92", Docket – Vol. I, pp. 296 to 302; Minutes of the hearing held on, and Order dated, May 27, 2021, Docket – Vol. II, pp. 977 to 988.
[24] Exhibit "P-101," Docket – Vol. II, pp. 859 to 872; Minutes of the hearing held on, and Order dated, July 6, 2021, Docket – Vol. II, pp. 1081 to 1084, and 1086 to 1088, respectively.
[25] Exhibit "P-104," Docket – Vol. III, pp. 1290 to 1322; Order dated November 9, 2021, Docket – Vol. III, pp. 1335 to 1337.
[26] *Oath of Commission* dated July 6, 2021, Docket – Vol. II, p. 1085; Minutes of the hearing held on, and Order dated, July 6, 2021, Docket – Vol. II, pp. 1081 to 1084, and 1086 to 1088, respectively.
[27] Exhibit "P-106," Docket – Vol. II, pp. 1102 to 1111; Order dated November 9, 2021, Docket – Vol. III, pp. 1335 to 1337.
[28] Exhibit "P-90," Docket – Vol. III, pp. 1269 to 1285.
[29] Docket – Vol. III, pp. 1398 to 1438.
[30] Records Verification dated March 2, 2022 issued by this Court's Judicial Records Division, Docket – Vol. III, p. 1445.
[31] Docket – Vol. III, pp. 1449 to 1461.
[32] Order dated October 4, 2022, Docket – Vol. III, pp. 1495-A to 1495-C.
[33] *Id.*
[34] *Id.*
[35] Docket – Vol. III, pp. 1533 to 1554.
[36] *Id.*, pp. 1496 to 1530.
[37] Minute Resolution dated December 15, 2022, Docket – Vol. III, p. 1558.

THE ISSUES

As stipulated by the parties, the main issues for the Court's resolution are the following:

I. **Whether or not petitioner is entitled to an income tax refund in the aggregate amount of Php20,381,132.00 representing its alleged excess and erroneous withholding tax incurred for taxable years 2017 and 2018**

II. **Whether or not petitioner complied with the requirements for its entitlement to Income Tax Holiday under Article 39(a) of the Omnibus Investment Code as BOI-registered pioneer company;**

III. **Whether or not the alleged Certificate of Registration issued by the Board of Investment to petitioner on 28 June 2018 has retroactive effect, so as to exempt petitioner from taxes incurred in prior years.**[38]

Petitioner's arguments

In arguing that it is entitled to a refund, petitioner sought to establish that it satisfied the requirements for the grant of refund, namely: that it timely filed both administrative and judicial claims for refund of the 2017 and 2018 overpayments within the two-year prescriptive period; that the withholding of the amounts sought to be refunded is evidenced by BIR Forms 2307 duly issued to it by the withholding agent (Manila Water Company, Inc.); and that the income upon which the taxes were withheld are reported in its returns.

Petitioner theorizes that although it signified in its original and amended 2017 Annual ITR the option to carry over the taxes, it can still claim a refund because the irrevocability rule enshrined in Section 76 of the NIRC—which states that once the option to carry-over has been made, it shall be

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[38] Issue, *JSFI*, Docket – Vol. II, pp. 953 to 954.

irrevocable for that taxable period and no application for refund or tax credit shall be allowed—ceased to apply to it when its taxpayer status changed to exempt. According to petitioner, Section 76 applies only to corporations liable to tax under Section 27 of the NIRC. When it was granted income tax holiday under its COR No. 2018-134 dated June 28, 2018, this had the legal effect of making erroneous the collection of withholding income taxes for 2017 and 2018.

Furthermore, petitioner explains that if it is unable to claim the refund, it will be carrying the overpayment in its account but will no longer have the chance to utilize it in the succeeding years. Since it was organized solely for the NBAQ4 Project, the contract duration of which is 1,460 calendar days (or four (4) years) from the 3rd quarter of 2017, it will no longer have business activity after the 3rd quarter of 2021. Petitioner proffers that it need not wait for the permanent cessation of its business to avail of the tax refund.

Lastly, petitioner claims that it has complied with the requirements for entitlement to tax incentives as a BOI-registered pioneer company, and that there is no retroactive application of this entitlement when it seeks the refund of tax payments made prior to June 18, 2018, which is the date of its COR.

Respondent's counter-arguments

Respondent maintains that the COR issued to petitioner has no retroactive effect; hence, it only affects the taxes petitioner incurred after June 18, 2018. Assuming without admitting, however, that petitioner has excess creditable withholding taxes for 2017, its option to carry-over the same to its succeeding taxable year is already irrevocable. The issuance of the COR will not operate to exempt it from the irrevocability rule.

Respondent argues that it is premature to conclude that petitioner will no longer incur taxes to which it can credit the alleged excess withholding taxes. Although petitioner's primary purpose as stated in its Articles of Incorporation is limited to the undertaking of the BOI-registered project, it can still conduct other taxable activities pursuant to its secondary purpose such as lease, sale, or transfer of any of its properties, or investment in shares of stocks of other companies. These activities can still give rise to income that is not exempt from tax under its COR. Alternatively, petitioner can amend its primary purpose at any point during its lifetime.

In other words, it is only after the termination of petitioner's existence can it be determined that the alleged excess withholding taxes can no longer be carried-over or utilized.

Respondent also observed that petitioner's Application Letter for Refund and the BIR Form 1914 refer only to the administrative claim for refund for calendar year 2018. Respondent concludes that the burden of proof to establish entitlement to refund is on the petitioner, but it failed to support its claim.

THE COURT'S RULING

The present Petition for Review is partly meritorious.

For an orderly disposition of the case, the second and third issues shall be resolved ahead of the first issue.

Petitioner complied with the requirements for entitlement to ITH as a BOI-registered pioneer company

Article 39(a) of Executive Order (E.O. No.) 226,[39] series of 1987, as amended by Republic Act No. 7918,[40] grants all BOI-registered enterprises income tax holiday (ITH) or exemption from payment of all income taxes levied by the national government, to the extent that these entities are engaged in a preferred area of investment, for a period of (6) years in case of pioneer firms, and a period of four (4) years for non-pioneer firms:

> "ART. 39. Incentives to Registered Enterprises. – All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:

[39] Otherwise known as the "Omnibus Investment Code" of 1987.
[40] An Act Amending Article 39, Title III of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended, and For Other Purposes.

> *(a) Income Tax Holiday.* –
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. xxx
>
> The preceding paragraph notwithstanding, no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years." [*Emphasis added*]

Relative to the foregoing, Section 7 of the same law has, in effect, endowed upon the BOI the power and authority to determine upon application which entities may be granted or denied the tax incentives under said law. Said provision reads, in part, as follows:

> "ART. 7. Powers and Duties of the Board. – **The Board shall be responsible for the regulation and promotion of investments in the Philippines.** It shall meet as often as may be necessary generally once a week on such day as it may fix. Notice of regular and special meetings shall be given all members of the Board. The presence of four (4) governors shall constitute a quorum and the affirmative vote of four (4) governors in a meeting validly held shall be necessary to exercise its powers and perform its duties, which shall be as follows:
>
> xxx
>
> (3) **Process and approve applications for registration with the Board, imposing such terms and conditions as it may deem necessary to promote the objectives of this Code,** including refund of incentives when appropriate, restricting availment of certain incentives not needed by the project in the determination of the Board, requiring performance bonds and other guarantees, and payment of application, registration, publication and other necessary fees and when warranted, may limit the availment of the tax holiday incentive to the extent that the investor's country law or treaties with the Philippines allows a credit for taxes paid in the Philippines;
>
> xxx
>
> (8) After due notice, cancel the registration or suspend the enjoyment of incentives benefits of any

> registered enterprise and/or require refund of incentives enjoyed by such enterprise including interests and monetary penalties, for (a) failure to maintain the qualifications required by this Code for registration with the Board or (b) for violations of this Code, of the rules and regulations issued under this Code, of the terms and conditions of registration, or of laws for the protection of labor or of the consuming public: *Provided*, That the registration of an enterprise whose project timetable, as set by the Board is delayed by one year, shall be considered automatically cancelled unless otherwise reinstalled as a registered enterprise by the Board; xxx" [*Emphasis added*]

Moreover, Sections 1 and 2, Rule V, of the Rules and Regulations to Implement Executive Order No. 226, otherwise known As The Omnibus Investment Code of 1987 (IRR of EO 226) provides:

> "RULE V
> CERTIFICATE OF REGISTRATION
>
> SECTION 1. ***Conditions Precedent for Issuance of Certificate.*** – Before the issuance of the certificate of registration, the following requirements shall be submitted and/or complied with:
>
> a. Payment of registration fee;
>
> b. Letter, or if a corporation, resolution of the applicant's board of directors formally accepting the proposed terms and conditions of registration;
>
> c. Sworn statement authorized by the board of directors/partners or by the individual adopting and/or affirming all representations and commitments made by the applicant to the Board, and stating that with the exception of those which the Board has been duly advised in writing, all information and data heretofore submitted by it to the Board are still correct; and
>
> d. All pre-registration requirements, if any, imposed by the Board. *am*

> SEC. 2. ***Issuance of Certificate.*** – Upon fulfillment of the foregoing conditions precedent, the certificate of registration shall be issued." [*Underscoring supplied*]

In the present case, petitioner's compliance with the requirements under the law is recognized in the letter dated June 28, 2018 of Atty. Marjorie O. Ramos-Samaniego, Director and Board Secretary of the BOI, addressed to petitioner's President. The pertinent portion thereof states:

> "Congratulations! Your project is now registered with the Board of Investments as a **New Services Provider for Design and Construction – State-of-the-Art Engineering, Procurement and Construction (Tunnel Boring Services)** on a **Pioneer** Status under the Omnibus Investments Code of 1987 (Executive Order No. 226)."[41] [*Emphasis in original*]

As a "*Pioneer*" enterprise, petitioner was granted under the *General Terms and Conditions* of COR No. 2018-134 a six (6)-year ITH for the registered project,[42] among others, and an entitlement to avail of bonus year in certain cases, if applicable, provided that the aggregate ITH availment (regular and bonus years) does not exceed eight (8) years.[43]

Both parties to the case also admitted that petitioner was issued the CTE dated December 13, 2018 by the BIR,[44] the relevant portion of which states:

> "This certifies that **NOVABALA JV CORP.**, with Tax Identification Number 009-749-118-000, is exempt from income tax and creditable withholding tax on its income received directly in connection with its registered project, New Services Provider for Design and Construction-State-of-the-Art Engineering, Procurement and Construction (Tunnel Boring Services), located at Balara, Commonwealth Avenue and La Mesa Watershed Reservation, a project duly registered with the Board of Investments (BOI) under Registration No. 2018-134 dated June 28, 2018, for

[41] Exhibit "P-14," Docket – Vol. I, p. 472.
[42] *See* Exhibit "P-16", Docket – Vol. I, p. 478.
[43] Exhibit "P-15-a," Docket – Vol. I, pp. 474-476.
[44] Exhibit "P-19", Docket – Vol. I, p. 489.

> a period of 6 years beginning from June 28, 2018 but in no case earlier than the date of registration of the project with the BOI xxx.
>
> The income qualified for Income Tax Holiday (ITH) shall be limited to the income directly attributable to the eligible revenue generated from the project, **New Services Provider for Design and Construction-State-of-the-Art Engineering, Procurement and Construction (Tunnel Boring Services).**"[45] [*Underscoring added*]

Evidently, both the BOI and the BIR concurred in the grant of ITH in petitioner's favor.

Suffice it to say that acts of public officers enjoy the presumption of regularity.[46] To overcome this presumption, clear and convincing evidence must be presented.[47] In the absence of such evidence, the presumption will prevail. Here in this case, no evidence exists to establish that the grant of the tax incentives under COR No. 2018-134 and the issuance of the CTE were attended with irregularities. Accordingly, it is undisputed that petitioner complied with the requirements under the law for entitlement to the ITH.

COR No. 2018-134 dated June 28, 2018 issued in petitioner's favor cannot be given retroactive effect so as to exempt petitioner from taxes incurred in the prior year. Contrary to the stance of petitioner, there is no erroneous withholding in 2017 and 2018.

The *General Terms and Conditions* of petitioner's COR expressly state:

> "5.The enterprise is eligible to the grant of the following incentives:

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[45] Par. 23, *Petition for Review*, Docket – Vol. I, p. 11, *vis-à-vis* par. 10, *Answer*, Docket – Vol. II, p. 714.
[46] *People v. Batino y Evangelista*, G.R. No. 254035, Nov. 15, 2021.
[47] *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, G.R. No. 125283, Feb. 10, 2006.

> a. Income Tax Holiday (ITH)
>
> a.1. ITH for **six (6) years** <u>from 28 June 2018</u>:
>
> The income qualified for ITH shall be limited to the income directly attributable to the eligible revenue generated from the registered project [State-of-the-Art Engineering, Procurement and Construction (Tunnel Boring Services)]."[48] [*Underscoring supplied*]

Likewise, the *Certificate of Income Tax Holiday Entitlement for Taxable Year 2018* issued to petitioner by the BOI clearly indicates that its entitlement to ITH is for the period "28 June 2018 to 27 June 2024 (6 years)."[49]

Furthermore, the CTE dated December 13, 2018 states that the commencement of the ITH period of petitioner is on "June 28, 2018 but in no case earlier than the date of registration of the project with the BOI."[50]

It is therefore evident that petitioner is entitled to the ITH only from June 28, 2018 until June 27, 2024, subject to extension thereafter when warranted under the circumstances and when allowed by law, as will be determined by the BOI.

Notwithstanding the foregoing, petitioner contends that it is not asking for refund of taxes withheld on income earned prior to June 28, 2018, but from "from contractual advances that were earned only after June 28, 2018." Petitioner argues:

> "129. As found by the ICPA, the difference between gross sales subjected to withholding tax prior to June 28, 2018 and gross sales record in the ledger/Audited Financial Statements prior to June 28, 2018 were treated as contractual advances, not yet revenue. Therefore, these were not yet income subject to income tax at the time of withholding. It was only after June 28, 2018 when these became income. But with the income tax exemption of petitioner, the withholding earlier made on these payments should be refunded as such withholding became erroneous.

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[48] Exhibit "P-15-a," Docket – Vol. 1, p. 474.
[49] Exhibit "P-16", Docket – Vol. 1, p. 478.
[50] Exhibit "P-19", Docket – Vol. 1, p. 489.

> 130. Thus, it's a case of erroneous withholding from advance payments prior to June 28, 2018 because of the change of the status of the petitioner from paying to exempt from income tax after June 28, 2018."[51]

Petitioner's reasoning is specious. We find that there is no "erroneous withholding [of income tax] from advance payments prior to June 28, 2018" in this case.

To be clear, Section 2.57.5(B)(2) of Revenue Regulations (RR) No. 2-98 provides:[52]

> "Sec. 2.57.5. *Exemption from Withholding*. – The withholding of creditable withholding tax prescribed in these Regulations shall **not** apply to income payments made to the following:
>
> xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:
>
> xxx
>
> (2) **Corporations duly registered with the Board of Investments**, Philippine Export Processing Zones and Subic Bay Metropolitan Authority **enjoying exemption from income pursuant to E.O. 226, as amended, R.A. 7916, the Omnibus Investment Code of 1997 and R.A. 7227, as amended, respectively**;" [*Emphasis added*]

However, as earlier established, petitioner was duly registered with the BOI and was granted ITH only on June 28, 2018. Such being the case, income payments made by Manila Water Company, Inc. (its only client) prior to said date are subject to withholding tax.

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[51] Petitioner's *Memorandum*, Docket – Vol. III, p. 1529.
[52] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as amended" relative to the Withholding of Income subject to the Expanded Withholding and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

Indeed, the first paragraph of Section 2.57.4 of RR No. 2-98, as amended by RR No. 12-01,[53] obliges the withholding agent to deduct and withhold the tax at the time an income payment is paid or payable:

> "Sec. 2.57.4. Time of Withholding. – The obligation of the payor to deduct and withhold the tax under Section 2.57 of these Regulations **arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable**, in the payor's books, whichever comes first. The term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable." [*Emphasis added*]

The crucial question therefore is whether the payments made by Manila Water Company, Inc. prior to June 28, 2018 were correctly treated by the latter as income or revenues of petitioner.

The Court answers in the affirmative.

Income is all wealth which flows into the taxpayer other than as mere return of capital. In tax law, it is "an amount of money coming to a person within a specified time, **whether as payment for services**, interest, or profit from investment. It means cash or its equivalent. **It is gain derived** and severed from capital, **from labor** or from both combined."[54]

Meanwhile, in commercial law, a "bill" represents any payable or receivable for accounts for goods sold, **services rendered, or work done**.[55] It is also defined as a statement of money owed for goods or services with request for payment.[56] Correspondingly, a "progress billing" generally refers to a claim

[53] SUBJECT: Amendment to the Pertinent Provisions of Revenue Regulations No. 1-98, as Amended, and Revenue Regulations No. 6-2001, Relative to the Revision of Withholding Tax Rates on Certain Income Payments Subject to Withholding Tax, the Deferment of the New Deadline Dates for Filing Selected Tax Returns, the Reporting Requirements for Recipients of Talent Fees, and for Other Purposes.

[54] *Commissioner of Internal Revenue v. The Court of Appeals, et al.*, G.R. No. 108576, Jan. 20, 1999. [Citations omitted] [emphasis added]

[55] Moreno's Law Dictionary, ©2000, p. 50. *See also* The Attorney's Pocket Dictionary, ©1981, p. 60. [Emphasis added]

[56] Random House Webster's Dictionary of the Law, ©2000, p. 53

for payment for works accomplished and materials delivered as a construction project progresses.[57]

As will be detailed momentarily, Manila Water Company, Inc. was prompted to pay petitioner via the latter's *Progress Billings* prior to June 28, 2018, and upon payment of what was billed, withheld the corresponding income taxes at the rate of 2%. The *Progress Billings* issued by petitioner represent claims or demands for payment of work done for a particular period as the NBAQ4 Project progresses. Notably, the period covered by petitioner's *Progress Billing No. 1* (*i.e.*, August 18 to September 18, 2017) corresponds with the date the Project commenced on August 18, 2017.[58] It stands to reason therefore that *Progress Billing No. 1* and the subsequent *Progress Billings* represent claims for the said period and subsequent periods, respectively.

Thus, since the amounts billed by petitioner, and paid by Manila Water Company, Inc., represent partial payments for services rendered by the former, it is only proper that the same be treated as petitioner's income and consequently be subjected to withholding tax.

As regards the advance payment made by Manila Water Company, Inc. in the amount of ₱264,397,123.35,[59] which was subjected to withholding tax amounting to ₱4,807,220.42,[60] the pertinent clause in the parties' agreement is reproduced below:

> "9. **ADVANCE PAYMENT**
>
> **MANILA WATER shall upon, request of the CONTRACTOR make a one (1) time advance payment to the CONTRACTOR in an amount equal to five percent (5%) of the total Contract Sum**, provided, that the CONTRACTOR shall secure an Advance Payment Guarantee in favor of MANILA WATER before the release of the five percent (5%) advance payment of the Contract amount.

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57 *See Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp.*, G.R. Nos. 169408 & 170144, Apr. 30, 2008; *Riser Airconditioning Services Corp. v. Confield Construction Development Corp.*, G.R. No. 143273, Sep. 20, 2004.
58 Exhibit "P-22-a," Docket – Vol. II, p. 1154.
59 Exhibit "P-24," Docket – Vol. I, p. 580.
60 Exhibit "P-23," Docket – Vol. I, p. 531.

> **The Advance Payment shall be repaid by the CONTRACTOR by deducting five percent (5%) from the last monthly progress billings until the Advance Payment is fully repaid.** Payments shall be in accordance with the retention requirements of Construction Contract Special Condition entitled SC – 15 'Invoicing and Payment'." [*Emphasis and underscoring supplied*]

Since the "advance payment" will eventually be deducted from Manila Water Company, Inc.'s liability under the contract for services rendered by petitioner, it is likewise proper to subject the same to withholding tax. As payor of the income and as a withholding agent, Manila Water Company, Inc. merely complied with the requirements of the law.

Notably, the alleged "contractual advances" raises the following questions which petitioner failed to address:

(1) What is the contractual basis for the contractual advances?
(2) Since the agreement between petitioner and Manila Water Company, Inc. contemplates only "a one (1) time advance payment," why were there other contractual advances made by the latter?
(3) Why weren't the other "CONTRACT DOCUMENTS" stated or referred to in the Contract Agreement presented in evidence?

It bears to stress the legal presumption that evidence willfully suppressed would be adverse if produced.[61]

In view of the foregoing, the Court doubts petitioner's convenient reasoning that the said "contractual advances" became income only after June 28, 2018 when it is already entitled to ITH.

Nonetheless, although petitioner is eligible to the grant of ITH only from June 28, 2018, its alleged erroneous payments for taxable years 2017 and 2018 may still be refunded as *excess* creditable income tax withheld, if compliance with the provisions of law governing the refund of excess and unutilized

[61] Rule 131, Section 3(e) of the Rules of Court.

creditable withholding taxes (CWTs) is established. As explained by the Supreme Court in *Citibank, N.A. v. Court of Appeals and Commissioner of Internal Revenue*:[62]

> "Withholding taxes are 'deposits' which are subject to adjustments at the proper time when the complete tax liability is determined.
>
> x x x As petitioner posted net losses in its 1979 and 1980 returns, it was not liable for any income taxes. Consequently and clearly, **the taxes withheld during the course of the taxable year, while collected legally under the aforesaid revenue regulation, became untenable and took on the nature of erroneously collected taxes at the end of the taxable year**." [*Emphasis and underscoring added*]

Relative thereto, Section 58 of the NIRC provides for the refund of withholding income taxes if the tax collected at source exceeds the tax due on the return, subject to the provisions of Section 204.

> "SEC. 58. *Return and Payment of Taxes Withheld at Source.* — x x x
>
> (D) *Income of Recipient.* — Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but **the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204**; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.
>
> All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent." [*Emphasis added*]

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[62] G.R. No. 107434, Oct. 10, 1997.

Accordingly, the present claim shall be tested against the requisites for a claim of refund or tax credit of *unutilized excess CWTs*, particularly under Sections 76, 204(C), and 229 of the NIRC, as well as pertinent revenue regulations.

Petitioner's claim for refund pertains to excess creditable withholding taxes, therefore, it must comply with the requisites for a valid claim of refund or tax credit of unutilized excess CWTs

Petitioner avers that in 2017, Manila Water Company, Inc. made the following payments in connection with the NBAQ4 Project and correspondingly withheld the 2% creditable withholding tax (CWT):

PAYMENT FOR	DATE	AMOUNT	2% CWT
5% Advance Payment	28 Sep 2017	₱ 240,361,021.22	₱ 4,807,220.42[63]
Progress Billing No. 1	13 Oct 2017	153,678,137.02	3,073,562.74[64]
Progress Billing No. 2	22 Nov 2017	57,736,191.24	1,154,723.82[65]
Progress Billing No. 3	12 Dec 2017	371,610,755.40	7,432,215.11[66]
Progress Billing No. 4	20 Dec 2017	276,351,275.40	5,527,025.51[67]
		₱ 1,099,737,380.28	**₱ 21,994,747,601**

Using the percentage of completion (PoC) method for the Project, petitioner declared ₱193,876,615.00 in revenues out of the total ₱1,099,737,380.28 in its original and amended ITR for 2017. According to petitioner, the rest of the amount collected was booked as contractual advances—a liability account being unearned revenue.

In its amended Annual ITR for 2017, petitioner also declared a taxable income of ₱15,118,964.00 and tax due other than minimum corporate income tax (MCIT) of ₱4,535,689.00. Allegedly, it applied the amount withheld by Manila Water Company, Inc. to the tax due, thereby resulting in overpayment of ₱17,527,898.00, as shown below:

[63] Exhibits "P-23" and "P-24", Docket – Vol. I, pp. 531 and 580.
[64] Exhibits "P-25", "P-26", and "P-27", Docket – Vol. I, pp. 580A to 583.
[65] Exhibits "P-28", "P-29", and "P-30", Docket – Vol. I, pp. 584 to 586.
[66] Exhibits "P-31", "P-32", and "P-33", Docket – Vol. I, pp. 587 to 589.
[67] Exhibits "P-34", "P-35", and "P-36", Docket – Vol. I, pp. 590 to 592.

Net Sales/Revenues		**₱ 193,876,615.00**
Less: Cost of Sales/Services		128,835,241.00
Total Gross Income		65,041,374.00
Less: Total Itemized Deductions		49,922,410.00
Taxable Net Income		**15,118.964.00**
Income Tax Rate		30%
Total Income Tax Due		**4,535,689.00**
Less: Total Credits/Payments		
MCIT paid for 3rd quarter, 2017	₱ 68,839.00	
Creditable Tax Withheld	₱ 21,994,748.00	22,063,587.00
Net Tax Payable (Overpayment)		**₱ 17,527,898.00**

Meanwhile, in 2018, Manila Water Company, Inc. made the following payments in connection with the NBAQ4 Project and correspondingly withheld the 2% CWT:

PAYMENT FOR	DATE	AMOUNT	2% CWT
Progress Billing No. 5	09 Feb 2018	₱ 20,781,872.93	₱ 415,637.46[68]
Progress Billing No. 6	15 Mar 2018	20,137,464.12	402,749.28[69]
Progress Billing No. 7	13 Apr 2018	30,513,530.89	610,270.62[70]
Progress Billing No. 8	29 May 2018	28,418,135.91	568,362.72[71]
Progress Billing No. 9	18 Jun 2018	15,554,079.76	311,081.60[72]
Progress Billing No. 10	18 Jul 2018	17,404,167.45	348,083.35[73]
Progress Billing No. 11	07 Sep 2018	9,852,746.55	197,054.93[74]
		₱ 142,661,997.61	**₱ 2,853,239.96**

As already intimated, although effective June 28, 2018, petitioner became eligible to the grant of ITH, Manila Water Company, Inc. continued to withhold 2% income tax from its payments to petitioner for Progress Billings up to September 7, 2018 (for Progress Billings Nos. 10 and 11). Manila Water Company, Inc. stopped withholding after September 7, 2018.

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68 Exhibits "P-41", and "P-43", Docket – Vol. I, pp. 579 and 603, respectively; Exhibit "P-42", Docket – Vol. II, p. 1196.
69 Exhibits "P-44" and "P-46", Docket – Vol. I, pp. 604 and 606, respectively; Exhibit "P-45", Docket – Vol. II, p. 1197.
70 Exhibits "P-47" and "P-49", Docket – Vol. I, pp. 607 and 609, respectively; Exhibit "P-48", Docket – Vol. II, p. 1198.
71 Exhibits "P-50", "P-51" and "P-52", Docket – Vol. I, pp. 610 to 612.
72 Exhibits "P-50", "P-51" and "P-52", Docket – Vol. I, pp. 610 to 612.
73 Exhibits "P-56" and "P-58", Docket – Vol. I, pp. 616 and 618, respectively; Exhibit "P-57", Docket – Vol. II, p. 1199.
74 Exhibits "P-59" and "P-61", Docket – Vol. I, pp. 619 and 621, respectively; Exhibit "P-60", Docket – Vol. II, p. 1200.

Petitioner filed its Annual ITR for 2018 on April 8, 2019.[75] It ticked the box, "*To be refunded*", in Line No. 21 which says: "*If Overpayment, mark 'x' one box only.*" Using the PoC method of revenue recognition, it segregated its income subject to tax for revenue earned from January 1, 2018 up to June 27, 2018 (in the column for "TOTAL REGULAR") from its income exempt from tax for revenue earned from June 28, 2018 up to December 31, 2018 (in the column for "TOTAL EXEMPT"):

	TOTAL EXEMPT	TOTAL REGULAR	TOTAL
Net Sales/Revenues/ Receipts/Fees	₱ 838,115,940.00	₱ 127,905,792.00	₱ 966,021,732.00
Less: Cost of Sales/Services	606,426,865.00	67,917,279.00	674,344,144.00
Gross Income from Operations	231,689,075.00	59,988,513.00	291,677,588.00
Add: Other Taxable Income not subject to final tax	3,558,266.00	138.00	3,558,404.00
Total Gross Income/Gross Taxable Income	235,247,341.00	59,988,651.00	295,235,992.00
Less: Total Itemized Deductions	64,285,560.00	62,114,749.00	126,400,309.00
Net Taxable Income/Net Income	₱170,961,781.00	(₱2,126,098.00)	₱168,835,683.00
Applicable Income Tax Rate	0%	30%	
Less: Total Credits/Payments			
Prior Years Excess Credits other than MCIT		17,527,898.00	
Creditable Tax Withheld from Previous Quarters		2,853,234.00	
Total Amount Payable (Overpayment)		**(₱20,381,132.00)**	

On the basis of the foregoing, petitioner seeks the refund of ₱20,381,132.00 comprising of the ₱17,527,898.00 excess credits other than MCIT from 2017 and the ₱2,853,234.00 creditable tax withheld in 2018.

[75] Exhibit "P-62", Docket – Vol. I, pp. 622 to 631.

1.) Petitioner is not entitled to the refund of the amount of ₱17,527,898.00 representing excess credits other than MCIT from taxable year 2017

Section 76 of the NIRC provides two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due: 1.) refund (either in the form of cash or tax credit certificate); or 2.) carry over the excess credit. However, once the carry-over option is made, it becomes irrevocable for that taxable period. The phrase "for that taxable period" qualifies the taxes paid during the taxable year to which the option to carry over was applied; it does not suggest that the option to carry-over can still be changed in the next taxable period.[76]

In exercising its option, the corporation must signify in its annual corporate adjustment return the intention either to carry over the excess credit or to claim a refund by marking the box provided in the BIR form.

Here, the established fact is that petitioner ticked the box "*To be carried over as tax credit next year/quarter*" in its original and amended 2017 Annual Income Tax Return (ITR).[77] However, petitioner opines that the irrevocability rule under Section 76 does not apply in this case as it changed its taxpayer status to exempt the following year.

We disagree.

Petitioner cites the following statement in the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue* to buttress its theory:[78]

> "Where, however, the corporation permanently ceases its operations before full utilization of the tax credits it opted to carry over, it may then be allowed to claim the refund of the remaining tax credits. In such a case, the remaining tax credits can no longer be carried over and the irrevocability rule ceases to apply. *Cessante ratione legis, cessat ipse lex.*"

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[76] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, Jul. 7, 2009.
[77] *supra*, note 8.
[78] G.R. No. 176290, Sep. 21, 2007.

The above statement, however, is only a footnote[79] in the case. At best, it is an *obiter dictum* or an opinion expressed by a court upon some question of law which is not necessary for the determination of the case before it.[80] An *obiter dictum* does not establish a binding precedent.[81]

Still, granting that this Court ought to treat the above statement as doctrinal, petitioner cannot invoke it in this case. The statement contemplates a scenario where a corporation "permanently ceases its operations before full utilization of the tax credits it opted to carry over." Here, petitioner has not permanently ceased operations. It still has the opportunity to utilize the tax credits after its six-year ITH or when it earns income that is not directly attributable to its BOI-registered project. Thus, this Court finds no reason to exempt petitioner from the applicability of Section 76 of the NIRC.

In sum, petitioner is not allowed to the refund of the amount of ₱17,527,898.00 representing prior year's excess credits other than MCIT, specifically for taxable year 2017. On the other hand, considering that in its Annual ITR for 2018, it opted for a refund by marking the box corresponding to the option, "*To be refunded*", its CWTs for 2018 in the amount of ₱2,853,234.00 may still be the proper subject of a claim for refund or tax credit pursuant to Section 76 of the NIRC.

Hence, the Court shall proceed to determine petitioner's compliance with the requisites for a valid claim of refund or tax credit of excess unutilized CWTs from taxable year 2018.

2.) Petitioner is entitled to the refund of excess CWTs for taxable year 2018 amounting to ₱2,853,239.96

Aside from compliance with Section 76 of the NIRC, jurisprudence and pertinent BIR Revenue Regulations outline the following requisites for a valid claim of refund or tax credit of excess unutilized CWTs:

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[79] *Id.*, footnote no. 23.
[80] *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) vs. Commissioner of Internal Revenue*, G.R. No. 215159, Jul. 5, 2022.
[81] *Cadajas v. People*, G.R. No. 247348, Nov. 16, 2021.

1. The claim must be filed within the two-year prescriptive period under Sections 204(C) and 229 of the NIRC;

2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld must be included in the return of the payee or recipient.[82]

The *first* requisite directs compliance with the following provisions of the NIRC:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may -
>
> x x x
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." [*Emphasis added*]
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — **No suit or proceeding shall be maintained in any court** for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or

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[82] *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, Oct. 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, Dec. 20, 1991; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, Oct. 11, 2012; Section 2.58, Revenue Regulations No. 2-98, as amended.

> collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphases added)

The above-quoted provisions are clear: the claimant must file an administrative claim before a judicial claim, and both claims must be filed within a two-year reglementary period. Timeliness in filing the claims is mandatory and jurisdictional; thus, the Court cannot take cognizance of a judicial claim for refund filed either prematurely or belatedly.[83] The two-year reglementary period shall be reckoned from the time the final adjustment return or the Annual ITR was filed, since it is only at that time when it can be determined whether the corporate taxpayer paid an amount exceeding its annual income tax liability.[84]

Based on the records of this case, petitioner filed its original ITR for taxable year 2018 on April 8, 2019.[85] Counting the two-year period from said date, petitioner had until April 8, 2021 to file its claims. Petitioner filed its administrative claim on July 22, 2019[86] and its judicial claim on June 29, 2020.[87] Both are well within the prescriptive period.

As to the <u>*second*</u> requisite, it is settled that the certificate of creditable tax withheld at source is the competent proof to

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[83] *Commissioner of Internal Revenue v. San Miguel Corporation*, G.R. Nos. 180740 and 180910, Nov. 11, 2019.
[84] *Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue*, G.R. No. 182582, Apr. 17, 2017.
[85] Exhibits "P-62" to "P-62-I," Docket – Vol. I, pp. 622 to 631.
[86] Exhibits "P-7" to "P-7-1," Docket – Vol. I, pp. 452 to 463.
[87] *Supra*, note 13.

establish the fact of withholding.[88] Figures appearing therein can be taken at face value since it is executed under the penalty of perjury pursuant to Section 267 of the NIRC. Upon presentation of the certificate, the burden of proof shifts to the BIR to prove that: (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.[89]

Here, verification of the records show that petitioner presented the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued by its sole client and withholding agent, Manila Water Company, Inc., reflecting the following:

EXHIBIT NO.	PERIOD COVERED[90]		INCOME PAYMENTS	CWT
	From	To		
"P-90-6A"	09/02/2018	09/02/2018	₱ 20,781,872.93	₱ 415,637.46
"P-90-7A"	15/03/2018	31/03/2018	20,137,464.12	402,749.28
"P-90-8A"	13/04/2018	30/04/2018	30,513,530.89	610,270.62
"P-90-9A"	29/05/2018	31/05/2018	28,418,135.91	568,362.72
"P-90-10A"	18/06/2018	30/06/2018	15,554,079.76	311,081.60
"P-90-11A"	18/07/2018	31/07/2018	17,404,167.45	348,083.35
"P-90-12A"	07/09/2018	30/09/2018	9,852,746.55	197,054.93
TOTAL			**₱142,661,997.61**	**₱2,853,239.96**

The certificates indicate the amounts of CWT paid and the corresponding income payments from which they are withheld. Verily, petitioner established compliance with the second requisite.

As to the *third* requisite, petitioner presented the following to prove that income payments related to the claimed CWTs formed part of its declared income: Quarterly and Annual ITRs for taxable years 2017 to 2019,[91] Audited Financial Statements (AFS) for taxable years 2017 and 2018,[92] General Ledgers (GLs)

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[88] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, Sep. 29, 2014
[89] *Id.*
[90] Date format: *dd/mm/yyyy*
[91] Exhibits "P-90-13" to "P-90-22."
[92] Exhibits "P-40" and "P-63", respectively.

of CWTs for taxable years 2017 and 2018,[93] 2018 Revenues Not Subjected to Withholding Tax,[94] Value of Work Accomplishment / Engineer's Certification of PoC,[95] Official Receipts,[96] and Billing Statements.[97]

Petitioner avers that the construction project from which it generates revenue is a long-term construction contract, therefore it spreads its revenue for the duration of the project such that all income payments collected during the year will not necessarily be reported as revenue in the same year.[98] This is pursuant to Section 48 of the NIRC, which states:

> "SEC. 48. *Accounting for Long-Term Contracts.* — Income from long-term contracts shall be reported for tax purposes in the manner as provided in this Section. As used herein, the term *'long-term contracts'* means building, installation or construction contracts covering a period in excess of one (1) year. **Persons whose gross income is derived in whole or in part from such contracts shall report such income upon the basis of percentage of completion.** The return should be accompanied by a return certificate of architects or engineers showing the percentage of completion during the taxable year of the entire work performed under contract. There should be deducted from such gross income all expenditures made during the taxable year on account of the contract, account being taken of the material and supplies on hand at the beginning and end of the taxable period for use in connection with the work under the contract but not yet so applied. If upon completion of a contract, it is found that the taxable net income arising thereunder has not been clearly reflected for any year or years, the Commissioner may permit or require an amended return." [*Emphasis added*]

The ICPA, Mr. Emmanuel Y. Mendoza, compared the revenue declared in the Annual ITRs for the taxable years 2017 and 2018 against the revenue recorded in the GLs, as follows:

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[93] Exhibits "P-90-27" to "P-90-28" and "P-90-29" to "P-90-30", respectively.
[94] Annex B, Exhibit "P-90," Docket – Vol. III, p. 1285.
[95] Exhibits "P-74" to "P-74-c."
[96] Exhibits "P-90-1B" to "P-90-12B."
[97] Exhibits "P-90-1C" to "P-90-12C."
[98] Par. 70, Exhibit "P-104," Docket – Vol. III, p. 1304.

		2017	2018			
		Exhibit "P-90-14" and "P-90-29"	Exhibit "P-90-18" and "P-90-30"			
			January to June	July to December	**Total**	**Grand Total**
Project Cost For The Period	(a)	₱178,660,481	₱129,700,742	₱670,335,761		
Project Cost To Date	(b)	178,660,481	308,361,223	978,696,984		
Project Cost at Completion	(c)	4,429,932,476	4,356,425,790	3,784,276,301		
PoC for the period (a/c)	(d)	4.03%	2.98%	17.71%		
PoC to date (b/c)	(e)	4.03%	7.08%	25.86%		
Per Audited Financial Statements /Ledger						
Total Estimated Project Cost at Completion	(f)	4,429,932,476	4,356,425,790	3,784,276,301		
Revenue Per AFS (f x d)	(g)	178,660,481	129,700,742	670,335,761	800,036,503	978,696,984
Per Annual Income Tax Return						
Total Contract Price (excluding VAT)	(h)	4,807,220,424	4,807,220,424	4,807,220,424		
Revenue Per Cost-to-Cost POC (h x d)	(i)	193,876,615	143,121,927	851,537,125		-
Temporary Differences						
Excess of Estimate Over Actual Cost, End (i - g)	(j)	15,216,134	13,421,185	181,201,364		
Excess of Estimate Over Actual Cost, Beg.	(k)	-	15,216,134	13,421,185		-
Revenue Per ITR (g + j - k)	(l)	**193,876,615**	**127,905,793**	**838,115,940**	**966,021,733**	**1,159,898,348**
Difference (g - l)		(₱15,216,134)	₱1,794,949	(₱167,780,178)	(₱165,985,230)	(₱181,201,364)

The ICPA states that the PoC used for financial and tax reporting purposes, computed based on costs incurred to date over total project cost at completion, were higher than the PoC based on the Engineer's Certification, which is based on actual accomplishment. The PoC certified by the engineer was measured at 3.90%, 6.00%, and 9.30% as of December 31, 2017, June 27, 2018, and December 31, 2018, respectively.[99]

The ICPA also noted that although petitioner recognized revenue using the PoC method in accordance with Section 48 of the NIRC, it used the *total project cost* as the base amount in its AFS, while it used the *total contract price* as the base amount in its ITR.[100]

Moreover, the ICPA states that the revenue recognized in the AFS for taxable years 2017 and 2018 conform with Philippine Accounting Standards (PAS) 11 "Construction Contracts"[101] and Philippine Financial Reporting Standards (PFRS) 15 "Revenue from Contracts with Customers,"[102] respectively, which is based on the PoC. On the other hand, revenue reported in its ITRs for taxable years 2017 and 2018 conformed with Section 44 of RR No. 2-40, which is also based on the PoC.

For taxable years 2017 and 2018, petitioner declared as revenues ₱193,876,615.00 and ₱966,021,732.00, respectively, out of the total income payments made by Manila Water Company, Inc. in the amounts of ₱1,099,737,380.28 in 2017 and ₱142,661,997.61 in 2018. This was based on the following PoC: 4.03% for taxable year 2017; 2.98% from January 1, 2018 to June 27, 2018; and 17.71% from June 28, 2018 to December 31, 2018. The ICPA's comparison of the amount of revenues subjected to the CWTs claimed for refund vis-à-vis the amount of revenues reported in the Annual ITRs for taxable years 2017 and 2018 revealed a difference of ₱82,501,031.00, broken down as follows:[103]

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[99] Exhibits "P-74", "P-74-a" to "P-74-c."
[100] Exhibit "P-90," Docket – Vol. I, p. 1276.
[101] PAS 11 – Construction Contracts require the allocation of contract revenue and contract costs to accounting periods in which construction work is performed. Contract revenues and expenses are recognised by reference to the stage of completion of contract activity where the outcome of the construction contract can be estimated reliably, otherwise revenue is recognised only to the extent of recoverable contract costs incurred.
[102] PFRS 15 – replaces PAS 18 "Revenue" and PAS 11 "Construction Contracts" beginning January 1, 2018, which establishes a comprehensive framework for determining when to recognize revenue and how much revenue to recognize. The core principle is for an entity to recognize revenue that depicts the transfer of promised goods or services to the customer in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.
[103] Pars. 69 and 70, Exhibit "P-104," Docket – Vol. III, p. 1304.

TAXABLE YEAR	AMOUNT OF CWT	REVENUE PER ITR	REVENUE PER CWT	DIFFERENCE
2017	₱ 21,994,748	193,876,615	1,099,737,380	(₱ 905,860,765)
2018	2,853,240	966,021,732	142,661,998	823,359,734
Total	**₱ 24,847,988**	**1,159,898,347**	**1,242,399,378**	**(₱ 82,501,031)**

The difference of ₱82,501,031.00 pertains to the net of the following: 1.) advance payment recognized as unrealized revenue (liability) per the AFS, but reported as revenue per ITR, amounting to ₱769,707,802.00; 2.) 2018 revenues/billings not subjected to withholding tax, amounting to ₱506,005,407.00; and 3.) temporary difference between Revenue per AFS/GL vs. Revenue per ITR amounting to ₱181,201,364.00.[104]

Advance downpayments reported as Customer Advances in the 2018 AFS Note 9	₱ (769,707,802.00)
2018 Revenues/Billings not subjected to withholding tax	506,005,407.00
Temporary differences between the Revenue per AFS/General Ledger and the Revenue per ITR	181,201,364.00
Total	**₱ (82,501,031.00)**

The ICPA ascertained that the revenues subjected to withholding tax were based on the income payments (*down payment and payments of progress billings*) reported by Manila Water Company, Inc. per CWT Certificates issued to petitioner, while the revenue reported in the AFS and GLs were based on the PoC resulting in a timing difference of ₱263,702,394.00.[105] This amount was reported as *reconciling item*[106] in both Annual ITRs for taxable years 2017[107] and 2018.[108] Thus, the cumulative balance of the "contractual advances" amounting to ₱769,707,802.00 (including the ₱82,501,031.00 difference) as of December 31, 2018 is deemed to have formed part of petitioner's reported revenues in taxable year 2019 amounting to ₱960,291,593.00.[109]

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[104] Par. 70, Exhibit "P-104," Docket – Vol. III, p. 1304.
[105] ₱769,707,802.00 less ₱506,005,407.00 (with ₱1.00 difference).
[106] Exhibit "P-62-g", Schedule 10, Docket – Vol. I, p. 629.
[107] Line 3, Excess Receipts over Actual Accomplishment, Schedule 9 - Reconciliation of Net Income per Books Against Taxable Income, Exhibit "P-90-14".
[108] Line 2, Excess of Estimated over Actual, Schedule 10 - Reconciliation of Net Income per Books Against Taxable Income, Exhibit "P-90-18".
[109] Line 31, Part IV, Exhibit "P-90-22".

Accordingly, petitioner was able to establish that it declared in its 2018 and 2019 Annual ITRs the income payments related to the claimed CWTs for taxable year 2018 amounting to ₱2,853,239.96.

In sum, petitioner showed compliance with the requisites for a valid claim of refund of excess unutilized CWTs, but only with respect to taxable year 2018.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Respondent is hereby ordered to refund petitioner the amount of **₱2,853,239.96**, representing the latter's excess creditable withholding taxes for taxable year 2018.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(on leave)
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision was reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice