REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

ROXAS LAND CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7219

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JAN 18 2008, 2:10 PM

x - x

DECISION

CASANOVA, *J.*:

Nature of the Case

This is a Petition for Review filed before this Court, praying for the issuance of tax credit certificate in favor of the petitioner for the total amount of P46,848,724.00 representing its excess/unutilized income tax credits for the years ending December 31, 2002 and December 31, 2003.

Statement of the Facts

Petitioner, Roxas Land Corporation, is a corporation duly organized and existing by virtue of Philippine laws, with principal office located at the 31st Floor, Tower One, Ayala Triangle, Ayala Avenue, Makati City.[1] It is principally engaged in the real estate business, and is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) registered taxpayer with Taxpayer Identification Number (TIN) 004-672-615-000[2] under Certificate of Registration OCN 0000017158 dated April 2, 1996.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including the power to decide, approve and grant claims for refunds or issuance of tax credit certificate of overpaid internal revenue taxes as provided by law with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

On April 15, 2003, petitioner filed with respondent's Large Taxpayers Division its Annual Income Tax Return[5] for the year ending December 31, 2002[6] showing overpayment of income tax in the amount of P21,341,193.00, computed as follows:

Sales/Revenues/Receipts		P 528,553,996.00
Less:	Cost of Sales/Services	583,790,017.00
Gross Income from Operation		P (55,236,021.00)
Add:	Non-Operating & Other Income	51,437,232.00
Total Gross Income		P (3,798,789.00)
Less:	Deductions	101,138,333.00
Taxable Income (Loss)		P(104,937,122.00)
Income Tax Due		NIL
Less:	Creditable Tax Withheld for the First Three Quarters	P 12,171,073.00
	Creditable Tax Withheld for the Fourth Quarter	9,170,120.00
	Total Tax Credits	P 21,341,193.00
Tax Payable/(Overpayment)		**P (21,341,193.00)**

In the same tax return, petitioner indicated its option to be issued a Tax Credit Certificate.[7]

[1] Paragraph 1, Joint Stipulation of Facts and Restatement of Issues (JSFRI), CTA Records page 86
[2] Paragraph 3, JSFRI, CTA Records page 86
[3] Exhibit "A", CTA Records page 128
[4] Paragraph 2, JSFRI, CTA Records page 86
[5] BIR Form No. 1702
[6] Paragraph 4, JSFRI, CTA Records page 87; Exhibit "B", CTA Records page 129
[7] Paragraph 5, JSFRI, CTA Records page 87; Exhibit "B-2", CTA Records page 129

On April 15, 2004, petitioner electronically filed its Annual Income Tax Return for the year ending December 31, 2003 with Filing Reference No. 120400000139639[8] showing overpayment of income tax in the amount of P25,468,950.28. However, on April 29, 2004, petitioner filed an amended Annual Income Tax Return[9] showing instead an overpayment of income tax in the amount of P25,507,531.00, computed as follows:

Sales/Revenues/Receipts		P 423,409,648.00
Less:	Cost of Sales/Services	428,729,618.00
Gross Income from Operation		P (5,319,970.00)
Add:	Non-Operating & Other Income	4,835,940.00
Total Gross Income		P (484,030.00)
Less:	Deductions	71,188,232.00
Taxable Income (Loss)		P (71,672,262.00)
Income Tax Due		NIL
Less:	Creditable Tax Withheld for the First Three Quarters	P 19,044,152.00
	Creditable Tax Withheld for the Fourth Quarter	6,463,379.00
	Total Tax Credits	P 25,507,531.00
Tax Payable/(Overpayment)		**P (25,507,531.00)**

In the same return, petitioner indicated its option to be issued a Tax Credit Certificate[10] by marking the appropriate box therein.

On April 14, 2005, petitioner filed with respondent's Large Taxpayers Division a written claim for the issuance of a Tax Credit Certificate in the amount of P46,848,724.00 allegedly representing its excess income tax credits for the years ending December 31, 2002 and 2003.[11]

To date, petitioner's administrative claim for the issuance of a Tax Credit Certificate for its 2002 and 2003 unutilized/excess tax credit is still pending with the BIR.[12] Thus, petitioner, on April 15, 2005, filed the instant Petition for Review.

[8] Exhibit "C", CTA Records page 144
[9] Paragraph 6, JSFRI, CTA Records page 87; Exhibit "D", CTA Records page 152
[10] Paragraph 7, JSFRI, CTA Records page 87; Exhibit "D-2", CTA Records page 152
[11] Exhibits "E" & "E-1", CTA Records page 170
[12] Paragraph 9, JSFRI, CTA Records page 87

In his Answer filed on May 25, 2005, respondent interposed the following special and affirmative defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. The amount of P46,848,724.00 being claimed by petitioner as alleged excess/unutilized income tax credits for the years ended December 31, 2002 and 2003 was not properly documented;
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;
>
> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon [b]with disfavor (*Western Minolco Corporation vs. Commissioner of Internal Revenue, 124 SCRA 121*[1])."[13]

During trial, petitioner presented testimonial and documentary evidence while respondent submitted the case for decision without presenting any evidence. The Court directed the parties to file their respective Memoranda within thirty (30) days from June 22, 2007. Petitioner filed its Memorandum[14] on July 23, 2007. Respondent did not file his Memorandum. Therefore, the case was submitted for decision on August 6, 2007.

Hence, this Decision.

The Issues[15]

The parties jointly stipulated on the following issues to be resolved, to wit:

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[13] Respondent's Answer, CTA Records page 62
[14] CTA Records pages 226-237
15 JSFRI, CTA Records pages 87-88

I

Whether or not the claim for the issuance of tax credit certificate is timely filed.

II

Whether or not the claim for refund in the amount of P46,848,724.00 is substantiated by sufficient evidence to show that these are excess income tax credits generated by the petitioner in the years ended December 31, 2002 and December 31, 2003.

III

Whether or not petitioner is entitled to the issuance of a tax credit certificate in the amount of P46,848,724.00.

The Court's Ruling

The records disclosed that the claim of P46,848,724.00 represents the sum of petitioner's unutilized creditable taxes withheld during the taxable years 2002 and 2003, in the amounts of P21,341,193.00 and P25,507,531.00, respectively.

Section 76 of the National Internal Revenue Code of 1997, as amended, states:

> **Section. 76.** *Fiscal Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
>
> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income 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.

Since petitioner properly marked the option "To be issued a Tax Credit Certificate" in its income tax returns for both years[16] and did not carry-over the unutilized tax credits of P21,341,193.00 and P25,507,531.00 to the succeeding years' returns[17], the same may be a subject of a claim for tax credit certificate under Section 76 of the NIRC of 1997, as amended.

However, it is well settled that the following requisites must be further complied with in order that the subject claim may be granted, viz:

1) That the claim for refund was filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;
2) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
3) That the income upon which the taxes were withheld were included in the return of the recipient.[18]

Claim filed within the two-year prescriptive period

In the computation of the two-year prescriptive period, a "year" is understood to be of twelve (12) calendar months, irrespective of the number of days in a month. This was explained in **Commissioner of Internal Revenue and Arturo V. Parcero in his capacity as Revenue District Officer of Revenue District No. 049 (Makati) vs. Primetown Property Group, Inc.,**[19] as follows:

> "Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter — the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap

[16] Exhibits "B-2", "C-4", and "D-2"
[17] Exhibits "C-3", "D-1" and "F-2"
[18] Section 2.58, Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals and CIR, 280 SCRA 459; Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue, 519 SCRA 93
[19] G.R. No. 162155, August 28, 2007

year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.

There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods.

Applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987 to this case, the two-year prescriptive period (reckoned from the time respondent filed its final adjusted return[34] on April 14, 1998) consisted of 24 calendar months, computed as follows:

Year 1	1st calendar month	April 15, 1998	to	May 14, 1998
	2nd calendar month	May 15, 1998	to	June 14, 1998
	3rd calendar month	June 15, 1998	to	July 14, 1998
	4th calendar month	July 15, 1998	to	August 14, 1998
	5th calendar month	August 15, 1998	to	September 14, 1998
	6th calendar month	September 15, 1998	to	October 14, 1998
	7th calendar month	October 15, 1998	to	November 14, 1998
	8th calendar month	November 15, 1998	to	December 14, 1998
	9th calendar month	December 15, 1998	to	January 14, 1999
	10th calendar month	January 15, 1999	to	February 14, 1999
	11th calendar month	February 15, 1999	to	March 14, 1999
	12th calendar month	March 15, 1999	to	April 14, 1999
Year 2	13th calendar month	April 15, 1999	to	May 14, 1999
	14th calendar month	May 15, 1999	to	June 14, 1999
	15th calendar month	June 15, 1999	to	July 14, 1999
	16th calendar month	July 15, 1999	to	August 14, 1999
	17th calendar month	August 15, 1999	to	September 14, 1999
	18th calendar month	September 15, 1999	to	October 14, 1999
	19th calendar month	October 15, 1999	to	November 14, 1999
	20th calendar month	November 15, 1999	to	December 14, 1999
	21st calendar month	December 15, 1999	to	January 14, 2000
	22nd calendar month	January 15, 2000	to	February 14, 2000
	23rd calendar month	February 15, 2000	to	March 14, 2000
	24th calendar month	March 15, 2000	to	April 14, 2000

We therefore hold that respondent's petition (filed on April 14, 2000) was filed on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period."

The relevant provisions in the NIRC of 1997, as amended, are Sections 204(C) and 229 which provide as follows:

> **Section. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless **the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty*: Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.** (Emphasis supplied)
>
> xxx xxx xxx
>
> **Section. 229.** *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax** or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

Further, in **Commissioner of Internal Revenue vs. TMX Sales, Inc.,**[20] and **ACCRA Investments Corporation vs. Commissioner of Internal Revenue,**[21] the

[20] 205 SCRA 184
[21] 204 SCRA 957

Supreme Court held that the two (2)-year prescriptive period should be counted from the filing of the final adjustment return, because it is only during that date that the exact tax liability or refundability of the tax can be determined.

The present claim covers taxable years 2002 and 2003 for which petitioner filed its income tax returns on April 15, 2003 and April 15, 2004, respectively.[22] Counting from these dates, petitioner had until April 15, 2005 (notwithstanding year 2004 was a leap year) and April 15, 2006 within which to file its claim for taxable years 2002 and 2003, respectively. Therefore, the administrative claim filed on April 14, 2005 and the Petition for Review filed on April 15, 2005, both covering taxable years 2002 and 2003, are within the two-year prescriptive period required by law.

<u>The fact of withholding is established by a copy of a statement issued by the payor to the payee</u>

To establish the fact of withholding of the claimed creditable taxes withheld for taxable years 2002 and 2003 in the respective amounts of P21,341,193.00 and P25,507,531.00 or in the sum of P46,848,724.00, petitioner submitted Certificates of Creditable Tax Withheld at Source[23], Withholding Tax Remittance Returns[24] and related machine validated bank deposit slips, bank official receipts and miscellaneous receipts[25] which were examined by the Court commissioned CPA firm, Constantino Guadalquiver & Co. (CG&Co.).

Based on the review and validation made by CG&Co., the following findings were noted:

[22] Exhibits "B-3" and "C-1"
[23] BIR Form No.2307
[24] BIR Form No. 1606
[25] Exhibits "L-01" to "L-169" and "M-01" to "M-162"

DESCRIPTION	AMOUNT 2002	AMOUNT 2003	TOTAL
A. Creditable withholding tax payments supported by original Withholding Tax Remittance Returns (BIR Form 1606), original Certificates of Creditable Tax Withheld at Source (BIR Form 2307), and other documents evidencing remittance of taxes withheld:			
1. Sale of Condominium Units			
a. Creditable withholding tax payments supported by original Withholding Tax Remittance Returns (BIR Form 1606) which were machine validated and stamped "received" by bank. Also supported by other documents such as original machine validated bank Deposit Slips, original bank Official Receipts and Miscellaneous Receipts.	P17,908,329.14 *Annex K-01*	P20,177,852.57 *Annex K-02*	P38,086,181.71
b. Creditable withholding tax payments supported by original Withholding Tax Remittance Returns (BIR Form 1606) which were machine validated and stamped "received" by bank. Also supported by photocopied bank Deposit Slips)	112,794.03 *Annex K-03*	4,592,690.23 *Annex K-04*	4,705,484.26
c. Creditable withholding tax payments supported by Withholding Tax Remittance Returns (BIR Form 1606) which were machine validated and stamped "received" by bank.	1,275,000.00 *Annex K-05*	-	1,275,000.00
SUB-TOTAL	**P19,296,123.17**	**P24,770,542.80**	**P44,066,665.97**
2. Lease of Condominium Units			
a. Creditable withholding tax payments supported by original Certificates of Creditable Tax Withheld at Source (BIR Form 2307).	P - -	P 394,120.74 *Annex K-06*	P 394,120.74
SUB-TOTAL		**P 394,120.74**	**P 394,120.74**
TOTAL	**P19,296,123.17**	**P 25,164,663.54**	**P44,460,786.71**

B. OTHER FINDINGS			
1. Sale of Condominium Units			
a. Creditable withholding tax payments supported by original machine validated bank Deposit Slip but with photocopied Withholding Tax Remittance Return (BIR Form 1606)	P 1,459,767.27 *Annex K-07*	P -	P 1,459,767.27
b. Creditable withholding tax payments supported by photocopied Withholding Tax Remittance Return (BIR Form 1606) and photocopied bank Deposit Slip.	585,302.99 *Annex K-08*	84,922.98 *Annex K-09*	670,225.97
c. Creditable withholding tax payments with no supporting documents such as Withholding Tax Remittance Return (BIR Form 1606), bank Deposit Slip, Official Receipt or Miscellaneous Receipt.	-	42,461.49 *Annex K-10*	42,461.49
SUB-TOTAL	**P 2,045,070.26**	**P 127,384.47**	**P 2,172,454.73**
2. Lease of Condominium Units			
a. Creditable withholding tax payments supported by Certificates of Creditable Tax Withheld at Source (BIR Form 2307) which is not issued under the Company's name.	P -	P 93,186.60 *Annex K-11*	P 93,186.60
b. Creditable withholding tax payments supported by photocopied Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	-	81,387.00 *Annex K-12*	81,387.00
c. Creditable withholding tax payments without supporting Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	-	40,909.09 *Annex K-06*	40,909.09
SUB-TOTAL	P -	**P 215,482.69**	**P 215,482.69**
TOTAL	**P 2,045,070.26**	**P 342,867.16**	**P 2,387,937.42**
GRAND TOTAL	**P21,341,193.43**	**P 25,507,530.70**	**P46,848.724.13**

Upon further verification against the Certifications issued by the Revenue Accounting Division of the BIR in Quezon City dated October 5, 2006[26] of the creditable withholding taxes supported by photocopied Withholding Tax Remittance Returns in the amounts of P1,459,767.27 and P670,225.97 totaling P2,129,993.24 referred to above as "B. Other Findings", specifically letters "a" and "b" under the caption "1. Sale of Condominium Units", the commissioned independent CPA submitted a supplemental report dated October 11, 2006,[27] stating the following:

Findings	Amount		
	2002	**2003**	**Total**
Sale of Condominium Units			
I. Creditable withholding tax payments supported Withholding Tax Remittance Return (BIR Form 1606) which were traced to the Certifications issued by Revenue Accounting Division of the BIR in Quezon City dated October 5, 2006			
a. Creditable withholding tax payments supported by original machine validated bank Deposit Slip but with photocopied Withholding Tax Remittance Return (BIR Form 1606) *(to be presented as* **<u>Exhibit K-Annex K-07</u>**; ***Exhibit L-161 and Exhibit M-156*** *during the hearing of the Company's case)*	P1,459,767.27	P -	P1,459,767.27
b. Creditable withholding tax payments supported by photocopied Withholding Tax Remittance Return (BIR Form 1606) and photocopied bank Deposit Slip *(to be presented as* **<u>Exhibit K-Annex K-08</u>**; ***Exhibit L-162 to 165 and Exhibit M-157 to 160****, during the hearing of the Company's case)*	585,302.99	-	585,302.99
Sub-total	**P2,045,070.26**	**P -**	**P2,045,070.26**
II. **OTHER FINDING**			
Creditable withholding tax payments supported by photocopied Withholding Tax Remittance Return (BIR Form 1606) which			

[26] Exhibits "X" and "X-01"
[27] Exhibit "W"

<u>cannot</u> be traced to the certifications issued by Revenue Accounting Division of the BIR in Quezon City dated October 5, 2006			
a. Creditable withholding tax payments supported by photocopied Withholding Tax Remittance Return (BIR Form 1606) and photocopied bank Deposit Slip (to be presented as **<u>Exhibit K-Annex K-09</u>**; ***Exhibit L-166 to 167 and Exhibit M-161 to 162***, during the hearing of the Company's case)	P -	P84,922.98	P 84,922.98
Sub-total	**P -**	**P84,922.98**	**P 84,922.98**
Total	**P2,045,070.26**	**P84,922.98**	**P2,129,993.24**

However, after carefully examining the reports presented by the commissioned independent CPA, this Court finds that creditable withholding taxes which do not have valid supporting documents in the amount of P342,867.16 should be disallowed from petitioner's claim, to wit:

		Amount of Claim		
		2002	2003	Total
Sale of Condominium Units				
a. Creditable withholding taxes supported by photocopied Withholding Tax Remittance Return (BIR Form 1606) and photocopied bank Deposit Slip which cannot be traced to the certifications issued by Revenue Accounting Division of the BIR in Quezon City dated October 5, 2006	Exhibits K - Annex K-09; L-166, L-167, M-161 & M-162	P -	P84,922.98	P 84,922.98
b. Creditable withholding taxes with no supporting documents such as Withholding Tax Remittance Return (BIR Form 1606), bank Deposit Slip, Official Receipt or Miscellaneous Receipt	Exhibit K-Annex K-10	-	42,461.49	42,461.49
Lease of Condominium Units				
a. Creditable withholding taxes supported by Creditable Tax Withheld at Source (BIR Form 2307) which is not issued under the name of petitioner	Exhibits K-Annex K-11 & L-168	-	93, 186.60	93,186.60
b. Creditable withholding taxes supported by photocopied Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Exhibits K-Annex K-12 & L-169	-	81,387.00	81,387.00
c. Creditable withholding taxes without Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Exhibits K-Annex K-06	-	40,909.09	40,909.09
	Total	**P -**	**P342,867.16**	**P 342,867.16**

Likewise, creditable taxes withheld in the amount of P2,349,627.02 pertaining to taxable years 2001 and 2004, which were outside the period of claim must be denied:

Exhibit	Date	Payor/Withholding Agent	Included in 2002	Included in 2003	Total
Sale of Condominium Units					
L-01	Dec-01	Beatriz Susana Zobel de Ayala	P 42,263.52		P 42,263.52
L-02	Dec-01	Angelino Z. Villanueva	684,650.91		684,650.91
L-142	Dec-01	Patricia Zobel de Ayala	42,461.47		42,461.47
L-143	Dec-01	VRJ Holdings, Inc.	20,151.52		20,151.52
L-161	Dec-01	Patrick D. Johnson/Yolanda Johnson	1,459,767.27		1,459,767.27
L-162	Dec-01	SM Investment Corp.	6,656.13		6,656.13
Lease of Condominium Units					
L-158	Jan-Dec '04	Dominique C. Gormand	-	P93,676.20	93,676.20
	Total		**P2,255,950.82**	**P93,676.20**	**P2,349,627.02**

In sum, out of the claimed creditable taxes withheld for taxable years 2002 and 2003 in the respective amounts of P21,341,193.00 and P25,507,531.00 totaling P46,848,724.00, petitioner was able to substantiate only the amounts of P19,085,242.18 and P25,070,987.64 or in the sum of P44,156,229.82, computed as follows:

	2002	2003	Total
Amount of Claimed Creditable Taxes Withheld	P21,341,193.00	P25,507,531.00	P46,848,724.00
Less: Disallowances			
Creditable withholding taxes without valid supporting documents		P 342,867.16	P 342,867.16
Creditable withholding taxes which fall outside the period of claim	P 2,255,950.82	93,676.20	2,349,627.02
Total Disallowances	P 2,255,950.82	P 436,543.36	P 2,692,494.18
Validly Substantiated Creditable Taxes Withheld	**P19,085,242.18**	**P25,070,987.64**	**P44,156,229.82**

The income was included in the return of the recipient

The income was included in the return of the recipient

As to whether or not petitioner declared the income related to the above substantiated creditable withholding taxes in its income tax returns for taxable years 2002 and 2003, the commissioned independent CPA, CG&Co., summarized its findings as follows[28]:

	Amount		
Description	**2002**	**2003**	**Total**
A. Creditable withholding tax payments with related income included in the Company's Income Tax Return			
1. Sale of Condominium Units			
a. Creditable withholding tax payments with related income included in the Company's Annual Income Tax Return as traced either to Contract to Sell, Deed of Absolute Sale or Deed of Cancellation, Company-prepared Sales Report, General Ledger and Annual Income Tax Return	P18,982,623.91 *Annex N-01*	P19,090,830.94 *Annex N-02*	P38,073,454.85
b. Creditable withholding tax payments with related income included in the Company's income tax return as traced to either Contract to Sell or Deed of Absolute Sale, Company-prepared Sales Report, Computation Sheet, General Ledger and Annual Income Tax Return. The selling price reflected in the Company-prepared Schedule of Monthly Creditable withholding tax payments was based on the selling price before adjustment on sales discount and other charges. Selling price included in Contract to Sell or Deed of Absolute Sale, Sales Report, General Ledger and Annual Income Tax Return is net of sales discount.	2,124,377.25 *Annex N-03*	3,583,866.95 *Annex N-04*	5,708,244.20
c. Creditable withholding tax payments with related income included in the Company's income tax return as traced to Contract to Sell, Computation Sheet, Sales Report, General Ledger and Annual Income Tax Return. Selling price stated in Contract to Sell is net of discount but gross of rebate while that in Sales Report, General Ledger and Annual Income Tax Return is net of			

[28] Exhibit "N"

		Annex N-05	
Sub-total	**P21,107,001.16**	**P24,897,927.27**	**P46,004,928.43**
2. Lease of Condominium Units			
a. Creditable withholding tax payments with related income reported per Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) reconciled with that reported in Company-prepared Schedule of Lease Income, General Ledger and Annual Income Tax Return	-	P 90,090.00 *Annex N-06*	P 90,090.00
b. Creditable withholding tax payments which related income reflected in Certificate of Creditable Tax Withheld at Source (BIR Form 2307) have lesser amounts than those stated in the Schedule of Lease Income, General Ledger and Annual Income Tax Return	-	251,263.63 *Annex N-07*	251,263.63
Sub-total	-	**P 341,353.63**	**P 341,353.63**
TOTAL	**P21,107,001.16**	**P25,239,280.90**	**P46,346,282.06**
B. OTHER FINDINGS			
1. Sale of Condominium Units			
a. Creditable withholding tax payments representing additional taxes paid as adjustment to previously paid taxes (amount still due after adding all previously paid taxes) with related income traced to Deed of Absolute Sale and Company-prepared Sales Report but not determined to be fully included in the General Ledger and Annual Income Tax Return. The General Ledger in 1996 was not available during verification.	P 6,656.13 *Annex N-08*	-	P 6,656.13
b. Creditable withholding tax payments with related income not determined to be fully included in the Company's income tax return. Selling price per Deed of Absolute Sale is higher than that reflected in the Sales Report, General Ledger and Annual Income Tax Return.	227,536.14 *Annex N-09*	-	227,536.14
Sub-total	**P 234,192.27**	-	**P 234,192.27**
2. Lease of Condominium Units			

2. Lease of Condominium Units			
a. Creditable withholding tax payments although traced to Schedule of Lease Income, General Ledger and Annual Income Tax Returns, the related Official Receipt was not issued under the withholding agent's name		P 93,186.60 *Annex N-10*	P 93,186.60
b. Creditable withholding tax payments which related income reflected in Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) have higher amounts than those stated in Schedule of Lease Income and Annual Income Tax Return	-	175,063.20 *Annex N-11*	175,063.20
Sub-total	-	**P 268,249.80**	**P 268,249.80**
TOTAL	**P 234,192.27**	**P 268,249.80**	**P 502,442.07**
GRAND TOTAL	**P21,341,193.43**	**P25,507,530.70**	**P46,848,724.13**

From the foregoing, the creditable withholding taxes in the amounts of P6,656.13 and P227,536.14 which related income were not determined to be fully included in the general ledger and income tax return of petitioner, and the creditable withholding taxes in the amount of P175,063.20 which related income reflected in the certificate were higher than those shown in the return, failed to satisfy the third requisite.

However, since the creditable withholding taxes of P6,656.13[29] and P175,063.20[30] were already disallowed earlier for being outside the period of claim or without valid proof of withholding, only the creditable withholding taxes of P227,536.14 shall be denied for non-compliance with the third requisite.

Consequently, out of the creditable withholding taxes with valid proof of withholding in the amounts of P19,085,242.18 and P25,070,987.64 for taxable years

[29] Exhibit "L-162"
[30] Exhibit "L-158" to "L-169"

2002 and 2003, respectively (totaling to P44,156,229.82) only the creditable withholding taxes of P18,857,706.04 and P25,070,987.64 for taxable years 2002 and 2003, respectively (in the sum of P43,928,693.68), which were verified to have been recorded in petitioner's general ledger and reported in petitioner's income tax returns, have complied with the third requisite computed as follows:

	2002	2003	Total
Claimed creditable taxes withheld with valid proof of withholding	P19,085,242.18	P25,070,987.64	P44,156,229.82
Less: Creditable taxes withheld with related income not determined to be fully included in petitioner's income tax return	227,536.14		227,536.14
Refundable Excess Creditable Taxes Withheld	**P18,857,706.04**	**P25,070,987.64**	**P43,928,693.68**

In view of the foregoing, this Court finds the Petition for Review partly meritorious.

WHEREFORE, the Court hereby **ORDERS** respondent to issue a Tax Credit Certificate in the amount of P43,928,693.68 in favor of herein petitioner representing its unutilized excess creditable taxes withheld for taxable years 2002 and 2003.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division