REPUBLIC OF THE PHILIPPINES
# *Court of Tax Appeals*
QUEZON CITY

## *Third Division*

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| **RCD REALTY MARKETING CORPORATION,** *Petitioner,* | **CTA CASE NO. 8468** |
| | Members: **Bautista,** *Chairperson* **Fabon-Victorino,** *and* **Ringpis-Liban, JJ.** |
| - *versus* - | |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: FEB 01 2016 4:01 p.m. |

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# *DECISION*

***BAUTISTA, J:***

### *The Case*

Before the Court is a Petition for Review[1] filed by petitioner RCD Realty Marketing Corporation ("RRMC") on April 13, 2012, pursuant to *Section 7(a)(1)*[2] *of Republic Act ("RA") No. 1125*[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], which seeks for the Court to render judgment ordering respondent to issue a Tax Credit

[1] *Records, CTA Case No. 8468, Petition for Review,* pp. 6-105, with Annexes.
[2]Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.
(1) Decisions of 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.
[3] *An Act Creating the Court of Tax Appeals, as Amended.*
[4] *An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.*
[5] *An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.*

Certificate ("TCC") in favor of petitioner in the amount of Php1,735,583.24 representing unutilized creditable tax withheld for the taxable year 2009.[6]

## *The Parties*[7]

Petitioner RRMC is a corporation duly organized and existing under Philippine laws with principal office and business address at 2nd Floor EGI Condominium corner P. Medina Street, Pio del Pilar, Makati City.

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR"), vested by law in general to implement and enforce the provisions of the National Internal Revenue Code ("NIRC") of 1997, as amended, and other tax laws, and in particular, decide claims for refund of internal revenue taxes.

## *The Facts*

On May 29, 2009[8], August 28, 2009[9] and November 27, 2009[10], petitioner filed its Quarterly Income Tax Return (BIR Form No. 1702Q) for the first, second and third quarters, respectively, of 2009.

On April 15, 2010, petitioner filed its Annual Income Tax Return ("ITR")[11] for taxable year 2009, wherein it chose the option *"To be issued a Tax Credit Certificate."* [12]

On May 27, 2010, respondent received petitioner's request for the issuance of a TCC, in the amount of One Million Seven Hundred Thirty-Five Thousand Five Hundred Eighty-Three & 24/100 Pesos (Php1,735,583.24), attached to the request were the following documents: Annual ITR for the year 2009 (BIR Form 1702); Certificate of Creditable Withholding Tax at Source (BIR Form No. 2307); and its Financial Statement ("FS") for the year 2009.[13] Petitioner likewise

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[6] *Records, Petition for Review,* p. 14.
[7] *Id., Joint Stipulation of Fact and Issues ("JSFI"),* pars. 1 & 2, pp. 135-136.
[8] *Id., Exhibit* "I," p. 2631.
[9] *Id., Exhibit* "J," p. 2632.
[10] *Id., Exhibit* "K," p. 2633.
[11] BIR Form No. 1702.
[12] *Records, Exhibit* "C," pp. 2623-2624; *Exhibit* "R-1," pp. 90-91.
[13] *Id., Exhibit* "D," p. 2625, *Exhibit* "R-1," p. 101.

filed an Application for Tax Credit/Refunds (BIR Form No. 1914) on even date.[14]

Petitioner received Letter of Authority No. 200800034867 ("LOA No. 34867") dated May 24, 2010,[15] and the list of documents for submission/presentation of records/documents for the year 2009.[16] LOA No. 34867 authorizes Revenue Officer ("RO") Maezy Claire T. Laggui ("Laggui") and Group Supervisor ("GS") Narciso T. Laguerta ("Laguerta"), to examine its books of accounts and other accounting records *"for all internal revenue taxes (refundable) for the period from January 1, 2009 to December 31, 2009."*[17]

On September 30, 2010, petitioner received SN: eLA201000004372 LOA-048-2010-00000103, dated August 27, 2010, which also authorizes RO Laggui and GS Laguerta to examine its books of accounts and other accounting records *"for all internal revenue taxes for the period January 1, 2009 to December 31, 2009 pursuant to regular audit program for 2010."* [18]

On May 11, 2011, petitioner received the First Notice for Presentation of Records bearing the same date, requesting for the presentation of books of accounts and other related accounting records. [19]

On August 19, 2011, petitioner received the Final Notice for Presentation of Books of Accounts and Other Accounting Records, dated August 16, 2011, informing petitioner that failure to submit and/or present the required documents within ten (10) days from receipt thereof, may compel the issuance of a *Subpoena Duces Tecum.*[20]

On September 1, 2011, RO Laggui received[21] from petitioner the following 2009 documents: 1) Annual Registration Fee Return; 2) Latest General Information Sheet; 3) Annual Income Tax Return; 4) Certificates of Creditable Withholding Taxes; 5) Quarterly Income Tax Return; 6) VAT Return; 7) Monthly Remittance of Tax Withheld

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[14] *Records, Exhibit* "E," p. 2626; *Exhibit* "R-1," p. 100.
[15] *Id., Exhibit* "G," p. 2628, received by a certain J'Jay Zamora on September 30, 2010; *Exhibit* "R-1," p. 93, received by a certain Maricel C. Relosa on June 22, 2010.
[16] *Id., Exhibit* "E," p. 2629; *Exhibit* "R-1," p. 92.
[17] *Id., JSFI*, par. 4, p. 136; *Exhibit* "G," p. 2628; *Exhibit* "R-1," p. 93.
[18] *Id., Exhibit* "F," p. 2627; *Exhibit* "R-2," p. 94.
[19] *Exhibit* "R-1," p. 95.
[20] *Records, JSFI*, par. 6, p. 136; *Exhibit* "R-1," pp. 96-97.
[21] *Id., Vol. III, Exhibit* "H-1," p. 2630.

at Source; 8) Monthly Remittance of Tax Withheld - Wages; 9) Annual Information Return - w/tax at source; 10) Annual Information Return & Alphalist - wages; and 11) Schedule of Taxes, Permits & Licenses.[22]

There being no action on petitioner's application for tax credit/refund filed on May 24, 2010, petitioner filed the instant Petition for Review on April 13, 2012.[23]

On May 4, 2012, respondent filed, by registered mail, a Motion for Extension of Time to File Answer,[24] which was granted by the Court in its Order dated May 15, 2012.[25]

On May 11, 2012 and through registered mail, respondent filed her Answer[26], raising the following Special and Affirmative Defenses:[27]

> 3. [She] reiterates, restates, and repleads the preceding paragraphs of this Answer as part of [his] Special and Affirmative Defenses.
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> 4. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;
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> 5. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.
>
> 6. Petitioner's claim for refund/issuance of tax credit in the amount of Php1,735,583.24 as alleged unutilized creditable income taxes withheld for the taxable year 2009 were not fully substantiated by proper documentary evidence, such as, but not limited to certificates of income taxes withheld at source and other required tax returns.
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> 7. Petitioner failed to prove that the amount of Php1,735,583.24, as alleged unutilized creditable income taxes withheld for taxable year 2009 was included as part of its

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[22] *Records, Vol. III, Exhibit* "H," p. 2630.
[23] *Id., JSFI,* par. 7, p. 136; *Petition for Review,* pp. 6-105, with Annexes.
[24] *Id.,* pp. 107-109.
[25] *Id.,* p. 110.
[26] *Id.,* pp. 112-115.
[27] *Id.,* pp. 112-113.

gross income for taxable year 2009 and the same was not utilized in payment of its income tax liability for the succeeding taxable quarters/years[.]

8. Petitioner has already exercised its option to carry-over to the succeeding taxable quarters/years the subject of its claim, pursuant to Section 76 of the 1997 Tax Code.

9. Petitioner failed to prove that the amount subject of its claim was remitted in full to the BIR.

10. Petitioner failed to comply with the requirements prescribed under Section 76 of the 1997 Tax Code.

11. It is incumbent upon the latter to show that it has complied with the provisions under Sections 204 in relation to Section 230 (now 229) of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

12. Claims for refund are construed strictly against herein petitioner for the same partakes the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*

On July 9, 2012, the parties, through their respective counsels, filed their Joint Stipulation of Facts and Issues ("JSFI").[28]

On August 6, 2012, a Pre-trial Order was issued by the Court terminating pre-trial and setting the date/s for the presentation of evidence by the parties.[29]

During trial, petitioner presented the Judicial Affidavits ("JA"), *in lieu* of direct testimony, of the following witnesses: (1) Ms. Maricel Rellosa[30], petitioner's Accounting Head[31]; and (2) Mr. Arvin B. Francisco[32], petitioner's President[33].

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[28] *Records*, pp. 135-142.
[29] *Id.*, pp. 169-175.
[30] *Id., Exhibit* "HHHH," pp. 177-290, with Annexes; Supplemental JA, *Exhibit* "FFFF," pp. 331-338; Second Supplemental JA, *Exhibit* "EEEE," pp. 505-2132, with Annexes.
[31] *Id., Minutes of Hearing dated September 11, 2012,* Docket (Vol. I), p. 291; *Minutes of Hearing dated October 18, 2012,* Docket (Vol. I), p. 339; *Minutes of Hearing dated September 19, 2013,* Docket (Vol. III), p. 2211.
[32] *Id., Exhibit* "GGGG," pp. 435-439.

On April 3, 2013, an Order[34] was issued by the Court transferring the case to the Third Division, pursuant to CTA *Administrative Circular No. 01-2013*[35], thereby cancelling all previously set hearings until further order from the Court.

On July 26, 2013, the parties, through their respective counsels filed a Joint Manifestation with Motion, praying that they be allowed to conduct the comparison and/or re-marking of petitioner's remaining Exhibits at respondent's office;[36] which was granted by the Court in open court during the August 1, 2013 hearing.[37]

On October 9, 2013 and through registered mail, petitioner filed a Motion for Extension of Time to File Formal Offer of Evidence ("FOE");[38] which was granted by the Court in its Order dated October 22, 2013.[39]

On October 14, 2013, petitioner filed its FOE,[40] which was resolved by the Court on January 6, 2014.[41]

On June 27, 2014, and by registered mail, respondent filed her FOE;[42] and on November 18, 2014, a Resolution was issued by the Court admitting respondent's exhibits.[43]

On January 12, 2015, and by registered mail, respondent filed a Manifestation and Motion, stating that she is adopting all her arguments (factual and legal) found in the special and affirmative defenses of her Answer dated May 10, 2012, including the purposes for which all the documentary evidence of respondent were formally offered and admitted by the Court, as part of her Memorandum.[44]

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[33] *Records, Minutes of Hearing dated December 6, 2012,* Docket (Vol. I), p. 464.
[34] *Id.,* p. 2133.
[35] Reorganizing the Three (3) Divisions of the Court of Tax Appeals, March 26, 2013.
[36] *Records,* pp. 2178-2180.
[37] *Id., Minutes of Hearing dated August 1, 2013,* Docket (Vol. III), p. 2182.
[38] *Id., Vol. III,* pp. 4343-4345.
[39] *Id., Vol. III,* p. 4346.
[40] *Id., Vol. III,* pp. 2215-4342, with Annexes.
[41] *Id., Vol. VI,* pp. 4363-4366.
[42] *Id., Vol. VI,* pp. 4475-4479.
[43] *Id., Vol. VI,* pp. 4533-4534.
[44] *Id., Vol. VI,* pp. 4547-4548.

On January 20, 2015, petitioner filed its Memorandum by registered mail.[45]

On February 5, 2015, a Resolution was issued by the Court submitting the case for decision,[46] hence, this Decision.

## *The Issues*[47]

For the Court's resolution are the following issues:

I. **WHETHER OR NOT PETITIONER'S INCOME UPON WHICH THE CREDITABLE TAXES WERE WITHHELD FOR THE TAXABLE YEAR 2009 WERE INCLUDED IN THE INCOME TAX RETURN OF PETITIONER FOR THE YEAR 2009;**

II. **WHETHER PETITIONER'S CLAIM FOR REFUND/ISSUANCE OF TAX CREDIT IN THE AMOUNT OF PHP1,735,583.24 WAS FULLY SUBSTANTIATED BY PROPER DOCUMENTARY EVIDENCE;**

III. **WHETHER OR NOT PETITIONER HAS CARRIED-OVER TO THE SUCCEEDING TAXABLE QUARTERS OR YEARS THE CLAIMED UNUTILIZED CREDITABLE INCOME TAXES WITHHELD FOR THE YEAR 2009 AND APPLIED THE SAME IN PAYMENT OF ITS INCOME TAX LIABILITY, IF ANY, FOR THE SUCCEEDING TAXABLE QUARTERS OR YEARS;**

IV. **WHETHER OR NOT THE AMOUNT OF PHP1,735,583.24 BEING CLAIMED BY PETITIONER AS UNUTILIZED CREDITABLE INCOME TAXES WITHHELD FOR TAXABLE YEAR 2009 WERE REMITTED IN FULL TO THE BIR;**

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[45] *Records, Vol. VI*, pp. 4550-4717, with Annexes.
[46] *Id., Vol. VI*, p. 4721.
[47] *Id., Pre-Trial Order*, p. 171.

**V. WHETHER OR NOT PETITIONER'S JUDICIAL CLAIM WAS FILED WITHIN THE PRESCRIPTIVE PERIOD; and**

**VI. WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF ITS CREDITABLE TAX WITHHELD FOR THE YEAR 2009 IN THE AMOUNT OF PHP1,735,583.24.**

*Petitioner's Arguments*

Petitioner maintains that it has complied with the requisites to prove its entitlement to the issuance of a TCC for unutilized excess creditable taxes withheld, specifically:

1. That it filed its judicial claim for refund within the two (2)-year prescriptive period from the date of payment of the tax;

2. That for the year 2009, it had unutilized excess creditable tax withheld in the amount of Php1,735,583.24 which it did not carry over to the succeeding taxable years and it opted to be issued a TCC; and

3. That it presented the certificates of creditable tax withheld at source (BIR Form No. 2307).

It also avers that respondent did not refute the authenticity and due execution of the withholding certificates presented during trial, and that it is not required to prove remittance to the BIR by the withholding agent.

*Respondent's Counter-Arguments*

Respondent counter-argues that the claim for refund is still subject to its administrative routinary investigation/examination; that taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable; that it failed to comply with the requisites prescribed under *Section 76* of the *1997 NIRC;* that its claim for refund is not properly substantiated by proper documentary evidence such as certificates of income taxes withheld at source and other required tax returns; that it failed to prove that the amount Php1,735,583.24, as alleged unutilized creditable income taxes withheld for taxable year 2009 was included as part of its gross income for taxable year 2009 and that the same was not utilized in payment of its income tax liability for the succeeding taxable quarters/years; that it has already exercised its option to carry-over to the succeeding taxable quarters/years the subject of its claim, pursuant to Section 76 of the 1997 Tax Code; and that claims for refund are construed strictly against herein petitioner for the same partakes the nature of exemption from taxation.

***The Ruling of the Court***

The aforecited issues can be summed up as follows:

1. WHETHER OR NOT THE JUDICIAL CLAIM WAS FILED WITHIN THE PRESCRIPTIVE PERIOD;

2. WHETHER OR NOT PETITIONER COMPLIED WITH THE REQUIREMENTS FOR A TAX REFUND AS PROVIDED BY THE *1997 NIRC*; and

3. WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF ITS CREDITABLE TAX WITHHELD FOR THE YEAR 2009 IN THE AMOUNT OF Php1,735,583.24.

***The judicial claim was filed within the prescriptive period.***

*Section 204 of the 1997 NIRC*, as amended provides:

> 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. *(underscoring ours)*
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> xxx xxx xxx

Corollary, *Section 229 of the 1997 NIRC,* as amended provides as follows:

> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully 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. *(underscoring ours)*

For the refund of Creditable Withholding Taxes, the Supreme Court case of *Commissioner of Internal Revenue vs. TeaM (Philippines) Operations Corporation [Formerly Mirant (Philippines) Operations Corporation] ("Mirant case")*[48] can help shed light on the date when the prescriptive period of two (2) years commences:

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[48] G.R. No. 185728, October 16, 2013, 707 SCRA 467; citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals,* 548 Phil. 32.

In addition to the abovementioned requisites, the NIRC of 1997, as amended, likewise provides for the strict observance of the concept of the irrevocability rule, the focal provision of which is Section 76 thereof, quoted hereunder for easy reference:

> SEC. 76. *Final Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
>
> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.
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> xxx xxx xxx

Here, it is undisputed that the claim for refund was filed within the two-year prescriptive period prescribed under Section 229[18] of the NIRC of 1997, as amended. Respondent filed its income tax return for taxable year 2001 on 15 April 2002. Counting from said date, it indeed had until 14 April 2004 within which to file its claim for refund or issuance of tax credit certificate in its favor both administratively and judicially. Thus, petitioner's administrative claim and petition for review filed on 19 March 2003 and 27 March 2003, respectively, fell within the abovementioned prescriptive period.

From the foregoing, it can be gathered that the two (2)-year prescriptive period for claiming a refund or TCC commences from the date of filing of the Final Adjustment Return ("FAR") under Section 76 of the *1997 NIRC*.[49] It is only when the FAR covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund/TCC can be claimed, based on the adjusted and audited figures.[50]

Applying this to the instant case, petitioner filed its Annual ITR on April 15, 2010,[51] counting two (2) years therefrom and taking into account the fact that April 15, 2012 falls on a Sunday, petitioner has until April 16, 2012, within which to file both its administrative and judicial claims for refund. Records disclose that petitioner filed its administrative claim on May 27, 2010.[52] There being no action on petitioner's application for tax credit/refund and before the two (2)-year prescriptive period lapses, petitioner filed the instant Petition for Review on April 13, 2012.[53] It is clear therefore, that petitioner filed both its administrative and judicial claims for refund/TCC on time.

***Petitioner complied with the requirements for a claim for refund.***

In the *Mirant case*, the Supreme Court laid down the requisites in claiming a tax refund or TCC, to wit:

1. The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

2. It must be shown on the return of the recipient that the income received was declared as part of the gross income; and

3. The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.

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[49] *ACCRA Investments Corporation v. The Honorable Court of Appeals, et. al.*, G.R. No. 96322, December 20, 1991, 204 SCRA 957.
[50] *Commissioner of Internal Revenue v. TMX Sales, Inc., et. al.*, G.R. No. 83736, January 15, 1992, 205 SCRA 184.
[51] *Records, Exhibit* "C," pp. 2623-2624; *Exhibit* "R-1," pp. 90-91.
[52] *Id., Exhibit* "D," p. 2625.
[53] *Id.*, pp. 6-105.

As already discussed, petitioner complied with the first requisite.

With regard to the second and third requisites, *Section 2.58.3 (B) of Revenue Regulations (RR) No. 02-98*[54], as amended, states:

> Sec. 2.58.3. Claim for tax credit or refund. –
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Anent the second requisite, a closer inspection of petitioner's BIR Form No. 2307 reveals that the above-stated amount of Php2,788,167.13 was withheld from petitioner's income of Php27,881,813.45,[55] which is lower as compared to the income of Php42,511,959.00 reported in petitioner's 2009 Annual ITR[56] and Audited Financial Statements ("AFS")[57].

Petitioner's witness Maricel Relosa, in her Supplemental JA[58], explained that the difference in the total revenue declared in its Annual ITR and AFS against summary of BIR Forms No. 2307 in the amount of Php11,917,916.70[59] represents the reported income for sale of services/commissions but without certificates of CWT, to wit:

> 6. Q: If RCD's income from sale of service in 2009 amounted to [Php] 42,511,959.00, why is it that the certificates of creditable

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[54] Implementing Republic Act No. 8424, "*An Act Amending the NIRC, as Amended*" relative to the withholding on income subject to the expanded withholding tax and final withholding tax, withholding of income tax on compensation, withholding of creditable value-added tax and other percentage taxes, April 17, 1998.
[55] Php30,594,184.50 less Php2,712,371.05.
[56] *Records, Exhibit* "C," line 14C.
[57] *Id., Exhibit* "W," *Vol. III*, p. 2747.
[58] *Id., Exhibit* "FFFF," *Vol. I*, pp. 331-338, item 6.
[59] Php42,511,959.00 less Php30,594,042.30, with a difference of Php142.20 (Php30,594,184.50 less Php30,594,042.30).

> withheld at source of RCD for its income from sale of services for the taxable year ending December 31, 2009 only covers the income [Php]30,594,042.30?
>
> A: The difference, which is [Php]11,917,916.70 was still reported as income by RCD even if no certificates of creditable taxes withheld at source were issued by our suppliers. We considered and reported this difference as income as we received all the revenues declared in the company's 2009 ITR in the year 2009.

The total taxable revenues/income *per* petitioner's 2009 ITR were the same amounts (Php42,511,959.00) reported by petitioner in its AFS in the same year.

To further prove that the income from which the creditable taxes were withheld were declared as part of its gross income for taxable year 2009, petitioner provided the following documents:

1. Summary of commission income[60]; and

2. Detailed composition of its revenues as reflected in the 2009 ITR and AFS on a *per* customer basis and additional supporting documents such as Accounts Payable Voucher, Agents/Brokers Commission Slip, Allied Bank Deposit Slip, Billing Form, Breakdown of Commission, Cash Voucher, Check Voucher, Commission Payable Form, Commission Payment Certificate, Commission Release Summary, Commission Request Form, Revolving Fund Voucher and Official Receipts.[61]

In fine, petitioner was able to show that the income payments, from which the CWTs amounting to Php2,788,167.13 were withheld, were actually declared in its 2009 Annual ITR.

Finally, as to the third requisite, petitioner submitted Certificates of Creditable Tax Withheld at Source ("BIR Form No. 2307") duly issued to it by various withholding agents showing that creditable taxes in the aggregate amount of Php3,059,418.44[62] were

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[60] *Records, Exhibits* "Z" to "DDDD."
[61] *Id., Exhibits* "Z-1" to "DDDD-1."
[62] *Per* 2009 ITR is Php3,059,404.23, a difference of Php14.21.

withheld on commissions/sale of services it received for the year 2009, detailed as follows:

| Exhibit | Payor's Name | Income Payment | Tax Withheld |
|---|---|---|---|
| "L-1" | AJ Mark Realty & Development Corp. | 158,673.00 | 15,867.30 |
| "L-2" | AJ Mark Realty & Development Corp. | 148,099.50 | 14,809.95 |
| "L-3" | AJ Mark Realty & Development Corp. | 335,799.00 | 33,579.90 |
| " L-4" | AJ Mark Realty & Development Corp. | 181,845.00 | 18,184.50 |
| " L-5" | AJ Mark Realty & Development Corp. | 42,480.00 | 4,248.00 |
| " L-6" | AJ Mark Realty & Development Corp. | 142,020.00 | 14,202.00 |
| " L-7" | AJ Mark Realty & Development Corp. | 377,550.00 | 37,755.00 |
| " L-8" | AJ Mark Realty & Development Corp. | 97,020.00 | 9,702.00 |
| " L-9" | AJ Mark Realty & Development Corp. | 420,892.00 | 42,089.20 |
| " L-10" | ALSGRO Industrial & Development Corp. | 84,463.80 | 8,446.38 |
| " L-11" | ALSGRO Industrial & Development Corp. | 46,958.90 | 4,695.89 |
| " L-12" | The New APEC Development Corp. | 9,189,430.50 | 918,943.05 |
| " L-13" | Asiatic Development Corporation | 401,124.40 | 40,112.44 |
| " L-14" | Basic Housing Solutions, Inc. | 113,126.90 | 11,312.69 |
| " L-15" | Banco De Oro | 284,486.40 | 28,448.64 |
| " L-16" | Borland Development Corporation | 1,394,956.60 | 139,495.66 |
| " L-17" | Borland Development Corporation | 478,181.00 | 47,818.10 |
| " L-18" | Borland Development Corporation | 390,315.90 | 39,031.59 |
| " L-19" | Casimiro Development Corporation | 182,329.34 | 18,232.93 |
| " L-20" | Citihomes Builder and Development | 139,129.40 | 13,912.94 |
| " L-21" | Convergence Realty & Development Corp. | 148,115.00 | 14,811.50 |
| " L-22" | Convergence Realty & Development Corp. | 155,882.00 | 15,588.20 |
| " L-23" | Convergence Realty & Development Corp. | 321,472.00 | 32,147.20 |
| " L-24" | Convergence Realty & Development Corp. | 197,610.00 | 19,761.00 |
| " L-25" | CRC Realty Corporation | 138,195.70 | 13,819.57 |
| " L-26" | CRC Realty Corporation | 979,073.80 | 97,907.38 |
| " L-27" | Cumberland Develoment Corp. | 6,772,278.13 | 677,227.81 |
| " L-28" | Dolmar Marketing Corpoation | 130,140.10 | 13,014.01 |
| " L-29" | Landmark Communities Inc. | 32,484.40 | 3,248.44 |
| " L-30" | Malate Construction and Development | 1,369,028.38 | 136,902.84 |
| " L-31" | Moldex Realty Inc. | 57,317.00 | 5,731.70 |
| " L-32" | Moldex Realty Inc. | 14,171.40 | 1,417.14 |
| " L-33" | Moldex Realty Inc. | 24,480.00 | 2,448.00 |
| " L-34" | Moldex Realty Inc. | 43,864.00 | 4,386.40 |
| " L-35" | Moldex Realty Inc. | 272,473.20 | 27,247.32 |
| " L-36" | Palm Beach Realty | 116,803.90 | 11,680.39 |
| " L-37" | Peak Properties Inc. | 95,375.80 | 9,537.58 |
| " L-38" | Peak Properties Inc. | 340,258.50 | 34,025.85 |
| " L-39" | Peak Properties Inc. | 84,933.00 | 8,493.30 |
| " L-40" | Peak Properties Inc. | 297,480.70 | 29,748.07 |
| " L-41" | Sibulo Construction Development | 221,472.00 | 22,147.20 |
| " L-42" | Sibulo Construction Development | 195,117.70 | 19,511.77 |
| " L-43" | Sibulo Construction Development | 69,237.00 | 6,923.70 |
| " L-44" | Sibulo Construction Development | 343,692.10 | 34,369.21 |
| " L-45" | Sibulo Construction Development | 140,380.20 | 14,038.02 |
| " L-46" | Sibulo Construction Development | 44,352.00 | 4,435.20 |
| " L-47" | Sibulo Construction Development | 230,227.20 | 23,022.72 |
| " L-48" | Sibulo Construction Development | 125,200.80 | 12,520.08 |
| " L-49" | Sibulo Construction Development | 121,428.00 | 12,142.80 |
| " L-50" | Sibulo Construction Development | 234,045.00 | 23,404.50 |
| " L-51" | Sibulo Construction Development | 57,686.40 | 5,768.64 |
| " L-52" | Sibulo Construction Development | 93,150.00 | 9,315.00 |
| " L-53" | Stateland Inc. | 335,470.00 | 33,547.00 |
| " L-54" | Stateland Inc. | 576,270.00 | 57,627.00 |
| " L-55" | Stateland Inc. | 485,310.00 | 48,531.00 |

| | | | |
|---|---|---|---|
| " L-56" | Stateland Inc. | 773,330.00 | 77,333.00 |
| " L-57" | Suntrust Properties, Inc. | 3,826.60 | 382.66 |
| " L-58" | Suntrust Properties, Inc. | 3,826.59 | 382.66 |
| " L-59" | Suntrust Properties, Inc. | 9,421.64 | 942.16 |
| " L-60" | Suntrust Properties, Inc. | 15,710.53 | 1,571.05 |
| " L-61" | Suntrust Properties, Inc. | 3,826.59 | 382.66 |
| " L-63" | Verdantpoint Development Corp. | 108,826.50 | 10,882.65 |
| " L-64" | Verdantpoint Development Corp. | 47,449.00 | 4,744.90 |
| " L-65" | Verdantpoint Development Corp. | 87,020.90 | 8,702.09 |
| " L-66" | Verdantpoint Development Corp. | 67,589.10 | 6,758.91 |
| Total | | 30,594,184.50 | 3,059,418.44 |

Verification of the said certificates, however, reveals that the creditable taxes withheld in the aggregate amount of Php271,237.10, the related income payments of which amount to Php2,712,371.05, are supported by BIR Form No. 2307, but it does not contain petitioner's TIN. Hence, petitioner was able to establish the fact of withholding only up to the extent of the amount of Php2,788,167.13, computed as follows:

| | | | |
|---|---|---|---|
| Total Claimed Creditable Taxes Withheld | | | Php3,059,404.23 |
| Less: Disallowed CWT (Without TIN) | | | |
| Borland Development Corporation | *Exh.* " L-16" | Php 139,495.66 | |
| Borland Development Corporation | *Exh.* " L-17" | 47,818.10 | |
| Borland Development Corporation | *Exh.* " L-18" | 39,031.59 | |
| Moldex Realty Inc. | *Exh.* " L-31" | 5,731.70 | |
| Moldex Realty Inc. | *Exh.* " L-32" | 1,417.14 | |
| Moldex Realty Inc. | *Exh.* " L-33" | 2,448.00 | |
| Moldex Realty Inc. | *Exh.* " L-34" | 4,386.40 | |
| Moldex Realty Inc. | *Exh.* " L-35" | 27,247.32 | |
| Suntrust Properties, Inc. | *Exh.* " L-57" | 382.66 | |
| Suntrust Properties, Inc. | *Exh.* " L-58" | 382.66 | |
| Suntrust Properties, Inc. | *Exh.* " L-59" | 942.16 | |
| Suntrust Properties, Inc. | *Exh.* " L-60" | 1,571.05 | |
| Suntrust Properties, Inc. | *Exh.* " L-61" | 382.66 | 271,237.10 |
| Total Valid CWT *per* BIR Form 2307 | | | Php2,788,167.13 |

Thus, there is no merit in respondent's contention that petitioner failed to prove that the amount subject of its claim was actually remitted in full to the BIR. In *Commissioner of Internal Revenue v. Philippine National Bank*[63] the Supreme Court held that:

> The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.

[63] G.R. No. 180290, September 29, 2014.

In Banco Filipino Savings and Mortgage Bank v. Court of Appeals, this court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes:

> In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.

At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.

Moreover, as correctly held by the Court of Tax Appeals *En Banc,* the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, which reads:

> SEC. 267. Declaration under Penalties of Perjury. - Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

<u>Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue</u>

<u>to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.</u>

Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. <u>Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.</u> (Emphasis ours, citations omitted)

This court's ruling in Commissioner of Internal Revenue v. Asian Transmission Corporation, citing the Court of Tax Appeals' explanation, is instructive:

> . . . proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 ofthe NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents.
>
> xxx xxx xxx

From the foregoing, it is clear that a taxpayer claiming for tax refund/credit is not duty bound to prove actual remittance to the BIR of the taxes withheld.

Having complied with all three (3) requirements for a refund or issuance of a TCC, petitioner is, therefore, entitled thereto. The only question left to be answered is the amount of the TCC to be granted to petitioner.

***Petitioner is entitled to the tax refund/credit of its creditable tax withheld for the year 2009 in the reduced amount of Php1,464,346.14.***

*Section 76* of the *1997 NIRC* provides as follows:

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

In interpreting the foregoing provision, the Supreme Court, in *Systra Philippines, Inc. v. Commissioner of Internal Revenue*[64], held that:

> A corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period.
>
> In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.

In the case at bar, a perusal of petitioner's Annual ITR[65] for CY2009 reveal that it opted to be issued a TCC when it marked the corresponding box therein. Moreover, its Annual ITR clearly indicates that an income tax due in the amount of Php1,323,820.99[66], was offset against Php3,059,404.23[67], leaving an excess tax credit of Php1,735,583.24[68] as of the end of December 31, 2009.

However, as previously discussed, the amount of Php271,237.10 was disallowed, because, while it was supported by BIR Form No. 2307, the same did not properly bear petitioner's TIN.

There is, likewise, no merit to respondent's claim that petitioner has already exercised the option to carry over its excess credit. A closer look at petitioner's 2009 Annual ITR reveal that petitioner opted to be issued a TCC when it marked the corresponding box therein. To support its claim, it submitted to the Court its 2010 Annual ITR[69] which reflects a "Prior Year's Excess Credits" of Php3,754,710.95.[70] This amount represents the excess tax credits for the year 2007 which petitioner opted to carry over to the succeeding

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[64] G.R. No. 176290, September 21, 2007, 533 SCRA 776.
[65] *Records, Exhibit* "C," *Vol. III*, p. 2623.
[66] *Id., Exhibit* "C," line 26.
[67] Creditable taxes withheld accumulated during the four (4) quarters of the said year.
[68] *Records, Exhibit* "C," line 30.
[69] *Id., Exhibit* "R."
[70] *Records, Exhibit* "R," line 27A.

period.[71] Thus, it is clear that for the year 2009, petitioner opted for the second option, which is for the issuance of a TCC.

In fine, petitioner has sufficiently proven its entitlement to the issuance of a TCC, representing unutilized excess CWT for CY2009 in the reduced amount of Php1,464,346.14, computed as follows:

| | | |
|---|---|---|
| Total Creditable Taxes Withheld | | Php3,059,404.23 |
| Less: | | |
| Disallowed CWT (Without TIN) | Php271,237.10 | |
| Income Tax Due | 1,323,820.99 | 1,595,058.09 |
| Substantiated Unutilized Creditable Withholding Taxes | | **Php1,464,346.14** |

**WHEREFORE,** premises considered, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **ONE MILLION FOUR HUNDRED SIXTY FOUR THOUSAND THREE HUNDRED FORTY SIX AND 14/100 PESOS (Php1,464,346.14).**

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**WE CONCUR:**

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

[71] *Id., Exhibit* "Y," line 31 (with a 0.52 rounding off difference).

## ATTESTATION

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

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice