**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

-versus-

**PHILIPPINE BANK OF COMMUNICATIONS,**
Respondent.

**CTA EB NO. 1128**
**(CTA Case No. 8269)**

x-------------------------------------------------x

**PHILIPPINE BANK OF COMMUNICATIONS,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB NO. 1130**
**(CTA CASE NO. 8269)**

**Present:**

**Del Rosario,** *P.J.,*
**Castañeda, Jr.**
**Bautista,**
**Uy,**
**Casanova,**
**Fabon-Victorino,**
**Mindaro-Grulla,**
**Cotangco-Manalastas,**
**Ringpis-Liban,** *JJ.*

**Promulgated:**
SEP 2 1 2015 2:30pm

x-------------------------------------------------------------------x

# DECISION

**RINGPIS-LIBAN, J.**

Before the Court *En Banc* are Petitions for Review[1] filed pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking nullification of the Decision[2] dated November 7, 2013 (Assailed Decision) and Resolution[3] dated February 10, 2014 (Assailed Resolution), both promulgated by the Second Division of this Court (Court in Division) in CTA Case No. 8269 entitled "*Philippine Bank of Communications vs. Commissioner of Internal Revenue*" which partially granted Philippine Bank of Communications' claim for refund or issuance of a tax credit certificate in the amount of P10, 042, 655.42, representing petitioner's unutilized and excess creditable withholding taxes for calendar year 2008.

## THE FACTS

The relevant antecedents stated in the assailed Decision are as follows:

> Petitioner Philippine Bank of Communications (PBCom) is a domestic corporation engaged in the commercial banking business duly organized and existing under Philippine laws, with principal office at PBCOM Tower, 6795 Ayala Avenue corner V.A. Rufino Street, Makati City. It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-263-340-000.
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia,* the power to decide, approve, and grant refunds or tax credits of overpaid or erroneously paid or collected internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.
>
> On April 15, 2009, petitioner filed with the BIR its Annual Income Tax Return (ITR) for calendar year 2008, where petitioner reported a net loss of P655,794,182.41 and creditable tax withheld in the amount of P31,591,458.62.

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[1] Rollo, pp. 52-65, with annexes, CTA EB No. 1128; Rollo, pp. 1-21, with annexes, CTA EB No. 1130.
[2] Rollo, pp. 66-86., CTA EB No. 1128.
[3] Rollo, pp. 87-91, CTA EB No. 1128.

On May 7, 2009, petitioner filed its final Annual ITR through the Electronic Filing and Payment System (EFPS) for calendar year 2008 reporting a net loss of P655,794,182.41 and creditable taxes withheld in the amount of P31,819,116.25.

On April 7, 2011, petitioner filed an administrative claim for the issuance of tax credit certificate, with the BIR for its alleged unutilized CWT for 2008.

Respondent failed to render a decision on petitioner's application for tax credit certificate, prompting petitioner to file the instant Petition for Review before this Court on April 14, 2011.

Respondent CIR filed her Answer[4] dated June 10, 2011, and interposed as her Special and Affirmative Defenses that: petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue; a claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim; nowhere in the petition did petitioner aver the required submission of supporting documents to justify its claim for refund; in order to be entitled to the refund being sought, petitioner must satisfactorily comply with the following requisites: a) that the claim for refund was filed within the two-year prescriptive period as provided under Section 204 (c) in relation to Section 229 of the NIRC of 1997; b) that 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 that the income upon which the taxes were withheld was included in the return of the recipient.; the amount of Thirty One Million, Eight Hundred Nineteen Thousand, One Hundred Sixteen and 25/100 allegedly incurred for the taxable year 2008 is not properly documented; petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim.

In the Joint Stipulation of Facts and Issues[5], the parties agreed that the issues to be resolved by the Court in Division are as follows:

1) Whether or not the claim for the issuance of a tax credit certificate for the calendar year 2008 was filed within the two-year prescriptive period prescribed under Section 204 (c), in relation to Section 229 of the NIRC of 1997 as amended;
2) Whether or not petitioner has unutilized creditable withholding tax in the amount of P31,819,116.25 for the calendar year 2008;

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[4] Docket, CTA Case No. 8269, p. 53-58.
[5] Filed by the parties on July 22, 2011.

3) Whether or not the alleged income from which the subject creditable taxes allegedly withheld are included as part of the gross income in petitioner's annual income tax return for the calendar year 2008;
4) Whether or not the alleged unutilized creditable withholding tax for the calendar year 2008 in the amount of P31,819,116.25 was carried over and applied by petitioner against its tax liabilities in the succeeding taxable year; and
5) Whether or not petitioner is entitled to a refund or issuance of a tax credit certificate in the total amount of P31,819,116.25.

After trial on the merits wherein both parties presented their respective evidence, and upon the parties' submission of their respective memoranda, the case was submitted for decision.

On November 7, 2013 and February 10, 2014, the Court in Division rendered the questioned Decision and Resolution.

Aggrieved, both parties filed before the Court *En Banc* their respective Petitions for Review docketed as CTA EB Nos. 1128 and 1130.

On April 11, 2014, the Court *En Banc* issued a Resolution ordering respondent CIR in CTA EB Case No. 1130, to file her Comment on the Petition for Review, within 10 days from notice.

On April 25, 2014, this Court issued a Resolution[6] consolidating CTA EB No. 1130 with CTA EB No. 1128, considering that said cases are appeals filed by PBCom and the CIR, respectively, from the same case docketed as CTA Case No. 8269.

As per Records Verification Report dated May 28, 2014, the CIR failed to file her Comment on PBCom's Petition for Review within the period required by the Court.

On July 7, 2014, the Court *En Banc* issued a Resolution[7] ordering PBCom to file its Comment on CIR's Petition for Review within ten days from notice.

On July 25, 2014, PBCom filed its Comment (Re: CIR's Petition for Review dated 13 March 2014).[8]

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[6] Minute Resolution dated April 25, 2014, Rollo, CTA EB No. 1128, pp. 96-97.
[7] Rollo, CTA EB No. 1128, pp. 101-103.
[8] Ibid. pp. 104-112.

On August 22, 2014, the Court *En Banc* issued a Resolution[9] ordering the parties to submit their respective Consolidated Memoranda within thirty days from notice. PBCom filed its Consolidated Memorandum on October 3, 2014, while the CIR failed to file her Consolidated Memorandum, as per Records Verification Report dated October 28, 2014.

The instant cases were deemed submitted for decision on December 4, 2014.

## ISSUE

The principal issue in this case is whether or not the Court in Division erred in finding that petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of P10,042,655.42, representing petitioner's unutilized and excess creditable withholding taxes for calendar year 2008.

## ARGUMENTS

PBCom mainly argues that the Second Division erred in considering solely the tax payments supported by BIR Form No. 2307 amounting to P16,302,740.46 as satisfying the second requirement for a tax refund; the Court in Division erred in finding that only P10,042,655.42 corresponds to income payments included in PBCom's General Ledger and Annual Income Tax Return for taxable year 2008; and it complied with all the requisites in proving its judicial claim for the refund of P10,042,655.42, representing the amount found by the Court as its excess creditable withholding taxes for the year ending 31 December 2008.

On the other hand, the CIR argues that PBCom must prove that it satisfactorily complied with the prescribed checklist of requirements to be submitted involving claims for unutilized creditable withholding tax pursuant to Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations No. 2-2006; and failure on the part of PBCom to submit the relevant documents on the administrative level, makes the administrative claim for tax refund or credit pro-forma and shall be construed as if no administrative claim was filed at all.

## RULING OF THE COURT EN BANC

The Petition for Review before the Court in Division was anchored on PBCom's claim for tax refund pursuant to Sections 76, 204 (c) and 229 of the NIRC of 1997, as amended.

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[9] Ibid. pp. 115-116.

***"Section 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 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 the 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 therefore."

***"Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may-

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

***"Section 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 to 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 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."

A taxpayer must establish the following requirements before a claim of tax credit or refund of creditable withholding tax will be granted:

1) The claim 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.[10]

On April 15, 2009, PBCom filed its Annual Income Tax Return.[11] On April 7, 2011, PBCom filed its administrative claim before the BIR.[12] On April 14, 2011, PB Com filed the Petition for Review before the Court in Division.[13] Thus, the filing of the administrative claim for refund before the BIR and the Petition for Review before the Court in Division both fell within the prescriptive period allowed by law.

After a careful review of PBCom's and the CIR's arguments and the records of the case, the Court *En Banc* finds both petitions to be unmeritorious. The issues raised by them have been exhaustively discussed and resolved by the Court in Division in the assailed Decision and Resolution.

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[10] Section 2.58, Revenue Regulations No. 2-98, as amended; 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.
[11] Exhibit "A".
[12] Exhibit "E".
[13] Docket, CTA Case No. 8269, page 1.

The pertinent portions of the Decision and Resolution are quoted below:

"Anent petitioner's (PBCom) compliance with the second requisite, the Court of Tax Appeals *En Banc* in the case of *Mermac, Inc. vs. Commissioner of Internal Revenue* ruled that claims for refund involving creditable tax withheld shall only be given due course upon submission of BIR Form No. 2307 issued by the income-payor to the recipient-payee, xxx.

xxx xxx xxx

Based on the above findings and the Court's ruling on strict compliance with the required Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 in claiming for CWT refund, petitioner has satisfied the second requirement in the amount of P16,302,740.46, xxx.

xxx xxx xxx

The income payments upon which the creditable withholding taxes on P16,302,740.46 were withheld amount to P426,506,677.90, xxx.

xxx xxx xxx

Based on the foregoing, the Court finds that only the income payments in the amount of P203,345,072.26 related to the creditable withholding taxes of P9,921,571.97 were clearly declared in petitioner's general ledger and Annual ITR for calendar year 2008, xxx.

xxx xxx xxx

xxx, the income payments in the amount of P6,054,171.77 upon which the creditable withholding taxes in the amount of P121,083.45 were withheld were also verified to be included in the income reported in the general ledger and Annual ITR of petitioner for calendar year 2008, xxx.

xxx xxx xxx

Petitioner was able to establish that the income payments of P209,399,244.03 (P203,345,072.26 plus P6,054,171.77) with a corresponding CWT of P10,042,655.42 (P9,921,571.97 plus P121,083.45) formed part of the gross income declared by petitioner in its Annual ITR for calendar year 2008; thus, in compliance with the third requisite.

In sum, petitioner has sufficiently proven compliance with the three requisites for the refund of unutilized creditable withholding taxes, but only to the extent of P10,042,655.42 out of the total claimed CWT of P31,819,116.25.

The Court shall now determine whether petitioner exercised the option to "carry-over" its excess creditable withholding taxes to the succeeding quarters, as provided under Section 76 of the NIRC of 1997, as amended, xxx

xxx xxx xxx

Records reveal that in its amended Income Tax Return for calendar year 2008, petitioner reflected a net loss of P655,794,182.41 and income tax overpayment of P72,730,652.77, which petitioner marked as "to be Issued a Tax Credit Certificate". The income tax overpayment of P72,730,652.77 consists of the following:

| | |
|---|---|
| Prior Year's Excess Credits | P40,911,536.52 |
| Creditable Tax Withheld during the year | 31, 819,116.25 |
| **TOTAL** | **P72,730,652.77** |

Petitioner was unable to utilize all the tax credits of P72,730,652.77 because it had no income tax liability due to losses incurred in its operations.

In petitioner's 2009 Quarterly Income Tax Returns for the first and second quarters, only the amount of P40, 911,536.52 was reflected as "Prior Year's Excess Credits"; while on the third quarter of 2009 as well as in its 2009 Amended Annual Income Tax Return, the amount of P40,811,031.83 was reflected as "Prior Year's Excess Credits". This amount was arrived at by deducting the second quarter MCIT for the year 2009 amounting to P100,504.69 from "Prior Year's Excess Credits" of P40,911,536.52. Evidently, the claimed CWT amounting to P31,819,116.25 for the year 2008 was not carried over to the succeeding quarters or taxable year."

In the Resolution on the Motion for Reconsideration, the Court in Division ruled that "in claims for refund or tax credit of CWT, the claim shall only be given due course when the income and withholding are established by a copy of the withholding tax statement (BIR Form No. 2307) issued by the income-payor to the recipient-payee."

Contrary to the position of the CIR, the Court in Division did not err in finding that RMO 53-98 is merely intended as a guide to revenue officers in requesting from taxpayers the documents to be submitted during a tax audit.

Hence, we reiterate the Court in Division's ruling in the Resolution on the CIR's Motion for Partial Reconsideration that:

> "RMO 53-98 is merely a guide to revenue officers in requesting what documents the taxpayer has to submit, they are not mandatory in nature as what respondent believes them to be. It is up to the tax payers to submit what it considers as material in proving its claim, since it is the taxpayer who shall stand to benefit/suffer from the same."

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[14] In this case, PBCom was able to prove that it is entitled to a refund or issuance of a tax credit certificate for its unutilized and excess creditable withholding taxes for calendar year 2008, but in the reduced amount of P10,042,655.42.

There being no new matters or issues raised in the Petitions for Review before the Court *En Banc* and there being no reversible error committed by the Court in Division, hence, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution.

**WHEREFORE,** premises considered, the Petitions for Review filed by PBCom and CIR are hereby **DENIED for lack of merit.** Accordingly, the Decision dated November 7, 2013 and Resolution dated February 10, 2014 are hereby affirmed *in toto.*

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[14] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

**SO ORDERED.**

Ma. Belen SL

**MA. BELEN M. RINGPIS-LIBAN**
**Associate Justice**

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

with concurring opinion & dissenting opinion

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

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

**(On Leave)**
**AMELIA R. COTANGCO – MANALASTAS**
Associate Justice

## CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
**Presiding Justice**

REPUBLIC OF THE PHILIPPINES
***Court of Tax Appeals***
QUEZON CITY

## ***EN BANC***

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,** *Petitioner,* | **CTA EB NO. 1128** (CTA Case No. 8269) |
| -versus- | |
| **PHILIPPINE BANK OF COMMUNICATIONS,** *Respondent.* | |
| x-----------------------------------------x | |
| **PHILIPPINE BANK OF COMMUNICATIONS,** *Petitioner,* | **CTA EB NO. 1130** (CTA Case No. 8269) |
| | Present: |
| -versus- | **DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: SEP 2 1 2015 2:35pm |

x ------------------------------------------------------------------------------------- x

# CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.:***

I concur with the *ponencia* in denying for lack of merit the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1128.

With all due respect, however, I am of the opinion that the proof of fact of withholding of tax, as an indispensable element to justify refund, is not limited to the submission of BIR Form 2307.

In *Commissioner of Internal Revenue v. Team (Philippines) Operations Corporation,*[1] the Supreme Court laid down the requirements for granting a claim for refund of excess or unutilized creditable withholding tax (CWT), *viz:*

> "A taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:
>
> 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;
>
> 2) It must be shown on the return of the recipient that the income received was declared as part of the gross income; and
>
> 3) **The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.**"

Based on the foregoing, the **third requirement** mandates a taxpayer to show proof of the fact of withholding by presenting a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld. Nowhere in afore-cited case did the Supreme Court limit the proof of fact of withholding to the submission of BIR Form 2307.[2]

In the case at bar, PBCOM presented BIR Form 1606 to prove the fact of withholding on its sales of real and other properties acquired (ROPA). A perusal of a sample BIR Form 1606 shows that the amount paid and the

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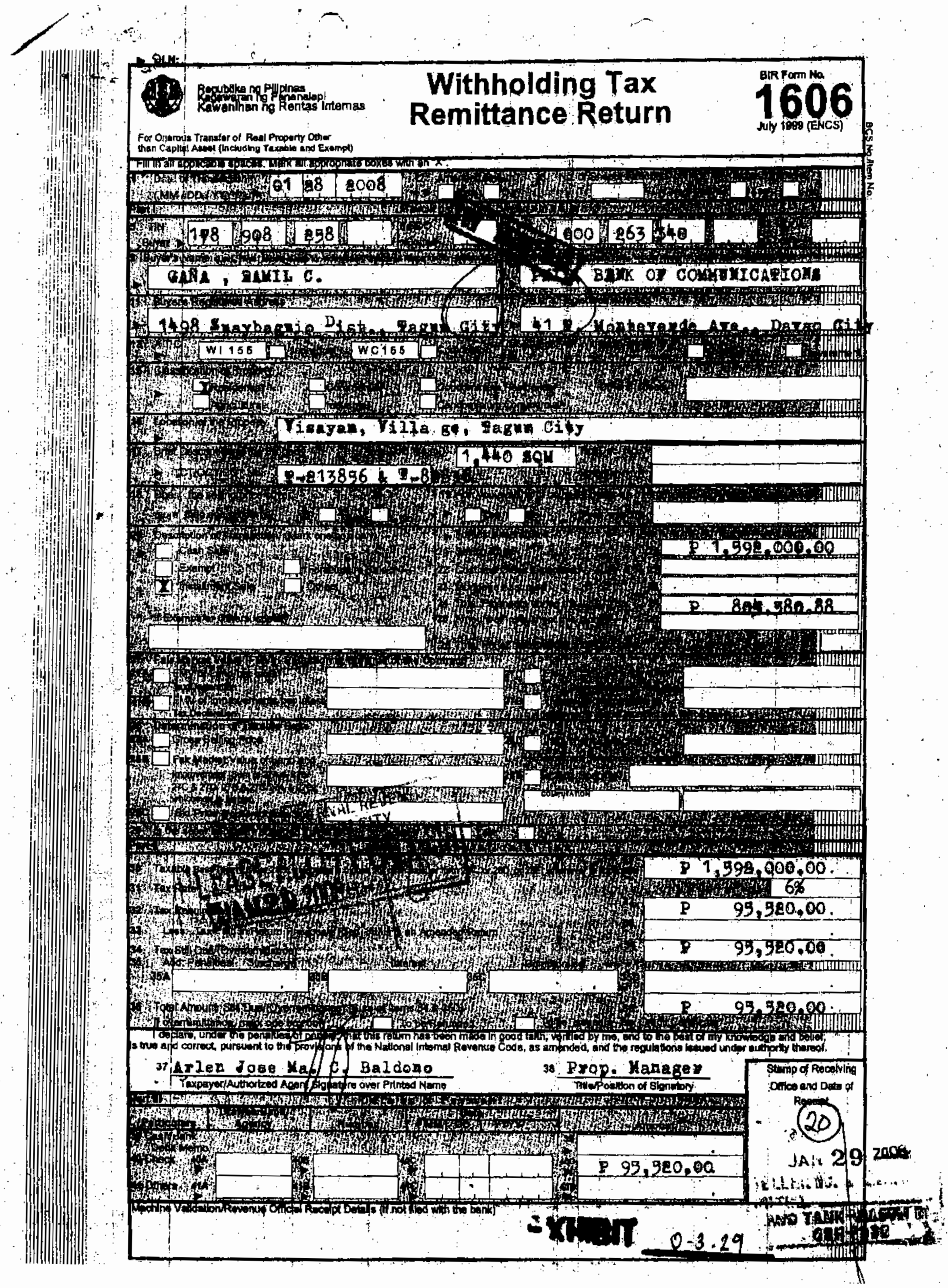
[1] G.R. No. 185728, October 16, 2013.

[2] BIR Form 2307 is the prescribed form pursuant to Revenue Regulations No. 2-98, as amended.

amount of tax withheld are clearly indicated in the said return. A copy of Exhibit O-3-29 is shown below for reference.



Republika ng Pilipinas
Kagawaran ng Pananalapi
Kawanihan ng Rentas Internas

**Withholding Tax Remittance Return**

BIR Form No. **1606**
July 1999 (ENCS)

For Onerous Transfer of Real Property Other than Capital Asset (Including Taxable and Exempt)

Fill in all applicable spaces. Mark all appropriate boxes with an "X".

01 28 2008

178 908 258 — 000 263 340

GAÑA , BAMIL C. — BANK OF COMMUNICATIONS

1408 Saaybaguio Dist., Tagum City — 41 R. Monteverde Ave., Davao City

WI 156 — WC156

Visayan, Village, Tagum City

1,440 SQM

T-213896 & T-8[illegible]

P 1,592,000.00

P 8[illegible].380.88

P 1,592,000.00

6%

P 95,520.00

P 95,520.00

P 95,520.00

I declare, under the penalties of perjury, that this return has been made in good faith, verified by me, and to the best of my knowledge and belief, is true and correct, pursuant to the provisions of the National Internal Revenue Code, as amended, and the regulations issued under authority thereof.

37 Arlen Jose Ma. C. Baldono — Taxpayer/Authorized Agent Signature over Printed Name

38 Prop. Manager — Title/Position of Signatory

Stamp of Receiving Office and Date of Receipt

JAN 29 2008

P 95,520.00

Machine Validation/Revenue Official Receipt Details (If not filed with the bank)

EXHIBIT O-3.29

Perusal of Exhibit O-3-29 shows the amount paid under item No. 21 (selling price) amounting to P1,592,000.00 and the tax withheld under item No. 32 (tax required to be withheld) amounting to P95,520.00. Clearly, BIR Form 1606 sufficiently confirms the proof of fact of withholding of tax as a third requirement for tax refund.

Moreover, **BIR Form 1606 is a withholding tax remittance return required by law to be filed by the buyer in triplicate copies as a requirement for the transfer of title to the buyer. The form supports the certification (BIR Form 2307) issued by the withholding agent/buyer attesting to the fact of withholding.**

The several BIR Forms 1606, submitted in evidence, show however that out of the ₱8,681,578.30 CWT payments as traced to the general ledger by the Independent CPA, the following forms with the corresponding CWT amounting to ₱6,043,858.50 must be denied for failure to indicate the amount paid in the said return:

| Exhibit BIR Form No. 1606 | Taxable Base | Amount of Creditable W/Tax |
|---|---|---|
| O-26 | ₱ 14,700,500.00 | ₱ 882,030.00 |
| O-3.19 | 32,750,000.00 | 1,965,000.00 |
| O-3.27 | 2,083,200.00 | 124,992.00 |
| O-3.12 | 1,176,875.00 | 70,612.50 |
| O-3.4 | 300,000.00 | 18,000.00 |
| O-3.21 | 9,500,000.00 | 570,000.00 |
| O-3.23 | 775,000.00 | 46,500.00 |
| O-3.32 | 7,984,000.00 | 479,040.00 |
| O-3.34 | 1,961,400.00 | 117,684.00 |
| O-3.31 | 5,000,000.00 | 300,000.00 |
| O-3.33 | 24,500,000.00 | 1,470,000.00 |
| **Total** | **₱ 100,730,975.00** | **₱ 6,043,858.50** |

On the other hand, PBCOM has sufficiently proven compliance with the third requisite for the refund of unutilized CWT in the **additional** amount of ₱2,637,719.80, as computed, based on BIR Form 1606:

| Exhibit BIR Form No. 1606 | Contract Selling Price | Amount of Creditable W/Tax |
|---|---|---|
| O-3.14 | ₱ 403,200.00 | ₱ 24,192.00 |
| O-3.17 | 160,000.00 | 9,600.00 |
| O-3.20 | 1,443,750.00 | 86,625.00 |
| O-3.22 | 1,500,000.00 | 90,000.00 |
| O-3.15 | 750,000.00 | 45,000.00 |
| O-3.28 | 25,279,680.00 | 1,516,780.80 |
| O-3.18 | 220,000.00 | 13,200.00 |
| O-3.25 | 1,200,000.00 | 72,000.00 |
| O-3.9 | 2,000,000.00 | 183,787.00 |
| O-3.16 | 1,250,250.00 | 75,015.00 |
| O-3.10 | 3,500,000.00 | 210,000.00 |
| O-3.30 | 3,600,000.00 | 216,000.00 |
| O-3.29 | 1,592,000.00 | 95,520.00 |
| **Total** | **₱ 42,898,880.00** | **₱ 2,637,719.80** |

All told, I **VOTE** to **PARTLY GRANT** the Petitions for Review filed by Philippine Bank of Communications in CTA EB No. 1130 and ORDER Commissioner of Internal Revenue to ISSUE A TAX CREDIT CERTIFICATE in favor of PBCOM in the amount of ₱10,042,655.42 as decreed by the Court in Division and upheld by the *ponencia* and the additional amount of ₱2,637,719.80 or the total amount of ₱12,680,375.22, representing PBCOM's unutilized and excess creditable withholding taxes for calendar year 2008.

**ROMAN G. DEL ROSARIO**
Presiding Justice