REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7763

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

JAN 20 2012; 2:00 p.m.

x- -x

DECISION

UY, *J.*:

Before Us is a Petition for Review filed on April 14, 2008, seeking the issuance of a tax credit certificate (TCC) in favor of petitioner Philippine Bank of Communications, in the amount of ₱ 20,705,641.00, allegedly representing its unutilized creditable withholding taxes for calendar year ended December 31, 2005.

THE FACTS

Petitioner Philippine Bank of Communications is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at PBCOM Tower, 6795 Ayala

Avenue corner V.A. Rufino Street, Makati City.[1] It is registered with the Bureau of Internal Revenue (BIR) as engaged in regular commercial banking business, with Tax Identification Number 000-263-340-000.[2]

On the other hand, respondent is the duly designated Commissioner of Internal Revenue, authorized under the law to perform the duties of said Office, including among others, the power to refund overpaid, as well as erroneously or illegally collected internal revenue taxes. She holds office at the National Office Building of the Bureau of Internal Revenue (BIR), Diliman, Quezon City.[3]

Petitioner filed its Annual Income Tax Return (ITR) for 2005 on April 17, 2006, showing a net loss of ₱ 1,111,343,780.00.[4] Subsequently, it filed an amended Annual ITR for 2005, which was stamped received on May 2, 2006, declaring therein a net loss of ₱ 1,174,479,367.00.[5] Both ITRs for 2005 reflected a tax overpayment of ₱ 61,789,455.00, consisting of prior year's excess credits of ₱ 41,083,814.00 and creditable tax withheld of ₱ 20,705,641.00. In the same ITRs, petitioner marked the option "To be issued a Tax Credit Certificate".

On April 11, 2008, petitioner filed its letter-request for the refund of its alleged excess creditable withholding tax paid for calendar year ended December 31, 2005 in the amount of ₱ 21,506,428.21 pursuant to Sections 76 and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended. In that request, petitioner pointed out that its excess creditable

---

[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 818.
[2] Exhibit "I".
[3] Par. 2, Stipulation of Facts, JSFI, Docket (Vol. I), pp. 818 to 819.
[4] Exhibit "A".
[5] Exhibit "B".

income tax withheld for 2005, as reported in its ITR, amounts to ₱ 20,705,641.00, but upon review of its documents, it discovered that the actual total excess creditable taxes for 2005 amounted to ₱ 21,506,428.21.[6]

Claiming inaction on respondent's part and in order to preserve its right to judicially claim the TCC,[7] petitioner filed the instant Petition for Review on April 14, 2008.[8]

In the Answer[9] filed on June 23, 2008, respondent prayed for the dismissal of the Petition for Review for lack of merit. In support thereof, respondent interposed the following defenses, *viz*:

> "3. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 4. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 5. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

In accordance with the pre-trial proceedings held on November 20, 2008[10], the parties submitted their "Joint Stipulation of Facts and Issues" on December 5, 2008[11] and was approved by the Court on December 12, 2008.[12]

Thereafter, trial ensued and both parties presented and offered their respective evidence. Upon termination thereof, this case was submitted for

---

[6] Exhibit "H".
[7] Pars. 12 to 13, Petition for Review, Docket (Vol. I), p. 4.
[8] Par. 3, Stipulation of Facts, JSFI, Docket (Vol. I), p. 819.
[9] Docket (Vol. I), pp. 114 to 116.
[10] Minutes of Pre-Trial held on November 20, 2008, Docket (Vol. I), p. 808
[11] JSFI, Docket (Vol. I), pp. 818 to 820.
[12] Resolution dated December 12, 2008, Docket (Vol. I), p. 822.

decision on August 16, 2011, taking into consideration respondent's Memorandum filed on July 25, 2011 and petitioner's Memorandum filed on August 15, 2011.[13]

Hence, this Decision.

THE ISSUES

The parties jointly stipulated on the following issues[14] for this Court's resolution, to wit:

> "A. Whether or not the claim for the issuance of a tax credit certificate was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997 as amended;
>
> B. Whether or not petitioner has an unutilized creditable withholding tax in the amount of P20,705,641.00 for the calendar year 2005, which is a proper subject of a claim for refund/issuance of tax credit certificate pursuant to Section 76 of the NIRC as amended;
>
> C. Whether or not the income from which the subject creditable taxes were withheld were included as part of the gross income in petitioner's annual income tax return for the calendar year 2005; and
>
> D. Whether or not the unutilized creditable withholding tax for the calendar year 2005 in the amount of P20,705,641.00 was carried-over and applied by petitioner against its tax liabilities in the succeeding taxable year."

The foregoing issues may be simplified as follows:

> "Whether or not petitioner is entitled to the issuance of a TCC in the amount of ₱ 20,705,641.00, allegedly representing the unutilized creditable withholding taxes for calendar year ended December 31, 2005."

---

[13] Resolution dated August 16, 2011, Docket (Vol. I), p. 1355.
[14] Stipulation of Issues, JSFI, Docket, pp. 819 to 820.

Petitioner's arguments

Petitioner contends that it has unutilized creditable withholding tax for the calendar year 2005 which is a proper subject of a claim for the issuance of a TCC, pursuant to Section 76 of the NIRC of 1997; and that its claim for the issuance of a TCC was filed within the two-year prescriptive period under Section 204(C), in relation to Section 229, both of the NIRC of 1997.

According to petitioner, the income from which the subject creditable taxes were withheld were included in its Annual ITR for the calendar year 2005 as part of its gross income; and that its unutilized creditable withholding tax for the calendar year 2005 in the amount of ₱ 20,705,641.00 was not carried-over and applied against its tax liabilities in the succeeding taxable year.

Respondent's counter-arguments

Respondent counter-argues that petitioner is not entitled to a refund or the issuance of a TCC in the amount of ₱ 20,705,641.00, representing unutilized creditable withholding tax for 2005 because petitioner failed to fully comply with the provisions of Section 2.58.3 of Revenue Regulations (RR) No. 2-98, otherwise known as the *Withholding Tax Regulations*.

THE COURT'S RULING

After careful and thorough consideration of the parties' allegations in their respective pleadings, the documentary and oral evidence presented in this case, the Court finds insufficient compliance with legal requirements to merit a favorable consideration of the instant refund claim.

Petitioner failed to fully comply with the conditions for the grant of a claim for refund of creditable withholding tax.

The Supreme Court ruled, in a number of cases[15], that there are three (3) conditions for the grant of a claim for refund of creditable withholding income tax (CWT), to wit: *first*, the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;[16] *second*, it is shown on the return of the recipient that the income payment received was declared as part of the gross income;[17] and *third*, the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

The *first* condition is pursuant to Sections 204(C) and 229 of the NIRC of 1997, *viz*:

> "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)*

---

[15] *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*, G.R. No. 155682, March 27, 2007; *Commissioner of Internal Revenue vs. Perf Realty Corporation*, G.R. No. 163345, July 4, 2008, and *Commissioner of Internal Revenue vs. Far East Bank & Trust Co. (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.

[16] Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006), citing *Gibb v. Collector*, 107 Phil. 230 (1960).

[17] *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482.

> "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)*

The Supreme Court has ruled that, at the earliest, the two-year prescriptive period for claiming a refund commences to run on the date of the filing of the final adjustment return,[18] and that such period consisted of twenty-four (24) months from such date.[19]

The present claim covers taxable year 2005 for which petitioner filed its Annual ITR on April 17, 2006.[20] Counting from this date, the Court finds the administrative claim filed by petitioner on April 11, 2008 and the Petition for Review filed on April 14, 2008 to be within the two-year prescriptive period. Clearly, the *first* condition has been satisfied.

As regards petitioner's compliance with the *second* and *third* conditions, the Court-commissioned Independent Certified Public Accountant

---

[18] *ACCRA Investments Corp. vs. Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.
[19] *Commissioner of Internal Revenue vs. Primetown Property Group, Inc.*, G.R. No. 162155, August 28, 2007.
[20] Exhibit "A".

(ICPA), Edwin F. Ramos, presented the following findings in his final and consolidated report dated November 3, 2009[21]:

Amount of CWT Per Schedule	₱ 20,705,641.15
Less : Overclaimed CWT	3,116.23
Amount of CWT Per Petition for Review	**₱ 20,702,524.92**
Accounted for as Follows:	
Claim Not Properly Substantiated	₱ 3,514,765.21
Income Not Traced to General Ledger (GL)	5,584,070.39
No Original BIR Forms 1606, 1706 and 2307	10,614,092.48
Subtotal	₱ 19,712,928.08
For Consideration of this Court (Claim Properly Substantiated and Related Income Traced to GL)	₱ 530,683.21
Claim Properly Substantiated and Related Income Traced to GL	458,913.63
Subtotal	₱ 989,596.84
Amount of CWT Per Petition for Review	**₱ 20,702,524.92**

Petitioner submitted additional documents to the ICPA, specifically, original BIR Forms 1606, original bank validated BIR tax payment deposit slips and original certification issued by the BIR in relation to the substantiation of its claimed CWT under Annexes A-9 to A-12 of the ICPA's final and consolidated report amounting to ₱ 10,783,504.00,[22] which formed part of the ₱ 19,712,928.08 CWT excepted by the ICPA.

Upon verification of petitioner's additional documents, the ICPA made the following findings in the supplemental report[23] dated August 31, 2010:

		Annex Reference	Amount
Creditable withholding tax payments properly supported by original BIR Form 1606, original bank validated BIR tax payment deposit slip and original certification issued by the BIR; the related income of which were verified to be included in the Company's General Ledgers (GL), Annual Audited Financial Statements (AAFS) and Annual Income Tax Return (ITR)			
1.	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent but with certification issued by the BIR confirming tax payments and photocopies of bank	Annex 1-1	₱ 72,300.00

[21] Exhibit "N", Annex C, p. 14.
[22] Exhibit "X", p. 1, par. 2.
[23] Exhibit "X", pp. 2 to 5.

	validated deposit slips as evidence of tax remittance; the related income of which were verified to be included in the Company's GL, AAFS and annual ITR		
2.	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent but with certification issued by the BIR confirming tax payments and with bank validation as evidence of tax remittance; the related income of which were verified to be .included in the Company's GL, AAFS and annual ITR	Annex 3	510,000.00
3.	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent but with certification issued by the BIR confirming tax payments; the related income of which were verified to be included in the Company's GL, AAFS and annual ITR	Annex 4-1	132,000.00
TOTAL – Properly Supported			**₱ 714,300.00**
For Consideration of the Honorable Court			
1.	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent but with certification issued by the BIR confirming tax payments and photocopies of bank validated deposit slips as evidence of tax remittance; the related income of which are supported by original deed of absolute sale and/or photocopies of debit tickets/instruction sheets for domestic operations/memorandum to book/transaction tickets/outgoing inter-branch transactions and are traced to the general ledger	Annex 1-2	₱ 471,000.00
2.	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent but with certification issued by the BIR confirming tax payments and photocopies of bank validated deposit slips as evidence of tax remittance; the related income of which are supported by original deed of absolute sale, photocopies of sales offering only but are traced to the GL	Annex 1-3	25,000.00
3.	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent but with certification issued by the BIR confirming tax payments and photocopies of bank validated deposit slips as evidence of tax remittance; the related income of which are supported by original deed of absolute sale, photocopies of sales offering and accounting tickets generated from the company's system but could not be traced to the general ledger	Annex 1-4	39,900.00
4.	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent but with certification issued by the BIR confirming tax payments and photocopies of bank validated deposit slips as evidence of tax remittance; the related income of which are supported by original deed of absolute sales, photocopies of sales offering tickets, original memorandum to book/instruction sheets for domestic operations/transaction tickets/outgoing inter-branch transactions and are traced to the general ledger, however, the name of the buyer per schedule and per tax return is different	Annex 1-5	5,760,000.00

5.	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent but with certification issued by the BIR confirming tax payments and photocopies of bank validated deposit slips as evidence of tax remittance; the related income of which are supported by original deed of absolute sale, photocopies of sales offering tickets, original memorandum to book/instruction sheets for domestic operations/transaction tickets/outgoing inter-branch transactions and could not be traced to general ledger, however, the name of the buyer per schedule and per tax return is different	Annex 1-6	300,000.00
6.	Creditable withholding tax payments supported by original BIR returns stamped "received" by the BIR agent and with certification issued by the BIR confirming tax payments, original BIR form 2307 and original bank validated deposit slips as evidence of tax remittance; the related income of which were verified to be included in the Company's GL, AAFS and annual ITR, however, the name of the buyer per schedule and per tax return is different	Annex 2	1,500,000.00
7.	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent but with certification issued by the BIR confirming tax payments; the related income of which are supported by original deed of absolute sale and photocopies of sales offering tickets only but are traced to the general ledger	Annex 4-2	204,000.00
TOTAL – For Consideration of the Honorable Court			**₱ 8,299,900.00**
Exceptions			
	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent but with certification issued by the BIR confirming tax payments and photocopies of bank validated deposit slips as evidence of tax remittance; the related income of which could not be traced to the Company's GL, AAFS and annual ITR	Annex 1-7	₱ 367,704.00
2.	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent and photocopies of bank validated deposit slips as evidence of tax remittance	Annex 1-8	351,600.00
3.	Creditable withholding tax payments supported by photocopies of BIR returns stamped "received" by the BIR agent but with certification issued by the BIR confirming tax payments; the related income of which could not be traced to the company's GL, AAFS and annual ITR	Annex 4-3	630,000.00
4.	Creditable withholding tax payments supported by photocopies of BIR returns stamped 'received' by the BIR agent	Annex 4-4	420,000.00
TOTAL – Exceptions			**₱ 1,769,304.00**
GRAND TOTAL			**₱ 10,783,504.00**

Based on the reports of the ICPA, out of petitioner's claimed CWT for taxable year 2005 in the amount of ₱ 20,705,641.00, only the amount of

₱ 1,173,213.63 (the sum of ₱ 458,913.63[24] and ₱ 714,300.00[25]) was found to be properly substantiated and the related income payments of which were verified to have been included in petitioner's General Ledger (GL), Annual Audited Financial Statements (AAFS) and Income Tax Return (ITR).

However, the ICPA noted that if the Court will allow petitioner's claims under "For Consideration of the Court" amounting to ₱ 8,830,583.21 (the sum of ₱ 530,683.21 and ₱ 8,299,900.00), petitioner's total amount of claimable CWT would be ₱ 10,003,796.84, broken down as follows:

Claims Properly Substantiated and Related Income Traced to GL, AAFS and ITR	
Per ICPA's Final and Consolidated Report (Exh. "N")	₱ 458,913.63
Per ICPA's Supplemental Report (Exh. "X")	714,300.00
Subtotal	**₱ 1,173,213.63**
For Consideration of this Court	
Per ICPA's Final and Consolidated Report (Exh. "N")	₱ 530,683.21
Per ICPA's Supplemental Report (Exh. "X")	8,299,900.00
Subtotal	**₱ 8,830,583.21**
TOTAL	**₱ 10,003,796.84**

A further scrutiny of the records revealed that the CWT of ₱ 10,003,796.84 is composed of the following:

A.	**CLAIMS PROPERLY SUBSTANTIATED AND RELATED INCOME TRACED TO GENERAL LEDGER, AAFS AND ITR**				
1.	***Per ICPA's Final Report (Exhibit "N")***				
	Withholding Agent	**Income Payment**	**Tax Withheld**	**BIR Form No.**	**Exhibit**
	Income Payments by Top 10000 Corp-Supplier of Services				
	Lafarge Cement Service Phils.	₱ 219,782.45	₱ 4,395.64	2307	M-2.71
	Lafarge Cement Service Phils.	149,706.96	2,994.14	2307	M-2.73
	Lafarge Cement Service Phils.	434,564.90	8,691.30	2307	M-2.76
	Lepanto Consolidated Mining	4,775.77	95.52	2307	M-2.199
	Rentals				

[24] Exhibit "N", Annex C, p. 14.
[25] Exhibit "X", p. 3.

	PBComm Finance	5,000.00	250.00	2307	M-2.108
	PBComm Finance	5,000.00	250.00	2307	M-2.108
	PBComm Finance	5,000.00	250.00	2307	M-2.108
	PBComm Finance	5,000.00	250.00	2307	M-2.109
	PBComm Finance	5,000.00	250.00	2307	M-2.109
	PBComm Finance	5,000.00	250.00	2307	M-2.109
	PBComm Finance	5,000.00	250.00	2307	M-2.110
	PBComm Finance	5,000.00	250.00	2307	M-2.110
	PBComm Finance	5,000.00	250.00	2307	M-2.110
	PBComm Finance	5,000.00	250.00	2307	M-2.111
	PBComm Finance	5,000.00	250.00	2307	M-2.111
	PBComm Finance	5,000.00	250.00	2307	M-2.111
	Sensomed Phils. Inc.	73,284.53	3,331.12	2307	M-2.365
	Sensomed Phils. Inc.	73,284.53	3,331.12	2307	M-2.365
	Traditional Homes	52,694.40	2,634.72	2307	M-2.370
	SAS Institute Phils Inc.	106,403.51	5,320.18	2307	M-2.371
	Traditional Homes	52,694.40	2,634.72	2307	M-2.370
	Blue Boz	82,222.50	4,111.13	2307	M-2.375
	Blue Boz	82,222.50	4,111.13	2307	M-2.375
	Blue Boz	82,222.50	4,111.13	2307	M-2.375
	New Image International	27,318.40	1,365.92	2307	M-2.381
	SAS Institute Phils Inc.	106,403.60	5,320.18	2307	M-2.386
	SAS Institute Phils Inc.	106,403.60	5,320.18	2307	M-2.386
	SAS Institute Phils Inc.	106,403.60	5,320.18	2307	M-2.386
	Traditional Homes	52,694.40	2,634.72	2307	M-2.388
	Traditional Homes	52,694.40	2,634.72	2307	M-2.388
	Traditional Homes	52,694.40	2,634.72	2307	M-2.388
	Traditional Homes	52,694.40	2,634.72	2307	M-2.370
	New Image International	27,318.40	1,365.92	2307	M-2.381
	Interest Payments to Banks				
	Abacus Capital and Investment	50,152.50	1,003.05	2307	M-2.349
	Vista Holding Corporation	130,643.50	2,612.87	2307	M-2.360
	Payments to Prime Contractors/Subcontractors				
	CAI-STA Phils.	572,488.80	28,624.44	2307	M-2.43
	CAI-STA Phils.	572,488.75	28,624.44	2307	M-2.43
	CAI-STA Phils.	572,488.75	28,624.44	2307	M-2.43
	CAI-STA Phils.	572,488.75	28,624.44	2307	M-2.43
	CAI-STA Phils.	572,488.75	28,624.44	2307	M-2.43
	CAI-STA Phils.	572,488.75	28,624.44	2307	M-2.43
	CAI-STA Phils.	583,488.52	29,174.42	2307	M-2.43
	CAI-STA Phils.	583,488.52	29,174.42	2307	M-2.43
	CAI-STA Phils.	583,488.52	29,174.42	2307	M-2.43
	CAI-STA Phils.	583,488.52	29,174.42	2307	M-2.43
	CAI-STA Phils.	583,488.52	29,174.42	2307	M-2.43
	CAI-STA Phils.	583,488.52	29,174.42	2307	M-2.43
	Lafarge Cement Service Phils.	214,782.45	4,295.64	2307	M-2.65
	Lafarge Cement Service Phils.	214,782.45	4,295.65	2307	M-2.72
	Maersk Logistics	727,699.50	14,553.99	2307	M-2.79

	Maersk Logistics	182,914.00	3,658.28	2307	M-2.82
	Maersk Logistics	185,393.27	3,707.87	2307	M-2.85
	Subtotal	**₱ 10,700,715.49**	**₱ 458,913.62**		
2.	***Per ICPA's Supplemental Report (Exhibit "X")***				
	Sale of Real Property				
	Silverio Cecille	₱ 800,000.00	₱ 48,000.00	1606	M-2.24
	Max & Dannah Vivares	405,000.00	24,300.00	1706	M-2.15
	Sps. Clarito & Phodale Gloriani	8,500,000.00	510,000.00	1706	M-2.26
	Mr. Gregorio The	2,200,000.00	132,000.00	1706	M-2.18
	Subtotal	**₱ 11,905,000.00**	**₱ 714,300.00**		
TOTAL - CLAIMS PROPERLY SUBSTANTIATED AND RELATED INCOME TRACED TO GL, AAFS AND ITR		**₱ 22,605,715.49**	**₱ 1,173,213.62**		
B.	**FOR CONSIDERATION OF THE COURT**				
1.	***Per ICPA'S Final Report (Exhibit "N")***				
	Payments to Prime Contractors/Subcontractors				
	Legaspi Oil Company	₱ 175,000.00	₱ 3,500.00	2307	M-2.286
	Rentals				
	Manulife	45,320.00	2,266.00	2307	M-2.93
	IPSOS (Daichi Properties)	45,048.00	2,252.40	2307	M-2.376
	IPSOS (Daichi Properties)	45,048.00	2,252.40	2307	M-2.377
	New Image Intl (Daichi Properties)	27,318.40	1,365.92	2307	M-2.381
	New Image Intl (Daichi Properties)	27,318.40	1,365.92	2307	M-2.381
	New Image Intl (Daichi Properties)	27,318.40	1,365.92	2307	M-2.381
	New Image Intl (Daichi Properties)	27,318.40	1,365.92	2307	M-2.382
	New Image Intl (Daichi Properties)	27,318.40	1,365.92	2307	M-2.382
	New Image Intl (Daichi Properties)	27,318.40	1,365.92	2307	M-2.382
	New Image Intl (Daichi Properties)	27,318.40	1,365.92	2307	M-2.383
	KSY Land Development	197,683.20	9,884.16	2307	M-2.397
	Matex Mineral Resources	300,000.00	15,000.00	2307	M-2.405
	Income Payments by Top 10000 Corp-Supplier of Services				
	Masagana Telamart	50,555.56	1,011.11	2307	M-2.230
	Masagana Telamart	101,111.11	2,022.22	2307	M-2.236
	Lepanto Consolidated Mining	86,507.50	1,730.15	2307	M-2.246
	Masagana Telamart	54,166.50	1,083.33	2307	M-2.241
	Sale of Real Property				
	Mariscotes Roberto	242,000.00	14,520.00	1606	M-2.14
	Medical One Corp.	7,760,000.00	465,600.00	1606	M-2.16
	Subtotal	**₱**	**₱ 530,683.21**		

mb

		1,918,020.01			
2.	*Per ICPA's Supplemental Report (Exh. "X")*				
	Sale of Real Property				
	Manuel/Esperanza Hernandez	₱ 1,250,000.00	₱ 75,000.00	1606	M-2.12
	Geraldine Villavert	665,000.00	39,900.00	1606	M-2.7
	Centroville Inc.	6,000,000.00	5,760,000.00	1606	M-2.30
	Sergio Yap	3,400,000.00	204,000.00	1606	M-2.23
	Milagros Abrea	600,000.00	36,000.00	1706	M-2.17
	RD Corporation	6,000,000.00	360,000.00	1706	M-2.20
	Ma. Emily Dela Pena	416,666.67	25,000.00	1706	M-2.11
	Sps. Alfonso & Susan Umali	5,000,000.00	300,000.00	1706	M-2.431
	Kian Heng Trading Corp.	25,000,000.00	1,500,000.00	2307	M-2.432
	Subtotal	**₱ 138,331,666.67**	**₱ 8,299,900.00**		
TOTAL- FOR CONSIDERATION OF THE COURT		**₱ 147,625,335.34**	**₱ 8,830,583.21**		
GRAND TOTAL		**₱ 170,231,050.83**	**₱ 10,003,796.83**		

Notwithstanding the foregoing findings, inasmuch as We would want to give weight and consideration to the findings and recommendation of the ICPA, We are constrained to disregard the same, because such findings and recommendations do not show faithful compliance with the *second* and *third* conditions for the grant of a claim for refund of CWT, to wit: there must be a showing on the return of the recipient that the income payment received was declared as part of the gross income;[26] and the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom, respectively.

It must be emphasized that the *second* and *third* conditions are based on Section 2.58.3(B) of RR No. 2-98, which states:

[26] *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482.

"*Sec. 2.58.3. Claim for Tax Credit or Refund*
xxx xxx xxx

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom** *(Emphasis supplied)."*[27]

The foregoing provision is plain and clear.

In complying with the *third* condition, it must be shown that the withholding tax statement was indeed "duly issued by the payor to the payee". As held in *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*,[28] the Supreme Court said:

"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**." *(Emphases supplied)*

[27] SUBJECT: Implementing Republic Act No. 8424, *"An Act Amending The National Internal Revenue Code, as Amended"* Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding on Income Tax on Compensation, Withholding of Creditable Value-Added Tax ad Other Percentage Taxes.
[28] G.R. No. 155682, March 27, 2007.

Relative thereto, Section 2.58(B) of RR 2-98, as amended by RR 03-02, identifies the withholding tax statement, for purposes of the *third* condition, as BIR Form No. 2307, to wit:

> "***Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.***
>
> xxx xxx xxx
>
> ***(B) Withholding tax statement for taxes withheld.*** — Every payor required to deduct or withhold taxes under these regulations shall furnish, in triplicate, each payee, whether individual or corporate, with a withholding tax statement, <u>using the prescribed form (BIR Form No. 2307)</u> showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter, within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. The payor, nonetheless, should always retain a copy of duly issued BIR Form No. 2307. Failure to furnish the same shall be a ground for the mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee.
>
> For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.
>
> Upon request of the payee, however, the payor must furnish such certificate simultaneously with the income payment." *(Underscoring supplied)*

Such being the case, the recommended amount of ₱ 10,003,796.84 by the ICPA must be reduced by the amounts which are not supported by BIR Form No. 2307, determined as follows:

Supposed claimable amount of CWT				**₱ 10,003,796.84**
Less: Withheld taxes not supported by BIR Form No. 2307				**7,994,320.00**
	Exhibit	**BIR Form No.**	**Tax Withheld**	
Per ICPA's Supplemental Report (Exhibit "X"):				
Sale of Real Property				
Silverio Cecille	M-2.24	1606	₱ 48,000.00	
Max & Dannah Vivares	M-2.15	1706	24,300.00	
Sps. Clarito & Phodale Gloriani	M-2.26	1706	510,000.00	
Mr. Gregorio The	M-2.18	1706	132,000.00	

Per ICPA'S Final Report (Exhibit "N"):				
Sale of Real Property				
Mariscotes Roberto	M-2.14	1606	14,520.00	
Medical One Corp.	M-2.16	1606	465,600.00	
Per ICPA's Supplemental Report (Exh. "X"):				
Sale of Real Property				
Manuel/Esperanza Hernandez	M-2.12	1606	75,000.00	
Geraldine Villavert	M-2.7	1606	39,900.00	
Centroville Inc.	M-2.30	1606	5,760,000.00	
Sergio Yap	M-2.23	1606	204,000.00	
Milagros Abrea	M-2.17	1706	36,000.00	
RD Corporation	M-2.20	1706	360,000.00	
Ma. Emily Dela Pena	M-2.11	1706	25,000.00	
Sps. Alfonso & Susan Umali	M-2.431	1706	300,000.00	
			₱ 7,994,320.00	
Total amount of tax withheld supported by BIR Form No. 2307				**₱ 2,009,476.84**

Notwithstanding said total amount of tax withheld supported by BIR Form No. 2307, petitioner however, failed to convincingly comply with the *second* condition, *i.e.*, it is shown **on the return of the recipient** that the income payment received was declared as part of the gross income. Logically, the first and foremost document to be closely examined is the final adjustment return or Annual ITR of petitioner for taxable year 2005,[29] particularly the entries made therein.

In the said return, specifically Schedule 1 thereof or the *"Schedule of Sales/Revenues/Receipts/Fees"*, stating a revenue in petitioner's Sale of Service in the amount of ₱ 1,378,216,892.00, there is no entry whatsoever in the *"Creditable Tax Withheld"* column. Even on petitioner's amended Annual ITR for the same taxable year[30] there is no entry on the corresponding *"Creditable Tax Withheld"* column.

Thus, said declarations are to the effect, or at the very least, taken to mean, that no part of the gross income reported therein were ever subjected

[29] Exhibit "A".
[30] Exhibit "B".

to creditable withholding tax. Accordingly, the supposed income payments to which taxes were withheld, cannot be said to have been declared as part of the gross income for taxable year 2005.

As cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[31] Thus, there should be no room for inconsistencies, especially on the part of claimant, who has the burden of proof to establish the factual basis of its claim for tax refund.

Not only was petitioner remiss of its duty prove compliance with the above-stated *second* condition, petitioner likewise failed to establish that it has not carried over its excess withholding income tax to the taxable quarters of the succeeding taxable years.

Once exercised, the option to carry over is irrevocable.

Section 76 of the NIRC of 1997 provides as follows:

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

---

[31] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

> **to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.**" *(Emphasis supplied)*

The last sentence of Section 76 is clear in its mandate. Once a corporation exercises the option to carry-over and apply the excess quarterly income tax against the tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable year. Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a TCC for the amount representing such overypayment.[32]

In this case, petitioner has effectively exercised the carry-over option pertaining to its declared excess CWT for 2005.

While petitioner elected the option "To be issued a Tax Credit Certificate" in its 2005 Annual ITR[33] insofar as the excess tax credits of ₱ 61,789,455.00 for 2005 (including the claimed unutilized creditable withholding tax of ₱ 20,705,641.00) is concerned, petitioner carried over the said amount in its Quarterly Income Tax Returns for the first[34], second[35], and third[36] quarters of taxable year 2006. Thus, petitioner's original option to be issued a TCC on the purported CWT of ₱ 20,705,641.00 is actually negated by its very act of carrying over the same amount to the succeeding taxable

---

[32] *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corporation, et seq.*, G.R. Nos. 171742 and 176165, June 15, 2011.
[33] Exhibit "A", line 31.
[34] Exhibit "M-16".
[35] Exhibit "M-17".
[36] Exhibit "M-18".

quarters of 2006. Having effectively exercised the option of carry-over as regards the claimed excess tax credits of ₱ 20,705,641.00, petitioner is bound by the irrevocability rule under Section 76 of the NIRC of 1997.

Consequently, the prayer of petitioner in the instant Petition of Review for the issuance of a TCC in the amount of ₱ 20,705,641.00 in its favor cannot be granted on the following grounds, viz:

1) failure to show compliance with the *second* and *third* conditions for the grant of a claim for refund of CWT, to wit: (a) that there must be a showing on the return of the recipient that the income payment received was declared as part of the gross income, and (b) that the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom, respectively; and
2) the operation of the irrevocability rule under Section 76 of the NIRC of 1997.

Thus, for all the reasons cited above, We reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[37]

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice