REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- **versus** -

AYALA PROPERTY MANAGEMENT CORPORATION,
Respondent.

CTA EB NO. 2053
(CTA Case No. 9298)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUL 07 2020 2:46 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**CIR/petitioner**) seeking to nullify the Special

[1] Rule 8 - Procedure in Civil Cases, Section 3(b), RRCTA.
Section 3. *Who may appeal; period to file petition.* —
. . .
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an

Second Division's Decision dated 21 January 2019[2] in CTA Case No. 9298, entitled *Ayala Property Management Corporation v. Commissioner of Internal Revenue*. The dispositive portion of the assailed 21 January 2019 Decision reads:

> ...
>
> **WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment issued by respondent against petitioner for alleged deficiency income tax in the amount of **₱6,929,516.89** and deficiency value-added tax in the amount of **₱770,492.81** or in the aggregate amount of **₱7,700,009.70** for taxable year 2009 is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**
>
> ...

The Special Second Division also denied Petitioner's Motion for Reconsideration (**MR**) of the above Decision on 05 April 2019, as earlier on stated.[3]

The antecedent facts follow.

On 26 May 2010, respondent Ayala Property Management Corporation (**APMC/respondent**) received Letter of Authority (**LOA**) No. 126-2010-00000017 dated 14 May 2010, authorizing the concerned revenue officers to examine respondent's books of accounts and other accounting records for income tax for the period of 01 January 2009 to 31 December 2009.

On 08 July 2014, respondent received the Preliminary Assessment Notice (**PAN**) with Details of Discrepancies dated 21 April 2014.[4]

On 10 October 2014, respondent received the Formal Letter of Demand with Details of Discrepancies and Assessment Notices (**FLD/FAN**)[5] dated 25 September 2014, assessing it for alleged

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additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[2] Division Docket, Volume II, pp. 523-542.

[3] Id., pp. 573-576.

[4] See Exhibit "R-11", BIR Records, pp. 445-451.

[5] Exhibit "P-1", Division Docket, Volume I, pp. 401-407; Exhibit "R-14", BIR Records, pp. 511-517.

deficiency income tax and Value-Added Tax (**VAT**), inclusive of interests, for taxable year (**TY**) 2009.

On 10 November 2014, respondent sent its Protest Letter dated 07 November 2014, assailing the tax assessments in the FLD/FAN, together with the documents in support of the same. On 07 January 2015, respondent sent a Letter dated 06 January 2015 to the BIR to supplement its Protest Letter and submitted documents in support thereof.

On 17 February 2016, respondent received the Final Decision on Disputed Assessment (**FDDA**)[6] with Details of Discrepancies, finding it liable for deficiency income tax and VAT, inclusive of interests, in the aggregate amount of ₱7,700,009.70 for TY 2009. Hence, it filed a Petition for Review before this Court.

After trial, the Special Second Division promulgated the assailed Decision dated 21 January 2019 and later on, its Resolution dated 05 April 2019 denying petitioner's MR. Aggrieved by the Special Second Division's actions, petitioner filed the instant petition.

In the herein Petition, petitioner raises the following errors:

I.
WHETHER THE HONORABLE COURT IN DIVISION ERRED IN RULING ON MATTERS THAT WERE NEVER SUBSTANTIATED IN THE ADMINISTRATIVE LEVEL;

II.
WHETHER THE HONORABLE COURT ERRED IN ASSUMING JURISDICTION OVER AN ISSUE WHICH HAS ALREADY BECOME FINAL; AND,

III.
WHETHER THE HONORABLE COURT IN DIVISION ERRED IN PARTIALLY CANCELLING RESPONDENT'S DEFICIENCY ASSESSMENT ON INCOME TAX AND VALUE[-]ADDED TAX.

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6 Exhibit "R-15", BIR Records, pp. 582-584.

In support of his petition, petitioner belabors on the contention that respondent never refuted the disallowance of tax credit amounting to ₱68,437,216.00 in its protests in the administrative level and in the Petition for Review (CTA Case No. 9298) it filed before this Court. He thus insists that he was denied procedural and substantive due process as he was not given the opportunity to be heard on the particular issue of "disallowed tax credit in relation to the deficiency income tax assessments".

Apropos to the above argument, petitioner also posits that, since he issued the FDDA, the Court's jurisdiction is strictly appellate in nature. Citing *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[7], it insists that the jurisdiction of the Court shifts from a trial court to a court exercising judicial review. Furthermore, since a judicial review is not a *de novo* trial, the only proper inquiry should be whether the findings of the administrative body are consistent with law, supported by evidence and fraud-free. Hence, for petitioner, it was erroneous for the Court to rule on matters that were never substantiated in the administrative level. Put differently, since there were available remedies to respondent but it did not make any disputes, the issue on the disallowed excess tax credit is uncontroverted (since respondent never questioned it in the first place).

Petitioner adds that, as regards the assessment for deficiency income tax and VAT arising from unaccounted income resulting from matching of Summary List of Purchases (**SLP**) of Third Parties *vis-à-vis* the Summary List of Sales (**SLS**) of respondent, he maintains that the assessment is with due basis and not just mere presumptions.

Lastly, petitioner maintains that the creditable income tax withheld in the amount of ₱2,574,599.19 was properly disallowed since respondent failed to substantiate its claim that the said amount corresponds to the income recognized in year 2008 but was claimed only in 2009. Thus, petitioner insists that the assessment for deficiency income tax arising from the disallowed creditable income tax withheld was proper.

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7 G.R. No. 207112, 08 December 2015.

Respondent, however, counters that, with respect to the disallowed excess tax credit totalling to ₱68,437,216.00, it is not actually a disallowance of tax credits or an item of the assessment. It is presented in the deficiency income tax computation merely to show the distribution or usage of respondent's available tax credits for that year. Respondent points out that such is evident from the deficiency income tax computation itself and supported by the fact that it was not included in the Details of Discrepancies appended to the FDDA. Respondent then insists that no further proof, discussion, or documentation on the said item should be expected from it.

On the assessment arising from unaccounted income, respondent remains firm that it is not questioning petitioner's power to obtain information from third persons, rather it is casting doubt on the correctness of the same as the data gathered were not validated from external data or third parties.

Finally, respondent maintains that it is allowed to claim the creditable withholding tax for income earned in 2008 as credit for 2009 considering that the certificates of withholding tax (BIR Form No. 2307) were received only in 2009; hence, it cannot be expected to claim the credit in 2008.

The Court *En Banc's* ruling follows below.

After an assiduous review of the records, the Court *En Banc* finds the petition partly meritorious. The reasons are essayed below, *in seriatim.*

DISALLOWED EXCESS TAX CREDITS
NOT AN ITEM OF THE ASSESSMENT

Petitioner's first two assigned errors pertain to the ₱68,437,216.00 disallowed excess tax credits carried over to the succeeding year. In this respect, the Court *En Banc* finds no reason to reverse the ruling of the Special Second Division. Indeed, it is not an item of the assessment that should be substantiated. As respondent correctly pointed out, the disallowed tax credit was not included in the Details of Discrepancies, hence, petitioner was in no way deprived of procedural and substantial due process.

Concomitantly, petitioner heavily hinges his argument before the Court *En Banc* on respondent's alleged failure to refute the disallowed tax credits at the administrative level and even in the Petition for Review before the Division, hence, petitioner believes that the Court erred in assuming jurisdiction over something that has become final.

Upon a second hard look on the proceedings before the Court in Division, it is noteworthy that both parties did not dwell on the excess tax credits from prior years. Instead, they only focused on the alleged unaccounted income resulting from the matching of the SLP of Third Parties *vis-à-vis* respondent's SLS and the disallowed creditable withholding tax. It is thus more logical to conclude that both parties were aware that the excess credits from prior years is indeed not an item of an assessment to be refuted.

Moreover, as stated in LOA-126-2010-00000017[8] dated 14 May 2010, the coverage of the assessment is "for the period from January 1, 2009 to December 31, 2009". Considering that the tax benefit from the said excess tax credits will be in the succeeding year 2010, at most, respondent may only be assessed for the said succeeding year.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[9], the Supreme Court emphasized that the assessment must be done within the scope/coverage of a valid LOA; otherwise, the deficiency tax assessment arising therefrom is a nullity. It held:

> ...
>
> Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.

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8 Exhibit "R-1", id., p. 5.

9 G.R. No. 178697, 17 November 2010.

SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -

(A) Examination of Returns and Determination of tax Due. - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative **may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: Provided, however, That failure to file a return shall not prevent the Commissioner from **authorizing the examination of any taxpayer**. x x x

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.

As earlier stated, LOA 19734 covered "the period 1997 and unverified prior years." For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. As pointed out by the CTA-First Division in its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA.

Upon review, the CTA-EB even added that the coverage of LOA 19734, particularly the phrase "and unverified prior years," violated Section C of Revenue Memorandum Order No. 43-90 dated September 20, 1990, the pertinent portion of which reads:

3. A Letter of Authority should cover **a taxable period not exceeding one taxable year**. The practice of issuing L/As covering audit of "unverified prior years["] is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A.[10]

...

Applying the doctrine laid down in the afore-cited case that the examination of books must be limited to the period indicated in the LOA, the Court could only conclude that a disallowance in excess tax

[10] Emphasis in the original text and underscoring supplied.

credits carried over to the succeeding year is improper because it would already involve a period *beyond* the coverage of the assessment.[11]

Moreover, as found by the Special Second Division, even assuming *arguendo* that the disallowance of tax credits carried over is an item of the assessment, such is still void for petitioner's failure to indicate the legal and factual bases of the same.

With foregoing disquisitions, the Court *En Banc* cannot lend credence to petitioner's argument that the Court erred in assuming jurisdiction over an issue which has become final. The disallowed tax credits from prior years, not being an item of the assessment, can never become final in the administrative level. We reiterate that it is not one of those items that need to be substantiated or refuted by respondent in its protests.

Likewise, the Court *En Banc* is inclined to uphold the Special Second Division's ruling relative to the unverified information that resulted in unaccounted income. It finds no reversible error to disturb the exhaustive discussion in the assailed Decision. We quote in agreement the assailed Decision, *viz*:

> ...
>
> Without the confirmation from third parties, the findings casts doubts as to the reliability and correctness of the assessment on the alleged unaccounted income.

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[11] See also *East Asia Power Resources, Corp. v. Commissioner of Internal Revenue*, CTA Case No. 8182, 15 January 2014. There, we held:

...

Respondent did not explain why petitioner's excess tax credits for the year 2006 amounting to ₱26,105,588.00 which was carried over to the succeeding period was deducted from the total available tax credits. This Court could only surmise that respondent intends to regain the benefit in the form of tax credit that has been forwarded by petitioner to the succeeding taxable year given that respondent's audit of petitioner resulted in a deficiency income tax assessment for the year 2006.

Respondent's disallowance of the ₱26,105,588.00 excess tax credits carried over to the succeeding year is improper because any tax benefit derived by petitioner from the carry-over of the said amount redounds to the succeeding year 2007. Since the tax benefit will be in the succeeding year, at most, petitioner may only be assessed in the said succeeding year.

...

While it is true that tax assessments have the presumption of correctness and regularity in its favor, it is also equally true that assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be. This principle was thoroughly discussed by the Supreme Court in the case of Commissioner of Internal Revenue v. Hantex Trading Co., Inc., the pertinent portions of which are quoted hereunder:

> "We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie*, presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a 'naked assessment,' *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.*"

Accordingly, the assessment cannot be sustained since it was based merely on unverified amounts extracted from respondent's own database.

> Note [further] that Revenue Memorandum Order (RMO) No. 04-03 requires the verification of the amounts reflected in the quarterly report with other externally sourced data in ascertaining the taxpayer's underdeclaration of revenues or overstatement of costs and expenses, if any.
>
> ...

TAX CREDITS RELATING TO INCOME RECOGNIZED IN 2008 PROPERLY DISALLOWED

With regard to the out-of-period creditable taxes withheld, the Court *En Banc* is likewise convinced that petitioner correctly disallowed the same. Respondent is obviously aware of the rule that the amount of creditable taxes withheld must be claimed as credit against the income tax liability of the payee in the same quarter of the taxable year in which it was earned. In the same vein, it admitted that the withholding taxes it is claiming as credit pertains to income earned in prior year. On the other hand, petitioner is not disputing the recognition of income in 2008 in its assessment.

As stated above, upon further consideration of the arguments and pieces of evidence proffered by the parties, the Court *En Banc* finds that petitioner's disallowance of the creditable withholding tax for the year 2008 (but was belatedly claimed in 2009) was proper and in accordance with Section 2.58.3 of Revenue Regulations (**RR**) 2-98[12], *viz*:

> ...
>
> **Section 2.58.3.** ***Claim for tax credit or refund*** –
>
> (A) The amount of creditable tax withheld shall be allowed as **a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.**
>
> (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**

12 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.

> **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.[13]
>
> ...

In ruling for respondent, the Court in Division relied only on Section 2.58.3(B) above and found it sufficient to allow the claiming of tax credits as long as the income relating to it was declared as part of the gross income. However, it can be gleaned from the above-cited provision that it is not enough that the related income earned or received be declared as part of the gross income. Equally important in claiming the tax credits is proof that the declaration of income earned or received is made in the <u>same period</u> with the claiming of the related tax credit.

The aforementioned rule finds support in the expanded concept of the matching principle which states that, when an entity claims a deduction, another entity must include the deducted amount in its income.[14] Since respondent has already recognized the revenues in 2008, respondent's customers should have also claimed the corresponding expenses in 2008 and subjected the same to withholding tax in 2008. As such, under normal circumstances, respondent should have also claimed the tax credits arising from the 2008 income in 2008. The apparent rationale for this rule is to prevent double or multiple claiming of tax credits arising from the same revenue.

The Court *En Banc* cannot also give full credence to respondent's contention that the receipt of the certificates of withholding is not within its control. While it is true that the issuance of certificates of withholding is incumbent upon the payor as withholding agent, respondent, as payee, can ask for its copy within twenty (20) days from the close of the taxable quarter or simultaneous with the income payment. This is in consonance with Section 2.58(B) of RR 2-98, to wit:

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[13] Emphasis supplied.

[14] Larry Maples, "Matching Deductions to Payments: Payer/payee Rules Are Not Always Clear", *Journal of Accountancy*, Vol. 202, No. 4 (2006).

> **Section 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.**
>
> ...
>
> **(B)** ***Withholding tax statement for taxes withheld*** — Every payor required to deduct and withhold taxes under these regulations shall furnish each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form 2307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. Upon request of the payee, however, the payor must furnish such statement to the payee simultaneously with the income payment. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.
>
> ...

Respondent cannot likewise conveniently point finger at the withholding agent and petitioner. Other than its allegation that the certificates were received only in 2009, it offered no proof that, at the very least, it requested from its clients (payors) the said certificates so it could claim the credit in the proper period. It is primarily the duty of the taxpayer payee to prove that the income was recognized in the same period that the related credit was claimed, lest the disallowance of such tax credit.[15] With this, the consequential disallowance of the tax credit is for respondent to bear.

Well-settled is the rule that tax refunds and tax credits partake in the nature of exemption, which cannot be allowed unless granted in the most explicit and categorical language and strictly construed against the claimant who must discharge such burden convincingly.[16]

Furthermore, upon matching of the documents, some of respondent's BIR Form No. 2307 did not tally with the official receipts (**ORs**) and the Statement of Account (**SOA**) it submitted, as follows:

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15 See RR No. 2-98, Section 2.58.3(A) and (B).

16 The *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, G.R. No. 147295, 16 February 2007.

Name of the Company	Tax credits per SOA (dated 2008) and OR (dated 2009) submitted	Tax credits per BIR Form No. 2307 (dated 2009) submitted	Difference
Glensworth Development, Inc.	₱5,814.04 69,280.39	₱75,094.43[17]	₱ -
The Residences At Greenbelt Condominium	135,475.20 9,031.68	135,475.20[18]	9,031.68
Ceci Realty, Inc.	14,300.91 24,918.16	39,219.07[19]	-
Avida Residences	28,627.20	28,627.20[20]	-
Avignon Tower Condominium Corp.	147,846.60	182,539.72[21]	(34,693.12)
Ayala Life FGU Center Condominium Corp.	6,918.47	133,748.88[22]	(126,830.41)
Ayala Westgrove Heights Homeowners	104,849.41	104,849.41[23]	-
Citibank N.A.	227,403.52	216,372.18[24]	11,031.34
Citibank Square Condominium Corp.	66,137.29	51,590.14[25]	14,547.15
Citigroup Business Process Solutions	35,621.87	35,621.87[26]	-
One Dela Rosa Property Development	141,051.64	211,474.16[27]	(70,422.52)
One Legazpi Park Residential Condo Corp.	43,678.55	58,734.72[28]	(15,056.17)
Roxas Triangle Towers Condominium Corp.	327.49 19,622.23 5,324.31 3,924.45	186,197.44[29]	(152,993.89)
Roxas Triangle Towers Condominium Corp.	4,005.07		
The Asia Tower Condominium Corp.	41,555.49	138,484.49[30]	(96,929.00)
Verdana Homes Homeowners Association	30,492.00	83,698.14[31]	(53,206.14)
The Columns Ayala Avenue Condominium	57,120.00	7,329.17[32]	49,790.83

17 BIR Records, Folder 4, pp. 547 and 555.
18 Id., p. 565.
19 Id., Folder 5, pp. 1047 and 1050.
20 Id., Folder 4, p. 559.
21 Id., Folder 5, pp. 1061, 1064 and 1085.
22 Id., pp. 1054 and 1057.
23 Id., p. 842.
24 Id., Folder 4, pp. 709-714.
25 Id., Folder 5, p. 1031.
26 Id., Folder 4, p. 571.
27 Id., Folder 5, pp. 1003 and 1021.
28 Id., p. 997.
29 Id., p. 848.
30 Id., pp. 988 and 991.
31 Id., p. 973.
32 Id., p. 982; Tagged in the BIR Form No. 2307 as 2008 income payments.

Name of the Company	Tax credits per SOA (dated 2008) and OR (dated 2009) submitted	Tax credits per BIR Form No. 2307 (dated 2009) submitted	Difference
Woodside Homes Condominium Corp.	23,405.24	59,374.24[33]	(35,969.00)
Ayala Land, Inc.	647,837.18	3,025,684.77[34]	(2,377,847.59)
Universal Re Condominium Corp.	10,489.53	58,734.72[35]	(48,245.19)
Subtotal	***₱1,905,057.92***	***₱ 4,832,849.95***	***₱ (2,927,792.03)***
Serendra Condominium Corporation	191,865.71	-[36]	191,865.71
Verdana Homes Homeowners' Association	49,464.81	-[37]	49,464.81
Dusit Thani Manila	46,360.95	-[38]	46,360.95
International School Manila, Inc.	16,638.44	16,638.45[39]	-
One Legazpi Park Residential Condo Corp.	123,946.03	189,531.31[40]	(65,585.28)
Fort Bonifacio Development Corp.	84,075.70	541,890.23[41]	(457,814.53)
Bonifacio Estate Services Corp.	12,250.00	-[42]	12,250.00
Ceci Realty Inc.	36,846.80	-[43]	36,846.80
Others	108,092.83	-[44]	108,092.83
Subtotal	***₱ 669,541.27***	***₱ 748,059.99***	***₱ (78,518.71)***
TOTAL	**₱ 2,574,599.19**	**₱ 5,580,909.94**	**₱ (3,006,310.74)**

From the above, the Court *En Banc* could then not ascertain whether the BIR Form No. 2307 submitted pertains to the withholding on the ORs as respondent had so claimed.

All told, notwithstanding the disallowance of the out-of-period creditable taxes withheld, respondent's excess prior year tax credit is more than sufficient to cover for the said disallowance, hence,

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33 Id., Folder 4, p. 836.
34 Id., Folder 5, pp. 865 and 866.
35 Id., p. 978.
36 BIR Form No. 2307 not found in the records.
37 BIR Form No. 2307 not found in the records.
38 BIR Form No. 2307 not found in the records.
39 BIR Records, Folder 3, p. 236.
40 Id., p. 168.
41 Id., pp. 156-159.
42 Id., p. 145; Admitted by the respondent as double take-up.
43 Id., p. 138; Admitted by the respondent as incorrect claiming.
44 BIR Form No. 2307 not found in the records.

respondent still has no deficiency income taxes due for 2009, as shown below:

Taxable income/(loss) per ITR[45]		₱ 29,425,307.00
Basic Income Tax Due at Regular Rate (30%)		₱ 8,827,592.00
Less: Allowable tax credits/payments:		
Prior year's excess credits other than MCIT	₱53,735,027.00	
Creditable tax withheld per return	23,529,781.00	
Less: Disallowed out of period tax credits	2,574,599.19	74,690,208.81
Total Basic Deficiency Income Tax Due		**₱ (65,862,616.81)**

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Petitioner's disallowance of out-of-period tax credits is **AFFIRMED** with **MODIFICATION**. Accordingly, respondent's income tax overpayment for the taxable year 2009 is **REDUCED** by ₱2,574,599.19 corresponding to the said out-of-period tax credits.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

45 BIR Records, Folder 1, pp. 401-403.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUL 0 7 2020
2:46 p.m.

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DISSENTING OPINION

MANAHAN, *J.:*

With due respect to my esteemed colleague and consistent with my position in the earlier case of *Ayala Property Management Corporation v. Commissioner of Internal Revenue* (CTA Case No. 9298), I respectfully disagree with the disquisition on the reduction of the tax overpayment claimed by respondent for taxable year 2009 by Php2,574,599.19.

The ponente posits that since the respondent has already recognized the revenues in 2008, its customers should have also claimed the corresponding expenses in 2008 and subjected the same to withholding tax in 2008. Thus, respondent should have also claimed the tax credits arising from the 2008 income in 2008.

Such position is predicated on the premise that the related income earned or received by the taxpayer be declared as part of the gross income and more so, that the claim for tax credit should be made within the same period that the income was earned or received.

It should be noted that the assailed decision explicitly mentioned therein that petitioner Commissioner of Internal Revenue (CIR) "**acknowledged in the FDDA that the amount of P2,574,599.19 was being claimed only in 2009 even if it represented creditable income tax withheld on income recognized in 2008. In other words, respondent was able to verify: (a) income recognition in 2008; and (b) use of the certificate of creditable taxes withheld only in 2009**."[1] Hence, there was proof that indeed the amount was recognized as income in 2008 and that the certificates for said withholding taxes having been made available to respondent only in 2009 and were utilized during the same year.

Such proof had complied with Section 2.58.3(B) of Revenue Regulations No. 2-98 dated April 17, 1998 as mentioned in the assailed decision, to wit:

> Section 2.58.3(8) of RR No. 02-98 provides that 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 (1) the income payment has been declared as part of the gross income, and (2) the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor/withholding agent to the payee/recipient, known as the Certificate of Creditable Tax Withheld at Source or 8IR Form No. 2307, showing the amount paid and the amount of tax withheld therefrom.
>
> Respondent admits that the income payments related to the creditable withholding taxes of P2,574,599.19 were already declared by petitioner in its income tax return for the year 2008. Likewise, the amount of P2,574,599.19 is duly supported by BIR Forms No. 2307 issued in the year 2009. Thus, pursuant to Section 2.58.3(8) of RR No. 02-98, petitioner may validly claim the amount of P2,574,599.19 as tax credits for the year 2009.

Further, as shown above, petitioner CIR admitted already that the income payments related to the creditable withholding taxes of P2,574,599.19 were already declared by petitioner in its income tax return for the year 2008 as evidenced by BIR

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[1] Rollo, CTA EB Case No. 2053, Decision dated January 21, 2019, pp. 48-49.

Form No. 2307 issued in 2009. The evil that is being nipped here is the potential double claim of tax deduction by respondent, which, as acknowledged in the FDDA, did not exist. How could the respondent claim the tax overpayment in 2008 when there was no Certificate of Withholding Tax (BIR Form 2307) available to substantiate it?

Besides, every business entity has its own accounting method and respondent's customers may adopt accounting methods different from that of the respondent. Hence, the timing factor in the recognition of revenue and/or expenditure will simply differ. The application therefore to the instant case of the "expanded concept of the matching principle" under the Rules of Accountancy must fail.

As held in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[2], when there is an apparent conflict between the provision of the Tax Code and the generally accepted accounting principle, the former shall prevail, *viz*:

> Even if we were to accept the notion that applying the 1998 purchases as deductions in the fiscal year 1998 conforms with the generally accepted principle of matching cost against revenue, the same would still not lend any comfort to the CIR. Revenue Memorandum Circular *(RMC)* No. 22-04, entitled *"Supplement to Revenue Memorandum Circular No. 44-2002 on Accounting Methods to be Used by Taxpayers for Internal Revenue Tax Purposes"* dated 12 April 2004, commands that where there is conflict between the provisions of the Tax Code (NIRC), including its implementing rules and regulations, on accounting methods and the generally accepted accounting principles, the former shall prevail. The relevant portion of RMC 22-04 reads:
>
> > II. Provisions of the Tax Code Shall Prevail.
> >
> > All returns required to be filed by the Tax Code shall be prepared always in conformity with the provisions of the Tax Code, and the rules and regulations implementing said Tax Code. Taxability of income and deductibility of expenses shall be determined strictly in accordance with the provisions of the Tax Code and the rules and regulations issued implementing said Tax Code. *In case of difference between the provisions of the Tax Code and the rules and regulations implementing the Tax Code, on one hand, and the general(v accepted accounting principles (GAAP) and the generally accepted accounting standards (GAAS), on the other hand, the*

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[2] G.R. No. 183408, July 12, 2017.

> *provisions of the Tax Code and the rules and regulations issued implementing said Tax Code shall prevail.* (italics supplied)

WHEREFORE, I shall maintain my vote in cancelling and setting aside *in toto* the Final Decision on Disputed Assessment issued by Petitioner CIR for the respondent's alleged deficiency income tax and value-added tax liabilities for taxable year 2009.

CATHERINE T. MANAHAN
Associate Justice