Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

FITNESS FIRST PHILIPPINES, INC., Petitioner,	**CTA Case No. 8942** For: Refund
	Members:
-versus-	**DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 06 2017 : 11:30am

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DECISION

MINDARO-GRULLA, J.:

This resolves the Petition for Review filed by Fitness First Philippines, Inc., pursuant to Section 7(a)(2)[1] of Republic Act (RA) No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals", as amended, as well as Section 3(a)(2)[2] of Rule 4 and Section 4(a)[3] of Rule 8 of the Revised Rules of the Court of Tax Appeals, 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:
xxx
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations 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 of action, in which case the inaction shall be deemed a denial;

[2] SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
xxx
(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: xxx;

[3] SEC. 4. *Where to appeal; mode of appeal.* –

Petitioner seeks the refund or the issuance of a tax credit certificate in the amount of ₱9,001,805.38, allegedly representing the withholding taxes it erroneously over-remitted to the Bureau of Internal Revenue (BIR) during the period covering November 2012 to April 2014.

Petitioner Fitness First Philippines, Inc. is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) on August 7, 1998, with Company Registration No. A199813109.[4] Its principal office is located at 17th Floor, SM Aura Premiere, 26th Street corner McKinley Parkway, Fort Bonifacio, Taguig City.[5] Petitioner is registered with the BIR as shown in its Certificate of Registration No. 8RC0000019630 with Tax Identification Number (TIN) 201-135-912-000, issued on September 2, 1998.[6]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who is empowered to perform the duties of his office, including among others, the power to decide, approve and grant refunds or tax credits of erroneously paid taxes, as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

As stated in its Articles of Incorporation[7], petitioner is engaged in providing fully integrated sports facility management services or total club management services which shall include but not limited to providing consultancy service to a diverse range of development projects like hotel health clubs, gyms, large-scale residential facilities, hotels, executive clubs and specialty sports facilities such as tennis clubs and ice rinks, providing an effective and total management

(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 and 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.

[4] Par. 4, Summary of Stipulated Facts, Joint Stipulations of Facts and Issues (JSFI), Docket, vol. II, p. 1271; Exhibit "P-1", Docket, vol. IV, p. 1892.

[5] Par. 1, Petition for Review, Docket vol. I, p. 6.

[6] Par. 5, Summary of Stipulated Facts, JSFI, Docket, vol. II, p. 1271; Exhibit "P-6" Docket, vol. IV, p. 1945.

[7] Exhibits "P-1-a", "P-2-a", and "P-3-a", Docket, vol. IV, pp. 1894-1911, 1913-1919, and 1923-1929.

service extending to all aspects of club operations like administration and finance, marketing, recreation strategy and food and beverage management, providing a complement of specialized services such as sports coaching, fitness testing, personal training, pro shops, beauty and massage treatments and food and beverage facilities, and selling (except on retail) club equipment and products like fitness equipment, tennis, squash and golf installation, sports surfaces and ancillary court products, recreational and playground equipment and sport simulation devices to governmental bodies, commercial operators and private developers.

Petitioner is the exclusive franchise holder in the Philippines of Fitness First Limited, a non-resident foreign corporation[8] organized and existing under the laws of the United Kingdom (UK), with registered office at 58 Fleets Lane, Poole, Dorset, BH15 3BT, England, and a tax resident of the UK during the material period of November 2012 to April 2014.[9]

On November 1, 2008, petitioner and Fitness First Limited entered into a Franchise Agreement[10], containing, among others, the following salient terms and conditions:

a. Fitness First Limited granted petitioner the exclusive right and license to operate the Business[11] in accordance with the System[12] in the Territory under the Trademarks[13] and using

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[8] Exhibits "P-8" to "P-12" and "P-47", Docket, vol. IV, pp. 1968-2027 and 2108.
[9] Exhibit "P-13", Docket, vol. IV, pp. 2028-2031.
[10] Exhibits "P-7" and "P-7-a", Docket, vol. IV, pp. 1946-1967.
[11] Clause 1.1 Definitions and Interpretation, "Business" means the business of setting up, operating and maintaining fitness centers, operated and conducted in accordance with the System under the Trade Marks using the Proprietary Rights and more particularly described in the Operation Manual, Exhibit "P-13", Docket, vol. IV, p. 1951.
[12] Clause 1.1 Definitions and Interpretation, "System" means the distinctive business format and method developed and implemented by the Franchisor in connection with the operation of the Business, utilizing and comprising the Proprietary Rights and certain standard operational procedures, plans, directions, specifications, methods, management and advertising techniques and identification schemes, parts of which are or may be contained in the Operation Manual, Exhibit "P-13", Docket, vol. IV, p. 1952.
[13] Clause 1.1 Definitions and Interpretation, "Trade Marks" means the registered trademarks and applications together with all other trademarks, trade names, logos, designs, symbols, emblems or insignia used in the business, Exhibit "P-13", Docket, vol. IV, p. 1952.

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the Proprietary Rights[14];[15]

b. The initial term shall be 10 years, renewable at the option of petitioner;[16] and

c. By way of consideration, petitioner shall pay Fitness First Limited royalties in four quarterly payments on account, with a final payment. Each quarterly payment is calculated as one quarter of the total franchise payment of the preceding year while the final payment is calculated based on the net sales franchise multiplied by the following rates:[17]

ANNUAL NET SALES (GBP) PER PREMISES	ANNUAL FRANCHISE FEE PAYABLE
0 GBP-250,000 GBP	5% on the first 250,000 GBP net sales
250,000 GBP-1 million GBP	7.5% on the next 750,000 GBP net sales
Over 1 million GBP	10% on the net sales over 1 million GBP

Pursuant to the Franchise Agreement, royalties in the total amount of ₱180,036,107.70 were accrued in the books of petitioner for the benefit of Fitness First Limited from November 2012 to April 2014.[18]

The accrued royalties were subjected to a thirty percent (30%) withholding tax pursuant to Section 28(B)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

"SEC. 28. *Rates of Income Tax on Foreign Corporations.* –

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[14] Clause 1.1 Definitions and Interpretation, "Proprietary Rights" means the Intellectual property rights in the System and in all fascia, slogans, know-how, information, drawings, plans, training materials and other identifying materials, whether or not registered or capable of registration, and all other proprietary rights whatsoever owned by or licensed to the Franchisor for use in connection with the System or the Business, Exhibit "P-13", Docket, vol. IV, p. 1952.

[15] Clause 2. Appointment and Grant, Exhibit "P-7", Docket, vol. IV, p. 1953.

[16] Clause 1.1 Definitions and Interpretation, "Initial Term" means 10 years from the date of commencement of this agreement, Docket, vol. IV, p. 1951.

[17] Exhibit "P-7-a", Docket, vol. IV, pp. 1960-1961.

[18] Exhibits "P-14" to "P-28", Docket, vol. IV, pp. 2035-2049.

(B) *Tax on Nonresident Foreign Corporation.* –

(1) *In General.* – Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs 5(c): *Provided*, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%)."

Thus, petitioner remitted to the BIR final withholding taxes in the total amount of ₱54,010,832.30, for the period from November 2012 to April 2014.[19]

Subsequently, petitioner discovered that the royalties it paid to Fitness First Limited in the total amount of ₱180,036,107.70 should have been subjected to a maximum withholding rate of twenty-five percent (25%) pursuant to Article 11 of the "Convention between the Government of the Republic of the Philippines and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains" ("RP-UK Tax Treaty" for brevity).

The application of Article 11 of the RP-UK Tax Treaty should have resulted to just ₱45,009,026.92 in final withholding taxes, instead of the 30% final withholding tax rate under Section 28(B)(1) of the NIRC of 1997, as amended, which resulted to ₱54,010,832.30 in withholding taxes that were remitted to the BIR. Thus, petitioner alleges that it over-remitted to the BIR final withholding taxes in the total amount of ₱9,001,805.38, broken down as follows:

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[19] Exhibits "P-29" to "P-39-b", Docket, vol. IV, pp. 2050-2071.

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Year	Month	Tax Base (Royalties Accrued)	30%WHT	25% WHT	Over-Remittance
2012	November[20]	₱ 22,093,359.77	₱ 6,628,007.93	₱ 5,523,339.94	₱ 1,104,667.99
	December[21]	18,955,785.00	5,686,735.50	4,738,946.25	947,789.25
2013	January[22]	34,712,493.73	10,413,748.12	8,678,123.43	1,735,624.69
	April[23]	32,352,721.67	9,705,816.50	8,088,180.42	1,617,636.08
	July[24]	34,075,108.23	10,222,532.47	8,518,777.06	1,703,755.41
	November[25]	9,929,891.77	2,978,967.53	2,482,472.94	496,494.59
2014	January[26]	13,840,236.97	4,152,071.09	3,460,059.24	692,011.85
	April[27]	14,076,510.53	4,222,953.16	3,519,127.63	703,825.53
TOTAL		**₱180,036,107.70**	**₱54,010,832.30**	**₱45,009,026.92**	**₱9,001,805.38**

On October 3, 2014, petitioner filed with the BIR a tax treaty relief application to confirm that the royalty payments/accruals under the Franchise Agreement are entitled to the 25% preferential treaty rate.

Subsequently, on October 31, 2014, petitioner filed with the BIR an administrative claim for refund and/or issuance of a tax credit certificate (TCC) representing the final withholding taxes it erroneously over-remitted covering the period November 2012 to April 2014 amounting to ₱9,001,805.38.

Due to respondent's inaction on petitioner's tax treaty relief application and administrative claim for tax refund and/or issuance of TCC, and to preserve its right to pursue its claim for refund, petitioner filed the instant Petition for Review[28] on December 1, 2014.

On December 10, 2014, petitioner filed a Manifestation with Attached Amended Petition for Review[29] pursuant to Section 2 of Rule 10 of the Revised Rules of Court. This was noted by the Court in the Order[30] dated December 19, 2014.

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[20] Exhibits "P-29" to "P-29-b-1", Docket, vol. IV, pp. 2050-2051.
[21] Exhibits "P-30" to "P-30-b-1", Docket, vol. IV, pp. 2052-2053.
[22] Exhibits "P-31" to "P-31-b-1", Docket, vol. IV, pp. 2054-2055.
[23] Exhibits "P-32" to "P-32-b-1", Docket, vol. IV, pp. 2056-2057.
[24] Exhibits "P-33" to "P-33-b-1", Docket, vol. IV, pp. 2058-2059.
[25] Exhibits "P-34" to "P-34-b-1", Docket, vol. IV, pp. 2060-2061.
[26] Exhibits "P-35" to "P-35-b-1", Docket, vol. IV, pp. 2062-2063.
[27] Exhibits "P-36" to "P-36-b-1", Docket, vol. IV, pp. 2064-2065.
[28] Docket, vol. I, pp. 6-13.
[29] Docket, vol. I, pp. 345-354.
[30] Docket, vol. I, p. 689.

Within the extended time granted by the Court,[31] respondent filed his Answer[32] through registered mail on March 19, 2015, and received by this Court on March 26, 2015, interposing the following special and affirmative defenses:

"***SPECIAL AND AFFIRMATIVE DEFENSES***

5. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:

6. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau.

7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

8. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php9,001,805.38, allegedly representing withholding taxes erroneously over-remitted to the BIR covering the period from November 2012 to April 2014, were not fully substantiated by proper documents, such as sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

9. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

10. Petitioner failed to comply with the conditions/ requirements under Section 112(A)(B)(C) of the 1997 Tax Code.

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[31] Order dated February 2, 2015 and Resolution dated March 16, 2015, Docket, vol. I, pp. 695 and 700.

[32] Docket, vol. I, pp. 701-703.

11. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

12. Claims for refund are construed strictly against herein petitioner since the same partakes 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 1211***)."

The Pre-Trial Conference was set on June 11, 2015.[33] Thus, petitioner filed its Pre-Trial Brief[34] on June 8, 2015; while the Pre-Trial Brief (for the Respondent)[35] was filed on June 9, 2015.

On July 1, 2015, the parties filed their Joint Stipulation of Facts and Issues[36]. This was approved by the Court in the Resolution[37] dated July 9, 2015, which also terminated the Pre-Trial. Subsequently, the Court issued the Pre-Trial Order[38] on August 11, 2015.

During trial, petitioner presented the following witnesses: Ms. Maria Rita A. Piquero[39], its Finance Officer; and Atty. Jocelyn T. Tsang[40], a Tax Manager of petitioner's External Tax Consultant, Isla Lipana & Co.

Petitioner's Formal Offer of Evidence[41] was filed on April 27, 2016. In the Resolution[42] dated June 28, 2016, the Court admitted petitioner's Exhibits "P-1", "P-1-a", "P-2", "P-2-a", "P-3", "P-3-a", "P-4", "P-4-a", "P-7", "P-7-a", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-14-a", "P-14-b", "P-15", "P-15-a", "P-16", "P-16-a", "P-17",

[33] Notice of Pre-Trial Conference, Docket, vol. I, pp. 705-706.
[34] Docket, vol. II, pp. 1243-1253.
[35] Docket, vol. II, pp. 1254-1255.
[36] Docket, vol. II, pp. 1270-1274.
[37] Docket, vol. II, pp. 1276-1277.
[38] Docket, vol. II, pp. 1285-1293.
[39] Minutes of the Hearing dated March 8, 2016, Docket, vol. III, pp. 1859-1860; Exhibit "P-48", Amended Judicial Affidavit of Maria Rita A. Piquero, Docket, vol. III, pp. 1309-1324.
[40] Minutes of the Hearing dated March 29, 2016, Docket, vol. IV, pp. 1864-1865; Exhibit "P-49", Amended Judicial Affidavit of Atty. Jocelyn T. Tsang, Docket, vol. III, pp. 1577-1589.
[41] Docket, vol. IV, pp. 1869-1891.
[42] Docket, vol. IV, pp. 2117-2118.

"P-17-a", "P-18", "P-18-a", "P-19", "P-19-a", "P-20", "P-20-a", "P-21 to P-28", "P-29", "P-29-a", "P-29-b", "P-29-b-1", "P-30", "P-30-a", "P-30-b", "P-30-b-1", "P-31", "P-31-a", "P-31-b", "P-31-b-1", "P-32", "P-32-a", "P-32-b", "P-32-b-1", "P-33", "P-33-a", "P-33-b", "P-33-b-1", "P-34", "P-34-a", "P-34-b", "P-34-b-1", "P-35", "P-35-a", "P-35-b", "P-35-b-1", "P-36", "P-36-a", "P-36-b", "P-36-b-1", "P-37", "P-37-a", "P-37-b", "P-38", "P-38-a", "P-38-b", "P-38-c", "P-38-d", "P-39", "P-39-a", "P-39-b", "P-40", "P-40-a", "P-41", "P-41-a", "P-41-b", "P-41-c", "P-42", "P-42-a", "P-42-b", "P-43", "P-43-a", "P-43-b", "P-44", "P-44-a", "P-44-b", "P-45", "P-45-a", "P-45-b", "P-45-c", "P-46", "P-46-a", "P-46-b", "P-47", "P-48", "P-48-a", "P-49", and "P-49-a". However, the Court denied the admission of Exhibit "P-5", for failure to present the original for comparison; and Exhibit "P-6", for failure of the exhibit formally offered to correspond with the document actually marked.

On July 14, 2016, petitioner filed a Motion for Reconsideration with Motion to Amend Formal Offer of Evidence and Admit Attached Amended Formal Offer of Evidence[43]. This was granted by the Court in the Resolution[44] dated October 3, 2016, and Exhibit "P-6" was admitted into evidence.

Petitioner formally offered the following documentary exhibits:

Exhibit:	Description:
P-1	Certificate of Incorporation of petitioner, originally FPD Sportathlon Philippines, Inc. dated 27 August 1998 with Company Registration No. A199813109
P-1-a	Articles of Incorporation of petitioner, originally FPD Sportathlon Philippines, Inc.
P-2	Certificate of Filing of Amended Articles of Incorporation of petitioner, formerly Sportathlon Philippines, Inc. dated 05 January 2000
P-2-a	Amended Articles of Incorporation of petitioner, formerly Sportathlon Philippines, Inc. adopted on 06 November 1999
P-3	Certificate of Filing of Amended Articles of Incorporation of petitioner dated 19 May 2004
P-3-a	Amended Articles of Incorporation of petitioner adopted on 12 April 2004
P-4	Certificate of Filing of Amended Articles of Incorporation of petitioner dated 21 July 2014
P-4-a	Amended Articles of Incorporation of petitioner adopted on 02 April 2004

[43] Docket, vol. IV, pp. 2119-2122.
[44] Docket, vol. IV, pp. 2161-2162.

P-6	Petitioner's new BIR Certificate of Registration No. 8RC0000053130
P-7	Franchise Agreement dated 01 November 2008 between petitioner and Fitness First Limited
P-7-a	Section 15 (15.1 to 15.3), page 12
P-8	Articles of Association dated 29 June 1995 of Fitness First Limited, originally Fitness First Group Limited
P-9	Certificate of Incorporation on Change of Name and Re-Registration of a Private Company as a Public Company dated 23 September 1996 from Fitness First Group Limited to Fitness First Plc, with Company No. 3075946
P-10	Certification dated 22 April 2009 on Re-Registration of a Public Company as a Private Company on 18 August 2003 of Fitness First Limited, with Company No. 3075946
P-11	Special Resolution dated 30 January 2013 of Fitness First Limited, with Company No. 3075946
P-12	Articles of Association dated 30 January 2013 of Fitness First Limited, with Company No. 3075946
P-13	Residence Certificate dated 10 November 2014 issued by the UK HM Revenue & Customs Large Business Corporation Tax that Fitness First Limited has been a resident of the UK from incorporation on 29 June 1995
P-14	Invoice dated 30 November 2012 issued by Fitness First Limited to petitioner for royalties/franchise fees due as stated
P-14-a	The amount of 34,514,922.94
P-14-b	The amount of 6,534,221.83
P-15	Invoice dated 31 January 2013 issued by Fitness First Limited to petitioner for royalties/franchise fees due as stated
P-15-a	The amount of 34,712,493.72
P-16	Invoice dated 30 April 2013 issued by Fitness First Limited to petitioner for royalties/franchise fees due as stated
P-16-a	The amount of 32,352,721.68
P-17	Invoice dated 31 July 2013 issued by Fitness First Limited to petitioner for royalties/franchise fees due as stated
P-17-a	The amount of 34,075,108.24
P-18	Invoice dated 30 November 2013 issued by Fitness First Limited to petitioner for royalties/franchise fees due as stated
P-18-a	The amount of 9,929,891.79
P-19	Invoice dated 31 January 2014 issued by Fitness First Limited to Petitioner for royalties/franchise fees due as stated
P-19-a	The amount of 13,840,236.98
P-20	Invoice dated 30 April 2014 issued by Fitness First Limited to Petitioner for royalties/franchise fees due as stated
P-20-a	The amount of 14,076,510.52
P-21 to P-28	Petitioner's General Ledger and Books of Accounts, including printouts of the Detail Trial Balance for the period November 2012 to April 2014 of the General Ledger Account No. 22341 extracted/downloaded from petitioner's computer accounting system
P-29	BIR certified computer printout from the BIR's Electronic Filing and Payment System (eFPS) of BIR Form No. 1601-F for Monthly Remittance Return of Final Income Taxes Withheld for November 2012 filed by petitioner

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P-29-a	Computation of Tax (Nature of Income Payment-On Other Payments to NRFCs; ATC-WC230; Tax Base-22,093,359.77; Tax Rate (%) 30.00; Tax Required to be Withheld-6,628,007.93
P-29-b	BIR certified computer printout of BIR eFPS Payment Details of Petitioner's WF-Monthly Remittance Return of Final Income Tax Withheld for the tax period 30 November 2012
P-29-b-1	"Total Payment (Successful): 6,628,007.93"
P-30	BIR certified computer printout from the BIR's Electronic Filing and Payment System (eFPS) of BIR Form No. 1601-F for Monthly Remittance Return of Final Income Taxes Withheld for December 2012 filed by petitioner
P-30-a	Computation of Tax (Nature of Income Payment-On Other Payments to NRFCs; ATC-WC230; Tax Base-18,955,785.00; Tax Rate (%) 30.00; Tax Required to be Withheld-5,686,735.50
P-30-b	BIR certified computer printout of BIR eFPS Payment Details of petitioner's WF-Monthly Remittance Return of Final Income Tax Withheld for the tax period 31 December 2012
P-30-b-1	Total Payments (Successful); 5,686,735.50
P-31	BIR certified computer printout from the BIR's Electronic Filing and Payment System (eFPS) of BIR Form No. 1601-F for Monthly Remittance Return of Final Income Taxes Withheld for January 2013 filed by petitioner
P-31-a	Computation of Tax (Nature of Income Payment-On Other Payments to NRFCs; ATC-WC230; Tax Base-34,712,493.73; Tax Rate (%) 30.00; Tax Required to be Withheld-10,413,748.12
P-31-b	BIR certified computer printout of BIR eFPS Payment Details of petitioner's WF-Monthly Remittance Return of Final Income Tax Withheld for the tax period 31 January 2013
P-31-b-1	"Total Payments (Successful); 10,555,783.48"
P-32	BIR certified computer printout from the BIR's Electronic Filing and Payment System (eFPS) of BIR Form No. 1601-F for Monthly Remittance Return of Final Income Taxes Withheld for April 2013 filed by petitioner
P-32-a	Computation of Tax (Nature of Income Payment-On Other Payments to NRFCs; ATC-WC230; Tax Base-32,352,721.67; Tax Rate (%) 30.00; Tax Required to be Withheld-9,705,816.50
P-32-b	BIR certified computer printout of BIR eFPS Payment Details of petitioner's WF-Monthly Remittance Return of Final Income Tax Withheld for the tax period 30 April 2013
P-32-b-1	"Total Payments (Successful); 9,849,427.76"
P-33	BIR certified computer printout from the BIR's Electronic Filing and Payment System (eFPS) of BIR Form No. 1601-F for Monthly Remittance Return of Final Income Taxes Withheld for July 2013 filed by petitioner
P-33-a	Computation of Tax (Nature of Income Payment-On Other Payments to NRFCs; ATC-WC230; Tax Base-34,075,108.23; Tax Rate (%) 30.00; Tax Required to be Withheld-10,222,532.47

P-33-b	BIR certified computer printout of BIR eFPS Payment Details of petitioner's WF-Monthly Remittance Return of Final Income Tax Withheld for the tax period 31 July 2013
P-33-b-1	"Total Payments (Successful); 10,374,294.97"
P-34	BIR certified computer printout from the BIR's Electronic Filing and Payment System (eFPS) of BIR Form No. 1601-F for Monthly Remittance Return of Final Income Taxes Withheld for November 2013 filed by petitioner
P-34-a	Computation of Tax (Nature of Income Payment-On Other Payments to NRFCs; ATC-WC230; Tax Base-9,929,891.77; Tax Rate (%) 30.00; Tax Required to be Withheld-2,978,967.53
P-34-b	BIR certified computer printout of BIR eFPS Payment Details of petitioner's WF-Monthly Remittance Return of Final Income Tax Withheld for the tax period 30 November 2013
P-34-b-1	"Total Payments (Successful); 2,978,967.53"
P-35	BIR certified computer printout from the BIR's Electronic Filing and Payment System (eFPS) of BIR Form No. 1601-F for Monthly Remittance Return of Final Income Taxes Withheld for January 2014 filed by petitioner
P-35-a	Computation of Tax (Nature of Income Payment-On Other Payments to NRFCs; ATC-WC230; Tax Base-13,840,236.97; Tax Rate (%) 30.00; Tax Required to be Withheld-4,152,071.09
P-35-b	BIR certified computer printout of BIR eFPS Payment Details of petitioner's WF-Monthly Remittance Return of Final Income Tax Withheld for the tax period 31 January 2-014
P-35-b-1	"Total Payments (Successful); 4,310,656.18
P-36	BIR certified computer printout from the BIR's Electronic Filing and Payment System (eFPS) of BIR Form No. 1601-F for Monthly Remittance Return of Final Income Taxes Withheld for April 2014 filed by petitioner
P-36-a	Computation of Tax (Nature of Income Payment-On Other Payments to NRFCs; ATC-WC230; Tax Base-14,076,510.53; Tax Rate (%) 30.00; Tax Required to be Withheld-4,222,953.16
P-36-b	BIR certified computer printout of BIR eFPS Payment Details of petitioner's WF-Monthly Remittance Return of Final Income Tax Withheld for the tax period 30 April 2014
P-36-b-1	"Total Payments (Successful); 4,431,203.55"
P-37	BIR certified computer printout from the BIR's Electronic Filing and Payment System (eFPS) of BIR Form No. 1604-CF for Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes for the year 2012 filed by petitioner
P-37-a	Schedule 2 Remittance per BIR Form No. 1601-F for the month of November 2012 (Taxes Withheld and Remitted-6,628,007.93)
P-37-b	Scheduled 2 Remittance per BIR Form No. 1601-F for the month of December 2012 (Taxes Withheld and Remitted-5,686,735.50)
P-38	BIR certified computer printout from the BIR's Electronic Filing and Payment System (eFPS) of BIR Form No. 1604-CF for Annual Information Return of Income Taxes Withheld on

	Compensation and Final Withholding Taxes for the year 2013 filed by petitioner
P-38-a	Schedule 2 Remittance per BIR Form No. 1601-F for the month of January 2013 (Taxes Withheld and Remitted-10,555,783.48)
P-38-b	Scheduled 2 Remittance per BIR Form No. 1601-F for the month of April 2013 (Taxes Withheld and Remitted-9,849,427.76)
P-38-c	Scheduled 2 Remittance per BIR Form No. 1601-F for the month of July 2013 (Taxes Withheld and Remitted-10,374,294.97)
P-38-d	Scheduled 2 Remittance per BIR Form No. 1601-F for the month of November 2013 (Taxes Withheld and Remitted-2,978,967.53)
P-39	BIR certified computer printout from the BIR's Electronic Filing and Payment System (eFPS) of BIR Form No. 1604-CF for Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes for the year 2014 filed by Petitioner
P-39-a	Schedule 2 Remittance per BIR Form No. 1601-F for the month of January 2014 (Taxes Withheld and Remitted-4,310,656.18)
P-39-b	Schedule 2 Remittance per BIR Form No. 1601-F for the month of April 2014 (Taxes Withheld and Remitted-4,431,203.55)
P-40	Convention between the Government of the Republic of the Philippines and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains signed on 10 June 1976 and effective in the Philippines from 01 January 1978
P-40-a	Article 11- Royalties
P-41	Receiving copy of petitioner's request/claim for refund and/or issuance of TCC dated 31 October 2014 with attached BIR Form No. 1914, among others, with BIR Large Taxpayer District Office rubber stamp received on same date of 31 October 2014
P-41-a	Signature of "Roselle K. Yu, Executive Director, Tax"
P-41-b	"Isla Lipana & Co. Team members Joselyn T. Tsang Manager"
P-41-c	BIR Large Taxpayers Division-Makati rubber stamp received on 31 October 2014
P-42	BIR Form No. 1914 for Application for Tax Credits/Refunds dated 31 October 2014 of petitioner, with BIR Large Taxpayer District Office rubber stamp received on same date of 31 October 2014
P-42-a	Signature of "Roselle K. Yu, for Isla Lipana & Co., Authorized Representative"
P-42-b	BIR Large Taxpayers Division-Makati rubber stamp received on 31 October 2014
P-43	Receiving copy of the letter request dated 03 November 2014 to amend addressee of the request/claim for refund and/or issuance of TCC and item 6 of BIR Form No. 1914 with attached amended BIR Form No. 1914, with BIR Large Taxpayer District Office rubber stamp received on same date of 03 November 2014

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P-43-a	Signature of "Jocelyn T. Tsang, Manager, Tax"
P-43-b	BIR Large Taxpayers Division-Makati rubber stamp received on 03 November 2014
P-44	Amended BIR Form No. 1914 for Application for Tax Credits/Refunds of Petitioner dated 03 November 2014, with BIR Large Taxpayer District Office rubber stamp rreceived on same date of 03 November 2014
P-44-a	Signature of "Jocelyn T. Tsang for Isla Lipana & Co., Authorized Representative"
P-44-b	BIR Large Taxpayers Division-Makati rubber stamp received on 03 November 2014
P-45	Receiving copy of petitioner's tax treaty relief application dated 03 October 2014 with attached BIR Form No. 0901-R, among others, with BIR Large Taxpayer District Office rubber stamp received on same date of 03 October 2014
P-45-a	Signature of "Roselle K. Yu, Executive Director, Tax"
P-45-b	"Isla Lipana & Co. Team members Joselyn T. Tsang Manager"
P-45-c	BIR Large Taxpayers Division-Makati rubber stamp received on 03 October 2014
P-46	BIR Form No. 0901-R for Tax Treaty Relief Application for Royalty Income of petitioner dated 03 October 2014, with BIR Large Taxpayer District Office rubber stamp received on same date of 03 October 2014
P-46-a	Signature of "Jocelyn T. Tsang for Isla Lipana & Co., Authorized Representative"
P-46-b	BIR Large Taxpayers Division-Makati rubber stamp received on 03 October 2014
P-47	Certification of Non-Registration of Company dated 09 July 2015 issued by the SEC Company and Monitoring Department that Fitness First Limited is not registered in its records as a corporation or as a partnership
P-48	Amended Judicial Affidavit dated 18 September 2015 of Maria Rita A. Piquero
P-48-a	Signature of Maria Rita A. Piquero
P-49	Amended Judicial Affidavit dated 30 October 2015 of Jocelyn T. Tsang
P-49-a	Signature of Jocelyn T. Tsang

Meanwhile, respondent posted a Very Urgent Manifestation[45] on May 3, 2016, manifesting that he will no longer be presenting any evidence/witness.

Petitioner filed its Memorandum[46] on November 7, 2016. Respondent, on the other hand, failed to file his memorandum.[47] Thus,

[45] Docket, vol. IV, pp. 2110-2111.
[46] Docket, vol. IV, pp. 2163-2180.
[47] Records Verification dated December 9, 2016, Docket, vol. IV, p. 2181.

in the Resolution dated December 20, 2016[48], the instant case was declared submitted for decision.

The parties stipulated on the following issue[49] for resolution of this Court:

> Whether or not petitioner is entitled to its claim for refund or issuance of tax credit certificate in the amount of ₱9,001,805.38, representing final withholding taxes erroneously over-remitted to the BIR covering the period from November 2012 to April 2014.

Sections 204(C) and 229 of the National Internal Revenue Code of 1997, as amended, state the requirements for the recovery of tax erroneously or illegally collected, to wit:

> "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." *(Emphasis supplied)*

[48] Docket, vol. IV, p. 2184.
[49] Statement of the Issue, JSFI, Docket, vol. II, p. 1271.

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"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)*

Pursuant to the above-mentioned provisions, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be complied with: (1) that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and (2) that the claim for refund or credit has been filed within two years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

The tax has been erroneously or illegally collected

Generally, non-resident foreign corporations are subject to a 30% income tax on royalties received from Philippine sources effective January 1, 2009, pursuant to Section 28(B)(1) of the NIRC of 1997, as amended, which states:

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"SEC. 28. *Rates of Income Tax on Foreign Corporations.* –

xxx xxx xxx

(B) *Tax on Nonresident Foreign Corporation.* –

(1) *In General.* – Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs 5(c): *Provided*, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%)."

Notably, however, the foregoing tax imposition may be reduced to the extent required by any treaty obligation binding upon the Philippine government, pursuant to Section 32(B)(5) of the NIRC of 1997, as amended, which states:

"SEC. 32. *Gross Income.* –

xxx xxx xxx

(B) *Exclusions from Gross Income.* – The following items shall not be included in gross income and shall be exempt from taxation under this Title:

xxx xxx xxx

(5) *Income Exempt under Treaty.* – Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines."

In this case, petitioner claims that the royalties arising from its Franchise Agreement with Fitness First Limited are entitled to the preferential tax rate of 25% on the basis of Article 11 of the RP-UK Tax Treaty.

The Court agrees with petitioner's contention.

Article 11 of the RP-UK Tax Treaty provides:[50]

"**Article 11**
Royalties

1. Royalties arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State. However, the tax so charged shall not exceed:

   (a) 15 percent of the gross amount of the royalties, where the royalties are paid:

      (i) by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activity; or
      (ii) in respect of cinematographic films or tapes for television or radio broadcasting.

   (b) in all other cases, 25 percent of the gross amount of the royalties.

[50] Exhibit "P-40-a", Docket, vol. IV, pp. 2083-2084.

3. The term 'royalties' as used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematographic films, and films or tapes for radio or television broadcasting), any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience."

Based on the foregoing treaty provision, the Philippines may tax the royalty payments by a Philippine company to a resident of United Kingdom at a preferential tax rate of (a) 15% if the payor is a BOI-registered enterprise and engaged in preferred areas of investments or if said payments are in respect of cinematographic films or tapes for television or radio broadcasting, and (b) 25% in all other cases.

Accordingly, petitioner qualifies as a resident of the Philippines. It is duly registered with the Philippines Securities and Exchange Commission (SEC) with principal office at 17th Floor SM Aura Premier, 26th Street corner McKinley Parkway, Barangay Fort Bonifacio, Taguig City, Metro Manila.[51] It is also duly registered with the BIR[52] and as a domestic corporation it is liable to tax in the Philippines under Section 27 of the NIRC of 1997, as amended.

On the other hand, Fitness First Limited qualifies as a resident of United Kingdom as evidenced by the Consularized Tax Residence Certificate issued by the HM Revenue and Customs[53], stating that Fitness First Limited has been a resident of the United Kingdom from its incorporation on June 29, 1995; and the Certificate of Non-Registration of Fitness First Limited issued by the Philippines SEC[54].

By virtue of the Franchise Agreement[55] between petitioner (Franchisee) and Fitness First Limited (Franchisor), petitioner-

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[51] Exhibits "P-1" to "P-4", Docket, vol. IV, pp. 1892-1931; Exhibit "P-4-a", Third Article, Docket, vol. IV, p. 1935.
[52] Exhibit "P-6", Docket, vol. IV, p. 1945.
[53] Exhibit "P-13", Docket, vol. IV, pp. 2028-2031.
[54] Exhibit "P-47", Docket, vol. IV, p. 2108.
[55] Exhibit "P-7", Clause 2, Docket, vol. IV, p. 1953.

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Franchisee was granted the license to operate the Business under Franchisor's Trademark and the right to use its Proprietary Rights. The remuneration thereof constitutes royalties, as defined in paragraph 3 of the afore-quoted Article 11 of the RP-UK Treaty. Fitness First Limited, being the Franchisor, is the beneficial owner of the accrued royalties, and necessarily has the full right to use and enjoy and benefit from the said income.

Considering that petitioner is not a BOI-registered enterprise engaged in preferred areas of investment, and that the royalties accrued are not in respect of cinematographic films or tapes for television or radio broadcasting, the subject royalties are entitled to the preferential tax rate of 25% pursuant to Article 11(2)(b) of the RP-UK Tax Treaty.

Having established that the 25% preferential tax rate on royalties under the RP-UK Tax Treaty is applicable, petitioner must now prove that it actually withheld and remitted 30% FWT resulting in erroneous over-remittance of taxes.

Records show that pursuant to the Franchise Agreement, Fitness First Limited issued invoices to petitioner for the royalties/franchise fees in the total amount of ₱180,036,107.70, broken down below, which were recorded in petitioner's books as per the Detail Trial Balance of General Ledger (G/L) Account No. 22341[56] for the period November 2012 to April 2014:

Exhibit (Invoice)[57]	**Invoice Ref. No.**	**Date**	**Amount**
P-14-a	RB1165	Nov. 30, 2012	₱ 34,514,922.94
P-14-b			6,534,221.83
P-15-a	RB1185	Jan. 31, 2013	34,712,493.72
P-16-a	RB1165	Apr. 30, 2013	32,352,721.68
P-17-a	RB1205	Jul. 31, 2013	34,075,108.24
P-18-a	RB1215	Nov. 30, 2013	9,929,891.79
P-19-a	RB1225	Jan. 31, 2014	13,840,236.98
P-20-a	RB1235	Apr. 30, 2014	14,076,510.52
	Total		**₱180,036,107.70**

[56] Exhibit "P-21", Docket, vol. IV, p. 2042.
[57] Docket, vol. IV, pp. 2035-2041.

To prove the fact of withholding and remittance of the 30% FWT, petitioner submitted its Monthly Remittance Returns of Final Income Taxes Withheld (BIR Forms No. 1601-F), together with the eFPS Payment Details[58], and Annual Information Returns of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Forms No. 1604-CF)[59], which were all certified by the BIR.

A perusal of the said documents shows that petitioner withheld 30% FWT in the amount of ₱54,010,832.30 from its accrued royalties of ₱180,036,107.67 for the period November 2012 to April 2014 and remitted the same to the BIR. The details of the remittances are as follows:

Exhibit[60]	Period Covered	Date of Remittance (per Payment Details)	Tax Base (Royalties)	30% FWT remitted
P-29 to P-29-b-1	November 2012	December 10, 2012	₱ 22,093,359.77	₱ 6,628,007.93
P-30 to P-30-b-1	December 2012	January 09, 2013	18,955,785.00	5,686,735.50
P-31 to P-31-b-1	January 2013	February 08, 2013	34,712,493.73	10,413,748.12
P-32 to P-32-b-1	April 2013	May 09, 2013	32,352,721.67	9,705,816.50
P-33 to P-33-b-1	July 2013	August 14, 2013	34,075,108.23	10,222,532.47
P-34 to P-34-b-1	November 2013	December 09, 2013	9,929,891.77	2,978,967.53
P-35 to P-35-b-1	January 2014	February 10, 2014	13,840,236.97	4,152,071.09
P-36 to P-36-b-1	April 2014	May 08, 2014	14,076,510.53	4,222,953.16
		Total	**₱180,036,107.67**	**₱54,010,832.30**

Save for a minimal discrepancy of ₱.03, the total amount of royalties per returns tallied with the total amount of royalties per invoices issued by Fitness First Limited. However, it was observed that although the invoices issued during November 2012 consisted of the amounts of ₱34,514,922.94 and ₱6,534,221.83[61] (or a total of ₱41,049,144.77), petitioner separately withheld from the amounts of ₱22,093,359.77 and ₱18,955,785.00 (or a total of ₱41,049,144.77) in December 2012 and January 2013, respectively.

Per its Detail Trial Balance of G/L Account No. 22341[62], royalties in the amounts of ₱6,534,221.83 and ₱15,559,137.92 (or a total of

[58] Exhibits "P-29" to "P-36-b", Docket, vol. IV, pp. 2050-2065.
[59] Exhibits "P-37" to "P-39-b", Docket, vol. IV, pp. 2066-2071.
[60] Docket, vol. IV, pp. 2050-2065.
[61] Exhibits "P-14-a" and "P-14-b", Docket, vol. IV, p. 2035.
[62] Exhibit "P-21", Docket, vol. IV, p. 2042.

₱22,093,359.75) were recorded in November 2012. In December 2012, a correction was made reversing the amount of ₱15,559,137.92 and royalty in the amount of ₱34,514,922.94 was also recorded. Consequently, the 30% FWT was withheld in December 2012 from the total amount of ₱22,093,359.75[63] recorded in November 2012. As to the royalty subjected to FWT in January 2013, instead of subjecting the recorded royalty of ₱34,514,922.94 to 30%, petitioner offset the reversed amount of ₱15,559,137.92, which was already subjected to FWT in the prior month, hence, the 30% FWT was withheld from the net amount of ₱18,955,785.02[64] (₱34,514,922.94 less ₱15,559,137.92).

Nonetheless, petitioner indeed subjected the royalties of ₱180,036,107.67 to 30% FWT, and these were properly remitted to the BIR.

In sum, since petitioner is entitled to the preferential tax rate of 25% on royalties accrued for the period November 2012 to April 2014 pursuant to the RP-UK Tax Treaty but petitioner withheld and remitted to the BIR 30% FWT on the said royalties, there is an over-remittance of the 5% difference in tax rates, equivalent to ₱9,001,805.38, as shown below:

	(A) Royalties accrued	**(B) FWT remitted**	**(C) 25% FWT due** (A x 25%)	**Over-remittance (B-C)**
November 2012	₱ 22,093,359.75	₱ 6,628,007.93	₱ 5,523,339.94	₱ 1,104,667.99
December 2012	18,955,785.02	5,686,735.50	4,738,946.26	947,789.24
January 2013	34,712,493.73	10,413,748.12	8,678,123.43	1,735,624.69
April 2013	32,352,721.67	9,705,816.50	8,088,180.42	1,617,636.08
July 2013	34,075,108.23	10,222,532.47	8,518,777.06	1,703,755.41
November 2013	9,929,891.77	2,978,967.53	2,482,472.94	496,494.59
January 2014	13,840,236.97	4,152,071.09	3,460,059.24	692,011.85
April 2014	14,076,510.53	4,222,953.16	3,519,127.63	703,825.53
Total	**₱180,036,107.67**	**₱54,010,832.30**	**₱45,009,026.92**	**₱9,001,805.38**

The claim for refund was filed within two years from date of payment of tax

[63] With a discrepancy of .02, which may be due to rounding.
[64] With a discrepancy of .02, which may be due to rounding.

The Supreme Court has consistently ruled that a claim for refund or credit with the BIR and the subsequent appeal to this Court must be filed within two (2) years from the date of payment of the tax.[65]

Recently, in the case of *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*[66], the Supreme Court held that Section 229 of the NIRC of 1997, as amended, states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue.

Based on the records of the case, petitioner paid and remitted to the BIR the FWT on the first royalty accrual on December 10, 2012[67]. Counting two years from the said date, petitioner had until December 10, 2014, at the earliest, within which to file its claim both in the administrative and judicial levels. Clearly, petitioner's original administrative claim[68] filed on October 31, 2014, which was amended on November 3, 2014[69] and the subsequent appeal before this Court filed on December 1, 2014 were within the two-year period prescribed by law.

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of TCC in the amount of ₱9,001,805.38, representing the FWT it erroneously over-remitted to the BIR covering the period November 2012 to April 2014.

It thus behooves the government to refund what it erroneously collected. To borrow from *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*[70], if the state expects taxpayers to observe fairness and honesty in paying their taxes, it must hold itself

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[65] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968; *Collector of Internal Revenue vs. J. N. Sweeney, A. O. Baigrie, and Ramon Burgas*, G.R. No. L-12178, August 21, 1959; *P.J. Kiener Company, Ltd. vs. Saturnino David*, G.R. No. L-5163, April 22, 1953.
[66] G.R. No. 216130, August 3, 2016.
[67] Exhibit "P-29-b-1", Docket, vol. IV, p. 2051.
[68] Exhibits "P-41" to "P-42", Docket, vol. IV, pp. 2095-2099.
[69] Exhibits "P-43" to "P-44", Docket, vol. IV, pp. 2100-2102.
[70] G.R. Nos. 167274-75, July 21, 2008.

against the same standard in refunding erroneous exactions and payment of such taxes.[71]

Based on the foregoing premises, the instant Petition for Review is **GRANTED**. Petitioner is entitled to a **REFUND** or a **TAX CREDIT CERTIFICATE** in the amount of **₱9,001,805.38**, representing the FWT it erroneously withheld on the royalties accrued for the benefit of Fitness First Limited for the period covering November 2012 to April 2014.

However, on November 2, 2017, petitioner had filed a "Manifestation with Motion to Withdraw Petition". Petitioner claimed that it received a check in the amount ₱9,001,805.38, corresponding to the herein claimed refund. Thus, petitioner claimed that the instant petition has become moot and now moves for the withdrawal of the instant petition.

When the case is deemed submitted for resolution, withdrawal of appeals made after the filing of the appellee's brief may still be allowed in the discretion of the Court.[72] This case was considered submitted for decision on December 20, 2016. Thus, petitioner can no longer withdraw its appeal as a matter of right and the grant of the instant Motion now rests on the sound discretion of this Court.

Taking into consideration the Court's disquisition finding merit in the petition which entitled petitioner to a refund or a tax credit certificate in the amount of ₱9,001,805.38 and petitioner's manifestation that a check in the amount of ₱9,001,805.38, corresponding to the present claim for refund of over-remitted final withholding taxes for the period November 2012 to April 14, 2014 has been deposited and credited to petitioner's bank account, the petition is rendered moot.

WHEREFORE, in view of the foregoing considerations, the Petition for Review docketed as **CTA Case No. 8942** is deemed **WITHDRAWN,** and the case is hereby declared **CLOSED and TERMINATED.**

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[71] *Commissioner of Internal Revenue and Commissioner of Customs vs. Philippine Airlines, Inc.*, G.R. No. 212536-37, August 27, 2014.

[72] *Commissioner of Internal Revenue vs. Nippon Express (Phils.) Corporation*, G.R. No. 212920, September 16, 2015.

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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

C E R T I F I C A T I O N

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
Chairperson, 1st Division