REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

****

AYALA CORPORATION, Petitioner,	**CTA CASE NO. 8629**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 02 2015 4:30 p.m.

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DECISION

CASANOVA, *J.*:

This is a petition for the issuance of a Tax Credit Certificate (TCC) in the amount of One Hundred Twenty Seven Million One Hundred Three Thousand One Hundred Forty and 40/100 Pesos (₱127,103,140.40) allegedly representing Ayala Corporation's excess or unutilized creditable withholding tax (CWT) for calendar years 2010 and 2011.

Petitioner is a domestic corporation duly organized and existing under the Philippine laws with principal place of business at 33rd Floor, Tower One Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.[1]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested with the authority to act as such, including the power to decide, approve and grant claims for refund or issuance of TCC

[1] Paragraph 1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. III), p. 1245

pertaining to any excess or overpaid internal revenue taxes under the Tax Code, as amended.[2]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a large taxpayer with Tax Identification Number (TIN) 000-153-610-000. As a large taxpayer duly classified and notified by the BIR, petitioner is required to file its quarterly and annual income tax returns and other BIR forms through the Electronic Filing and Payment System (EFPS).[3]

On April 14, 2011, petitioner filed, through the EFPS,[4] its Annual Income Tax Return (BIR Form 1702) for calendar year ended December 31, 2010, showing overpayment of income tax amounting to ₱91,902,495.38 computed as follows:

Taxable Income		₱ (3,874,393,725.00)
Tax Rate		30%
Income Tax		-
MCIT		₱ 11,879,600.62
Aggregate Income Tax Due		11,879,600.62
Less: Tax Credits/Payments		
Prior Year's Credits	₱ 36,407,368.00	
CWT 1st to 3rd Quarters	37,076,276.00	
CWT 4th Quarter	30,298,452.00	
Total	₱ 103,782,096.00	103,782,096.00
Total Overpayment		₱ (91,902,495.38)

The next day, April 15, 2011, petitioner manually filed the said Annual Income Tax Return (BIR Form 1702) with the BIR Large Taxpayer Service (LTS),[5] again, showing overpayment of income tax amounting to ₱91,902,495.00 computed as follows:

Taxable Income		₱ (3,874,393,725.00)
Tax Rate		30%
Income Tax		-

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[2] Par. 2, *Ibid.*
[3] Par. 3, *Id.*, pp. 1245-1246
[4] Par. 5.16, *Id.*, p. 1247
[5] Par. 5.17, *Id.*; Exhibit "P-7-2"

MCIT		₱ 11,879,601.00
Aggregate Income Tax Due		11,879,601.00
Less: Tax Credits/Payments		
Prior Year's Credits	₱ 36,407,368.00	
CWT 1st to 3rd Quarters	37,076,276.00	
CWT 4th Quarter	30,298,452.00	
Total	₱ 103,782,096.00	103,782,096.00
Total Overpayment		₱ (91,902,495.00)

The above computations reveal that petitioner had an income tax due for the year equivalent to MCIT of ₱11,879,600.62 which was applied to the prior year's excess credits of ₱36,407,368.00 leaving a balance of ₱24,527,767.67,[6] while the CWT from 1st to 4th quarters in the total amount of ₱67,374,728.00 were allegedly unutilized at the end of the current year 2010.

On April 16, 2012, petitioner filed, through the EFPS,[7] its Annual Income Tax Return (BIR Form 1702) for calendar year ended December 31, 2011 in accordance with Revenue Regulations (RR) No. 19-2011 and Revenue Memorandum Circular (RMC) No. 15-2012.

Then, on April 24, 2012, petitioner manually filed the said Annual Income Tax Return (BIR Form 1702) with the BIR LTS,[8] showing an overpayment of income tax amounting to ₱116,590,485.40, computed as follows:

Taxable Income		₱ (2,861,847,271.48)
Tax Rate		30%
Income Tax		-
MCIT		₱ 7,222,902.33
Aggregate Income Tax Due		7,222,902.33
Less: Tax Credits/Payments		
Prior Year's Credits	₱ 24,527,767.67	
CWT 1st to 3rd Quarters	25,349,227.91	
CWT 4th Quarter	34,379,184.49	

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[6] Exhibit "P-7-2C"
[7] Par. 5.24, Joint Stipulation of Facts, JSFI, Docket (Vol. III), p. 1248; Exhibit "P-8-1"
[8] Par. 5.25, Joint Stipulation of Facts, JSFI, Docket (Vol. III), p. 1248; Exhibit "P-8-2"

2005 CWTs disallowed by CTA under CTA Case No. 7754 dated March 16, 2011[9]	39,557,207.66	
Total	₱123,813,387.73	123,813,387.73
Total Overpayment		₱ (116,590,485.40)

Based above, petitioner's income tax due for calendar year 2011, equivalent to MCIT of ₱7,222,902.33, was applied to the Prior Year's Credits (CY 2007) of ₱24,527,767.67, thereby, leaving a balance of ₱17,304,865.34, while the CWT from 1st to 4th quarters of calendar year 2011 in the total amount of ₱59,728,412.40 remained unutilized at the end of said calendar year.

In summary, petitioner's claim for issuance of TCC for its alleged unutilized CWTs for calendar years 2010 and 2011 amounted to ₱127,103,140.40, broken down as follows:

Calendar Years	Amount
Unutilized CWTs 2010	₱ 67,374,728.00
Unutilized CWTs 2011	59,728,412.40
Total claim for issuance of TCC	₱ 127,103,140.40

Thereafter, petitioner filed an administrative claim for the issuance of TCC for its unutilized CWTs for CYs 2010 and 2011 in the aggregate amount of ₱127,103,140.40. The administrative claim for the issuance of TCC was filed on March 1, 2013 with the BIR Large Taxpayer Division together with other supporting documents.[10]

Then, on April 10, 2013, petitioner filed its judicial claim for refund with the Court of Tax Appeals (CTA) *via* the instant Petition for Review[11].

On May 6, 2013, petitioner filed a Motion for the Commissioning of an Independent Certified Public Accountant[12], praying that Ms. **Ma. Milagros F. Padernal**, Audit Partner of Uy, Singson, Abella & Co., be

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[9] Exhibits "P-11-1" to "P-11-1B"
[10] Par. 4, Joint Stipulation of Facts, JSFI, Docket (Vol. III), p. 1246; Exhibits "P-10-1" to "P-10-1B"
[11] Docket (Vol. I), pp. 6-14
[12] *Ibid.*, pp. 50-52

commissioned to act as an Independent Certified Public Accountant (ICPA) of the case.

After asking for an extension of time and the Court having granted the same, respondent filed her Answer[13] on July 8, 2013, raising therein the following special and affirmative defenses:

> "4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses;
>
> ***The instant claim for tax refund is tainted with procedural infirmity due to petitioner's failure to submit complete documents in support of its administrative claim for refund.***
>
> 5. Basic as a hornbook principle is that, **taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents.** Hence, tax refunds are in the nature of tax exemptions and are to be interpreted in the strictest manner. Considering that tax refunds consists of monetary amounts which are currently in the hands of the government, <u>the validity of petitioner's claim should be meticulously verified specially when the claim involves the total amount of One Hundred Twenty Seven Million One Hundred Three Thousand One Hundred Forty Pesos and 40/100 (P127,103,140.40)</u>. With these, to claim for a refund, petitioner should adduce every single document that will prove its entitlement to its claim. It is imperative to prove therefore every minute aspect of its case.
>
> 6. Hence, in order to be entitled to the refund being sought, the taxpayer must satisfactorily comply with the following requisites:

[13] *Id.*, pp. 69-80

1. The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

2. It must be shown on the return that the income received was declared as part of the gross income; and

3. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.

7. However, compliance with the afore-quoted requirements will not suffice if petitioner failed to comply with the prescribed checklist of requirements to be submitted involving claims for unutilized creditable withholding tax pursuant to **Revenue Memorandum Order (RMO) No. 53-98** (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). To be sure, RMO No. 53-98 was issued to identify the documents required from a taxpayer during audit of the application for refund. In obedience to the provisions of RMO No. 53-98, the following documents must be submitted by the petitioner:

INCOME TAX/WITHHOLDING TAX

A) Requirements from Taxpayer

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 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 the appropriate regulatory agency, together with the 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.

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.

8. Further, **Revenue Regulations 2-2006** (Mandatory Attachments of the Summary Alpha list 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) provides:

Section 2. MANDATORY SUBMISSION OF SUMMARY ALPHALIST 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 AGENT INCOME PAYOR AS ATTACHMENT TO THEIR FILED RETURNS.

A. xxx xxx xxx

B. Persons required to submit Summary Alpha list 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 payments per return period are strictly required to submit SAWT in hard copy as attachment to the required tax return;

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

9. Simply put, petitioner must prove compliance with **RR 53-98 and 2-2006**, to give support to the validity of its claim for unutilized creditable withholding tax for Calendar Years 2010 and 2011. Verily, administrative issuances have the force and effect of law. They benefit from the same presumption of validity and constitutionality enjoyed by statutes. Failure of the petitioner to prove compliance with the above-mentioned requirements in the administrative level will likely render its Petition for Review vulnerable and shows the weakness of its claim.

10. Moreover, failure on the part of the taxpayer to submit relevant documents on administrative level, such as in the instant case, makes the administrative claim for tax refund or credit pro-forma and shall be construed as if no administrative claim was filed at all.

11. In the case at bar, although petitioner submitted supporting documents relevant to its claim for tax credit before this Honorable Court, it miserably failed to substantiate its administrative claim for refund filed with respondent, it failed to submit the complete requirements under RMO No. 53-98. There is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. This is a requirement established by law and jurisprudence.

12. In cases such as this, before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. <u>They must prove that they complied with all the administrative requirements continuing up to judicial review</u>. In other words, before *trial de novo* proceeds and disposes of the issue of refund entitlement under substantive law, it must first be proved that there was procedural compliance in pursuing the administrative claim leading to the appellate proceedings.

13. In **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, (G.R. No. 145526, March 16, 2007) the Highest Tribunal held**:

> 'xxx a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims**. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also **that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit**. Second, cases filed in the CTA are litigated de novo. Thus, a respondent should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial

claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.' (Emphasis Supplied)

x x x'

14. Clearly, the necessity for petitioner to submit all relevant documents to substantiate its administrative claim for refund is imperative. Absent these circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating taxpayer's claim for refund. Had petitioner submitted all relevant documents to substantiate its claim for tax credit, respondent would have the opportunity to determine the veracity of its claim and might refund or issue a tax credit certificate for the claimed amount. Again, failure of petitioner to submit relevant documents deprived respondent of the opportunity and time to study petitioner's claim for refund and to fully exercise its function.

Petitioner miserably failed to exhaust administrative remedies before elevating the case to the Honorable Court

15. Well settled is the rule that, **the party aggrieved by a decision of an administrative official should first apply for review of such decision by higher administrative authority before seeking judicial relief, otherwise his court suit may be dismissed for prematurity or lack of cause of action**.

16. In **Jariol v COMELEC, 80 SCAD 910, 270 SCRA (1997)**, the Highest Tribunal had occasion to rule the following:

x x x

'The aggrieved party must not merely initiate the prescribed administrative procedure to obtain relief,

> **but must also pursue it to its appropriate conclusion before seeking judicial intervention in order to give that administrative agency an opportunity to decide the matter by itself correctly and prevent unneccesary and premature resort to the court.**' (emphasis supplied)

x x x

17. In the instant case, it may be gleaned that the administrative claim for the issuance of a tax credit certificate was filed with the Bureau of Internal Revenue only on **01 March 2013** and the Petition for Review was filed with the Court of Tax Appeals on **10 April 2013**. Evidently, respondent was not given sufficient time and information to evaluate petitioner's administrative claim for refund, nor was she given sufficient facts to evaluate the administrative claim.

18. In **Ampil, Jr. vs. COMELEC**, the Supreme Court has repeatedly pronounced the following:

> 'xxx In a long line of cases, this Court has held consistently that before a party is allowed to seek the intervention of the Court, it is pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action'

x x x

19. Petitioner's claim for refund is subject to administrative investigation/examination by respondent. Pending the closure of this investigation, no grant of refund may be given to petitioner based on the filed claim. It has been held by the Supreme Court that a claim for refund is not *ipso facto* granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.

20. The purpose of requiring submission of supporting documents relevant to a claim for tax credit is to give the administrative agency the opportunity to ascertain the veracity and validity of the claim. This is the very essence, the very substance of the doctrine of exhaustion of administrative remedies. The doctrine rests upon the presumption that the administrative body, board, or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Thus, non-compliance with a condition precedent renders the petition for review filed by petitioner dismissible.

21. **A situation arises wherein taxpayers will file their administrative and judicial claims at a point when the two-year period is about to prescribe, as what had happened in the instant case. Respondent is thus, deprived of her function to act on the administrative claim for refund filed by taxpayers**. Taxpayers can always find justification for judicially filing their claims for refund before this Honorable Court because the two-year period is about to prescribe. With this scenario, this Honorable Court becomes indirect avenue for processing administrative claim for refund, which function rightfully belongs to the Commissioner of Internal Revenue. Hence, before resort to the courts can be obtained, all administrative remedies available should first be exhausted.

22. It is only before this Honorable Court that petitioner submitted and presented various pieces of evidence allegedly supporting its claim for refund. It is well-settled that matters not raised in the administrative level cannot be raised for the first time on appeal.

23. It is well settled rule in tax laws, that the taxpayer who feels aggrieved by the actions taken by tax authorities may not seek redress in the courts of justice <u>without first exhausting available administrative remedies</u>, except for certain well-recognized exceptions. It is the policy of the law and good practice to discourage court litigations and encourage resort to administrative action whenever the latter is feasible, adequate, and speedy. Another thing, the respect and consideration due to each branch of the government demand that the judicial department abstain, whenever possible from interfering in the acts of the other

departments except when the latter transcend their respective shares of action and suitable remedies cannot be obtained by them. Of prime importance therefore is the requirement for petitioner to submit all relevant documents to substantiate its administrative claim for refund. The filing of the petition for review to this Honorable Court must be due to the denial by respondent of petitioner's claim or respondent's inaction which is tantamount to a denial of the said petitioner's claim. Absent these circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating taxpayer's claim for refund.

Claims for refund are construed strictly against the taxpayer and in favor of the Government.

24. Time and again, it has been held that the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Again, taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.

25. In **Asiatic Petroleum Co. v Llanes**, the Honorable Supreme Court held that:

> 'When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported." *(Citations Omitted)*

On July 10, 2013, a Notice of Pre-Trial Conference[14] was issued by this Court setting the case for pre-trial conference on August 15, 2013 at 1:30 p.m.

Meanwhile, during the August 1, 2013 hearing, this Court granted petitioner's Motion to Commission an ICPA, thereby commissioning Ms. Ma. Milagros F. Padernal as the ICPA of the instant case, and ordering her to submit her ICPA Report within forty five (45) days. In the meantime, this Court cancelled and reset the schedule of the Pre-Trial Conference .

On September 9, 2013, petitioner filed a Motion to Take Judicial Notice[15], praying that the facts and documentary exhibits presented in CTA Case Nos. 7754, 8262 and 8629, all entitled *Ayala Corporation vs. CIR*, be judicially noted for the purpose of expediency and convenience since there is a commonality of parties, subject matter, issues and even the handling counsel for the respondent.

On September 30, 2013, respondent filed a Comment (Re: Petitioner's Motion to Take Judicial Notice)[16], asserting that courts are not mandated to take judicial notice of a previous case, absent any compelling reason to rule otherwise.

Thus, in the October 29, 2013 Resolution[17], this Court denied petitioner's Motion to Take Judicial Notice for lack of merit, since petitioner failed to show the interrelation between the present and the claimed cases. This Court found that the said cases are independent of each other.

On November 15, 2013, respondent filed her Respondent's Pre-Trial Brief,[18] while petitioner filed its Pre-Trail Brief[19] on January 7, 2014.

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[20] on January 28, 2014. After finding everything in order, this

[14] *Id.*, p. 81
[15] *Id.*, pp. 102-105
[16] *Id.*, pp. 113-117
[17] *Id.*, pp. 120-122
[18] *Id.*, pp. 124-128
[19] *Id.*, pp. 129-137
[20] Docket (Vol. III), pp. 1245-1250

Court issued a Pre-Trial Order[21] on February 21, 2014, thereby declaring the pre-trial terminated and ordering petitioner to proceed with the initial presentation of its evidence.

Petitioner presented and offered the testimony of its Senior Manager for Corporate Accounting, **Ms. Maria Susana C. Bables**, as its first witness, to prove, among others, that petitioner has excess and unutilized CWTs for calendar years 2010 and 2011 in the aggregate amount of ₱127,103,140.40 subject to the issuance of TCC.

Thereafter, petitioner presented the ICPA, **Ms. Ma. Milagros F. Padernal**, to prove that she conducted a review and evaluation of petitioner's claim for issuance of TCC for its excess and unutilized CWT for calendar years 2010 and 2011 in the amount of ₱127,103,140.40, and found the same to have been properly substantiated by supporting documents.

On May 23, 2014, petitioner filed its Formal Offer of Evidence[22], offering Exhibits "P-1" to "P-54", inclusive of their sub-markings. In response, respondent filed her Comment on Formal Offer of Evidence[23] on May 30, 2014.

In the Resolution[24] dated June 20, 2014, this Court admitted most of petitioner's exhibits, save Exhibits "P-8-2B", "P-19", and "P-38" for their failure to correspond with the documents actually marked and identified by the witnesses. Further, the initial presentation of evidence for the respondent was set on June 25, 2014 at 9:00 a.m.

During the June 25, 2014 hearing, petitioner manifested its intention to file, within the same day, an Urgent Motion for Reconsideration[25] for the admission of Exhibit "P-8-2B". Hence, there being no objection from respondent, this Court granted petitioner's prayer, thereby, admitting the said previously denied exhibit.

On July 18, 2014, respondent's counsels, in their Manifestation[26], stated that respondent will no longer be presenting evidence and

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[21] *Ibid.*, pp. 1260-1266
[22] *Id.*, pp. 1275-1300
[23] *Id.*, pp. 1301-1303
[24] *Id.*, pp. 1306-1307
[25] *Id.*, pp. 1309-1313
[26] *Id.*, pp. 1314-1316

instead, requested a period of thirty (30) days within which to file her memorandum.

Thus, in the July 23, 2014 Resolution[27], this Court, in view of respondent's Manifestation, cancelled the initial presentation of evidence for the respondent, and gave the parties a period of thirty (30) days within which to submit their respective memorandum.

After asking for several extensions of time, the parties submitted their respective memoranda. Petitioner filed its Memorandum[28] on September 25, 2014, while respondent filed her Memorandum[29] on September 30, 2014. Accordingly, in the Resolution[30] dated October 3, 2014, this Court deemed the instant case submitted for decision.

The issues[31] stipulated by the parties for this Court's resolution are as follows:

1. Whether or not petitioner's claim for issuance of TCC in the total amount of ₱127,103,140.40 is duly substantiated by sufficient evidence showing that the excess or unutilized CWTs were generated in CYs 2010 and 2011?

2. Whether or not petitioner's claim for issuance of TCC was filed within the two-year prescriptive period?

3. Whether or not petitioner's claim for issuance of TCC in the total amount of ₱127,103,140.40 was carried over to CY 2012?

4. Whether or not petitioner is entitled to the issuance of TCC in the total amount of ₱127,103,140.40 pertaining to the alleged excess or unutilized CWTs for CYs 2010 and 2011?

The above-stipulated issues can be summarized into, *viz*, Whether or not petitioner is entitled to the issuance of a TCC in the total amount

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[27] *Id.*, p. 1318
[28] *Id.*, pp. 1339-1360
[29] *Id.*, pp. 1361-1382
[30] *Id.*, p. 1383
[31] Joint Stipulation of Issues, JSFI, Docket (Vol. III), p. 1249

of ₱127,103,140.40 for its excess or unutilized CWT for calendar years 2010 and 2011.

In its arguments, petitioner primarily claims that its unutilized CWTs for calendar years 2010 and 2011 were not carried over to calendar year 2012. It alleges that the source and documentations of petitioner's prior years' excess credits appearing in its 2010 annual income tax return were duly proven during trial, as concluded by the ICPA after her thorough review and verification of petitioner's documentary evidence.

On the other hand, respondent mainly avers that petitioner failed to prove that it fulfilled the necessary requirements for its claim for refund of excess CWT to prosper. Respondent insists that petitioner failed to submit complete documents in support of its administrative claim as required in Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1998, in relation to RR No. 2-2006. Thus, petitioner's non-compliance with the documentary requirements under said RMO, results in its failure to exhaust administrative remedies before elevating the case to the court.

After considering all the arguments and evidence presented, this Court finds partial merit in the instant Petition.

In claiming tax refund/credit certificate for excess creditable withholding taxes, Section 76 of the NIRC of 1997, as amended, 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:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.

> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

Section 2.58.3[32] of Revenue Regulations No. 02-98[33] should be read in conjunction with the said provision for it provides the requisites in claims for refunds or issuance of tax credit certificates for unutilized CWTs, *to wit:* a

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[32] **SECTION 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.

Proof of remittance is the responsibility of the withholding agent.

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

> (1) If in lieu of the automatic application of his excess credit, the taxpayer wants cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefor, within two years after payment of the tax, provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer.

xxx *xxx* *xxx*

[33] PRESCRIBES THE REGULATIONS TO IMPLEMENT RA NO. 8424 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, dated May 17, 1998

1. The claim for refund was filed with the Commissioner of Internal Revenue within the two-year prescriptive period from the date of payment of tax, as prescribed under Section 204(C), in relation to Section 229 of the 1997 NIRC, as amended;

2. It is shown on the return of the recipient that the income payment received was declared as part of the gross income; and

3. The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.[34]

As to the first requisite, Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the mandatory prescriptive period within which to file a claim for refund, *viz*:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** — The Commissioner may —
>
> *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 Ours)*

And Section 229 provides:

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[34] CIR vs. Far East Bank & Trust Company *(now Bank of the Philippine Islands)* GR No 173854, March 15, 2010; CIR vs. Perf Realty Corp., G.R. No. 163345, July 4, 2008; Banco Filipino Savings and Mortgage Bank vs. CA, et al., G.R. No. 155682, March 27, 2007; Citibank N.A. vs. CA, et al., GR No. 107434, October 10, 1997; ACCRA Investments Corp. vs. The Honorable Court of Appeals, et al., GR No. 96322, December 20, 1991

> "**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." *(Emphasis Ours)*

Thus, pursuant to Sections 204 (C) and 229, respectively, and as held in *ACCRA Investments Corporation vs. Court of Appeals,*[35] the two-year prescriptive period for claiming refund commences on the date of filing of the Final Adjustment Return. It is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[36] This guiding principle was repeated in the more recent case of *Commissioner of Internal Revenue vs. Primetown Property,*[37] where it was held that the two-year prescriptive period is reckoned from the filing of the final adjusted return.

In the instant case, it was already stipulated by the parties that petitioner filed its Annual Income Tax Return (BIR Form 1702) for calendar year ended December 31, 2010, *via* the EFPS[38] on April 14, 2011, and by manual filing[39] on the next day, April 15, 2011. While its Annual Income Tax Return (ITR) for the next calendar year ended

[35] GR 96322, December 20, 1991, 204 SCRA 957
[36] Commissioner of Internal Revenue vs. TMX Sales Inc., et al., GR 83736, January 15, 1992
[37] GR 162155, August 28, 2007
[38] Par. 5.16, Joint Stipulation of Facts, JSFI, Docket (Vol. III), p. 1247; Exhibit "P-7-1"
[39] Par. 5.17, *Ibid.*

December 31, 2011, was filed *via* EFPS[40] on April 16, 2012, and on August 24, 2012 *via* manual filing[41]. Thus, counting the two (2) year prescriptive period from said dates, petitioner had, at the latest, until April 14, 2013 within which to file both its administrative and judicial claims for refund. By filing its administrative claim[42], together with other supporting documents, on March 1, 2013 with the BIR Large Taxpayer Division and the instant Petition for Review[43] with the CTA on April 10, 2013, petitioner has timely filed both its administrative and judicial claims within the two-year period prescribed by law.

Anent the issue that petitioner failed to submit all relevant documents within sixty (60) days from the filing of protest in accordance with Section 228 of the NIRC of 1997, in relation to RR No. 12-99, this Court has consistently held that the term "complete documents" should be understood to refer to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Moreover, it is basic that respondent ought to know the tax records of all taxpayers.[44]

The Supreme Court in the case of *COMMISSIONER OF INTERNAL REVENUE vs. FIRST EXPRESS PAWNSHOP COMPANY, INC.*,[45] answered the issue of what are relevant documents needed to be submitted to the Bureau of Internal Revenue, *to wit*:

> "The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. <u>The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what</u>

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[40] Par. 5.24, *Id.*, p. 1248
[41] Par. 5.25, *Id.*; Exhibit "P-8-3a"
[42] Par. 4, Joint Stipulation of Facts, JSFI, Docket (Vol. III), p. 1246; Exhibits "P-10-1" to "P-10-1B"
[43] Docket (Vol. I), pp. 6-14
[44] Diageo Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 7846 and 7865, January 16, 2012; *citing* BPI-Family Savings Bank, Inc. vs. Court of Appeals, et. al., G.R. No. 122480, April 12, 2000, and Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation, G.R. No. 180042, February 8, 2010
[45] G.R. Nos. 172045-46, June 16, 2009

> type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit." *(Underscoring Ours)*

Moreover, in the case of *COMMISSIONER OF INTERNAL REVENUE vs. JIMENEZBASIC ADVERTISING INCORPORATED,*[46] the Former First Division of this Court in its Resolution dated June 29, 2009 stated that:

> "Anent respondent's second argument, he is wrong in stating that petitioner failed to prove compliance with the prescribed checklist of requirements to be submitted involving claims for input tax credits, pursuant to Revenue Memorandum Order (RMO) No. 53-98, in relation to Section 4.108.1 of RR-7-95.
>
> RMO 53-98 prescribes the documents required for submission by a taxpayer upon audit of his tax liabilities per type of tax, as well as different mandatory audit reporting requirements to be prepared, submitted and attached to a tax audit docket by a Revenue Officer; while Section 4.108-1 of RR 7-95 refers to invoicing requirements.
>
> RMO 53-98 is intended as a guide to revenue officers in requesting from taxpayers the documents to be submitted during a tax audit. Respondent's Final Decision did not mention any insufficiency of documents presented by petitioner in its position paper. Hence, petitioner complied with RMO 53-98." *(Underscoring Ours)*

That having been settled, we'll now proceed with the second and third requisites.

As recalled, Section 76 of the NIRC of 1997, as amended, prescribes two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. The taxpayer may either file a tax refund (either in the form of cash or tax credit certificate) or avail of a tax credit. However, once the carry-over option is taken actually or constructively it becomes

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[46] CTA EB No. 509, February 9, 2010 (CTA Case No. 7240)

irrevocable for that taxable period.[47] The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer.[48]

The claimant-corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.[49]

A scrutiny of petitioner's Annual ITRs for CYs 2010 and 2011 reveals that petitioner had total credits in the respective amounts of ₱103,782,096.00 and ₱123,813,387.73, consisting of the following:

AITR for CY 2010 *(Exhibit "P-7-1")*		
Prior Year's Excess Credits other than MCIT		₱ 36,407,368.00
Creditable Tax Withheld for the First Three Quarters	₱ 37,076,276.00	
Creditable Tax Withheld for the Fourth Quarter	30,298,452.00	67,374,728.00
Total Tax Credits		**₱ 103,782,096.00**
AITR for CY 2011 *(Exhibit "P-8-3a")*		
Prior Year's Excess Credits other than MCIT		₱ 24,527,767.67
Creditable Tax Withheld for the First Three Quarters	₱ 25,349,227.91	
Creditable Tax Withheld for the Fourth Quarter	34,379,184.49	59,728,412.40
2005 CWTs disallowed (CTA Case No. 7754)		39,557,207.66
Total Tax Credits		**₱ 123,813,387.73**

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

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

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

Records reveal that the prior year's excess credits reported in the petitioner's 2010 and 2011 Annual ITRs in the respective amounts of ₱36,407,368.00 and ₱24,527,767.67 originated from the creditable taxes withheld for the years 2006 and 2007 duly supported by Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307)[50], as shown below:

2006[51]		
Prior year's excess credits	₱ 8,467,836.00	**
Creditable taxes withheld for the year	34,133,265.00	
Total tax credits	42,601,101.00	
Less: Tax due	9,478,115.96	
Amount carried over to 2007	**₱ 33,122,985.04**	

2007[52]		
Prior year's excess credits	₱ 33,122,985.00	**
Creditable taxes withheld for the year	33,769,015.00	
Total tax credits	66,892,000.00	
Less: Tax due	10,269,099.44	
Amount carried over to 2008	**₱ 56,622,900.56**	

2008[53]		
Prior year's excess credits	₱ 56,622,901.00	**
Creditable taxes withheld for the year	44,288,865.00	
Total tax credits	100,911,766.00	
Less: Tax due	8,908,985.78	
Amount claimed for issuance of TCC	44,288,865.00	
Amount carried over to 2009	**₱ 47,713,915.22**	

2009[54]		
Prior year's excess credits	₱ 47,713,915.00	**
Creditable taxes withheld for the year	57,921,704.00	
Total tax credits	105,635,619.00	
Less: Tax due	11,306,546.70	

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50 Exhibit "P-14-1", Procedures and Observations number 8, p. 13; Exhibits "P-34-1" to "P-34-192", as summarized in Exhibit "P-34"; Exhibits "P-35-1" to "P-35-11", as summarized in Exhibit "P-35"; "P-36-1" to "P-36-2", as summarized in Exhibit "P-36"; Exhibit "P-37-1", as summarized in Exhibit "P-37"
51 Exhibits "P-3-1B" and "P-3-1a"
52 Exhibit "P-4-1"
53 Exhibit "P-5-1"
54 Exhibit "P-6-1"

Amount claimed for issuance of TCC	57,921,704.00
Amount carried over to 2010	**₱ 36,407,368.30**

***Difference in amount forwarded due to rounding-off*

Petitioner's Minimum Corporate Income Tax (MCIT) due for the years 2010 and 2011 in the respective amounts of ₱11,879,600.62 and ₱7,222,902.33 were paid using the portion of its prior year's excess credits of ₱36,407,368.00, leaving the balance of prior year's excess credits at the end of CY 2011 in the amount of ₱17,304,864.67. Petitioner also declared as part of its total tax credits in its 2011 Annual ITR the amount of ₱39,557,207.66, representing the 2005 CWTs disallowed by this Court for the issuance of TCC under CTA Case No. 7754. The foregoing details are presented below:

	2010	**2011**
Prior year's excess credits	₱36,407,368.00**	₱24,527,767.00**
Less: Income tax due	11,879,600.62	7,222,902.33
Balance of prior year's excess credits	24,527,767.38	17,304,864.67
Add: Creditable taxes withheld during the year	67,374,728.00	59,728,412.40
CWTs disallowed by this Court	-	39,557,207.66
Unutilized excess tax credits as of December 31, 2009	**₱ 91,902,495.38**	**₱116,590,484.73**

***Difference in amount forwarded due to rounding-off*

Considering that only the prior year's excess credits were carried over to the subsequent quarters/years, the unutilized CWT for CYs 2010 and 2011 in the respective amounts of ₱67,374,728.00 and ₱59,728,412.40, or totaling ₱127,103,140.40, for which petitioner opted to be issued a tax credit certificate[55], may be refunded pursuant to Section 76 of the NIRC of 1997, as amended.

However, as earlier mentioned, petitioner must likewise comply with Section 2.58.3(B) of RR No. 2-98, which also requires that:

> "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

[55] Exhibits "P-7-1b, "P-7-2c", "P-8-3b" and "P-8-2d"

> 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 Ours)*

As such, petitioner submitted the Schedule of Creditable of Taxes Withheld[56] for the years 2010 and 2011 and the related Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307). Upon verification of these documents, the Court-commissioned ICPA, Ms. Ma. Milagros F. Padernal, provided a summary of petitioner's claimed creditable withholding taxes for CYs 2010 and 2011 in the respective amounts of ₱67,374,727.82 and ₱59,728,413.03, as follows[57]:

Exhibit	BIR Form No. 2307	2010	2011	Total
"P-17"	Supported with original BIR Form No. 2307 in the Petitioner's name and included in the Alphalist stamped "Received" by BIR's Large Taxpayers Assistance Division	₱ 67,104,843.70	₱ 59,466,393.77	₱ 126,571,237.47
"P-18"	Supported with original BIR Form No. 2307 not in the Petitioner's name and included in the Alphalist stamped "Received" by BIR's Large Taxpayers Assistance Division	228,500.00	213,000.00	441,500.00
"P-19"	Not supported	3,000.00	2,672.70	5,672.70
-	Exchange rates and rounding-off differences	38,384.12	46,346.56	84,730.68

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[56] Exhibit "P-16"
[57] Exhibit "P-14", p. 8

Exhibit	BIR Form No. 2307	2010	2011	Total
		₱67,374,727.82	**₱59,728,413.03**	**₱127,103,140.85**

As seen above, the above claims that were supported by BIR Forms No. 2307 and were not in petitioner's name (marked as Exhibit "P-18"), and those not supported by BIR Forms No. 2307 (marked as Exhibit "P-19"), including the exchange rates and rounding-off differences, amounting to ₱269,884.12 in CY 2010 and ₱262,019.26 in CY 2011, for an aggregate amount of ₱531,903.38; requires a downward adjustment to petitioner's claim. Therefore, petitioner was able to satisfy the second requirement and established the fact of withholding for the CYs 2010 and 2011 but only in the respective amounts of ₱67,104,843.70 and ₱59,466,393.77, or in the sum of ₱126,571,237.47.

As to the third requisite of proving that the income upon which the subject taxes were withheld was included and reported in its Annual Income Tax Returns for CYs 2010 and 2011, petitioner presented Schedule of Creditable Taxes Withheld[58], Summaries[59] of Rental Income, Directors' Fees, Other Income, Proceeds from Sale of Land and Others - Various Accounts for the CYs 2010 and 2011 and the corresponding general ledgers (GLs)[60] for CYs 2010 and 2011, Schedule[61] of Comparison of Payor's Name and Amount of Income Payment Between Schedule of Creditable Tax Withheld At Source and Summaries of Rental Income, Directors' Fees, Other Income, Proceeds from Sale - Land and Others-Various Accounts, Schedule[62] of Comparison of Payors' Name And Amount of Income Payment Between Summaries of Rental Income, Directors' Fees, Other Income, Proceeds from Sale - Land And Others-Various Accounts, petitioner's official receipts, bank credit memo and bank statements[63], Schedules of Computation of Taxable Income for CYs 2010[64] and 2011[65].

The amounts of Rental Income, Directors' Fees, Other Income, Proceeds from Sale of Land and Others – Various Accounts per general ledgers of CYs 2010 and 2011 tally with those reflected in the petitioner-prepared Schedules of Computation of Taxable Income for

[58] Exhibit "P-16"
[59] Exhibits "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27" and "P-28"
[60] Exhibits "P-20-1", "P-21-1", "P-22-1", "P-23-1", "P-24-1", "P-25-1", "P-26-1", "P-27-1" and "P-28-1"
[61] Exhibit "P-29"
[62] Exhibit "P-30"
[63] Exhibit "P-30-1" to "P-30-516"
[64] Exhibit "P-31"
[65] Exhibit "P-32"

the CYs 2010 and 2011, except for some rounding-off differences, as follows:

Particulars	Exhibit	Per General Ledger	Exhibit	Per Schedule of Computation of Taxable Income	Difference*
CY 2010					
Rental income	"P-20", "P-20-1"	₱ 137,174,924.22		₱137,174,924.00	₱ 0.22
Directors' fees	"P-21", "P-21-1"	29,040,600.00		29,040,600.00	-
Other income	"P-22", "P-22-1"	472,735,808.01		472,735,809.00	(0.99)
Others – various accounts	"P-23-1" to "P-23-4	34,479,780.21		34,479,780.21	-
Total		**₱673,431,112.44**	"P-31"	**₱673,431,113.21**	**₱ (0.77)**
CY 2011					
Rental income	"P-24", "P-24-1"	₱ 103,688,472.62		₱103,688,473.00	₱ (0.38)
Directors' fees	"P-25", "P-25-1"	43,456,800.00		43,456,800.00	-
Other income	"P-26", "P-26-1"	555,923,466.45		555,923,466.45	-
Proceeds from sale of land	"P-27", "P-27-1"	5,410,397.18		5,410,397.18	-
Others – various accounts	"P-28", "P-28-1"	31,719,037.70		31,719,037.70	-
Total		**₱740,198,173.95**	"P-32"	**₱740,198,174.33**	**₱ (0.38)**

Due to rounding-off

Further, the amounts of gross revenue and selected cost and expense accounts reflected in the taxable income column of the per petitioner-prepared Schedule of Computation of Taxable Income for the CYs 2010 and 2011 tally with the total amounts of sales/revenues/fees, and non-operating and other income and selected deductible costs and expenses accounts reflected in the Annual ITRs for the CYs 2010 and 2011 duly stamped "Received" by the BIR as follows:

	Exhibit	2010	Exhibit	2011
Gross revenue reflected in the taxable income column per Schedule of Computation of	"P-31"	₱ 826,834,875.00	"P-32"	₱ 613,811,642.00

	Exhibit	2010	Exhibit	2011
Taxable Income				
Gross revenue reflected in the Annual Income Tax Return duly stamped "Received" by the BIR	"P-7-1"	826,834,874.00	"P-8-3a"	613,811,642.06
Rounding-off difference		₱ 1.00		₱ (0.06)
Costs and expenses reflected in the taxable income column per Schedule of Computation of Taxable Income	"P-31"	₱ 4,701,228,600.00	"P-32"	₱ 3,475,658,913.00
Costs and expenses reflected in the Annual Income Tax Return duly stamped "Received" by the BIR	"P-7-1"	4,701,228,600.00	"P-8-3a"	3,475,658,913.00
Difference		₱ -		₱ -

However, there were income payments as per the Summary of Certificate of Creditable Taxes Withheld Supported by Original Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) Issued by the Payor in the Petitioner's Name for the CYs 2010 and 2011[66] that cannot be traced or that differ with the income amounts indicated in the Summaries[67] of Rental Income, Directors' Fees, Other Income, Proceeds from Sale - Land and Others-Various Accounts. Since petitioner was not able to explain the discrepancies therefrom, and this Court cannot ascertain whether the said income payments pertain to one and the same transaction/s, hence, the related creditable withholding taxes in the amount of ₱58,828,478.62 shall be disallowed as follows:

Exhibit No.	Period Covered	Payor	Amount of Income Payment	Amount of Taxes Withheld
2010			**(In Philippine Pesos)**	
Rental Income				

[66] Exhibit "P-17"
[67] Exhibits "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27" and "P-28"

P-17-6	2nd quarter	Honda Cars Alabang	5,356,756.20	267,837.82
P-17-9	1st quarter	Honda Cars Makati Inc.	44,450,604.40	2,222,530.23
Other Income				
P-17-92	4th quarter	Bank of the Philippine Islands	23,000,000.00	3,450,000.00
P-17-97	1st quarter	Globe Telecom Inc.	29,411,764.67	4,411,764.70
P-17-98	1st quarter	Globe Telecom Inc.	11,764,705.88	1,764,705.88
P-17-99	3rd quarter	Globe Telecom Inc.	129,464.29	2,589.29
P-17-101	4th quarter	Globe Telecom Inc.	27,058,823.53	4,058,823.53
P-17-110	3rd quarter	Integrated Microelectronics Inc.	956,340.00	143,451.00
P-17-111	4th quarter	Integrated Microelectronics Inc.	67,500.00	10,125.00
P-17-112	4th quarter	Integrated Microelectronics Inc.	6,500,000.00	975,000.00
P-17-113	4th quarter	Integrated Microelectronics Inc.	12,370,976.00	1,855,646.40
P-17-117	4th quarter	Manila Execon Group Inc.	32,000.00	640.00
	1st quarter	Manila Water Company	28,455,624.12	4,268,343.62
P-17-80	2nd quarter	Manila Water Company	28,785,572.73	4,317,835.91
	2nd quarter	Manila Water Company	27,225,000.00	4,083,750.00
P-17-121	4th quarter	Manila Water Company	27,683,445.13	4,152,516.77
P-17-126	3rd quarter	Microbase Incorporated	89,600.00	1,600.00
Others - Various Accounts				
P-17-141	2nd quarter	Ayala Systems Technology Inc.	5,079.00	101.58
P-17-144	2nd quarter	Bank of the Philippine Islands	66,363.60	663.64
P-17-145	2nd quarter	Bank of the Philippine Islands	61,224.49	1,224.49
P-17-150	2nd quarter	BPI Rental Corporation	2,357,000.00	47,500.00
P-17-160	2nd quarter	Globe Telecom Inc.	53,571.43	1,071.43
TOTAL - 2010			**275,881,415.47**	**36,037,721.29**
2011				
Rental Income				
P-17-197	3rd Quarter	Isuzu Cebu Inc. Mandaue Branch	986,224.40	49,311.22
P-17-198	4th Quarter	Isuzu Cebu Inc. Mandaue Branch	610,070.00	30,503.50
P-17-199	4th Quarter	Isuzu Cebu Inc. Mandaue Branch	1,042,342.00	52,117.10
Other Income				
P-17-269	4th Quarter	Bank of the Philippine Islands	23,000,000.00	3,450,000.00
P-17-277	4th Quarter	Globe Telecom Inc.	34,936,446.53	5,240,466.98
P-17-283	4th Quarter	Integrated Microelectronics Inc.	18,590,352.00	2,788,552.80
P-17-285	1st Quarter	Makati Development Corp.	27,000.00	540.00
P-17-286	1st Quarter	Manila Water Company	18,722,500.00	2,722,500.00
P-17-288	2nd Quarter	Manila Water Company	27,747,374.47	4,162,106.17
P-17-260	4th Quarter	Manila Water Company	18,900.00	378.00
P-17-291	4th Quarter	Manila Water Company	28,468,794.80	4,270,319.22
Proceeds From Sale of Land				
P-17-305	3rd Quarter	Alexander Cordero	37,166.00	2,229.96
Others - Various Accounts				
P-17-277	4th Quarter	Globe Telecom Inc.	812,250.00	16,245.00
P-17-317	4th Quarter	Honda Cars Makati Inc.	264,900.00	5,298.00
P-17-319	3rd Quarter	Quadriver Energy Corporation	9,468.92	189.38

TOTAL - 2011		**155,273,789.12**	**22,790,757.33**
GRAND TOTAL - 2010 AND 2011		**431,155,204.59**	**58,828,478.62**

Accordingly, and in compliance with the third requisite, out of the total amount of ₱126,571,237.47 creditable withholding taxes which was properly supported with BIR Forms No. 2307, only the amount of ₱67,742,758.85 creditable withholding taxes should be granted, in view of the fact that this is only the amount which corresponds to the income payments, and duly verified to have been included in petitioner's taxable gross income per its Annual Income Tax Returns for CYs 2010 and 2011, thus:

	CY 2010	**CY 2011**	**Total**
Claimed Creditable Withholding Taxes with valid BIR Forms No. 2307	₱67,104,843.70	₱59,466,393.77	₱126,571,237.47
Less: CWT, the related income payments of which per Schedule of Creditable Taxes Withheld differ with the income payments reflected in the Summaries of Rental Income, Directors' Fees, Other Income, Proceeds from Sale - Land and Others-Various Accounts	36,037,721.29	22,790,757.33	58,828,478.62
Refundable Excess CWT	**₱31,067,122.41**	**₱36,675,636.44**	**₱67,742,758.85**

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of **₱67,742,758.85** representing petitioner's unutilized excess creditable withholding taxes for CYs 2010 and 2011.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice