REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CE CASECNAN WATER AND ENERGY CO. INC., Petitioner,	C.T.A. CASE NO. 8073
	Members:
-versus-	UY, *Chairperson and* FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 10 2013 ; 1:05 p.m.

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DECISION

Fabon-Victorino, J.:

In this a Petition for Review filed on April 13, 2010, petitioner CE Casecnan Water and Energy Company, Inc. (CE Casecnan) prays for refund or issuance of tax credit certificate (TCC) in the amount of ₱56,075,812.45, claimed to be erroneously paid income tax for taxable year 2007.

Petitioner is a duly registered local corporation with principal office at Pantabangan, Nueva Ecija. It is engaged in the business of generation, collection and distribution of electricity.[1]

As a VAT-registered entity, petitioner was issued Registration No. OCN0000017028 on July 1, 1998[2]. It was likewise issued a Certificate of Registration No. 94-388 by the Board of Investments (BOI) as a Pioneer Enterprise with

[1] Exhibits "A", "A-1", "A-2" and "A-3".
[2] Exhibits "B" and "B-1".

Income Tax Holiday (ITH) entitlement period from December 11, 2001 to December 10, 2007.[3]

On the other hand, respondent is the Commissioner of Internal Revenue (CIR), vested with the power to act on claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On June 26, 1995, petitioner and the National Irrigation Administration (NIA) entered into an "Amended and Restated Casecnan Project Agreement", for the delivery of energy and water to NIA for a fee.[4]

For taxable year 2007, petitioner generated sales of ₱2,714,448,831.63[5], representing water delivery fees to NIA from which the latter withheld the total amount of ₱135,722,437.61.[6]

On March 17, 2010, petitioner filed with Bureau of Internal Revenue (BIR) Large Taxpayers Regular Audit Division I an administrative claim for refund or issuance of TCC in the amount of ₱56,075,812.45, allegedly representing its erroneously paid income tax for taxable year 2007.[7]

On April 13, 2010, petitioner filed the instant Petition for Review alleging inaction on the part of respondent on its claim for refund/TCC.

On June 7, 2010, respondent filed her Answer[8], interposing the following Special and Affirmative Defenses:

> 6. Petitioner's claim for refund has no legal basis. The amount of ₱160,216,607.00 allegedly reported as

[3] Exhibits "C" and "D"
[4] Exhibit "VVVV".
[5] Exhibits "M", "N", "O", "P", "Q","R", "S" and "T".
[6] Exhibits "U" to "FF", including sub-markings.
[7] Exhibits "E", "E-1" and "E-2".
[8] Docket, pp. 100-107.

other income is subject to income tax. Section 32 of the National Internal Revenue Code (NIRC) of 1997 provides for the inclusion of gross income to wit:

> Section 32. Gross Income. -
>
> (A) General Definition - Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
>
> (1) Compensation for services in whatever form paid, including but not limited to fees, salaries, wages, commissions, and similar items;
>
> (2) Gross income derived from the conduct of trade or business or the exercise of a profession;
>
> xxx xxx xxx
>
> Income of whatever source is subject to income tax. Considering that the amount of ₱160,216,607.00 is the income resulting from the excess of 7% standard input over actual input value added tax (VAT) attributable to petitioner's water delivery to National Irrigation Administration (NIA), the payment of ₱56,075,812.45 as 35% corporate income tax is proper.

7. The amount of Fifty Six Million Seventy Five Thousand Eight Hundred Twelve Pesos and 45/100 (₱56,075,812.45) being claimed by petitioner as alleged erroneously paid

income tax for taxable year 2007 is not properly documented.

8. Considering that the claim for refund of petitioner was brought about by the excess of 7% standard input over actual input vat attributable to petitioner's water delivery to National Irrigation Administration (NIA), it is imperative for petitioner to prove the following, viz:

a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53.98, otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code, as amended. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the

120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner for review;

d. That petitioner's domestic purchases of goods and services were made in the course of trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

e. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits)

9. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not ipso facto granted because respondent CIR still has to investigate and ascertain the validity of the claim.

10. Taxes collected are presumed to be in accordance with laws and regulations.

11. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to

sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (*Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670*).

12. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*). Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption (*Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005*). The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. (*Sea-Land Service. Vs. Court of Appeals, 357 SCRA 444*)."

After the pre-trial conference, the parties filed their their Joint Stipulations of Facts and Issues on July 12, 2010, which the Court approved on July 15, 2010.[9]

During the trial, petitioner presented three (3) witnesses, namely: 1) Leilah Yasmin E. Alpad, Head of Tax Services of its parent company; 2) Annalyn B. Artuz, the

[9] Docket, p. 136.

Court Commissioned Independent Certified Public Accountant (ICPA); and 3) Erwin Ray D. Aragon, its Plant Manager.

Ms. Leilah Yasmin E. Alpad, by way of Judicial Affidavit,[10] testified that she is the Head of the Tax Services of CalEnergy International Services, Inc.-ROHQ (CalEnergy), in which petitioner is an affiliate. She coordinates with petitioner's counsel regarding tax matters affecting it and makes sure that it is compliant with requirements of the BIR. Petitioner is a BIR-registered entity,[11] engaged in the business of development, construction and operation of a hydro-electric power plant and related facilities and the delivery of water and generated power to the National Irrigation Administration (NIA).[12]

Petitioner filed tax returns through the Electronic Filing and Payment System (EFPS)[13] and paid income tax in the aggregate amount of P205,144,954.26, which includes the subject erroneously paid income tax for 2007.[14]

According to the witness, the erroneous income tax payments subject of the instant case for refund/TCC in the amount of P56,075,812.45 for taxable year 2007 arose from the "other income" declared by petitioner in its annual income tax return (ITR) which represents the excess of the standard input value added tax (VAT) over the actual input VAT of petitioner attributable to its water delivery fees from the NIA, prior to the expiration of the ITH. This income was erroneously reported as subject to the regular corporate income tax rate of 35% instead of being tax exempt pursuant to the petitioner's entitlement to ITH from the period December 11, 2001 to December 10, 2007 as indicated in its BOI Certificate of Registration. [15]

Alpad added that the standard input VAT for the water delivery fees being charged by petitioner to NIA is computed at 7% and such fees forms part of the registered activity of

[10] Exhibit "BBBBB", docket, pp. 176-185..
[11] Exhibits "B" and "B-1".
[12] Exhibits "A" and "WWWW", inclusive of sub-markings.
[13] Exhibit "H", "I", "J", "K" and "L", inclusive of sub-markings.
[14] Exhibits "XXXX", "YYYY", "ZZZZ", "AAAAA" and "GG".
[15] Exhibits "C" and "D", inclusive of sub-markings.

petitioner, which includes water diversion and irrigation system.

To rectify petitioner's overpayment, it filed an Amended ITR on February 26, 2010 wherein the erroneous income tax paid relating to "other income" was reported as overpayment with the "option to be refunded." On March 17, 2010,[16] petitioner filed an administrative claim for refund and/or issuance of TCC together with the supporting documents. To date, it remains unacted by respondent.

Court commissioned ICPA Annalyn B. Artuz examined and verified the documents pertaining to the instant claim for refund/TCC for petitioner's unutilized input VAT on its purchases attributable to its zero-rated sales of generated power for taxable year 2007, pursuant to R.A. 9136 or the EPIRA Law of 2001. Her audit reveals that petitioner is entitled to its claim for refund/TCC in the amount of P56,075,812.45.[17]

Witness Erwin Ray D. Aragon testified[18] that he is currently the Plant Manager of petitioner. As such, he is in-charge of the daily operation of the Casecnan Project[19] as well as ensures the efficient, safe and reliable operation of the Casecnan Project Agreement executed by petitioner with the NIA. The Casecnan Project involves the delivery/transportation and energy generation fees. It is a combined irrigation and hydro-electric power project wherein the pressure of the water inside the transbasin tunnel drives the turbine/generators which produces electrical energy.

Aragon clarified that only one operation is involved in the project because the water that goes inside the tunnel is the same water that powers the turbines, which is eventually discharged to and stored in Pantabangan Lake for the irrigation water for Central Luzon. Through NIA, the water is then distributed to the farmers. The generation of power is merely a by-product of the whole process, which benefits the people since the additional energy is for

[16] Exhibits "E" and "F", inclusive of sub-markings.
[17] Exhibit "KKKKK".
[18] Exhibit "TTTTT".
[19] Exhibit "SSSSS".

electrical distribution of Luzon and petitioner gets paid for the power generated and the water distributed.

After formal offer of its documents,[20] petitioner rested its case.[21]

On June 5, 2012, respondent submitted the case for decision without presenting any evidence.[22]

On August 24, 2012, the case was submitted for decision after respondent filed her Memorandum on August 3, 2012[23] and petitioner, on August 6, 2012.[24]

The sole issue jointly submitted by the parties for the determination of the Court is:

> 1. Whether Petitioner is entitled to a refund and/or tax credit certificate amounting to FIFTY-SIX MILLION SEVENTY-FIVE THOUSAND EIGHT HUNDRED TWELVE & 45/100 (₱56,075,812.45) representing erroneous income taxes payments for the taxable year 2007.[25]

The Ruling of the Court

To rule on petitioner's alleged entitlement to refund/TCC, it must first look into the timeliness of the filing of the instant Petition for Review.

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997 provide as follows:

[20] Docket, pp. 00389-00391.
[21] Docket, pp. 00392-00397.
[22] Minutes of the Hearing dated June 5, 2012.
[23] Docket, pp. 000495-000517.
[24] Docket, pp. 000518-000543.
[25] No. II, Joint Stipulation of Facts and Issues, docket, p. 133.

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 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.

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.

As provided above, both the administrative and judicial claim for refund/TCC of erroneously collected and/or paid tax must be filed within two years from the payment of tax.

However, as regards corporate income taxes, Section 229 should be correlated with Sections 75 and 76 of the NIRC of 1997, as amended, which require corporations to file quarterly income tax returns and final adjustment returns, respectively. Hence, the two (2)-year prescriptive period under Section 229 should be reckoned from the date of filing of the final adjustment return (FAR) and payment of the tax thereof. The two-year prescriptive period commences from the filing of the FAR or the Annual Income Tax Return as only then that it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax.[26]

In this case, the two-year prescriptive period commenced to run from the time petitioner was required to file a return for taxable year 2007. Petitioner filed its Annual Income Tax Return for 2007 and paid the corresponding tax due on April 15, 2008. Reckoned from April 15, 2008, petitioner had until April 15, 2010, within which to file its claim both in the administrative and judicial levels. Evidently, the administrative claim filed by petitioner on March 17, 2010 and the Petition for Review filed on April 13, 2010, were well within the two-year prescriptive period.

On the main issue of petitioner's entitlement to refund/TCC in the amount of ₱56,075,812.45, representing its erroneously paid income tax for taxable year 2007,

[26] Commissioner of Internal Revenue v. TMX Sales, Inc., et al., G.R. No. 83736, January 15, 1992; ACCRA Investments Corporation v. The Honorable Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals, G.R. No. 96322, December 20, 1991; Commissioner of Internal Revenue v. Asia Australia Express, Ltd., represented by Soriamont Steamship Agencies, Inc., and Court of Tax Appeals, G.R. No. 85956, April 10, 1989; Commissioner of Internal Revenue v. Citytrust Banking Corporation, CA-G.R. SP No. 26839, July 31, 1992; and Servicewide Specialists, Inc., v. Commissioner of Internal Revenue and Court of Tax Appeals, CA-G.R. SP No. 25893, November 9, 1992.

petitioner invokes its right to ITH incentive under Article 39(a) of Executive Order (E.O.) No. 226, as amended by Republic Act (R.A.) No. 7918, as a BOI-registered operator of a hydro-electric power plant which has a registered capacity of 100 (MW) including water diversion and irrigation system.

Article 39 of the Omnibus Investments Code provides:

> Article 39. *Incentives to Registered Enterprise*. All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;
>
> (a) Income Tax Holiday.
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases:

In recently decided case by the Court's First Division,[27] involving petitioner and respondent, it was ruled that the income payments made by NIA to petitioner upon which petitioner paid thirty-five percent (35%) income tax fell within the income tax exemption of petitioner under its BOI registration. The pertinent portion of the Decision is hereby quoted as follows:

> In this case, petitioner has sufficiently proven that it has a BOI-registered 'PIONEER' status as evidenced by its BOI Certificate of Registration No. 94-388

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[27] *CE Casecnan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7917, August 23, 2012.

(Exhibit 'C'), its General Terms and Conditions *(Exhibit 'C-1')*, its Specific Terms and Conditions *(Exhibit 'C-2')*, its Amended General Terms and Conditions *(Exhibit 'C-3')*, and its BOI Certificate of ITH Entitlement for taxable year 2006 with CE No. 2007-000032 *(Exhibit 'N')*.

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A 'pioneer enterprise' shall mean a registered enterprise whose *status of registration is reflected as such in its BOI Certificate of Registration. (Rule II, Section 1, Revised Rules and Regulations in the Availment of Income Tax Holiday)*

In the Specific Terms and Conditions, petitioner's status is 'PIONEER', with registered capacity of 'ONE HUNDRED (100) MW INCLUDING WATER DIVERSION AND IRRIGATION SYSTEM'.

Based on the said terms and conditions of registration, 'water diversion and irrigation system' is included in its registered capacity. In Paragraph 1 of the said Specific Terms and Conditions, it was made a condition that:

'1. The enterprise shall submit a copy of the Final Contract with NIA covering the registered project. It is understood that the registration shall be automatically cancelled when the enterprise fails to secure the final contract with the government on this project.'

The foregoing condition was complied with, as petitioner presented in evidence the Amended and Restated Casecnan Project Agreement by and between CE Casecnan Water and Energy Company, Inc. and National Irrigation Administration dated June 26, 1995.

Paragraph 2.9, Article 2 of the Scope of Management portion of petitioner's contract with NIA states that:

'2.9 **ELECTRICAL ENERGY AND WATER DELIVERY.** — The operator will transport water from the Casecnan Watershed to the Pantabangan Reservoir and, in the process of such transport, generate electrical energy, and NIA shall accept all electrical energy generated by the Project and all water delivered to the Pantabangan Reservoir by the Project and shall pay to the Operator the fees provided in Part B of Article 7 and in the Fifth Schedule (Delivery of Water and Electrical Energy).'

In the same contract, Paragraph 7.1, Article 7, Part A, Delivery of Electrical Energy and Water by Operator also provides that:

'7.1 **DELIVERY.** NIA agrees to accept all water delivered from the Casecnan Watershed to the Pantabangan Reservoir by the Project and all electrical energy generated by the Project and to pay the fees as specified in the Fifth Schedule (Delivery of Water and Electrical Energy). The Operator shall dedicate the entire electrical output of the Project (net of Project usage) to NIA and shall deliver all water diverted by the Project to the Pantabangan Reservoir.'

In relation thereto, Paragraph 7.5, Article 7, Part B, Fees provides that NIA shall pay water delivery fee, guaranteed energy delivery fee and excess energy delivery fee to petitioner, to wit:

'7.5 **FEES.** With respect to each Month, or part thereof, NIA shall pay to the Operator the Water Delivery Fee, the Guaranteed Energy Delivery Fee, and the Excess Energy Delivery Fee, as applicable, in each case calculated as provided in the

Fifth Schedule (Delivery of Water and Electrical Energy), plus, to the extent a separate billing therefore is not permitted or advisable under Philippine law, any present or future value-added taxes or similar incremental Taxes payable or to be payable by the Operator in respect of such amounts, such that after the Operator has paid any and all value-added taxes or similar incremental Taxes required to be paid by it in respect of such amounts there remains a sum equal to the Water Delivery Fee, the Guaranteed Energy Delivery Fee, and the Excess Energy Delivery Fee, as applicable, for such month.'

Evidently, the contract with NIA, which involved a 'water diversion and irrigation system' contemplated by the specific terms and conditions of the registration, is covered by the registration as such 'pioneer enterprise'.

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Clearly, the water diversion supports the business of petitioner as a hydro-electric power company. If such diversion or supply of water also serves NIA for agricultural purposes, this circumstance should not be the cause to limit the exemption of petitioner as a 'pioneer enterprise'. To do so would be to render nugatory the purposes envisioned by the BOI incentives granted to pioneer enterprises.

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Consequently, petitioner's income from the delivery of water to NIA is covered by the income tax exemption. *(Emphasis supplied)*

The record shows that petitioner earns water delivery fees from its delivery of water to the NIA of which a final VAT at the rate of 5% was withheld by NIA pursuant to the provision of Section 114(C) of RA No. 9337, which states:

> SEC. 114. *Return and Payment of Value-Added Tax.* -
>
> xxx xxx xxx
>
> (C) *Withholding of Value-Added Tax.* – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: *Provided,* That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.

In relation thereto, Section 4.114-2 of RR No. 16-2005, implementing RA No. 9337, provides that the Government, NIA in this case, shall deduct and withhold a final VAT due at the rate of five percent (5%) on gross payment on account of each purchase of goods and services taxed at ten percent (10%)[28] VAT. The 5% final VAT withholding rate shall represent the net VAT payable of the seller. The remaining 5%[29] effectively accounts for the standard input VAT for sale of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs,

[28] Twelve percent (12%) effective February 1, 2006.
[29] Seven percent (7%) effective February 1, 2006.

in lieu of the actual input VAT directly attributable or ratably apportioned to such sales.

For income tax purposes, the difference between the actual input VAT related to sales to government and the 5% or 7% standard input VAT, as the case may be, shall be adjusted to the seller's cost or expense. Hence, the seller may incur additional cost if the actual input VAT exceeds the 5% or 7% standard input VAT. On the other hand, if actual input VAT is less than the said standard input VAT, the seller, in effect, recognizes additional income.

In the instant case, petitioner's 7% standard input VAT exceeded its actual input VAT attributable to its water delivery fees to NIA, in the amount of ₱160,216,607.00, which it recognized as "other income" and consequently, was subjected to the regular income tax rate of 35%. The income resulting therefrom was included in the total amount of other income reported in petitioner's Quarterly Income Tax Returns[30] and Annual Income Tax Return[31] for the period covering January 1 to December 31, 2007, as detailed below:

Tax Returns (2007)	**Total amount of other income reported**	**Excess standard input VAT included in other income[32]**	**Income tax rate**	**Income tax payments**
1st Quarter	₱ 86,971,775.00	₱ 45,555,401.26	35%	₱ 15,944,390.44
2nd Quarter	74,986,252.25	43,650,618.12	35%	15,277,716.34
3rd Quarter	70,822,267.59	43,100,210.05	35%	15,085,073.52
Annual	102,237,755.16	41,045,030.23	35%	14,365,760.58
Total	**₱335,018,050.00**	**₱173,351,259.66**		**₱60,672,940.88**
Less: Other Income reported outside of ITH		13,134,652.66	35%	4,597,128.43
Total Other Income reported within ITH		**₱160,216,607.00**		**₱56,075,812.45**

Further, petitioner's Amended Quarterly VAT Returns[33] for taxable year 2007 show that it had sales to government

[30] Exhibits "H", "I", and "J".
[31] Exhibits "K" and "L".
[32] Independent ICPA Report, Exhibit "KKKKK".
[33] Exhibits "N", "P", "R", and "T"

(water delivery fees subjected to 12% VAT) and zero-rated sales amounting to ₱2,714,448,831.63 and ₱2,765,210,931.59, respectively, totaling ₱5,479,659,763.22, computed as follows:

Period	Exhibit	Sales to Government	Zero-rated Sales	Total
1st Quarter	N	₱ 716,026,606.13	₱ 597,073,817.14	₱ 1,313,100,423.27
2nd Quarter	P	690,359,485.72	424,445,028.00	1,114,804,513.72
3rd Quarter	R	674,068,415.69	462,311,968.29	1,136,380,383.98
4th Quarter	T	633,994,324.09	1,281,380,118.16	1,915,374,442.25
Total		**₱2,714,448,831.63**	**₱2,765,210,931.59**	**₱5,479,659,763.22**

Petitioner's proceeds from its sales to NIA (water delivery fees) for the period January 1, 2007 to December 31, 2007 were duly supported by Official Receipts[34] and were subjected to 5% Final Withholding VAT as evidenced by Certificates of Creditable Withholding Tax Withheld at Source (BIR Form No. 2307)[35] issued by NIA to petitioner.

The standard input VAT was derived by imputing 7% rate to the water delivery fees of ₱2,714,448,831.63, which was actually the remainder of the 12% output VAT over the 5% final VAT withheld by NIA on the water delivery fees, broken down as follows:

Period	Water Delivery Fees	Output Tax	5% Final Withholding VAT	7% Standard Input VAT
1st Quarter	₱ 716,026,606.13	₱ 85,923,192.74	₱ 35,801,330.32	₱ 50,121,862.42
2nd Quarter	690,359,485.72	82,843,138.29	34,517,974.29	48,325,164.00
3rd Quarter	674,068,415.69	80,888,209.88	33,703,420.78	47,184,789.10
4th Quarter	633,994,324.09	76,079,318.89	31,699,716.20	44,379,602.69
Total	**₱2,714,448,831.63**	**₱325,733,859.80**	**₱135,722,441.59**	**₱190,011,418.21**

[34] Exhibits "FFF", "GGG", "HHH", "III", "JJJ", "KKK", "LLL", "MMM", "NNN", "OOO", "PPP", and "QQQ".
[35] Exhibits "U", "V", "W", "X", "Y", "Z", "AA", "BB", "CC", "DD", "EE", and "FF".

On the other hand, the actual input VAT directly attributable to such sales to the NIA amounted to ₱15,460,121.48, as computed below:

Period Covered	Sale to Government (a)	Zero-Rated Sales (b)	Total Sales (c)	Input Tax (d)	Input tax attributable to Sale to Govt (a/c*d)
1st Qtr	₱ 716,026,606.13	₱ 597,073,817.14	₱ 1,313,100,423.27	₱ 8,476,746.65	₱ 4,622,324.41
2nd Qtr	690,359,485.72	424,445,028.00	1,114,804,513.72	6,708,424.11	4,154,292.67
3rd Qtr	674,068,415.69	462,311,968.29	1,136,380,383.98	6,897,712.85	4,091,526.43
4th Qtr	633,994,324.09	1,281,380,118.16	1,915,374,442.25	7,830,682.67	2,591,977.97
Total	**₱2,714,448,831.63**	**₱2,765,210,931.59**	**₱5,479,659,763.22**	**₱29,913,566.28**	**₱15,460,121.48**

As mentioned earlier, the difference between the actual input VAT related to sales to government and the 7% standard input VAT was adjusted to petitioner's income or expense. In this case, petitioner's actual input VAT was less than the standard input VAT; thus, petitioner recognized additional income in its books, as computed below:

Period	**Standard Input VAT (7%)**	**Proportionate Actual Input VAT Attributable to Water Delivery Fees**	**Amount Reported as part of Non-Operating and Taxable Other Income**
1st Quarter	₱ 50,121,862.42	₱ 4,622,324.41	₱ 45,499,538.01
2nd Quarter	48,325,164.00	4,154,292.67	44,170,871.33
3rd Quarter	47,184,789.10	4,091,526.43	43,093,262.67
4th Quarter	44,379,602.69	2,591,977.97	41,787,624.72
Total	**₱190,011,418.21**	**₱ 15,460,121.48**	**₱174,551,296.73**
Less: Foreign Exchange Difference			1,200,037.07
Total Taxable Income per Annual ITR			₱ 173,351,259.66
Less: Other Income reported outside ITH			13,134,652.66
Total Taxable Income reported within ITH			₱ 160,216,607.00
Income Tax Rate			35%
Income Tax Payments being claimed for Refund/TCC			**₱ 56,075,812.45**

In fine, petitioner has sufficiently established that it has excess input VAT and such excess input VAT was declared by petitioner in its Annual ITR as other income, which was consequently subjected to a regular corporate income tax rate of 35%.

WHEREFORE, finding merit, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent is **DIRECTED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the full amount of ₱56,075,812.45, representing the latter's erroneously paid income tax for taxable year 2007.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
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.

ERLINDA P. UY
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice