Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8273

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
FEB 11 2014
3:00 p.m.

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DECISION

CASANOVA, *J.*:

The instant Petition for Review,[1] filed by petitioner-Jardine Lloyd Thompson Insurance Brokers, Inc., dated April 14, 2011, seeks the refund or issuance of Tax Credit Certificate (TCC) in the amount of ₱8,880,039.00, representing its excess and unutilized creditable income taxes withheld for calendar year (CY) 2008.

The facts of the case, as culled from the records, are as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at 25th Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City[2] and is primarily engaged in the business of insurance brokerage, and as such, receives commission income from various insurance companies.[3]

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[1] Docket, pp. 4-13.
[2] Par. 1, Petition for Review, Ibid, p. 4.
[3] Par. 2, Stipulations, Joint Stipulation of Facts and Issues (JSFI), Id, p. 176.

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes and may be served with summons and other legal processes of this Court at 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

Petitioner is registered with the Bureau of Internal Revenue (BIR) and was issued Tax Identification Number (TIN) 000-125-711-000 and BIR Certificate of Registration bearing RDO Control No. 8RC0000019169.[5]

On April 15, 2009, petitioner manually filed with the BIR its Annual Income Tax Return (ITR) for CY 2008, where it reported gross revenues in the total amount of ₱121,890,522.00, consisting of revenues from commissions, and an income tax due of ₱1,394,162.56.[6]

Thereafter, on March 29, 2010, petitioner filed with the BIR Large Taxpayers Service (LTS)-Regular Taxpayer's its administrative claim for refund of its excess and unutilized creditable withholding taxes (CWT) for CY 2008 in the amount of ₱8,880,039.00.[7]

To this date, respondent has yet to decide on petitioner's claim for refund of excess and unutilized CWT for CY 2008.[8] Consequently, petitioner filed its Petition for Review before this Court on April 14, 2011.

In her Answer,[9] filed on May 24, 2011, respondent averred the following special and affirmative defenses:

> "5. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

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[4] Par. 1, Admitted Facts, JSFI, Id, p. 175.
[5] Par. 3, Stipulations, JSFI, Id, p. 176.
[6] Par. 5, Petition for Review, Id, p. 5; Par. 4, Stipulations, JSFI Id, p.176.
[7] Par. 5, Stipulations, JSFI, Id, p. 176.
[8] Par. 6, Stipulations, JSFI, Id.
[9] Id, pp. 147-152.

6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

7. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

8. Petitioner must show that it has complied with the provisions of Sections 204 (c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

9. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law.

10. Petitioner failed to substantiate its claim for refund/issuance of tax credit certificate in the amount of Eight Million Eight Hundred Eighty Thousand and Thirty Nine Pesos (P8,880,039.00) representing alleged unutilized creditable withholding tax for the taxable year 2008.

11. In the case entitled '*Commissioner of Internal Revenue vs. Rosemarie Acosta*', the Supreme Court had the occasion to say:

'*xxx* Noteworthy, the requirements under Section 230 (now Section 204) for refund claims are as follows:

1. A **written claim** for refund or tax credit must be filed by the taxpayer with the Commissioner;

2. The claim for refund must be a **categorical demand** for reimbursement;'

3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court **within two (2) years from date of payment of the tax or penalty regardless of any supervening cause.**

In our view, the law is clear. A claimant must first file a written claim for refund, **<u>categorically demanding recovery of overpaid taxes</u>** with the CIR, before resorting to an action in court. This obviously is intended, first, **<u>to afford the CIR an opportunity to correct the action of subordinate officers;</u>** and second, to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure xxx.'
(emphasis and underscoring supplied)

12. 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

c.) That the income upon which the taxes were withheld was included in the return of the recipient.

13. Petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law.

14. Petitioner must prove that it has fully complied with the requirements of Revenue Memorandum Order No. 53-98, for purposes of submission of the supporting documents, otherwise, there would be no sufficient compliance with regard to the filing of an administrative claim for tax credit/refund

which is a condition *sine qua non* prior to the filing of judicial claim;

15. 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.

16. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

17. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption *(Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005).* The law does not look with favor on tax exemption and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Sea Land Service Vs. Court of Appeals, 357 SCRA 444)."

On July 22, 2011, the parties filed their Joint Stipulation of Facts and Issues.[10]

During trial, petitioner presented the following witnesses: 1) Ms. Ma. Milagros F. Padernal[11], Independent Certified Public Accountant (ICPA) and Ms. Maria Esperanza Rosario R. Dellosa[12], petitioner's Assistant Vice-President (AVP).

Thereafter, petitioner filed its Formal Offer of Evidence[13] (FOE) on August 6, 2012. A Comment (On Petitioner's Formal Offer of Evidence)[14] was filed by respondent on August 17, 2012

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[10] Id, pp. 175-178.
[11] Minutes of the Hearing dated October 12, 2011, Id, p. 233; and, Minutes of the Hearing dated March 5, 2012, Id, p. 261;
[12] Minutes of the Hearing dated October 12, 2011, Id, p. 233; Minutes of the Hearing dated December 12, 2011, Id, p. 242; Minutes of the Hearing dated April 23, 2012, Id, p. 267; and, Minutes of the Hearing dated May 28, 2012, Id, p. 268.
[13] Id, pp. 286-306.

In a Resolution[15] promulgated on September 19, 2012, the Court resolved petitioner's FOE and admitted Exhibits "A" to "I", "K", and "R" to "XX", inclusive of their sub-markings, but noted the following discrepancies:

> "a. Two documents were marked Exhibit MMf-302; and
>
> b. Exhibit 'K-1' described as 'Line 30A of petitioner's Annual ITR for CY 2009 showing prior year's excess credits other than MCIT in the amount of **Php47,737,418.51** reported by petitioner', actually pertains to the amount of **Php47,837,418.51**."

In the November 14, 2012 hearing[16], respondent's counsel manifested the instant case has no report of investigation and that she has no witness to present. Thus, upon motion of the parties' counsels, the Court ordered them to file their respective Memorandum within thirty (30) days from November 14, 2012 or until December 14, 2012.

On February 14, 2013, the Court considered the case submitted[17] for decision taking into consideration respondent's Memorandum[18] filed on December 4, 2012 and petitioner's Memorandum[19] filed on January 28, 2013.

On February 14, 2013, petitioner filed a Motion for Additional Time to File Formal Offer of Evidence[20] which was denied by this Court in a Resolution[21] promulgated on February 15, 2013.

Hence, this Decision.

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[14] Id, pp. 311-314.
[15] Id, pp. 319-320.
[16] Id, p. 324.
[17] Resolution dated February 14, 2013, Id, p. 385.
[18] Id, pp. 325-335.
[19] Id, pp. 366-382.
[20] Id, pp. 386-388.
[21] Id, p. 390.

The following are the parties' jointly stipulated issues[22] submitted for this Court's resolution:

1. Whether or not petitioner had unutilized CWT for CY 2008 in the amount of Eight Million Eight Hundred Eighty Thousand and Thirty Nine Pesos (₱8,880,039.00).

2. Whether or not petitioner's unutilized CWT amounting to Eight Million Eight Hundred Eighty Thousand and Thirty Nine Pesos (₱8,880,039.00), for CY 2008 are duly substantiated by documentary evidence.

3. Whether or not the fact of withholding of the CWT for CY 2008, being claimed for refund was established.

4. Whether or not the income from which the subject CWT was withheld was reported as part of petitioner's gross income in its Annual ITR for CY 2008.

5. Whether or not petitioner's unutilized CWT for CY 2008 was applied against its income tax liability for the succeeding taxable year.

6. Whether or not petitioner filed its administrative and judicial claims for refund of excess CWT for CY 2008 within the two-year prescriptive period provided in Sections 204(C) and 229, Tax Code.

7. Whether or not petitioner is entitled to its claim for refund or issuance of Tax Credit Certificates for its excess and unutilized CWT for CY 2008 in the amount of ₱8,880,039.00.

Pertinent to the resolution of this case is the provision of Section 76 of the 1997 National Internal Revenue Code (NIRC), 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

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[22] Issues, JSFI, Id, p. 177.

> 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:
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> "(A) Pay the balance of tax still due; or
>
> "(B) Carry-over the excess credit; or
>
> "(C) Be credited or refunded with the excess amount paid, as the case may be.
>
> "In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

Based on the afore-quoted provisions, a corporation entitled to a tax credit or refund of the excess income taxes paid in a given taxable year has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry-over the excess credit is exercised, the same shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.

The corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.[23]

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

A perusal of petitioner's manually and electronically filed Annual Income Tax Return for taxable year 2008[24] shows that petitioner had total tax credits of ₱58,111,621.00 which consisted of the prior year's excess credits in the amount of ₱49,231,582.00 and creditable taxes withheld during the year 2008 in the amount of ₱8,880,039.00[25]. Petitioner's MCIT in the amount of ₱1,394,162.56 was paid using a portion of its prior year's excess credits of ₱49,231,582.00 leaving the prior year's excess credits in the amount of ₱47,837,419.44 and creditable taxes withheld during the year 2008 in the amount of ₱8,880,039.00 totaling to ₱56,717,458.44 unutilized as of December 31, 2008, as shown below:

Minimum Corporate Income Tax (MCIT)	₱ 1,394,162.56
Less: Prior Year's Excess Credits	49,231,582.00
Balance of Prior Year's Excess Credits	₱ 47,837,419.44
Add: Creditable Taxes Withheld – 2008	8,880,039.00
Excess Creditable Taxes Withheld as of December 31, 2008	**₱ 56,717,458.44**

Inasmuch as petitioner marked the option "To be refunded" in its Annual Income Tax Return for taxable year 2008[26] and reflected only the amounts of ₱40,474,717.00[27] and ₱47,837,418.51[28] as "Prior Year's Excess Credits" in its original and amended Annual Income Tax Returns for 2009, respectively, as well as in its Quarterly Income Tax Return for the 1st,[29] 2nd[30] and 3rd[31] quarters of 2009, the unutilized creditable withholding taxes for taxable year 2008 in the amount of ₱8,880,039.00 may be the subject of a claim for refund 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, a taxpayer must satisfy the following requirements in order to be entitled to a refund or issuance of tax credit certificate for excess/unapplied CWT:

[24] Exhibits "D" and "E".
[25] ₱6,900,681.00 plus ₱1,979,358.00, Lines 28C and 28D, Exhibits "D" and "E".
[26] Exhibits "D" and "E".
[27] Amount carried over is lower by ₱7,362,702.44, Line 28A, Exhibit "I" (original 2009 Annual Income Tax Return).
[28] Amount carried over is lower by ₱ 0.93, Line 30A, Exhibit "K" (amended 2009 Annual Income Tax Return).
[29] Exhibit "FF".
[30] Exhibit "GG".
[31] Exhibit "HH".

1.) 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;

2.) 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

3.) That the income upon which the taxes were withheld were included in the return of the recipient.[32]

Anent the first requisite, the applicable provisions are Sections 204(C) and 229 of the 1997 NIRC, as amended, which respectively provide:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may-
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*- No suit or proceeding shall be maintained in any

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[32] Section 2.58, Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals and CIR, G.R. No. 107434, October 10, 1997; ACCRA Investment Corporation vs. CA, et al., G.R. No. 96322, December 20, 1991.

> 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."

In the case of *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.,* [33] the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for refund or tax credit of excess income tax paid/withheld provided in the above-quoted provisions should commence from the date of filing of the final adjustment return.

Applying the foregoing ruling to the case at bench, records show that petitioner manually filed its Annual Income Tax Return on April 15, 2009[34]. Counting from this date, it can be inferred that the administrative claim[35] filed by petitioner on March 29, 2010, as well as the Petition for Review filed on April 14, 2011, fell within the two-year prescriptive period. Thus, the first requirement has been complied with.

In compliance with the second requisite, petitioner presented its Schedule of Creditable Taxes Withheld for 2008[36] and Certificates of

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[33] G.R. No. 96322, December 20, 1991.
[34] Par. 4, Stipulations, JSFI, Docket, p. 176.
[35] Exhibits "C-1 and "C".
[36] Exhibit "JJ".

Creditable Tax Withheld at Source[37] [BIR Form 2307] issued to it by various withholding agents for the year 2008 which were examined by the Court-commissioned independent CPA, Uy Singson Abella & Co., through its partner, Ms. Ma. Milagros F. Padernal. In her report dated February 17, 2012, Ms. Padernal summarized her findings[38] as follows:

Exhibit No.	BIR Form No. 2307	Amount of Income Payment	Amount of Taxes Withheld
KK	Supported with original BIR Form No. 2307 in the Petitioner's name	₱ 97,270,019.30	₱ 8,879,416.89
LL	Not supported with original BIR Form No. 2307	3,252.49	325.25
	Error in recording	3,000.00	300.00
		₱ 97,276,271.79	**₱ 8,880,042.14**

The ICPA explained that the error in recording pertains to a certificate of creditable tax withheld at source (BIR Form No. 2307) from Insurance Company of North America wherein the amount of tax withheld was reported in the summary prepared by petitioner[39] as ₱1,838.24 but the actual BIR Form No. 2307 reflects only ₱1,538.24.[40]

The Court finds the ICPA's report in order. The total amount of ₱625.25 (₱325.25 plus ₱300.00) requires a downward adjustment to the petitioner's claim. Therefore, out of the total claimed CWT of ₱8,880,039.00, petitioner was able to substantiate by proper withholding tax certificates only the creditable withholding taxes in the amount of ₱8,879,416.89 *(Exhibit KK)* for taxable year 2008.

This brings us to the third requirement of whether or not the income upon which the subject taxes were withheld were included and reported by petitioner in its Annual Income Tax Return for the taxable year 2008.

[37] Exhibits "KK1" to "KK212".
[38] Par. 6 of Exhibit "UU", p. 6 of 15.
[39] Exhibit "JJ".
[40] Par. 6 of Exhibit "UU", p. 6 of 15.

In the Supplemental Sworn Statement of Ms. Maria Esperanza Rosario R. Dellosa, petitioner's Assistant Vice-President, she explained the recording of petitioner's revenues in this wise:[41]

> "The Company's income is derived from its commissions and service fees.
>
> For the commission income, when a premium falls due, our insurer issues a billing statement to the Company for a particular policyholder. Upon receipt of the billing statement, the Company prepares a separate billing statement to be issued to the policy holder for the set-up of the receivables due from the client and the commissions earned by the Company for the particular billing. For service fees, a billing statement is likewise issued to our client.
>
> Once the Company has prepared the billing statements, for both commission income and service fees, a Production Report is prepared which summarizes, among others, the amount of the commission income and the service fees for that particular day.
>
> The total commission income and service fees reflected in the Production Report are thereafter posted in the Company's General Ledger.
>
> The total income posted in the General Ledger will be the basis for the Company's Annual Income Tax Return."

A perusal of petitioner's 2008 Annual Income Tax Return and Audited Financial Statements reveals that petitioner reflected revenues from its sale of services amounting to ₱121,890,522.00[42]. On the other hand, the valid withholding tax certificates showed that the creditable income taxes of ₱8,879,416.89 for taxable year 2008 were withheld on gross income payments of ₱97,270,019.30, broken down as follows:

[41] A6, Exhibit "WW".
[42] Line 15C, Exhibit "E".

Nature of Income Payments	Per Certificates	
	Income Payments	Income Tax Withheld
Commission Income and Service Fees	₱ 96,184,699.30	₱ 8,825,150.89
Other Income	1,085,320.00	54,266.00
Total	**₱ 97,270,019.30**	**₱ 8,879,416.89**

The ICPA compared the total amounts of income payments relating to commission income and service fees indicated in the "Schedule of Production Report Generated from the Petitioner's BOSS System" for the calendar years 2008[43] and 2007[44] against the amounts of income per Summary of General Ledger account classification for the years 2008 and 2007[45].

The results of ICPA's comparison are summarized in the following table:[46]

Particulars	Classification	Exhibit No.	GL Amount (CY 2008)	Exhibit No.	GL Amount (CY 2007)
Production Reports	Commission income	MMa-1 to MMa-1308	₱74,893,566.46	MMb-1 to MMb-472	₱55,867,499.62
	Fees and other income		47,916,584.78		43,587,562.50
Total Production Reports			122,810,151.24		99,455,062.12
General Ledger		NN	122,136,315.86	NN	101,086,280.96
Difference			(₱ 673,835.38)		₱1,631,218.84

The petitioner explained that the difference is due to the following:

Particulars	2008	2007
Foreign exchange differences	₱745,793.77	₱677,156.17
Adjustment made on estimated claims handling cost	(1,418,835.86)	951,794.49
Accumulated small differences adjusted in the current year	(663.19)	2,268.18
Unaccounted difference	(130.10)	-
Difference	(₱ 673,835.38)	₱1,631,218.84

[43] Exhibits "MMa-1" to "MMa-1308".
[44] Exhibits "MMb-1" to "MMb-472".
[45] Exhibit "NN".
[46] Par. 7 (c) of Exhibit "UU", p. 10 of 15.

Accordingly, the foreign exchange differences relate to foreign exchange gains or losses arising from foreign currency denominated transactions which are recorded separately in the general ledger under Account Number 140499[47].

The claims handling cost are provided in the accounts by the petitioner based on the expectation of future servicing requirements for which an element of income is deferred to cover the associated contractual obligation. The adjustment in 2008 pertains to the lower provision set up in the accounts compared to the expected future servicing requirements while the 2007 adjustment relates to the higher accrued provision compared to the expected future servicing requirements.

The ICPA also compared the amounts of commission income and service fees per general ledger for the calendar years 2008 and 2007 with the commission income and service fees declared as revenue per 2008 and 2007 Annual Income Tax Returns as follows:[48]

Exhibit No.	Particulars	CY 2008	CY 2007
NN	Total per General Ledger	₱122,136,315.86	₱101,086,280.96
D	Per Annual Income Tax Return	121,890,522.00	98,957,330.00
	Difference	₱ 245,793.86	₱ 2,128,950.96

The petitioner's explanations for the above difference are summarized as follows:

	CY 2008	CY 2007
Foreign exchange gain per GL account no. 140499 included as reconciling item in the Annual Income Tax Return	₱745,793.77	₱677,156.00
Accrual (reversal) of contingent profit commission	(500,000.00)	500,000.00
Non-deductible handling cost for tax purposes	-	951,794.00
Rounding-off difference	0.09	0.96
	₱245,793.86	₱2,128,950.96

To show that petitioner's commission income and service fees of ₱96,184,699.30 formed part of petitioner's gross income of ₱121,890,522.00 and ₱98,957,330.00[49] in its 2008 and 2007 Annual Income

[47] Exhibits "NNa-3" and "NNa-b".
[48] Par. 7 (d) of Exhibit "UU", pp. 10-11 of 15.
[49] Line 15C, Exhibit "H".

Tax Returns, respectively, petitioner offered the following documents: Summary of Income Payments with Tax Withheld Traced to Production Reports, Remittance Reports, Payment Vouchers and Official Receipts[50]; Schedule of Production Report Generated from BOSS System for taxable years 2008[51] and 2007[52]; Remittance Reports[53]; Payment Vouchers for Premiums[54] and Creditable Withholding Tax[55]; official receipts[56]; billing statements for 2008[57]; Summary of General Ledger Account Classification[58]; General Ledger Balance Detail – Income for 2008[59] and 2007[60]; Account No. 100001 – Brokerage and Others[61]; Account No. 120003 – Profit Commissions[62]; Account No. 140499 – Exchange Difference[63]; and, Account No. 150506 – Input[64].

Upon examination of the aforesaid documents, the Court finds that petitioner has proven that the income payments of ₱96,184,699.30 upon which the valid creditable taxes of ₱8,825,150.89 were withheld were declared in its 2007 and 2008 Annual Income Tax Returns except for the amount of ₱58,332,023.13 the corresponding creditable tax withheld of which amounts to ₱5,309,498.52, to wit:

Exhibit No.	Period Covered	Payor	Amount of Income Payment	Amount of Taxes Withheld
KK1	1st quarter	Asalus Corporation	₱ 688.04	₱ 68.80
KK2	1st quarter	Asalus Corporation	1,560.30	156.03
KK3	1st quarter	Asalus Corporation	2,356.36	235.64
KK4	1st quarter	Asalus Corporation	2,498.30	249.83
KK6	1st quarter	Asalus Corporation	3,923.10	392.31
KK8	1st quarter	Asalus Corporation	15,997.82	1,599.78
KK9	1st quarter	Asalus Corporation	48,823.01	4,882.30

[50] Exhibit "MM".
[51] Exhibits "MMa-1" to "MMa-1308".
[52] Exhibits "MMb-1" to "MMb-472".
[53] Exhibits "MMc-1" to "MMc-319".
[54] Exhibits "MMd-1" to "MMd-309".
[55] Exhibits "MMe-1" to "MMe-300".
[56] Exhibits "MMf-1" to "MMf-302".
[57] Exhibits "MMf303" to "MMf6102".
[58] Exhibit "NN".
[59] Exhibit "NNa".
[60] Exhibit "NNb".
[61] Exhibits "NNa-1" and "NNb-1".
[62] Exhibits "NNa-2" and "NNb-2".
[63] Exhibits "NNa-3" and "NNb-3".
[64] Exhibits "NNa-4" and "NNb-4".

KK10	1st quarter	Asalus Corporation	128,584.45	12,858.44
KK13	1st quarter	Asalus Corporation	252,268.65	25,226.87
KK15	1st quarter	Asalus Corporation	2,551,426.20	255,142.62
KK18	2nd quarter	Asalus Corporation	1,288.37	128.84
KK19	2nd quarter	Asalus Corporation	1,506.60	150.66
KK24	2nd quarter	Asalus Corporation	14,921.98	1,492.20
KK28	2nd quarter	Asalus Corporation	58,380.18	5,838.02
KK31	3rd quarter	Asalus Corporation	698.92	69.89
KK30	2nd quarter	Asalus Corporation	18,786.92	1,878.74
KK32	3rd quarter	Asalus Corporation	1,125.68	112.57
KK34	3rd quarter	Asalus Corporation	7,829.88	782.99
KK40	3rd quarter	Asalus Corporation	15,146.67	1,514.67
KK43	3rd quarter	Asalus Corporation	26,723.18	2,672.32
KK52	4th quarter	Asalus Corporation	2,246.42	224.64
KK46	4th quarter	Asalus Corporation		
KK50	4th quarter	Asalus Corporation		
KK53	4th quarter	Asalus Corporation		
KK54	4th quarter	Asalus Corporation	45.36	4.54
KK42	3rd quarter	Asalus Corporation	29.47	2.95
KK45	3rd quarter	Asalus Corporation	166,965.21	16,696.53
KK56	4th quarter	Asalus Corporation	5,835.46	583.55
KK57	4th quarter	Asalus Corporation	8,838.59	883.86
KK59	4th quarter	Asalus Corporation	21,569.55	2,156.96
KK60	4th quarter	Asalus Corporation	45,277.82	4,527.78
KK61	4th quarter	Asalus Corporation	246.01	24.60
KK63	1st quarter	Asia Insurance (Philippines) Corporation	225.21	22.53
KK64	1st quarter	Asia Insurance (Philippines) Corporation	353,834.91	35,383.49
KK65	2nd quarter	Asia Insurance (Philippines) Corporation	785.13	78.43
KK66	3rd quarter	Asia Insurance (Philippines) Corporation	1,969.11	1,579.07
KK67	1st quarter	Asianlife and General Assurance Corporation	570,313.43	57,031.34
KK68	1st quarter	Asianlife and General Assurance Corporation	24,877.61	2,487.76
KK69	3rd quarter	Asianlife and General Assurance Corporation	146,546.81	14,654.68
KK70	4th quarter	Asianlife and General Assurance Corporation	28,725.51	2,872.55
KK71	2nd quarter	BPI/MS Insurance Corporation	829,127.58	82,913.86
KK72	2nd quarter	BPI/MS Insurance Corporation	1,053,410.57	105,341.69
KK73	3rd quarter	BPI/MS Insurance Corporation	754,728.67	76,765.00
KK74	4th quarter	BPI/MS Insurance Corporation	753,918.08	75,392.53
KK75	1st quarter	Federal Phoenix Assurance Company, Inc.	213,755.40	21,375.54
KK76	2nd quarter	Federal Phoenix Assurance Company, Inc.	922,059.40	92,205.94
KK77	3rd quarter	Federal Phoenix Assurance Company, Inc.	87.89	8.83
KK78	4th quarter	Federal Phoenix Assurance Company, Inc.	215,643.54	21,564.35
KK79	1st quarter	First Guarantee Life Assurance Company, Inc.	59,330.40	5,933.04

KK83	2nd quarter	Fortune General Insurance Corporation	1,569.10	156.91
KK84	2nd quarter	Fortune General Insurance Corporation	982,434.00	98,243.40
KK85	4th quarter	Fortune General Insurance Corporation	59,327.50	5,932.75
KK86	3rd quarter	Fortune Medicare Inc.	34,746.30	3,474.63
KK87	3rd quarter	Fortune Medicare Inc.	675,253.30	65,809.44
KK89	4th quarter	Fortune Medicare Inc.	395,557.25	39,555.72
KK90	1st quarter	Generali Pilipinas Insurance Company, Inc.	33,378.84	3,337.89
KK93	4th quarter	Generali Pilipinas Insurance Company, Inc.	393,442.49	39,344.25
KK94	1st quarter	Generali Pilipinas Life Assurance Company, Inc.	716,861.10	71,686.11
KK95	2nd quarter	Generali Pilipinas Life Assurance Company, Inc.		
KK96	2nd quarter	Generali Pilipinas Life Assurance Company, Inc.	253.54	25.41
KK97	3rd quarter	Generali Pilipinas Life Assurance Company, Inc.	500,676.50	50,067.65
KK98	3rd quarter	Generali Pilipinas Life Assurance Company, Inc.	782,620.10	78,262.01
KK99	4th quarter	Generali Pilipinas Life Assurance Company, Inc.	628,335.10	62,833.51
KK101	2nd quarter	Insurance Company of North America	46.84	4.69
KK102	3rd quarter	Insurance Company of North America	137,162.40	13,716.24
KK103	3rd quarter	Insurance Company of North America	246,449.10	24,644.91
KK105	4th quarter	Insurance Company of North America	60.81	6.08
KK107	4th quarter	Insurance Company of North America	104,277.74	10,427.77
KK108	4th quarter	Insurance Company of North America	47,014.76	4,701.48
KK109	2nd quarter	MAA General Assurance Phils., Inc.	74,419.10	7,441.91
KK110	3rd quarter	MAA General Assurance Phils., Inc.	71.90	7.20
KK111	4th quarter	MAA General Assurance Phils., Inc.	14,754.75	1,475.47
KK112	1st quarter	Malayan Insurance Company, Inc.	954,460.70	95,446.07
KK113	2nd quarter	Malayan Insurance Company, Inc.	1,038,536.33	103,853.63
KK114	3rd quarter	Malayan Insurance Company, Inc.	765,808.70	76,580.87
KK115	4th quarter	Malayan Insurance Company, Inc.	1,843,708.69	184,370.87
KK119	1st quarter	Maxicare Healthcare Corp.	613,858.06	61,385.81
KK120	2nd quarter	Maxicare Healthcare Corp.	788,710.29	78,871.03
KK121	3rd quarter	Maxicare Healthcare Corp.	719,895.70	71,989.57
KK122	4th quarter	Maxicare Healthcare Corp.	2,373,158.20	237,315.82
KK124	3rd quarter	Medicard Philippines, Inc.	110.42	11.04
KK125	3rd quarter	Medicard Philippines, Inc.	236,160.20	23,616.02
KK126	4th quarter	Medicard Philippines, Inc.	6,609.98	661.00
KK127	1st quarter	New Hampshire Insurance Company	70,000.00	7,000.00
KK128	2nd quarter	New Hampshire Insurance Company	1,245,609.40	124,560.94
KK129	1st quarter	PGA Sompo Japan Insurance Inc.	73,468.60	7,346.86
KK130	2nd quarter	PGA Sompo Japan Insurance Inc.	34,648.82	3,464.88
KK131	3rd quarter	PGA Sompo Japan Insurance Inc.	14,395.62	1,439.43
KK133	1st quarter	Philam Insurance Company, Inc.	2,937,260.65	293,726.07
KK136	4th quarter	Philam Insurance Company, Inc.	128,637.10	12,863.72
KK137	1st quarter	Philamcare Health Systems, Inc.	271,068.40	27,106.84

KK138	2nd quarter	Philamcare Health Systems, Inc.	58,746.40	5,874.64
KK139	3rd quarter	Philamcare Health Systems, Inc.	61,831.60	6,183.16
KK140	3rd quarter	Philippine AXA Life Insurance Corporation	37,530.27	3,350.92
KK141	3rd quarter	Philippine AXA Life Insurance Corporation	19,949.49	16,624.56
KK142	4th quarter	Philippine AXA Life Insurance Corporation	61,366.25	5,479.13
KK143	1st quarter	Philippine Charter Insurance Corporation	95,402.56	9,540.24
KK145	3rd quarter	Philippine Charter Insurance Corporation	18.94	1.70
KK146	4th quarter	Philippine Charter Insurance Corporation	6,924.96	692.48
KK147	2nd quarter	Pioneer Insurance and Surety Corporation	348,401.44	34,840.27
KK148	3rd quarter	Pioneer Insurance and Surety Corporation	40,035.27	5,477.15
KK149	3rd quarter	Pioneer Insurance and Surety Corporation	1,388,528.26	138,761.70
KK150	4th quarter	Pioneer Insurance and Surety Corporation	27,825.03	2,782.92
KK151	4th quarter	Pioneer Insurance and Surety Corporation	1,009,556.40	100,955.64
KK152	1st quarter	PNB General Insurers Co., Inc.	551,868.09	55,186.93
KK153	2nd quarter	PNB General Insurers Co., Inc.	124,237.07	12,423.71
KK154	3rd quarter	PNB General Insurers Co., Inc.	18.42	1.71
KK155	4th quarter	PNB General Insurers Co., Inc.	102,246.85	9,897.80
KK160	1st quarter	Prudential Life Healthcare Inc.	5,352,468.49	535,246.85
KK161	2nd quarter	Prudential Life Healthcare Inc.	289,603.93	28,960.39
KK162	3rd quarter	Prudential Life Healthcare Inc.	2,627,427.11	262,742.71
KK163	4th quarter	Prudential Life Healthcare Inc.	40,469.60	4,046.96
KK164	4th quarter	Prudential Life Healthcare Inc.	997,298.70	99,729.87
KK165	1st quarter	QBE Insurance Phils., inc.	1,783,243.40	178,324.34
KK166	2nd quarter	QBE Insurance Phils., inc.	469,402.80	46,939.90
KK167	3rd quarter	QBE Insurance Phils., inc.	747,151.60	74,715.16
KK168	4th quarter	QBE Insurance Phils., inc.	566,315.30	56,631.53
KK169	4th quarter	QBE Insurance Phils., inc.	828,827.30	82,882.73
KK170	1st quarter	Standard Insurance Co., Inc.	384,038.55	38,403.86
KK172	3rd quarter	Standard Insurance Co., Inc.	62,545.66	6,254.57
KK174	1st quarter	Sunlife of Canada (Philippines) Inc.	43,012.61	4,301.26
KK175	3rd quarter	Sunlife of Canada (Philippines) Inc.	114,710.69	11,471.07
KK176	2nd quarter	Sunlife of Canada (Philippines) Inc.	149,059.39	14,905.95
KK178	1st quarter	Philippine American Life and General Insurance Company	27,500.00	550.00
KK179	2nd quarter	Tokio Marine Malayan Insurance Company, Inc.	493,087.87	49,308.78
KK180	1st quarter	Tokio Marine Malayan Insurance Company, Inc.	689,043.60	68,904.36
KK181	1st quarter	UCPB General Insurance Company, Inc.	101,100.50	10,110.05
KK182	3rd quarter	UCPB General Insurance Company, Inc.	9,183.00	918.30
KK183	4th quarter	UCPB General Insurance Company, Inc.	10,342.84	1,058.62
KK184	3rd quarter	United Coconut Planters Life Assurance Corporation	71,966.80	7,196.68
KK185	4th quarter	United Coconut Planters Life Assurance Corporation	128,319.30	12,831.93
KK186	3rd quarter	BPI/MS Insurance Corporation	219,306.77	51,961.30
KK188	1st quarter	Glaxosmithkline Philippines, Inc.	733,333.00	14,666.66

KK190	3rd quarter	Glaxosmithkline Philippines, Inc.	2,359,575.50	47,191.51
KK191	4th quarter	Glaxosmithkline Philippines, Inc.	1,217,525.50	24,350.51
KK193	2nd quarter	HMC Inc.	27,782.51	2,778.25
KK194	1st quarter	Intertek Testing Services Phils., Inc.	227,283.00	19,773.62
KK197	3rd quarter	Manila North Tollways Corporation	1,700,000.00	170,000.00
KK199	1st quarter	Sara Lee Philippines Inc.	336,041.20	6,720.82
KK200	2nd quarter	Sara Lee Philippines Inc.	166,919.50	3,338.39
KK201	3rd quarter	Sara Lee Philippines Inc.	1,383,243.68	27,664.87
KK202	3rd quarter	Subic Water and Sewerage Company Inc.	498,804.00	4,988.04
KK203	4th quarter	Subic Water and Sewerage Company Inc.	261,856.00	2,618.56
TOTAL COMMISSION INCOME AND SERVICE FEES			**₱ 58,332,023.13**	**₱ 5,309,498.52**

The Court, however, cannot trace with certainty from the production report, general ledger and Annual ITR, the income payments of ₱58,332,023.13. We note that the Annual ITR merely provides summarized data without the supporting schedule or notes that will enlighten the Court as to the detailed items included therein.

As for the amount of ₱1,085,320.00, with a corresponding withholding taxes of ₱54,266.00 classified as Other Income, petitioner submitted before this Court documents such as the Lease and Sub-lease Agreements entered into by petitioner during the CY 2008[65]; Lease Contracts (Philamlife Tower-Head Office[66] and Kepwealth Property Phils., Inc., Cebu Branch[67]); Contracts of Sub-lease with Jardine Davies Investment, Inc.[68] and York Philippines, Inc.[69]; Schedule of Rent Expense for 2008[70]; Journal Vouchers on Rental and Other Charges to Jardine Davies Investment Inc.[71] and York Philippines, Inc.[72]; Journal Voucher for the Reversal of Accrual of Rent Expense[73]; General Ledger of Rent Expense – Account No. 23000[74]; and, official receipts of rent income collected[75] to support the same. According to petitioner, rental income is recorded as a reduction against the rent expense account in the general ledger. The ICPA reviewed

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[65] Exhibit "OO".
[66] Exhibit "OO1".
[67] Exhibit "OO2".
[68] Exhibit "OO3".
[69] Exhibit "OO4".
[70] Exhibit "PP".
[71] Exhibits "PP1" to "PP13".
[72] Exhibits "PP14" to "PP18".
[73] Exhibit "PP19".
[74] Exhibits "PPa-1" to "PPa-7".
[75] Exhibits "PPb-1" to "PPb-6".

the "rent expense based on the provisions of the agreements and JVs examined as summarized in the Schedule of Movements of Rent Expense"[76] and "traced the income shown as deductions from the amount of rent expense reflected in the general ledger."[77]

Upon verification, the Court finds that petitioner was able to prove that the income payments in the amount of ₱1,085,320.00, upon which the withholding taxes of ₱54,266.00 were withheld, were indeed reported in its Annual ITR for the year 2008.

In sum, petitioner has complied with the three (3) aforementioned substantiation requirements but only in as much as the CWT of ₱3,569,915.23 out of the total claim of ₱8,880,039.00, as determined below:

	Amount of Income Payments	Amount of CWT
Claim for Refund/TCC	₱ 97,276,271.79	₱ 8,880,039.00
Less: Disallowed (No supporting BIR Form 2307 and error in recording)	6,252.49	625.25
Income payments cannot be traced from the GL	58,332,023.13	5,309,498.52
Substantiated CWT	**₱ 38,937, 996.17**	**₱ 3,569,915.23**

In order to prove that no amount of the subject claim was utilized to pay for its 2008 MCIT liability of ₱1,394,162.56[78], petitioner presented various Certificates of Creditable Tax Withheld at Source for the years 1999 to 2007[79]. Records show that the Prior Year's Excess Credits of ₱49,231,582.00 reflected in petitioner's 2008 Annual Income Tax Return represents the balance of petitioner's excess and unutilized tax credits from 1999 to 2007[80]. For taxable years 1999 to 2007, petitioner's creditable withholding taxes amounts to ₱57,314,802.00, tax payments of ₱550,819.00 and MCIT liability/income taxes due in the aggregate amount of ₱8,634,039.64, leaving the unapplied tax credits from 1999 to 2007 in the amount of ₱49,231,581.36, detailed as follows:

[76] Exhibit "PP".
[77] Exhibit "PPa-1"; Par. 8 (b) of Exhibit "UU", p. 12 of 15.
[78] Exhibit "E-3".
[79] Exhibits "QQ1" to "QQ1173".
[80] Exhibits "W", "X", "Y", "Z", "AA", "BB", "CC", "DD" and "EE".

Exhibit	Year	Creditable Tax Withheld	Tax Payments	MCIT / Income Tax Due	Balance of Prior Years Excess Credits
W	1999	₱ 3,076,766.00		₱ 876,804.00	₱ 2,199,962.00
X	2000	2,182,038.00			4,382,000.00
Y	2001	4,022,813.00			8,404,813.00
Z	2002	9,257,991.00		1,337,722.16	16,325,081.84
AA	2003	8,342,787.00		1,651,372.16	23,016,496.68
BB	2004	13,724,663.00		1,341,007.48	35,400,152.20
CC	2005	9,345,042.00		1,148,624.84	43,596,569.36
DD	2006	To be refunded		1,226,485.32	42,370,084.04
EE	2007	7,362,702.00	₱ 550,819.00	1,052,023.68	**₱ 49,231,581.36**
Total		**₱ 57,314,802.00**	**₱ 550,819.00**	**₱ 8,634,039.64**	

Out of the reported creditable withholding taxes for the years 1999 to 2007 of ₱57,314,802.00, petitioner substantiated the amount of ₱57,015,995.55 which were summarized in the Schedule of Prior Years' Creditable Taxes Withheld on Commission Income and Service Fees supported by original BIR form 2307 for the taxable years 1999 to 2007[81]. Therefore, the substantiated creditable tax withheld for the years 1999 to 2007 of ₱57,015,995.55 are more than enough to cover the tax liabilities for years 1999 to 2007 in the aggregate amount of ₱8,634,039.64. Thus, petitioner has sufficiently proven that it has excess tax credits as of December 31, 2007 against which the tax liability of ₱1,394,162.56 for the year 2008 may be offset or credited.

In fine, the Court finds the evidence adduced by petitioner to be sufficient for it to be entitled to its claim for refund or issuance of tax credit certificate in the reduced amount of ₱3,569,915.23, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2008.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱3,569,915.23, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2008.

[81] Exhibit "QQ".

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
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.
Associate Justice
Chairperson, Second Division

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice