REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GLOBAL ENERGY SUPPLY CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10501

Members:

BACORRO-VILLENA, *Acting Chairperson,* *and*
CUI-DAVID, *JJ.*

Promulgated:
MAY 03 2024
x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Global Energy Supply Corporation (**petitioner**) against respondent Commissioner of Internal Revenue (**respondent/CIR**) pursuant to Section 3(a)[2], Rule 8

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[1] Filed on 17 May 2021, Division Docket, pp. 7-25.

[2] **SEC. 3**. *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

in relation to Section 3(a)(1)[3], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It prays that judgment be rendered ordering respondent to refund to petitioner the amount of ₱53,371,744.24, representing the latter's excess and unutilized creditable withholding taxes (**CWTs**) for taxable year (**TY**) 2018.[4]

PARTIES OF THE CASE

Petitioner Global Energy Supply Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines.[5] It is registered with the Bureau of Internal Revenue (**BIR**) with Tax Identification Number (**TIN**) 234-621-270-000.[6] It holds its principal office at 15/F Metrobank Plaza Bldg., Osmeña Blvd., Santa Cruz, Cebu City 6000.[7] It is primarily engaged in the supply and delivery of electricity, and the development, construction, operation, maintenance, and management of facilities used in connection therewith, as well as provide facilities or services as may be necessary or appropriate in connection with the supply and delivery of electricity.[8]

Respondent, on the other hand, is the duly appointed CIR tasked to perform the duties of his or her office, including, *inter alia*, the power to decide claims for tax refund or tax credit subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4[9] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and

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3 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(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[.]

4 Prayer, Petition for Review, Division Docket, p. 23.

5 Exhibit "P-1", id., pp. 342-351.

6 Exhibit "P-2", id., p. 352.

7 Id.

8 Supra at note 5, p. 343.

9 **SEC. 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Section 7[10] of Republic Act (**RA**) No. 1125[11], as amended by RA 9282.[12] He or she holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

FACTS OF THE CASE

On 12 April 2019, petitioner filed its Annual Income Tax Return[13] (**ITR**) for TY 2018 which reflected an overpayment of ₱82,720,276.00, computed as follows:

Total Income Tax Due		₱ 13,234,227
Less: Total tax credits/payments		
Prior year's excess tax credits other than MCIT	₱ 42,582,759	
CWT for TY 2018	53,371,744	95,954,503
Total Amount Payable (Overpayment)		(₱ 82,720,276)

Before the BIR, petitioner manifested its option to refund the said amount by checking the appropriate box in its Annual ITR for TY 2018.[14]

Out of the amount of ₱42,582,759.00 from the prior year's unutilized excess tax credits, only ₱29,348,532.00 remained after applying against the same the income tax (**IT**) due of ₱13,234,227.00 for TY 2018. Petitioner also carried over the same amount of ₱29,348,532.00 from the prior TY 2018's unutilized excess tax credits in its Annual ITR for TY 2019.[15]

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10 **Sec. 7.** *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.
(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue[.]

11 AN ACT CREATING THE COURT OF TAX APPEALS.

12 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.

13 Exhibit "P-4", Division Docket, pp. 356-363.

14 Line 21, Exhibit "P-4", id., p. 356.

15 Line 1, Schedule 7, Exhibit "P-7", id., p. 423.

Later, petitioner exercised its option to refund the CWTs that it withheld from its customers during TY 2018. Thus, on 14 and 16 December 2020, petitioner filed its letter dated 09 December 2020[16], and Application for Tax Credits/Refund (BIR Form No. 1914)[17], with the BIR. It applied for a refund or issuance of tax credit certificate (**TCC**) covering excess and unutilized CWTs for TY 2018, in the aggregate amount of ₱53,371,744.00.

The BIR, however, did not act on petitioner's claim. Due to the BIR's inaction, it filed the present petition on 17 May 2021.[18] The case was initially raffled to this Court's Third Division.

PROCEEDINGS BEFORE THIS COURT

On 14 June 2021, the Court issued Summons[19] on respondent. Respondent filed a "Motion to Admit Attached Answer" on 26 July 2021[20], which the Court deemed granted through its Resolution dated 11 October 2021.[21] In the Answer[22], respondent interposed that petitioner is not entitled to the claimed refund as the petition failed to show it complied with the requirements of Revenue Memorandum Order (**RMO**) No. 53-98[23] and Revenue Regulations (**RR**) No. 2-2006.[24] Particularly, it failed to submit the complete documentary requirements as provided for in RMO No. 53-98 as well as RR No. 2-2006. According to respondent, although petitioner submitted documents to support its claim, the latter failed to faithfully substantiate its claim when it failed to comply with the aforementioned issuances, a lapse supposedly fatal to its judicial claim.

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16 Exhibit "P-8", id., p. 477.

17 Exhibit "P-8-1", BIR Records, p. 918.

18 Supra at note 1.

19 Division Docket, p. 214.

20 Id., pp. 216-219.

21 Id., p. 227.

22 Id., pp. 221-225.

23 Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as Of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

24 Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns with Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.

Thereafter, on 12 November 2021, petitioner filed its Pre-Trial Brief.[25]

The Pre-Trial Conference was initially set on 18 November 2021[26], but was reset to and held on 29 March 2022.[27] Prior thereto, on 01 March 2022, respondent submitted his or her Pre-Trial Brief.[28] On 10 March 2022, respondent then transmitted to the Court the BIR Records of this case.[29]

On 29 March 2020, the Pre-Trial Conference proceeded as scheduled.[30] On 27 April 2022, the parties submitted their Joint Stipulation of Facts and Issues[31] (**JSFI**), which was admitted and approved by the Court in its Resolution dated 05 May 2022[32], marking the termination of the Pre-Trial. A Pre-Trial Order dated 25 May 2022[33] was then issued.

Upon petitioner's motion[34], the Court commissioned Atty. Walter L. Abela, Jr., (**Abela**) as Independent Certified Public Accountant (**ICPA**) on 22 June 2022.[35] On 29 June 2022, the case was transferred to this Court's Second Division, pursuant to CTA Administrative Circular No. 01-2022 dated 21 June 2022, which reorganized the CTA's Second and Third Divisions.[36]

Thereafter, trial ensued with petitioner offering the testimonies of the following witnesses, namely: (1) Reymonda Aida B. Obrero (**Obrero**)[37], its Vice-President/Controller; and (2) ICPA Abela.[38] Both testified through their respective Judicial Affidavits.

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25 Division Docket, pp. 228-237.
26 See Resolution dated 11 October 2021, id., p. 227.
27 See Resolution dated 24 November 2021, id., p. 243.
28 Id., pp. 244-246.
29 See Respondent's Compliance dated 10 March 2022, id., pp. 249-251.
30 See Minutes of the Hearing and Order, both dated 29 March 2022, id., pp. 254, and 256-257, respectively.
31 Id., pp. 258-265.
32 Id., p. 267.
33 Id., pp. 269-275.
34 Petitioner's Motion to Avail of the Provisions of Section 5, Rule 12 of the Revised Rules of the Court of Tax Appeals, id., pp. 276-279.
35 See Order dated 22 June 2022, id., pp. 309-310.
36 See Order dated 29 June 2022, id., p. 311.
37 See Minutes of the Hearing and Order, both dated 22 June 2022, id., pp. 307, and 309-310, respectively.
38 Id.; Oath of Commission dated 23 June 2022, id., p. 308.

On the witness stand, Obrero identified exhibits she referred to in her Judicial Affidavit. She testified as to petitioner's filing of its Annual ITR for TY 2018, the resulting overpayment of ITs, and the carry-over of tax credits to TY 2019. She also discussed the other circumstances leading to the filing of petitioner's administrative claim for refund.[39] Obrero did not undergo any cross-examination.[40]

When it was ICPA Abela's turn to testify, he identified the ICPA report he prepared. He highlighted the relevant portions therein detailing the procedures he conducted and the methods he employed, leading to his final recommendation.[41] On cross-examination, respondent's counsel clarified that in his recommendation, he reduced the amount claimable (by petitioner) by approximately ₱2 million. He likewise confirmed that all documents he examined were originals. No redirect examination followed.[42]

On 08 August 2022, ICPA Abela filed his Report[43] *via* registered mail, which the Court received on 15 August 2022.[44]

On 07 October 2022, petitioner filed its Formal Offer of Evidence[45] (**FOE**), with respondent commenting thereon on 10 October 2022.[46] In its Resolution dated 07 November 2022[47], the Court admitted all of petitioner's offered exhibits, noting some discrepancies relative to a few of them. In particular, petitioner inadvertently offered its Exhibits "**P-12**" to "**P-12-94**"[48] as only "**P-12**" to "**P-12-49**" due to a typographical error in the body of its FOE, then it offered its Exhibit "**P-14-4**"[49] when the document actually marked in the records was marked as Exhibit "**P-14-2**".

Thereafter, on 25 November 2022, to rectify the noted discrepancies, petitioner filed a "Motion for Partial Reconsideration [of

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39 Judicial Affidavit of Reymonda Aida B. Obrero, id., pp. 57-64.
40 Supra at note 37.
41 Exhibit "P-49", Division Docket, pp. 319-324.
42 TSN dated 21 September 2022, pp. 7-8.
43 Exhibit "P-48", ICPA Report.
44 See Minute Resolution dated 17 August 2022, Division Docket, p. 314.
45 Id., pp. 331-341.
46 Respondent's Comment (Re: Formal Offer of Evidence), id., pp. 478-480.
47 Id., pp. 483-484.
48 Petitioner's Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307s) for TY 2017.
49 Petitioner's Billing Statements for TY 2018 which were subjected to Creditable Withholding Tax (CWT).

Resolution dated November 7, 2022]"[50] (**MPR**), with respondent failing to file a comment thereto.[51]

In the Resolution dated 03 February 2023[52], the Court granted the abovementioned MPR and admitted the remaining Exhibits "**P-12-50**" to "**P-12-94**". It also required petitioner to submit a copy of Exhibit "**P-14-4**" with the appropriate marking, which petitioner subsequently complied with.[53]

On 15 March 2023, considering respondent's manifestation[54] that he will not be presenting any witnesses, the Court cancelled the hearing set for the said purpose. It also ordered the parties to file their respective memoranda.[55]

Later, on 14 April 2023, respondent filed his or her Memorandum[56], while that of petitioner was filed on 19 April 2023.[57] With both memoranda filed, the Court considered the case submitted for decision on 05 May 2023.[58]

ISSUE

As the parties so stipulated during the Pre-Trial, the following issue was submitted for this Court's determination —

> WHETHER PETITIONER GLOBAL ENERGY SUPPLY CORPORATION IS ENTITLED TO ITS CLAIM FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE (TCC) OF ITS EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES (CWTs) FOR TAXABLE YEAR (TY) 2018 IN THE AMOUNT OF ₱53,371,744.24.[59]

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50 Division Docket, pp. 485-489.
51 See Records Verification dated 20 January 2023, id., p. 492.
52 Id., pp. 496-497.
53 See Petitioner's Compliance dated 09 February 2023, id., p. 498-500; See Resolution dated 20 February 2023, id., pp. 503-504.
54 Respondent's Manifestation dated 09 March 2023, id., pp. 505-507.
55 See Resolution dated 15 March 2023, id., p. 510.
56 Id., pp. 511-517.
57 Id., pp. 519-539.
58 See Resolution dated 05 May 2023, id., p. 540.
59 See Joint Stipulation of Facts and Issues (JSFI), id., p. 258.

ARGUMENTS

In support of its petition, petitioner argues mainly that the excess and unutilized CWTs earned in TY 2018 in the amount of ₱53,371,744.24 is the proper subject of the instant claim for refund or issuance of a TCC under the NIRC of 1997, as amended. It maintains that it timely filed its claim for refund and that CWT Certificates (BIR Form No. 2307) duly support the excess and unutilized CWTs for TY 2018. It is likewise firm in its position that the corresponding income (upon which the taxes were withheld) was duly reported.

Respondent, on the other hand, argues that petitioner is not entitled to a refund. According to respondent, petitioner failed to prove that the alleged claim for refund was filed within the two (2)-year period provided under the NIRC of 1997, as amended. As to the reporting of income, respondent contends that petitioner also failed to prove that it had declared the related income in its Annual ITR.

Finally, respondent avers that the instant claim for tax refund is tainted with procedural infirmities for petitioner's failure to submit complete documents to support its administrative claim for refund.

RULING OF THE COURT

After a careful review of the records and the parties' contrasting arguments, We find the present petition partly meritorious.

FAILURE TO SUBMIT COMPLETE DOCUMENTS DOES NOT RESULT IN THE OUTRIGHT DENIAL OF A CLAIM FOR REFUND OR TAX CREDIT CERTIFICATE (TCC).

Before delving into the merits of this case, this Court shall first address respondent's claim that petitioner's failure to submit complete documents pursuant to RMO No. 53-98[60] and RR No. 2-2006[61] renders

60 Supra at note 23.
61 Supra at note 24.

its administrative refund claim *pro forma* and warrants the denial thereof.

A reading of both issuances reveals that neither states that the non-submission of the documents enumerated therein would *ipso facto* result in the denial of a claim for tax refund or credit. At most, RR No. 2-2006 merely imposes a fine as a penalty for non-submission of the information or statement required therein. Still, such lapse does not lead to the outright denial of any claim for refund or TCC. This is exemplified in *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.*[62] (**Univation**), where the Supreme Court held:

> ...
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> Petitioner CIR argued that failure of the respondent to submit the required complete documents as required by Revenue Memorandum Order No. 53-98 and Revenue Regulations No. 2-2006 rendered the petition with the CTA dismissible on the ground of lack of jurisdiction. It reasoned out that when a taxpayer prematurely filed a judicial claim with the CTA, the latter has no jurisdiction over the appeal.
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> **In the instant case, respondent's failure to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction.** At this point, it is necessary to determine the grounds relied upon by a taxpayer in filing its judicial claim with the CTA. The case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* is instructive, thus:
>
>> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that

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[62] G.R. No. 231581, 10 April 2019; Citations omitted, emphasis supplied and italics in the original text.

> not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

In this case, it was the inaction of petitioner CIR which prompted respondent to seek judicial recourse with the CTA. Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. As a matter of fact, petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.

Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR. Thus, RA No. 1125 states:

> Section 8. *Court of record; seal; proceedings*. — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.

Cases filed in the CTA are litigated *de novo* as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting ... to the Court of Tax Appeals all evidence ... required for the successful prosecution of its administrative claim.' Consequently, **the CTA may give credence to all evidence presented by respondent, including those that may not have**

> **been submitted to the CIR as the case is being essentially decided in the first instance.**
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> ...

It is thus apparent from the foregoing disquisitions that failure to submit "complete documents", as required by either of the aforementioned issuances, is not fatal to a refund claim. In the same light, contrary to respondent's contention[63], it does not render the petition filed before this Court dismissible on the ground of lack of jurisdiction. Moreover, it is clear that respondent's inaction in a claim for refund does not preclude this Court from considering evidence that was not presented in the administrative claim with the BIR.

PETITIONER DID NOT CARRY FORWARD THE EXCESS CREDITABLE WITHHOLDING TAXES (CWTs) BEING CLAIMED FOR REFUND, PURSUANT TO SECTION 76 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED.

Petitioner's claim for refund of its excess and unutilized CWTs is anchored on Section 76 of the NIRC of 1997, as amended, which provides:

> ...
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> **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:
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> (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

63 Respondent's Memorandum, Division Docket, p. 514.

> 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.[64]
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> ...

Based on the foregoing provision, two (2) options are available to a corporation that overpays its IT for the TY: (1) to carry over and apply the overpayment as tax credit against the estimated quarterly IT liabilities of the succeeding TYs (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); and, (2) to apply for a cash refund or issuance of a TCC within the prescribed period.[65] In exercising its option, the applying corporation must signify, in its Annual ITR, which option it intends to avail. This is done by marking the appropriate box provided in the BIR form.[66]

In the case of *University Physicians Services Inc.-Management, Inc. v. Commissioner of Internal Revenue*[67], the Supreme Court provides the irrevocability rule.

Interpreting the last sentence of above-quoted Section 76 of the NIRC of 1997, as amended, it held that the provision applies only when the option to carry-over is elected and there is nothing therein that suggests that the other choice, *i.e.*, cash refund or TCC, is also irrevocable.[68] Meanwhile, the phrase "for that taxable period" refers to the TY when the excess IT (subject of the option) was acquired by the taxpayer.[69]

In the case at bar, petitioner opted to refund the unutilized CWTs by marking the option "To be refunded" in its BIR-received Annual ITR for TY 2018.[70]

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64 Emphasis supplied and italics in the original text.

65 *University Physicians Services Inc.-Management, Inc. v. Commissioner of Internal Revenue*, G.R. No. 205955, 07 March 2018.

66 See *Philippine Bank of Communications v. Commissioner of Internal Revenue, et al.*, G.R. No. 112024,
28 January 1999.

67 Supra at note 65.

68 Id.

69 *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 07 July 2009.

70 Supra at note 14.

A perusal of petitioner's Annual ITR for TY 2018 reveals that it had regular corporate income tax (**RCIT**) due of ₱13,234,227.00, higher than its minimum corporate income tax (**MCIT**) due of ₱1,116,712.00. The entire amount was paid using its tax credits from the prior year's excess tax credits of ₱42,582,759.00; thus, leaving a balance of said credits in the amount of ₱29,348,532.00, and CWTs during TY 2018 in the amount of ₱53,371,744.00, totaling to ₱82,720,276.00 excess tax credits as of 31 December 2018. This is summarized below[71]:

Prior Year's Excess Credits other than MCIT		₱42,582,759
Less: RCIT Due		13,234,227
Balance of Prior Year Excess Credits		29,348,532
Add: Creditable Tax Withheld during TY 2018		
Creditable tax withheld from previous quarters *per* BIR Form No. 2307	₱36,267,991	
Creditable tax withheld *per* BIR Form 2307 for the fourth quarter	17,103,753	53,371,744
Excess Tax Credits as of 31 December 2018		**₱82,720,276**

Notably, pursuant to Section 2.58.3 of RR No. 2-98[72], the submission of petitioner's Annual ITR for TY 2018 is sufficient to prove its "Prior Year's Excess Credits other than MCIT" in the amount of ₱42,582,759.00. The RR thus provides:

> ...
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> Sec. 2.58.3. Claim for Tax Credit or Refund. —
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> ...
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> (C) *Excess Credits*. - An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, **provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits**, and on which return he has not opted for a cash refund or tax credit certificate.[73]
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> ...

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71 Supra at note 13.

72 Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, 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.

73 Emphasis supplied and italics in the original text.

Based on the foregoing, the excess CWTs of a specific TY, which a taxpayer opts to carry over to the succeeding TY, automatically form part of the credits against the IT due of such succeeding TY (as long as the amount of excess CWTs are evidenced by the ITR for the TY when such excess credits arose).

In the present case, petitioner presented its Annual ITR for TY 2017[74] showing the excess tax credits amounting to ₱42,582,759.00[75], consisting of prior year's excess credits of ₱42,668,586.00, and CWTs during TY 2017 in the amount of ₱39,185,625.00, as shown below:

Prior Year's Excess Credits other than MCIT		₱42,668,586
Less: RCIT Due		39,271,452
Balance of Prior Year Excess Credits		3,397,134
Add: Creditable Tax Withheld during TY 2017		
Creditable tax withheld from previous quarters *per* BIR Form No. 2307	₱18,191,922	
Creditable tax withheld *per* BIR Form No. 2307 for the fourth quarter	20,993,703	39,185,625
Excess Tax Credits as of 31 December 2017		**₱42,582,759**

The balance of ₱29,348,532.00 (representing petitioner's "prior year's excess credits" after TY 2018) was subsequently carried over and reflected as "Prior Year's Excess Credits" in petitioner's Annual ITR for TY 2019.[76] Thus, the claimed CWTs for TY 2018, in the amount of ₱53,371,744.00, which is the subject of petitioner's instant claim for refund, may be the proper subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

PETITIONER MUST COMPLY WITH THE REQUISITES FOR A CLAIM OF REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC).

As long settled by and in jurisprudence[77], in order for a corporate taxpayer to successfully claim for a refund or issuance of a TCC involving

[74] Exhibit "P-27", USB.
[75] Part II - Line 20 and Schedule 7, Exhibit "P-27", USB.
[76] Line 1, Schedule 7, Exhibit "P-7", Division Docket, p. 423.
[77] See *Commissioner of Internal Revenue v. Philippine Bank of* Communications, G.R. No. 211348, 23 February 2022.

excess creditable withholding taxes, the following requirements must be satisfied:

1. The claim must be filed with the CIR within the two (2)-year period from the date of payment of the tax;
2. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld; and,
3. It must be shown on the return that the income received was declared as part of the gross income.

<u>FIRST (1ST) REQUISITE:</u>
BOTH THE ADMINISTRATIVE AND JUDICIAL CLAIMS MUST BE TIMELY FILED.

Anent the *first requisite*, Sections 204(C) and 229 of the NIRC of 1997, as amended, provide that claims for refund must be filed within two (2) years after the payment of the tax or penalty:

> ...
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> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
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> ...
>
> (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.
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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 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.[78]
>
> ...

As shown above, both the administrative and judicial claims must be filed within two (2) years from the date of payment of the tax or penalty. Significantly, it must be emphasized that the two (2)-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the final adjustment return (or, the final Annual ITR).[79] This must be so since it is only on such date when it can be finally ascertained if a taxpayer still has to pay additional IT or if the latter is entitled to a refund of overpaid IT.[80] Alternatively stated, it is only at this point it can be determined whether a taxpayer paid an amount exceeding its annual IT liability.[81]

As the records show, the present claim for refund pertains to TY 2018 for which petitioner electronically filed its Annual ITR on 12 April 2019.[82] Such date serves as its date of filing its final adjustment return.[83]

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78 Emphasis supplied and italics in the original text.

79 See *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 96322, 20 December 1991; *Commissioner of Internal Revenue v. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, 15 January 1992; *Commissioner of Internal Revenue v. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, 29 May 1995.

80 *Commissioner of Internal Revenue v. TMX Sales, Inc., et al.*, supra.

81 *Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue*, G.R. No. 182582, 17 April 2017.

82 Supra at note 13.

83 *Per* Revenue Memorandum Circular (RMC) No. 24-2018 (SUBJECT: Guidelines in the Filing, Receiving and Processing of 2017 Income Tax Returns Including Its Attachments): Taxpayers who are mandated to use eFPS under existing issuances shall file and pay directly using the eFPS facility. However, taxpayers who have electronically filed shall also submit a copy of electronically filed ITR with Filing Reference Number (FRN) thru eFPS facility, together with the required attachments within fifteen (15) days from the deadline of filing or date of electronic filing of the return whichever comes later. Hence, the counting of the two (2)-year prescriptive period was reckoned from the date of filing of the final adjustment return *via* eFPS.

Counting two (2) years from this date, petitioner had until 12 April 2021 within which to file a claim for refund of its excess CWTs both in the administrative and judicial levels.

Petitioner timely filed its administrative claim on 14 December 2020[84] as well as its judicial claim, through the instant Petition for Review, on 17 May 2021.[85] While the latter date falls beyond the deadline determined above, petitioner is well justified considering the physical closures of the court at the height of the COVID-19 pandemic.[86] Evidently, in consideration of the foregoing, petitioner complied with the *first requisite*.

As for the *second and third requisites*, Section 2.58.3(B) of RR No. 2-98[87], as amended, is instructive, *viz*:

> ...
>
> SEC. 2.58.3. *Claim for Tax Credit or Refund.* —
>
> ...
>
> (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.**[88]
>
> ...

SECOND (2ND) REQUISITE:
THERE MUST BE SUFFICIENT EVIDENCE OF THE FACT OF WITHHOLDING.

Thus, as regards the *second requisite*, the Supreme Court, in *Commissioner of Internal Revenue v. Philippine National Bank*[89], affirmed

84 Exhibit "P-8", Division Docket, p. 477.
85 Supra at note 1.
86 Pursuant to SC Administrative Circular Nos. 21-2021, 22-2021, and 29-2021, the time for filing and service of pleadings and motions from 10 April 2021 to 14 May 2021 in all the courts and judicial offices in the National Capital Judicial Region and the provinces of Bulacan, Cavite, Laguna, and Rizal (NCJR+) was suspended and resumed on 17 May 2021, the first day of the physical reopening of the relevant court.
87 Supra at note 72.
88 Emphasis supplied and italics in the original text.
89 G.R. No. 180290, 29 September 2014; Citations omitted, emphasis and italics in the original text.

that a certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld and that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits, to wit:

> ...
>
> **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.
>
> ...
>
> **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 to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.**
>
> Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **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.**
>
> This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:
>
> ...
>
> > **...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.**
>
> ...

Based on the foregoing, it is undeniable that the fact of withholding may be established by presenting the pertinent certificates of creditable tax withheld at source where the relevant details (amount paid and the amount of tax withheld) are reliably reflected.

To prove its compliance with the *second requisite*, petitioner submitted the Certificates of Creditable Tax Withheld at Source (BIR Form No 2307)[90] duly issued by its withholding agents for TY 2018, detailed as follows:

Period Covered (TY 2018)	Payor	Income Payment	Amount of CWTs	Exhibit No.
January	Cathay International Resources Corp.	₱2,973,936.16	₱59,478.72	"P-13"
February	Cathay International Resources Corp.	3,064,617.81	61,292.36	"P-13-1"
March	Cathay International Resources Corp.	2,899,943.79	57,998.88	"P-13-2"
April	Cathay International Resources Corp.	3,178,490.66	63,569.81	"P-13-3"
May	Cathay International Resources Corp.	3,061,697.51	61,233.95	"P-13-4"
June	Cathay International Resources Corp.	3,306,673.50	66,133.47	"P-13-5"
July	Cathay International Resources Corp.	3,146,951.28	62,939.03	"P-13-6"
August	Cathay International Resources Corp.	3,487,514.69	69,750.29	"P-13-7"
September	Cathay International Resources Corp.	3,589,017.80	71,780.36	"P-13-8"
October	Cathay International Resources Corp.	3,508,332.71	70,166.65	"P-13-9"
November	Cathay International Resources Corp.	3,597,003.58	71,940.07	"P-13-10"
December	Cathay International Resources Corp.	3,718,565.18	74,371.30	"P-13-11"
January	Cathay Pacific Steel Corporation	17,435,254.73	348,705.09	"P-13-12"
February	Cathay Pacific Steel Corporation	21,229,087.50	424,581.75	"P-13-13"
March	Cathay Pacific Steel Corporation	23,907,331.50	478,146.63	"P-13-14"
April	Cathay Pacific Steel Corporation	21,146,715.60	422,934.31	"P-13-15"
May	Cathay Pacific Steel Corporation	22,259,941.20	445,198.82	"P-13-16"
June	Cathay Pacific Steel Corporation	25,117,053.30	502,341.07	"P-13-17"
July	Cathay Pacific Steel Corporation	26,555,768.70	531,115.37	"P-13-18"
August	Cathay Pacific Steel Corporation	24,359,075.70	487,181.51	"P-13-19"
September	Cathay Pacific Steel Corporation	27,751,724.70	555,034.49	"P-13-20"
October	Cathay Pacific Steel Corporation	27,851,736.90	557,034.74	"P-13-21"
December	Cathay Pacific Steel Corporation	25,186,273.20	503,725.46	"P-13-22"
April	Cebu Danao Paper Inc.	3,090,440.60	61,808.81	"P-13-23"
May	Cebu Danao Paper Inc.	3,630,384.23	72,607.68	"P-13-24"
June	Cebu Danao Paper Inc.	2,813,221.25	56,264.42	"P-13-25"
July	Cebu Danao Paper Inc.	3,733,624.60	74,672.49	"P-13-26"
August	Cebu Danao Paper Inc.	2,193,985.63	43,879.71	"P-13-27"
August	Cebu Danao Paper Inc.	2,446,832.28	48,936.65	"P-13-28"
October	Cebu Danao Paper Inc.	3,510,730.63	70,214.62	"P-13-29"
November	Cebu Danao Paper Inc.	2,398,667.62	47,973.35	"P-13-30"
December	Cebu Danao Paper Inc.	3,927,353.10	78,547.06	"P-13-31"
October - December	Cebu Energy Development Corporation	5,123,421.60	176,758.08	"P-13-32"
January - March	Cebu Mitsumi Inc.	69,647,862.22	1,392,957.24	"P-13-33"
January - March	Cebu Mitsumi Inc.	63,237,674.80	1,264,753.50	"P-13-34"
January - March	Cebu Mitsumi Inc.	70,606,408.22	1,412,128.16	"P-13-35"
April - June	Cebu Mitsumi Inc.	59,945,566.25	1,198,911.33	"P-13-36"
January - March	Cebu Mitsumi Inc.	52,210,236.82	1,044,204.74	"P-13-37"
April - June	Cebu Mitsumi Inc.	58,045,713.54	1,160,914.27	"P-13-38"
July - September	Cebu Mitsumi Inc.	64,451,444.52	1,289,028.89	"P-13-39"
July - September	Cebu Mitsumi Inc.	67,307,112.42	1,346,142.25	"P-13-40"
July - September	Cebu Mitsumi Inc.	75,052,168.04	1,501,043.36	"P-13-41"
July - September	Cebu Mitsumi Inc.	75,269,564.00	1,505,391.28	"P-13-42"
October - December	Cebu Mitsumi Inc.	74,233,563.72	1,484,671.27	"P-13-43"
October - December	Cebu Mitsumi Inc.	68,790,492.00	1,375,809.84	"P-13-44"

[90] Exhibits "P-13-1" to "P-13-165", USB.

Period Covered (TY 2018)	Payor	Income Payment	Amount of CWTs	Exhibit No.
January	Federal Land Inc.	6,576,350.05	131,527.00	"P-13-45"
January - March	Federal Land Inc.	6,979,285.24	139,585.70	"P-13-46"
January - March	Federal Land Inc.	6,812,620.88	136,252.42	"P-13-47"
March	Golden Portals Industries Inc.	1,335,859.30	26,717.19	"P-13-48"
April	Golden Portals Industries Inc.	1,499,219.87	29,984.40	"P-13-49"
May	Golden Portals Industries Inc.	1,827,573.09	36,551.46	"P-13-50"
June	Golden Portals Industries Inc.	1,595,917.41	31,918.35	"P-13-51"
July	Golden Portals Industries Inc.	2,579,288.74	51,585.77	"P-13-52"
August	Golden Portals Industries Inc.	2,731,514.46	54,630.29	"P-13-53"
September	Golden Portals Industries Inc.	2,986,342.08	59,726.84	"P-13-54"
October	Golden Portals Industries Inc.	2,819,934.90	56,398.70	"P-13-55"
November	Golden Portals Industries Inc.	2,686,691.88	53,733.84	"P-13-56"
December	Golden Portals Industries Inc.	2,672,929.99	53,458.60	"P-13-57"
April - June	Mabuhay Filcement Inc.	12,695,989.10	253,919.78	"P-13-58"
July - September	Mabuhay Filcement Inc.	13,248,022.17	264,960.44	"P-13-59"
July - September	Mabuhay Filcement Inc.	12,899,192.54	257,983.85	"P-13-60"
July - September	Mabuhay Filcement Inc.	14,156,881.23	283,137.62	"P-13-61"
October - December	Mabuhay Filcement Inc.	13,794,484.82	275,889.70	"P-13-62"
October - December	Mabuhay Filcement Inc.	13,664,681.89	273,293.64	"P-13-63"
October - December	Mabuhay Filcement Inc.	13,995,424.71	279,908.49	"P-13-64"
July	Makoto Metal Technology Inc.	4,434,655.20	44,346.55	"P-13-65"
August	Makoto Metal Technology Inc.	3,996,312.89	39,963.13	"P-13-66"
September	Makoto Metal Technology Inc.	3,685,556.61	36,855.57	"P-13-67"
October	Makoto Metal Technology Inc.	3,740,665.70	37,406.66	"P-13-68"
November	Makoto Metal Technology Inc.	4,033,640.63	40,336.41	"P-13-69"
December	Makoto Metal Technology Inc.	3,737,735.14	37,377.35	"P-13-70"
April - June	Panay Energy Development Corporation	3,347,408.83	132,749.15	"P-13-71"
July - September	Panay Energy Development Corporation	2,024,645.30	79,973.47	"P-13-72"
October - December	Panay Energy Development Corporation	2,699,527.07	106,631.32	"P-13-73"
April - June	Panay Power Corporation	924,200.00	36,505.90	"P-13-74"
July - September	Panay Power Corporation	554,520.00	21,903.54	"P-13-75"
October - December	Panay Power Corporation	739,360.00	29,204.72	"P-13-76"
January - March	Philippine Mining Service Corporation	9,886,801.76	197,736.04	"P-13-77"
April	Philippine Mining Service Corporation	3,463,034.33	69,260.69	"P-13-78"
May	Philippine Mining Service Corporation	3,020,435.80	60,408.72	"P-13-79"
June	Philippine Mining Service Corporation	3,065,089.99	61,301.80	"P-13-80"
July	Philippine Mining Service Corporation	3,049,426.40	60,988.53	"P-13-81"
August	Philippine Mining Service Corporation	3,603,599.04	72,071.98	"P-13-82"
September	Philippine Mining Service Corporation	3,539,716.93	70,794.34	"P-13-83"
October	Philippine Mining Service Corporation	3,864,952.73	77,299.05	"P-13-84"
November	Philippine Mining Service Corporation	3,984,036.52	79,680.73	"P-13-85"
December	Philippine Mining Service Corporation	3,973,023.89	79,460.48	"P-13-86"
January	Robinsons Land Corporation	10,048,022.34	200,960.45	"P-13-87"
February	Robinsons Land Corporation	2,774,123.70	55,482.47	"P-13-88"
February	Robinsons Land Corporation	2,839,428.31	56,788.57	"P-13-89"
February	Robinsons Land Corporation	6,852,355.13	137,047.10	"P-13-90"
February	Robinsons Land Corporation	4,503,899.93	90,078.00	"P-13-91"
February	Robinsons Land Corporation	2,822,247.22	56,444.94	"P-13-92"
February	Robinsons Land Corporation	2,994,168.48	59,883.37	"P-13-93"
February	Robinsons Land Corporation	7,112,359.19	142,247.18	"P-13-94"
February	Robinsons Land Corporation	4,235,637.02	84,712.74	"P-13-95"
February	Robinsons Land Corporation	10,235,744.15	204,714.88	"P-13-96"
March	Robinsons Land Corporation	2,265,043.12	45,300.86	"P-13-97"
March	Robinsons Land Corporation	2,424,645.04	48,492.90	"P-13-98"

Period Covered (TY 2018)	Payor	Income Payment	Amount of CWTs	Exhibit No.
March	Robinsons Land Corporation	6,121,332.97	122,426.66	"P-13-99"
March	Robinsons Land Corporation	3,930,207.34	78,604.15	"P-13-100"
March	Robinsons Land Corporation	8,024,322.77	160,486.46	"P-13-101"
April	Robinsons Land Corporation	2,344,127.21	46,882.54	"P-13-102"
April	Robinsons Land Corporation	2,654,460.90	53,089.22	"P-13-103"
April	Robinsons Land Corporation	6,132,308.81	122,646.18	"P-13-104"
April	Robinsons Land Corporation	4,044,020.75	80,880.42	"P-13-105"
April	Robinsons Land Corporation	8,701,044.08	174,020.88	"P-13-106"
May	Robinsons Land Corporation	2,651,281.48	53,025.63	"P-13-107"
May	Robinsons Land Corporation	2,388,964.59	47,779.29	"P-13-108"
May	Robinsons Land Corporation	8,985,135.07	179,702.70	"P-13-109"
May	Robinsons Land Corporation	6,363,266.77	127,265.34	"P-13-110"
June	Robinsons Land Corporation	4,304,762.39	86,095.25	"P-13-111"
June	Robinsons Land Corporation	2,720,930.99	54,418.62	"P-13-112"
June	Robinsons Land Corporation	4,744,187.47	94,883.75	"P-13-113"
June	Robinsons Land Corporation	2,453,361.67	49,067.23	"P-13-114"
June	Robinsons Land Corporation	9,502,157.19	190,043.14	"P-13-115"
June	Robinsons Land Corporation	7,000,028.55	140,000.57	"P-13-116"
July	Robinsons Land Corporation	2,579,964.70	51,599.29	"P-13-117"
July	Robinsons Land Corporation	4,831,372.27	96,627.45	"P-13-118"
July	Robinsons Land Corporation	2,387,957.29	47,759.15	"P-13-119"
July	Robinsons Land Corporation	9,111,965.29	182,239.31	"P-13-120"
July	Robinsons Land Corporation	6,349,893.27	126,997.87	"P-13-121"
July	Robinsons Land Corporation	93,510.26	1,870.21	"P-13-122"
August	Robinsons Land Corporation	2,700,549.07	54,010.98	"P-13-123"
August	Robinsons Land Corporation	2,493,081.65	49,861.63	"P-13-124"
August	Robinsons Land Corporation	9,534,716.22	190,694.32	"P-13-125"
August	Robinsons Land Corporation	6,487,006.45	129,740.13	"P-13-126"
September	Robinsons Land Corporation	2,607,767.50	52,155.35	"P-13-127"
September	Robinsons Land Corporation	2,413,114.50	48,262.29	"P-13-128"
September	Robinsons Land Corporation	9,420,962.50	188,419.25	"P-13-129"
September	Robinsons Land Corporation	6,554,755.03	131,095.10	"P-13-130"
October	Robinsons Land Corporation	2,395,404.05	47,908.08	"P-13-131"
October	Robinsons Land Corporation	2,669,380.24	53,387.60	"P-13-132"
October	Robinsons Land Corporation	9,655,670.97	193,113.42	"P-13-133"
October	Robinsons Land Corporation	6,163,816.11	123,276.32	"P-13-134"
November	Robinsons Land Corporation	2,376,007.75	47,520.16	"P-13-135"
November	Robinsons Land Corporation	2,594,064.03	51,881.28	"P-13-136"
November	Robinsons Land Corporation	9,482,463.14	189,649.26	"P-13-137"
November	Robinsons Land Corporation	6,280,966.62	125,619.33	"P-13-138"
December	Robinsons Land Corporation	6,265,801.10	125,316.02	"P-13-139"
December	Robinsons Land Corporation	2,481,233.55	49,624.67	"P-13-140"
December	Robinsons Land Corporation	2,385,303.65	47,706.07	"P-13-141"
December	Robinsons Land Corporation	9,256,849.87	185,137.00	"P-13-142"
January - March	SM Prime Holdings Inc.	111,607,630.56	2,232,152.61	"P-13-143"
April - June	SM Prime Holdings Inc.	56,920,982.38	1,138,419.65	"P-13-147"
April - June	SM Prime Holdings Inc.	51,251,213.82	1,025,024.28	"P-13-148"
April - June	SM Prime Holdings Inc.	54,540,272.68	1,090,805.45	"P-13-149"
July - September	SM Prime Holdings Inc.	173,730,849.48	3,474,616.99	"P-13-150"
October - December	SM Prime Holdings Inc.	250,308,077.22	5,006,161.54	"P-13-151"
January - March	Taiheiyo Cement Philippines Inc.	15,936,281.50	318,725.63	"P-13-152"
January - March	Taiheiyo Cement Philippines Inc.	29,518,389.50	590,367.79	"P-13-153"
January - March	Taiheiyo Cement Philippines Inc.	29,166,123.00	583,322.46	"P-13-154"
January - March	Taiheiyo Cement Philippines Inc.	26,473,082.00	529,461.64	"P-13-155"

Period Covered (TY 2018)	Payor	Income Payment	Amount of CWTs	Exhibit No.
April - June	Taiheiyo Cement Philippines Inc.	29,664,137.50	593,282.75	"P-13-156"
April - June	Taiheiyo Cement Philippines Inc.	28,916,004.50	578,320.09	"P-13-157"
July - September	Taiheiyo Cement Philippines Inc.	32,640,877.00	652,817.54	"P-13-158"
July - September	Taiheiyo Cement Philippines Inc.	9,355,615.00	187,112.30	"P-13-159"
July - September	Taiheiyo Cement Philippines Inc.	30,475,758.50	609,515.17	"P-13-160"
July - September	Taiheiyo Cement Philippines Inc.	31,796,957.00	635,939.14	"P-13-161"
October - December	Taiheiyo Cement Philippines Inc.	31,213,055.00	624,261.10	"P-13-162"
October - December	Taiheiyo Cement Philippines Inc.	27,456,468.50	549,129.37	"P-13-163"
October - December	Toledo Power Company	1,478,720.27	58,409.48	"P-13-144"
April - June	Toledo Power Company	1,848,400.33	73,011.85	"P-13-164"
July - September	Toledo Power Company	1,109,040.20	43,807.11	"P-13-165"
November	Universal Robina Corporation	4,308,965.67	86,179.31	"P-13-145"
December	Universal Robina Corporation	3,913,231.14	78,264.62	"P-13-146"
	Total	**₱2,662,303,009.36**	**₱53,371,744.24**	

The Court examined the aforesaid CWT certificates and found no significant exceptions therein. As such, petitioner has satisfactorily complied with the *second* requisite.

THIRD (3[RD]) REQUISITE:
THE INCOME RECEIVED UPON WHICH THE TAXES WERE WITHHELD MUST HAVE BEEN DECLARED AS PART OF GROSS INCOME.

Lastly, as to the *third requisite*, petitioner must prove that the income payments related to the substantiated CWTs of ₱53,371,744.24 were declared as part of its gross income subject to IT in TY 2018. Petitioner's Annual ITR for TY 2018 reported the following:

In its Annual ITR for TY 2018, petitioner reported total net sales or revenues of ₱2,751,071,475.00.[91] Meanwhile, in its Audited Financial Statements (**AFS**) for the same TY, petitioner likewise declared total revenues of ₱2,751,071,475.00. The figure is comprised of Electricity Trading Revenue of ₱2,731,195,235.00 and Other Service Fees of ₱19,876,240.00.[92]

An examination of petitioner's Summary of Total Revenues *per* its General Ledger (**GL**) for TY 2018[93] shows that the aggregated revenues

[91] Supra at note 13, p. 357.
[92] Supra at note 13, p. 368.
[93] Annex F of the ICPA Report, Exhibit "P-48", USB.

posted therein tally with the total revenues *per* petitioner's TY 2018 AFS and Annual ITR. However, as summarized further above, the income related to the claimed CWTs amounts to ₱2,662,303,009.36.

To ascertain whether the income payments totaling ₱2,662,303,009.36 (related to the CWTs being claimed for refund) were declared as part of its gross income subject to IT in TY 2018, petitioner submitted its billing statements (**BSs**)[94], official receipts (**ORs**)[95], and its Schedule of Total Revenues[96] for the said period.

Upon examination of the aforementioned documents and matching the same to the income reflected in the Summary of CWTs *vis-à-vis* the 2017 and 2018 GLs, this Court finds that petitioner sufficiently showed that the income payments (upon which the claimed CWTs were based) were reported as part of its gross income in its ITRs, with some exceptions.

It is noted that income payments of ₱19,849,243.60 (with corresponding claimed CWTs of ₱758,954.62) could not be traced to the Summary of Total Revenues *per* 2017 and 2018 GLs[97] (which tie-up with the TY 2017 and 2018 Annual ITRs), as demonstrated below:

BS No.	Customer's Name	Income Payments	CWT
1784, 1785, 1787, 1810, 1841, 1969, 1970, 1971, 1972	Cebu Energy Development Corporation	₱5,123,421.60	₱176,758.08
1770,1771, 1772, 1773	Panay Energy Development Corporation	3,347,408.83	132,749.15
1843	Panay Energy Development Corporation	2,024,645.30	79,973.47
1917	Panay Energy Development Corporation	2,699,527.07	106,631.32
1779, 1780, 1781, 1782	Panay Power Corporation	924,200.00	36,505.90
1844	Panay Power Corporation	554,520.00	21,903.54
1779, 1780, 1781, 1782	Panay Power Corporation	739,360.00	29,204.72
1920	Toledo Power Company	1,478,720.27	58,409.48
1762	Toledo Power Company	1,848,400.33	73,011.85
1845	Toledo Power Company	1,109,040.20	43,807.11
	Total	**₱19,849,243.60**	**₱758,954.62**

94 Exhibits "P-14" to "P-14-268", USB.
95 Exhibits "P-15" to "P-15-229", USB.
96 Annexes F and G of the ICPA Report, Exhibit "P-48", USB.
97 Id.

Similarly, income payments from SM Prime Holdings, Inc. totaling ₱22,381,489.98 could not be traced to the Summary of Total Revenues *per* 2018 GL[98]:

Income payment (*per* BS No. 1908)	₱250,308,077.22
Less: Sales traced to TY 2018 GL (Table 1)	227,926,587.24
Income payments *not* traced to GL	**22,381,489.98**
Multiply by: Applicable EWT Rate (2%)	x 2%
Disallowed CWT	**₱447,629.80**

Table 1. Sales traced to TY 2018 GL with corresponding Journal Entry (JE) No.

JE No.	Sales	JE No.	Sales	JE No.	Sales
14675	₱2,227,357.04	16234	₱1,792,918.56	17764	₱2,193,212.00
14676	23,506.96	16235	11,742,772.81	17765	88,914.00
14680	9,133,923.60	16236	2,983,653.37	17769	8,600,872.00
14681	93,756.40	16271	8,739,858.36	17770	348,684.00
14721	114,307.80	16272	593,465.64	18347	245,048.04
14722	6,284,806.25	16276	144,081.93	18348	7,739,791.84
14723	16,024,109.87	16277	2,222,667.07	18349	16,447,812.05
14724	1,840,332.62	16823	56,840.88	18350	1,886,449.71
14725	14,818,018.82	16824	9,097,258.11	18351	11,164,594.62
14726	6,427,348.61	16825	15,909,615.26	18352	9,187,792.88
16231	256,222.11	16826	1,821,185.48	18429	8,949,556.00
16232	11,949,604.75	16827	13,095,452.61	18433	2,126,203.78
16233	16,291,357.41	16828	5,107,311.78	18434	155,922.22
				Total	**₱227,926,587.24**

In view of the foregoing, the collective amount of ₱1,206,584.42 worth of CWTs (₱758,954.62 plus ₱447,629.80), pertaining to income payments of which cannot be traced to the corresponding GLs and Annual ITRs, may not form part of the refundable amount.

Additionally, We echo the findings of ICPA Abela concerning the declaration of the following related income in TY 2017 (even though the related tax credits are being claimed in TY 2018)[99]:

[98] Supra at note 93.
[99] ICPA Report, Exhibit "P-48", USB, pp. 9-10.

Payor	Income Payment	Tax Withheld	Exhibit No.
Taiheiyo Cement Philippines, Inc.	₱15,936,281.50	₱318,725.63	"P-14-33"
Cathay Pacific Steel Corporation	17,435,254.73	348,705.09	"P-14-2"
Cebu Mitsumi, Inc.	69,647,862.22	1,392,957.24	"P-14-4"
Federal Land, Inc.	6,576,350.05	131,527.00	"P-14-7"
SM Prime Holdings, Inc.	4,634,573.11	92,691.46	"P-14-24"
Philippine Mining Service Corporation	3,062,461.29	61,249.23	"P-14-11"
Total	**₱117,292,782.90**	**₱2,345,855.65**	

The Supreme Court's pronouncements in the *Univation* case are instructive[100]:

> ...
>
> Petitioner CIR insisted on the absence of the second and third requirements. It argued that respondent failed to prove the fact of withholding, showing the amount paid and the amount of tax withheld and that the income it received was declared as part of the gross income. Specifically, petitioner CIR questioned respondent when it included the creditable withholding taxes pertaining to income payments for the years 2006, 2008 and 2009 to form part of its claim for refund for the year 2010.
>
> In this case, respondent was able to establish through the documentary evidence it submitted compliance with the second and third requisites. As correctly evaluated by the CTA 1st division:
>
> ...
>
> It must be noted that while the income payments from which the CWTs which were declared in its return covered the years 2006, 2008, 2009 and 2010, there was nothing wrong with it as what is important is that the respondent complied with the third requisite, that is, the income which the taxes were withheld was included in the returns of the respondent.
>
> The CTA *En Banc* correctly appreciated the explanation of the independent CPA (ICPA) why the income payments from which the CWT amounting to P12,729,617.90 were withheld, were declared in its returns covering the years 2006, 2008, 2009 and 2010. In gist, the ICPA suggests that there were delays in collection of certain income payments to respondent. For one, certain sales made by respondent to its dealers in 2008 and 2009 were only paid in 2010. In other words, there were certain income payments which, although respondent expected to receive in 2006, 2008 and 2009, were only remitted to it in 2010. **As concluded by the CTA *En Banc*, the delay in collection of certain income payments of respondent caused the timing**

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100 Supra at note 62; Citation omitted, emphasis and underscoring supplied and italics in the original text.

> **difference between the actual reporting of the income by respondent and the actual withholding of the corresponding creditable income tax by respondent's customers. What is important is that the creditable withholding taxes corresponding to the related income in the respondent's books for CY's 2006, 2008 and 2009 <u>were not yet claimed as income tax credits in respondent's annual ITRs corresponding to the said years</u>. Hence, it is just proper that these income payments should form part of respondent's tax credit for 2010.**
>
> ...

Following the above discussions, the timing difference alone (between the actual reporting of the income and the actual withholding of the related tax credits) would not bar taxpayers from claiming the related tax credits. However, it is incumbent upon the taxpayer-claimant to prove that each of such credits had not yet been claimed in the same year when the corresponding income was reported.

Petitioner's total CWTs amount to ₱39,185,625.00 in its 2017 Annual ITR.[101] However, petitioner's Summary of 2017 CWTs[102] (which shows the supposed breakdown of the total CWTs it claimed in TY 2017) *only* contains an aggregate of ₱33,212,341.49 worth of CWTs. From this, it can be reasonably inferred that petitioner had claimed additional CWTs of ₱5,973,283.51 in 2017.

Fortunately, petitioner attached a PDF copy of its Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (**SAWT**) to its set of AFS for TY 2017.[103] A meticulous review of the said SAWT elucidates that, out of the total above-mentioned exceptions, only the income payment from Cebu Mitsumi, Inc. amounting to ₱69,647,862.22 (with corresponding claimed CWTs of ₱1,392,957.24) had already been claimed by petitioner in its Annual ITR for TY 2017. Thus, the pertinent CWTs amounting to ₱1,392,957.24 must be disallowed.

Accordingly, out of the CWTs claimed totaling ₱53,371,744.24 duly supported with CWT Certificates (BIR Form No. 2307), after verifying that the related income payments had been properly declared in

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101 Supra at note 74.
102 ICPA Report, Exhibit "P-48", USB, pp. 9-10.
103 Exhibit "P-42", id.

petitioner's taxable gross income *per* its TYs 2017 and 2018 Annual ITRs, and after accounting for the observed exceptions, petitioner's refund claim must be granted, albeit in a reduced amount, as summarized below:

Claimed CWTs, duly supported by CWT Certificates (BIR Form No. 2307)	₱53,371,744.24
Less: CWT, the income payments of which cannot be traced to the corresponding GLs and Annual ITRs	1,206,584.42
Less: CWT already claimed in TY 2017	1,392,957.24
Refundable Unutilized CWT for TY 2018	**₱50,772,202.58**

In sum, petitioner has sufficiently proven that it is entitled to the issuance of TCC in the amount of ₱50,772,202.58, representing its unutilized CWTs for TY 2018, pursuant to Section 76, in relation to Sections 204 and 229 of the NIRC of 1997, as amended.

WHEREFORE, the foregoing premises considered, the Petition for Review filed by petitioner Global Energy Supply Corporation on 17 May 2021 is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND TO OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Global Energy Supply Corporation in the reduced amount of **₱50,772,202.58**, representing unutilized creditable withholding taxes for taxable year 2018.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice