REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

SKY CABLE CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9069

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
NOV 08 2019
2:42 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This case involves a claim for refund or issuance of tax credit certificate ("TCC") in the amount of Php12,304,065.32, allegedly representing overpayment of withholding taxes on royalties paid on May 2013 to December 2014.

The Facts

Petitioner Sky Cable Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at the 6th Floor ELJ Communications Center, Mother Ignacia Avenue, Quezon City.[1]

[1] Docket – Vol. 1, Joint Stipulations of Facts & Issues (JSFI), II. Facts Stipulated by the Parties, Paragraph (Par.) 1, p. 195.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code ("NIRC") of 1997, as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue ("BIR").[2]

On various dates, Destiny Cable, Inc. ("DCI") and petitioner separately or jointly entered into, or renewed, certain distribution agreements, with various non-resident corporations/entities for their respective cable television subscribers in the Philippines.[3]

In May 2012, petitioner and DCI entered into an Asset Purchase Agreement and Deed of Sale and Assignment,[4] whereby DCI sold its assets, subscription contracts, and other contracts and assets (as listed therein) to petitioner. The said Agreement was approved by the National Telecommunications Commission in its Order dated December 18, 2012.[5]

For the months from January 2013 up to December 2014, petitioner filed Monthly Remittance Returns of Final Income Taxes Withheld (BIR Form No. 1601-F), and remitted final withholding taxes on income payments to non-resident cinematographic films owner, lessor, distributor at the rate of twenty-five percent (25%).[6]

On March 16, 2015, petitioner filed an administrative claim for refund with the BIR – Large Taxpayers Service ("LTS"), requesting for a refund and/or issuance of TCC in the amount of Php17,470,935.60, allegedly representing the excess taxes withheld and paid by petitioner from royalty payments during the years 2013 and 2014, in connection with its agreements with various non-resident film owners, distributors and lessors.[7]

Petitioner filed the instant Petition for Review before this Court on June 17, 2015,[8] praying that this Court declare that petitioner is entitled to a

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2 *Id.* – Vol. 1, JSFI, I. Summary of Admitted Facts, Par. 1, p. 194.

3 *Id.* – Vol. 3, Exhibits "P-19" to "P-20", "P-26" to "P-27", "P-39" to "P-40", "P-48" to "P-51", "P-53" to "P-54", "P-58" to "P-59", "P-68" to "P-70", "P-80", "P-86", "P-88", "P-90", "P-93" to "P-99", pp. 1585 to 1615, 1621 to 1653, 1661 to 1667, 1668 to 1683, 1685 to 1689, 1712 to 1734, 1791 to 1807, 1836 to 1856, 1876 to 1886, 1890 to 1897, 1893 to 1894, 1900 to 1913, respectively.

4 *Id.* – Vol. 3, Exhibits "P-2" and "P-3", pp. 1337 to 1415.

5 *Id.* – Vol. 3, Exhibits "P-4" and "P-5", pp. 1416 to 1419.

6 *Id.* – Vol. 3, Exhibits "P-7" and its sub-markings, and Exhibits "P-8" and its sub-markings, pp. 1432 to 1455, and 1456 to 1479, respectively.

7 *Id.* – Vol. 3, Exhibit "P-1", pp. 1331 to 1336.

8 *Id.* – Vol. 1, pp. 10 to 20.

refund/TCC in the total amount of Php12,304,065.32, allegedly representing overpayment of withholding taxes on royalties paid on May 2013 to December 2014.

Respondent filed his Answer on November 9, 2015,[9] interposing the following affirmative defenses:

> "4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> ***PETITIONER MUST SHOW THAT IT FILED THE ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND WITHIN THE PRESECRIPTIVE PERIOD.***
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> 5. Petitioner must prove that it filed the claim for refund, both administrative and judicial, within the two-year period provided by law.
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> 6. Section 204(C) of the Tax Code in relation to Section 229 provides the period within which the claim for refund must be filed, to wit:
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>> '**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** – The Commissioner may-
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>> 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 stamped 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

[9] *Id.* – Vol. 1, pp. 138 to 149.

> unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.'
>
> '**SEC. 229. Recovery of Tax Erroneously or Illegally Collected.**- no suit or proceeding shall be maintained in any 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 therefore, 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.'

7. The two-year prescriptive period to claim for refund is reckoned from the date the tax due is paid or becomes demandable whichever is earlier. As held in ACCRA INVESTMENTS CORPORATION vs. THE HONORABLE COURT OF APPEALS:

> 'In the *Gibbs* case, *supra*, cited by the court of Appeals, we have clearly stated that:
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> > Payment is a mode of extinguishing obligations (Art. 1231, Civil Code) and it means not only the delivery of money but also the performance, in any other

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> manner, of an obligation (id., Art. 1231). A taxpayer, resident or non-resident, does so not really to deposit an amount to the Commissioner of Internal Revenue, but, in truth, to perform and extinguish his tax obligation for the year concerned. In other words, he is paying his tax liabilities for that year. Consequently, *a taxpayer whose income is withheld at source will deemed to have paid his tax liability end of the tax year. It is from when the same falls due at this latter date then, or when the two-year prescriptive period under Section 306 (now the tax liability falls due, that the rt of Section 230) of the Revenue Code starts to run with respect to payments effected through the withholding tax system....*

The aforequoted ruling presents two alternative reckoning dates, i.e. (2) the end of the tax year; and (2) <u>when the tax liability falls due</u>.' (Underscoring supplied)

8. In relation to the foregoing, Revenue Regulations No. 2-98 provides when final withholding tax liability falls due, to wit:

'SECTION 2.58. **Returns and Payment of Taxes Withheld at Source**.

(A) **Monthly return** and **payment of taxes** withheld at source –
(1) WHERE TO FILE – Creditable and **final withholding taxes deducted and withheld by the withholding agent shall be paid upon filing a return** in duplicate with the authorized agent banks located within the Revenue District Office (RDO) having jurisdiction over the residence or principal place of business of the withholding agent. In places where there is no authorized agent banks, the return shall be filed directly with the Revenue District Officer, Collection Officer or the duly authorized Treasurer of the city or municipality where the

withholding agent's residence or principal place of business is located, or where the withholding agent is a corporation, where the principal office is located except in cases where the Commissioner otherwise permit.

(2) WHEN TO FILE –
(a) **The withholding tax return, whether creditable or final, shall be filed and payments should be made** within ten (10) days after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year

xxx xxx'

9. Clearly, petitioner must prove that it filed its administrative and judicial claim within two years from the date of payment of the final withholding tax which should be made within ten (10) days after the end of each taxable month.

PETITIONER UNJUSTIFIABLY DISREGARDED REVENUE MEMORANDUM ORDER NO. (RMO) 1-2000 AND 72-2010.

10. Petitioner stated in paragraph 10 of its Petition for Review that it claims for refund in the absence of a prior Tax Treaty Relief Application (TTRA).

11. With all due respect, the cited case of Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue has been misapplied for there is a difference in the circumstances of the said case and the present petition.

12. The issue in Deutsche Bank case is whether the failure to strictly comply with RMO 1-2000 will deprive persons or corporation of the benefit of a tax treaty.

13. Meanwhile in the present case, there is an <u>absolute</u> failure to comply with the RMO 1-2000 and RMO 72-2010; petitioner unjustifiably did not file any TTRA.

14. Petitioner disregarded RMO 1-2000 and RMO 72-2010, despite their being valid administrative issuances.

15. It must be noted that in Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue, there is nothing in the decision of the Honorable Supreme Court which declares that RMO 1-2000 as illegal or invalid. Thus RMO 1-2000 is still valid and operative. One cannot disregard the compliance with an administrative order for it has the force and effect of a law.

16. Verily, administrative issuances have the force and effect of law. They benefit from the presumption of validity and constitutionality enjoyed by the statutes. (*Rufino O. Eslao vs. Commission on Audit, G.R. No. 108310, September 1, 1994*)

17. The intention of RMO 1-2000 is clear, to wit, 'to obviate any erroneous interpretation and/or application of the treaty provisions. The objective of the BIR is to forestall assessments against corporations who erroneously availed themselves of the benefits of the tax treaty but are not legally entitled thereto, as well as to save such investors from the tedious process of claims for a refund due to an inaccurate application of the tax treaty provisions.'

18. As held in the above-cited case:

> 'At most, the application for a tax treaty relief from the BIR should merely operate to <u>confirm the entitlement</u> of the taxpayer to the relief.'

19. Considering that petitioner unjustifiably disregarded RMO 1-2000 and RMO 72-2010 by <u>not filing any TTRA</u>, one cannot expect the BIR to confirm the entitlement of petitioner to the relief sought. The opportunity to examine the records and documents to determine whether petitioner was entitled to relief has been denied from the BIR which may lead to erroneous interpretation and/or application of the treaty provisions.

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20. As can be gleaned from the decision of the Honorable Supreme Court, it relaxed the strict compliance with RMO 1-2000, but an absolute non-compliance with the said RMOs is a clear violation of the administrative issuance.

21. Thus, for failure to comply with RMO 1-2000 and RMO 72-2010, by not filing any TTRA, petitioner failed to establish its right to refund.

TAX TREATIES INVOKED BY PETITIONER MUST BE SHOWN TO BE APPLICABLE TO THE INSTANT CASE.

22. Petitioner invoked the application of RP-France Tax Treaty, RP-Singapore Tax Treaty, and RP-Netherlands Tax Treaty in the present case.

23. Consequently, petitioner has all the burden to prove that it is entitled to the privileges granted by the said treaties, and that the preferential tax rates, applicable in this case. Failure to do so bars petitioner to claim their tax privileges.

PETITIONER MUST PROVE THAT IT HAS THE REQUISITE LEGAL STANDING TO CLAIM FOR REFUND.

24. Petitioner alleged that Destiny Cable Inc. (DCI) entered into Licensing Agreements with various non-resident foreign corporations (Licensors) over the distribution and broadcast of film and television programs for its cable television subscribers in the Philippines.

25. However, petitioner did not provide any proof to demonstrate that there were in fact legal, valid, and existing Licensing Agreements between DCI and the alleged Licensors.

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26. Petitioner further alleged that, in 2012, it acquired the assets of DCI including the rights and obligations of the latter under the Licensing Agreement.

27. The alleged acquisition of assets of DCI by petitioner is a substantial matter that must be proved by petitioner. And even assuming arguendo that petitioner legally acquired DCI, it is not clear whether it validly substituted DCI in all the latter's rights and obligations, including among others, the right to distribution and broadcast of film and television programs and the obligation to pay the license fees.

PETITIONER MUST LIKEWISE PROVE THE ALLEGED TRANSACTIONS WITH THE LICENSORS THAT GIVE RISE TO THE PAYMENT OF LICENSE FEES TO THE LATTER.

28. Petitioner claims that it paid license fees to its Licensors to the right to distribution and broadcast of film and television programs in the amount of P125,141,587.12 for 2013 and 2014. With that, it provides the Alphabetical List of payees (Alphalist) showing the alleged payments.

29. However, such Alphalist is merely self-serving evidence that does not prove the alleged transaction and payments made to the said Licensors.

30. Remittance of the license fees to said Licensors must be proved by petitioner, otherwise the final taxes allegedly paid by petitioner cannot be covered by the Tax Treaties invoked.

TO BE ENTITLED TO THE PRIVILEGES GRANTED BY THE TAX TREATIES INVOLVED, THE LICENSORS MUST BE PROVED TO BE

RESIDENTS OF THE CONTRACTING STATES.

31. As provided in the invoked Tax Treaties, there should be a payor of royalties in a Contracting State and a recipient of royalties in the other Contracting State. These two must be clearly shown for the applicability of such Tax Treaties.

32. Petitioner must be able to prove that it paid and remitted the royalties involved from which taxes were withheld, and that the recipients of such royalties are residents of other Contracting State,

33. Also, the Licensors are alleged to be residents of France, Singapore, and Netherlands, respectively. Such allegations that is not substantiated by evidence is insufficient to show that they are indeed non-resident foreign corporations.

34. Moreover, there is no claim that these Licensors do not carry on business in the Philippines or that they do not perform professional services from the fixed bases situation in the Philippines, and the right or property in respect of which the royalties are paid is not effectively connected with such permanent establishment or fixed base.

35. As allegations must be supported by concrete evidence to justify the claim for refund filed by petitioner. As the Honorable Supreme Court held:

> 'Petitioner's bare allegations is far from sufficient proof for the Court to rule in her favor. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.'

IT IS INCUMBENT UPON PETITIONER TO PROVE THAT IT IS ENTITLED TO THE REFUND SOUGHT BECAUSE A CLAIM FOR REFUND IS NOT IPSO FACTO GRANTED UPON FILING OF CLAIM.

36. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government. It has been held by the Supreme Court that a claim for refund is not *ipso fact* granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.

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

38. The taxpayer has the burden of proving that it has the right to claim for refund. As provided in Section 1 of Rule 131 of the Rules of Court:

> '**Section 1.** Burden of proof. – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.'

39. Finally, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words to plain to be mistake and too categorical to be misinterpreted.

40. Based on the foregoing, petitioner's claim for refund has no bases in fact and in law. Thus, the instant petition should be denied for lack of merit."

Respondent's Pre-Trial Brief was filed on March 22, 2016,[10] while the Pre-Trial Brief for Petitioner was filed on May 23, 2016.[11]

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[10] *Id.* – Vol. 1, pp. 158 to 161.
[11] *Id.* – Vol. 1, pp. 173 to 179.

The Pre-trial conference was held on May 26, 2016.[12] The parties submitted their Joint Stipulation of Facts & Issues on June 20, 2016.[13] Thereafter, the Court issued the Pre-Trial Order on July 01, 2016.[14] On July 20, 2016, petitioner filed a Motion to Amend Pre-Trial Order dated July 01, 2016,[15] which the Court granted in its Resolution dated September 26, 2016.[16]

The trial of the case ensued.

During trial, petitioner presented its Administrative Assistant for Tax Regulatory Compliance and its Programming Head, Mr. Ricardo A. Lavendia, Jr., and Mr. Jesus James A. Dumlao, respectively, on September 27, 2016,[17] Ms. Daphne D. Caluma, petitioner's Account Manager, on November 08, 2016,[18] and the Court-commissioned Independent Certified Public Accountant ("ICPA"), Ms. Theresa Romey Dela Roca, on November 29, 2016.[19]

Petitioner filed its Formal Offer of Evidence on December 12, 2017.[20] In two separate Resolutions dated May 09, 2018[21] and September 13, 2018[22], the Court admitted petitioner's exhibits *except* for Exhibits "P-1000b", "P-1500i", "P-2000b", "P-3000b", "P-4000b", "P-5000b", "P-6000b", "P-7000b", "P-8000b", "P-8500c", "P-8500i", "P-9000b", "P-10000b", "P-10500e", "P-11000b", "P-12000b", "P-13000b", "P-14000b", "P-15000b", "P-15400b" to "P-15400g", "P-15400i", "P-15500b" to "P-15500g", "P-15500i", "P-16000b", "P-16400a", "P-16400d", "P-16400g" to "P-16400h", "P-16500a", "P-16500d", "P-16500g" to "P-16500h", "P-17000b", "P-17400a" to "P-17400c", "P-17400f" to "P-17400i", "P-17500a" to "P-17500c", "P-17500f" to "P-17500i", "P-18000b", "P-18400a" to "P-18400d", "P-18400f" to "P-18400i", "P-18500a" to "P-18500d", "P-18500f" to "P-18500i", "P-19000b", "P-19400a" to "P-19400d", "P-19400f" to "P-19400i", "P-19500a" to "P-19500d", "P-19500f" to "P-19500i", "P-20000b", "P-20400a" to "P-20400b", "P-20400d", "P-20400f" to "P-20400i", "P-20500a" to "P-20500b", "P-20500d", "P-20500f" to "P-20500i", "P-21000b", "P-21400a" to "P-21400d", "P-21400f" to "P-21400i", "P-21500a" to "P-21500d", "P-21500f" to "P-21500i", "P-22000b", "P-22400a"

[12] *Id.* – Vol. 1, Minutes of the hearing held on, and Order dated, May 26, 2016, pp. 181 to 186.
[13] *Id.* – Vol. 1, pp. 194 to 204.
[14] *Id.* – Vol. 1, pp. 210 to 223.
[15] *Id.* – Vol. 1, pp. 250 to 259.
[16] *Id.* – Vol. 3, pp. 1030 to 1039.
[17] *Id.* – Vol. 3, Minutes of the hearing held on, and Order dated, September 27, 2016, pp. 1040 to 1046.
[18] *Id.* – Vol. 3, Minutes of the hearing held on, and Order dated, November 8, 2016, pp. 1142 to 1145.
[19] *Id.* – Vol. 3, Minutes of the hearing held on, and Order dated, November 29, 2016, pp. 1170 to 1173.
[20] *Id.* – Vol. 3, pp. 1270 to 1330.
[21] *Id.* – Vol. 4, pp. 1964 to 1972.
[22] *Id.* – Vol. 4, pp. 2070 to 2072.

to "P-22400d", "P-22400f" to "P-22400i", "P-22500a" to "P-22500d", "P-22500f" to "P-22500i", "P-23000b", "P-23400a" to "P-23400d", P-23400f" to "P-23400i", "P-23500a" to "P-23500d", "P-23500f" to "P-23500i", "P-24000b", "P-24400a" to "P-24400i", "P-521.3" and "P-577.2", for not being found in the records of the case; and the Photocopies of License Agreements, for failure to present their originals for comparison.

Thereafter, respondent manifested that he will no longer present any witness as there is no report of investigation.[23]

On June 03, 2018, respondent filed his Memorandum;[24] whereas on November 08, 2018, petitioner filed its Memorandum.[25] In the Resolution dated November 13, 2018,[26] the instant case was submitted for decision.

The Issue

As stipulated by the parties, the sole issue for this Court's resolution is as follows:

> "Whether or not Petitioner is entitled to a refund or tax credit amounting to Php12,304,065.32 on the alleged overpayment of withholding tax on royalties covering the period from May 2013 to December 2014."[27]

Petitioner's arguments:

Petitioner argues that prior filing of a tax treaty application ("TTRA") is not required to be entitled to tax refund; that it is entitled to tax refund for erroneous overpayment of taxes on license fees, since its Petition for Review was timely filed, and petitioner paid the taxes on license fees under the twenty-five percent (25%) rate as prescribed by Revenue Regulations ("RR") No. 2-98, and Section 28 of the NIRC of 1997, as amended.

Moreover, petitioner claims that it is entitled to the fifteen percent (15%) rate for royalties under the tax treaties, for the following reasons: (1) the License Fees paid by petitioner are in the nature of royalties; (2) the licensors are non-residents of the Philippines; (3) the licensors do not have a permanent

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[23] *Id.* – Vol. 4, Minutes of the hearing held on, and Order dated, May 10, 2018, pp. 1973 to 1974.
[24] *Id.* – Vol. 4, pp. 2040 to 2050.
[25] *Id.* – Vol. 4, pp. 2086 to 2136.
[26] *Id.* – Vol. 4, Resolution dated November 13, 2018, p. 2139.
[27] *Id.* – Vol. 1, JSFI, Issue to be Resolved, p. 195.

establishment in the Philippines; (4) based on the findings of the ICPA, petitioner is entitled to tax refund amounting to Php13,378,319.22 due to overpayment.

Respondent's counter-arguments:

Respondent contends that petitioner must show that it filed the administrative and judicial claims for refund within the prescriptive period; that petitioner unjustifiably disregarded Revenue Memorandum Order ("RMO") Nos. 1-2000 and 72-2010; that tax treaties invoked by petitioner must be shown to be applicable to the instant case; and that petitioner must prove that it has the requisite legal standing to claim for refund.

Furthermore, respondent avers that petitioner must likewise prove the alleged transactions with the licensors that give rise to the payment of License Fees to the latter; that to be entitled to the privileges granted by the tax treaties involved, the licensors must be proved to be residents of the Contracting States; and that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not ipso facto granted upon filing of claim.

Discussion/Ruling

The instant Petition for Review must be partially granted.

Section 229 of the NIRC of 1997, as amended, provides as follows:

> "**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 therefore, 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."[28]

The foregoing provision allows the recovery of taxes erroneously or illegally collected within a period of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[29]

Thus, in this case, We shall first determine whether petitioner timely filed its administrative and judicial claims. Thereafter, We shall proceed to resolve whether the subject refund claim involves erroneous or illegal taxes.

Petitioner timely filed its administrative and judicial claims.

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.[30]

Based on records of the case, petitioner paid and remitted final withholding taxes on royalties due on the following dates:

Period Covered	Monthly Remittance Return of Final Income Taxes Withheld (BIR Form No. 1601-F) (Exhibit)	BIR ePayment Confirmation (Exhibit)	Payment Transaction Date per BIR EPayment Confirmation	Last Day to File Administrative and Judicial Claims
May 2013	"P-7-D" to "P-7-D-2"	"P-8-D"	June 17, 2013	June 17, 2015
June 2013	"P-7-E" to "P-7-E-2"	"P-8-E"	July 15, 2013	July 15, 2015

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[28] *Emphasis and underscoring supplied.*

[29] Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April 25, 2012.

[30] Commissioner of Internal Revenue v. Victorias Milling Co., Inc. and The Court of Tax Appeals, G.R. No. L-24108, January 3, 1968; J. N. Sweeney, A. O. Baigrie, and Ramon Burgas v. Collector, G.R. No. L-12178, August 21, 1959; P.J. Kiener Company, Ltd. v. Saturnino David, G.R. No. L-5163, April 23, 1953.

July 2013	"P-7-F" to "P-7-F-2"	"P-8-F"	August 15, 2013	August 15, 2015
August 2013	"P-7-G" to "P-7-G-2"	"P-8-G"	September 16, 2013	September 16, 2015
September 2013	"P-7-H" to "P-7-H-2"	"P-8-H"	October 16, 2013	October 16, 2015
October 2013	"P-7-I" to "P-7-I-2"	"P-8-I"	November 15, 2013	November 15, 2015
November 2013	"P-7-J" to "P-7-J-2"	"P-8-J"	December 16, 2013	December 16, 2015
December 2013	"P-7-K" to "P-7-K-2"	"P-8-K"	January 20, 2014	January 20, 2016
January 2014	"P-7-L" to "P-7-L-2"	"P-8-L"	February 17, 2014	February 17, 2016
February 2014	"P-7-M" to "P-7-M-2"	"P-8-M"	March 17, 2014	March 16, 2016
March 2014	"P-7-N" to "P-7-N-2"	"P-8-N"	April 15, 2014	April 15, 2016
April 2014	"P-7-O" to "P-7-O-2"	"P-8-O"	May 15, 2014	May 15, 2016
May 2014	"P-7-P" to "P-7-P-2"	"P-8-P"	June 16, 2014	June 16, 2016
June 2014	"P-7-Q" to "P-7-Q-2"	"P-8-Q"	July 15, 2014	July 15, 2016
July 2014	"P-7-R" to "P-7-R-2"	"P-8-R"	August 15, 2014	August 15, 2016
August 2014	"P-7-S" to "P-7-S-2"	"P-8-S"	September 15, 2014	September 15, 2016
September 2014	"P-7-T" to "P-7-T-2"	"P-8-T"	October 15, 2014	October 15, 2016
October 2014	"P-7-U" to "P-7-U-2"	"P-8-U"	November 17, 2014	November 17, 2016
November 2014	"P-7-V" to "P-7-V-2"	"P-8-V"	December 15, 2014	December 15, 2016
December 2014	"P-7-W" to "P-7-W-2"	"P-8-W"	January 20, 2015	January 20, 2017

Such being the case, counting two (2) years from the dates the payments were made, petitioner had, at the earliest, until June 17, 2015, within which to file its administrative and judicial claims for refund/TCC.

Clearly, petitioner's administrative claim filed on March 16, 2015 and the subsequent appeal before this Court *via* Petition for Review filed on June 17, 2015, are both within the two (2)-year prescriptive period provided under Section 229 of the NIRC of 1997, as amended.

A portion of petitioner's refund claim consists of erroneous or illegal taxes.

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Section 28(B)(2) of the NIRC of 1997, as amended, provides as follows:

> "SEC. 28. *Rates of Income Tax on Foreign Corporations.* —
>
> xxx xxx xxx
>
> (B) *Tax on Nonresident Foreign Corporation.* —
>
> xxx xxx xxx
>
> (2) *Nonresident Cinematographic Film Owner, Lessor or Distributor.* — A cinematographic film owner, lessor, or distributor shall pay a tax of twenty-five percent (25%) of its gross income from all sources within the Philippines."

Relative thereto, Section 2.57-1(I)(2) of RR No. 2-98, as amended, reads:

> "Sec. 2.57-1. *Income Payments Subject to Final Withholding Tax.* – The following forms of income shall be subject to final withholding tax at the rates herein specified:
>
> xxx xxx xxx
>
> (I) *Income Derived From all Sources Within the Philippines by Non-Resident Foreign Corporation.* – **The following shall be subject to final withholding tax based on the gross amount of income and at the rate of tax prescribed therefor:**
>
> xxx xxx xxx
>
> **(2) Gross income from all sources within the Philippines derived by non-resident cinematographic film owners, lessors or distributors – Twenty five percent (25%)**".[31]

Thus, the law requires that any payment to a nonresident cinematographic film owner, lessor or distributor, is subject to tax, and must be subject to the final withholding tax, at the rate of twenty-five percent (25%).

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[31] *Emphasis supplied.*

However, Section 32(A)(6), and (B)(5) of the NIRC of 1997, as amended, provides as follows:

> "SEC. 32. *Gross Income.* —
>
> (A) *General Definition.* – Except when otherwise provided in this Title, **gross income means all income derived from whatever source, including (but not limited to) the following items**:
>
> xxx xxx xxx
>
> (6) **Royalties**;
>
> 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.**"[32]

Based on the foregoing provisions, while "royalties" are regarded, in general, as covered under the definition of "gross income" under the law; the said item shall be excluded as such, and exempt from income taxation, to the extent required by any treaty obligation binding upon the Government of the Philippines.

Thus, the above-stated twenty-five percent (25%) withholding tax rate for payments to a nonresident cinematographic film owner, lessor or distributor, may be reduced to the extent required by a tax treaty entered into by the Government of the Philippines.

In this case, petitioner invokes the following tax treaties in claiming that its alleged payments to certain nonresident cinematographic film owners, lessors

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32 *Emphasis supplied.*

or distributors, are subject to final withholding tax, only at the rate of fifteen percent (15%), to wit:

(1) RP-France Tax Treaty;[33]
(2) RP-Singapore Tax Treaty;[34]
(3) RP-China Tax Treaty;[35] and
(4) RP-Netherlands Tax Treaty.[36]

The pertinent provisions of the foregoing tax treaties respectively state as follows:

Article 12 of the RP-France Tax Treaty:

"Article 12
ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, **such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 15 percent of the gross amount of the royalties.**

3. The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work

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[33] Formally known as the CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. This treaty has been amended by the PROTOCOL TO THE TAX CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE FRENCH REPUBLIC SIGNED ON JANUARY 9, 1976.

[34] Formally known as the CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE REPUBLIC OF SINGAPORE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

[35] Formally known as the AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

[36] Formally known as the CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF THE PHILIPPINES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

including cinematograph films and works recorded for broadcasting or television, xxx.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State professional services from a fixed based situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply."[37]

Article 12 of the RP-Singapore Tax Treaty:

"Article 12
ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, **such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but, if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:**

   a) **in the case of the Philippines, 15 per cent of the gross amount of the royalties,** where the royalties are paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activities and also **royalties in respect of cinematographic films or tapes for television or broadcasting**;

   b) in the case of Singapore, where the royalties are approved under the Economic Expansion Incentives (Relief from Income Tax) Act of Singapore, the royalties shall be exempt;

   c) in all other cases, 25 per cent of the gross amount of the royalties.

[37] *Emphasis supplied.*

xxx xxx xxx

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State professional services from a fixed based situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply."[38]

<u>Article 12 of the RP-China Tax Treaty</u>:

"Article 12
ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, **such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:**

   a) **15 per cent of the gross amount of the royalties arising from** the use of, or the right to use, any copyright of literary, artistic or scientific work including **cinematographic films or tapes for television or broadcasting**, or

xxx xxx xxx

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed based situated

[38] *Emphasis supplied.*

therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply."[39]

Article 12 of the RP-Netherlands Tax Treaty:

"Article 12
ROYALTIES

1. Royalties arising in one of the States and paid to a resident of the other State may be taxed in that other State.

2. However, **such royalties may also be taxed in the State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:**

   a) 10 per cent of the gross amount of the royalties where the royalties are paid by an enterprise registered, and engaged in preferred areas of activities in that State; and

   b) 15 per cent of the gross amount of the royalties in all other cases.

xxx xxx xxx

4. The term 'royalties' as used in this Article means payments 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 cinematograph films or tapes for radio or television broadcasting**, xxx.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of one of the States, carries on business in the other State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State professional services from a fixed based situated therein, and the right or property in respect of

[39] *Emphasis supplied.*

> which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply."[40]

Based on the foregoing provisions, to be entitled to the fifteen percent (15%) preferential tax treaty rate, petitioner must fulfill the following requisites:

1) To be deemed as royalties, the payments are received as a consideration for the use of, or the right to use, cinematographic films or tapes for television or broadcasting;

2) The royalties must arise from the Philippines;

3) The recipient is the beneficial owner of the said royalties; and

4) The recipient, being a resident of France, Singapore, China, or the Netherlands, as the case may be, does not carry on business in the Philippines, through a permanent establishment situated therein, or performs in the Philippines professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base.

For an orderly determination of the foregoing requisites, We shall first determine whether petitioner complied with the *fourth* requisite. Thereafter, We shall jointly ascertain petitioner's fulfillment of the above-stated *first*, *second*, and *third* requisites.

For purposes of the said *fourth* requisite, petitioner presented the following information on the following recipients:

Recipient	Corporate Filing / Registration Document	Country of Origin / Residence	Exhibit
Carpal Holding B.V.	Commercial Register Extract from the Netherland's Chamber of Commerce/Uittreksel Handelsregister Kamer van Koophandel for Carpal Holding	The Netherlands	"P-34"

40 *Emphasis supplied.*

	B.V. dated July 29, 2011 with attached information		
Business News (Asia) LLP (doing business as "CNBC Asia Pacific")	Business Profile of Business News (Asia) LLP dated July 18, 2016 issued by the Accounting and Corporate Regulatory Authority of Singapore with attached Certificate of Production of Statement by Computer	Singapore	"P-65"
Discovery Networks Asia-Pacific Pte. Ltd.	Business Profile of Discovery Networks Asia-Pacific Pte. Ltd. dated July 18, 2016 issued by the Accounting and Corporate Regulatory Authority of Singapore with attached Certificate of Production of Statement by Computer	Singapore	"P-62'
	Certificate of Good Standing of Discovery Networks Asia-Pacific Pte. Ltd. dated July 18, 2016 issued by the Accounting and Corporate Regulatory Authority of Singapore		"P-64"
Eurosport SAS	Articles of Association of Eurosport SAS with attached receipt from the Registre du Commerce et des Societes dated July 7, 2016	France	"P-55",
	Extrait d'Immatriculation Principale au Registre du Commerce et des Societes (Commerical Register Extract) of Eurosport SAS dated July 6, 2016		"P-66"
Globecast Hong Kong Ltd. (formerly Pacific Century Matrix (HK) Ltd.)	Memorandum and Articles of Association of Pacific Century Matrix Limited dated July 26, 1999.	Hong Kong	"P-107"
Globecast Asia Pte. Ltd.	Business Profile of Globecast Asia Pte. Ltd. dated July 7, 2016 issued by the Accounting and Corporate Regulatory Authority of Singapore	Singapore	"P-81"
	Certificate of Good Standing of Globecast Asia Pte. Ltd. dated July 7, 2016 issued by the Accounting and Corporate Regulatory Authority of Singapore		"P-84"

Home Box Office (Singapore) Pte. Ltd.	Business Profile of Home Box Office (Singapore) Pte. Ltd. dated July 18, 2016 issued by the Accounting and Corporate Regulatory Authority of Singapore with attached Certificate of Production of Statement by Computer	Singapore	"P-60"
	Certificate of Good Standing of Home Box Office (Singapore) Pte. Ltd. dated July 18, 2016 issued by the Accounting and Corporate Regulatory Authority of Singapore		"P-61"
International Global Networks B.V.	Commercial Register Extract from the Netherland's Chamber of Commerce/Uittreksel Handelsregister Kamer van Koophandel for International Global Networks B.V. dated July 7, 2016	The Netherlands	"P-22"
Nickelodeon Asia Holdings Pte. Ltd.	Memorandum of Association of Nickelodeon Asia Holdings Pte. Ltd.	Singapore	"P-10"
	Business Profile of Nickelodeon Asia Holdings Pte. Ltd. dated June 15, 2016 issued by the Accounting and Corporate Regulatory Authority of Singapore with attached Certificate of Production of Statement by Computer		"P-17"
	Certificate of Good Standing of Nickelodeon Asia Holdings Pte. Ltd. dated June 15, 2016 issued by the Accounting and Corporate Regulatory Authority of Singapore		"P-18"
Nimbus Media Pte. Ltd.	Private Company Information of Nimbus Media Pte. Ltd. issued by the Accounting and Corporate Regulatory Authority of Singapore	Singapore	"P-72'
	Business Profile of Nimbus Media Pte. Ltd. dated July 7, 2016 with attached Certificate of Production of Statement by Computer issued by the Accounting and Corporate Regulatory Authority of Singapore		"P-78"
	Certificate of Good Standing of Nimbus Media Pte. Ltd. dated July 7, 2016 issued by the Accounting		"P-79"

	and Corporate Regulatory Authority of Singapore		

On the basis of the foregoing, Carpal Holdings B.V., and International Global Networks B.V. are residents of The Netherlands; Business News (Asia) LLP, Discovery Networks Asia-Pacific Pte. Ltd., Globe Asia Pte. Ltd., Home Box Office (Singapore) Pte. Ltd., Nickelodeon Asia Holdings Pte. Ltd., Nimbus Media Pte. Ltd., are all residents of Singapore; and Eurosport SAS is a resident of France.

However, as for Globecast Hongkong Ltd., this Court finds that it cannot be treated as a resident of China. It must be emphasized that the RP-China Tax Treaty shall apply only to persons who are residents of China or the Philippines, or both.[41] For purposes of the RP-China Tax Treaty, the term "China" means the People's Republic of China.[42] Since there is no indication that Hong Kong is included in the term "People's Republic of China", a resident of Hong Kong, such as Globecast Hongkong Ltd., may not be considered as a resident of China, for purposes of the RP-China Tax Treaty. Such being the case, any royalty payment by petitioner to Globecast Hongkong Ltd., as nonresident cinematographic film owner, lessor or distributor, is subject to the final withholding tax rate of twenty-five percent (25%) imposed under Section 28(B)(2) of the NIRC of 1997, as amended, in relation to Section 2.57-1(I)(2) of RR No. 2-98, as amended.

In any event, petitioner submitted various Certifications of Non-Registration of Company issued by the Securities and Exchange Commissions ("SEC") to prove that the named entities therein are not registered corporations/partnerships in the Philippines, to wit:

Recipient	**Country of Origin /Residence**	**SEC Certification of Non-Registration**
Eurosport SA	France	Exhibit "P-57"
International Global Networks B.V.	The Netherlands	Exhibit "P-24"
Business News (Asia) LLP	Singapore	Exhibit "P-32"
Discovery Networks Asia-Pacific Pte. Ltd.	Singapore	Exhibit "P-33"
Home Box Office (Singapore) Pte. Ltd.	Singapore	Exhibit "P-52"
Nickelodeon Asia Holdings Pte. Ltd.	Singapore	Exhibit "P-16"
Nimbus Media Pte. Ltd.	Singapore	Exhibit "P-77"

41 Article 1, RP-China Tax Treaty.
42 Article 3(1)(a), RP-China Tax Treaty.

The foregoing evidence determine whether the said non-resident recipients of the subject royalties have permanent establishments in the Philippines. Relative thereto, the term "permanent establishment", as defined under Article 5(1) of the RP-France Tax Treaty, Article 5(1) of the RP-Netherlands Tax Treaty, and Article 5(1) of the RP-Singapore Tax Treaty, respectively means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

Thus, since Carpal Holdings B.V. and Globe Asia Pte. Ltd. are not covered by any SEC Certification of Non-Registration of Company, it cannot be said that the said corporations have no permanent establishment in the Philippines. Such being the case, any royalty payment by petitioner to the said entities, as nonresident cinematographic film owner, lessor or distributor, is likewise subject to the final withholding tax rate of twenty-five percent (25%) imposed under Section 28(B)(2) of the NIRC of 1997, as amended, in relation to Section 2.57-1(I)(2) of RR No. 2-98, as amended.

As for the *first*, *second*, and *third* requisites to be entitled to the fifteen percent (15%) preferential tax treaty rate, petitioner complied with the same insofar as certain nonresident recipients are concerned.

To repeat, the said requisites respectively read as follows: (1) to be deemed as royalties, the payments are received as a consideration for the use of, or the right to use, cinematographic films or tapes for television or broadcasting; (2) the royalties must arise from the Philippines; and (3) the recipient is the beneficial owner of the said royalties.

When DCI sold its the assets to petitioner, its rights and obligations under the various distribution agreements, which it had entered into,[43] including subscription contracts with various non-resident suppliers of television and film programs, were effectively assigned and transferred to petitioner.

As borne by the evidence in this case, the distribution agreements entered into by petitioner, including those acquired by the latter from DCI, were for the distribution and broadcast of film and television programs for cable television subscribers in the Philippines, to wit:

Licensor	Document Title	Exhibit

[43] *Id.* – Vol. 3, Exhibits "P-2" and "P-3", pp. 1337 to 1415.

Business News (Asia) LLP (doing business as "CNBC Asia Pacific")	Agreement between Between Business News (Asia) LLP and Destiny Cable, Inc. dated February 15, 2012	"P-68"
	Novation Agreement among Business News (Asia) LLP, Destiny Cable, Inc. and Skycable Corporation dated November 2012	"P-69"
	Letter to Skycable Corporation with the subject 'Agreement dated February 15, 2012 between Business News (Asia) LLP, doing business as CNBC Asia Pacific and Skycable Corporation pursuant to the Novation Agreement dated November 2012 ('the Agreement')'.	"P-70"
Discovery Networks Asia-Pacific Pte. Ltd.	Letter dated April 18, 2011 between Destiny Cable, Inc. and Discovery Asia, Inc. (re: Channel Carriage Affiliate Agreement Amendment)	"P-48"
	Letter dated September 24, 2012 between Skycable Corporation and Discovery Networks Asia-Pacific Pte. Ltd. (re: Transfer of Ownership of Destiny Cable, Inc. to Skycable Corporation)	"P-49"
	Third Supplemental Agreement between Skycable Corporation and Discovery Asia, Inc. dated September 29, 2009	"P-50"
	Fourth Supplemental Agreement between Skycable Corporation and Discovery Networks Asia-Pacific Pte. Ltd. dated January 31, 2013	"P-51"
	Letter dated July 7, 2015 between Sky Cable Corporation and Discovery Networks Asia-Pacific Pte. Ltd. (re: Channel Carriage Affiliate Agreement Amendment)	"P-53"
	Undated Fifth Supplemental Agreement between Skycable Corporation and Discovery Networks Asia-Pacific Pte. Ltd.	"P-54"
	2014 Letter between Discovery Networks Asia-Pacific Pte. Ltd and Skycable Corporation (re: Channel Carriage Affilliate Agreement Amendement)	"P-94"
	Letter dated July 11, 2013 between Discovery Networks Asia-Pacific Pte. Ltd and Skycable Corporation (re: Channel Carriage Affilliate Agreement Amendement)	"P-95"
	Letter dated February 1, 2014 between Discovery Networks Asia-Pacific Pte. Ltd and Skycable Corporation (re: Channel Carriage Affilliate Agreement Amendment)	"P-96"
	Letter dated June 11, 2014 between Discovery Networks Asia-Pacific Pte. Ltd and Skycable Corporation (re: Channel Carriage Affilliate Agreement Amendement)	"P-97"
	Letter dated November 27, 2014 between Discovery Networks Asia-Pacific Pte. Ltd and Skycable Corporation (re: Channel Carriage Affilliate Agreement Amendement)	"P-98"
Eurosport SAS	Distribution Agreement between Eurosport SA and Destiny Cable, Inc. dated October 2010	"P-58"
	Affiliation Agreement between Eurosport SAS and Destiny Cable, Inc. dated 2014	"P-59"
	Amendment to the Eurosport Distribution Agreement (Cable and Satellite) between Eurosport SAS and Skycable Corporation	"P-99"

International Global Networks B.V.	Binding Term Sheet between International Global Networks B.V. and Destiny Cable, Inc.	"P-26"
	Limited License to Distribute Channels between Skycable Corporation and International Global Networks B.V. dated June 16, 2015	"P-27"
	Extension of Binding Term Sheet between International Global Networks B.V. and Destiny Cable, Inc. dated April 22, 2014	"P-93"
Nickelodeon Asia Holdings Pte. Ltd.	Distribution Agreement between Destiny Cable, Inc. and Nickelodeon Asia Holdings Pte. Ltd. dated March 11, 2011	"P-19"
	Addendum - Revision of (I) Authorized Means and (II) Subscriber Fees between Nickelodeon Asia Holdings Pte Ltd and Sky Cable Corporation dated July 1, 2012	"P-90"
	Distribution Agreement between Sky Cable Corporation and Nickelodeon Holdings Asia Pte. Ltd	"P-20"

Furthermore, the foregoing agreements are supported by corresponding invoices and check vouchers of petitioner which show that the payments made by petitioner pertain to the use of, or the right to use, cinematographic films for television or broadcasting, summarized as follows:

Name of Payee	Documents Showing the Nature of the Payment		Proof of Remittance	Amount of License fee	
	Check Voucher Exhibit	**Invoice Exhibit**		**in US Dollar**	**in PhP**[44]
Business News (Asia) LLP (CNBC Asia Pacific)					
Year 2013					
May	P-510.1a	P-510.1b/P-510.2a	P-510.3a	6,750.00	385,920.00
June	P-511.1a	P-511.1b/P-511.2a	P-511.3a	6,750.00	421,740.00
July	P-512.1a	P-512.1b/P-512.2a	P-512.3a	6,750.00	391,320.00
August	P-513.1a	P-513.1b/P-513.2a	P-513.3a	6,750.00	402,750.00
September	P-514.1a	P-514.1b/P-514.2a	P-514.6a	6,750.00	390,060.00
October	P-514.1a	P-514.1b/P-514.3a	P-514.6a	6,750.00	390,600.00
November	P-514.1a	P-514.1b/P-514.4a	P-514.6a	6,750.00	385,020.00
December	P-514.1a	P-514.1b/P-514.5a	P-514.6a	6,750.00	399,555.00
Year 2014					

[44] Annex P-4b, P-4c, P-4d, P-4f, P-g, P-4h of the ICPA Report.

	January	P-514.1a	P-514.1c/P-514.7a	P-514.9a	6,750.00	407,880.00
	February	P-514.1a	P-514.1d/P-514.8a	P-514.9a	6,750.00	401,670.00
	Total				**67,500.00**	**3,976,515.00**
Discovery Networks Asia-Pacific Pte. Ltd.						
	Year 2013					
	May	P-520.1a	P-520.1b/P-520.2a	P-520.3a	9,500.00	553,217.36
	August	P-522.1a	P-522.1b/P-522.2a	P-522.3a	9,500.00	566,833.33
	September	P-523.1a	P-523.1b/P-523.2a	P-523.4a	9,500.00	551,253.33
	October	P-523.1a	P-523.1c/P-523.3a	P-523.4a	9,500.00	546,566.67
	Year 2014					
	January	P-526.1a	P-526.1b/P-526.2a	P-526.3a	9,500.00	622,566.65
	February	P-526.1a	P-526.1c/P-526.4a	P-526.5a	9,500.00	581,336.65
	Total				**57,000.00**	**3,421,773.99**
Eurosport SAS						
	Year 2013					
	May	P-528.1a	P-528.1b/P-528.2a	P-528.3a	15,000.00	897,100.00
	June	P-529.1a	P-529.1b/P-529.2a	P-529.3a	15,000.00	917,200.00
	July	P-530.1a	P-530.1b/P-530.2a	P-530.3a	15,000.00	884,800.00
	August	P-531.1a	P-531.1b/P-531.2a	P-531.3a	15,000.00	926,000.00
	September	P-532.1a	P-532.1b/P-532.2a	P-532.3a	15,000.00	(1,800.00)
	October	P-533.1a	P-533.1b/P-533.2a	P-533.3a	15,000.00	(64,200.00)
	December	P-535.1a	P-535.1b/P-535.2a	P-535.3a	15,000.00	909,300.00
	Year 2014					
	January	P-536.1a	P-536.1b/P-536.2a	P-536.5a	15,000.00	946,600.00
	February	P-536.1a	P-536.1c/P-536.3a	P-536.5a	15,000.00	917,900.00
	Total				**135,000.00**	**6,332,900.00**
International Global Networks B.V.						
	Year 2013					

	July	P-565.1a	P-565.1b/P-565.2a	P-565.5a	21,700.00	
	July	P-565.1a	P-565.1b/P-565.3a	P-565.5a	15,000.00	4,586,017.34
	July	P-565.1a	P-565.1b/P-565.4a	P-565.5a	40,500.00	
	August	P-568.1a	P-568.1b/P-568.2a	P-568.5a	15,000.00	
	August	P-568.1a	P-568.1b/P-568.3a	P-568.5a	40,500.00	4,364,616.65
	August	P-568.1a	P-568.1b/P-568.4a	P-568.5a	21,700.00	
	September	P-571.1a	P-571.1b/P-571.2a	P-571.5a	15,000.00	
	September	P-571.1a	P-571.1b/P-571.3a	P-571.5a	21,700.00	4,227,094.65
	September	P-571.1a	P-571.1b/P-571.4a	P-571.5a	40,500.00	
	October	P-574.1a	P-574.1b/P-574.2a	P-574.5a	15,000.00	
	October	P-574.1a	P-574.1b/P-574.3a	P-574.5a	21,700.00	4,191,982.65
	October	P-574.1a	P-574.1b/P-574.4a	P-574.5a	40,500.00	
	December	P-577.1a	P-577.1b	P-577.3a	51,450.00	4,369,981.01
	December	P-577.1a	P-577.1b	P-577.3a	21,700.00	
	Year 2014					
	January	P-579.1a	P-579.1c/P-579.2a	P-579.6a	51,450.00	4,938,012.93
	January	P-579.1a	P-579.1c/P-579.3a	P-579.6a	24,410.00	
	February	P-579.1a	P-579.1b/P-579.4a	P-579.6a	24,410.00	4,544,898.73
	February	P-579.1a	P-579.1b/P-579.5a	P-579.6a	51,450.00	
	Total				**533,670.00**	**31,222,603.96**
Nickelodeon Asia Holdings Pte Ltd						
	Year 2013					
	May	P-583.1a	P-583.1b/P-583.2a	P-583.3a	9,500.00	548,339.96
	June	P-584.1a	P-584.1b/P-584.2a	P-584.3a	9,500.00	547,200.00
	July	P-585.1a	P-585.1b/P-585.2a	P-585.4a	9,500.00	560,373.33

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	August	P-585.1a	P-585.1c/P-585.3a	P-585.4a	9,500.00	574,053.33
	November	P-589.1a	P-589.1b/P-589.2a	P-589.3a	9,500.00	472,010.61
	December	P-590.1a	P-590.1b/P-590.2a	P-590.3a	9,500.00	562,336.67
	Year 2014					
	February	P-591.1a	P-591.1b/P-591.2a	P-591.3a	9,500.00	557,586.65
	Total				**66,500.00**	**3,821,900.55**
GRAND TOTAL					**859,670.00**	**48,775,693.50**

Thus, on the basis of the identified agreements *vis-a-vis* the pertinent invoices and check vouchers, this Court finds that the above-stated payments are royalties. Correspondingly, petitioner fulfilled the *first* requisite, insofar the above-mentioned non-resident recipients are concerned.

Parenthetically, this Court excluded the supposed payments to Home Box Office (Singapore) Pte. Ltd., since the same were not supported by any distribution agreement. As for Nimbus Media Pte. Ltd., while it may be true that petitioner submitted the Channel Distribution Agreement with DCI,[45] it has not submitted any invoice and check voucher to prove that payments relative thereto have been made.

Such being the case, payments made by petitioner to Home Box Office (Singapore) Pte. Ltd. and Nimbus Media Pte. Ltd., are subject to the final withholding tax rate of twenty-five percent (25%) imposed under Section 28(B)(2) of the NIRC of 1997, as amended, in relation to Section 2.57-1(I)(2) of RR No. 2-98, as amended, for lack of sufficient evidence to prove that the said payments are royalties.

With regard to the *second* and *third* requisites, petitioner's Proof of Remittances (as identified in the above summary) prove that the royalty payments arose from the Philippines, since as stated therein, the said payments were made or remitted by petitioner, and the beneficiary thereof are the named non-resident recipients.

In sum, petitioner was able to prove that it had overpaid withholding taxes on royalty payments, or erroneous withholding taxes remitted, in the total amount of Php4,877,569.44, detailed as follows:

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45 *Id.* – Vol. 3, Exhibit "P-80", pp. 1836 to 1856.

Name of Payees	Amount of Income Payment	Amount of Tax Withheld @ Tax Rate of 25%	Preferential Tax Treaty Rate of 15%	Overpayment
Business News (Asia) LLP (CNBC Asia Pacific)				
Year 2013				
May	Php 385,920.00	Php 96,480.00	Php 57,888.00	Php 38,592.00
June	421,740.00	105,435.00	63,261.00	42,174.00
July	391,320.00	97,830.00	58,698.00	39,132.00
August	402,750.00	100,687.50	60,412.50	40,275.00
September	390,060.00	97,515.00	58,509.00	39,006.00
October	390,600.00	97,650.00	58,590.00	39,060.00
November	385,020.00	96,255.00	57,753.00	38,502.00
December	399,555.00	99,888.75	59,933.25	39,955.50
subtotal	*3,166,965.00*	*791,741.25*	*475,044.75*	*316,696.50*
Year 2014				
January	407,880.00	101,970.00	61,182.00	40,788.00
February	401,670.00	100,417.50	60,250.50	40,167.00
subtotal	*809,550.00*	*202,387.50*	*121,432.50*	*80,955.00*
Total	**3,976,515.00**	**994,128.75**	**596,477.25**	**397,651.50**
Discovery Networks Asia Pacific Pte. Ltd.				
Year 2013				
May	553,217.36	138,304.34	82,982.60	55,321.74
August	566,833.33	141,708.37	85,025.00	56,683.37
September	551,253.33	137,813.29	82,688.00	55,125.29
October	546,566.67	136,641.66	81,985.00	54,656.66
subtotal	*2,217,870.69*	*554,467.66*	*332,680.60*	*221,787.06*
Year 2014				
January	622,566.65	155,641.70	93,385.00	62,256.69
February	581,336.65	145,334.20	87,200.50	58,133.69
subtotal	*1,203,903.30*	*300,975.90*	*180,585.50*	*120,390.40*
Total	**3,421,773.99**	**855,443.56**	**513,266.10**	**342,177.45**
Eurosport SAS				
Year 2013				
May	897,100.00	224,275.00	134,565.00	89,710.00
June	917,200.00	229,300.00	137,580.00	91,720.00
July	884,800.00	221,200.00	132,720.00	88,480.00
August	926,000.00	231,500.00	138,900.00	92,600.00
September	(1,800.00)	(450.00)	(270.00)	(180.00)
October	(64,200.00)	(16,050.00)	(9,630.00)	(6,420.00)
December	909,300.00	227,325.00	136,395.00	90,930.00
subtotal	*4,468,400.00*	*1,117,100.00*	*670,260.00*	*446,840.00*
Year 2014				
January	946,600.00	236,650.00	141,990.00	94,660.00
February	917,900.00	229,475.00	137,685.00	91,790.00
subtotal	*1,864,500.00*	*466,125.00*	*279,675.00*	*186,450.00*

Total	**6,332,900.00**	**1,583,225.00**	**949,935.00**	**633,290.00**
International Global Network B.V.				
Year 2013				
July	4,586,017.34	1,146,504.33	687,902.60	458,601.74
August	4,364,616.65	1,091,154.17	654,692.50	436,461.66
September	4,227,094.65	1,056,773.67	634,064.20	422,709.46
October	4,191,982.65	1,047,995.66	628,797.40	419,198.26
December	4,369,981.01	1,092,495.26	655,497.15	436,998.11
subtotal	*21,739,692.30*	*5,434,923.08*	*3,260,953.85*	*2,173,969.24*
Year 2014				
January	4,938,012.93	1,234,503.24	740,701.94	493,801.30
February	4,544,898.73	1,136,224.69	681,734.81	454,489.88
subtotal	*9,482,911.66*	*2,370,727.93*	*1,422,436.75*	*948,291.18*
Total	**31,222,603.96**	**7,805,651.02**	**4,683,390.60**	**3,122,260.42**
Nickelodeon Asia Holdings Pte. Ltd.				
Year 2013				
May	548,339.96	137,084.99	82,250.99	54,834.00
June	547,200.00	136,800.00	82,080.00	54,720.00
July	560,373.33	140,093.33	84,056.00	56,037.33
August	574,053.33	143,513.33	86,108.00	57,405.33
November	472,010.61	118,002.66	70,801.59	47,201.07
December	562,336.67	140,584.17	84,350.50	56,233.67
subtotal	*3,264,313.90*	*816,078.48*	*489,647.08*	*326,431.40*
Year 2014				
February	557,586.65	139,396.66	83,638.00	55,758.66
subtotal	*557,586.65*	*139,396.66*	*83,638.00*	*55,758.66*
Total	**3,821,900.55**	**955,475.14**	**573,285.08**	**382,190.06**
GRAND TOTAL	**Php48,775,693.50**	**Php12,193,923.47**	**Php7,316,354.03**	**Php4,877,569.44**

A prior TTRA is not necessary to avail of the benefits granted under the tax treaties.

Lastly, respondent argues that for failure to comply with RMO Nos. 1-2000[46] and 72-2010[47], by not filing an TTRA, petitioner unjustifiably failed to establish its right to refund.

We do not agree.

[46] SUBJECT: Prescribes the procedure for the processing of tax treaty relief application.

[47] SUBJECT: GUIDELINES ON THE PROCESSING OF TAX TREATY RELIEF APPLICATIONS (TTRA) PURSUANT TO EXISTING PHILIPPINE TAX TREATIES.

Both of the said BIR issuances deal with processing of TTRAs. However, it has already been held that TTRAs merely operate to confirm the entitlement of the taxpayer to the relief.[48]

In *CBK Power Co. Ltd. v. Commissioner of Internal Revenue*,[49] the Supreme Court held as follows:

> "xxx as pointed out in *Deutsche Bank*,[50] the underlying principle of prior application with the BIR becomes **moot in refund cases** – as in the present case – <u>where the very basis of the claim is **erroneous or there is excessive payment** arising from the non-availment of a tax treaty relief at the first instance</u>. Just as Deutsche Bank was not faulted by the Court for not complying with RMO No. 1-2000 prior to the transaction, so should CBK Power could not have applied for a tax treaty relief 15 days prior to its payment of the final withholding tax on the interest paid to its lenders **precisely because it erroneously paid said tax** on the basis of the regular rate as prescribed by the NIRC, and not on the preferential tax rate provided under the different treaties. As stressed by the Court, the prior application requirement under RMO No. 1-2000 then becomes **illogical**.
>
> Not only is the requirement illogical, but it is also an imposition that is **not found at all in the applicable tax treaties.** In *Deutsche Bank*, the Court categorically held that the BIR should not impose additional requirements that would negate the availment of the reliefs provided for under international agreements, especially since said tax treaties do not provide for any prerequisite at all for the availment of the benefits under said agreements."[51]

Based on the foregoing jurisprudential pronouncements, the prior application requirement under RMO No. 1-2000 and 72-2010 is not only illogical, but also not found at all in the applicable tax treaties. Clearly, the BIR should not impose additional requirements that would negate the availment of the reliefs provided under international agreements.

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48 Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue, G.R. No. 188550, August 19, 2013.
49 G.R. Nos. 193383-84 and 193407-08, January 14, 2015.
50 Referring to the case of Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue, G.R. No. 188550, August 19, 2013.
51 *Emphasis and underscoring supplied.*

Such being the case, the filing of a prior TTRA with the BIR before petitioner can apply the preferential tax rates under the pertinent tax treaties is no longer necessary.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is ordered to refund or issue a TCC in favor of petitioner the amount of **Php4,877,569.44**, representing the latter's overpayment of withholding taxes on royalties paid from May 2013 to December 2014.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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