REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TULLET PREBON (PHILIPPINES), INC., Petitioner,	**CTA CASE NO. 9804**
	Members:
-versus-	**Castañeda, Jr.**, *Chairperson,* **Mindaro-Grulla,** and **Bacorro-Villena,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 15 2020 2:10 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on April 10, 2018, prays for the refund or issuance of a tax credit certificate (TCC) in the amount of ₱12,481,971.00, allegedly representing petitioner's excess and unutilized creditable withholding taxes (CWT) for calendar year (CY) ended December 31, 2015.[1]

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal business office located at

[1] Summary of the Case, Pre-Trial Order dated July 16, 2018, Docket, p. 310.

25th Floor, Rufino Pacific Tower, 6784 Ayala Avenue, Makati City.[2] It is a registered taxpayer under Tax Identification Number 004-653-622-000 with Certificate of Registration No. OCN 8RC0000019324.[3]

Respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide, approve and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On September 15, 2017, petitioner filed with the Bureau of Internal Revenue (BIR) an administrative claim for refund for its excess and unutilized CWT for CY 2015, amounting to ₱12,481,971.00.[5]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant *Petition for Review* on April 10, 2018.[6]

Respondent filed his *Answer* on May 21, 2018,[7] interposing the following special and affirmative defenses, to wit:

> **"SPECIAL AND AFFIRMATIVE DEFENSES**
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> 4. Petitioner's claim of P12,481,971.00 representing alleged excess and unutilized creditable withholding tax for the calendar year ended 31 December 2015 is subject to determination of sufficiency of proper documentation.
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> 5. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure

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[2] Exhibit "P-1", Docket, pp. 367 to 375.
[3] Exhibit "P-2", Docket, p. 376.
[4] Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 297.
[5] Exhibits "P-7" and "P-7-a", Docket, pp. 466 to 469.
[6] Docket, pp. 10 to 21.
[7] Docket, pp. 135 to 138.

to sustain the burden is fatal to the claim for refund/credit.

6. Petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.

7. In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor ***(Western Mindanao Power Corporation vs. CIR, G.R. No. 181136, 13 June 2012, 672 SCRA 350, 362).***

8. Well to consider, taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner.

9. Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.

10. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer ***(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenu vs. Tokyo Shipping co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).*** g

11. Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language ***(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999).*** Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority ***(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377).***

12. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).***"

The pre-trial conference was set and held on June 21, 2018.[8] *Respondent's Pre-Trial Brief* was filed on June 1, 2018;[9] while *Petitioner's Pre-Trial Brief* was submitted on June 14, 2018.[10]

The parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on July 6, 2018.[11] Thereafter, the Court issued the Pre-Trial Order dated July 16, 2018,[12] approving and adopting the said JSFI and deeming termination of the pre-trial.

Trial proceeded.

During trial, petitioner presented documentary and testimonial evidence. For its testimonial evidence, petitioner offered the testimonies of the following individuals, namely: (1) Mr. Philip G. Arabia,[13] petitioner's Finance Manager; and (2) Ms. Katherine O.

[8] *Notice of Pre-Trial Conference* dated May 24, 2018, Docket, pp. 140 to 141; Minutes of the hearing held on, and Order dated, June 21, 2018, Docket, pp. 275 to 276.
[9] Docket, pp. 142 to 144.
[10] Docket, pp. 146 to 160.
[11] Docket, pp. 297 to 306.
[12] Docket, pp. 310 to 314.
[13] Exhibit "P-12", Docket, pp. 164 to 174; Minutes of the hearing held on, and Order dated, September 5, 2018, Docket, pp. 350 to 351.

Constantino,[14] the Court-commissioned Independent Certified Public Accountant (ICPA).[15]

On August 24, 2018, the *ICPA Report* was submitted to this Court.[16]

Petitioner filed its *Formal Offer of Evidence* on September 25, 2018.[17] Respondent then submitted his *Comment (Re: Petitioner's Formal Offer of Evidence)* on October 3, 2018.[18]

In the Resolution dated November 5, 2018,[19] the Court admitted petitioner's exhibit, *except* Exhibits "P-254", "P-499 to P-501", "P-506", "P-2288", "P-2599 to P-2603", and "P-2986" for failure to present the originals for comparison.

Consequently, petitioner filed a *Motion for Partial Reconsideration (Re: Resolution dated November 5, 2018)*.[20] Petitioner likewise asked for a commissioner's hearing during the hearing held on November 21, 2018, which the Court allowed.[21] At the same hearing, respondent's counsel manifested during the said hearing that he has no witness to present in this case.[22]

On November 28, 2018, a Commissioner's Hearing was held.[23]

In support of its *Motion for Partial Reconsideration*, petitioner filed its *Submission* on December 11, 2018,[24] attaching therewith the duly marked documentary exhibits.

Thus, in the Resolution dated January 31, 2019,[25] the Court granted the said *Motion for Partial Reconsideration*, thereby admitting

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[14] *Sworn Statement of Ms. Katherine O. Constantino to Questions Propounded by Atty. Marjorie R. Rosario*, Docket, pp. 328 to 349; Minutes of the hearing held on, and Order dated, September 5, 2018, Docket, pp. 350 to 351.
[15] *Motion to Commission Independent Certified Public Accountant*, Docket, pp. 277 to 279; Exhibit "P-12", Docket, pp. 280 to 283; Minutes of the hearing held on, and Order dated, July 25, 2018, Docket, pp. 316 to 318; *Oath of Commission* dated July 25, 2018, Docket, p. 315.
[16] Docket, pp. 323 to 324.
[17] Docket, pp. 352 to 366.
[18] Docket, pp. 490 to 492.
[19] Docket, pp. 498 to 499.
[20] Docket, pp. 503 to 507.
[21] Minutes of the hearing held on, and Order dated, November 21, 2018, Docket, pp. 500 to 501.
[22] *Id.*
[23] Commissioner's Report dated November 28, 2018, Docket, p. 508.
[24] Docket, pp. 512 to 519.

petitioner's Exhibits "P-254", "P-2288", "P-2599", "P-2600", and "P-2603".

Respondent filed his *Memorandum* on March 8, 2019;[26] while petitioner submitted its *Memorandum* on April 12, 2019.[27]

On April 30, 2019, the case was considered submitted for decision.[28]

THE ISSUE

The main issue set forth by the parties for the Court's resolution is as follows:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF EXCESS AND UNUTILIZED CWT FOR CY 2015 IN THE AMOUNT OF PHP12,481,971.00."[29]

Petitioner's arguments:

Petitioner contends that it filed its administrative and judicial claims for refund of excess and unutilized CWTs for CY 2015 with the two-year prescription period provided in Sections 204 (C) and 229 of the National Internal Revenue Code (NIRC) of 1997; that its excess and unutilized CWT for CY 2015 in the amount of ₱12,481,971.00 are duly substantiated by documentary evidence; that the income upon which the CWTs being claimed for refund were withheld, was reported as part of the revenues declared in petitioner's Annual ITR; that it did not exercise the option to carry over the subject excess and unutilized CWT amounting to ₱12,481,971.00 to the succeeding taxable periods.

Respondent's counter-arguments:

Respondent avers that it is upon petitioner to discharge the burden of proving the fact of withholding of taxes and their

[25] Resolution dated January 31, 2019, Docket, pp. 524 to 525.
[26] Docket, pp. 528 to 532.
[27] Docket, pp. 538 to 558.
[28] Resolution dated April 30, 2019, Docket, p. 559.
[29] Issue, JSFI, Docket, p. 298.

subsequent remittance to the BIR; that Revenue Regulations (RR) No. 2-98 requires the proof of actual remittance of the taxes withheld to the BIR, thus, indispensable in a claim for refund of excess CWTs; that petitioner failed to prove the alleged withheld taxes were remitted to the BIR, hence, it is not entitled to any refund; and that petitioner's claim for refund has allegedly no bases in fact and in law.

THE COURT'S RULING

We partially grant the instant *Petition for Review.*

Petitioner's compliance with the requisites to claim a refund or credit for unutilized excess CWT.

Based on relevant jurisprudence vis-à-vis Sections 204(C) and 229 of the NIRC of 1997, and RR No. 2-98,[30] as amended, in order for a taxpayer to be entitled to a refund or an issuance of a TCC for unutilized excess CWT, the following three (3) requisites must be sufficiently established, to wit:

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

2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld must be included in the return of the recipient.[31]

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[30] 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 Tax of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

[31] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; *Citibank N.A. vs. Court of Appeals*, et al., G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals*, et al., G.R. No. 96322, December 20, 1991; Section 2.58, Revenue Regulations No. 2-98, as amended.

Anent the *first* requisite, the pertinent provisions are Sections 204(C) and 229 of the NIRC of 1997, which provide:

> "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."
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any 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." 𝒻𝓏

The above-stated provisions mandate that the administrative and judicial remedies of filing a claim for refund of erroneously or excessively paid tax must be done within two (2) years from the date of payment of the tax. For actions for refund of excess corporate income tax, the Supreme Court has already ruled that the two-year prescriptive period should be counted from the filing of the *Final Adjustment Return*, because it is only upon that date that the exact tax liability or refundability of the tax can be determined.[32]

The present claim pertains to taxable year 2015 for which petitioner filed its Annual ITR on April 11, 2016.[33] Counting from this date, petitioner had until April 11, 2018 within which to file a claim for refund of its excess CWT both in the administrative and judicial levels. Thus, the filing of petitioner's administrative claim[34] for refund on September 15, 2017 and of the instant *Petition for Review* on April 10, 2018 fell within the two-year prescriptive period. Such being the case, the administrative and judicial claims were seasonably filed, thereby complying with the *first* requisite.

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

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

To prove the fact of withholding of the claimed CWT of ₱12,481,971.00, petitioner presented its *Schedule of Creditable Withholding Tax*[35] and the related *Certificates of Creditable Tax*

[32] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et. al.*, G.R. No. 96322, December 20, 1991.
[33] Exhibit "P-3", Docket, p. 377.
[34] Exhibits "P-7" and "P-7-a", Docket, pp. 466 to 469.
[35] Exhibit "P-17".

Withheld at Source (BIR Forms No. 2307)[36] for CY 2015. Upon examination of these documents, the Court-commissioned ICPA, Ms. Katherine O. Constantino, summarized her findings as follows:[37]

	Summary of Findings	**Annex Reference**	**Per Schedule of Creditable Withholding Tax for CY 2015 (Exhibit P-17)**	**Per creditable withholding tax certificates (Exhibits P-47 to P-515)**	
			CWT Amount	**Income Payment Amount**	**CWT Amount**
1	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	**Annex 2-a**	₱ 7,299,384.83	₱ 78,469,797.35	₱ 7,299,384.83
2	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is lower than the schedule	**Annex 2-b**	2,282,483.88	23,511,699.06	2,098,463.84
3	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is higher than the schedule	**Annex 2-c**	1,210,913.65	18,146,565.17	1,323,002.96
4	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign	**Annex 2-d**	336,118.01	3,361,180.10	336,118.01
5	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign where EWT amount is lower than the schedule	**Annex 2-e**	872,078.83	6,797,329.28	679,732.93
6	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign where EWT amount is higher than the schedule	**Annex 2-f**	97,496.03	1,642,423.57	164,242.37
7	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without Petitioner's TIN and with incomplete Petitioner's name	**Annex 2-g**	6,129.38	61,293.80	6,129.38
9	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incorrect Petitioner's TIN where EWT amount per certificate is lower than the schedule	**Annex 2-h**	24,348.57	140,520.00	14,052.00
10	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incorrect Petitioner's TIN	**Annex 2-i**	44.74	447.40	44.74

Jc

[36] Exhibits "P-47 to P-498", "P-502 to P-505", and "P-507 to P-515".
[37] Exhibit "P-15", pp. 12 to 14.

11	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incorrect Petitioner's TIN and without Petitioner's address indicated	**Annex 2-j**	3,981.86	39,818.60	3,981.86
13	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with different Petitioner's address indicated	**Annex 2-k**	18,560.00	185,600.00	18,560.00
15	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with different Petitioner's name and without Petitioner's address indicated	**Annex 2-l**	240.00	12,000.00	240.00
17	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) dated not within the period of claim	**Annex 2-m**	237,338.85	2,594,402.93	237,338.85
18	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with alteration on the date but with countersign	**Annex 2-n**	1,120.00	56,000.00	1,120.00
19	CWT duly supported by scanned copy of Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	**Annex 2-o**	2,750.00	25,000.00	2,750.00
20	CWT duly supported by photocopy of Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	**Annex 2-p**	39,652.54	396,526.75	39,652.54
21	CWT duly supported by photocopy of Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount is higher than the schedule	**Annex 2-q**	114,492.35	1,642,755.44	164,274.60
22	CWT without available supporting documents at the time of verification	**Annex 2-r**	(65,162.24)	-	-
	TOTAL		**₱12,481,971.28**	**₱137,083,359.45**	**₱12,389,088.91**

Only the above claims which are classified under numbers 1 to 6 and summarized under Annexes 2-a to 2-f of the ICPA Report, are properly supported with BIR Forms No. 2307. However, it is noted that there were instances wherein the CWT per certificates exceeded those reflected per schedule/ITR or vice-versa. In as much as the basis of the instant claim for refund is the amount reflected in the Annual ITR as filed, the Court shall consider only the lesser of the two amounts. Thus, petitioner has complied with the *second* requisite but only to the extent of ₱11,722,109.29, broken down as follows: *92*

	Particulars	Annex Reference	Per Schedule of Creditable Withholding Tax for CY 2015 (Exhibit P-17)	Per creditable withholding tax certificates (Exhibits P-47 to P-515)		Valid CWT
			CWT Amount	Income Payment Amount	CWT Amount	
1	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-a	₱7,299,384.83	₱78,469,797.35	₱7,299,384.83	₱7,299,384.83
2	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is lower than the schedule	Annex 2-b	2,282,483.88	23,511,699.06	2,098,463.84	2,098,463.84
3	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is higher than the schedule	Annex 2-c	1,210,913.65	18,146,565.17	1,323,002.96	1,210,913.65
4	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign	Annex 2-d	336,118.01	3,361,180.10	336,118.01	336,118.01
5	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign where EWT amount is lower than the schedule	Annex 2-e	872,078.83	6,797,329.28	679,732.93	679,732.93
6	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign where EWT amount is higher than the schedule	Annex 2-f	97,496.03	1,642,423.57	164,242.37	97,496.03
	TOTAL		**₱12,098,475.23**	**₱131,928,994.53**	**₱11,900,944.94**	**₱11,722,109.29**

This brings Us to the *third* requisite, which is whether or not the income upon which the subject taxes were withheld was included and reported by petitioner in its Annual ITR.

The certificates show that the claimed CWT were withheld on income payments amounting to ₱137,083,359.45 representing gross commissions or service fees of customs, insurance, stock, real estate, immigration, and commercial brokers.

On the other hand, petitioner's *Audited Financial Statements* (AFS) for CY 2015[38] has disclosed that the principal activity of petitioner is to operate as a broker between market participants in foreign exchange, deposits and fixed income securities, among others. Brokerage fees-net[39] derived from such activity in 2015 amounted to ₱135,729,752.00[40]. This is the same amount reflected as *"Net Sales/Revenues/Receipts/Fees"* from *Sales of Services* in petitioner's AITR for CY 2015.[41]

As ascertained by the ICPA, petitioner's revenue subjected to withholding tax at the rates of 2%, 10%, or 15% was lodged under *"Account 60005 – Gross Brokerage Name Give Up"* which shows a total amount of ₱135,729,752.42[42] per petitioner's general ledger.

To verify that the ₱137,083,359.45 income payments per certificates indeed formed part of petitioner's declared income per Annual ITR, the ICPA traced in the revenue general ledger[43] of *"Account 60005 – Gross Brokerage Name Give Up"* the related income amount of the claimed creditable withholding tax based on petitioner's *Schedule of Creditable Withholding Taxes*,[44] billing invoices,[45] and official receipts for CY 2015.[46] The ICPA's detailed analysis is presented as follows:[47]

			Per Schedule of Creditable Withholding Tax for CY 2015 (Exhibit P-17)	Per creditable withholding tax certificates (Exhibits P-47 to P-515)		Per 2015 Gross Brokerage Account General Ledger (Exhibit P-23)		Traced to CY 2014 Gross Brokerage Account General Ledger
Summary of Findings		Annex Reference	CWT Amount	Income Payment Amount	CWT Amount	Revenue Amount	Corresponding CWT amount	Corresponding CWT amount
1	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	**Annex 2-a**	₱7,299,384.83	₱78,469,797.35	₱7,299,384.83	(₱73,729,651.54)[48]	₱6,979,693.64	₱319,691.19
2	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is lower than the schedule	**Annex 2-b**	2,282,483.88	23,511,699.06	2,098,463.84	(22,292,108.03)[49]	1,905,190.30	193,273.54

[38] Exhibit "P-3-a", Note 14, p. 427.
[39] Exhibit "P-3-a", Note 14, p. 427; ₱180,652,138.00 less ₱44,922,386.00.
[40] Exhibit "P-3-a", Statements of Comprehensive Income for the year ended December 31, 2015, Docket, p. 398.
[41] Exhibit "P-3", Schedule 1, Docket, p. 382.
[42] Exhibit "P-23", pp. 34 and 56; ₱180,652,138.60 less ₱44,922,386.18.
[43] Exhibit "P-23".
[44] Exhibit "P-17".
[45] Exhibits "P-1276 to P-2232".
[46] Exhibits "P-516 to P-1275".
[47] Exhibit "P-15", pp. 12 to 14.
[48] Exhibit "P-15", as per detailed analysis presented in Annex 3, p. 52 of 84.
[49] Exhibit "P-15", as per detailed analysis presented in Annex 3, p. 65 of 84.

			Per Schedule of Creditable Withholding Tax for CY 2015 (Exhibit P-17)	Per creditable withholding tax certificates (Exhibits P-47 to P-515)		Per 2015 Gross Brokerage Account General Ledger (Exhibit P-23)		Traced to CY 2014 Gross Brokerage Account General Ledger
	Summary of Findings	Annex Reference	CWT Amount	Income Payment Amount	CWT Amount	Revenue Amount	Corresponding CWT amount	Corresponding CWT amount
3	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is higher than the schedule	Annex 2-c	1,210,913.65	18,146,565.17	1,323,002.96	(17,075,204.17)	1,120,803.41	90,110.24
4	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign	Annex 2-d	336,118.01	3,361,180.10	336,118.01	(2,956,609.69)	293,877.46	42,240.55
5	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign where EWT amount is lower than the schedule	Annex 2-e	872,078.83	6,797,329.28	679,732.93	(5,299,645.82)	590,132.93	89,600.00
6	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign where EWT amount is higher than the schedule	Annex 2-f	97,496.03	1,642,423.57	164,242.37	(2,080,632.46)	97,496.03	-
7	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without Petitioner's TIN and with incomplete Petitioner's name	Annex 2-g	6,129.38	61,293.80	6,129.38	-	-	6,129.38
9	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incorrect Petitioner's TIN where EWT amount per certificate is lower than the schedule	Annex 2-h	24,348.57	140,520.00	14,052.00	(234,116.86)	13,511.31	540.69
10	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incorrect Petitioner's TIN	Annex 2-i	44.74	447.40	44.74	-	-	44.74
11	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incorrect Petitioner's TIN and without Petitioner's address indicated	Annex 2-j	3,981.86	39,818.60	3,981.86	-	-	3,981.86
13	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with different Petitioner's address indicated	Annex 2-k	18,560.00	185,600.00	18,560.00	(153,600.00)	15,360.00	3,200.00
15	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with different	Annex 2-l	240.00	12,000.00	240.00	(12,000.00)	240.00	-

			Per Schedule of Creditable Withholding Tax for CY 2015 (Exhibit P-17)	Per creditable withholding tax certificates (Exhibits P-47 to P-515)		Per 2015 Gross Brokerage Account General Ledger (Exhibit P-23)		Traced to CY 2014 Gross Brokerage Account General Ledger
Summary of Findings		Annex Reference	CWT Amount	Income Payment Amount	CWT Amount	Revenue Amount	Corresponding CWT amount	Corresponding CWT amount
	Petitioner's name and without Petitioner's address indicated							
17	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) dated not within the period of claim	Annex 2-m	237,338.85	2,594,402.93	237,338.85	-	-	237,338.85
18	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with alteration on the date but with countersign	Annex 2-n	1,120.00	56,000.00	1,120.00	(56,000.00)	1,120.00	-
19	CWT duly supported by scanned copy of Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-o	2,750.00	25,000.00	2,750.00	(25,000.00)	2,750.00	-
20	CWT duly supported by photocopy of Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-p	39,652.54	396,526.75	39,652.54	(396,526.78)	39,652.54	-
21	CWT duly supported by photocopy of Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount is higher than the schedule	Annex 2-q	114,492.35	1,642,755.44	164,274.60	(1,144,922.85)	114,492.35	-
22	CWT without available supporting documents at the time of verification	Annex 2-r	(65,162.24)	-	-	(911,114.77)	(65,162.24)	-
TOTAL			**₱12,481,971.28**	**₱137,083,359.45**	**₱12,389,088.91**	**(₱126,367,132.97)[50]**	**₱11,109,157.73**	**₱986,151.04**

The Court could not verify the CWTs traced to CY 2014 Gross Brokerage Account General Ledger by the ICPA as petitioner failed to present the same, thus, shall be denied.

Correspondingly, petitioner has been able to prove that the income payments of ₱123,433,851.71, with corresponding CWT of ₱10,987,193.77, formed part of the income declared in its Annual ITR for CY 2015, as shown below:[51]

		Per 2015 Gross Brokerage Account General Ledger (Exhibit P-23)	
Particulars	**Annex Reference**	**Revenue Amount**	**Corresponding CWT amount**

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[50] As adjusted.

[51] Only the claims which are classified under numbers 1 to 6 and summarized under Annexes 2-a to 2-f of the ICPA Report.

1	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	**Annex 2-a**	₱73,729,651.54	₱6,979,693.64
2	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is lower than the schedule	**Annex 2-b**	22,292,108.03	1,905,190.30
3	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is higher than the schedule	**Annex 2-c**	17,075,204.17	1,120,803.41
4	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign	**Annex 2-d**	2,956,609.69	293,877.46
5	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign where EWT amount is lower than the schedule	**Annex 2-e**	5,299,645.82	590,132.93
6	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamped signature but with countersign where EWT amount is higher than the schedule	**Annex 2-f**	2,080,632.46	97,496.03
	Total		**₱123,433,851.71**	**₱10,987,193.77**

In sum, petitioner has complied with the three (3) requisites for refund of excess CWT for CY 2015 only to the extent of ₱10,987,193.77.

Proof of actual remittance is not indispensable.

Respondent contends, however, that the proof actual remittance of the taxes withheld to the BIR is indispensable in a claim for refund of excess CWTs.

We disagree.

In *Commissioner of Internal Revenue vs. Philippine National Bank*,[52] the Supreme Court held as follows:

> "Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **<u>Proof of actual</u>**

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

<u>remittance is not a condition to claim for a refund of unutilized tax credits</u>. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with responsibility of withholding and remitting income taxes.

This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*,[53] citing the Court of Tax Appeals' explanation, is instructive:

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

[53] G.R. No. 179617, January 19, 2011 [Per J. Mendoza, Second Division].

Thus, there can be no merit in respondent's contention that proof actual remittance of the taxes withheld to the BIR is indispensable.

Petitioner is only entitled to the reduced amount of ₱8,571,938.77.

The Court shall now proceed to determine whether the aforesaid CWT of ₱10,987,193.77 are unutilized and may be the proper subject of a claim for refund or issuance of a tax credit certificate pursuant to Section 76 of the NIRC of 1997, which reads:

> "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."

Based on the foregoing provision, in case of overpayment of income taxes, a taxable corporation has two options: (1) it may file a claim for refund, either in the form of cash or TCC, or (2) it may carry over the same to the succeeding taxable quarters/years until it is fully utilized. However, once the carry-over option is taken, actually or constructively it becomes irrevocable for that taxable period.[54] 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.[55]

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.[56]

A perusal of petitioner's Annual ITR for CY 2015[57] shows that petitioner had income tax credits in the total amount of ₱35,279,316.00, consisting of the (i) prior year's excess tax credits in the amount of ₱22,797,345.00, and (ii) CWT accumulated during the four (4) quarters of CY 2015 in the aggregate amount of ₱12,481,971.00 (the sum of ₱9,958,992.00 and ₱2,522,979.00).[58]

Petitioner claims that its regular corporate income tax (RCIT) due for CY 2015 in the amount of ₱2,415,255.00[59] was paid using a portion of its prior year's excess credits of ₱22,797,345.00. This leaves the prior year's excess tax credits in the amount of ₱20,382,090.00 and creditable taxes withheld during the CY 2015 in the amount of ₱12,481,971.00 totaling ₱32,864,061.00 unutilized as of December 31, 2015, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 22,797,345.00
Less: Tax Due (RCIT)	2,415,255.00
Balance of Prior Year's Excess Credits	₱ 20,382,090.00
Add: Creditable Taxes Withheld – CY 2015	12,481,971.00
Excess Creditable Taxes Withheld as of December 31, 2015	**₱32,864,061.00**

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[54] *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.

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

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

[57] Exhibit "P-3", Docket, pp. 377 to 391.

[58] Exhibit "P-3", Schedule 7, Docket, p. 388.

[59] Exhibit "P-3", Line 16, Docket, p. 378.

Petitioner indicated on its Annual ITR for CY 2015 its option to be issued a TCC for its excess and unutilized CWT for CY 2015.[60] Consequently, only the prior year's excess tax credits of ₱20,382,090.00 were carried-over in petitioner's Quarterly ITRs[61] and Annual ITR[62] for CY 2016.

To prove the existence of its prior year's excess credits of ₱22,797,345.00, petitioner presented *Certificates of Creditable Tax Withheld at Source* (BIR Forms No. 2307) for the years 2011[63] and 2012[64], in the amounts of ₱17,558,549.78 and ₱17,995,739.89, respectively, which were accounted by the ICPA as follows:[65]

Summary of Findings For CY 2011	**Income Payment**	**CWT Amount**
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	₱86,289,560.19	₱8,980,233.94
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) EWT amount per Certificate is lower than the amount in the schedule/income tax return	16,516,606.19	1,651,660.62
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) EWT amount per Certificate is higher than the amount in the schedule/income tax return	33,489,697.82	2,999,775.30
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but with different income payment	32,922.36	32,922.35
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different	181,288.50	3,625.77
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different, the Petitioner's TIN number is wrong or not indicated, EWT amount per Certificate is lower than the amount in the schedule/income tax return	826,081.50	16,521.63
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different, the Petitioner's TIN number is wrong or not indicated, EWT amount per Certificate is higher than the amount in the schedule/income tax return	11,355,370.50	163,568.96
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different and the Petitioner's TIN number is wrong or not indicated	236,800.00	23,680.00

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[60] Exhibit "P-3", Docket, p. 378.
[61] Exhibits "P-8", "P-9", and "P-10", Line 31A, Docket, pp. 470, 474, and 476.
[62] Exhibit "P-11", Schedule 7, Line 1, Docket, p. 485.
[63] Exhibits "P-2233 to P-2600", "P-2603", and "P-2984" to "P-2986".
[64] Exhibits "P-2604" to "P-2983".
[65] Exhibit "P-15", pp. 18-20; Annexes 5 and 4.

CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with no date indicated or not dated within CY 2011 and Petitioner's name is different	376,703.09	37,670.31
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with no date indicated or not dated within CY 2011, but the Petitioner's TIN number is wrong or not indicated	331,697.10	17,489.71
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but with different income payment and EWT amount per Certificate is lower than the amount in the schedule/income tax return	21,405.45	21,405.45
CWT duly supported by photocopied Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	4,208,977.00	420,897.72
Over claim of EWT amount per income tax return vs. certificate for Annex 5-b, 5-f and 5-k		74,782.10
CWT without available supporting documents at the time of verification		3,114,315.92
Total - CY 2011	**₱153,867,109.70**	**₱17,558,549.78**

Summary of Findings For CY 2012	**Income Payment**	**CWT Amount**
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	₱100,028,341.68	₱10,238,862.73
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307). EWT amount per Certificate is lower than the amount in the schedule/income tax return	34,292,506.96	2,367,383.17
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307). EWT amount per Certificate is higher than the amount in the schedule/income tax return	30,744,172.05	2,067,843.39
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different and Petitioner's TIN number is wrong or not indicated	797,944.69	79,794.49
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without date indicated or not dated within CY 2012, Petitioner's name is different, and EWT amount per Certificate is higher than amount in the schedule/income tax return	475,149.13	47,512.39
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with no date indicated or not dated within CY 2012, Petitioner's name is different and EWT amount per Certificate is higher than amount in the schedule/income tax return	3,369,433.08	75,857.07
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) not dated within CY 2012 and Petitioner's name is different	1,542,528.34	133,066.90

CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without date indicated or not dated within CY 2012 and with different income payment	39,227.48	39,314.54
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incomplete Petitioner's name	60,391.90	6,039.21
Over claim of EWT amount per income tax return vs. certificate for Annex 4-b		90,367.87
CWT without available supporting documents at the time of verification		2,849,698.13
Total – CY 2012	**₱171,349,695.31**	**₱17,995,739.89**

Based on the preceding tables, only the CWT of ₱13,631,669.86 and ₱14,674,089.29 for CYs 2011 and 2012, respectively, totaling ₱28,305,759.15, were properly supported by BIR Forms No. 2307, to wit:

	2011		**2012**	
Particulars	**Income Payment**	**CWT amount**	**Income Payment**	**CWT amount**
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307).	₱ 86,289,560.19	₱ 8,980,233.94	₱ 100,028,341.68	₱ 10,238,862.73
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307). CWT amount per Certificate is lower than the schedule (amount indicated pertains to certificate amount).	16,516,606.19	1,651,660.62	34,292,506.96	2,367,383.17
CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307). CWT amount per Certificate is higher than the schedule (amount indicated pertains to schedule amount).	33,489,697.82	2,999,775.30	30,744,172.05	2,067,843.39
Total properly substantiated	**₱136,295,864.20**	**₱13,631,669.86**	**₱165,065,020.69**	**₱14,674,089.29**

However, these CWTs do not represent petitioner's excess CWTs for CYs 2011, 2012, 2013, and 2014 since petitioner reflected in its Annual ITRs for the said years, income tax due in the respective amounts of ₱14,233,716.00[66], ₱12,400,630.50[67], ₱7,676,632.00[68],

[66] Exhibit "P-27", Line 32.
[67] Exhibit "P-31", Line 32.
[68] Exhibit "P-35", Line 16.

and ₱4,404,423.00[69], or in the sum of ₱38,715,401.50. Deducting this total income tax liabilities of ₱38,715,401.50 from the CWT of ₱28,305,759.15 results to an amount of ₱10,409,642.35 income tax still due as of the end of CY 2014, as shown below:

Income Tax Due for 2011	₱14,233,716.00	
Income Tax Due for 2012	12,400,630.50	
Income Tax Due for 2013	7,676,632.00	
Income Tax Due for 2014	4,404,423.00	
Total Income Tax Due for 2011 to 2014		₱ 38,715,401.50
Less: *Total Valid CWTs for 2011 and 2012*		
Valid CWT for 2011	₱13,631,669.86	
Valid CWT for 2012	14,674,089.29	28,305,759.15
Income Tax Still Due		**₱10,409,642.35**

Since petitioner failed to prove that it had prior years excess credits, petitioner's properly substantiated CWT for CY 2015 in the amount of ₱10,987,193.77, as stated earlier, should be applied to cover its income tax due for CY 2015 in the amount of ₱2,415,255.00, as illustrated below:

Valid CWTs for 2015	₱ 10,987,193.77
Less: Income Tax Due for CY 2015	2,415,255.00
Excess Valid CWTs for 2015	**₱8,571,938.77**

Based on the foregoing discussions, petitioner has sufficiently proved its entitlement to a refund or issuance of a TCC of excess CWT for CY 2015 but only to the extent of ₱8,571,938.77.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND, or TO ISSUE A TCC** in favor of petitioner in, the reduced amount of **₱8,571,938.77**, representing its excess and unutilized CWT for CY 2015.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[69] Exhibit "P-39", Line 16.

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice