REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PHILIPPINE BANK OF COMMUNICATIONS, *Petitioner,*	**CTA CASE NO. 8084**
	Members: **BAUTISTA,** *Chairperson*
-versus-	**COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** AUG 12 2013 11:42 a.m.

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DECISION

COTANGCO-MANALASTAS, *J.*:

STATEMENT OF THE CASE

Philippine Bank of Communications filed this Petition for Review on April 15, 2010 to appeal the inaction of the Commissioner of Internal Revenue over its administrative claim for issuance of tax credit certificate in the amount of ₱29,076,156.00, representing its alleged unutilized creditable withholding taxes (CWT) for calendar year 2007.

STATEMENT OF FACTS

Petitioner Philippine Bank of Communications is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at PBCOM Tower, 6795 Ayala Avenue corner V.A. Rufino Street, Makati City. It is engaged in the commercial banking business and is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-263-340-000.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue duly authorized under the law to perform the duties of said office, including, among others, the power to refund overpaid and erroneously or illegally collected internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

On April 15, 2008, petitioner filed its Tentative Annual Income Tax Return (BIR Form No. 1702) for calendar year 2007, through the Electronic Filing and Payment System (EFPS), reporting a net loss of ₱822,409,440.00 and creditable taxes withheld at source in the amount of ₱29,007,058.38 for calendar year 2007.[2]

On May 2, 2008, petitioner filed its Final Annual Income Tax Return for calendar year 2007, through the EFPS, reporting a net loss of ₱772,866,753.00 and unutilized creditable taxes withheld at source in the amount of ₱29,076,156.00.[3]

On April 5, 2010, petitioner filed an administrative claim for the issuance of a tax credit certificate with the Bureau of Internal Revenue.[4]

Respondent failed to render a decision on petitioner's application for a tax credit certificate, prompting petitioner to file a Petition for Review before this Court on April 15, 2010.

Petitioner alleged that it was not able to utilize its creditable withholding tax for calendar year 2007 inasmuch as it incurred a net loss for that calendar year. Petitioner further argued that it indicated its intention to be issued a tax credit certificate for its unutilized creditable withholding tax for calendar year 2007 by marking the box corresponding to the choice "To be issued a Tax Credit Certificate" in Line 31 of its Final Annual Income Tax Return for calendar year 2007, pursuant to Section 76 of the NIRC of 1997, as amended. It asserted that it did not carry over the said unutilized creditable withholding taxes in its income tax return for calendar year 2008.

On June 4, 2010, respondent filed her Answer[5] and interposed the following contentions:

[1] Pars. 1.1 and 1.3, Stipulation of Facts, Joint Stipulation of Facts and Issues with Motion, *rollo*, pp. 68-69.
[2] Exhibit "A".
[3] Exhibit "B".
[4] Exhibit "E".
[5] *Rollo*, pp. 43-45.

"**SPECIAL AND AFFIRMATIVE DEFENSES**

3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

4. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;

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 Php29,076,156.00 as alleged excess and unutilized creditable income taxes withheld for taxable year 2007 were not fully substantiated by proper documentary evidence, such as, but not limited to certificates of income taxes withheld at source.

7. Petitioner failed to prove that the amount of Php29,076,156.00, as alleged excess and unutilized creditable income taxes withheld for taxable year 2007 was included as part of its gross income for taxable year 2007 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;

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. Assuming but without admitting that petitioner is entitled to tax refund, 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 refunds are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

On June 21, 2010, the Court issued a Notice of Pre-Trial Conference which required both parties and their counsels to be present at the pre-trial and to file with this Court and serve on the adverse party at least three (3) days before the date of the pre-trial their Pre-trial Briefs.[6] On July 27, 2010, both petitioner[7] and respondent[8] filed their respective Pre-trial Briefs.

On September 2, 2010, the parties submitted their Joint Stipulation of Facts and Issues with Motion.[9] In the same Joint Stipulation, respondent proposed to add two more issues, to wit:

> "3.1. Whether or not the amount of P29,076,156 being claimed by petitioner as unutilized creditable withholding tax for the calendar year 2007 was remitted in full to the BIR; and
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> 3.2. Whether or not petitioner's claim for the issuance of a tax credit certificate for the calendar year 2007 in the amount of P29,076,156 is duly substantiated by proper documentary evidence, such as invoices, official receipts, certificates of withholding tax at source, certificate of remittances and other required tax returns."

Petitioner objected to the inclusion of the two issues for the reason that the first proposed addition to the stipulation of issues is not a valid issue in the case at bar; whereas the second proposed addition is necessarily subsumed in the issue stated in paragraph 2.2 of the Joint Stipulation and therefore, redundant.

On September 13, 2010, this Court approved in its Pre-Trial Order[10] the Joint Stipulation of Facts and Issues and agreed with petitioner as regards respondent's proposed two additional issues, in this wise:

> "(T)he additional issue of proof of remittance to the BIR of the subject amount in Item C.1 is not one of the requisites in a claim for the issuance of a tax credit certificate of unutilized creditable withholding taxes withheld at source. The requisites are as stated as issues in items B.1 to B.4. On the other hand, the second proposed additional issue of substantiation is necessarily subsumed in the issue stated in item B.2."[11]

In the same Pre-Trial Order, this Court terminated the pre-trial and scheduled the initial presentation of evidence for the petitioner.[12]

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[6] *Rollo*, p. 47.
[7] *Rollo*, pp. 50-60.
[8] *Rollo*, pp. 61-63.
[9] *Rollo*, pp. 68-72.
[10] *Rollo*, pp. 75-80.
[11] *Rollo*, p. 77.
[12] *Rollo*, p. 80.

On January 14, 2011, petitioner moved to commission Mr. Edwin F. Ramos of Constantino Guadalquiver & Co., as the Independent Certified Public Accountant (ICPA) to conduct the actual examination, evaluation and audit of the voluminous documents pertinent to the present case, pursuant to Section 5 of Rule 12 and Rule 13 of the Revised Rules of the Court of Tax Appeals.[13] On January 19, 2011, the Court appointed Mr. Edwin F. Ramos as ICPA in this case. On February 18, 2011, Mr. Ramos, as the Court-commissioned ICPA, submitted his Report.[14]

On September 16, 2011, petitioner moved[15], with leave of court, to recall witness Mr. Edwin F. Ramos, to allow the ICPA to submit a second supplemental report and to set a hearing for the presentation of the ICPA's second supplemental report. On October 27, 2011, the Court granted petitioner's motion.[16]

On February 29, 2012, petitioner formally offered Exhibits "A" to "S" inclusive of their sub-markings and the testimonies of Percival J. Ordejon, as the head of the financial accounting and tax management unit of petitioner, and of Edwin F. Ramos, as the Court-commissioned ICPA. The Court in a Resolution[17] dated April 10, 2012, admitted Exhibits "A" to "S" except Exhibits "G" inclusive of its sub-markings, "P-1" to "P-18.3", and "R-1.1" to "R-6". On May 3, 2012, petitioner filed a Motion for Reconsideration[18], praying that the denied evidence be admitted. In the Resolution[19] dated June 21, 2012, this Court partially granted petitioner's Motion for Reconsideration.

On April 2, 2012, petitioner filed an Omnibus Motion with Leave of Court to reopen proceedings for the introduction of new evidence and to recall witness Percival Ordejon.[20] The Court, in a Resolution[21] dated May 18, 2012, granted petitioner's motion.

On June 22, 2012, petitioner filed a Supplemental Formal Offer of Documentary Exhibits, praying for the Court to admit Exhibits "T", "T-1", and "U"[22]. In a Resolution[23] dated July 17, 2012, this Court admitted the above-mentioned exhibits and petitioner was deemed to have finally rested its case.

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[13] Minutes of the January 19, 2011 Hearing, *Rollo*, p. 98; Transcript of Stenographic Notes (TSN), January 19, 2011, pp. 13-23.
[14] *Rollo*, p. 105.
[15] *Rollo*, pp. 226-232.
[16] Resolution dated October 27, 2011, *rollo*, p. 238.
[17] *Rollo*, pp. 465-466.
[18] *Rollo*, pp. 474-478.
[19] *Rollo*, pp. 501-503.
[20] *Rollo*, pp. 459-462.
[21] *Rollo*, p. 486.
[22] *Rollo*, pp. 504-507.
[23] *Rollo*, p. 521.

During the hearing held on September 13, 2012, respondent, through counsel, manifested that there is no investigation report regarding petitioner's claim for refund since it is still pending investigation; thus, she is constrained to submit the case for decision without presenting evidence.[24]

The case was submitted for decision on November 26, 2012, considering petitioner's Memorandum[25] filed on October 12, 2012 and respondent's Memorandum[26] submitted on October 29, 2012.

STATEMENT OF ISSUES

The parties submitted the following jointly stipulated issues[27] for this Court's consideration:

1. Whether or not the claim for issuance of tax credit certificate for calendar year 2007 was filed within the two-year period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997 as amended;

2. Whether or not petitioner has an unutilized creditable withholding tax in the amount of ₱29,076,156.00 for calendar year 2007, which is a proper subject of a claim for refund/issuance of tax credit certificate pursuant to Section 76 of the NIRC, as amended;

3. Whether or not the income from which the subject creditable taxes were withheld was included as part of the gross income in petitioner's annual income tax return for calendar year 2007; and

4. Whether or not the unutilized creditable withholding tax for calendar year 2007 in the amount of ₱29,076,156.00 was carried over and applied by petitioner against its tax liabilities in the succeeding taxable year.

Basically, the issue is whether or not petitioner is entitled to issuance of tax credit certificate for its alleged unutilized creditable withholding tax for calendar year 2007 in the aggregate amount of ₱29,076,156.00.

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[24] Minutes of the September 13, 2012 Hearing, *rollo*, p. 525; TSN dated September 13, 2012, pp. 3-4.
[25] *Rollo*, pp. 528-543.
[26] *Rollo*, pp. 547-553.
[27] Pars. 2.1 to 2.4, Stipulation of Issues, Joint Stipulation of Facts and Issues with Motion, *rollo*, pp. 69-70.

RULING OF THE COURT

In order to be entitled to the issuance of tax credit certificate for excess/unutilized creditable withholding tax, petitioner must satisfy the following requisites:

1. That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;

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

3. That the income upon which the taxes were withheld was included in the return of the recipient.[28]

Anent the first requisite, the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, pertinent to claiming a tax refund/tax credit are Sections 204(C) and 229, which provide:

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

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[28] Section 2.58, Revenue Regulations No. 2-98, as amended; *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

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

In *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*[29], the Supreme Court held that the two-year prescriptive period for claiming a refund commences to run on the date of filing of the Final Adjustment Return. The pertinent portions of the Supreme Court decision are as follows:

> "The term 'return' in the case of domestic corporations like ACCRAIN refers to the final adjustment return as mentioned in Section 69 of the Tax Code of 1986, as amended, which partly reads:
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> > Sec. 69. *Final Adjustment Return.* - Every corporation liable to tax under Section 24 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 excess tax still due; or
> > (b) Be refunded the excess amount paid, as the case may be.
>
> Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of *Commissioner of Internal Revenue v. Asia Australia Express, Ltd.* (G. R. No. 85956), **we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return.** xxx.
>
> It bears emphasis at this point that **the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final**

[29] G.R. No. 96322, December 20, 1991.

> **adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations.** The 'date of payment', therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982." *(Emphasis supplied)*

Also, the Highest Tribunal opined in the case of *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*[30] that "it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures."

Based on the afore-cited cases, petitioner has two years from the date of filing of the Final Adjustment Return within which to file a claim for refund or issuance of tax credit certificate for its excess creditable withholding taxes both in the administrative and judicial levels. The present claim covers taxable year 2007 for which petitioner filed its original Annual Income Tax Return on April 15, 2008.[31] Counting from this date, the administrative claim which was filed on April 5, 2010[32] and the Petition for Review which was filed on April 15, 2010 both fell within the two-year prescriptive period provided by Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended. Thus, petitioner complied with the first requisite.

As regards petitioner's compliance with the second requisite, the Court of Tax Appeals *En Banc* ruled in the case of *Mermac, Inc. vs. Commissioner of Internal Revenue*[33] that claims for refund of creditable tax withheld shall only be given due course upon submission of BIR Form No. 2307 issued by the income-payor to the recipient-payee, to wit:

> "On the outset, the third condition is imposed by Section 2.58.3 (B) of Revenue Regulations (RR) No. 2-98, which 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. (Emphasis provided)

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[30] G.R. No. 83736, January 15, 1992.
[31] Exhibit "A".
[32] Exhibit "E".
[33] CTA EB Case No. 699, July 27, 2011 (CTA Case No. 7758).

Corollary to the condition set forth, the same RR No. 2-98 establishes the requirement on the part of the payor to furnish the payee the withholding tax statement using the prescribed form (BIR Form No. 2307), which shows the income payments made and the amount of taxes withheld. Otherwise, the failure of the payor to furnish the same shall be a ground for mandatory audit, *viz.*:

> Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. —
>
> xxx xxx xxx
>
> (B) Withholding tax statement for taxes withheld. - **Every payor required to deduct and withhold taxes under these regulations shall furnish, in triplicate, each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form No. 2307) showing the income payments made and the amount of taxes withheld therefrom**, for every month of the quarter, within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. The payor, nonetheless, should always retain a copy of duly issued BIR Form 2307. Failure to furnish the same shall be a ground for mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee.
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> xxx xxx xxx

The rules are clear. The income-payor, as the withholding agent, is required to furnish the recipient-payee of the statement of withholding or BIR Form No. 2307. **And for purposes of claims for refund or tax credit of creditable income tax, the claim shall only be given due course when the income and withholding are established by a copy of the withholding tax statement or BIR Form No. 2307** issued by the income-payor to the recipient-payee." (*Emphasis supplied*)

The breakdown of petitioner's total claim amounting to ₱29,076,156.00 is summarized as follows:[34]

Findings	Annex Reference	Supporting BIR Returns	Amount of Creditable Withholding Tax
A. Creditable Withholding tax payments properly supported by original BIR Form 1606, BIR Form 1706, and BIR Form 2307			
Sale of Property			
1. Creditable withholding tax payments supported by original BIR Returns stamped "received" by the BIR			

[34] ICPA Report, dated March 5, 2011, Exhibit "G-36", pp. 3-6

agent and photocopies of bank validated deposit slips as evidence of tax remittance.	Annex A1-1	1606 & 1706	₱ 6,290,474.40
2. Creditable withholding tax payment supported by original BIR Return stamped "received" by the BIR agent without the Company's TIN indicated therein and original copy of bank validated deposit slip as evidence of tax remittance.	Annex A1-2	1606	180,000.00
3. Creditable withholding tax payment supported by original BIR Return stamped "received" by the BIR agent.	Annex A1-3	1606	420,000.00
Sub-Total			**6,890,474.40**
Lease Income 1. Creditable withholding tax payments supported by original BIR Form 2307	Annex A2-1	2307	7,005,347.85
2. Creditable withholding tax payments supported by original BIR Form 2307 without Company's TIN indicated therein	Annex A2-2	2307	1,076.51
Sub-Total			**7,006,424.36**
Interest Income on Commercial Loans 1. Creditable withholding tax payments supported by original BIR Form 2307	Annex A3-1	2307	2,821,472.44
2. Creditable withholding tax payments supported by original BIR Form 2307 without the Company's TIN indicated therein	Annex A3-2	2307	477,001.86
Sub-Total			**3,298,474.30**
Reimbursement 1. Creditable withholding tax payments supported by original BIR Form 2307	Annex A5-1	2307	125,583.02
2. Creditable withholding tax payments supported by original BIR Form 2307 without the company's TIN indicated therein	Annex A5-2	2307	79,225.95
Sub-Total			**204,808.97**
TOTAL			**₱ 17,400,182.03**
B. Other Findings **Sale of Property** 1. Creditable withholding tax payments supported by photocopies of BIR Returns stamped "received" by the BIR agent and photocopies of bank validated deposit slips as evidence of tax remittance.	Annex A1-4	1606	3,590,614.80
2. Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent	Annex A1-5	1606/1706	1,140,000.00
3. Creditable withholding tax payment supported by photocopy of BIR return stamped :received" by the BIR agent but with different company name indicated therein, and photocopy of bank validated deposit slip as evidence of tax remittance	Annex A1-6	1606	160,992.00
4. Under-claimed creditable withholding tax payments	Annex A1-7	1606	(89,502.00)

Sub-Total			**4,802,104.80**
Lease Income 1. Creditable withholding tax payments supported by original BIR Form 2307 but with different company TIN indicted therein	Annex A2-3	2307	562,189.63
2. Creditable withholding tax payments supported by original BIR Form 2307 but not dated within the period of claim/without date indicated therein/with erasure on the date (year)	Annex A2-4	2307	371,794.93
3. Creditable withholding tax payments supported by original BIR Form 1601-E	Annex A2-5	1601-E	15,175.00
4. Creditable withholding tax payments supported by original BIR Form 1601-E but are not dated within the period of claim/without date indicated therein/with erasure on the date (year)	Annex A2-6	1601-E	5,200.00
5. Supporting documents not available for verification	Annex A2-7		4,770,064.05
6. Under-claimed creditable withholding tax payments	Annex A2-8	2307	(51,786.68)
Sub-Total			**5,672,636.93**
Interest Income on Commercial Loans 1. Creditable withholding tax payments supported by original BIR Form 2307 but with different company TIN indicated therein	Annex A3-3	2307	295,739.42
2. Creditable withholding tax payments supported by original BIR Form 2307 but not dated within the period of claim/without date indicated therein/with erasure on the date (year)	Annex A3-4	2307	5,337.08
3. Creditable withholding tax payments supported by original BIR Form 2307 but with erasure in the amount	Annex A3-5	2307	19,539.01
4. Creditable withholding tax payments supported by photocopies of BIR Form 2307	Annex A3-6	2307	553,261.11
5. Supporting documents not available for verification	Annex A3-7		221,198.06
6. Under claimed creditable withholding tax payments	Annex A3-8	2307	(1,535.83)
Sub-Total			**1,093,538.85**
Commission Income 1. Supporting documents not available for verification	Annex A4		**4,110.37**
Reimbursement 1. Creditable withholding tax payments supported by original BIR Form 2307 but with different company TIN indicated therein	Annex A5-3	2307	44.25
2. Creditable withholding tax payments supported by original BIR Form 2307 but with different company name indicated therein	Annex A5-4	2307	995.74
3. Creditable withholding tax payments supported by original BIR Form 2307 but are not dated within the period of claim/without date indicate therein/with erasure on the date (year)	Annex A5-5	2307	85,312.50

4. Creditable withholding tax payments supported by original BIR Form 2307 but with erasure in amount	Annex A5-6	2307	2,771.62
5. Supporting documents not available for verification	Annex A5-7		16,745.23
6. Under claimed creditable withholding tax payments	Annex A5-8	2307	(2,286.32)
Sub-Total			**103,583.02**
TOTAL - *Other Findings*			**11,675,973.97**
GRAND TOTAL			**₱29,076,156.00**

Based on the above findings and the Court's ruling on strict compliance with the required Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 in claiming for CWT refund, petitioner was only able to comply with the second requisite in the amount of ₱10,505,664.42, as presented below:

Findings	Annex Reference	Supporting BIR Returns	Amount of Creditable Withholding Tax
A. Creditable Withholding tax payments properly supported by original BIR Form 2307 **Lease Income** Creditable withholding tax payments supported by original BIR Form 2307	Annex A2-1	2307	7,005,347.85
Interest Income on Commercial Loans Creditable withholding tax payments supported by original BIR Form 2307	Annex A3-1	2307	2,821,472.44
Reimbursement Creditable withholding tax payments supported by original BIR Form 2307	Annex A5-1	2307	125,583.02
B. Other Findings **Interest Income on Commercial Loans** Creditable withholding tax payments supported by photocopies of BIR Form 2307	Annex A3-6	2307	553,261.11
GRAND TOTAL			**₱10,505,664.42**

As regards the third requisite, records reveal that out of the amount of ₱10,505,664.42, which was supported with BIR Form No. 2307, only the amount of ₱903,106.89 CWT has been proven. The Court found out that this is the amount that corresponds to the income payments in the aggregate amount of ₱18,250,259.33; which the Court verified to have been included in petitioner's General Ledger and Annual Income Tax Return for taxable year 2007, in compliance with the requisite that the income upon which the taxes were withheld was included in the return of the recipient, to wit:

Exhibit	Received From	Amount of Income Payments	Amount of Creditable Withholding Tax
A. Creditable Withholding tax payments properly supported by original BIR Form Nos. 1606, 1706, and 2307			
Lease Income (Annex A2-1, Exhibit G-36)			

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G-12.38	Caspo, Inc./via Web Inc.	₱ 3,274,131.20	₱ 163,706.56
G-12.99	PBCom Finance Corp.	15,000.00	750.00
G-12.108	Philam	1,802,655.80	90,132.79
G-12.113	Primary Breeders	222,062.20	11,103.12
G-12-142	Alpha Securities (Daiichi Properties)	30,258.00	1,512.90
G-12-143	Alpha Securities (Daiichi Properties)	30,258.00	1,512.90
G-12-144	Alpha Securities (Daiichi Properties)	30,258.00	1,512.90
G-12-146	Alpha Securities (Daiichi Properties)	30,258.00	1,512.90
G-12-147	Alpha Securities (Daiichi Properties)	30,258.00	1,512.90
G-12-148	Alpha Securities (Daiichi Properties)	27,948.00	1,397.40
G-12-149	Alpha Securities (Daiichi Properties)	27,948.00	1,397.40
G-12-150	Alpha Securities (Daiichi Properties)	27,948.00	1,397.40
G-12-151	Banco De Oro	1,018,767.60	50,938.38
G-12-152	Banco De Oro	679,178.40	33,958.92
G-12-154	Bell Communications	80,850.48	4,042.52
G-12-155	Bell Communications	4,119.51	205.98
G-12-156	Blu Boz Water Treatment	472,335.00	23,616.75
G-12-158	Blu Boz Water Treatment	314,890.00	15,744.50
G-12-159	Blu Boz Water Treatment	173,189.50	8,659.47
G-12-160	Blu Boz Water Treatment	173,189.50	8,659.47
G-12-54	Data Road Philippines	615,458.00	30,772.90
G-12-62	ESS Manufacturing	668,273.35	33,413.67
G-12-168	First Philippine Industrial Park	183,894.00	9,194.70
G-12-169	GKE Group Int'l. Inc.	75,496.00	3,774.80
G-12-170	GKE Group Int'l. Inc.	75,496.00	3,774.80
G-12-171	GKE Group Int'l. Inc.	75,496.00	3,774.80
G-12-172	GKE Group Int'l. Inc.	75,496.00	3,774.80
G-12-173	GKE Group Int'l. Inc.	75,496.00	3,774.80
G-12-176	ING Bank N.V.	140,325.00	7,016.25
G-12-179	IPSOS Phils. Inc.	47,300.40	2,365.02
G-12-180	IPSOS Phils. Inc.	47,300.40	2,365.02
G-12-182	IPSOS Phils. Inc.	54,811.00	2,740.55
G-12-183	IPSOS Phils. Inc.	54,811.00	2,740.55
G-12-184	IPSOS Phils. Inc.	54,811.00	2,740.55
G-12-185	IPSOS Phils. Inc.	54,811.00	2,740.55
G-12-186	IPSOS Phils. Inc.	54,811.00	2,740.55
G-12-187	IPSOS Phils. Inc.	54,811.00	2,740.55
G-12-188	IPSOS Phils. Inc.	54,811.00	2,740.55
G-12-192	KSY Land Dev. Corp.	70,602.00	3,530.10
G-12-193	KSY Land Dev. Corp.	70,602.00	3,530.10
G-12-194	KSY Land Dev. Corp.	70,602.00	3,530.10
G-12-195	KSY Land Dev. Corp.	70,602.00	3,530.10
G-12-196	KSY Land Dev. Corp.	70,602.00	3,530.10
G-12-199	KSY Land Dev. Corp.	65,212.00	3,260.60
G-12-200	KSY Land Dev. Corp.	65,212.00	3,260.60
G-12-201	KSY Land Dev. Corp.	65,212.00	3,260.60
G-12-202	Mechel Metal Supply	32,238.03	1,611.91
G-12-72	Mitsubishi Corporation	1,045,010.14	52,250.51
G-12-215	Norwegian Missionary	105,069.00	5,253.45
G-12-216	Norwegian Missionary	122,516.00	6,125.80
G-12-217	Norwegian Missionary	122,516.00	6,125.80
G-12-218	Norwegian Missionary	122,516.00	6,125.80
G-12-219	Norwegian Missionary	122,516.00	6,125.80

G-12-220	Norwegian Missionary	122,516.00	6,125.80
G-12-221	Norwegian Missionary	122,516.00	6,125.80
G-12-222	Norwegian Missionary	122,516.00	6,125.80
G-12-223	Norwegian Missionary	122,516.00	6,125.80
G-12-79	NPC Alliance Corporation	37,894.80	1,894.74
G-12-80	NPC Alliance Corporation	573,102.60	28,655.13
G-12-225	Orakel Transcription	127,785.00	6,389.25
G-12-82	Primary Breeders	222,062.40	11,103.12
G-12-230	Sodexho Pass	112,556.40	5,627.82
G-12-231	Sodexho Pass	112,556.40	5,627.82
G-12-232	Sodexho Pass	112,556.40	5,627.82
G-12-233	Sodexho Pass	37,648.00	1,882.40
G-12-234	Sodexho Pass	37,648.00	1,882.40
G-12-235	Sodexho Pass	112,556.40	5,627.82
G-12-236	Sodexho Pass	37,648.00	1,882.40
G-12-237	Sodexho Pass	112,556.40	5,627.82
G-12-238	Sodexho Pass	37,648.00	1,882.40
G-12-239	Sodexho Pass	37,648.00	1,882.40
G-12-240	Sodexho Pass	112,556.40	5,627.82
G-12-241	Symbio Inc.	127,704.25	6,385.21
G-12-242	Symbio Inc.	127,704.25	6,385.21
G-12-243	Symbio Inc.	127,704.25	6,385.21
G-12-244	Symbio Inc.	127,704.25	6,385.21
G-12-245	Symbio Inc.	127,704.25	6,385.21
G-12-246	Symbio Inc.	127,704.25	6,385.21
G-12-247	Symbio Inc.	127,704.25	6,385.21
G-12-250	Talkpia Language Center	33,756.00	1,687.80
G-12-251	Talkpia Language Center	33,756.00	1,687.80
G-12-252	Talkpia Language Center	33,756.00	1,687.80
G-12-253	Talkpia Language Center	33,756.00	1,687.80
G-12-254	Talkpia Language Center	33,756.00	1,687.80
G-12-255	Talkpia Language Center	33,756.00	1,687.80
G-12-256	Talkpia Language Center	33,756.00	1,687.80
G-12-257	Talkpia Language Center	33,756.00	1,687.80
G-12-258	Talkpia Language Center	33,756.00	1,687.80
G-12-259	Tradition Homes	68,872.00	3,443.60
G-12-260	Tradition Homes	68,872.00	3,443.60
G-12-261	Tradition Homes	68,872.00	3,443.60
G-12-262	Tradition Homes	68,872.00	3,443.60
G-12-263	Tradition Homes	68,872.00	3,443.60
G-12-264	Tradition Homes	68,872.00	3,443.60
G-12-265	Tradition Homes	68,872.00	3,443.60
G-12-266	Tradition Homes	68,872.00	3,443.60
G-12-267	TUV Phils.	186,096.00	9,304.80
G-12-268	TUV Phils.	186,096.00	9,304.80
G-12-269	TUV Phils.	10,000.00	500.00
G-12-270	TUV Phils.	5,000.00	250.00
G-12-272	TUV Phils.	186,096.00	9,304.80
G-12-311	Pepsi Cola	150,000.00	7,500.00
	Total	**₱ 17,936,723.46**	**₱ 896,836.17**
Interest Income on Commercial Loans (Annex A3-1, Exhibit G-36)			
G-12-937	Lepanto Consolidated Mining	28,987.26	579.75
G-12-943	Masagana Telemart, inc.	48,951.39	979.03

G-12-945	Masagana Telemart, inc.	53,173.61	1,063.47
G-12-947	Masagana Telemart, inc.	49,083.33	981.67
G-12-949	Masagana Telemart, inc.	51,666.67	1,033.33
G-12-951	Masagana Telemart, inc.	53,173.61	1,063.47
G-12-981	Masagana Telemart, inc.	28,500.00	570.00
	Total	**313,535.87**	**6,270.72**
GRAND TOTAL		**₱ 18,250,259.33**	**₱ 903,106.89**

In sum, petitioner has sufficiently complied with the three requisites for the refund of unutilized creditable withholding taxes, but only to the extent of ₱903,106.89 out of the total claimed CWT of ₱29,076,156.00.

The Court shall now determine whether petitioner exercised the option to carry over its excess creditable withholding taxes to the succeeding quarters, as provided under Section 76 of the NIRC of 1997, as amended, which reads:

> "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."

Pursuant to the above-quoted provision, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (either in the form of cash or tax credit certificate) or carried over/applied to the succeeding taxable years. However, once the carry-over option has been made, the same becomes irrevocable for that taxable period.

Records reveal that in its Final Income Tax Return for calendar year 2007[35], petitioner reflected a net loss of ₱772,866,753.00[36] and income tax overpayment of ₱70,159,970.00[37]; which petitioner marked as "To be Issued a Tax Credit Certificate".

A perusal of said Income Tax Return shows that the income tax overpayment of ₱70,159,970.00 consists of the following:

Prior Year's Excess Credits	₱41,083,814.00
Add: Creditable tax withheld during the year	29,076,156.00
Unutilized Creditable Withholding Taxes	**₱70,159,970.00**

Petitioner was unable to utilize the total tax credits of ₱70,159,970.00 because it had no income tax liability due to losses incurred in its operations.

In petitioner's 2008 Quarterly Income Tax Returns for the first[38] and second[39] quarters, only the amount of ₱41,083,814.00 was reflected as "Prior Year's Excess Credits"; while in the Quarterly Income Tax Returns for the third[40] quarter as well as in its 2008 Annual Income Tax Return[41], only the amount of ₱40,911,536.52 was reflected as "Prior Year's Excess Credits". This amount was arrived at by deducting the Minimum Corporate Income Tax (MCIT) for the second quarter of 2008 amounting to ₱172,277.48 from "Prior Year's Excess Credits" of ₱41,083,814.00. Clearly, the claimed CWT amounting to ₱29,076,156.00 for the year 2007 was not carried over to the succeeding quarters or taxable year.

In recapitulation, petitioner is entitled to the issuance of tax credit certificate in the reduced amount of ₱903,106.89, representing excess/unutilized creditable withholding taxes for calendar year 2007.

[35] Exhibit "B"
[36] Exhibit "B", Line 21B
[37] Exhibit "B", Line 29
[38] Exhibit "G-4"
[39] Exhibit "G-5"
[40] Exhibit "G-6"
[41] Exhibit "D"

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **NINE HUNDRED THREE THOUSAND ONE HUNDRED SIX PESOS AND 89/100 (₱903,106.89)** in favor of petitioner, representing its unutilized creditable withholding taxes for calendar year 2007.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

I CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice