REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

SM INVESTMENTS CORPORATION, Petitioner,	**CTA Case No. 9569**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** and **MODESTO-SAN PEDRO,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUN 29 2020 1:22 p.m.

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DECISION

UY, J.:

Before this Court is a *Petition for Review* filed on April 7, 2017 by petitioner, SM Investments Corporation, praying that judgment be rendered ordering respondent, Commissioner of Internal Revenue (CIR), to refund or issue tax credit certificate (TCC) in favor of petitioner in the amount of ₱330,559,574.00, allegedly representing excess and unutilized creditable withholding tax (CWT) for calendar year (CY) ended December 31, 2014.

THE FACTS

The facts, as culled from the records of the case and evidence admitted by this Court, are as follows:

Petitioner SM Investments Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 10th Floor One E-com Center, Harbor Drive, Mall of Asia Complex, CBP –

IA, Pasay City and herein represented by its Senior Vice President for Corporate Tax, Cecilia R. Patricio.[1] It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification Number (TIN) 000-169-020-00000.[2]

On the other hand, respondent is the duly appointed CIR, empowered to perform the duties of the said office including, among others, the power to decide, approve and grant refunds or tax credits as provided by law. He may be served summons, pleadings and other processes at his office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[3]

On the following dates, petitioner filed its Quarterly Income Tax Return (ITR) for CY 2014:

Period	**Date of Filing**	**Exhibit**
First Quarter ITR	May 23, 2014	"P-9"
Second Quarter ITR	August 28, 2014	"P-10"
Third Quarterly ITR	Nov 26, 2014	"P-11"

On April 8, 2015, petitioner filed its AITR for CY2014 through eFPS with reference No. 121500010942132,[4] indicating total income tax credits in the amount of **₱548,765,509.00** and an overpayment of income tax in the amount of **₱470,169,461.00,** as follows:

Total Income Tax Due		₱78.596.048.00
Less: Prior Year's Excess Credits other than MCIT	₱ 218.205.935.00	
Creditable Tax Withheld from Previous Quarters	234.436.652.00	
Creditable Tax Withheld for the 4th quarter	96.122.922.00	
Total Tax Credits		**(₱548.765.509.00)**
Total Overpayments		**(₱470,169,461.00)**

Petitioner indicated in its AITR for CY 2014 its option to be issued a TCC for its excess and unutilized CWT for CY 2014.[5]

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[1] Admitted Fact, par. 1, *Joint Stipulation of Facts and Issues*(JSFI), Docket–Vol. 1, p.391.
[2] Exhibit "P-2", *Certificate of Registration*, Docket – Vol. 1, p. 537.
[3] Admitted Fact, par. 2, JSFI, Docket – Vol. 1, pp. 391 to 392.
[4] Exhibit "P-3", Docket – Vol. 2, pp. 769 to 776.
[5] Exhibit "P-3", Line 21, Docket – Vol. 2, p. 769.

On September 21, 2015 petitioner filed with the BIR Regular LT-Audit Division 2, a *Letter* dated September 14, 2015[6] for the refund of or issuance of TCC for its excess and unutilized CWT for CY 2014 in the amount of ₱330,559,574.00.

There being no action on the part of respondent, petitioner filed the instant *Petition for Review* on April 7, 2017[7].

Respondent filed his *Answer*[8] on June 16, 2017 arguing among others, that petitioner failed to prove that it submitted the documentary requirements under Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006. According to respondent, petitioner must prove that it submitted the following documentary requirements as provided for in RMO No. 53-98:

1. Certified Financial Statements, including comparative Profit and Loss Statement with Statement of Cost of Goods Manufactured and Sold, if applicable;

2. Proof of claimed tax credit/s, if applicable;

3. Proof of the claimed "Interest Expense", if applicable;

4. Proof of claimed Bad Debts/worthlessness of credits, if applicable;

5. Reconciliation of "Book Income" and "Taxable Income";

6. Certificate of Registration issued by appropriate regulatory agency, together with conditions attached to such registration, if applicable;

7. Proof of Exemption under special laws, if applicable;

8. Certification of the appropriate regulatory agency as to taxpayer's entitlement to tax incentives, if applicable;

9. Xerox copy of used Tax Credit Certificate with annotation of issued TDM at the back, if applicable;

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[6] Exhibit "P-16" Docket – Vol. 2, pp. 720 to 722.
[7] Docket – Vol. 1, pp. 10 to 19.
[8] Docket, Vol. 1, pp. 114 to 116.

10. Proof of payment of deficiency tax, if any/applicable
    (a)Current year/period
    (b)Previous year/period

11. Reports submitted to applicable regulatory agency that reflects the financial condition and result of operation of the taxpayer e.g., Annual Statement prepared by insurance companies submitted to the Insurance Commission etc., if applicable.

Moreover, RR No. 2-2006[9] provides:

"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. xxx xxx xxx

B. Person required to submit Summary Alphalist of Withholding Agents of Income Payments subjected to Withholding Taxes (SAWT)

1. All persons claiming refund or applying their creditable tax withheld at source against the tax due with not more than ten (10) withholding agents-payor of income payment per return period are strictly required to submit SAWT in hard copy as attachment to the required tax return;

2. All persons claiming for refund or applying their creditable tax withheld at source against the tax due with more than (10) withholding agent-payor of income payment per return period are strictly required to submit SAWT electronically in a 3.5-inch floppy diskette following the format to be prescribed by the BIR;"

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

Allegedly, petitioner must faithfully comply with these rules and regulations as they partake the nature of a statute that have the force and effect of the law, and enjoy the presumption of constitutionality and legality until they are set with finality in an appropriate case by a competent court; that petitioner's failure to fully substantiate its claim is fatal to its judicial claim.

During the Pre-Trial Conference held on August 15, 2017[10], the parties were given twenty (20) days to file their *Joint Stipulation of Facts and Issues*, or until September 4, 2017.

As per Records Verification Report dated September 6, 2017,[11] the parties failed to file their *Joint Stipulation of Facts and Issues (JSFI)*. On September 18, 2017, petitioner filed a *Motion to Admit Stipulations of Facts and Issues*[12] praying that it be given leave of this Court to file the JSFI. In the interest of substantial justice, petitioner's *Motion to Admit Joint Stipulation of Facts and Issues* was granted in the Resolution[13] dated September 28, 2018. Thereafter, the Court issued the Pre-Trial Order[14] on October 11, 2017.

During trial, petitioner presented the following witnesses: (1) Cecilia R. Patricio, its Senior Vice President for Corporate Tax[15] (2) Helen Grace Dela Cruz, its Senior Assistant Vice President-Controllership[16]; and Romeo A. De Jesus, Jr., the Court-commissioned Independent Certified Public Accountant (ICPA)[17]

Thereafter, petitioner filed its *Formal Offer of Evidence (With Motion to Set Commissioner's Hearing)*[18] on June 4, 2018, praying that the exhibits be admitted as petitioner's documentary and testimonial evidence and that the Court set a commissioner's hearing for the purpose of comparison of provisionally marked Exhibits "P-3", "P-4" and "P-15" with the originals.

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[10] Order, Docket – Vol. 1, pp. 385 to 386.
[11] Docket – Vol. – 1, p. 387.
[12] Docket – Vol. 1, pp. 388 to 390.
[13] Docket – Vol. 1, pp. 400 to 401.
[14] Pre-Trial Order, Docket - Vol. 1, pp. 403 to 408.
[15] Exhibit "P-20", Docket - Vol. 2, pp. 726 to 734.
[16] Exhibit "P-21", Docket - Vol. 2, pp. 735 to 748.
[17] Exhibit "P-22", Docket - Vol. 1, pp. 490 to 498.
[18] Docket - Vol. 2, pp. 508 to 519.

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In the Resolution[19] dated July 5, 2018, the Court granted petitioner's *Motion to Set Commissioner's Hearing* and set the Commissioner's hearing on July 26, 2018 for the comparison of the provisionally marked exhibits "P-3", "P-4" and "P-15" with their originals. Meanwhile, resolution of petitioner's *Formal Offer of Evidence* was held in abeyance.

On August 3, 2018, petitioner filed *Submission and Supplemental Formal Offer of Evidence*[20] praying that exhibits "P-3", "P-4" and "P-15" be admitted as petitioner's documentary evidence and the provisionally marked exhibits on record be cancelled and replaced accordingly.

Respondent filed his *Comment/Opposition (on Petitioners Formal Offer of Evidence)*[21] praying that Exhibits "P-47-1" to "P-47-39" be denied admission for failure to present the original documents for comparison and that Exhibits "P-48-1" to "P-48-17" be likewise denied for failure of the ICPA to authenticate the electronic signatures in the certificates.

In the Resolution[22] dated October 17, 2018, the Court admitted all the exhibits offered by petitioner and the presentation of respondent's evidence was set on February 12, 2019.

During the hearing on February 12, 2019 for the presentation of respondent's evidence, respondent's counsel manifested that she will not present evidence on the ground that there was no result of the investigation with regard to petitioner's claim for refund during the hearing held on February 12, 2019.[23] Thus, the Court directed the parties to file their respective Memorandum.[24] Petitioner filed its *Memorandum* on April 8, 2019[25]; while respondent filed its *Memorandum* on April 15, 2019[26]. In the Resolution dated April 22, 2019,[27] the case was submitted for decision.

Hence, this Decision.

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[19] Docket – Vol. 2, pp. 754 to 755.
[20] Docket – Vol. 2, pp. 764 to 767.
[21] Docket – Vol. 2, pp. 795 to797.
[22] Docket – Vol. 2, pp. 800 to 801.
[23] Minutes of the Hearing held on February 12, 2019, Docket – Vol. 2, p. 802.
[24] Order dated February 12, 2019, Docket – Vol. 2, p. 803.
[25] Docket – Vol. 2, pp. 819 to 841.
[26] Docket – Vol. 2, pp. 843 to 855.
[27] Docket—Vol. 2, p. 859.

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THE ISSUES

The parties stipulated a sole issue[28] for this Court's resolution, to wit:

> " Whether or not petitioner is entitled to the claim for refund or tax credit certificate of excess income tax payments of ₱330,559,574.00."

Petitioner's arguments

Petitioner argues that it was able to prove compliance with the requisites for the refund or issuance of TCC of its excess and unutilized CWT by proving the timeliness of its claim, the inclusion of the income in its ITR, and the proof that withholding taxes occurred.

Allegedly, the failure of respondent to resolve petitioner's administrative claim for refund amounts to a denial of due process.

As regards respondent's allegation that petitioner failed to present its documentary evidence before the BIR, petitioner contends that the power of this Court to exercise its appellate jurisdiction does not preclude it from considering the evidence that was not presented in the administrative claim with the BIR.

Finally, petitioner maintains that it was able to satisfy its burden of proving its right to refund.

Respondent's counter-arguments

Respondent counter-argues that the petitioner failed to exhaust administrative remedies before elevating the case to this Court. Allegedly, petitioner's claim is subject to administrative investigation/ examination by respondent and pending closure of such investigation, no grant of refund may be given to petitioner based on the filed claim.

Further, respondent asserts that petitioner is not entitled to the claim for refund of CWTs because it did not provide supporting documents to show that income from which creditable withholding tax

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[28] Docket – Vol. 1, JSFI – Stipulated Issue, pp. 392.

being claimed was declared in the Annual Income Tax Return (AITR). There is allegedly no direct linkage between the CWT and the income as reflected in the AITR. Thus, there is a clear violation from the requirement that gross income as reported in the AITR must include the portion of income to which respondent is requested for the refund of CWT. If the income from which the CWT is attributed was not declared, such CWT must allegedly be disallowed from the claim.

In addition, respondent points out that petitioner did not just fail to comply with mandatory requirements but had even failed to show direct linkage between the claimed CWTs and the related income.

THE COURT'S RULING

The Court shall first address the issue raised by respondent on whether the instant case should be dismissed for prematurity or lack of action.

Respondent argues that petitioner failed to exhaust administrative remedies before elevating the case to this Court. It is respondent's position that pending closure of this investigation, no grant of refund may be given to petitioner based on the filed claim.

We disagree.

Section 229 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

> "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.
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> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of

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> payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis supplied)

Based on the foregoing provisions, the judicial claim for tax refund must be made within two (2) years from the date of payment of the tax or penalty, regardless of any supervening cause that may arise after such payment.

In the consolidated cases of *CBK Power Company Limited v. Commissioner of Internal Revenue*, and *Commissioner of Internal Revenue v. CBK Power Company Limited*[29] the Supreme Court ruled as follows:

> "With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. **Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.**
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> Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. **There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.**

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[29] G.R. No. 193383-84 and G.R. No. 193407-08 , January 14, 2015.

> In the foregoing instances, attention must be drawn to the Court's ruling in P.J. Kiener Co., Ltd. v. David (Kiener), wherein it was held that **in no wise does the law,** i.e., Section 306 of the old Tax Code **(now, Section 229 of the NIRC), imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action**. In Kiener, the Court went on to say that **the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow** . . .". (Emphasis supplied)

It is evident from the foregoing jurisprudential pronouncements that there is no violation of the doctrine of exhaustion of administrative remedies even if the taxpayer-claimant did not wait for the action of the CIR on its refund claim before filing its judicial claim with this Court. As held by the Supreme Court, nowhere in Section 229 of the NIRC of 1997 is it implied that respondent must first act upon the taxpayer's claim, and that the taxpayer shall not go to court before such taxpayer is notified of respondent's action thereon.

In this case, there is no showing that respondent ever acted upon petitioner's administrative claim for refund from the time it was filed on September 21, 2015 up to the filing of its judicial claim on April 7, 2017. Considering that the two-year prescriptive period is about to end, it was correct on the part of petitioner to have elevated its judicial claim within the said two-year prescriptive period under Section 229 of the NIRC of 1997.

Non-submission of complete documents enumerated under RMO No. 53-98 and RR No. 2-2006 at the administrative level is <u>not</u> fatal to a claim for refund at the judicial level.

As regards respondent's contention that the instant claim for tax refund should be denied for petitioner's failure to comply with RMO No. 53-98 and RR No. 2-2006, the same is without merit.

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A cursory reading of RMO No. 53-98[30] and RR No. 2-2006[31] shows that nowhere is it stated that the non-submission of the documents enumerated therein would *ipso facto* result to the denial of the claim for tax refund or credit. Further, it bears noting that RR No. 2-2006 merely imposes a penalty of fine for non-submission of the information or statement required therein, but not the outright denial of the claim for tax refund or credit.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[32] the Supreme Court, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation)*,[33] pointed out that the there is nothing under RMO No. 53-98 that requires the submission of complete document for a grant of a refund or credit, *to wit*:

> "As can be gleaned from the above, **RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess VAT**. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation* (formerly Mirant Sual Corporation):
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> The CIR's reliance on RMO 53-98 is misplaced. <u>There is nothing</u> in Section 112 of the NIRC, RR 3-88 or <u>RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT.</u> The subject of RMO 53-98 states that it is a 'Checklist of Documents to

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

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

[32] G.R. No. 207112, December 8, 2015.

[33] G.R. No. 205055, July 18, 2014.

> be Submitted by a Taxpayer upon Audit of his Tax Liabilities x x x.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'
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> xxx xxx xxx
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> **Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT.** This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court." (*Emphasis and underscoring supplied*)

While the foregoing case involves a claim for tax refund or credit of unutilized VAT, We find the principle enunciated therein as applicable in a claim for tax refund or issuance of TCC of unutilized CWT.

Based on the afore-cited jurisprudence, RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities and is never intended as a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund. It is further stated that the failure of the taxpayer to submit the requirements listed under RMO No. 53-98 is not fatal to the taxpayer's claim for tax credit or refund.

In view thereof, the Court finds that respondent cannot validly invoke the alleged non-compliance with RMO No. 53-98 and RR No. 2-2006 as legal basis to deny the instant claim for tax refund or credit.

Moreover, the CTA being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of its case.[34] It is not precluded from accepting petitioner's evidence assuming these were not presented at the administrative level.[35] The question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[36]

Petitioner is partially entitled to its claim for refund.

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

> **"SEC. 76. - *Final Adjustment Return.*** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
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> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> **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. <u>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</u> for that taxable period and no application for cash refund or issuance of a tax credit**

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[34] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[35] *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 180290, September 29, 2014.
[36] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015.

certificate shall be allowed therefor." *(Emphasis supplied.)*

Interpreting the foregoing provision, the Supreme Court, in *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*,[37] held that a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a TCC or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period. 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 ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.[39]

In this case, petitioner clearly indicated its intention to be issued a TCC by marking the box corresponding to the said choice in its 2014 AITR.[40]

As can be gleaned from the 2014 AITR[41], petitioner had total tax credits in the amount of ₱548,765,509.00[42] consisting of prior year's excess credits amounting to ₱218,205,935.00[43] and creditable withholding taxes accumulated during the four (4) quarters of CY 2014 amounting to ₱330,559,574.00 (₱234,436,652.00 plus 96,122,922.00₱)[44]. Petitioner's income tax due for CY 2014 amounting to ₱78,596,048.00[45] was offset against prior year's excess credits of ₱218,205,935.00, leaving a balance of the prior year's

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[37] 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 – Vol. 2, p. 769, 2014 ITR, Line 21.
[41] Exhibit "P-3", Docket – Vol. 2, pp. 768 to 776.
[42] Exhibit "P-3", Docket – Vol. 2, p. 769, 2014 ITR, Line 17.
[43] Exhibit "P-3", Docket – Vol. 2, p. 774, Schedule 7, Line 1.
[44] Exhibit "P-3", Docket – Vol. 2, p. 774, Schedule 7, Lines 5 and 6.
[45] Exhibit "P-3", Docket – Vol. 2, p. 769, Line 16.

NO

excess credits of ₱139,609,887.00 and creditable taxes withheld during CY2014 in the amount of ₱330,559,574.00, or a total of excess tax credits as December 31, 2014 in the amount of ₱470,169,461.00[46], detailed as follows:

Prior Year's Excess Credit		₱218,205,935.00
Less: Income Tax Due:		78,596,048.00
Balance of Prior Year Excess Credit		139,609,887.00
Add : Creditable Tax Withheld during CY2014		
From previous quarters	₱234,436,652.00	
For the fourth quarter	96,122,922.00	330,559,574.00
Excess Tax Credits as of December 31, 2014		**₱470,169,461.00**

Finding that petitioner opted to be issued a TCC and considering that the balance of prior year's excess credits in the amount of ₱139,609,887.00 were carried-over in the subsequent quarters of CY 2015 and was in fact reflected as "Prior Year's Excess Credits" in its First Quarterly ITR[47] and AITR[48] for TY2015, the amount of ₱330,559,574.00 may be the proper subject of a claim for refund or issuance of TCC under Section 76 of the NIRC of 1997.

However, in order to be entitled to a refund or issuance of TCC for excess/unutilized CWT, petitioner must satisfy the following requirements:

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

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom;[49] and

3. That the income upon which the taxes were withheld was included in the return of the recipient, i.e., declared as part of the gross income.[50]

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[46] Exhibit "P-3", Docket – Vol. 2, p. 769, 2014 ITR, Line 20.
[47] Exhibit "P-6", Docket – Vol. 2, p. 640, Line 31A.
[48] Exhibit "P-7", Docket – Vol. 2, p. 650, Schedule 7, Line 1.
[49] Section 2.58.3 (B) of Revenue Regulations No. 2-98.
[50] *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue*, G.R. No. 151857, April 28, 2005

First condition

The *first condition* is anchored on the aforecited Section 229, in relation to Section 204 of the NIRC of 1997, to wit:

> "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 stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund." (Emphasis supplied)

Based on the foregoing provision and the aforecited Section 229, both the administrative and the judicial claims must be filed within two (2) years from the date of payment of the tax. Timeliness of the filing of the claim is mandatory and jurisdictional. The court cannot take cognizance of a judicial claim for refund either prematurely or out of time.[51]

The two-year prescriptive period within which to claim a refund commences to run at the earliest, on the date of the filing of the adjusted final return.[52] This must be so because it is only on such date when 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.[53]

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[51] *Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, G.R. No. 209776, December 7, 2016.

[52] *ACCRA Investments Corporation vs. Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

[53] *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.*, G.R. No. 83736, January 15, 1992.

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In the instant case, petitioner filed its AITR for CY 2014 through e-FPS on April 8, 2015.[54] Thus, counting two years therefrom, petitioner had until April 8, 2017 to file both its administrative claim and judicial claim.

Petitioner's administrative claim was filed on September 21, 2015[55] , while the judicial claim via the instant *Petition for Review* was filed on April 7, 2017. Hence, both the administrative and the judicial claims were timely filed.

Second and Third conditions

As for the *second and third conditions*, the basis therefor is Section 2.58.3 (B) of RR No. 2-98[56], as amended, which states:

> "Sec. 2.58.3. Claim for tax credit or refund. —
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments **shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement** duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom." *(Emphasis supplied)*

Based from the foregoing provision, the fact of withholding may be established by a copy of the withholding tax statement.

At this juncture, it must be emphasized that there is no merit in respondent's argument that proof of actual remittance is indispensable in respondent's claim for refund or issuance of a TCC for its unutilized excess CWT for taxable year 2014. The certificates of creditable taxes withheld accomplished by petitioner's withholding

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[54] Exhibit "P-3", Docket – Vol. 2, pp. 768 to 776.
[55] Exhibit "P-16", Docket Vol. 2, pp. 720 to 722.
[56] SUBJECT: *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.*

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agents showing the amount deducted and withheld from its income in support of the claim for tax refund, constitute competent and conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income.

In *Commissioner of Internal Revenue v. Philippine National Bank,*[57] the Supreme Court affirmed that a certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld and that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits, *to wit:*

> "**The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld.** It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.
>
> xxx xxx xxx
>
> **Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.**
>
> Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits.** Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, **it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes**.
>
> This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:

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[57] G.R. No. 180290, September 29, 2014.

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> **The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents.** *(Emphasis supplied, citations omitted)*

In view of the foregoing, it is evident that petitioner's compliance with the *second condition* may be shown merely by presenting the pertinent certificates of creditable tax withheld at source, which are complete in their relevant details and with a written statement that they were made under the penalties of perjury.

To prove its compliance with the second requisite, petitioner submitted the *Certificates of Creditable Tax Withheld at Source* (BIR Form No. 2307)[58] and the *Summary of Creditable Taxes Withheld* for the year 2014[59].

The Court-commissioned ICPA examined the said documents and presented in the ICPA Report dated March 3, 2018[60], the result of the verification, as follows:

Exhibit/Reference	ICPA Findings	Amount
"P-34-1" to "P-34-992"[61]	**Properly Supported with BIR Form No. 2307**	**₱330,544,863.49**
"P-35-1" to "P-35-7"[62]	Supported by Scanned Copy of BIR Form 2307	11,555.84
Annex D[63]	Not Supported by BIR Form No. 2307	3,154.76
Total taxes Withheld per ITR/SAWT		₱330,559,574.00[64]

Out of the ₱330,544,863.49 found by the ICPA to be duly supported by original BIR Form No. 2307, the amount of **₱26,889,398.45,** broken down below, should likewise be disallowed for the following reasons:

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[58] Exhibits "P-34-1" to "P-34-992"; "P-35-1" to "P-35-7", found in Exhibit "P-24" (CD).
[59] Exhibit "P-30", found in Exhibit "P-24" (CD).
[60] Exhibit "P-23", Docket – Vol. 1, p. 481.
[61] Found in Exhibit "P-24" (CD).
[62] *Ibid.*
[63] *Ibid.*
[64] .09 rounding off difference.

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Payor's name	Exhibit No.	Income payments	Taxes withheld
CWTs supported by original BIR Forms No. 2307 but with different Company TIN indicated therein			
Brand & Lifestyle Development Partners, Inc.	"P-34-29"	₱ 70,398.72	₱ 3,519.94
	"P-34-30"	73,398.72	3,769.94
	"P-34-198"	72,898.72	3,644.94
	"P-34-199"	72,898.72	3,644.94
	"P-34-200"	70,398.72	3,519.94
	"P-34-201"	70,398.72	3,519.94
	"P-34-482"	70,398.72	3,519.94
	"P-34-483"	83,918.66	4,195.93
	"P-34-484"	76,418.66	3,820.93
Anchorland Holdings Inc.	"P-34-11"	1,137,812.70	56,890.64
	"P-34-12"	1,137,812.71	56,890.63
	"P-34-13"	1,137,812.70	56,890.63
	"P-34-180"	1,137,812.70	56,890.63
	"P-34-181"	1,164,806.31	58,240.32
	"P-34-182"	1,164,806.31	58,240.32
	"P-34-443"	1,178,303.12	58,915.15
	"P-34-444"	1,200,150.42	60,007.52
	"P-34-445"	1,308,498.04	65,424.90
Bayan Telecommunications Inc	"P-34-16"	15,750.00	787.5
	"P-34-451"	16,537.00	826.88
	"P-34-452"	16,537.00	826.88
	"P-34-453"	16,537.00	826.88
Stanfield International Corp.	"P-34-140"	257,802.44	12,459.02
Watsons Personal Care Stores (Phils) Inc.	"P-34-163"	125,782,679.68	18,867,401.95
Alize Voyages & Adventures	"P-34-176"	42,943.90	2,147.20
ePLDT Inc.	"P-34-239"	568,497.60	27,424.88
	"P-34-240"	568,497.60	27,424.88
Purf Restaurants, Inc (Burger King)	"P-34-574"	1,650.00	82.50
	"P-34-575"	2,475.00	123.75
Teletech Customer Management Philippines Inc.	"P-34-682"	312,375.00	15618.75
	"P-34-683"	249,900.00	12,495.00
CWTs supported by original BIR Form 2307 but without payor's signature			
Airlite Intl Travel & Tours Inc.	"P-34-173"	47,773.53	2,388.69
SM Prime Holdings, Inc.	"P-34-647"	1,401,204.55	48,895.58
CWTs supported by original BIR Form 2307 with erasure in the Company's TIN but without countersignature			
Warehouse Development Company Inc	"P-34-950"	19,828,622.47	962,388.77
BIR Form 2307 that are not readable			
Star Appliance Center Inc.	"P-34-142"	36,666,071.59	5,499,910.74[65]

[65] Annex E, found in Exhibit "P-24" (CD).

	"P-34-142"	36,666,071.23	733,321.42[66]
Prime Spots Inc.	"P-34-116"	750,000.00	112,500.00[67]
TOTAL		**₱234,440,868.96**	**₱26,889,398.45**

Thus, petitioner was able to satisfy the *second condition* but only to the extent of **₱303,655,464.95**, computed as follows:

Amount of claimed CWT	₱330,559,574.00
Less: Disallowances	
Per ICPA report	14,710.60
Per this Court's further verification	26,889,398.45
Claimed CWT with proper BIR Forms No. 2307	**₱303,655,464.95**

Anent the *third condition*, petitioner must prove that the income payments from which the substantiated CWTs of **₱303,655,464.95** were withheld and were declared as part of its gross income.

To prove its compliance thereto, petitioner presented its 2014 Audited Financial Statements (AFS),[68] Summary of Alphalist for the First,[69] Second,[70] Third[71] and Fourth[72] quarters of CY 2014, General Ledger Details of Management Fee and Service Income,[73] General Ledger Details of Rent Income,[74] General Ledger Details of Reimbursable Charges,[75] General Ledger of Others[76] and 2014 AITR.[77]

Based from the ICPA Report, the CWT of ₱330,544,863.40 corresponds to the total income payments ₱4,051,042,063.41. According to the ICPA, out of the ₱4,051,042,063.41 income payments per CWT certificates, only the amount of ₱3,539,556,388.00 were declared as part of the gross income in the 2014 AITR:

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[66] Annex F, found in Exhibit "P-24" (CD).
[67] Annex E, found in Exhibit "P-24" (CD).
[68] Exhibit "P-5", Docket – Vol. 2, pp. 561 to 638.
[69] Exhibit "P-12", Docket – Vol. 2, pp. 700 to 703.
[70] Exhibit "P-13", Docket – Vol. 2, pp. 704 to 709.
[71] Exhibit "P-14", Docket – Vol. 2, pp. 710 to 713.
[72] Exhibit "P-15", Docket – Vol. 2, pp. 785 to 791.
[73] Exhibit "P-36", found in Exhibit "P-24" (CD).
[74] Exhibit "P-37", found in Exhibit "P-24" (CD).
[75] Exhibit "P-38", found in Exhibit "P-24" (CD).
[76] Exhibit "P-39", found in Exhibit "P-24" (CD).
[77] Exhibit "P-3", Docket – Vol. 2, pp. 768 to 776.

	CWT per BIR Form 2307	Income per BIR Form 2307	Per ITR	Discrepancy
Management Fee	256,916,478.43	1,713,151,522.84	1,713,117,327.00	**(34,195.84)**
Service Income	17,982,315.59	899,115,778.15	896,459,591.00	**(2,656,187.00)**
Rent Income	43,541,782.30	866,668,194.89	890,101,661.00	24,433,466.11
Reimbursable Charges	9,005,870.50	452,039,535.89	-	**(452,039,535.89)**
Gain on Sale of Assets	24,155.65	1,207,782.56	730,723.00	**(477,059.56)**
Other Income	1,984,821.48	13,240,047.96	39,147,086.00	25,907,038.04
Transfer of Assets	1,089,439.45	105,619,201.12	-	**(105,619,201.12)**
Total	**330,544,863.40**	**4,051,042,063.41**	3,539,556,388.00	

The Court notes that the gross income declared in the 2014 AITR is _lower than_ the total income payments per CWT certificates. In particular, these discrepancies pertain to *Management Fee*, *Service Income*, *Reimbursable Charges*, *Gain on Sale of Assets*, *Other Income* and *Transfer of Assets.* These discrepancies may indicate that there are income payments per CWT certificates that were **_not_** declared as part of the gross income in the 2014 ITR, in violation of the *third condition* for the entitlement to a refund or issuance of TCC.

We shall now identify and verify these discrepancies to determine compliance with the *third condition.*

Per ICPA report, income payments amounting to ₱4,014,335.64 with corresponding CWT amounting to **₱52,816.95** cannot be traced to the gross income declared in petitioner's 2014 ITR, hence, the same must be disallowed. Details are as follows:

Type of Income	CWT	Income (untraceable to 2014)
Management Fee	198.46	376,321.94
Rent Income	26,769.96	535,395.82
Reimbursable charges	24,527.25	2,970,507.95
Transfer of assets	1,321.28	132,109.93
TOTAL	**52,816.95**	**4,014,335.64**

Further, the Court notes that the following claims amounting to **₱3,331,136.77** were not declared as part of petitioner's gross income in its 2014 ITR. These income payments were traced by the ICPA to the income declared in CY 2013. Hence, the related CWT must likewise be disallowed:

Type of Income	CWT	Income declared in CY 2013
Service income	53,123.83	2,656,191.72
Rent Income	1,715,917.73	30,150,904.51
Reimbursable charges	1,444,529.17	72,228,355.19
Transfer of assets	117,566.04	8,431,861.90
TOTAL	**3,331,136.77**	**113,467,313.32**

As regards the "***Gain on Sale of Assets"***, the ICPA found that the income payment presented in the CWT certificates constitutes the gross selling price of the asset sold amounting to ₱1,938,467.00 (only the amount of ₱1,207,782.56 was subjected to withholding), while the amount of income declared in the 2014 ITR pertains only to the capital gain amounting to ₱730,723.00. However, upon further verification, the Court cannot ascertain the veracity of the findings made by the ICPA. Based on the evidence presented by petitioner and the ICPA, the Court cannot trace or confirm whether the said capital gain was indeed declared as part of gross income in the 2014 AITR. Hence, the related CWT amounting to **₱24,155.65** shall be disallowed.

With respect to the ***"Other Income"*** , with income payments per CWT certificates amounting to ₱13,240,047.96 and corresponding CWT amounting to ₱1,984,821.48, the ICPA found that these pertains to Director's Fees and Commission Income. However, upon verification with the 2014 ITR, there is no showing that the said income payments were actually declared as part of gross income in the 2014 AITR. The Court cannot also trace with certainty the said income payments from the 2014 AITR. Hence, the CWT pertinent thereto amounting to **₱1,984,821.48** shall be disallowed.

As to the ***"Reimbursement Charges"*** with income payments per CWT certificates amounting to ₱452,039,535.89 and corresponding CWT amounting to ₱9,005,870.50, it is stated in the ICPA report that these were no longer presented as a separate item in the ITR since these were already presented net with operating expenses for ITR purposes; and that the effect of deducting reimbursable charges from deductible operating expenses is the same as reporting it as gross income since the reduction of the allowable deductions results in higher taxable income.

However, the Court cannot determine whether the said reimbursement charges resulted to a higher taxable income in CY

2014, absent adequate proof that the said reimbursement charges were indeed offset against deductible operating expenses. Accordingly, the CWT pertinent to "Reimbursable Charges" amounting to ₱9,005,870.50 must likewise be disallowed. Considering that the amount of ₱24,527.25 (untraceable) and ₱1,444,529.17 (CWTs which relates to income declared in CY2013) were already taken into account, only the remaining amount of **₱7,536,818.83** shall be disallowed.

As regards the "***Transfer of Assets***", with income payments amounting ₱105,619,201.12 and the corresponding CWT amounting to ₱1,089,439.45, according to the ICPA, this pertains to assets transferred to petitioner's affiliated companies; and that since this transaction is **not** income related, the same is not reflected in the ITR. Considering that the income payments relative to the "Transfer of Assets" do not form part petitioner's gross income, the same must therefore be disallowed. Accordingly, the CWT pertinent thereto amounting to ₱1,089,439.45 must be disallowed. Since the amount of ₱1,321.28 (untraceable) and ₱117,566.04 (income already declared in 2013) were already taken into account, only the remaining amount of **₱970,552.11** shall be disallowed.

It must be remembered that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[78]

Thus, for failure to comply with the *third condition*, the following shall be disallowed:

Untraceable		₱ 52,816.95
Income recorded in CY 2013		3,331,136.77
Unsubstantiated income payments:		
Gain on sale of assets	₱ 24,155.65	
Other income	1,984,821.48	
Reimbursement charges	7,536,818.83	
Transfer of Assets	970,552.11	10,516,348.07
TOTAL		**₱13,900,301.79**

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[78] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

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To recapitulate out of the total claimed CWT of ₱330,559,574.00, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC, representing unutilized excess CWT for CY 2014 in the reduced amount of **₱289,755,163.16**, computed as follows:

Creditable Withholding Per Claim		₱330,559,574.00
Less: Disallowances		
Supported by Scanned Copy of BIR Form 2307	₱ 11,555.84	
Not Supported by BIR Form 2307	3,154.76	
Not supported by proper BIR Form 2307	26,889,398.45	
Untraceable	52,816.95	
Income reported in CY 2013	3,331,136.77	
Unsubstantiated income payments	10,516,348.07	40,804,411
Refundable Excess CWT		**₱289,755,163.16**

WHEREFORE, the instant *Petition for Review* is **PARTIALLYGRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the total amount of **₱289,755,163.16**, representing petitioner's excess and unutilized Creditable Withholding Tax for the calendar year ended December 31, 2014.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

Ma. Belen

MA. BELEN RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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
Associate Justice
Chairperson, 3rd Division

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