Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

UNISYS PHILIPPINES LIMITED, Petitioner,	**CTA Case No. 8634** For*:* Refund
-versus-	Members: **DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 07 2016 9:20 a.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on April 11, 2013 by Unisys Philippines Limited as petitioner, against Commissioner of Internal Revenue as respondent, before the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

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[1] Sec. 7. *Jurisdiction*. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

x x x x x x

[2] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner seeks the refund of the amount of ₱31,736,011.00, allegedly representing unutilized creditable taxes erroneously withheld and remitted to the Bureau of Internal Revenue (BIR) for calendar year (CY) 2010.

Petitioner Unisys Philippines Limited is a foreign corporation duly organized by virtue of the laws of the state of Michigan, United States of America. It is engaged in information technology services and solutions, consulting and systems integration, and network services and security. Its principal office is located at Level 9, One Cyberpod, ETON Centris Station, EDSA corner Quezon Avenue, Quezon City. Petitioner is duly licensed to do business in the Philippines under its amended Securities and Exchange Commission

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

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

x x x x x x

(SEC) License No. F-49 dated April 22, 2004.[3] It is likewise a registered taxpayer with Taxpayer Identification No. (TIN) 000-151-596-000 and was issued by the BIR Large Taxpayers District Office (LTDO) with BIR Certificate of Registration No. 8RC0000019521 dated January 1, 1997.[4]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 15, 2011, petitioner filed its Annual Income Tax Return (ITR) for CY 2010 with the BIR. The said return indicated a net loss in the amount of ₱36,939,170.00 and a Minimum Corporate Income Tax (MCIT) in the amount of ₱3,079,325.68.[5]

On October 10, 2012, petitioner filed an administrative claim for the refund of unutilized creditable taxes withheld for CY 2010 in the amount of ₱31,736,011.00, representing the ₱30,255,508.00 for the first three quarters of 2010 and the ₱1,480,503.00 for the fourth quarter of 2010, with the BIR.[6]

There being no action taken by respondent on petitioner's administrative claim for refund, petitioner filed the present Petition for Review[7] before this Court on April 11, 2013.

In her Answer[8] filed via registered mail on June 13, 2013 and received by the Court on June 25, 2013, respondent interposed the following Special and Affirmative Defenses:

[3] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 509.
[4] Par. 2, Admitted Facts, JSFI, Docket, pp. 509-510.
[5] Par. 7, Admitted Facts, JSFI, Docket, p. 510.
[6] Par. 8, Admitted Facts, JSFI, Docket, p. 510.
[7] Docket, pp. 6-18.
[8] Docket, pp. 207-209.

"3. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

4. It is explicitly stated under Section 76 of the NIRC of 1997, as amended, that once a taxpayer chooses the option of carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed **(Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005)**. Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, 'no application for tax refund or issuance of a tax credit certificate shall be allowed therefor' (supra).

5. Applying the foregoing rulings to the instant case, considering that petitioner opted to carry-over its alleged accumulated unutilized creditable withholding taxes of ₱81,555,833.32 for taxable year 2010, *(which includes the ₱31,736,011.00 subject of the present claim)* to the first, second, third quarters and annual income tax return of taxable year 2011 ***(Annexes 'G', 'G-1', 'G-2' and 'G-3' of the Petition)*** when it had actually carried-over said alleged excess creditable withholding tax to the first, second and third quarters in its Quarterly Income Tax Returns and Annual Income Tax Return for taxable year 2011, said option to carry-over becomes irrevocable.

6. Petitioner's act of reporting in its Quarterly Income Tax Returns and Annual Income Tax Return for taxable year 2011 as 'prior year's excess credits' the amount of ₱81,555,833.32, although was not actually applied against the 2011 income tax due, will not change the fact that petitioner had already opted the carry-over option in its first, second and third

quarters Quarterly Income Tax Returns and Annual Income Tax Return for taxable year 2011, and said choice is irrevocable. As previously mentioned, whether or not petitioner actually gets to apply said excess tax credit is irrelevant and would not change the carry-over option already made.

7. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

9. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 76 in relation to Sections 204 and 229 of the 1997 Tax Code, as amended, including Revenue Regulations No. 2-98, as amended.

10. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)**."

Respondent filed her Pre-Trial Brief[9] on July 31, 2013; while petitioner filed its Pre-Trial Brief[10] on August 22, 2013. The Pre-Trial was held on November 8, 2013.[11] Thereafter, as directed by this Court, the parties filed their Joint Stipulation of Facts and Issues[12] on November 18, 2013, which was approved by the Court via the Pre-Trial Order[13] dated March 13, 2014.

[9] Docket, pp. 221-228.
[10] Docket, pp. 230-246.
[11] Minutes of the Pre-Trial, Docket, pp. 503-505.
[12] Docket, pp. 509-516.
[13] Docket, pp. 541-557.

During trial, petitioner presented its Company Finance Manager, Ms. Jennifer Glinoga and the Independent CPA, Mr. Jerome Antonio B. Constantino as its witnesses and formally offered pieces of documentary and testimonial evidence.[14]

On April 25, 2014, petitioner filed a Motion to Admit the Court-commissioned Independent Certified Public Accountant's (ICPA) Supplemental Report as documentary evidence. Respondent, however, failed to file her Comment to both petitioner's Formal Offer of Evidence (FOE) and Motion to Admit.[15]

In the Resolution[16] dated July 2, 2014, this Court admitted petitioner's Exhibits "P-1", "P-1-1", "P-1-2", "P-1-3", "P-2", "P-3", "P-4", "P-4-1", "P-4-2", "P-5", "P-5-1", "P-5-2", "P-5-3", "P-6", "P-6-1", "P-7", "P-7-1", "P-8", "P-8-1", "P-9", "P-9-1", "P-11", "P-11-1", "P-12", "P-12-1", "P-13", "P-13-1", "P-14", "P-14-1", "P-15", "P-15-1", "P-17", "P-17-1", "P-18", "P-18-1", "P-19", "P-19-1", "P-20", "P-20-1", "P-20-2", "P-23", "P-92", "P-92-1", "P-93", "P-93-1", "P-93-2", "P-94, and "P-94-1" to "P-94-4."

On the other hand, the Court denied the admission of Exhibits "P-4-3", "P-4-4", "P-4-5", "P-4-6", "P-4-7", "P-4-8", "P-4-9", and "P-4-10" for failure to have the said exhibits identified during the trial. Exhibits "P-10", "P-10-1", "P-16", "P-16-1", "P-21", "P-21-1", "P-22", and "P-22-1" were also denied admission for failure to submit the originals for comparison.

This Court also denied the admission of Exhibits "P-23-1", "P-23-1-1", "P-23-1-2", "P-23-1-3", "P-23-1-4", "P-23-1-5", "P-23-1-6", "P-23-1-7", "P-23-1-8", "P-23-1-9", "P-23-1-10", "P-23-1-11", "P-23-1-12", "P-23-1-13", "P-23-1-14", "P-23-1-15"," P-23-1-16", ""P-23-1-17", "P-23-1-18", "P-23-1-19", "P-23-1-20", "P-23-1-21", "P-23-1-22", "P-23-1-23", "P-23-1-24", "P-23-1-25", "P-23-1-26", "P-23-1-27", "P-23-1-28", "P-23-1-29", "P-23-1-30", "P-23-1-31", "P-23-1-32", "P-23-1-33", "P-23-1-34", "P-23-1-35", "P-23-2", "P-24", P-

[14] Formal Offer of Evidence filed on April 22, 2014, Docket, pp. 570-601.
[15] Records Verification dated May 23, 2014, Docket, p. 831.
[16] Docket, pp. 836-837.

25", P-26", P-27", P-28-1", to "P-28-4", "P-29-1" to "P-29-9", "P-30-1" to "P-30-3", and "P-30-5" to "P-30-113", "P-30-4", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-63", "P-64", "P-65", "P-66", "P-67", "P-68", "P-69", "P-70", "P-71", "P-72", "P-73", "P-74", "P-75", "P-76", "P-77", "P-78-1" to "P-78-205", "P-79-1" to "P-79-117", "P-80", ""P-81", "P-82", "P-83", "P-84", P-85", "P-86", "P-87-1" to "P-87-23", "P-88-1" to P-88-129", "P-89-1" to "P-89-31", "P-90", and "P-91" for not being found in the records of this case.

On July 18, 2014, petitioner filed a Motion for Reconsideration[17] of this Court's Resolution dated July 2, 2014. On July 23, 2014, petitioner manifested[18] that its Motion for Reconsideration was filed with this Court without attaching Exhibit "P-23-1". According to petitioner, Exhibit "P-23-1" was previously received by this Court on October 14, 2013. In the Resolution[19] dated September 11, 2014, the Court ordered the setting of a Commissioner's Hearing for the purpose of verifying the markings of or for the comparison of the exhibits.

In the Resolution[20] dated December 17, 2014, the Court partially granted petitioner's Motion for Reconsideration. Accordingly, Exhibits "P-10", "P-10-1", "P-16", "P-16-1", "P-21", "P-21-1", "P-22", P-23-1", "P-23-1-1", "P-23-1-2", "P-23-1-3", "P-23-1-4", "P-23-1-5", "P-23-1-6", "P-23-1-7", "P-23-1-8", "P-23-1-9", "P-23-1-10", "P-23-1-11", "P-23-1-12", "P-23-1-13", "P-23-1-14", "P-23-1-15", "P-23-1-16", "P-23-1-17", "P-23-1-18", "P-23-1-19", "P-23-1-20", "P-23-1-21", "P-23-1-22", "P-23-1-23", "P-23-1-24", "P-23-1-25", "P-23-1-26", "P-23-1-27", "P-23-1-28", "P-23-1-29", "P-23-1-30", "P-23-1-31", "P-23-1-32", "P-23-1-33", "P-23-1-34", "P-23-1-35", "P-23-2", "P-24", P-25", "P-26", P-27", P-28-1", to "P-28-4", "P-29-1" to "P-29-9", "P-30-1" to "P-30-3", and "P-30-5" to "P-30-113", "P-30-4", "P-31",

[17] Docket, pp. 838-849.
[18] Manifestation, Docket, pp. 852-855.
[19] Docket, pp. 857-859.
[20] Docket, pp. 871-873.

"P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-63", "P-64", "P-65", "P-66", "P-67", "P-68", "P-69", "P-70", "P-71", "P-72", "P-73", "P-74", "P-75", "P-76", "P-77", "P-78-1" to "P-78-205", "P-79-1" to "P-79-117", "P-84", P-85", "P-86", "P-87-1" to "P-87-23", "P-88-1" to P-88-129", "P-89-1" to "P-89-31", "P-90", and "P-91" were admitted; while Exhibits "P-80", "P-81", "P-82", and "P-83" were denied admission for failure of the said exhibits formally offered to correspond with the documents actually marked.

Petitioner's admitted exhibits are as follows:

Exhibit	Description
P-1	Judicial Affidavit of Independent Certified Public Accountant (ICPA), Mr. Jerome Antonio B. Constantino
P-1-1	Signature of Mr. Jerome Antonio B. Constantino
P-1-2	Curriculum Vitae of Mr. Constantino
P-1-3	List of cases where Mr. Constantino was appointed as Independent CPA
P-2	Original copy of the administrative claim for VAT Refund filed by Petitioner, through Punongbayan & Araullo with the BIR LTDO in Makati duly stamped received by the BIR on October 10, 2012
P-3	Original copy of the Application for Tax Credits/Refunds (BIR Form No. 1914) filed by Petitioner, through Punongbayan & Araullo, and duly received by the BIR on October 10, 2012
P-4	Petition for Review filed by Roque Law Firm on behalf of the Company, duly stamped received by the Court of Tax Appeals on April 11, 2013
P-4-1	Copy of Petitioner's Amended License No. F-49 issued by the Securities and Exchange Commission on April 22, 2004

P-4-2	Copy of Petitioner's Certificate of Registration (BIR Form No. 2303) issued on January 1, 1997
P-4-3	Original computer print-out of Petitioner's Annual Income Tax Return (BIR Form No. 1702) for taxable year ended December 31, 2002
P-4-4	Original computer print-out of Petitioner's Annual Income Tax Return (BIR Form No. 1702) for taxable year ended December 31, 2003
P-4-5	Original computer print-out of Petitioner's Annual Income Tax Return (BIR Form No. 1702) for taxable year ended December 31, 2004
P-4-6	Original computer print-out of Petitioner's Annual Income Tax Return (BIR Form No. 1702) for taxable year ended December 31, 2005
P-4-7	Original computer print-out of Petitioner's Annual Income Tax Return (BIR Form No. 1702) for taxable year ended December 31, 2006
P-4-8	Original computer print-out of Petitioner's Annual Income Tax Return (BIR Form No. 1702) for taxable year ended December 31, 2007
P-4-9	Original computer print-out of Petitioner's Annual Income Tax Return (BIR Form No. 1702) for taxable year ended December 31, 2008
P-4-10	Original computer print-out of Petitioner's Annual Income Tax Return (BIR Form No. 1702) for taxable year ended December 31, 2009
P-5	Original computer print-out of Petitioner's duly filed Annual Income Tax Return for the taxable year 2010 (BIR From 1702)
P-5-1	Line 30C of the Petitioner's 2010 Annual Income Tax Return (BIR Form 1702)
P-5-2	Line 30D of the Petitioner's 2010 Annual Income Tax Return (BIR Form 1702)
P-5-3	Line 33 of the Petitioner's 2010 Annual Income Tax Return (BIR Form 1702) showing the marked circle of the option "To be Refunded"
P-6	Original computer print-out of Petitioner's duly filed Quarterly Income

	Tax Declaration (First Quarter) for the taxable year ended December 31, 2011, with BIR electronic filing reference date of May 25, 2011
P-6-1	Line 31A of Petitioner's Quarterly Income Tax Declaration (First Quarter) for taxable year ended December 31, 2011
P-7	Original computer print-out of Petitioner's duly filed Quarterly Income Tax Declaration (Second Quarter) for the taxable year ended December 31, 2011, with BIR electronic filing reference date of August 30, 2011
P-7-1	Line 31A of Petitioner's duly filed Quarterly Income Tax Declaration (Second Quarter) for the taxable year ended December 31, 2011, with BIR electronic filing reference date of August 30, 2011
P-8	Original computer print-out of Petitioner's duly filed Quarterly Income Tax Declaration (Third Quarter) for the taxable year ended December 31, 2011, with BIR electronic filing reference date of November 24, 2011
P-8-1	Line 31A of Petitioner's duly filed Quarterly Income Tax Declaration (Third Quarter) for the taxable year ended December 31, 2011, with BIR electronic filing reference date of November 24, 2011
P-9	Original copy of Petitioner's duly filed Annual Income Tax Return for the taxable year ended December 31, 2011, with BIR offline/manual filing reference dated of April 30, 2012. The EFPS site on April 13, 2012 was down as it went on system upgrade, thus, offline filing was advised.
P-9-1	Line 33A of Petitioner's duly filed Annual Income Tax Return for the taxable year ended December 31, 2011, with BIR offline/manual filing reference date of April 30, 2012. The EFPS site on April 13, 2012 was down as it went on system upgrade, thus, offline filing was advised.

P-10	Copy of Petitioner's duly filed Quarterly Income Tax Declaration (First Quarter) for the taxable year ended December 31, 2012, with BIR electronic filing reference date of May 30, 2012
P-10-1	Line 31A of Petitioner's duly filed Quarterly Income Tax Declaration (First Quarter) for the taxable year ended December 31, 2012, with BIR electronic filing reference date of May 30, 2012
P-11	Original computer print-out of Petitioner's duly filed Quarterly Income Tax Declaration (Second Quarter) for the taxable year ended December 31, 2012, with BIR electronic filing reference date of August 29, 2012
P-11-1	Line 31A of Petitioner's duly filed Quarterly Income Tax Declaration (Second Quarter) for the taxable year ended December 31, 2012, with BIR electronic filing reference date of August 29, 2012
P-12	Original computer print-out of Petitioner's duly filed Quarterly Income Tax Declaration (Third Quarter) for the taxable year ended December 31, 2012, with BIR electronic filing reference date of November 29, 2012
P-12-1	Liner 31A of Petitioner's duly filed Quarterly Income Tax Declaration (Third Quarter) for the taxable year ended December 31, 2012, with BIR electronic filing reference date of November 29, 2012
P-13	Original computer print-out of Petitioner's duly filed Amended Quarterly Income Tax Declaration (First Quarter) for the taxable year ended December 31, 2011 with BIR electronic filing reference date of July 9, 2013
P-13-1	Line 31A of Petitioner's duly filed Amended Quarterly Income Tax Declaration (First Quarter) for the taxable year ended December 31, 2011, with BIR electronic filing reference date of July 9, 2013

P-14	Original computer print-out of Petitioner's duly filed Amended Quarterly Income Tax Declaration (Second Quarter) for the taxable year ended December 31, 2011, with BIR electronic filing reference date of July 9, 2013
P-14-1	Line 31A of Petitioner's duly filed Amended Quarterly Income Tax Declaration (Second Quarter) for the taxable year ended December 31, 2011, with BIR electronic filing reference date of July 9, 2013
P-15	Original computer print-out Petitioner's duly filed Amended Quarterly Income Tax Declaration (Third Quarter) for the year ended December 31, 2011, with BIR electronic filing reference date of July 9, 2013
P-16	Copy of Petitioner's duly filed Amended Annual Income Tax Return for the taxable year ended December 31, 2011, with BIR electronic filing reference date of June 11, 2013
P-16-1	Line 33A of Petitioner's duly filed Amended Annual Income Tax Return for the taxable year ended December 31, 2011, with BIR electronic filing reference date of June 11, 2013
P-17	Original computer print-out of Petitioner's duly filed Amended Quarterly Income Tax Declaration (First Quarter) for the taxable year ended December 31, 2012, with BIR electronic filing reference date of July 9, 2013
P-17-1	Line 31A of Petitioner's duly filed Amended Quarterly Income Tax Declaration (First Quarter) for the taxable year ended December 31, 2012, with BIR electronic reference date of July 9, 2013
P-18	Original computer print-out of Petitioner's duly filed Amended Quarterly Income Tax Declaration (Second Quarter) for the taxable year ended December 31, 2012, with BIR electronic filing reference date of July 9, 2013

P-18-1	Line 31A of Petitioner's duly filed Amended Quarterly Income Tax Declaration (Second Quarter) for the taxable year ended December 31, 2012, with BIR electronic filing reference date of July 9, 2013
P-19	Original computer print-out of Petitioner's duly filed Amended Quarterly Income Tax Declaration (Third Quarter) for the taxable year ended December 31, 2012, with BIR electronic filing reference date of July 9, 2013
P-19-1	Line 31A of Petitioner's duly filed Amended Quarterly Income Tax Declaration (Third Quarter) for the taxable year ended December 31, 2012, with BIR electronic filing reference date of July 9, 2013
P-20	Original computer print-out of Petitioner's duly filed Annual Income Tax Return for the taxable year ended December 31, 2012, with BIR electronic filing reference date of April 12, 2013
P-20-1	Line 33A of Petitioner's duly filed Annual Income Tax Return for the taxable year ended December 31, 2012, with BIR electronic filing reference date of April 12, 2013
P-20-2	Line 33Q/R of Petitioner's duly filed Annual Income Tax Return for the taxable year ended December 31, 2012, with BIR electronic filing reference date of April 12, 2013
P-21	Copy of Petitioner's duly filed Quarterly Income Tax Declaration (First Quarter) for the taxable year ended December 31, 2013, with BIR electronic filing reference date of May 28, 2013
P-21-1	Line 31A of Petitioner's duly filed Quarterly Income Tax Declaration (First Quarter) for the taxable year ended December 31, 2013, with BIR electronic filing reference date of May 28, 2013
P-22	Copy of Petitioner's duly filed Quarterly Income Tax Declaration (Second Quarter) for the taxable year ended

	December 31, 2013, with BIR electronic filing reference date of August 26, 2013
P-22-1	Line 31A of Petitioner's duly filed Quarterly Income Tax Declaration (Second Quarter) for the taxable year ended December 31, 2013, with BIR electronic filing reference date of August 26, 2013
P-23	Independent CPA Report (Part 1)
P-23-1	Independent CPA Report (Part 2)
P-23-1-1	Annex 1 of the Report
P-23-1-2	Annex 1-A of the Report
P-23-1-3	Annex 1-B of the Report
P-23-1-4	Annex 1-C of the Report
P-23-1-5	Annex 1-D of the Report
P-23-1-6	Annex 1-E of the Report
P-23-1-7	Annex 1-F of the Report
P-23-1-8	Annex 1-G of the Report
P-23-1-9	Annex 1-H of the Report
P-23-1-10	Annex 1-I of the Report
P-23-1-11	Annex 1-J of the Report
P-23-1-12	Annex 1-K of the Report
P-23-1-13	Annex 1-L of the Report
P-23-1-14	Annex 2 of the Report
P-23-1-15	Annex 2-A.1 of the Report
P-23-1-16	Annex 2-A.2 of the Report
P-23-1-17	Annex 2-A.3 of the Report
P-23-1-18	Annex 2-B.1 of the Report
P-23-1-19	Annex 2-B.2 of the Report
P-23-1-20	Annex 2-B.2 of the Report
P-23-1-21	Annex 2-C.1 of the Report
P-23-1-22	Annex 2-C.2 of the Report
P-23-1-23	Annex 2-D of the Report
P-23-1-24	Annex 2-E of the Report
P-23-1-25	Annex 2-F of the Report
P-23-1-26	Annex 2-G.1 of the Report
P-23-1-27	Annex 2-G.2 of the Report
P-23-1-28	Annex 2-H of the Report
P-23-1-29	Annex 2-I.1 of the Report
P-23-1-30	Annex 2-I.2 of the Report
P-23-1-31	Annex 2-I.3 of the Report
P-23-1-32	Annex J of the Report
P-23-1-33	Annex K of the Report
P-23-1-34	Annex L of the Report
P-23-1-35	Annex 3 of the Report
P-23-2	The signature appearing above the name Jerome Antonio B. Constantino is his signature

P-24	Petitioner's license to do business in the Philippines – SEC License No. F-49
P-25	Certificate of Registration issued by the BIR – COR No. 8RC000019521
P-26	Revenue Reported in the Annual Income Tax Return for the taxable year 2010 (BIR Form 1702)
P-27	Audited Financial Statements as of and for the year ended December 31, 2010
P-28-1 to P-28-4	Long-term contracts with BOC
P-29-1 to P-29-9	Long-term contracts with PPA
P-30-1 to P-30-3 and P-30-5 to P-30-113	Certificate of creditable withholding taxes (BIR Form 2307)
P-30-4	Monthly Remittance Return of Creditable Income Taxes Withheld
P-31	Quarterly Income Tax-Return (BIR Form 1702Q) for the first quarter of taxable year 2010
P-32	Quarterly Income Tax Return (BIR Form 1702Q) for the second quarter of taxable year 2010
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P-35	Trial Balance as of and for the year ended December 31, 2010
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P-38	Trial Balance as of and for the year ended December 31, 2003
P-39	Trial Balance as of and for the year ended December 31, 2004
P-40	Trial Balance as of and for the year ended December 31, 2005
P-41	Trial Balance as of and for the year ended December 31, 2006
P-42	Trial Balance as of and for the year ended December 31, 2007
P-43	Trial Balance as of and for the year ended December 31, 2008
P-44	Trial Balance as of and for the year ended December 31, 2009
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P-50	Audited Financial as of and for the year ended December 31, 2005
P-51	Audited Financial as of and for the year ended December 31, 2006
P-52	Audited Financial as of and for the year ended December 31, 2007
P-53	Audited Financial as of and for the year ended December 31, 2008
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P-61	Revenue Reported in the Annual Income Tax Return for the taxable year 2006 (BIR Form 1702)
P-62	Revenue Reported in the Annual Income Tax Return for the taxable year 2007 (BIR Form 1702)
P-63	Revenue Reported in the Annual Income Tax Return for the taxable year 2008 (BIR Form 1702)
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P-67	General ledgers of revenue for the year 2002
P-68	General ledgers of revenue for the year 2003

P-69	General ledgers of revenue for the year 2004
P-70	General ledgers of revenue for the year 2005
P-71	General ledgers of revenue for the year 2006
P-72	General ledgers of revenue for the year 2007
P-73	General ledgers of revenue for the year 2008
P-74	General ledgers of revenue for the year 2009
P-75	General ledgers of revenue of the year 2010
P-76	General ledgers of revenue for the year 2011
P-77	General ledgers of revenue for the year 2012
P-78-1 to P-78-205	Sales invoices supporting the revenues/ income reported in BIR Form 2307 upon which the taxes are withheld
P-79-1 to P-79-117	Official receipts supporting the revenues/ income reported in BIR Form 2307 upon which the taxes are withheld
P-84	Certifications from Bureau of Customs (BOC) for the creditable withholding taxes certificates issued to the Petitioner for the taxable year 2010
P-85	Certifications from Philippine Port Authority (PPA) for the creditable withholding taxes certificates issued to the Petitioner for the taxable year
P-86	Certifications from Philippine Clearing House Corporation (PCHC) for the creditable withholding taxes certificates issued to the Petitioner for the taxable year 2010

P-87-1 to P-87-23	BIR Forms 2307 revised and reissued by BOC and PPA showing the correct and complete details such as dated TIN and address of the Petitioner, and payor's signature
P-88-1 to P-33-129	Invoices supporting the Maintenance contract with BOC
P-89-1 to P-89-31	Invoices supporting the reimbursement of telecommunication for Project 2037918 with BOC
P-90	Invoice supporting the reimbursement of telecommunication for Project 2037918 with BOC
P-91	Certified True Copy of signed RIEG waiver of RIEG Milestone (Project 2037918) with BOC
P-92	Judicial Affidavit of Ms. Jennifer Glinoga
P-92-1	Signature of Ms. Jennifer Glinoga appearing on the Judicial Affidavit
P-93	Judicial Affidavit of Jerome Antonio B. Constantino
P-93-1	Signature of Mr. Jerome Antonio B. Constantino appearing on the Judicial Affidavit
P-93-2	Annex A to the Judicial Affidavit of Mr. Jerome Antonio B. Constantino
P-94	Supplemental Report of the Independent CPA representing the summary of Exhibits presented and offered to this Honorable Court
P-94-1 to P-94-4	Summary of exhibits and the corresponding folder and box numbers of the annexes which forms part of the ICPA Report

During the hearing held on February 24, 2015, respondent, through counsel, waived the presentation of her evidence.[21] *ℒ*

[21] Minutes, Docket, p. 874.

In the Resolution[22] dated February 24, 2015, the parties were given a period of thirty (30) days within which to submit their respective Memoranda.

Petitioner filed its Memorandum[23] on March 26, 2015. Respondent, however, failed to file her Memorandum.[24]

In the Resolution dated April 8, 2015, the Court declared the case submitted for decision in view of the filing of petitioner's Memorandum and respondent's failure to file her Memorandum.

The parties submitted the following issue[25] for this Court's resolution:

> Whether or not herein Petitioner is entitled to the refund of the unutilized excess creditable income taxes withheld amounting to **Thirty One Million, Seven Hundred Thirty Six Thousand and Eleven Pesos (₱31,736,011.00)**.

Pertinent to the resolution of the present case is Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, which states:

> "SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (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.

[22] Docket, p. 877.
[23] Docket, pp. 878-888.
[24] Records Verification dated April 6, 2015, Docket, p. 889.
[25] Joint Stipulation of Facts and Issues, Docket, p. 513.

> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor."

Based on the foregoing provision, a corporation entitled to a tax credit or refund of the excess income taxes paid in a given taxable year has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. In case the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.[26] The phrase "for that taxable period" merely identifies the excess income tax subject of the option, by referring to the taxable period when it was acquired by the taxpayer.

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, whether to carry over the excess credit or to claim a refund. The two options are alternative and not cumulative in nature, that is, the choice of one precludes the other.[27]

A scrutiny of petitioner's Annual Income Tax Return[28] for CY 2010 filed with the BIR via the Electronic Filing and Payment System (eFPS) on April 15, 2011 shows that

26 *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

27 *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015.

28 Exhibit "P-5", Docket, pp. 665-668.

petitioner had MCIT liability of ₱3,079,325.68[29], which was applied against its total tax credits of ₱84,635,159.00, which consisted of creditable withholding taxes (CWTs) for the four quarters of CY 2010 in the amount of ₱31,736,011.00[30] (which is the subject claim of this Petition for Review) and the prior year's excess credits of ₱52,899,148.00,[31] thus, leaving the CWTs in the aggregate amount of ₱81,555,833.32[32] unutilized as of December 31, 2010, as shown below:

Sales/Revenues/Receipts/Fees	₱ 250,694,496.00
Less: Cost of Sales/Services	106,556,712.00
Gross Income from Operation	144,137,784.00
Add: Non-Operating and Taxable Other Income	9,828,500.00
Total Gross Income	153,966,284.00
Less: Deductions	190,905,454.00
Taxable Income (Loss)	(36,939,170.00)
MCIT Due (2% of Total Gross Income)	3,079,325.68
Less: Tax Credits/Payments	
Prior Year's Excess Tax Credits	52,899,148.00
Creditable Tax Withheld for the First Three Quarters	30,255,508.00
Creditable Tax Withheld for the Fourth Quarter	1,480,503.00
Tax Payable/(Overpayment)	**(₱81,555,833.32)**

A close examination of the foregoing Annual ITR for CY 2010 reveals that petitioner opted for a refund of its CWTs for CY 2010 by marking the box corresponding to the option "To be refunded".

Nevertheless, although petitioner elected the option "To be refunded", petitioner still carried over the excess tax credits of ₱81,555,833.32, which includes the subject CWTs of ₱31,736,011.00 in its first,[33] second,[34] and third[35] Quarterly ITRs, as well as in the Annual ITR[36] of the

[29] Exhibit "P-5", Line 27, Docket, p. 665.
[30] Sum of Line 30C, Exhibit "P-5-1" (₱30,255,508.00) and Line 30D, Exhibit "P-5-2" (₱1,480,503.00), Docket, p. 666.
[31] Exhibit "P-5", Line 30A, Docket, p. 666.
[32] Exhibit "P-5-3", Docket, p. 666.
[33] Exhibit "P-6-1", Docket, p. 674.
[34] Exhibit "P-7-1", Docket, p. 689.
[35] Exhibit "P-8-1", Docket, p. 701.
[36] Exhibit "P-9-1", Docket, p. 711.

succeeding CY 2011, until the third quarter[37] of CY 2012 as "Prior Year's Excess Credits". Clearly, petitioner's option to refund the CWTs for CY 2010 was negated by its act of carrying over the entire excess tax credits to the succeeding taxable quarters/years 2011 and 2012.

Since petitioner exercised the option to carry over the entire excess tax credits of ₱81,555,833.32, petitioner is bound by the "irrevocability rule" under Section 76 of the NIRC of 1997, as amended. Therefore, it cannot seek the refund of the amount of ₱31,736,011.00 even if the same was not utilized in the succeeding quarters/years. Consequently, its only recourse is to apply the said overpaid tax to the succeeding quarters/years until it is fully utilized.

The Supreme Court's ruling in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[38] corroborates the foregoing in this wise:

> "Hence, the controlling factor for the operation of the *irrevocability rule* is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."

Moreover, in the landmark case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*[39], the High Court ruled that the simple act of filling out the line item for "Prior Year's Excess Tax Credits" on the ITR of the succeeding calendar year would signify that the carry-over option was chosen, to wit:

[37] Exhibits "P-10-1", Docket, p. 716; "P-11-1", Docket, p. 724; "P-12-1", Docket, p. 736.
[38] G.R. No. 178490, July 7, 2009.
[39] G.R. Nos. 156637 and 162004, December 14, 2005.

> "***First,* the fact that it filled out the portion 'Prior Year's Excess Credits' in its 1999 FAR means that it categorically availed itself of the carry-over option.** In fact, the line that precedes that phrase in the BIR form clearly states 'Less: Tax Credits/Payments.' The contention that it merely filled out that portion because it was a requirement – and that to have done otherwise would have been tantamount to falsifying the FAR – is a long shot.
>
> The FAR is the most reliable firsthand evidence of corporate acts pertaining to income taxes. In it are found the itemization and summary of additions to and deductions from income taxes due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process.
>
> Failure to indicate the amount of 'prior year's excess credits' does not mean falsification by a taxpayer of its current year's FAR. **On the contrary, if an application for a *tax refund* has been – or will be – filed, then that portion of the BIR form should necessarily be blank, even if the FAR of the previous taxable year already shows an overpayment in taxes.**" *(Emphasis supplied)*

Nonetheless, petitioner also presented its **amended** Quarterly and Annual ITRs for CYs 2011 and 2012[40] to prove that the excess CWTs of ₱31,736,011.00 were not carried over or applied by petitioner to the succeeding years. In this connection, although it may be argued that petitioner's amended Quarterly and Annual ITR for CYs 2011 and 2012 had the effect of abandoning or superseding its original Quarterly and Annual ITRs for CYs 2011 and 2012, petitioner cannot escape the legal consequences brought about by the carrying over of its claimed excess amount of withholding tax reflected in its original Annual ITR and its original Quarterly ITRs for CYs 2011 and 2012.

It has been repeated time and again that tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris* against the person or entity

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[40] Exhibits "P-13" to "P-19", Docket, pp. 748-769.

claiming the exemption, as such, the burden in proving the claim for refund necessarily falls on the taxpayer or the person claiming the refund or exemption.[41]

WHEREFORE, premises considered, petitioner's claim for refund in the amount of ₱31,736,011.00, representing its unutilized creditable withholding taxes for calendar year 2010, is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

[41] *Far East Bank and Trust Company, as Trustee of Various Retirement Funds vs. Commissioner of Internal Revenue, et al.*, G.R. No. 138919, May 2, 2006.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

UNISYS PHILIPPINES LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8634

Members:

Del Rosario, *PJ, Chairperson,*
Uy, and
Mindaro-Grulla, *JJ.*

Promulgated:
MAR 07 2016 ; 9:15 a.m.

x- -x

DISSENTING OPINION

DEL ROSARIO, PJ:

With utmost respect to the *ponencia* of my esteemed colleague, I dissent on the outright denial of petitioner's claim for refund of unutilized Creditable Withholding Taxes (CWT) due to the erroneous application of "irrevocability rule" under Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended.

While the *ponencia* aptly observed that petitioner opted for refund in its Annual Income Tax Return (ITR) for calendar year 2010 as petitioner marked the box corresponding to the option *"To be refunded"*, nevertheless, I could not agree on the *ponencia's* conclusion that petitioner's act of carrying over the entire excess tax credits to the succeeding taxable quarters/years of 2011 and 2012 as shown in the *original* Quarterly and Annual ITRs for said taxable years negates petitioner's choice to refund the CWT for 2010, notwithstanding the presence of the *amended* Quarterly and Annual ITRs for the aforesaid years which proved that the claimed excess CWT were not actually carried over therein.

I submit that petitioner's claim for refund should not be denied as, in truth, it is bound by its option indicated in the 2010 ITR which is to get a refund. *Apropos,* the Court should instead proceed to determine and decide on petitioner's compliance with the other requirements for refund, *i.e., the fact of tax withholding, and the inclusion of income relative to the claimed CWT in the ITR.*

The landmark case of ***Philam Asset Management, Inc. vs. Commissioner of Internal Revenue***[1] cited in the *ponencia* as basis in denying petitioner's claim is mistakenly taken out of context. While the Supreme Court indeed held in *Philam* case that *"the fact that the taxpayer therein filled out the portion 'Prior Year's Excess Credits' in its 1999 FAR means that it categorically availed itself of the carry-over option,"* I believe that the foregoing pronouncement is inapplicable to the present case as the factual circumstances of that *Philam* case is materially different from the case at bar.

In the aforecited *Philam* case, therein petitioner failed to tick the appropriate box in its 1998 ITR to signify its chosen option whether to have its excess CWT either refunded or carried over and applied to the succeeding year. Thus, the Supreme Court considered the subsequent act of therein petitioner, which revealed that it had effectively chosen the carry-over option when it filled out the portion *'Prior Years Excess Credits'* in its 1999 ITR.

In contrast, petitioner, in the case at bar, opted from the very beginning for a refund of its claimed excess CWT as petitioner marked the box corresponding to the option *"To be refunded"* in its Annual ITR for taxable year 2010. Petitioner is therefore bound by its original intention to refund its 2010 unutilized/excess CWT following the declaration of the Supreme Court in the same *Philam* case, *viz.*:

> "xxx **Section 76 offers two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceeds its total income tax due. These options are (1) filing for a tax refund or (2) availing of a tax credit.**
>
> The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.
>
> The second option works by applying the refundable amount, as shown on the FAR of a given taxable year,

[1] G.R. Nos. 156637 and 162004, December 14, 2005.

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against the estimated quarterly income tax liabilities of the succeeding taxable year.

These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in Philippine Bank of Communications v. Commissioner of Internal Revenue, the Court ruled that a corporation must signify its intention -- whether to request a tax refund or claim a tax credit -- by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection." *(Boldfacing supplied)*

Further, as held in ***Commissioner of Internal Revenue vs. McGeorge Food Industries, Inc.***,[2] *"Section 76 of the 1997 NIRC wrought two changes to its predecessor, Section 69 of the 1977 NIRC: first,* ***it mandates that the taxpayer's exercise of its option to either seek refund or crediting is irrevocable****; and second, the taxpayers decision to carry-over and apply its current overpayment to future tax liability continues until the overpayment has been fully applied, no matter how many tax cycles it takes."* The controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one.[3]

As petitioner already made an option of refund as it marked the corresponding box *"To be refunded"* in its 2010 Annual ITR; indubitably, its original choice to seek a refund becomes irrevocable.

The fact that petitioner carried over its excess tax credits, including the subject CWT in its original Quarterly and Annual ITRs for 2011 and 2012 should not preclude the applicability of the "irrevocability rule" brought about by petitioner's choice as expressed in its 2010 ITR. The said fact of carrying over its excess tax credits to the subsequent period shows plain oversight, and the error apparently committed by petitioner was corrected when petitioner filed its amended Quarterly and Annual ITRs for taxable year 2011 and 2012. The irrevocable

[2] G.R. No. 174157, October 20, 2010.
[3] Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009.

intention of petitioner to refund its 2010 unutilized CWT in view of the chosen option in its 2010 Annual ITR is evident in petitioner's amended Quarterly and Annual ITRs for 2011 and 2012, wherein the claimed 2010 excess/unutilized CWT of P31,736,011.00 was no longer carried-over as part of its 'Prior Years' Excess Credits' during those taxable periods. A comparison of petitioner's 'Prior Year's Excess Credits' declared in its original and amended Quarterly and Annual ITRs for taxable years 2011 and 2012, discloses the following:

Period	Exhibit	Prior Year's Excess Credits (Original ITR)	Exhibit	Prior Year's Excess Credits (Amended ITR)	Difference between original & amended ITRs
2011					
1st Quarter	P-6-1	81,555,833.32	P-13-1	49,819,821.88	**31,736,011.44**
2nd Quarter	P-7-1	81,555,833.32	P-14-1	49,819,821.88	**31,736,011.44**
3rd Quarter	P-8-1	81,555,833.32	P-15-1	49,819,821.88	**31,736,011.44**
Annual	P-9-1	81,555,833.00	P-16-1	49,819,821.00	**31,736,012.00**
2012					
1st Quarter	P-10-1	85,615,153.00	P-17-1	53,879,142.00	**31,736,011.00**
2nd Quarter	P-11-1	85,615,153.00	P-18-1	53,879,142.30	**31,736,010.70**
3rd Quarter	P-12-1	85,615,153.00	P-19-1	**53,879,142.00**	**31,736,011.00**
Annual	P-20-1	**53,879,142.00**			

The difference in the declared 'Prior Years Excess Credits' between the original *and* amended Quarterly and Annual ITRs for taxable years 2011 and 2012 actually represents petitioner's claimed unutilized CWT for 2010. **This simply means that no carry-over of petitioner's claimed CWT was ultimately made, as reflected in its amended Quarterly and Annual ITRs for 2011 and 2012**.

Lastly, as to the *ponencia's* ruling that petitioner's recourse *(relating to the effect of its denial of claim)* is to apply the claimed overpaid tax to the succeeding quarters/years until it is fully utilized, suffice it to state that the approach is too simplistic. If pursued, the purported carry over may not at all be feasible especially if a notice for audit, *i.e., a Letter of Authority (LOA),* is issued by the BIR for taxable years after the period of claim. In such a situation, petitioner would no longer be allowed to amend its ITRs to reflect back or declare anew the denied amount which was previously taken out from *'Prior Years' Excess Credits'* in the amended Quarterly and Annual

ITRs of petitioner for 2011 and 2012 pursuant to Sec. 6 (A) of 1997 NIRC, as amended.[4]

Substantial justice, equity and fair play call for the grant of refund. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[5]

In sum, the applicability of the "irrevocability rule" justifies the grant of refund by virtue of petitioner's irrevocable choice to refund its claimed unutilized CWT as shown in its 2010 Annual ITR.

All told, I vote not to deny the Petition for Review due to the erroneous application of the "irrevocability rule". The Court should accordingly proceed to discuss and determine petitioner's compliance with the other requirements for refund.

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirement for Tax Administration and Enforcement. –
(A) Examination of Returns and Determination of Tax Due. – xxx
Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice of audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.
[5] BPI-Family Savings Bank, Inc. vs. Court of Appeals, G.R. No. 122480, April 12, 2000.