REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CASAS + ARCHITECTS, INC., Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 10058

Members:

DEL ROSARIO, *P.J.*, Chairperson, and,
MANAHAN, *JJ.*

Promulgated:

JUL 09 2021 8:25 am

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DECISION

DEL ROSARIO, P.J.:

Before the Court is the Petition for Review[1] filed by Casas + Architects, Inc. on April 5, 2019 seeking the refund of ₱9,989,997.00 representing its alleged excess and unutilized creditable withholding taxes for taxable year 2016.

THE PARTIES

Petitioner Casas + Architects, Inc. (petitioner) is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office address at 6th Floor Paseo Center Building, 8757 Paseo de Roxas, Salcedo Village, Makati City.[2] It is engaged, among others, in providing various architectural services.[3] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 008-552-446-000.[4]

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[1] Docket, pp. 12-67.
[2] Paragraph II(A)(1), Pre-Trial Order (PTO), Docket, p. 200; Exhibits "P-1" and "P-2", Docket, pp. 257 and 261.
[3] Exhibit "P-2", Docket, pp. 260-261.
[4] Paragraph (II(A)(3), PTO, Docket, p. 200; Exhibit "P-3", Docket, p. 265.

Respondent Commissioner of Internal Revenue [5] (CIR or respondent) is empowered to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes.

THE FACTS

On April 17, 2017, petitioner electronically filed its Annual Income Tax Return (ITR) for taxable year (TY) 2016 declaring a total Income Tax overpayment of ₱9,989,997.00[6] computed as follows:

Total Income Tax Due (Overpayment)	₱	6,087,978.00
Less: Total Tax Credits/Payments		16,077,975.00
Net Tax Payable (Overpayment)		(9,989,997.00)
Add: Total Penalties		0.00
TOTAL AMOUNT PAYABLE (Overpayment)	₱	(9,989,997.00)

On January 11, 2019, petitioner filed an Application for Tax Refund (BIR Form No, 1914) with the BIR.[7]

Due to respondent's inaction on its application for refund, petitioner filed the present Petition for Review on April 5, 2019.

Summonses were served upon respondent on May 9, 2019 and the Office of the Solicitor General on May 14, 2019.[8]

On June 24, 2019, within the extended period,[9] respondent filed his Answer[10] on July 3, 2019, raising the following as special and affirmative defenses:

> (i) The Petition for Review states no cause of action as taxes paid and collected are presumed to have been made in accordance with laws and regulations; therefore, not creditable or refundable;
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> (ii) Petitioner failed to demonstrate that the tax subject of the case was erroneously or illegally collected;

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[5] The incumbent CIR is Hon. Caesar R. Dulay.
[6] Paragraph 5, Petition for Review (PFR), Docket, p. 12; Paragraph 1.4, Memorandum, Docket, p. 358; Exhibits "P-4" and "P-5", Docket, pp. 266-274.
[7] Paragraph 8, PFR, Docket, p. 14; Paragraph 1.7, Memorandum, Docket, p. 359; Exhibit "P-11", Docket, p. 295.
[8] Docket, pp. 68-70.
[9] Order dated May 30, 2019, Docket, p. 75.
[10] Docket, pp. 76-79.

(iii) Assuming but without admitting that petitioner filed a claim for refund, the same is still subject to investigation by the BIR;

(iv) Petitioner's claim for refund in the total amount of ₱9,989,997.00 was not fully substantiated by proper documents;

(v) Petitioner must show compliance with Section 204 (C), in relation to Section 229, of the National Internal Revenue Code (NIRC) of 1997, as amended; failure to prove the same is fatal to its claim for refund;

(v) The burden of proof to establish entitlement to refund is on the claimant taxpayer; and,

(vi) Being in the nature of a claim for exemption, refund is construed *strictissimi juris* against the entity claiming the refund and in favor of the taxing authority.

The Pre-Trial Conference was set on September 5, 2019. On August 29, 2019, respondent filed his Pre-trial Brief[11] while Petitioner's Pre-Trial Brief[12] was filed on August 30, 2019.

On September 5, 2019, the Pre-Trial proceeded as scheduled. The parties were given until September 20, 2019 to file their Joint Stipulation of Facts and Issues (JSFI).[13]

On September 19, 2019, the parties filed their JSFI.[14]

On October 22, 2019, the Pre-Trial Order[15] was issued, terminating the Pre-Trial.

During trial, petitioner presented two (2) witnesses, namely: Bernadith Bersabe-Nañaga,[16] its Head of Finance and Accounting, and, Araceli F. Caseles,[17] the Court-commissioned Independent Certified Public Accountant (ICPA).

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[11] Docket, pp. 85-89.
[12] Docket, pp. 145-151.
[13] Order dated September 5, 2019, Docket, pp. 159-160.
[14] Docket, pp. 177-180.
[15] Docket, pp. 199-204.
[16] Exhibit "P-19", Docket, pp. 93-144; Order dated October 22, 2019, Docket, p. 206.
[17] Exhibit "P-384", Docket, pp. 224-229; Order dated November 19, 2019, Docket, pp. 232-233.

On February 19, 2019, petitioner filed its Formal Offer of Evidence (Re: Petitioner's Evidence)[18] which was acted upon in the Resolution dated October 15, 2020,[19] admitting all its offered exhibits and directing the parties to file their respective memoranda within thirty (30) days from receipt thereof, in view of respondent's manifestation that he will not present any evidence.

In the Resolution dated December 16, 2020,[20] the Court noted petitioner's Manifestation and Motion (Re: Resolution dated 15 October 2020)[21] filed on November 19, 2020, with attached complete Annual ITR 1702-RT for 2017 (Exhibit "P-9"), which the Court noted in its Resolution dated October 15, 2020 to contain only six pages instead of eight. Petitioner was given a period of thirty (30) days from receipt of the Resolution within which to file its memorandum.

With the parties' submission of their respective memoranda,[22] the case was submitted for decision on January 6, 2021.[23]

THE ISSUES

The parties stipulated the following issues for the resolution of the Court:

> "1. Whether petitioner is entitled to [the] refund of its alleged excess and unutilized Creditable Withholding Tax (CWT)/Income Tax for taxable year 2016 amounting to ₱9,989,997.00 pursuant to Section 76 of the National Internal Revenue Code (NIRC), as amended; and
>
> 2. Whether petitioner is a domestic corporation duly organized and existing under the laws of the Philippines."[24]

THE PARTIES' ARGUMENTS

Petitioner's Arguments

In its Memorandum, petitioner avers that it is entitled to the refund of its excess and unutilized CWT/Income Tax for TY 2016 pursuant to Section 76 of the NIRC of 1997, as amended.

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[18] Docket, pp. 243-302.
[19] Docket, pp. 327-328.
[20] Docket, pp.376-378.
[21] Docket, pp. 329-340.
[22] Memorandum (for the Respondent), Docket, pp. 341-352; Petitioner's Memorandum, Docket, pp. 357-372.
[23] Resolution dated January 6, 2021, Docket, p. 380.
[24] Paragraph II(B)(1) and (2), Issues, PTO, Docket, p. 200.

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It asserts that the Court of Tax Appeals (CTA) has jurisdiction to hear and decide its Petition for Review on the inaction of respondent on its refund claim per Section 7 of Republic Act No. 1125, as amended, and Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals.

Petitioner argues that both its administrative and judicial claims were timely filed pursuant to Sections 204 (C) and 229, of the NIRC of 1997, as amended. Citing *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*[25] and *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Appeals*,[26] petitioner posits that the reckoning period for filing both the administrative and judicial claims for refund is the date of filing of the final adjustment return or the annual income tax return or final payment of income tax. Petitioner also claims that a return filed showing overpayment shall be considered as a written claim for credit or refund pursuant to Section 204 (C) of the NIRC of 1997, as amended. Thus, petitioner is deemed to have filed its written claim for refund with the BIR as of the filing of its 2016 Annual ITR showing overpayment thereon on April 17, 2017. Nonetheless, petitioner's written reiteration of its refund claim for refund filed on January 11, 2019 is well within the two (2)-year period prescribed under Section 204 (C) of the NIRC of 1997, as amended.

Petitioner claims that it made an option to claim the refund of the subject overpaid taxes and consistent with that option, it did not carry over the same to the succeeding taxable quarter.

Petitioner maintains that it is a domestic corporation duly organized under the laws of the Philippines and is duly registered with the appropriate government agencies in the operation of its business as evidenced by its Certificate of Registration issued by the Securities and Exchange Commission (SEC) and its Certificate of Registration (BIR Form No. 2303) issued by the BIR.

Thus, from the foregoing, it insists that it is entitled to the refund of its excess and unutilized CWTs for TY 2016 in the total amount of ₱9,989,997.00.

Respondent's Arguments

In his Memorandum, respondent contends that the instant Petition for Review for tax refund for TY 2016 was filed out of time.

[25] G.R. No. 96322, December 20, 1991.
[26] G.R. No. 83736, January 15, 1992.

Citing Sections 204 (C) and 229 of the NIRC of 1997, as amended, he asserts that the administrative and judicial claims for refund shall be filed within two (2) years from the date of payment of taxes or penalties and not from the date of the filing of the annual ITR. Allegedly, nowhere in Sections 204 (C) and 229 of the NIRC of 1997, as amended, does it provide that the filing of judicial claim for refund of taxes shall be within two (2) years from the date of filing of the annual ITR.

Respondent explains that under Section 2.58 of Revenue Regulations (RR) No. 2-98, as amended by RR No. 17-2003, withholding agents shall file their BIR Monthly Remittance Return form every 10th day of the following month when the withholding was made, except for December of each year which shall be filed on or before January 15 of the following year; and every 15th of the following month for withholding agents using the eFPS facility, except for December of each year which shall be filed on or before January 20 of the following year. Section 2.58 of RR No. 2-98, was further amended by RR No. 11-2018, directing withholding agents to file their BIR Monthly Remittance Return form every 10th day of the following month when the withholding was made and every 15th of the following month for withholding agents using the eFPS facility.

In view of the foregoing, respondent submits that the reckoning of the two (2)-year period for petitioner's refund claim would be from the date of monthly remittance of the claimed CWTs for January to December 2016. Respondent notes that the last month covered by the subject claim is December 2016, which under RR No. 2-98, as amended, should have been paid on January 15, 2017 or January 20, 2017, if it availed of the eFPS. Therefore, petitioner had only until January 15, 2019 or January 20, 2019, as the case may be to file its claim for refund for the months of January to December 2016 both in the administrative and judicial levels.

Considering that petitioner's judicial claim was filed on April 5, 2019, respondent is convinced that its judicial claim was filed way beyond the prescriptive period for filing the same.

Respondent also submits that petitioner failed to show its entitlement to a refund of its alleged excess and unutilized CWTs for TY 2016. Respondent claims that the certificates of CWT withheld it presented as evidence do not constitute conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income.

Lastly, respondent stresses that tax refunds are in the nature of tax exemptions as such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.

THE COURT'S RULING

Petitioner is a domestic corporation

Section 22 (C)[27] of the NIRC of 1997, as amended, defines a domestic corporation as a corporation created or organized in the Philippines or under its laws.

Relatedly, Section 19 of the Corporation Code of the Philippines (*Batas Pambansa Bilang* 68),[28] provides that a corporation formed under it commences to have corporate existence and juridical personality and is deemed incorporated from the date the SEC issues a certificate of incorporation under its official seal.

To prove that petitioner is a domestic corporation, petitioner presented its Certificate of Incorporation[29] issued by the SEC and Articles of Incorporation[30] submitted to the SEC.

Petitioner's Certificate of Incorporation states that its Articles of Incorporation and By-Laws were duly approved by the SEC upon the

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[27] Sec. 22. Definitions. When used in this Title:

xxx xxx xxx

(B) The term *'corporation'* shall include partnerships, no matter how created or organized, joint-stock companies, joint accounts (*cuentas en participacion*), associations, or insurance companies, but does not include general professional partnerships and a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract with the Government. *'General professional partnerships'* are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.

(C) The term *'domestic,'* when applied to a corporation, means created or organized in the Philippines or under its laws. xxx

[28] Section 19. *Commencement of corporate existence.* – A private corporation formed or organized under this Code commences to have corporate existence and juridical personality and is deemed incorporated from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal; and thereupon the incorporators, stockholders/members and their successors shall constitute a body politic and corporate under the name stated in the articles of incorporation for the period of time mentioned therein, unless said period is extended or the corporation is sooner dissolved in accordance with law. (now Section 18 of the Revised Corporation Code [Republic Act No.11232])

[29] Exhibit "P-1", Docket, p. 257.

[30] Exhibit "P-2", Docket, pp. 260-264.

date of its issuance (June 21, 2013) in accordance with the Corporation Code of the Philippines and grants juridical personality to petitioner.[31]

Respondent did not object to the admission of petitioner's Certificate of Incorporation and Articles of Incorporation nor did he present evidence contrary thereto.

Thus, petitioner's status as a domestic corporation, having been incorporated in accordance with the Corporation Code of the Philippines on June 21, 2013, cannot be denied.

Compliance with the requisites for refund of CWT

Petitioner's Annual ITR for TY 2016 [32] shows that it has ₱16,077,975.00 tax credits, broken down as follows:

Item	Amount
Creditable Tax Withheld from Previous Quarter/s per BIR Form No. 2307	₱ 10,727,830.00
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	5,350,145.00
Total Tax Credits/Payments	**₱ 16,077,975.00**

Its Annual ITR for TY 2016 also indicates that its regular corporate income tax due for the period amounted to ₱6,087,978.00, and was paid for using the CWTs amounting to ₱16,077,975.00. Hence, there remained an amount of ₱9,989,997.00 representing the excess and unutilized CWTs of petitioner as of year-end 2016.

In support of its claim for refund, petitioner offered in evidence its Annual ITR for TY 2016,[33] Quarterly and Annual ITRs for TY 2017,[34] Audited Financial Statements (AFS) for TY 2016,[35] Summary Alphalist of Withholding Taxes (SAWT) for TY 2016,[36] Certificates of Creditable Taxes Withheld at Source (BIR Form 2307),[37] General Ledger (GL) for Revenue (Architectural Design and Other Income),[38] Statements of Account (SOAs) reported in 2016,[39] and Official Receipts related to the CWTs claimed.[40]

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[31] *Supra,* Note 28.
[32] Exhibit "P-4", Docket, pp. 266-273.
[33] Exhibit "P-4", Docket, pp. 266-273.
[34] Exhibits "P-6" to "P-10", Docket, pp. 275-294.
[35] Exhibit "P-21".
[36] Exhibit "P-24".
[37] Exhibits "P-25" to "P-131".
[38] Exhibit "P-132".
[39] Exhibits "P-133" to "P-286".
[40] Exhibits "P-287" to "P-381".

As implemented by the applicable rules and regulations, and as interpreted in a vast array of decisions, a taxpayer who seeks a refund of excess and unutilized CWT must:

1) File the claim with the CIR within the two-year period from the date of payment of the tax and the date of filing of the annual ITR as discussed hereunder;

2) Show on the return that the income received was declared as part of the gross income; and

3) Establish the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.[41]

Before ascertaining petitioner's compliance with the above-listed requisites, the Court shall first determine whether petitioner validly exercised the refund option in its Annual ITR for TY 2016 under Section 76 of the NIRC of 1997, as amended.

Petitioner chose the refund option in its Annual ITR

Section 76 of the NIRC of 1997, as amended, provides:

> "SEC. 76. - *Final Adjustment Return*. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
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> (A) Pay the balance of tax still due; or
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> (B) Carry-over the excess credit; or
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> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income

[41] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 212699, March 13, 2019.

> 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."

Under the aforequoted provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid essentially has two (2) options, either: (a) to carry-over the excess credit against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year; or (2) to apply for a cash refund or issuance of a tax credit certificate within the prescribed period. If the carry-over option is selected, such is irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.[42]

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form of the Annual ITR) its intention, either to carry over the excess credit or to claim a refund.[43] In this case, petitioner marked the box corresponding to the option "To be refunded" in its Annual ITR for TY 2016.[44]

Likewise, to determine whether the amount of ₱9,989,997.00 representing the excess and unutilized CWTs requested to be refunded has not been carried over to the succeeding taxable periods, examination of the Annual ITR of the succeeding taxable period, in this case that of TY 2017, is proper. The presentation of the annual ITR for the succeeding taxable period would suffice in proving that prior year's excess credits were not utilized for the succeeding taxable year in order to make a final determination of the total tax due.[45]

Examination of the "Prior Year's Excess Credits Other Than MCIT" found in petitioner's Annual ITR for TY 2017[46] shows a zero balance, which means that the amount prayed to be refunded in this case has not been carried over to the succeeding TY 2017. Thus, the unutilized CWTs for TY 2016 in the amount of ₱9,989,997.00 may be the subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

[42] *University Physicians Services Inc.-Management, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205955, March 7, 2018.
[43] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.
[44] Exhibit "P-4", Docket, p. 266.
[45] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.
[46] Exhibit "P-10", Docket, p. 291.

First requisite: The administrative and judicial claims for refund were filed on time

Sections 204 (C) and 229 of the NIRC of 1997, as amended, provides the prescriptive period for the filing of the administrative and judicial claims for refund or 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.
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> xxx xxx xxx
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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."

Section 204 of the NIRC of 1997, as amended, applies to administrative claims for refund while Section 229 of the same Code pertains to judicial claims.

Under the aforequoted provisions, a claimant for refund must first file an administrative claim for refund before respondent, prior to filing a judicial claim before the Court. Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription. The primary purpose of filing an administrative claim is to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded.[47]

Respondent's assertion that the administrative and judicial claims for refund shall be filed within two (2) years from the date of payment of taxes or penalties and not from the date of the filing of the annual income tax return is no longer novel. The proper resolution of this issue has been long settled by the Supreme Court in *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*[48] and *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Appeals*[49]. And, in the more recent case of *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*,[50] the Supreme Court reiterated these cases stating that while the law provides that **the two (2)-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two (2)-year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise.**

In this case, petitioner electronically filed its Annual ITR for TY 2016 on April 17, 2017.[51] Thus, petitioner had until April 17, 2019 to file both its administrative and judicial claims for refund. As aforementioned, petitioner filed its administrative claim on January 11, 2019 evidenced by its Application for Tax Credits/Refunds.[52] Without waiting for the decision of respondent on its application, petitioner filed the present Petition for Review on April 5, 2019. Clearly, both petitioner's administrative and judicial claims were filed within the two (2)-year prescriptive period in accordance with Sections 204 (C) and

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[47] *Metropolitan Bank & Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.
[48] Supra, Note 25.
[49] Supra, Note 26.
[50] G.R. No. 231581, April 10, 2019.
[51] Exhibit "P-5", Docket, p. 274.
[52] Exhibit "P-11", Docket, p. 295.

229 of the NIRC of 1997, as amended. Hence, the Court has jurisdiction to take cognizance of this case.

Second requisite: The income received was declared as part of the gross income

As found by the ICPA, the total amount of income payments and corresponding CWTs as reflected in the CWT certificates offered by petitioner in evidence are as follows:

PERIOD	EXHBITS	INCOME PAYMENTS	CWT
2nd Quarter TY 2016	P-25 to P-68	₱ 41,159,048.19	₱ 5,386,469.53
3rd Quarter TY 2016	P-69 to P-104	35,656,889.45	5,341,361.51
4th Quarter TY 2016	P-105 to P-131	40,310,751.40	5,350,144.54
Total		₱ 117,126,689.04	₱ 16,077,975.58

The ICPA verified the income payments appearing in each of the CWT certificates against the SOAs issued by petitioner to its income payors during TY 2016. The ICPA likewise cross-referenced each SOA to the GL accounts of petitioner for both of its: (1) Architectural Design Fees; and (2) Other Income generated in TY 2016. The ICPA found that the total amount of ₱117,126,689.04 representing income payments appearing in the CWT certificates tallies with the amounts reported in the GL, as follows:

ITEM	AMOUNT	
Total Income Payments per CWT certificates		₱ 117,126,689.04
Total Income Payments per GL		
Recorded in GL as Design Fees supported by SOAs	₱ 106,730,095.89	
Recorded in GL as Other Income but not supported by SOAs	341,103.89	
Not recorded in GL	₱ 10,055,489.26	₱ 117,126,689.04

The corresponding CWTs of the above income payments per GL are listed below:

ITEM	INCOME PAYMENT	CWT
Recorded in GL as Design Fees supported by SOAs	₱ 106,730,095.89	₱ 14,570,610.15
Recorded in GL as Other Income but not supported by SOAs	341,103.89	14,175.59
Not recorded in GL	10,055,489.26	1,493,189.84
Total	₱ 117,126,689.05	₱ 16,077,975.58

The ICPA noted that there is an income payment of ₱10,055,489.26 with corresponding CWT of ₱1,493,189.84 representing the amounts not recorded in the GL as Design Fees and/or Other Income. The ICPA observed that the said income pertained to those reported or incurred in prior years but the payment of the related billing was received only in TY 2016, as follows:[53]

NAME	INCOME PAYMENT	CWT	YEAR DECLARED
Travellers International Hotel Group Inc.	₱ 110,145.83	₱ 2,202.92	2015
Aseana Holdings Inc.	696,428.57	104,464.29	2015
Brittany Corporation	54,166.67	8,125.00	Not traced
Megaworld Corporation	2,600,000.00	390,000.00	2015
Royal Duty-Free Shops, Inc.	2,592,589.27	388,888.39	2015
Erawan Philippines (Makati) Inc.	803,571.43	120,535.71	2015
Sta. Lucia, Inc.	848,214.29	127,232.14	2014
The Insular Life Assurance Co., Ltd.	321,428.60	48,214.29	2015
Travellers International Hotel Group Inc.	105,000.00	15,750.00	2015
Metropolitan Bank & Trust Company	629,464.27	94,419.64	2015
Bonifacio Landmark Realty & Development Corp.	3,408.93	68.18	2015
Metropolitan Bank & Trust Company	2,857.14	57.14	Not traced
Shang Properties Realty Corporation	645,357.14	96,803.57	2015
Aseana Residential Holdings Corp.	642,857.13	96,428.57	2014 and 2015
Total	₱ 10,055,489.27	₱ 1,493,189.84	

The Court finds the ICPA's observations proper. Since the above income payments amounting to ₱10,055,489.26, with corresponding CWT of ₱1,493,189.84, were not supported by SOAs, and which the ICPA was able to trace back to periods prior to TY 2016, the Court shall disallow the same as they do not pertain to the subject period of claim.

As previously mentioned, the ICPA observed that income payments subjected to CWT were recorded in petitioner's GL.[54] The amount of ₱106,730,095.89 representing income payments supported by SOAs were recorded in the GL as Design Fees, which reported a total income of ₱222,899,694.12. On the other hand, the amount of ₱341,103.89 representing income payments not supported by SOAs were nevertheless recorded in the GL as Other Income, which reported a total income of ₱2,963,531.26. All in all, petitioner reported in the GL total revenues of ₱225,863,225.38 in combined Design Fees and Other Income. In its AFS for TY 2016, petitioner reported total revenues in the amount of ₱225,863,225.00, consisting of ₱222,899,694.00 in architectural design fees, and ₱2,963,531.00 in other income.[55] Moreover, in its Annual ITR for TY 2016, petitioner reported total revenues amounting to ₱226,938,613.00,[56] detailed below, which include architectural design fees amounting to

[53] Exhibit "P-382", Docket, p. 216.
[54] Exhibit "P132".
[55] Exhibit "P-21".
[56] Exhibit "P-20".

₱222,899,694.00 (reported as "Net Sales/Revenues/Receipts/Fees), and "Other Income – Printing" amounting to ₱2,963,531.00 (reported under "Other Taxable Income Not Subject to Final Tax").

PARTICULARS	AMOUNT	
Net Sales/Revenues/Receipts/Fees (Line 30)		₱ 222,899,694.00
Add: Other Taxable Income Not Subject to Final Tax (Line 33)		
Realized Forex Gain	₱ 371,749.00	
Other Income - Printing	2,963,531.00	
Trading Gain	703,639.00	4,038,919.00
Total Income Reported in the Annual ITR		₱ 226,938,613.00

The total revenues recorded in the GL tallies with the figures reported in the AFS and Annual ITR for TY 2016. Thus, petitioner was able to establish that the income payments upon which the taxes were withheld were properly reported and formed part of the gross income declared in its Annual ITR for TY 2016.

Third Requisite: Fact of withholding is established by copies of withholding statements duly issued by the payor

The third requisite mandates petitioner to prove the fact of withholding of the claimed CWT by a copy of the statement duly issued by the payor, acting as the withholding agent, to the payee, showing the names of the payor and payee, the income payment, the amount of tax withheld, and the nature of the tax paid.

Contrary to respondent's claim that petitioner's certificates of CWT withheld presented as evidence do not constitute conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income, the Supreme Court, in *Commissioner of Internal Revenue vs. Philippine National Bank*,[57] explained that the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) is the competent proof to establish the fact of withholding; proof of remittance thereof to the BIR is not a condition for a claim of refund of unutilized tax credits, *viz.*:

> **"The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.**

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[57] G.R. No. 180290, September 29, 2014.

In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, this court declared that **a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes**:

> In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
>
> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.

Moreover, as correctly held by the Court of Tax Appeals *En Banc*, **the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury**, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, which reads:

> SEC. 267. *Declaration under Penalties of Perjury.* – Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

Thus, upon **presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury**, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.

Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund**

> **claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.**
>
> This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:
>
>> . . .**proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner**. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. **The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents**." (*Citations omitted; boldfacing supplied*)

For the withholding tax certificates, to be considered as valid evidence of the fact of withholding of tax, they must be signed by the income payor's authorized representative as proof of their execution under the penalties of perjury in accordance with Section 267 of the NIRC of 1997, as amended.

Upon evaluation of petitioner's CWT certificates offered in evidence,[58] the following CWT certificates amounting to ₱682,078.12 shall be disallowed due to lack of signature of the income payor's authorized representative:

EXHIBIT NO.	PERIOD	PAYOR	INCOME PAYMENT	CWT
P-106	7/1/16 to 7/31/16	TWIN LAKES CORPORATION	₱ 4,285,714.27	₱ 642,857.14
P-117	12/1/16 to 12/31/16	THE INSULAR LIFE ASSURANCE CO., LTD.	261,473.20	39,220.98

[58] Exhibits "P-25" to "P-131".

TOTAL	₱ 4,547,187.47	₱ **682,078.12**

Thus, the total disallowances per the Court's verification stands at ₱2,175,267.96, as follows:

ITEM	CWT
Income payments not recorded in GL	₱ 1,493,189.84
Recorded in GL as Other Income but not supported by SOAs	682,078.12
Total	₱ 2,175,267.96

In summary, the Court has determined that petitioner's total valid CWTs subject for refund for TY 2016 amounted to ₱7,814,729.04, computed below:

PARTICULARS	AMOUNT	
Total Income Tax Due		₱ 6,087,978.00
Less: Total Tax Credits/Payments	₱ 16,077,975.00	
Less: Total CWT Disallowances per Court's verification	2,175,267.96	₱ 13,902,707.04)
Net Tax Payable (Overpayment)		₱ **(7,814,729.04)**

PARTICULARS	CWT
Petitioner's Claim	₱ 9,989,997.00
Less: Disallowances	
Income payments not recorded in GL	1,493,189.84
CWT certificates with no payor signature	682,078.12
Total Valid Claim	₱ **7,814,729.04**

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[59] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[60] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[61]

In fine, petitioner has sufficiently proven that it is entitled to a refund in the amount of ₱7,814,729.04 representing its excess and unutilized CWTs for TY 2016.

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[59] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

[60] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.*, G.R. No. 127105, June 25, 1999.

[61] *Kepco Philippines Corp. vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.

WHEREFORE, in light of the foregoing discussion, the Petition for Review filed on April 5, 2019 is **PARTIALLY GRANTED**. The Commissioner of Internal Revenue is **ORDERED** to refund or issue a tax credit certificate in favor of Casas + Architects, Inc. the reduced amount of **₱7,814,729.04** representing its excess and unutilized creditable withholding taxes for taxable year 2016.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice