Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PPI PRIME VENTURE, INC. Petitioner,	**CTA Case No. 8795** For: Refund
	Members:
-versus-	**DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 16 2016 11:10 a.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on April 8, 2014, by PPI Prime Venture, Inc. as petitioner, against Commissioner of Internal Revenue as respondent, before the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

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[1] Sec. 7. *Jurisdiction*. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

x x x x x x

[2] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

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Petitioner seeks the refund or issuance of tax credit certificate (TCC) in the amount of ₱31,425,888.00, allegedly representing its excess and unutilized creditable withholding tax (CWT) for calendar year (CY) 2011.

Petitioner PPI Prime Venture, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business located in Makati City. It is duly registered with the Revenue District Office (RDO) No. 50 of the Bureau of Internal Revenue (BIR), with Taxpayer Identification No. (TIN) 000-485-082-000.[3] Petitioner is primarily engaged in the business of owning, holding, purchasing, acquiring, using, selling, transferring, and/or disposing real and personal properties of every kind and description.[4]

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

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[3] Exhibit "P-5", Docket, p. 474; Par. 3, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 393.

[4] Exhibit "P-4", Docket, pp. 457-473; Par. 2. JSFI, Docket, p. 392.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of her office, including, among others, to act on and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 13, 2012, petitioner filed its original Annual Income Tax Return (ITR) for CY 2011 with the BIR.[5] Petitioner reported gross income in the amount of ₱253,696,155.81 and net taxable income of ₱152,217,693,49.[6] On January 27, 2014, petitioner filed its amended Annual ITR for CY 2011 in order to report its alleged excess and unutilized CWT in the amount of ₱31,425,888.00.[7]

On February 27, 2014, petitioner filed with the BIR its administrative claim for refund or issuance of TCC in the amount of ₱31,425,888.00, allegedly representing its excess and unutilized CWT for CY 2011.[8]

There being no action taken by respondent on petitioner's administrative claim for refund or issuance of TCC, petitioner filed the present Petition for Review before this Court on April 8, 2014.

Respondent filed her Answer[9] through registered mail on June 5, 2014 and received by the Court on June 17, 2014, interposing the following Special and Affirmative Defenses:

> "4. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses which are discussed hereunder;
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> 5. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;
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> 6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

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[5] Par. 5, JSFI, Docket, p. 393.
[6] Exhibit "P-16", Docket, pp. 559-561.
[7] Exhibit "P-17", Docket, pp. 587-589.
[8] Par. 6, JSFI, Docket, p. 393.
[9] Docket, pp. 98-100.

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7. It is explicitly stated under Section 76 of the Tax Code, as amended, that once a taxpayer chooses the option of carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed **(Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005)**. Petitioner, therefore, must prove that it did not carry-over its 2011 alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years, otherwise, petitioner is precluded from claiming a cash refund or for issuance of tax credit certificate [of] its excess tax credit for taxable year 2011.

8. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim **(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206)**;

10. It is incumbent upon petitioner to show that it has complied with the provisions of Section 76 in relation to Sections 204 and 229 of the 1997 Tax Code, as amended, including Revenue Regulations No. 2-98, as amended.

11. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor. **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)**."

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Respondent filed her Pre-Trial Brief[10] through registered mail on August 19, 2014 and received by the Court on August 27, 2014; while petitioner filed its Pre-Trial Brief[11] on September 29, 2014. The Pre-Trial Conference was scheduled on August 28, 2014,[12] but was reset to October 2, 2014.[13]

The parties filed their Joint Stipulation of Facts and Issues[14] on October 22, 2014, which was approved by the Court in the Resolution[15] dated October 30, 2014. The Court issued the Pre-Trial Order[16] on November 7, 2014.

During the hearing[17] on February 3, 2015, the Court granted petitioner a period of twenty (20) days to file its Formal Offer of Evidence. Respondent also manifested that she is waiving the presentation of her evidence.

Petitioner filed its Formal Offer of Evidence[18] on February 23, 2015, submitting Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-9-1", "P-10", "P-10-1", "P-11", "P-11-1", "P-11-2", "P-12", "P-12-1", "P-13", "P-14", "P-15", "P-16", "P-16-1", "P-16-2", "P-17", "P-18", "P-19", "P-20", "P-21", "P-21-1", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30-1" to "P-30-2", "P-31-1" to "P-31-2", "P-32-1", "P-32-2", "P-33-1", "P-33-2", "P-34", "P-34-1", "P-35", "P-36", and "P-37". Respondent failed to file her comment to petitioner's Formal Offer of Evidence.[19]

On March 2, 2015, petitioner filed a Manifestation and Motion[20] praying that Exhibits "P-7" and "P-8" be admitted as secondary evidence in accordance with Section 5 of Rule 130 of the Rules of Court. Respondent filed her Comment (To Petitioner's Manifestation and Motion dated March 2, 2015)[21] through registered mail on March 19, 2015 and received by the Court on March 26, 2015.

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[10] Docket, pp. 107-109.
[11] Docket, pp. 363-381.
[12] Notice of Pre-Trial Conference, Docket, p. 101.
[13] Order dated August 27, 2014, Docket, p. 114.
[14] Docket, pp. 392-401.
[15] Docket, p. 415.
[16] Docket, pp. 417-428.
[17] Minutes of the hearing dated February 3, 2015, Docket, pp-431-432.
[18] Docket, pp. 435-449.
[19] Records Verification dated April 6, 2015, Docket, p. 712.
[20] Docket, pp. 702-706.
[21] Docket, pp. 709-710.

In the Resolution[22] dated May 25, 2015, the Court admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-9", "P-9-1", "P-10", "P-10-1", "P-11", "P-11-1", "P-11-2", "P-12", "P-12-1", "P-13", "P-14", "P-15", "P-16", "P-16-1", "P-16-2", "P-17", "P-18", "P-19", "P-20", "P-21", "P-21-1", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30-1" to "P-30-2", "P-31-1" to "P-31-2", "P-32-1", "P-32-2", "P-33-1", "P-33-2", "P-34", "P-34-1", "P-35", "P-36", and "P-37" as petitioner's evidence. However, the Court denied Exhibits "P-7" and "P-8" for petitioner's failure to lay the basis for introducing said exhibits as secondary evidence. In the same Resolution, the parties were also given a period of thirty (30) days within which to file their respective memoranda.

Petitioner's admitted documentary exhibits are as follows:

Exhibits:	**Description:**
P-1	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to petitioner by DMCI Project Developers, Inc. (DMCI) for December 2011, covering the creditable withholding tax (CWT) on the sale of petitioner's real property (the "Property") in the amount of Php15,805,920.00 (the "First Tranche CWT"), stamped received by the Bureau of Internal Revenue (BIR) Authorized Agent Bank (AAB) on April 13, 2012
P-2	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to petitioner by DMCI for December 2011, covering the additional CWT on the sale of the Property in the amount of Php31,425,888.00 (the "Second Tranche CWT"), stamped received by the BIR on January 27, 2014
P-3	Management Agreement between Ayala Corporation (AC) and Pamplona Realty, Inc. (petitioner's former corporate name) dated December 12, 2001
P-4	Petitioner's Amended Articles of Incorporation issued by the Securities and Exchange Commission on March 4, 2009
P-5	Petitioner's BIR Certificate of Registration (BIR Form No. 2303)
P-6	Certificate Authorizing Registration (CAR) (BIR Form No. 2313) under CAR201300199668 issued by the BIR on September 24, 2013, authorizing the transfer of registration of the Property from petitioner to DMCI
P-9	Withholding Tax Remittance Return (BIR Form No. 1606) stamped received by the BIR-AAB on January

[22] Docket, pp. 716-720.

	10, 2012, covering the remittance of CWT in the amount of Php15,805,920.00
P-9-1	Machine validated BIR Tax Payment Deposit Slip covering the remittance of CWT in the amount of Php15,805,920.00 on January 10, 2012
P-10	Withholding Tax Remittance Return (BIR Form No. 1606) stamped received by the BIR-AAB on September 17, 2013, covering the remittance of CWT in the amount of Php42,023,762.10, consisting of the Second Tranche CWT in the amount of Php31,425,888.00 and penalties and interest in the total amount of Php10,597,874.10
P-10-1	Machine validated BTR-BIR Deposit/Payment Slip covering petitioner's payment of Php42,023,762.10 on September 17, 2013
P-11	Petitioner's Annual ITR (BIR Form No. 1702) for CY 2009, which was stamped as received by the BIR on April 15, 2010
P-11-1	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) covering CWT in the amount of Php1,001,785.72, representing the CWT withheld by Carosal Development Corporation from its income payment to petitioner for the purchase of real property in CY 2009
P-11-2	Petitioner's Audited Financial Statements (FS) for CYs 2009 and 2008 stamped received by the BIR on April 15, 2010
P-12	Petitioner's Annual ITR (BIR Form No. 1702) for CY 2010 which was filed with the BIR on April 14, 2011
P-12-1	Petitioner's Audited FS for CYs 2010 and 2009 filed with the BIR on April 14, 2011
P-13	Petitioner's Quarterly ITR (BIR Form No. 1702Q) for the 1st quarter of CY 2011 filed with the BIR on May 20, 2011
P-14	Petitioner's Quarterly ITR (BIR Form No. 1702Q) for the 2nd quarter of CY 2011 filed with the BIR on August 23, 2011
P-15	Petitioner's Quarterly ITR (BIR Form No. 1702Q) for the 3rd quarter of CY 2011 filed with the BIR on October 27, 2011
P-16	Petitioner's Original Annual ITR (BIR Form No. 1702) for CY 2011 filed stamped as received by the BIR on April 13, 2012
P-16-1	BPI BTR-BIR Deposit/Payment Slip covering petitioner's payment of Php29,601,114.91 on April 13, 2012
P-16-2	Petitioner's Audited FS for CYs 2011 and 2010 filed with the BIR on April 13, 2012
P-17	Petitioner's Amended Annual ITR (BIR Form No. 1702) for CY 2011 stamped as received by the BIR on January 27, 2014

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P-18	Petitioner's Quarterly ITR (BIR Form No. 1702Q) for the 1st quarter of CY 2012 which was filed with the BIR on May 9, 2012
P-19	Petitioner's Quarterly ITR (BIR Form No. 1702Q) for the 2nd quarter of CY 2012 which was filed with the BIR on August 10, 2012
P-20	Petitioner's Quarterly ITR (BIR Form No. 1702Q) for the 3rd quarter of CY 2012 which was filed with the BIR on October 17, 2012
P-21	Petitioner's Annual ITR (BIR Form No. 1702) for CY 2012 stamped as received by the BIR on April 15, 2013
P-21-1	Petitioner's Audited FS for CYs 2012 and 2011 which was stamped received by the BIR on April 15, 2013
P-22	Deed of Absolute Sale executed by petitioner and DMCI on December 29, 2011 covering the sale of the Property from petitioner to DMCI
P-23	Petitioner's administrative claim for refund of excess and unutilized CWT for CY 2011, with attached Application for Tax Credits/Refunds (BIR Form No. 1914), stamped received by the BIR on February 27, 2014
P-24	Petitioner's letter-request for certified true copies of supporting documents from the BIR, RDO No. 53A
P-25	Reconciliation Schedule of Petitioner's Gross Income for CY ended December 31, 2011
P-26	Computation of Gain on Sale of Real Property to DMCI for CY ended December 31, 2011
P-27	Schedule of Creditable Withholding Taxes for CY ended December 31, 2011
P-28	Page 12 of petitioner's General Journal Voucher showing the accounting entries recording the sale of the Property to DMCI in December 2011
P-29	Summary of Entries for the Sale of the Property to DMCI in December 2011
P-30-1 to P-30-2	Petitioner's Trial Balance for CY 2010
P-31-1 to P-31-2	Petitioner's Trial Balance for CY 2011
P-32-1	Petitioner's Official Receipt No. 0007 dated December 16, 2011 covering the amount of Php247,626.080.00, representing the purchase price for the sale of the Property in the amount of Php263,432,000.00 less the 6% CWT (First Tranche CWT) in the amount of Php15,805,920.00
P-32-2	Machine validated Deposit/Payment Slip covering the payment of Php247,626,080.00
P-33-1	Petitioner's Official Receipt No. 0008 dated December 16, 2011 covering the amount of Php63,037,728.00, representing payment of the 12% VAT on the purchase price amounting to Php31,611,840.00 and DMCI's 50% share in the 12% VAT on excess zonal value over selling price amounting to Php31,425,888.00

P-33-2	Machine validated Deposit/Payment Slip covering the payment of Php63,037,728.00
P-34	Petitioner's Quarterly ITR (BIR Form No. 1702Q) for the 1st quarter of CY 2010 filed with the BIR on May 31, 2010
P-34-1	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by San Fermin de Pamplona, Inc., covering the CWT on the petitioner's sale of real property in CY 2010 amounting to Php26,269,414.28
P-35	Petitioner's Quarterly ITR (BIR Form No. 1702Q) for the 2nd quarter of CY 2010) filed with the BIR on July 20, 2010
P-36	Petitioner's Quarterly ITR (BIR Form No. 1702Q) for the 3rd quarter of CY 2010 filed with the BIR on November 4, 2010
P-37	Sworn Statement of Ms. Maria Susana C. Bables to Questions Propounded by Atty. Mardomeo N. Raymundo, Jr.

Petitioner filed an Omnibus Motion (I) For Reconsideration (Re: Resolution dated May 25, 2015); and (II) For Leave of Court to Present Additional Evidence[23] on June 17, 2015. Respondent, however, failed to file her comment to petitioner's Omnibus Motion.[24]

On July 1, 2015, petitioner filed a Motion to Defer Filing of Memorandum[25] in view of the pendency of its Omnibus Motion. The Court granted petitioner's Motion to Defer Filing of Memorandum via Resolution[26] dated July 9, 2015.

In the Resolution[27] dated September 16, 2015, the Court denied petitioner's Motion for Reconsideration (Re: Resolution dated May 25, 2015) and Motion for Leave of Court to Present Additional Evidence[28].

Petitioner filed a Motion for Extension of Time to File Memorandum[29] on October 21, 2015. On the same date, petitioner likewise filed a Manifestation with Tender of Excluded Evidence.

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[23] Docket, pp. 721-733.
[24] Records Verification dated July 23, 2015, Docket, p. 749.
[25] Docket, pp. 742-745.
[26] Docket, p 748.
[27] Docket, pp. 751-755.
[28] Docket, pp. 756-758.
[29] Docket, pp. 759-767.

Respondent filed her Memorandum[30] through registered mail on October 15, 2015 and received by the Court on October 22, 2015.

In the Order[31] dated October 26, 2015, the Court noted the submission of respondent's Memorandum and further granted petitioner's Motion for Extension of Time to File Memorandum. Thereafter, petitioner filed its Memorandum[32] on November 23, 2015.

In view of the filing of the parties' respective Memoranda, the case was declared submitted for decision on December 1, 2015.[33]

The parties submitted the following issue[34] for this Court's resolution:

> Whether or not petitioner is entitled to the refund of or issuance of a TCC for its excess and unutilized CWT for CY 2011 in the total amount of ₱31,425,888.00.

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

1. Whether or not petitioner had excess and unutilized CWT in CY 2011;

2. Whether or not petitioner's excess and unutilized CWTs for CY 2011 are duly supported by documentary evidence;

3. Whether or not the income from which the CWTs being claimed for refund were withheld was reported as part of the gross income declared in petitioner's Annual ITR for CY 2011;

4. Whether or not petitioner exercised the option to carry over and/or carried over its excess and unutilized CWT for CY 2011 to the succeeding taxable periods; and

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[30] Docket, pp. 768-773.
[31] Docket, p. 775.
[32] Docket, pp. 776-798.
[33] Resolution dated December 1, 2015, Docket, p. 800.
[34] Docket, p. 394.

5. Whether or not petitioner filed its administrative and judicial claims for refund within the two-year prescriptive period provided under Sections 204(C) and 229 of the Tax Code.

Petitioner anchors its claim on Sections 58(D) and 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, quoted hereunder for ready reference:

> "SEC. 58. *Returns and Payment of Taxes Withheld at Source.* –
>
> xxx xxx xxx
>
> (D) *Income of Recipient.* – Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.
>
> All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent."
>
> "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.

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In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. 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."

Pursuant to above-quoted provisions, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (in the form of cash or tax credit certificate) or carried over/applied to the succeeding taxable years. However, once the carry-over option is chosen, it shall be irrevocable for that taxable period and no application for a tax refund or issuance of a tax credit certificate shall be allowed.[35]

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, the remedies are in the alternative and the choice of one precludes the other.[36]

In the instant case, petitioner opted "To be issued a Tax Credit Certificate" in its amended Annual Income Tax Return for CY 2011.[37] Further, the claimed CWTs of ₱31,425,888.00 were no longer carried over as excess credits in petitioner's Quarterly and Annual ITRs for the succeeding CY 2012[38], thus, preventing the same from being applied to future income tax due. Therefore, the claimed amount of ₱31,425,888.00 appears to be refundable pursuant to Section 76 of the NIRC of 1997, as amended.

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[35] *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.
[36] *Philippines Bank of Communications vs. Commissioner of Internal Revenue, et. al.* G.R. No. 112024, January 28, 1999.
[37] Exhibit "P-17", Line 37, Docket, p. 588.
[38] Exhibits "P-18", "P-19", and "P-20", Line 31A, Docket, pp. 594, 597, and 600; Exhibit "P-21", Docket, p. 604.

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.[39]

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 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**

[39] *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.

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)*

It is well-settled in our jurisprudence that the reckoning of the two-year prescriptive period for the filing of a claim for issuance of tax credit certificate or refund of excess income tax withheld, both in the administrative and judicial levels, commences from the date of filing of the Final Adjustment Return. The reason is obvious. It is only when the 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.[40]

Petitioner filed its amended Annual ITR on January 27, 2014.[41] The amended Annual ITR shall be considered as the Final Adjustment Return in accordance with Section 76 of the NIRC of 1997, as

[40] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals,* G.R. No. 83736, January 15, 1992; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et. al.,* G.R. No. 105208, May 29, 1995; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et. al.,* G.R. No. 96322, December 20, 1991.
[41] Exhibit "P-17", Docket pp. 587 to 589.

amended, since it was only in the filing of the amended Annual ITR when it was determined that there was a resulting excess CWT. Hence, the date of filing of the amended Annual ITR on January 27, 2014 shall be the reckoning date to count the two-year prescriptive period provided under Sections 204(C) and 229 of the NIRC of 1997, as amended.

Petitioner filed its administrative claim for refund or issuance of tax credit certificate with respondent on February 27, 2014.[42] Due to alleged inaction by the latter, petitioner elevated its claim before this Court through a Petition for Review filed on April 8, 2014. Both dates of filing fell within the two-year prescriptive period provided under Sections 204(C) and 229 of the NIRC of 1997, as amended. Clearly, petitioner satisfied the first requirement.

The Court will now proceed to determine petitioner's compliance with the second and third requisites.

The subject claim amounting to ₱31,425,888.00 is composed of the following:[43]

Annual ITR Line Item	Description	Amount
32	Income tax due	₱ 45,665,308.05
	Less:	
33A	Prior year's excess credit other than MCIT	6,104.14
33D	Excess MCIT applied this current taxable year	252,169.00
33H	Creditable tax withheld per BIR Form No. 2307 for the 4th Qtr.	47,231,808.00
33L	Tax paid in return previously filed, if this is an amended return	29,601,114.91
33R	Total tax credits/payments	77,091,196.05
34B/37	**Tax payable/(overpayment)**	**₱(31,425,888.00)**

Petitioner satisfactorily supported the amounts per Line Items 33H and 33L though the presentation of the following documents:

Exhibit No.	Description	Amount
"P-1"[44]		₱ 15,805,920.00

[42] Exhibit "P-23", Docket, pp. 634 to 640.
[43] Exhibit "P-17", Docket, p. 588.
[44] Docket, p. 450.

"P-2"[45]	BIR Form No. 2307 issued to petitioner by DMCI Project Developers, Inc. covering the month of December 2011	31,425,888.00
		₱47,231,808.00
"P-16-1"[46]	BTR-BIR Deposit Slip dated April 13, 2012 per Original Annual ITR[47]	**₱29,601,114.91**

As for Line Item 33D, the Court noted from the amended Annual ITR under Schedule 2 thereof that the excess MCIT amounting to ₱252,169.00 arose from CY 2009. Based on CY 2009 ITR[48], petitioner incurred an MCIT amounting to ₱252,169.00[49] which was applied against its CWTs amounting to ₱1,001,786.00[50], supported by BIR Form No. 2307[51]. The resulting excess CWT in the amount of ₱749,616.00 was opted by petitioner "To be carried over as tax credit next year/quarter".[52]

According to Section 27(E)(1) and (2) of the NIRC of 1997, as amended, a Minimum Corporate Income Tax (MCIT) of two percent (2%) is imposed as of the end of the taxable year, beginning in the fourth taxable year from the commencement of business operations, when it is greater than the normal income tax due and the excess of MCIT over normal income tax shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years.

In its CY 2010 ITR[53], petitioner incurred normal income tax amounting to ₱29,096,876.00[54]. However, it did not apply its excess MCIT from 2009[55] nor did it declare the same in Section C of its CY 2010 ITR. Petitioner instead carried over and claimed as tax credit such MCIT in its CY 2011 ITR. Still, the carry over and claim as tax credit was within the three-year allowable period per Section 27(E)(2) of the NIRC of 1997, as amended.

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[45] Docket, p. 451.
[46] Docket, p. 562.
[47] Exhibit "P-16", Docket, pp. 559 to 561.
[48] Exhibit "P-11", Docket, pp. 486 to 488.
[49] *Id.* At Line Items 27 and 29.
[50] *Id.* At Line Items 30C and 30G.
[51] Exhibit "P-11-1" (₱1,001,785.72), Docket, p. 489.
[52] Exhibit "P-11", Line Items 31 and 33, Docket, p. 486.
[53] Exhibit "P-12", Docket, pp. 518 to 520.
[54] *Id.* at Line Items 25, 28A, and 29.
[55] *Id.* at Line Item 28B.

Proceeding therefrom, petitioner accordingly carried over its 2009 excess CWTs amounting to ₱749,616.00 in its CY 2010 ITR.[56] Also, petitioner had the following tax credit and payment during CY 2010:

Exhibit No.	Description	Amount
P-34-1[57]	BIR Form No. 2307 issued to petitioner by San Fermin de Pamplona, Inc. covering the first quarter of 2010	**₱26,269,414.28**
P-34[58]	BTR-BIR Deposit Slip dated May 31, 2010 per 1st Qtr. ITR	**₱ 2,083,949.74**

In sum, petitioner had available tax credits/payments for CY 2010 totaling ₱29,102,980.02, broken down as follows:[59]

Annual ITR Line Item	Description	Amount
30A	Prior year's excess credit other than MCIT	₱ 749,616.00
30B	Tax payments for the first 3 quarters	2,083,949.74
30C	Creditable tax withheld for the first 3 quarters	26,269,414.28
30H	**Total tax credits/payments**	**₱29,102,980.02**

Deducting the above amount from the normal income tax due of ₱29,096,876.00 yielded an excess CWT amounting to ₱6,104.02, which was opted by petitioner "To be carried over as tax credit next year/quarter"[60] and was in fact carried over in the CY 2011 ITR but in the amount of ₱6,104.14[61].

In sum, petitioner satisfactorily proved compliance with the second requisite in the amount of ₱31,425,887.88, computed as follows:

Annual ITR Line Item	Description	Amount
32	Income tax due	₱ 45,665,308.05
	Less:	
33A	Prior year's excess credit other than MCIT	6,104.02
33D	Excess MCIT applied this current taxable year	252,169.00
33H	Creditable tax withheld per BIR Form No. 2307 for the 4th Qtr.	47,231,808.00
33L	Tax paid in return previously filed, if this is an amended return	29,601,114.91
33R	Total tax credits/payments	77,091,195.93
34B/37	**Tax payable/(overpayment)**	**₱(31,425,887.88)**

[56] *Id.* at Line Item 30A.
[57] Docket, p. 661.
[58] Docket, p. 664.
[59] Exhibit "P-12", Docket, p. 518.
[60] *Id.* at Line Items 31 and 33.
[61] Exhibit "P-17", Line Item 33A, Docket, p. 588.

As to the third requisite, records show that the tax credits earned by petitioner in CY 2011 arose from a sale of land to DMCI Project Developers, Inc. with a selling price of ₱263,432,000.00, exclusive of twelve percent (12%) value-added tax (VAT), pursuant to the Deed of Absolute Sale[62] executed by petitioner with the latter in December 2011.

The corresponding six percent (6%) withholding tax amounting to ₱15,805,920.00[63] was withheld by DMCI as evidenced by BIR Form No. 2307[64]. However, since the fair market value of the land was ₱787,196,800.00 as assessed by respondent, DMCI was required to withhold a total of ₱47,231,808.00[65]. Hence, DMCI remitted an additional ₱31,425,888.00[66] withholding tax on September 17, 2013[67] and issued to petitioner another BIR Form No. 2307[68] for the said amount.

The said sale pertains to petitioner's Investment Property with book value amounting to ₱10,546,744.00 which when deducted from the selling price of ₱263,432,000.00 resulted in a gain on sale amounting to ₱252,885,256.00.[69] This gain on sale formed part of the ₱255,639,005.00 Revenues reflected in petitioner's Statement of Comprehensive Income for CY 2011.[70]

However, petitioner's declared income in its ITR for CY 2011 amounted only to ₱253,696,155.81.[71] The ₱1,942,849.19 difference was traced to the Interest Income already subjected to final tax[72] pursuant to Section 27(D)(1) of NIRC of 1997, as amended[73], hence,

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[62] Exhibit "P-22", Docket, pp. 628 to 633.
[63] ₱263,432,000.00 x 6%
[64] Exhibit "P-1", Docket, p. 450.
[65] ₱787,196,800.00 x 6%.
[66] ₱47,231,808.00 less ₱15,805,920.00.
[67] Exhibits "P-10" and "P-10-1", Docket, pp. 484 to 495.
[68] Exhibit "P-2", Docket, p. 451.
[69] Exhibit "P-16-2", Note 5, Audited Financial Statements for the year 2011, Docket, p. 580.
[70] Exhibit "P-16-2", Docket, p. 569.
[71] Exhibit "P-17", Line Items 19 and 20", Docket, p. 587.
[72] Exhibit "P-17", Schedule 3, Line Item 66, Docket, p. 589; Statement of Comprehensive Income and Note 5 of Audited Financial Statements, Exhibit "P-16-2", Docket, pp. 569 and 580.
[73] SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
xxx
(D) *Rates of Tax on Certain Passive Incomes.*-
(1) *Interest from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, and Royalties.* – A final

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must no longer be declared as part of gross income for normal income tax computation purposes.

From the foregoing, petitioner likewise satisfied the third requisite for claiming refund of its unutilized excess CWTs for CY 2011.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱31,425,887.88** representing petitioner's excess and unutilized creditable withholding taxes for calendar year 2011.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairperson, 1st Division

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tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest on currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporations, and royalties, derived from sources within the Philippines: xxx.