REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

UNIVATION MOTOR PHILIPPINES, INC. (FORMERLY, NISSAN MOTOR PHILIPPINES, INC.), Petitioner,	**CTA CASE NO. 9027**
	Members:
-versus-	**Castañeda, Jr.,** *Chairperson,* **Casanova,** *and* **Manahan,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 22 2017 2:50 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This is a Petition for Review[1] filed on April 10, 2015 by Univation Motor Philippines, Inc. (Formerly, Nissan Motor Philippines, Inc.) against the Commissioner of Internal Revenue (CIR) to seek the refund or issuance of tax credit certificate (TCC) in the amount of ₱7,281,271.00, allegedly representing its excess and unutilized creditable withholding taxes (CWT) for calendar year (CY) 2012.

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[1] Docket, Vol. I, pp. 12-22.

THE FACTS

Petitioner Univation Motor Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines, with principal office at Nissan Technopark, Barangay Pulong, Sta. Cruz, Sta. Rosa, Laguna.[2] It is registered with the Bureau of Internal Revenue (BIR) Large Taxpayers Service, as evidenced by its BIR Certificate of Registration No. OCN8RC0000054095 dated January 31, 1996 and Taxpayer Identification Number (TIN) 000-389-353-000.[3]

As stated in its Articles of Incorporation, petitioner's primary purpose is:

> "To carry on business of buying, acquiring, manufacturing, assembling, producing, importing, holding, selling, disposing, distributing, dealing in motor trucks, cars, engines and other kinds of automobiles and mechanically propelled vehicles, means of transportation and industrial machinery, their bodies, spare parts, accessories; and to repair, maintain, service, condition and/or recondition said products."[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Quezon City.

On April 12, 2013, petitioner filed its original Annual Income Tax Return (ITR) through Electronic Filing and Payment System (eFPS) for CY 2012[5] with the BIR. Thereafter, petitioner manually filed the same original Annual ITR on April 25, 2013.[6] On July 9, 2013, petitioner filed its amended Annual ITR through eFPS for CY 2012.[7] Petitioner also manually filed the same amended Annual ITR on July 19, 2013.[8]

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[2] Exhibit "P-1", docket, Vol. II, pp. 459-481; Par. 3, Joint Stipulation of Facts and Issues (JSFI), docket, Vol. I, p. 342.
[3] Exhibit "P-2", docket, Vol. II, p. 482; Par. 5, JSFI, docket, Vol. I, p. 343.
[4] Exhibit "P-1", docket, Vol. II, p. 462; Par. 4, JSFI, docket, Vol. I, p. 343.
[5] Exhibit "P-3", docket, Vol. II, p. 665.
[6] Exhibit "P-3-a", docket, Vol. II, pp. 497-502.
[7] Exhibit "P-4", docket, Vol. II, p. 679.
[8] Exhibit "P-4-a, docket, Vol. II, pp. 518-523.

On December 9, 2013, petitioner filed with the BIR Large Taxpayers Excise Audit Division (LTEAD) II an administrative claim for refund or issuance of TCC for alleged excess and unutilized CWT for CY 2012 in the amount of ₱7,281,271.00.[9]

Due to respondent's inaction, petitioner filed the present Petition for Review on April 10, 2015.

On May 5, 2015, respondent filed his Answer[10], interposing the following Special and Affirmative Defenses:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
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> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 5. The amount of P7,281,271.00 allegedly representing excess and unutilized creditable withholding taxes for the calendar year ended 31 December 2012 was not properly documented.
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.
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> 7. Petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
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> 8. The instant case involves a claim for refund of alleged excess and unutilized creditable withholding taxes for calendar year 2012. Thus, it is incumbent upon petitioner to discharge its burden of proving entitlement thereto, which basically must include the fact of withholding of taxes and its subsequent remittance to the BIR.
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> 9. Petitioner must prove that it has complied with the following requisites as ruled by the Supreme Court and the Honorable Court in a number of cases, to wit: (a) the claim is filed with the Commissioner of Internal within the two-year period from the date of payment of the tax; (b) it is shown on the return of the

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[9] Exhibits "P-12" and "P-12-a", docket, Vol. II, pp. 620-622; Par. 6, JSFI, docket, Vol. I, p. 343.
[10] Docket, Vol. I, pp. 136-141.

recipient that the income payment received was declared as part of the gross income; and (c) 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.

10. Petitioner must likewise prove that it has not exercised the option to carry over any excess credits in the succeeding quarters as provided under Section 76 of the National Internal Revenue Code of 1997 (NIRC of 1997) which provides thus:

> '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.

11. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people ***(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690)***. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time

frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

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 Revenue 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)**.

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)**.

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[11] was set on June 25, 2015. Respondent's Pre-Trial Brief[12] was filed on June 2, 2015; while Petitioner's Pre-Trial Brief[13] was filed on June 22, 2015.

The parties filed their Joint Stipulation of Facts and Issues[14] on July 14, 2015, which was approved by the Court in its Pre-Trial Order[15] issued on July 30, 2015.

[11] Notice of Pre-Trial Conference, docket, Vol. I, pp. 142-143.
[12] Docket, Vol. I, pp. 144-147.
[13] Docket, Vol. I, pp. 329-338.
[14] Docket, Vol. I, pp. 341-349.
[15] Docket, Vol. I, pp. 372-377.

During trial, petitioner presented the following witnesses: (1) Ms. Lourdes Y. Bautista[16]; and (3) Independent Certified Public Accountant (ICPA) Madonna Mia S. Dayego.[17]

On November 5, 2015, petitioner filed its Formal Offer of Evidence,[18] offering Exhibits "P-1", "P-2", "P-3", "P-3-a", "P-4", "P-4-a", "P-5", "P-5-a", "P-6", "P-6-a", "P-7", "P-7-a", "P-8", "P-8-a", "P-9", "P-10", "P-11", "P-12", "P-12-a", "P-13", "P-13-a", "P-14", "P-14-1", "P-14-2", "P-14-3", "P-14-4", "P-14-5", "P-14-6", "P-14-7", "P-15", "P-15-1", "P-15-2", "P-15-3", "P-15-4", "P-15-5", "P-15-6", "P-15-7", "P-16", "P-17", "P-17-1" to "P-17-539", "P-18", "P-18-1", "P-18-2", "P-18-3", "P-19", "P-19-1", "P-19-2", "P-19-3", "P-20", "P-20-1", "P-20-2", "P-21", "P-21-1", "P-21-2", "P-21-3", "P-22", "P-22-1" to "P-22-8954", "P-22-a-1" to "P-22-a-33", "P-23", "P-23-1" to "P-23-1605", "P-23-a-1" to "P-23-a-845", "P-24", "P-24-1" to "P-24-25", "P-24-26" to "P-24-29", "P-24-30" to "P-24-41", "P-24-42", "P-25", "P-25-1" to "P-25-15", "P-25-16" to "P-25-19", "P-25-20" to "P-25-31", "P-25-32", "P-26", "P-26-1", "P-27", "P-27-1", "P-28", "P-29", "P-30", "P-31-1", "P-31-2", "P-31-3", "P-32", "P-33", "P-33-1" to "P-33-220", "P-34", "P-34-a", "P-35", and "P-35-a, as its documentary evidence. Respondent filed his Comment (On Petitioner's Formal Offer of Exhibits)[19] on November 6, 2015.

In the Resolution[20] dated December 9, 2015, the Court admitted Exhibits "P-1", "P-2", "P-3-a", "P-4-a", "P-5-a", "P-6-a", "P-7-a", "P-8-a", "P-12", "P-12-a", "P-13", "P-13-a", "P-14", "P-14-1", "P-14-2", "P-14-3", "P-14-4", "P-14-5", "P-14-6", "P-14-7", "P-15", "P-15-1", "P-15-2", "P-15-3", "P-15-4", "P-15-5", "P-15-6", "P-15-7", "P-16", "P-17", "P-17-1" to "P-17-539", "P-18", "P-18-1", "P-18-2", "P-18-3", "P-19", "P-19-1", "P-19-2", "P-19-3", "P-20", "P-20-1", "P-20-2", "P-21", "P-21-1", "P-21-2", "P-21-3", "P-22", "P-22-1" to "P-22-8954", "P-22-a-1" to "P-22-a-33", "P-23", "P-23-1" to "P-23-464", "P-23-466" to "P-23-1308", 'P-23-1310" to "P-23-1605", "P-23-a-1" to "P-23-a-705", "P-23-a-707" to "P-23-a-845", "P-24", "P-24-1" to "P-24-25", "P-24-26" to "P-24-29", "P-24-30" to "P-24-41", "P-24-42", "P-25", "P-25-1" to "P-25-15", "P-25-16" to "P-25-19", "P-25-20" to "P-25-31", "P-25-32", "P-26", "P-26-1", "P-27", "P-27-1", "P-28", "P-29", "P-30", "P-31-1", "P-31-2", "P-31-3", "P-32", "P-33", "P-33-1" to "P-33-220", "P-34", "P-34-a", "P-35", gr

[16] Minutes of the hearing on August 26, 2015, docket, Vol. II, p. 383.
[17] Minutes of the hearing on October 7, 2015, docket, Vol. II, p. 412.
[18] Docket, Vol. II, pp. 425-458.
[19] Docket, Vol. II, pp. 646-649.
[20] Docket, Vol. II, pp. 651-652.

and "P-35-a. The Court, however, denied the admission of Exhibits "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-23-465", "P-23-1309", and "P-23-a-706".

Petitioner filed its Motion for Partial Reconsideration (Re: Resolution dated December 9, 2015)[21] on January 4, 2016. Respondent, however, failed to file his comment on petitioner's motion.[22] In the Resolution[23] dated August 24, 2016, the Court granted petitioner's motion and accordingly admitted Exhibits "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-23-465", and "P-23-1309".

On the other hand, respondent, through counsel, manifested that he has no witness to present.[24]

Respondent filed his Memorandum[25] on January 20, 2016; while petitioner filed its Memorandum[26] on September 30, 2016. Hence, the case was declared submitted for decision on October 24, 2016.[27]

THE ISSUES

The parties stipulated the following issue for the Court's resolution:[28]

> "Whether or not petitioner is entitled to its claim for refund of or issuance of TCC for its alleged excess and unutilized CWT for CY 2012 in the amount of ₱7,281,271.00."

The afore-mentioned issue may be broken down into the following sub-issues:

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[21] Docket, Vol. II, pp. 656-664.
[22] Records Verification dated January 28, 2016, docket, Vol. II, p. 757.
[23] Docket, Vol. II, pp. 783-785.
[24] Docket, Vol. II, 652.
[25] Docket, Vol. II, pp. 750-756.
[26] Docket, Vol. II, pp. 790-808.
[27] Docket, Vol. II, p. 809.
[28] JSFI, docket, Vol. I, pp. 343-344.

(a) Whether or not petitioner had alleged excess and unutilized CWT for CY 2012 in the amount of ₱7,281,271.00;

(b) Whether or not petitioner's alleged excess and unutilized CWT for CY 2012 in the amount of ₱7,281,271.00 are duly substantiated by documentary evidence;

(c) Whether or not the alleged income from which the CWT's being claimed for refund were withheld was reported as part of the gross revenues declared in petitioner's Annual Income Tax Return;

(d) Whether or not petitioner carried over its alleged excess and unutilized CWT for CY 2012 to the succeeding taxable periods; and

(e) Whether or not petitioner filed its administrative and judicial claims for refund of alleged excess and unutilized CWT for CY 2012 within the two (2)-year prescriptive period provided under Sections 204(C) and 229, Tax Code.

THE COURT'S RULING

Petitioner's claim finds legal basis on Section 76 of the NIRC of 1997, as amended, which provides:

> "SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (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 tax credit certificate shall be allowed therefor."

The above provision prescribes two options to a taxable corporation whose total quarterly income tax payment in a given taxable year exceeds its total income tax due. The taxpayer may either file a tax refund (either in the form of cash or tax credit certificate) or carry over the excess credit. However, once the carry-over option is taken actually or constructively, it becomes irrevocable for that taxable period.[29] 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.[30]

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 facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[31]

A perusal of its Annual ITR for CY 2012[32] shows that petitioner had income tax credits in the total amount of ₱19,171,887.00, consisting of the prior year's excess credits other than the Minimum Corporate Income Tax (MCIT) in the amount of ₱11,890,616.00 and CWT for the four (4) quarters in the aggregate amount of ₱7,281,271.00, to wit:

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

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

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

[32] Exhibit "P-4", docket, Vol. II, p. 679.

Prior year's excess credits other than MCIT		₱ 11,890,616.00
Creditable tax withheld from previous quarter/s	₱3,833,993.00	
Creditable tax withheld for the fourth quarter	3,447,278.00	7,281,271.00
Total Tax Credits		**₱19,171,887.00**

As illustrated below, the prior year's excess credits of ₱11,890,616.00 originated from the creditable taxes withheld for the years 2007 and 2008 in the respective amounts of ₱19,514,513.00 and ₱16,024,714.00, which are duly supported by various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)[33]:

Exhibit	Taxable Year	Income Tax Due (a)	Prior Year's Excess Credits (b)	(Income Tax Still Due)/Balance of Prior Year's Excess Credits (c) = (b) less (a)	CWT for the Year (d)	CWT at the End of the Year
"P-14-1"	2005	₱ 13,120,451.40	₱ -	₱ (13,120,451.40)	₱ 32,752,987.00	₱ 19,632,535.60
"P-14-2"	2006	-	19,632,536.00*	19,632,536.00	25,287,007.00	44,919,543.00
"P-14-3"	2007	56,165,995.35	44,919,543.00	(11,246,452.35)	19,424,967.00	8,178,514.65
"P-14-4"	2008	6,188,219.90	8,268,061.00*	2,079,841.10	16,024,714.00	18,104,555.10
"P-14-5"	2009	2,527,717.78	18,104,555.00*	15,576,837.22	**	15,576,837.22
"P-14-6"	2010	2,341,683.48	15,576,837.00*	13,235,153.52	**	13,235,153.52
"P-14-7"	2011	1,344,538.02	13,235,154.00*	11,890,615.98	**	11,890,615.98

**Amounts were rounded-off*
***Amounts were claimed for issuance of TCC*

Petitioner's MCIT due for CY 2012 in the amount of ₱1,698,158.90 was offset against the prior year's excess credits of ₱11,890,616.00, leaving the latter a balance of ₱10,192,457.10 and CWT during CY 2012 in the amount of ₱7,281,271.00 or in the total amount of ₱17,473,728.10[34] unutilized as of December 31, 2012, as shown below:

Prior Year's Excess Credits	₱ 11,890,616.00
Less: Income Tax Due	1,698,158.90
Balance of Prior Year's Excess Credits	10,192,457.10
Add: Creditable Taxes Withheld During the Year	7,281,271.00
Unutilized Excess Tax Credits as of December 31, 2012	**₱ 17,473,728.10**

Inasmuch as petitioner clearly indicated its intention to be issued a TCC by marking the box corresponding to the said choice in its Annual ITR[35] for CY 2012 and only the excess tax credits from prior years of ₱10,192,457.00 were carried over by petitioner in its tax

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33 Exhibits "P-33-1" to "P-33-220".
34 Exhibit "P-4", docket, Vol. II, p. 679.
35 Exhibit "P-3", docket, Vol. II, p. 669.

returns[36] for the succeeding taxable year 2013, the unutilized CWT for the year 2012 in the amount of ₱7,281,271.00 may be the proper subject of a claim for TCC under Section 76 of the NIRC of 1997, as amended.

However, in addition to the requisite provided under Section 76 of the NIRC of 1997, as amended, a taxpayer must also satisfy the following requirements in order to be entitled to a refund or issuance of TCC for unapplied excess CWTs:

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, as amended;

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.[37]

Anent the first requisite, the pertinent provisions are Sections 204(C) and 229 of the NIRC of 1997, as amended, which read as follows:

> "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

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[36] Exhibits "P-5", "P-5-a", "P-6", "P-6-a", "P-7", "P-7-a", "P-8", P-8-a", "P-9", "P-10", and "P-11", docket, Vol. II, pp. 700, 539, 710, 557, 721, 576, 732, 600, 737, 740, and 745.

[37] *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.

revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*

"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)*

In applying the foregoing provisions, the Supreme Court, in the case of *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*[38], held that the two-year prescriptive period for claiming a refund of overpaid income tax/CWT commences to run on the date of filing of the Final Adjustment Return. It is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[39] This guiding principle was reiterated in the case of *Commissioner of Internal Revenue, et al. vs. Primetown Property Group, Inc.*[40], where it was held that the two-year prescriptive period is reckoned from the filing of the Final Adjustment Return.

[38] G.R. No. 96322, December 20, 1991.
[39] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.
[40] G.R. No. 162155, August 28, 2007.

In the present case, petitioner filed its amended Annual ITR for CY 2012 on July 9, 2013.[41] Counting from this date, petitioner had until July 9, 2015 to file an administrative claim for refund or issuance of a TCC, and to institute the corresponding judicial action. Considering that petitioner's administrative claim for refund of or issuance of TCC for the excess and unutilized CWT for CY 2012 was filed with the BIR LTEAD II on December 9, 2013[42], and the subsequent appeal was filed before this Court on April 10, 2015[43], clearly, both the administrative and the judicial claims were filed within the two-year prescriptive period under Sections 204(C) and 229 of the NIRC of 1997, as amended.

The second and third requisites are imposed by Section 2.58.3(B) of Revenue Regulations (RR) No. 02-98, as amended, which states:

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

To prove the fact of withholding of the subject CWT, petitioner presented the Schedule of Creditable Taxes Withheld[44] and the related Certificates (BIR Form No. 2307)[45] duly issued by its various withholding agents for the CY 2012, reflecting creditable withholding taxes in the total amount of ₱7,281,271.00 with related income payments of ₱696,467,957.31. ge

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[41] Exhibits "P-4", docket, Vol. II, p. 679.
[42] Par. 6, Joint Stipulation of Facts and Issues, docket, Vol. I, p. 343; Exhibits "P-12" and "P-12-a", docket, Vol. II, pp. 620-622.
[43] Petition for Review, docket, Vol. I, p. 12.
[44] Exhibits "P-16" to "P-17".
[45] Exhibits "P-17-1" to "P-17-539".

Anent the third requisite, the Court-commissioned Independent CPA, Ms. Madonna Mia S. Dayego of Uy Singson Abella & Co., noted in her Report[46] that the income payments of ₱696,467,957.31, *save those of income payments of ₱18,912,909.94 with corresponding CWT of ₱189,271.48*[47], were recorded in petitioner's general ledger (GL), as summarized below,[48] and mentioned that the same were reported in petitioner's Annual ITRs for the years 2012, 2011 and 2010:

Particulars	Per Schedule of Creditable Tax Withheld	Income Payments Covered by BIR Form No. 2307 Traced to General Ledger					Difference
		Exhibit	2010	2011	2012	Total	
Sales of Goods and Services	₱ 693,125,493.02	"P-22-1" to "P-22-8954" and/or "P-22-a-1" to "P-22-a-33"	₱ 18,543,711.41	₱ 89,382,985.26	₱ 566,285,886.41	₱674,212,583.08	₱18,912,909.94
Other Income:							
Handling and delivery charges	210,607.15	"P-24-1" to "P-24-25"	4,285.71	36,500.00	169,821.44	210,607.15	-
Rental income	264,000.00	"P-24-26" to "P-24-29"	-	-	264,000.00	264,000.00	-
Management income	2,100,000.00	"P-24-30" to P-46-41	-	-	2,100,000.00	2,100,000.00	-
Sale of fixed assets	767,857.14	"P-24-42"	-	-	767,857.14	767,857.14	-
Subtotal – Other Income	3,342,464.29		4,285.71	36,500.00	3,301,678.58	3,342,464.29	-
Grand Total	₱ 696,467,957.31		₱ 18,547,997.12	₱89,419,485.26	₱ 569,587,564.99	₱677,555,047.37	₱18,912,909.94

Records show that the income payments related to the subject CWT pertain to petitioner's sales of goods and services and other income for the years 2012, 2011 and 2010.

In ascertaining that the sales and other income per GL tally with those declared per tax returns, the ICPA prepared the following reconciliation:

Particulars	Exhibit	Per GL	Exhibit	Per Schedule of Computation of Taxable Income	Difference
2012					
Sales of goods and services	"P-18-1"	₱ 961,405,824.24		₱ 961,405,824.00	₱ 0.24*
Other income	"P-21-1"	9,976,224.28		96,424,846.00	(86,448,621.72)
Total		₱ 971,382,048.52	"P-28"	₱ 1,057,830,670.00	₱ (86,448,623.00)

[46] Exhibit "P-34", docket, Vol. II, pp. 623-643.
[47] Exhibit "P-22", p. 148 of 148, total amount not traced to GL.
[48] Exhibit "CC", par. 7, p. 6.

2011					
Sales of goods and services	"P-18-2"	₱ 1,510,345,251.00		₱ 1,510,345,251.00	₱ -
Other income	"P-21-2"	6,776,570.99		9,643,362.00	(2,866,791.01)
					(0.99)*
Total		₱ 1,517,121,821.99	"P-29"	₱ 1,519,988,613.00	₱ (2,866,792.00)
2010					
Sales of goods and services	"P-18-3"	₱ 2,151,388,315.77		₱ 2,151,388,316.00	₱ 0.23*
Other income	"P-21-3"	44,993,251.59		59,153,011.00	(14,159,759.41)
					1.64*
Total		₱ 2,196,381,567.36	"P-30"	₱ 2,210,541,327.00	₱ 14,159,758.00)

**Due to rounding-off*

The amounts of sales of goods and services and other income per Schedule of Computation of Taxable Income for the years 2012, 2011 and 2010 were the same amounts reflected in petitioner's Annual ITRs for the same taxable years.

The differences in "Other Income" were accounted for as follows:

Particulars	**Amount**
2012	
Taxable realized foreign exchange gain	₱ (80,819,255.00)
Taxable interest income	(5,243,343.00)
Nontaxable dividend income	297,257.00
Nontaxable reversal of accrued benefits	2,000,000.00
Other expense	(2,683,282.00)
	₱ (86,448,623.00)
2011	
Taxable interest income classified under a separate account in the GL	₱ (580,292.00)
Nontaxable miscellaneous income	(2,286,500.00)
	₱ (2,866,792.00)
2010	
Nontaxable miscellaneous income	₱ 2,597,965.00
Taxable realized foreign exchange gain	(12,878,814.00)
Taxable interest income	(3,878,909.00)
	₱ (14,159,758.00)

Indeed, from the foregoing reconciliations, petitioner was able to prove that the income payments of ₱677,555,047.37 (₱696,467,957.31 less ₱18,912,909.94) with corresponding CWT of ₱7,091,999.52 (₱7,281,271.00 less ₱189,271.48) formed part of the gross income declared in its Annual ITRs.

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT**

CERTIFICATE in the amount of **₱7,091,999.52** in favor of petitioner, representing the latter's excess and unutilized CWT for taxable year 2012.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice