REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8632

Members:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, *JJ.*

Promulgated:

SEP 9 2015
10:20 a.m.

x -- x

D E C I S I O N

BAUTISTA, J:

The Case

This is a Petition for Review filed by petitioner Philippine Bank of Communications ("PBC") praying for refund or issuance of a tax credit certificate ("TCC") in the amount of Thirty-Three Million Nine Hundred Fifty Thousand Three Hundred Fifty-Seven Pesos and Forty Centavos (PhP33,950,357.40) representing its unutilized creditable withholding tax ("CWT") for the taxable year 2010.[1]

The Parties[2]

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office

[1] *Records*, p. 13.
[2] *Id.*, pp. 366-367.

at PBCom Tower, 6795 Ayala Avenue corner VA Rufino Street. Makati City.

Respondent Commissioner of Internal Revenue ("CIR") is the government agency charged with the assessment, collection and enforcement of all national internal revenue taxes, fees and charges, including forfeitures, penalties and fines connected therewith, and is being represented by legal officers of the Legal Division at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.

The Facts

On April 15, 2010, petitioner filed its Annual Income Tax Return ("ITR") for taxable year 2009. It subsequently filed its Final Adjusted ITR for the same period on May 6, 2010.[3]

On April 15, 2011 at 1:47 p.m., petitioner filed its Annual ITR for the taxable year 2010 and thereafter filed its Final Adjusted ITR on the same date at 6:36 p.m.[4]

On April 4, 2013, petitioner filed with the BIR Large Taxpayers Service - Regular Large Taxpayers Audit Division II an administrative claim for refund or issuance of a TCC of excess CWT for taxable year 2010 in the amount of PhP33,950,357.40.[5]

There being no action on the part of respondent, petitioner filed the instant Petition for Review on April 11, 2013 citing as legal basis Sections 58(D) and 76 in relation to Sections 204 and 229 of the 1997 National Internal Revenue Code, as amended ("Tax Code").

On June 13, 2013, respondent filed her Answer,[6] interposing 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.

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[3] *Id.*, p. 367.
[4] *Id.*
[5] *Id.*
[6] *Id.*, pp. 63-72.

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 interposed in the strictest manner. Considering that tax refunds consist of monetary amounts which are currently in the hands of the government, the validity of petitioner's claim should be meticulously verified. 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, petitioner must satisfactorily comply with the following requisites:

> 1. The claim must be filed with the CIR within the two-year period from the date of the payment of the tax;
>
> 2. It must be shown on the return that 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 CWT 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 TCC 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 conditions 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 ('RR') No. 2-2006** (Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) whose income received have been subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor if 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 TAX BY THE WITHHOLDING AGENT INCOME PAYOR AS ATTACHMENT TO THEIR FILED RETURNS.
>
> A. xxx xxx xxx
>
> B. Persons required to submit Summary Alphalist of Withholding Agents of Income Payments subjected to Withholding Taxes (SAWT)

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

2. All persons claiming 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 No. 53-98 and 2-2006, to give support to the validity of its claim for unutilized CWT for taxable year 2010. 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 juridical 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. They must prove that they complied with all the administrative requirements continuing up to judicial review. 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 [Court of Tax Appeals ('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 grants 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)

14. Clearly, the necessity for petitioner to submit all relevant documents to substantiate its administrative claim for refund is imperative. Absent there circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the CIR 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 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:

> '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 unnecessary and premature resort to the court.**' (Emphasis supplied)

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 BIR only on **04 April 2013** and the Petition for Review was filed with the CTA on **11 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 a 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 a 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.'

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 CIR 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 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 an indirect avenue for processing administrative claim for refund, which function rightfully belongs to the CIR. 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 without first exhausting available administrative remedies, 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 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 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

Petitioner and respondent filed their respective Pre-trial Briefs[7] on July 25, 2013 and July 29, 2013.

On November 4, 0213, the parties filed their Joint Stipulation of Facts and Issues,[8] and thus a Pre-Trial Order[9] was issued on November 22, 2013.

On February 18, 2014, petitioner filed its Formal Offer of Evidence.[10] Respondent, on the other hand, manifested in open Court on May 5, 2014 that she will no longer present evidence and moved for thirty (30) days to file her memoranda. In the Resolution[11] dated July 1, 2014, the Court ordered the parties to file simultaneously within thirty (30) days their respective memoranda.

[7] *Id.*, pp. 87-92 and 175-177.
[8] *Id.*, pp. 354-360.
[9] *Id.*, pp. 366-370.
[10] *Id.*, pp. 577-586.
[11] *Id.*, pp. 1028-1029.

In compliance to the Resolution, petitioner and respondent then filed their Memoranda on September 1, 2014[12]

Thus, on September 10, 2014, the Court promulgated a Resolution[13] submitting the case for Decision.

Hence, this Decision.

The Issues[14]

The issue for the consideration of the Court is:

> **WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OR ISSUANCE OF A TCC REPRESENTING UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR TAXABLE YEAR 2010 IN THE TOTAL AMOUNT OF THIRTY-THREE MILLION NINE HUNDRED FIFTY THOUSAND THREE HUNDRED FIFTY-SEVEN PESOS AND FORTY CENTAVOS (PHP33,950,357.40)**

The Petitioner's Arguments

Petitioner contends that it is entitled to the refund or issuance of TCC of its excess/unutilized CWT amounting to PhP33,950,357.40 pursuant to Sections 58(D) and 76 in relation to Sections 204 and 229 of the Tax Code.

It submits that the requisites for an application for refund provided in ***VJ Properties, Inc. vs. Commissioner of Internal Revenue***[15] have been complied with — (*i*) the claim for refund/issuance of TCC was filed within two (2) years as prescribed under the Tax Code; (*ii*) the income upon which the taxes were withheld were included as part of the gross income declared in the return of the taxpayer; (*iii*) the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom; and (*iv*) the taxpayer

[12] *Id.*, pp. 1044-1060 and 1074-1084.
[13] *Id.*, p. 1591.
[14] *Id.*, pp. 109-110.
[15] CTA Case No. 5810, March 7, 2002.

applying for refund must satisfactorily prove that the claimed amount was not carried over/applied to the succeeding year. Therefore, it is entitled to its claim of refund.

The Respondent's Counter-Arguments

Respondent argues in the following manner: (*i*) that petitioner failed to submit complete documents in support of its administrative claim for refund pursuant to Revenue Memorandum Order ("RMO") No. 53-98[16] and Revenue Regulation ("RR") No. 2-2006;[17] (*ii*) that petitioner failed to exhaust administrative remedies before elevating the case before the Court; and (*iii*) that petitioner failed to substantiate its claim for refund or issuance of a TCC, as prescribed by Section 76 of the Tax Code and as ruled by the Supreme Court in ***CIR vs. Team [Philippines] Operations Corporation.***[18]

The Ruling of the Court

Irrevocability rule under Section 76 of the Tax Code

Section 76 of the Tax Code 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

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[16] 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.
[17] Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments
[18] G.R. No. 179260, April 2, 2014.

(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." (Emphasis ours)

From the above-quoted Section, to be entitled to a tax credit or refund of excess income taxes paid in a given taxable year, a corporate taxpayer has two (2) options, namely: (1) to carry-over the excess credit to the quarters of the succeeding taxable years; or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund.[19]

However, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period and no application for cash refund or issuance of a TCC shall be allowed. This is also known as the "irrevocability rule" on income tax credits under the Tax Code. [20]

In the present case, petitioner chose the option to be issued a TCC in the amount of PhP33,950,357.40, as indicated in its Annual ITR (both original and amended)[21] for taxable year 2010 filed through EFPS on April 15, 2011, and by leaving blank item no. 33A ("Prior Year's Excess Credits other than MCIT") of petitioner's Quarterly ITR[22] and Annual

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[19] *Systra Philippines, Inc. vs. CIR*, G.R. No. 176290, September 21, 2007, 533 SCRA 776, citing the case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, 514 Phil.* 147.
[20] *Paseo Realty & Development Corporation vs. Court of Appeals, et al.*, G.R. No. 119286, October 13, 2004.
[21] *Records*, p. 613, *Exhibits "P-41" &"P-42,"* Line 33.
[22] *Exhibits "P-45.1 to "P-45.3."*

ITR[23] for the following taxable year 2011.[24] Having done so, petitioner is bound by the "irrevocability rule" under Section 76 of the Tax Code.

Consequently, as petitioner had already chosen the irrevocable option to be issued a TCC for taxable year 2010, discussion on petitioner's evidence presented to substantiate its entitlement to its claim for refund of CWT becomes necessary.

Conditions for the grant of a claim for refund of creditable withholding tax

In the case of ***CIR vs. Team (Philippines) Energy Corp.*** ("Team Case")[25] citing the case of ***Banco Filipino Savings and Mortgage Bank vs. Court of Appeals*** *("Banco Filipino Case")*[26], the Supreme Court has set three (3) conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (*i*) that the claim is filed with the CIR within the two-year period from the date of payment of the tax; (*ii*) that must be shown on the return of the recipient that the income payment received was declared as part of the gross income; and, (*iii*) that 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 .

Essential to the first condition are Sections 204 (C) and 229 of the Tax Code, which provides:

> "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

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[23] *Exhibit "P-43."*
[24] *Records*, p. 616.
[25] CTA EB 694 (CTA Case No. 7603), April 13, 2012.
[26] G.R. No. 155682, March 27, 2007, 520 SCRA 312.

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)

"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 supplied)

It is well-settled that the reckoning of the two-year prescriptive period for claiming a refund or tax credit of excess income tax paid/withheld, commences to run on the date of the filing of the Final Adjusted ITR[27], for both the administrative and judicial claims. Since petitioner filed its Final Adjusted ITR[28] for taxable year 2010 on April 15, 2011, it had until April 16, 2013 to file an administrative claim for refund. Counting two-years therefrom the filing of petitioner's administrative claim on April 4, 2013[29] and the Petition for Review on

[27] *ACCRA Investments Corp. vs. Court of Appeals,* G.R. No. 96322, December 20, 1991, 204 SCRA 957.
[28] *Records,* pp. 612-614.
[29] *Id.,* pp. 643-646.

April 11, 2013[30] are well within the period. Therefore, the claim was timely filed.

For the second and third conditions, essential are the provisions of Section 2.58.3 (B) of Revenue Regulations No. 2-98, which states:

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

For the third condition, Section 2.58 (B) of RR No. 2-98, as amended by RR 03-02, identifies the withholding tax statement, as BIR Form No. 2307, to wit:

> "Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. –
>
> xxx xxx xxx
>
> (B) Withholding tax statement for taxes withheld. – Every payor required to deduct or withhold taxes under these regulations shall furnish, in triplicate, each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form No. 2307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter, within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. The payor, nonetheless, should always

[30] *Id.*, p. 6.

retain a copy of duly issued BIR Form No. 2307. Failure to furnish the same shall be a ground for the mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee.

For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

Upon request of the payee, however, the payor must furnish such certificate simultaneously with the income payment." (Emphasis ours)

In the instant case, the Court-commissioned Independent CPA ("ICPA") firm, Constantino, Guadalquiver & Co., through its Partner, Mr. Edwin F. Ramos, summarized petitioner's total claimed CWT of PhP33,950,357.40 as follows[31]:

Findings	*Reference (Exhibit P-92)*	*Amount of Creditable Withholding Tax*
A. ***Creditable withholding tax payments duly supported by original BIR Form 2307 and BIR Certification***		
<u>Sale of property</u>		
1. Creditable withholding tax payment supported by original BIR Form 2307	Annex A1-1	PhP 6,822,124.20
2. Creditable withholding tax payment supported by original BIR Form 2307 and BIR certification confirming the remittance of taxes withheld	Annex A1-2	*6,507,840.45*
3. Creditable withholding tax payment supported by BIR certification confirming the remittance of taxes withheld	Annex A1-3	*144,000.00*
Sub-total		**PhP 13,473,964.65**
<u>Lease income</u>		
1. Creditable withholding tax payment supported by original BIR Form 2307	Annex A2-1	PhP 13,148,401.48

[31] *Exhibit "P-92."*

Findings	*Reference (Exhibit P-92)*	*Amount of Creditable Withholding Tax*
2. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the date but with countersignature	Annex A2-2	261,059.17
Sub-total		**PhP 13,409,460.65**
Interest income on commercial and trade loans		
1. Creditable withholding tax payment supported by original BIR Form 2307	Annex A3-1	PhP 2,899,457.88
2. Creditable withholding tax payment supported by original BIR Form 2307 without the Company's Taxpayer Identification Number ("TIN") indicated therein	Annex A3-2	335,841.29
3. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the amount of withholding tax but with countersignature and the withholding tax can be recomputed using the tax base and related withholding tax rate as indicated in the Form	Annex A3-3	10,895.12
4. Creditable withholding tax payment supported by certified true copy of BIR Form 2307	Annex A3-4	15,850.81
5. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN but with countersignature	Annex A3-5	129,848.46
Sub-total		**PhP 3,391,893.56**
Reimbursements		
1. Creditable withholding tax payment supported by original BIR Form 2307	Annex A4-1	**PhP 150,480.67**
TOTAL		**PhP 30,425,799.53**
B. ***Other Findings***		
Sale of property		

Findings	*Reference (Exhibit P-92)*	*Amount of Creditable Withholding Tax*
1. Creditable withholding tax payment supported by original BIR Form 1706 stamped received by the bank	Annex A1-4	PhP 921,000.00
2. Creditable withholding tax payment supported by original BIR Form 2307 without the date indicated therein	Annex A1-5	47,400.00
3. Creditable withholding tax payment supported by original BIR Form 1606	Annex A1-6	450,000.00
4. Over claimed creditable withholding tax payment	Annex A1-7	3.00
Sub-total		**PhP 1,418,403.00**
Lease income		
1. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN without countersignature	Annex A2-3	PhP 5,999.03
2. Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim	Annex A2-4	1,070,717.65
3. Supporting documents not available for verification	Annex A2-5	581,621.98
4. Under claimed creditable withholding tax payment	Annex A2-6	(929.56)
Sub-total		**PhP 1,657,409.10**
Interest income on commercial and trade loans		
1. Creditable withholding tax payment supported by original BIR Form 2307 but with different Company TIN indicated therein	Annex A3-6	PhP 116,313.45
2. Creditable withholding tax payment supported by original BIR Form 2307 without the Company's TIN indicated therein and with erasure in amount of withholding tax without countersignature	Annex A3-7	36,410.29
3. Creditable withholding tax payment supported by original BIR Form 2307	Annex A3-8	18,172.17

Findings	*Reference (Exhibit P-92)*	*Amount of Creditable Withholding Tax*
with erasure in the amount without countersignature but can be recomputed		
4. Creditable withholding tax payment supported by original BIR Form 2307 without the Company's TIN indicated therein and with erasure in amount of withholding tax without countersignature but the withholding tax can be recomputed using the tax base and related withholding tax rate as indicated in the Form	Annex A3-9	56,000.47
5. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN without countersignature	Annex A3-10	81,053.56
6. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the amount of withholding tax without countersignature	Annex A3-11	30,231.36
7. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the year without countersignature	Annex A3-12	3,836.16
8. Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim	Annex A3-13	39,352.93
9. Creditable withholding tax payment supported by photocopy of BIR Form 2307	Annex A3-14	23,164.90
10. Creditable withholding tax payment supported by original BIR Form 2307 without signature	Annex A3-15	4,475.63
11. Supporting documents not available for verification	Annex A3-16	53,411.65
12. Under claimed creditable withholding tax payment	Annex A3-17	(56,504.35)
Sub-total		**PhP 405,918.22**
<u>*Reimbursements*</u>		

Findings	*Reference (Exhibit P-92)*	*Amount of Creditable Withholding Tax*
1. Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim	Annex A4-2	PhP 38,111.45
2. Supporting documents not available for verification	Annex A4-3	4,716.11
3. Under claimed creditable withholding tax payments	Annex A4-4	(0.01)
Sub-total		**PhP 42,827.55**
TOTAL - Other Findings		**PhP 3,524,557.87**
GRAND TOTAL		**PhP 33,950,357.40**

However, out of the ICPA recommended amount of PhP33,950,357.40, the amount of PhP3,524,557.87, which was classified by the ICPA under the caption "*B. Other Findings*" shall be reduced therefrom for not being supported by BIR Form No. 2307.

In addition, out of the PhP30,425,799.53[32] CWT payments found by the ICPA to be duly supported by original BIR Form 2307 and BIR Certification (*under letter A of the ICPA Findings*), the amount of PhP636,435.68 shall be disallowed, detailed as follows:

Findings	*Reference (Exhibit P-92)*	*Amount of Creditable Withholding Tax*
A. ***Creditable withholding tax payments duly supported by original BIR Form 2307 and BIR Certification***		
Sale of Property		
xxx		
3. Creditable withholding tax payment supported by BIR certification confirming the remittance of taxes withheld	Annex A1-3	PhP 144,000.00
Interest income on commercial and trade loans		
xxx		

[32] The difference of PhP33,950,357.40 and PhP3,524,557.87.

Findings	Reference (Exhibit P-92)	Amount of Creditable Withholding Tax
2. Creditable withholding tax payment supported by original BIR Form 2307 without the Company's TIN indicated therein	Annex A3-2	335,841.29
3. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the amount of withholding tax but with countersignature and the withholding tax can be recomputed using the tax base and related withholding tax rate as indicated in the Form	Annex A3-3	10,895.12
xxx		
5. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN but with countersignature	Annex A3-5	129,848.46
Total		**PhP 636,435.68**

Likewise, the CWT of PhP144,000.00 under *Annex "A1-3"* of *"Sale of Property"* shall be disallowed for petitioner's failure to present the corresponding BIR Form No. 2307. The BIR Certification confirming the remittance of PhP144,000.00 CWT cannot be a substitute to BIR Form No. 2307.

Also, petitioner's claimed CWT under *Annexes "A3-2," "A3-3"* and *"A3-5"* of *"Interest income on commercial and trade loans"* shall be disallowed because of the following reasons, respectively:

a) The supporting BIR Form No. 2307 did not indicate petitioner's TIN;

b) The countersignature on the corrections made in BIR Forms No. 2307 marked as *Exhibits "P-48.31," "P-48.518," and "P-48.666"* of *Annex "A3-3"* is not similar with the signature appearing in the blank provided for the "Payor/Payor's Authorized Representative" and the remaining exhibits/BIR Forms No. 2307 do not bear petitioner's TIN; and

c) The countersignature on the corrections made in all the exhibits/BIR Forms No. 2307 in *Annex "A3-5"* is not similar with the signature appearing in the blank provided for the "Payor/Payor's Authorized Representative".

In fine, petitioner was able to prove compliance with the third condition only to the extent of PhP29,789,363.85, broken down as follows:

Findings	**Reference (Exhibit P-92)**	**Amount of Creditable Withholding Tax**
1. Sale of property	Annex A1-1	PhP 6,822,124.20
	Annex A1-2	6,507,840.45
2. Lease income	Annex A2-1	13,148,401.48
	Annex A2-2	261,059.17
3. Interest Income on commercial and trade loans	Annex A3-1	2,899,457.88
4. Reimbursements	Annex A4-1	150,480.67
TOTAL		**PhP 29,789,363.85**

As regards the second condition, there must be a showing on the return that the income payment subjected to withholding tax was declared as part of the gross income of petitioner.

From the amount of PhP29,789,363.85 CWT, supported with BIR Form No. 2307, only the amount of PhP27,275,721.33 CWT were verified to have been included in petitioner's General Ledger and Annual ITR for taxable year 2010, to wit:

Findings	***Reference (Exhibit P-92)***	***Amount of Creditable Withholding Tax***
Creditable withholding tax duly supported by original BIR Form 2307 and the related income were traced in the petitioner's General Ledger and Annual Income Tax Return for taxable year 2010		
Sale of property		
1. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original deed of absolute sale or contract to sell, photocopy of sales offering ticket, original accounting ticket, and traced to GL	Annex B1-1	PhP 6,822,124.20

<table>
<tr><th colspan="3">Findings</th><th>Reference (Exhibit P-92)</th><th>Amount of Creditable Withholding Tax</th></tr>
<tr><td colspan="3">2. Creditable withholding tax payment supported by original BIR Form 2307 and BIR certification confirming the remittance of taxes withheld; the related income of which is supported by original deed of absolute sale or contract to sell, photocopy sales offering ticket, original accounting ticket, and traced to GL</td><td>Annex B1-2</td><td>4,876,188.45</td></tr>
<tr><td colspan="3">3. Creditable withholding tax payment supported by original BIR Form 2307 and BIR certification confirming the remittance of taxes withheld; the related income of which is supported by original deed of absolute sale, photocopy sales offering ticket, original memo to book, and traced to GL</td><td>Annex B1-3</td><td>1,631,652.00</td></tr>
<tr><td colspan="3">Subtotal</td><td></td><td>PhP13,329,964.65</td></tr>
<tr><td colspan="3"></td><td></td><td></td></tr>
<tr><td colspan="3"><u>Lease income</u></td><td></td><td></td></tr>
<tr><td colspan="3">1. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original lease contract and accounting ticket, and traced to GL</td><td>Annex B2-1</td><td>PhP 4,792,595.43</td></tr>
<tr><td colspan="3">2. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy of lease contract and original accounting ticket, and traced to GL</td><td>Annex B2-2</td><td>1,707.63</td></tr>
<tr><td colspan="3">3. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original accounting ticket, and traced to GL</td><td>Annex B2-3</td><td>8,124,342.21</td></tr>
<tr><td colspan="3">4. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original lease contract and accounting ticket but partially traced to GL</td><td rowspan="3">Annex B2-5</td><td rowspan="3">99,952.00</td></tr>
<tr><td>Lease Income Traced</td><td>1,999,038.49</td><td rowspan="2">x176,581.84 (CWT)</td></tr>
<tr><td>Total Income per BIR</td><td>3,531,634.25</td></tr>
</table>

Findings			*Reference (Exhibit P-92)*	*Amount of Creditable Withholding Tax*
Form No. 2307				
Subtotal				**PhP13,018,597.27**
Interest income on commercial and trade loans				
1. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original trust receipt (TR), debit advice and instruction sheet, and traced to GL			Annex B3-1	PhP 194,268.84
2. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original TR, debit advice and instruction sheet and traced to GL; income per GL exceeds that of Form 2307			Annex B3-2	15,631.52
3. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original debit advice and instruction sheet, and traced to GL			Annex B3-3	6,911.73
4. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original debit advice and instruction sheet, and traced to GL; income per GL exceeds that of the Form 2307			Annex B3-4	715.00
5. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original promissory note (PN) and instruction sheet, and traced to GL			Annex B3-5	435,594.28
6. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet, and traced to GL			Annex B3-6	34,944.08
7. Creditable withholding tax payment supported by certified true copy of BIR Form 2307; the related income of which is supported by original TR, debit advice and instruction sheet, and traced to GL			Annex B3-17	15,850.81
8. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by			Annex B3-18	34,856.78

✓

Findings			***Reference (Exhibit P-92)***	***Amount of Creditable Withholding Tax***
original TR, debit advice and instruction sheet, but partially traced to GL				
Interest Income Traced	1,742,839.11	x40,047.03 (CWT)		
Total Interest Income per BIR Form No. 2307	2,002,351.80			
9. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is partially supported by original TR, debit advice and instruction sheet, but partially traced to GL				
Interest Income Traced	3,219,500.42	x79,402.53 (CWT)		
Total Interest Income per BIR Form No. 2307	3,970,125.57		Annex B3-19	64,390.02
10. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original PN and instruction sheet, but partially traced to GL				
Interest Income Traced	854,467.43	x 18,747.28 (CWT)		
Total Interest Income per BIR Form No. 2307	937,363.74		Annex B3-21	17,089.35
11. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet, but partially traced to GL			Annex B3-22	241.54

Findings			*Reference (Exhibit P-92)*	*Amount of Creditable Withholding Tax*
Interest Income Traced	12,077.09			
Total Interest Income per BIR Form No. 2307	21,312.50	x 426.25 (CWT)		
12. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is partially supported by original PN and instruction sheet, but partially traced to GL				
Interest Income Traced	3,079,966.58			
Total Interest Income per BIR Form No. 2307	5,649,579.57	x115,996.30 (CWT)	Annex B3-23	63,237.40
13. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the amount withholding tax but with countersignature and the withholding tax can be recomputed using the tax base and related withholding tax rate as indicated in the Form; the related income of which is supported by original TR, debit advice and instruction sheet but partially traced to GL				
Interest Income Traced	*1,943.91*			
Total Interest Income per BIR Form No. 2307	*141,926.59*	x 2,838.53 (CWT)	Annex B3-27	38.88
Sub-total				**PhP 883,770.23**

Findings	*Reference (Exhibit P-92)*	*Amount of Creditable Withholding Tax*
Reimbursements		
1. Creditable withholding tax payment supported by original BIR Form 2307; the related reduction in expense of which is supported by original accounting ticket and traced to GL	Annex B4-1	**PhP 43,389.18**
TOTAL - Creditable withholding taxes duly supported by original BIR Form 2307 and the related income of which were traced to the petitioner's General Ledger and Annual Income Tax Return for taxable year 2010		**PhP27,275,721.33**

In view of the foregoing, from petitioner's claim of PhP33,350,357.40, only the amount of PhP27,275,721.33 complied with the substantiation requirements as prescribed in Sections 58(D), 76, 204 and 229 of the Tax Code and the conditions set forth in the *Team Case*[33] and *Banco Filipino Case*[34].

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-SEVEN MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND SEVEN HUNDRED TWENTY ONE AND 33/100 PESOS (PHP27,275,721.33)** representing petitioner's unutilized creditable withholding taxes for taxable year 2010.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[33] CTA EB 694 (CTA Case No. 7603), April 13, 2012
[34] G.R. No. 155682, March 27, 2007, 520 SCRA 312.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution and the Division's 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