REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PROCTER & GAMBLE DISTRIBUTING (PHILIPPINES), INC.,	**CTA Case No. 9634**
Petitioner,	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson,* **FABON-VICTORINO, MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 09 2020 3:43pm

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DECISION

MANAHAN, *J.:*

This is a Petition for Review filed by Procter & Gamble Distributing (Philippines), Inc., as petitioner, praying for the refund or the issuance of a tax credit certificate (TCC) in the total amount of THREE HUNDRED FIFTY SEVEN MILLION SIX HUNDRED SIXTY SIX THOUSAND and SEVEN HUNDRED FIFTY PESOS (Php357,666,750.00) allegedly representing excess and unutilized creditable withholding taxes (CWT) for fiscal year (FY) ended June 30, 2015.[1]

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with SEC Company Registration No. A200107315.[2] It is a registered

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[1] Summary of the Case, Pre-Trial Order dated January 5, 2018, Court Docket, p. 280.

[2] Exhibit "P-1", Docket, pp. 401 to 411.

taxpayer with the Bureau of Internal Revenue (BIR), Large Taxpayers Service, with Taxpayer Identification No. (TIN) 211-379-144-000.[3]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested with the authority to carry out all the functions, duties, and responsibilities of his office, including *inter alia*, the power to decide, approve, and grant claims for refund or issuance of tax credit certificates for overpaid or erroneously paid or collected internal revenue taxes, including excess and unutilized CWT.[4]

THE FACTS

On October 13, 2015, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return (ITR) for FY July 1, 2014 to June 30, 2015, through its Electronic Filing and Payment System (eFPS).[5]

On February, 27, 2017, petitioner filed with the BIR Large Taxpayers Service-Regular Office, an Application for Tax Credits/Refund (BIR Form No. 1914) of its alleged excess and unutilized CWT for FY July 1, 2014 to June 30, 2015 in the total amount of ₱357,666,750.00.[6]

Due to the inaction of respondent and in order to preserve its right to judicially claim a refund of its alleged excess and unutilized CWT for FY 2014-205 within the prescribed two (2) year period, petitioner filed a Petition for Review with this Court on July 25, 2017.[7] The case was initially raffled to the Court's Second Division.

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[3] Exhibit "P-2", Docket, p. 413.
[4] Par. 1, Stipulations of Fact, *Joint Stipulation of Facts and Issue* (JSFI), Docket, p. 257.
[5] Exhibit "P-3", Docket, pp. 414 to 421.
[6] Exhibits "P-8" and "P-8-b", Docket, pp. 498 to 502.
[7] Docket, pp. 10 to 23.

Within the extended time granted by the Court,[8] respondent filed his *Answer (Re: Petition for Review dated 24 July 2017)* on October 6, 2017.[9]

The pre-trial conference was set and held on November 23, 2017.[10]

Respondent transmitted the BIR Records for the instant case on October 11, 2017[11] and March 16, 2018.[12]

On November 16, 2017, respondent filed his Pre-Trial Brief.[13]

On November 20, 2017, petitioner likewise filed its Pre-Trial Brief.[14]

On December 8, 2017, both parties filed their Joint Stipulation of Facts and Issues (JSFI).[15]

In the Pre-Trial Order dated January 5, 2018,[16] the Court approved and adopted the said JSFI, and deemed the pre-trial terminated.

Trial ensued.

During trial, petitioner presented its documentary and testimonial evidence and offered the testimonies of the following individuals, namely: (1) Ms. Marian B. Concibido,[17] petitioner's Associate Tax Manager; and (2) Ms. Mary Josephine D.

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[8] Orders dated August 23, 2017 and September 26, 2017, Docket, pp. 66 and 71, respectively.
[9] Docket, pp. 72 to 75.
[10] *Notice of Pre-Trial Conference* dated October 10, 2017, Docket, pp. 77 to 78; Minutes of the hearing held on, and Order dated, November 23, 2017, Docket, pp. 255 to 256.
[11] Respondent's *Transmittal* dated October 11, 2017, Docket, pp. 79 to 80.
[12] Respondent's *Transmittal* dated March 15, 2018, Docket, pp. 308 to 309.
[13] Docket, pp. 83 to 85.
[14] Docket, pp. 242 to 253.
[15] Docket, pp. 257 to 264.
[16] Docket, pp. 280 to 284.
[17] Exhibit "P-13", Docket, pp. 91 to 102; Minutes of the hearing held on, and Order dated, January 29, 2018, Docket, pp. 285 and 287, respectively.

Tesalona,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).[19]

On March 15, 2018, the ICPA Report was submitted to the Court.[20]

On June 7, 2018, petitioner filed its Formal Offer of Evidence.[21] Respondent filed his Comment [Re: Petitioner's Formal Offer of Evidence] on June 13, 2018.[22]

In the Resolution dated July 26, 2018,[23] the Court admitted petitioner's exhibits except Exhibit "P-25-AJ", for not being found in the records of the case.

Consequently, at the hearing held on August 15, 2018, petitioner manifested that it will be filing a Motion for Reconsideration of the said Resolution.

During the same hearing held on August 15, 2018, respondent manifested that the instant refund case has no report of investigation.[24]

The parties were granted thirty (30) days from receipt of the resolution on petitioner's Motion for Reconsideration within which to file their memoranda.

On August 15, 2018, petitioner filed its Motion for Reconsideration (Re: Resolution dated July 26, 2018) (With Motion for Leave to Admit Supplemental Sworn Statement of

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[18] Exhibit "P-32", Docket, pp. 315 to 350; Minutes of the hearing held on, and Order dated, April 23, 2018, Docket, pp. 352 to 353.

[19] *Oath of Commission* dated January 29, 2018, Docket, p. 286; *Sworn Statement of Ms. Mary Josephine D. Tesalona to Questions Propounded by Atty. Alexis John S.* Ramos, Docket, pp. 268 to 271; Minutes of the hearing held on, and Order dated, January 29, 2018, Docket, pp. 285 and 287, respectively.

[20] Docket, pp. 299 to 307.

[21] Docket, pp. 382 to 400.

[22] Docket, pp. 515 to 517.

[23] Docket, pp. 520 to 521.

[24] Minutes of the hearing held on, and Order dated August 15, 2018, Docket, pp. 524 to 525.

Ms. Mary Josephine D. Tesalona),[25] praying for the Court to (a) admit the Supplemental Sworn Statement of Ms. Mary Josephine D. Tesalona; (b) set a hearing date for the recall of the ICPA, Ms. Tesalona, at any date and time as may be available in the Court's calendar; and (c) reconsider its Resolution dated July 26, 2018 by admitting (i) petitioner's Reconciliation Schedule for its customer, Watsons Personal Care Stores (Phils), as Exhibit "P-25-Z", and (ii) the Supplemental Sworn Statement of Ms. Tesalona and her signature therein as Exhibits "P-33" and "P-33-a", respectively.

Respondent failed to file his comment on petitioner's Motion for Reconsideration.[26]

In an Order dated September 24, 2018,[27] the instant case was transferred to this Court's First Division.

Thereafter, in the Resolution dated October 4, 2018,[28] the Court granted petitioner's Motion for Leave to Admit Supplemental Sworn Statement; noted the submission of the Sworn Statement of Ms. Tesalona; and set the case for the recall of Ms. Tesalona on November 13, 2018 to identify Exhibit "P-25-Z" and the said Sworn Statement.

At the hearing held on November 13, 2018,[29] petitioner's witness, Ms. Tesalona, was recalled to the witness stand, and petitioner was granted five (5) days or until November 19, 2018 to file its Supplemental Formal Offer of Evidence. From receipt of petitioner's Supplemental Formal Offer of Evidence, respondent was also granted five (5) days to file comment thereto.

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[25] Docket, pp. 527 to 537.
[26] Records Verification dated September 3, 2018 issued by the Judicial Records Division of this Court, Docket, p. 538.
[27] Docket, p. 539.
[28] Docket, pp. 542 to 453.
[29] Minutes of the hearing held on, and Order dated, November 13, 2018, Docket, pp. 544 to 547.

On November 19, 2018, petitioner filed its Supplemental Formal Offer of Evidence,[30] sans respondent's comment.[31]

In the Resolution dated February 11, 2019,[32] the Court granted petitioner's Motion for Reconsideration, and admitted Exhibits "P-25-Z", "P-33", and "P-33-a", as part of petitioner's documentary evidence.

Respondent's Memorandum was filed on April 11, 2019;[33] while petitioner's Memorandum was submitted on May 6, 2019.[34]

The case was submitted for decision on May 14, 2019.[35]

THE ISSUES

The parties submitted the following lone issue for this Court's resolution:

> "Whether or not Petitioner is entitled to its claim for refund of or issuance of TCC for its excess and unutilized CWT for FY beginning July 1, 2014 and ending June 30, 2015 (FY 2015) in the total amount of Php357,666,750.00."[36]

Petitioner's arguments:

Petitioner argues that it is entitled to claim for refund of or a tax credit certificate for its excess and unutilized CWT for FY 2014 to 2015 in the amount of ₱357,666,750.00 pursuant to Sections 58(D) and 76 of the 1997 National Internal Revenue Code (NIRC),as amended because it has satisfactorily complied with all the following requisites:

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[30] Docket, pp. 549 to 553.
[31] Records Verification dated December 4, 2018 issued by the Judicial Records Division of this Court, Docket, p. 555.
[32] Docket, pp. 559 to 561.
[33] Docket, pp. 576 to 581.
[34] Docket, pp. 590 to 619.
[35] Docket, p. 623.
[36] Proposed Issues for Stipulation, JSFI, Docket, p. 257.

a. That it filed its administrative and judicial claims for refund of excess and unutilized CWTs for FY 2014 to 2015, within the two-year prescriptive period in accordance with Sections 204(C) and 229 of the 1997 NIRC, as amended;
b. That its excess and unutilized CWT for FY 2014 to 2015 in the amount of ₱357,666,750.00 are duly substantiated by documentary evidence;
c. That the income upon which the CWTs being claimed for refund were withheld was reported as part of the revenues declared in its Annual ITR; and
d. That petitioner did not exercise the option to carry over its excess and unutilized CWT for FY 2014 to 2015 to the succeeding taxable period.

Respondent's counter-arguments:

In his Answer filed on October 6, 2017, respondent interposed the following Special and Affirmative Defenses, and we quote:

> "3.1 The instant case involves a claim for refund allegedly representing excess and unutilized creditable income taxes withheld. Thus, it is incumbent upon petitioner to discharge its burden of proving the fact of withholding of taxes and their subsequent remittance to the BIR.
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> 3.2 Respondent would like to emphasize that the law and Bureau of Internal Revenue issuances provide that in order for any claim for refund to prosper, it is incumbent upon the claimant to prove actual remittance of the same alleged withheld taxes to the BIR. The fact of withholding of taxes is one thing, the fact of their remittance is another. It is settled that claims for refund should be construed in *strictissimi juris* against the claimant. Petitioner is not exempt from the application of said principle in taxation. Hence, it should have exerted efforts to prove actual remittance of the same alleged withheld taxes to the BIR. Respondent is not obliged to prove before the Court non-remittance of the alleged withheld taxes. It is the duty of petitioner to prove otherwise. The government is not duty bound to restore what was not originally received by mistake.
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> 3.3 Section 2 of Revenue Regulations (RR) No. 2-2006 categorically provides:
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> '**Section 2. MANDATORY SUBMISSION**

OF SUMMARY ALPHALIST OF WITHHOLDING AGENTS OF INCOME PAYMENTS SUBJECTED TO CREDITABLE WITHHOLDING TAXES (SAWT) BY THE PAYEE/INCOME RECIPIENT AND OF MONTHLY ALPHALIST OF PAYEES (MAP) SUBJECTED TO WITHHOLDING TAX BY THE WITHHOLDING AGENT/INCOME PAYOR AS ATTACHMENT TO THEIR FILED RETURNS.

A. Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT) and Monthly Alphalist of Payees (MAP) defined

Summary Alphalist of Withholding Agents/Payors of Income Payments subjected to Creditable Withholding Tax At Source (SAWT) Annex 'A' is a consolidated alphalist of withholding agents from whom income was earned or received and subjected to withholding tax to be submitted **by the payee-recipient of income** as attachment to its duly filed return for a given period which Summary List contains a summary of information showing, among others, total amounts of income/gross sales/gross receipts and claimed tax credits taken from all Certificate of Creditable Withholding Tax at Source (BIR Form No. 2307) issued by the payors of income payment.

Monthly Alphalist of Payees Annex 'B' is a consolidated alphalist of income earners from whom taxes have been withheld **by the payor of income** for a given return period and in whose behalf, the taxes were remitted. It contains a summary of information on taxes withheld and **remitted** through the monthly remittance returns (BIR form Nos. 1601-E, 1601-F, 1600) showing, among others, total amounts of income/gross sales/gross receipts and taxes withheld and remitted." (Emphasis supplied)

3.4 Based on the foregoing, proof of actual remittance of taxes withheld to the BIR is indispensable in a claim for refund of excess CWTs.

3.5 Petitioner's failure to allege that the purported withheld taxes were remitted to the BIR is fatal to its claim. It is unquestionably not entitled to any refund.

3.6 A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the

> taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund *Far East Bank & Trust Company vs. Commissioner of Internal Revenue, G.R. No. 149589, 15 September 2006).*"

In a nutshell, respondent counter-argues that it is incumbent upon petitioner to discharge its burden of proving the fact of withholding of taxes and their subsequent remittance to the BIR and that he is not obliged to prove before the Court non-remittance of the alleged withheld taxes.

Respondent asserts that petitioner's failure to prove that the purported withheld taxes were remitted to the BIR is fatal to its claim for refund. Additionally, respondent maintains that petitioner must first prove its compliance with Revenue Regulations (RR) No. 53-98 and 2-2006 to give support to the validity of its claim for unutilized CWT. Finally, respondent cites the oft-repeated doctrine that a tax refund is in the nature of tax exemption and which must be construed *strictissimi juris* against the taxpayer hence it is incumbent upon the latter to prove by clear and convincing evidence its entitlement to the tax refund being claimed.

RULING OF THE COURT

We find the Petition for Review to be partially meritorious.

Pertinent to the resolution of the present case is Section 76 of the 1997 NIRC, as amended, to wit:

> "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
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> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be. *eu*

> 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."

The above provision grants two (2) options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. The taxpayer may either file a tax refund (either in the form of cash or tax credit certificate) or carry over the excess credit. However, once the carry-over option is chosen actually or constructively it becomes irrevocable for that taxable period.[37] The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[38]

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[39]

A perusal of petitioner's Annual ITR for FY ended June 30, 2015[40] shows that petitioner had total tax credits of ₱636,091,119.00[41], which consisted of the following:

Prior Year's Excess Credits other than MCIT		₱ 278,424,369.00

[37] *Philam Asset Management, Inc., vs. Commissioner of Internal Revenue*, G.R. Nos. 156637/162004, December 14, 2005; *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

[38] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.

[39] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.

[40] Exhibit "P-3", Docket, pp. 414 to 421.

[41] Exhibit "P-3", Schedule 7, Docket, at p. 419.

Add: Creditable Taxes Withheld – FY 2015		
Creditable tax withheld for the first three quarters	₱272,047,312.00	
Creditable tax withheld per BIR Form 2307 for the fourth quarter	85,619,438.00	357,666,750.00
Total tax credits		**₱ 636,091,119.00**

Petitioner claims that its Minimum Corporate Income Tax (MCIT) due for FY ended June 30, 2015 in the amount of ₱148,177,902.00[42] was paid using a portion of its prior year's excess credits of ₱278,424,369.00, thus leaving the prior year's excess credits in the amount of ₱130,246,467.00 and the creditable taxes withheld during the FY 2015 in the amount of ₱357,666,750.00 or a total of ₱487,913,217.00 unutilized as of June 30, 2015, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 278,424,369.00
Less: Tax Due (MCIT)	148,177,902.00
Balance of Prior Year's Excess Credits	₱ 130,246,467.00
Add: Creditable Taxes Withheld – FY 2015	357,666,750.00
Excess Creditable Withholding Taxes as of June 30, 2015	**₱ 487,913,217.00**

To prove the existence of the prior year's excess credits of ₱278,424,369.00, petitioner submitted various Certificates of Creditable Taxes Withheld at Source for the FY 2014[43] issued by its withholding agents. Upon verification, petitioner was able to substantiate its CWTs in the total amount of ₱501,775,360.73,[44] and to prove that it had prior year's excess credits in the amount of ₱278,424,352.73, as shown below:

CWT for FY 2014 supported by certificates	₱ 501,775,360.73

[42] Exhibit "P-3", Line 16, Docket, p. 414.
[43] Exhibit "P-17-C", pp. 1 to 298.
[44] Exhibit "P-14", Annex A-2.

Less: Tax Due for FY 2014[45]	223,351,008.00
Excess tax credits as of FY 2014	**₱ 278,424,352.73**

Apparently, the substantiated prior year's excess tax credits of ₱278,424,352.73 is sufficient to cover petitioner's tax liability for FY 2015 in the amount of ₱148,177,902.00.

Considering that petitioner opted for a refund by marking the box corresponding to the option "To be refunded"[46] in its Annual ITR for FY 2015, and carried over only the amount of ₱130,246,467.00, which is the balance of its prior year's excess credits, as reflected in its Annual ITR for FY 2016,[47] the CWTs for the FY ended June 30, 2015 in the amount of ₱357,666,750.00 may be a proper subject of a claim for refund or TCC pursuant to Section 76 of the 1997 NIRC, as amended.

In addition to that which is provided under Section 76 of the NIRC of 1997, jurisprudence on claims of refund of this nature has dictated the following additional requisites in order that the subject claim may be granted, *viz:*

1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204 (C) and 229 of the 1997 NIRC, as amended;

2. The fact of withholding must be 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. The income upon which the taxes were withheld must be included in the return of the recipient.[48]

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[45] Exhibit "P-4", Docket, p. 475.
[46] Exhibit "P-3", Line 21, Docket, p. 414.
[47] Exhibit "P-9", Line 1 of Schedule 7, Docket, p. 508.
[48] *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; *United International Pictures AB vs.*

With regard to the first requisite, we quote Sections 204(C) and 229 of the 1997 NIRC, as amended, thus:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may-
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> 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 stamped 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 ours)*
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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**

Commissioner of Internal Revenue, G.R. No. 168331, October 11, 2012; Section 2.58, Revenue Regulations No. 2-98, as amended.

> **supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefore, 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)

It is well-settled that the two-year prescriptive period for claiming a refund of overpaid income tax/CWT commences to run on the date of filing of the Final Adjustment Return.[49] It is only when the said tax 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.[50]

The present claim for refund pertains to FY July 1, 2014 to June 30, 2015 for which petitioner filed its Annual ITR on October 13, 2015.[51] Counting from this date, petitioner had until October 13, 2017 within which to file a claim for refund of its excess CWT both in the administrative and judicial levels. Thus, petitioner timely filed with the BIR its administrative claim for refund on February 27, 2017,[52] and its judicial claim for refund through the instant Petition for Review on July 25, 2017.[53]

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

> "Sec. 2.58.3. *Claim for tax credit or refund.* —
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> xxx xxx xxx

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[49] *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, May 29, 1995.
[50] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.
[51] Exhibit "P-3", Docket, pp. 414 to 421.
[52] Exhibits "P-8" and "P-8-b", Docket, pp. 498 to 502.
[53] Docket, p. 10.

> (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 supplied)

To prove the fact of withholding of the subject CWTs, petitioner presented various Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307) for FY 2015 duly issued by its various withholding agents covering the subject period,[54] reflecting CWTs in the total amount of ₱357,666,749.24, with related income payments of ₱35,722,824,116.93.,[55] which were duly examined by the Court-commissioned ICPA, Ms. Mary Josephine D. Tesalona.

Based on the ICPA's verification, the amount of ₱1,229,471.39 out of the CWT of ₱357,666,749.24 should be disallowed as the same was only supported by photocopied CWT certificates,[56] while the amount of ₱8,436,340.58 was supported by CWT certificates but bear only a stamped signature of the payor.[57]

Consequently, only the amount of ₱348,000,937.27 is duly supported by certificates, broken down as follows:

Reference	**Details**	**Tax Withheld**
Annex B-1 Page 5	CWTs which are properly supported by original CWT Certificates issued in the name of the Company with payor's signature and dated within FY 2015	₱ 327,434,763.82
Annex B-2 Page 6	CWTs which are supported by original CWT certificates with payor's signature, dated within FY 2015, with the correct TIN of the Company but not with the exact registered name of the Company but supported with certification from the SEC that there is no other company bearing a	20,566,173.45

[54] Exhibit "P-15-D", pages 1-203.
[55] Exhibit "P-14", Annex A-1.
[56] Exhibit "P-14", Annex B-3 Page 7.
[57] Exhibit "P-14", Annex B-4 Page 8.

	similar name to the Company's registered/abbreviated/shortened name (Exhibit P-24)	
TOTAL		**₱ 348,000,937.27**

Accordingly, petitioner was able to satisfy the second requisite but only to the extent of the said duly substantiated CWTs in the amount of ₱348,000,937.27.

As regards the third requisite, petitioner presented its general ledgers (GL) for FY ended June 30, 2015 to prove that the income payments related to the claimed CWTs formed part of its declared income per ITR.[58]

As ascertained by the ICPA, out of the CWT of ₱348,000,937.27, only the income payments related to the CWTs of ₱332,037,660.73 were traced to petitioner's GLs and ultimately to petitioner's Annual ITR for the FY ended June 30, 2015, while the remaining income payments related to the CWTs of ₱15,963,276.54, as detailed below, were not traced to the GLs and Annual ITR for the FY ended June 30, 2015, viz:

Reference	Particulars	Tax Withheld
Annex D-10, page 13 Annex D-11, page 15	CWTs which are properly supported by original CWT Certificates issued in the name of the Company with payor's signature, dated within the FY 2015, and the related part of the sales was traced to the FY 2015 GL/ITR. The total sales traced to GL/ITR is lower than the total income payments presented in the CWT Certificates. CWTs related to sales not traced to the FY 2015 GL/ITR were disallowed.	₱ 685,552.47
Annex D-12, page 16	CWTs which are supported by original CWT Certificates with payor's signature, dated within FY 2015 with the correct TIN of the Company, but not with the exact registered name of the Company but supported with a certification from the SEC (Exhibit P-24) that there is no other company bearing a similar name to the Company's registered/abbreviated/shortened name.	504.89

[58] Exhibits "P-22-A" to "P-22-AE".

	The related part of the sales was traced to the FY 2015 GL/ITR. The total sales reported in the FY 2015 GL/ITR is lower than the income payments in the CWT Certificates. CWTs related to sales not traced to the FY 2015 GL/ITR were disallowed.	
Annex D-13, page 17	Part of the related sales was traced to the FY 2015 GL and reported as part of gross income in the FY 2015 ITR. The related sales presented in the Reconciliation Schedules were equal to the income payments presented in the certificates. The sales transactions and the deductions from gross sales were traced to the supporting documents (e.g., sales invoices, credit memos) and/or related adjusting journal entries. However, there were GL entries in the Reconciliation Schedules which were not traced back to the FY 2015 GL. CWTs related to sales not traced to the FY 2015 GL/ITR were disallowed.	1,724,682.96
Annex D-14, page 18	Part of the related sales was traced to the FY 2015 GL and reported as part of gross income in the FY 2015 ITR. The related sales presented in the Reconciliation Schedules were greater than the income payments presented in the certificates. The sales transactions and the deductions from gross sales were traced to the supporting documents (e.g., sales invoices, credit memos) and/or related adjusting journal entries. However, there were GL entries in the Reconciliation Schedules which were not traced back to the FY 2015 GL/ITR. CWTs related to sales not traced to the FY 2015 GL were disallowed.	326,499.70
Annex D-15, page 19	Part of the related sales was traced to the FY 2015 GL and reported as part of gross income in the FY 2015 ITR. The related sales presented in the Reconciliation Schedules were lower than the income payments presented in the certificates. The sales transactions and the deductions from gross sales were traced to the supporting documents (e.g., sales invoices, credit memos) and/or related adjusting journal entries. Moreover, there were GL entries in the Reconciliation Schedules which were not traced back to the FY 2015 GL/ITR. CWTs related to sales not traced to the FY 2015 GL were disallowed.	519,788.34
Annex D-16, page 20	CWTs which are supported by original CWT Certificates with payor's signature, dated within FY 2015, but not with the exact registered name of the Company but supported with certification from the SEC	19,274.51

	(Exhibit P-24) that there is no other company bearing a similar name to the to the Company's registered/abbreviated/shortened name. The related part of the sales was traced to the FY 2015 GL/ITR. However, a portion of the related sales was not traced to the FY 2015 GL and not verified as reported in the Company's gross income per ITR in FY 2015. CWTs related to sales not traced to the FY 2015 GL/ITR were disallowed.	
Annex D-17, page 22, Table III-G	Part of the related sales traced to the FY 2015 GL and reported as part of gross income in the FY 2015 ITR were supported by VAT Sales Invoices and Credit Memos but not with the exact Payer Name recorded in the FY 2015 GL and the exact Payor Name indicated in the CWT Certificates but with Customer Codes and TIN exactly matched with Payer name and Payor name in the CWT Certificates and FY2015 GL, respectively.	4,746,035.10
Annex D-17, page 22, Table III-G	Part of the related sales traced to the FY 2015 GL and reported as part of gross income in the FY 2015 ITR were supported by VAT Sales Invoices and Credit Memos but not with the exact Payer Name recorded in the FY 2015 GL and the exact Payor Name indicated in the CWT Certificates and with Customer Codes and TIN not exactly matched with Payer name and Payor name in the CWT Certificates and FY 2015 GL, respectively.	3,611,217.89
Annex D-18, page 23, Table III-G	Part of the related sales traced to the FY 2015 GL and reported as part of gross income in the FY 2015 ITR were supported by VAT Sales Invoices and Credit Memos but with a totally different Payer Name in the VAT Sales Invoices and Credit Memos compared with the Payer Name recorded in the FY 2015 GL and the Payor Name indicated in the CWT Certificates.	817,595.27
Annex D-19, page 24, Table III-G	CWTs which are supported by original CWT Certificates with payor's signature, dated within FY 2015 with the correct TIN of the Company, but not with the exact registered name of the Company but supported with a certification from the SEC (Exhibit P-24) that there is no other company bearing a similar name to the Company's registered/abbreviated/shortened name. The related part of the sales was traced to the FY 2015 GL/ITR. The supporting VAT Sales Invoices and Credit Memos (CMs) of the sales transactions and the deductions from gross income, respectively, bear a Payer/Customer Name that is not exactly the same as the name in the CWT Certificates and/or FY2015	34,567.24

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	GL but they have the same customer code reflected in the FY2015 GL and the same TIN found in the CWT certificates.	
Annex D-20, page 25	CWTs which are properly supported by original CWT Certificates issued in the name of the Company with payor's signature, dated within the FY 2015, but the related sales were not verified as reported in the Company's gross income in FY 2015 GL/ITR.	398,590.54
Annex D-21, page 26	CWTs which are supported by original CWT Certificates but not with the exact registered name of the Company with payor's signature, dated within the FY 2015, but the related sales were not verified as reported in the Company's gross income in FY 2015 GL/ITR.	20,652.89
Table III-L, Page 33-37 of Exhibit P-14	Disallowable CWTs from reversed/cancelled sales	3,058,314.74
	TOTAL	**₱15,963,276.54**

Based on the foregoing, petitioner was only able to prove that the income payments related to the CWTs of ₱332,037,660.73 formed part of the gross income declared in its Annual ITR for the FY ended June 30, 2015, computed as follows:

CWTs supported by certificates	₱ 348,000,937.27
Less: Disallowed CWTs corresponding to income payments not traced to AITR	15,963,276.54
Valid CWTs	**₱ 332,037,660.73**

Correspondingly, petitioner is considered to have complied with the third requisite, but only insofar as the amount of ₱332,037,660.73 is concerned.

In sum, petitioner has sufficiently proven its entitlement to a partial refund or issuance of a tax credit certificate in the amount of ₱332,037,660.73, representing unutilized excess CWT for the FY ended June 30, 2015.

We now address respondent's contention that petitioner's failure to prove that the purported withheld taxes were remitted to the BIR is fatal to its claim.

We disagree with respondent.

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*,[59] the Supreme Court held as follows:

> "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 responsibility of withholding and remitting income taxes.**
>
> This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*,[60] citing the Court of Tax Appeals' explanation, is instructive:
>
> **...proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner.** Section 2.58.3(B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. **In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee.** Therefore, respondent. . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. **The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-**

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[59] G.R. No. 180290, September 29, 2014.
[60] G.R. No. 179617, January 19, 2011.

> **payee to the government itself through said agents."** (Emphasis supplied)

Thus, we find no merit in respondent's contention that failure to prove actual remittance of the taxes withheld on the part of petitioner is fatal to its refund claim.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is ordered to refund to petitioner, or issue in its favor a tax credit certificate in the reduced amount of ₱332,037,660.73, representing excess and unutilized CWT for FY ended June 30, 2015.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice