Ut.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR INSURANCE BROKERS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5753

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 08 2001

x - x

DECISION

This is a Petition for Review seeking for the Refund or issuance of a tax credit certificate in the amount of TWO MILLION EIGHT HUNDRED SIX THOUSAND SEVEN HUNDRED EIGHTY NINE PESOS (P2,806,789.00) representing the alleged excess unutilized creditable taxes withheld at source for taxable years 1996 and 1997.

The facts of the case as admitted by the parties in their "Joint Stipulation of Facts and Issues" dated July 28, 1999 are as follows:

> "1. Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at the Penthouse, Manila Bank Building, 6772 Ayala Avenue.
>
> 2. Petitioner is engaged in the business of insurance brokering from which it derives commission income subject to creditable or expanded withholding tax under BIR Revenue Regulations No. 6-85.
>
> 3. For calendar year ended December 31, 1996, Petitioner filed its Corporate Annual Income Tax Return with the BIR on April 15, 1997.

4. Petitioner filed its final adjustment return for calendar year ended December 31, 1997.

5. For calendar year ended December 31, 1996, Petitioner declared in its annual income tax return creditable income tax withheld at source in the amount of P1,762,907 which Petitioner carried over to the next taxable year.

6. Petitioner indicated its intention to carry over and apply its excess income tax credits (amounting to P1,762,907) as of December 31, 1996 against its income tax liability for the succeeding year in accordance with then Section 69 of the Tax Code, as amended.

7. In addition to its unutilized creditable income tax credits carried over from the previous year, the Petitioner declared in its annual income tax return for the fiscal year ended December 1997 creditable income tax withheld at source in the amount of P1,803,758.

8. Petitioner filed an administrative claim for refund with Respondent on December 22, 1998 together with all supporting documents within the two-year prescriptive period provided for by law.

9. Petitioner filed the instant Petition for Review within the two-year prescriptive period provided for under Section 229 of the Tax Code, as amended."

(Joint Stipulation of Facts and Issues, July 28, 1999, CTA docket pp. 58-59)

Records likewise reveal that Petitioner declared in its Corporate Annual Income Tax Return a taxable income of P2,823,055.00 and an income tax due of only P988,069.00 for the calendar year 1996 (Exh. "B"). An amount of P2,750,976.00 was also withheld from Petitioner's income resulting to an excess withholding tax credit of P1,762,907.00, thus:

CALENDAR YEAR 1996

Taxable Income	P2,823,055.00
Tax Due	988,069.00
Less: Creditable Withholding Tax	2,750,976.00

Excess Tax to be Carried-Over to 1997	(P1,762,907.00)

Despite its intention to carry-over said amount to 1997, Petitioner was not able to utilize the full amount of its 1996 excess tax credits against its 1997 tax liability as the year 1997 only yielded a tax due of P759,876.00. Also, an amount of P1,803,758.00 was withheld from Petitioner's income in 1997 (Exh. "D"). Thus, as of this date, Petitioner's excess creditable withholding tax credit as of December 31, 1997 amounted to P2,806,789.00, computed as follows:

CALENDAR YEAR 1997

Taxable Income	P2,171,075.00
Tax Due	759,876.00
Less: Excess Withholding Tax Carried-over from 1996	1,762,907.00
Refundable Tax	P1,003,031.00
Add: Creditable Withholding tax For 1997	1,803,758.00
Excess Creditable Withholding Tax	(P2,806,789.00)

Accordingly, on January 8, 1999 (Exh. "F"), Petitioner filed with the BIR an administrative claim for refund of the aforesaid amount. There being no action on the part of herein Respondent, the instant Petition was filed on March 29, 1999.

Respondent, in his Answer filed through registered mail on May 21, 1999, raised the following Special and Affirmative Defenses:

"5. The amount claimed by petitioner has been applied as tax credit to the next succeeding year, hence, not refundable;

6. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid;

7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;

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

9. Well-settled is the rule that claims for refund are construed strictly against the claimants since it partakes of the nature of an exemption from taxation. (*Resins, Inc. vs. Auditor General, 75 SCRA 754, 1968*)."

In order to substantiate its claim for refund, Petitioner submitted the following documentary evidence, to wit:

Exhibits	Description
B, D, G	Petitioner's Corporate Annual Income Tax Return for CY ended December 31, 1996, 1997 and 1998
C, E	Schedule of Creditable Taxes Withheld for the year ended December 31, 1996 and 1997
C-1 to C-98 E-1 to E-108	Various Certificates of Creditable Income Tax Withheld for the year ended December 31, 1996 and 1997
F	Written claim for refund with the BIR
A	Certificate of Filing of Amended Articles of Incorporation
H	The Independent CPA's report verifying the Withholding tax certificates
I, J	Schedule of Creditable Taxes Withheld for 1996 and 1997 which were supported by certified true copies and not originals

The issues to be resolved by this Court as stipulated by the parties in their Joint Stipulation of Facts and Issues (see CTA records, p. 59) are as follows:

"1. Whether or not Petitioner's unutilized income tax credits for calendar years ended December 31, 1996 and 1997 in the total amount of P2,806,789.00 are duly substantiated by Certificates of Withholding Tax.

2. Whether or not the income upon which the taxes were withheld were declared in Petitioner's 1996 and 1997 Income Tax Return.

3. Whether or not Petitioner was not able to fully utilize its excess tax credits for calendar year ended December 31, 1996 against its income tax liability for the succeeding year.

4. Whether or not the Petitioner is entitled to a tax credit/refund in the amount of P2,806,789.00 representing unutilized excess tax credits for calendar years ended 1996 and 1997."

At this point, it is best to cite the three basic requirements for the refund of excess unutilized creditable withholding tax provided in Revenue Regulations No. 6-85, as amended as these are intertwined with the stipulated issues given by the parties, thus:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 230 (now Section 229) of the Tax Code;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That the income upon which the taxes were withheld were included in the return of the recipient (Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85); *Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957*).

After examining the documentary evidence presented by the Petitioner, We rule in favor of Petitioner.

As to the aforequoted first requirement, We deem it best not to resolve it anymore and consider it moot and academic as the parties already admitted that the instant action was timely filed pursuant to Section 230 of the Tax Code. (Joint Stipulation of Facts and Issues, par. 8 and 9, CTA records pp. 59).

As to the aforequoted second requirement which is likewise the first stipulated issue at hand, We rule that Petitioner has substantially established the fact of withholding by the submission of various certificates of withholding tax for the year covered. However, a circumspect examination of the said certificates reveal that not all of the claimed 1996 and 1997 unutilized excess tax credits of P2,806,789.00 were properly substantiated by certificates of creditable tax withheld at source.

As can be inferred in its 1996 annual income tax return, Petitioner reported a total amount of creditable taxes withheld during 1996 of P2,750,976.00 which was applied against an income tax due of P988,069.00 leaving an excess amount of tax credits of P1,762,907.00. (Sections B & E of Exh. B). Petitioner indicated in the said return its intention of applying the excess tax credits of P1,762,907.00 to the succeeding year 1997.

In its 1997 annual income tax return, Petitioner reported a total amount of tax credits of P3,566,665.00, representing the sum of the prior year's (1996) excess tax credit of P1,762,907.00 and creditable taxes withheld during 1997 of P1,803,758.00. The total tax credits of P3,566,665.00 were applied against an income tax due of P759,876.00 resulting to an excess unutilized tax credits of P2,806,789.00 which Petitioner opted to be refunded instead of applying the same as tax credits to the succeeding year 1998. (Sections B & E of Exh. D).

To prove the fact of withholding of the reported creditable tax[illegible]held i[illegible] and 1997 of P2,750,976.00 and P1,803,758.00, respectively, [illegible] pr[illegible] certificates of creditable tax withheld at source issued by various withholding agents [illegible] the said years detailed as follows:

For calendar year 1996

Exh.	Payor/Withholding Agent	Income Payment	Income Tax Withheld
C-1	Philam Insurance Co., Inc.	P 2,289,915.51	P 114,495.78
C-2	Philam Insurance Co., Inc.	3,150.00	157.50
C-3	UCPB General Insurance Co., Inc.	635,021.80	31,751.09
C-4	Blue Cross Insurance, Inc.	153,425.76	7,672.19
C-5	Central Surety and Insurance Co.	86,302.88	4,315.15
C-6	Commonwealth Insurance Co.	6,571.95	328.60
C-7	Insurance Co. of North America	1,201,605.40	60,080.27
C-8	Consolidated Insurance Co., Inc.	33,672.20	1,683.54
C-9	Dominion Insurance Corporation	19,084.00	954.20
C-10	Excel Card, Inc.	79,111.62	3,955.58
C-11	Federal Phoenix Ass. Co.	288,835.80	14,441.79
C-12	Federal Phoenix Ass. Co.	776,861.00	38,843.05
C-13	Federal Phoenix Ass. Co.	272,715.40	13,635.77
C-14	Federal Phoenix Ass. Co.	196,655.80	9,832.79
C-15	FGU Insurance Corporation	392,838.59	19,641.93
C-16	FGU Insurance Corporation	996,829.45	49,841.47
C-17	FGU Insurance Corporation	10,000.00	2,000.00
C-18	FGU Insurance Corporation	221,876.78	11,093.84
C-19	FGU Insurance Corporation	241,262.59	12,063.13
C-20	Ayala Health Care Inc.	355.75	17.79
C-21	Ayala Health Care Inc.	2,442.94	122.15
C-22	Ayala Health Care Inc.	1,083.94	54.20
C-23	Ayala Health Care Inc.	302.10	15.11
C-24	Ayala Health Care Inc.	4,031.60	201.58
C-25	Ayala Health Care Inc.	967.95	48.40
C-26	Ayala Health Care Inc.	3,490.40	174.52
C-27	Ayala Life Assurance Inc.	16,087.40	804.37
C-28	Ayala Life Assurance Inc.	1,238.60	61.93
C-29	First Lepanto-Taisho Ins. Corp.	41,726.97	2,086.36
C-30	Insular General Insurance Co., Inc.	425,391.25	21,269.68
C-31	Intra Strata Assurance Corp.	8,226.26	411.32
C-32	Insurance of the Phil. Islands	35,938.91	1,796.93
C-33	Liberty Insurance Corporation	115,147.09	5,757.36
C-34	Malayan Insurance Co., Inc.	5,299,681.60	264,984.08
C-35	Malayan Insurance Co., Inc.	75.00	3.75
C-36	Malayan Insurance Co., Inc.	4,384.54	219.23
C-37	Malayan Insurance Co., Inc.	14,500.91	725.05
C-38	Jardine CMG Life Insurance Co., Inc.	1,646,208.57	82,310.43
C-39	Meridian Assurance Corporation	5,040.00	504.00
C-40	Mercantile Insurance Co., Inc.	44,311.20	2,215.56
C-41	Makati Insurance Co., Inc.	14,256.85	712.84
C-41	Makati Insurance Co., Inc.	78,694.46	3,934.72
C-41	Makati Insurance Co., Inc.	74,501.42	3,725.07
C-42	The Manufacturers Life Insurance Co.	11,407.82	570.39
C-43	The Manufacturers Life Insurance Co.	9,549.85	477.50
C-44	The Manufacturers Life Insurance Co.	1,750.80	87.54
C-45	The Manufacturers Life Insurance Co.	3,362.88	168.14
C-47	Malayan Zurich Insurance Co., Inc.	778,639.40	38,931.97
C-48	Monarch Insurance Co., Inc.	16,060.20	803.01
C-49	The Netherlands Insurance Co.	205,148.00	10,257.40

C-50	General Accident Insurance Asia, Ltd.	5,142,090.00	257,104.50
C-51	Oriental Assurance Corporation	72,140.09	3,607.01
C-52	Oriental Assurance Corporation	8,833.27	441.66
C-53	Phil. British Assurance Co., Inc.	149,221.26	7,461.06
C-54	Philamcare Health Systems, Inc.	12,323.42	616.17
C-55	Philamcare Health Systems, Inc.	10,116.82	505.85
C-56	Philippine Charter Insurance Corp.	318,870.00	16,292.06
C-56	Philippine Charter Insurance Corp.	151,826.60	8,816.33
C-56	Philippine Charter Insurance Corp.	21,550.60	1,077.53
C-57	Citystate Insurance Corporation	424,154.20	21,207.71
C-58	Phil. Fire & Marine Ins. Corp.	53,923.07	2,696.15
C-59	Philippine Asia Life Assurance Corp.	344.62	17.23
C-60	Philippine Asia Life Assurance Corp.	12,620.13	631.01
C-61	Philippine Asia Life Assurance Corp.	172.80	8.64
C-62	Philippine Asia Life Assurance Corp.	24,322.26	1,216.11
C-63	Pioneer Insurance & Surety Corp.	359,908.51	17,995.44
C-64	Pioneer Insurance & Surety Corp.	1,186,602.68	59,340.20
C-65	Pioneer Insurance & Surety Corp.	767,110.49	38,355.75
C-66	Pioneer Insurance & Surety Corp.	2,388.00	119.40
C-67	Pioneer Insurance & Surety Corp.	338,569.60	16,928.97
C-68	PNB General Insurers Co., Inc.	2,951.60	147.58
C-69	Pan Phils. Life Insurance Corp.	530,753.81	24,128.42
C-70	Pan Phils. Life Insurance Corp.	5,600.00	1,120.00
C-71	Provident Insurance Corporation	6,161,922.00	308,096.10
C-72	Mapfre Asian Insurance Corporation	2,390,622.20	119,531.11
C-73	Mapfre Asian Insurance Corporation	3,239,109.40	161,955.47
C-74	Mapfre Asian Insurance Corporation	210,729.60	10,536.48
C-75	Provident Insurance Corporation	1,824,945.40	91,247.27
C-76	Provident Insurance Corporation	201,642.40	10,082.12
C-77	Prudential Guarantee & Ass., Inc.	417,086.71	20,854.35
C-78	Prudential Guarantee & Ass., Inc.	85,830.27	4,291.83
C-79	Prudential Guarantee & Ass., Inc.	10,349.03	517.45
C-80	Prudential Guarantee & Ass., Inc.	43,969.33	2,198.48
C-81	Radionet, Inc.	23,963.73	1,198.19
C-82	Royal Int'l Ins. Hldgs., Ltd.	1,163,637.68	58,181.89
C-83	Royal Int'l Ins. Hldgs., Ltd.	137,576.10	6,878.83
C-84	Seaboard-Eastern Ins. Co., Inc.	205,555.40	10,277.77
C-85	Seaboard-Eastern Ins. Co., Inc.	136,759.17	6,837.99
C-86	Seaboard-Eastern Ins. Co., Inc.	147,198.45	7,359.93
C-87	Seaboard-Eastern Ins. Co., Inc.	285,445.20	14,272.26
C-88	Semper Insurance Corp.	23,903.87	1,195.19
C-89	The Solid Guaranty, Inc.	1,380.40	69.02
C-90	Tico Insurance Co., Inc.	120,571.19	6,028.56
C-91	United Coconut Planters Life Assu. Corp.	6,031.44	301.57
C-92	United Coconut Planters Life Assu. Corp.	82,046.55	4,102.34
C-93	United Coconut Planters Life Assu. Corp.	181,499.86	9,074.99
C-94	United Coconut Planters Life Assu. Corp.	52,224.20	2,611.21
C-95	Union Ins. Society of Canton Ltd.	15,581.30	779.07
C-96	Angelo R. Gelano	3,800,000.00	285,000.00
C-97	Layola Roque Yap	3,800,000.00	285,000.00
C-98	Medicard Philippines, Inc.	48,449.40	2,422.47
	Total:	P 51,184,165.30	P 2,750,976.77

For calendar year 1997

Exh.	Payor/Withholding Agent	Income Payment	Income Tax Withheld
E-1	Insurance Agents & Insurance Adjusters	P 2,025,538.88	P 101,276.96
E-2	Ayala Health Care Incorporated	2,119.05	105.95
E-3	Ayala Health Care Incorporated	302.10	15.11
E-4	Ayala Health Care Incorporated	3,490.40	349.04
E-5	UCPB General Insurance Co., Inc.	37,748.40	1,887.42
E-6	UCPB General Insurance Co., Inc.	72,578.60	3,628.93
E-7	UCPB General Insurance Co., Inc.	44,613.40	2,230.67
E-8	UCPB General Insurance Co., Inc.	373,320.00	18,666.00
E-9	Blue Cross Insurance, Inc.	99,663.00	4,983.15
E-10	Central Surety and Insurance Company	387,540.82	19,376.67
E-11	Commonwealth Insurance Company	786.24	39.31
E-12	Insurance Company of North America	767,963.60	38,398.18
E-13	Consolidated Insurance Co., Inc.	41,002.00	2,050.10
E-14	Excel Card, Inc.	74,698.00	3,734.87
E-15	Excel Card, Inc.	6,812.40	340.62
E-16	Excel Card, Inc.	27,194.20	1,359.71
E-17	Excel Card, Inc.	14,549.20	727.46
E-18	Federal Phoenix Assurance Co.,	929,300.00	46,465.00
E-19	FGU Insurance Corporation	1,054,713.72	52,719.09
E-20	Ayala Life Assurance Incorporated	473,804.80	23,690.24
E-21	First Lepanto-Taisho Ins. Corp.	96,142.91	4,807.15
E-22	Insular Life Health Care, Inc.	3,032.00	303.20
E-23	Insular Life Health Care, Inc.	5,712.20	285.61
E-24	Insular General Insurance Co., Inc.	1,501,878.20	75,093.91
E-25	Intra Strata Assurance Corporation	60.00	3.00
E-26	Insurance of the Phil. Islands Co., Inc.	73,002.60	3,650.13
E-27	Liberty Insurance Corporation	2,637.25	131.86
E-28	Liberty Insurance Corporation	4,476.23	223.80
E-29	Liberty Insurance Corporation	11,474.43	573.72
E-30	Jardine CMG Life Insurance Co., Inc.	31,587.30	1,579.37
E-31	Jardine CMG Life Insurance Co., Inc.	1,616,422.87	80,821.14
E-32	Jardine CMG Life Insurance Co., Inc.	136,623.60	6,831.18
E-33	Jardine CMG Life Insurance Co., Inc.	3,957.30	197.87
E-34	Jardine CMG Life Insurance Co., Inc.	362,076.30	18,103.82
E-35	Jardine CMG Life Insurance Co., Inc.	57,689.80	2,884.49
E-36	Jardine CMG Life Insurance Co., Inc.	1,222,204.62	61,110.23
E-37	Jardine CMG Life Insurance Co., Inc.	448.80	22.44
E-38	Jardine CMG Life Insurance Co., Inc.	5,196.63	259.83
E-39	Jardine CMG Life Insurance Co., Inc.	704.63	35.23
E-40	Jardine CMG Life Insurance Co., Inc.	373.33	18.87
E-41	Malayan Insurance Co., Inc.	1,399,956.60	69,997.83
E-42	Phil. Health-Care Providers, Inc.	10,064.50	503.22
E-43	Phil. Health-Care Providers, Inc.	5,440.20	272.01
E-44	Medicard Philippines, Inc.	19,790.16	989.51
E-45	Medicard Philippines, Inc.	42,073.20	2,103.66
E-46	Medicard Philippines, Inc.	271.00	13.55
E-47	Medicard Philippines, Inc.	51,584.39	2,579.22
E-48	Meridian Assurance Corporation	1,333.44	66.67
E-49	Meridian Assurance Corporation	2,917.09	145.85
E-50	Meridian Assurance Corporation	3,902.35	195.12
E-51	The Mercantile Insurance Co., Inc.	50,624.65	2,531.23

E-52	Makati Insurance Company, Inc.	34,319.04	1,715.98
E-53	Makati Insurance Company, Inc.	113,910.29	5,695.54
E-54	Makati Insurance Company, Inc.	115,675.93	5,783.80
E-55	Makati Insurance Company, Inc.	12,998.48	649.92
E-56	The Manufacturers Life Insurance Co.	2,472.48	123.62
E-57	The Manufacturers Life Insurance Co.	2,447.04	122.36
E-58	The Manufacturers Life Insurance Co.	8,266.49	414.32
E-59	The Manufacturers Life Insurance Co.	1,711.34	85.57
E-60	Monarch Insurance Company, Inc.	390.86	19.54
E-61	Malayan Zurich Insurance Company	412,823.24	20,641.19
E-62	The Netherlands Insu. Co. (Phils.), Inc.	247,269.80	12,363.49
E-63	The Netherlands Insu. Co. (Phils.), Inc.	3,551.00	177.55
E-64	General Accident Insurance Asia Ltd.	9,113,433.44	455,671.67
E-65	Oriental Assurance Corporation	30,183.75	1,508.80
E-66	Oriental Assurance Corporation	25,891.30	1,294.57
E-67	Phil. British Assurance Co., Inc.	15,021.00	751.05
E-68	Phil. British Assurance Co., Inc.	37,077.80	1,853.89
E-69	Philamcare Health Systems, Inc.	99,208.20	4,960.41
E-70	Philamcare Health Systems, Inc.	2,964.40	148.22
E-71	Philippine Charter Insurance Corp.	130,071.40	6,503.57
E-72	Philippine Charter Insurance Corp.	62,040.20	3,102.01
E-73	Philippine Charter Insurance Corp.	233,786.80	11,689.34
E-74	Philippine Charter Insurance Corp.	53,987.20	2,699.36
E-75	Citystate Insurance Corporation	193,731.40	9,686.57
E-76	Phil. Fire & Marine Insurance Corp.	5,223.60	261.18
E-77	Philippine Asia Life Assurance Corp.	9,350.17	467.51
E-78	Philippine Asia Life Assurance Corp.	12,905.36	645.27
E-79	Philippine Asia Life Assurance Corp.	6,950.52	347.53
E-80	Pru Life Insurance Corp. of U.K.	17,657.60	882.88
E-81	Pioneer Insurance & Surety Corp.	2,510,056.68	125,502.84
E-82	PNB General Insurers Co., Inc.	460,314.40	23,015.72
E-83	Pan Phils. Life Insurance Corp.	364,906.61	17,312.43
E-84	Phil. Phoenix Surety & Insurance, Inc.	26,392.24	1,319.80
E-85	Phil. Phoenix Surety & Insurance, Inc.	52,734.25	2,636.80
E-86	Phil. Phoenix Surety & Insurance, Inc.	661.50	33.08
E-87	Mapfre Asian Insurance Corporation	7,119,999.80	355,999.99
E-88	Mapfre Asian Insurance Corporation	70,717.06	3,535.85
E-89	Prudential Guarantee and Assurance Inc.	401,712.41	20,086.06
E-90	Prudential Guarantee and Assurance Inc.	129,560.46	6,478.01
E-91	Prudential Guarantee and Assurance Inc.	78,955.19	3,947.74
E-92	R & B Insurance Corporation	43,964.26	2,198.21
E-93	Royal International Insu. Holdings Ltd.	22,023.20	1,101.16
E-94	Royal International Insu. Holdings Ltd.	161,826.80	8,091.34
E-95	Seaboard-Eastern Insurance Co., Inc.	68,759.00	3,437.95
E-96	Seaboard-Eastern Insurance Co., Inc.	55,317.60	2,765.88
E-97	Seaboard-Eastern Insurance Co., Inc.	48,655.00	2,432.75
E-98	Seaboard-Eastern Insurance Co., Inc.	27,484.55	1,374.23
E-99	Seaboard-Eastern Insurance Co., Inc.	1,773.64	88.68
E-100	Paramount Gen. Insurance Corp.	9,490.80	474.54
E-101	Sun Life of Canada	4,841.80	242.09
E-102	Tico Insurance Co., Inc.	78,806.13	3,940.31
E-103	United Coconut Planters Life Assu. Corp.	27,129.64	1,356.49
E-104	United Coconut Planters Life Assu. Corp.	55,338.48	2,766.92
E-105	United Coconut Planters Life Assu. Corp.	40,887.95	2,044.41
E-106	United Coconut Planters Life Assu. Corp.	8,479.83	423.99

E-107	Union Insurance Society of Canton, Ltd.	4,744.81	237.24
E-108	Union Insurance Society of Canton, Ltd.	45,366.07	2,268.34
	Total:	P 36,087,617.68	P 1,803,758.76

However, Petitioner did not present the originals nor the duplicate originals or certified true copies of the following certificates in order for this Court to ascertain their authenticity (August 11, 1999 Commissioner's hearing, CTA records, page 63 and Exhibit I):

Exh.	Payor/Withholding Agent	Income Payment	Income Tax Withheld
1996			
C-41	Makati Insurance Co., Inc.	P 14,256.85	P 712.84
C-41	Makati Insurance Co., Inc.	78,694.46	3,934.72
C-42	The Manufacturers Life Insurance Co.	11,407.82	570.39
C-43	The Manufacturers Life Insurance Co.	9,549.85	477.50
C-44	The Manufacturers Life Insurance Co.	1,750.80	87.54
C-45	The Manufacturers Life Insurance Co.	3,362.88	168.14
C-88	Semper Insurance Corp.	23,903.87	1,195.19
C-89	The Solid Guaranty, Inc.	1,380.40	69.02
C-92	United Coconut Planters Life Assu. Corp.	82,046.55	4,102.34
C-93	United Coconut Planters Life Assu. Corp.	181,499.86	9,074.99
	Total:	P 407,853.34	P 20,392.67

Also, it was noted that the following certificates were not duly signed by the respective payors or withholding agents:

Exh.	Payor/Withholding Agent	Income Payment	Income Tax Withheld
1996			
C-22	Ayala Health Care Inc.	P 1,083.94	P 54.20
C-56	Philippine Charter Insurance Corp.	21,550.60	1,077.53
C-59	Philippine Asia Life Assurance Corp.	344.62	17.23
C-81	Radionet, Inc.	23,963.73	1,198.19
		P 46,942.89	P 2,347.15
1997			
E-2	Ayala Health Care Incorporated	2,119.05	105.95
E-3	Ayala Health Care Incorporated	302.10	15.11
E-4	Ayala Health Care Incorporated	3,490.40	349.04
E-72	Philippine Charter Insurance Corp.	62,040.20	3,102.01
E-73	Philippine Charter Insurance Corp.	233,786.80	11,689.34
E-83	Pan Phils. Life Insurance Corp.	364,906.61	17,312.43
		P 666,645.16	P 32,573.88

Therefore, out of the creditable taxes withheld in 1996 and 1997 of P P2,750,976.00 and P1,803,758.00, respectively, declared by Petitioner in its annual income tax returns for the same years, only the respective amounts of P2,728,236.18 and P1,771,184.12 were supported by valid certificates of creditable tax withheld at source computed as follows:

For calendar year 1996 (Schedule 1)

	Income Payment	Income Tax Withheld
Creditable taxes withheld during the year w/ certificates	P 51,184,165.30	P 2,750,976.00
Less: 1.) creditable withholding taxes with no corresponding original copies nor duplicate originals or certified true copies of certificates	407,853.34	20,392.67
2.) creditable withholding taxes with certificates which were not signed by the w/holdingagents	46,942.89	2,347.15
Creditable taxes withheld during the year with valid certificates of creditable tax withheld at source	P 50,729,369.07	P 2,728,236.18

For calendar year 1997 (Schedule 2)

	Income Payment	Income Tax Withheld
Creditable taxes withheld during the year w/ certificates	P 36,087,617.68	P 1,803,758.00
Less: 1.) creditable withholding taxes with certificates which were not signed by the w/holding agents	666,645.16	32,573.88
Creditable taxes withheld during the year with valid certificates of creditable tax withheld at source	P 35,420,972.52	P 1,771,184.12

Correspondingly, only the amount of P2,751,476.06 out of the claimed amount of P2,806,789.00 excess 1996 and 1997 unutilized tax credits was properly supported by certificates of creditable tax withheld at source as shown below:

	1996	1997
Income Tax Due per ITR	P 988,069.00	P 759,876.00
Less: Tax Credits		
1.) Prior year's excess credit		1,740,167.18
2.) Creditable taxes withheld during the year with proper certificates	2,728,236.18	1,771,184.88
Excess unutilized tax credits	P(1,740,167.18)	P (2,751,476.06)

This brings as to the third aforequoted requirement which is the second stipulated issue of whether or not the income upon which the taxes were withheld were declared in Petitioner's 1996 and 1997 Income Tax Returns.

A perusal of all the records submitted to this Court would reveal that Petitioner failed to sufficiently prove that it fully declared in its annual income tax returns the income from which the 1996 and 1997 creditable taxes were withheld.

Petitioner admitted that there is an apparent discrepancy of P13,879,120.00 between the amount of gross commission income of P41,140,407.00 reflected in its 1996 ITR ([Schedule 2, Section C] & Section A of Exh. B) and the gross commission income of P55,019,527.20 (computed by outrightly dividing P2,750,976.00 by the withholding tax rate of 5%) from which the claimed 1996 creditable taxes of P2,750,976.00 were withheld. According to Petitioner, while the gross commission income reflected in its 1996 ITR is lesser than the gross commission income indicated in the 1996 withholding tax certificates, such discrepancy was due to "timing difference" wherein the income of P13,879,120.00 was actually reported in its 1995 ITR but the corresponding withholding tax certificates were issued only in the first quarter of 1996 as testified by Ms. Mia Cabotage, Petitioner's Supervisor of the Finance Dept., during the October 20, 1999 hearing.

Petitioner alleged that the same explanation holds true with respect to the P3,974,687.00 difference between the gross commission income of P40,049,858.00 reflected in its 1997 ITR ([Schedule 2, Section C] & Section A of Exh. D) and the gross commission income of P36,075,171.00 indicated in the 1997 withholding tax certificates.

This Court believes, however, that while the discrepancy in Petitioner's 1996 gross income may have been brought about by a "timing difference" where the withholding agent(s) withheld and issued the corresponding certificates after Petitioner has already accrued and reported the income in its annual income tax return, Petitioner should have proven such fact by documentary evidence. The testimony made by Ms. Mia Cabotage should have been corroborated by documents such as the 1995 annual income tax return, reconciliation schedule showing the income amounts reported in 1995 which were subjected to withholding in 1995 and 1996, invoices/receipts or any other document that would clearly show that the discrepancy was actually reported in Petitioner's 1995 ITR but the withholding of the corresponding tax was made in 1996. Hence, for calendar year 1996, Petitioner was able to prove only the gross commission income of P41,140,407.00 indicated in its 1996 annual income tax return. There is an actual discrepancy of P9,588,962.07 between the gross commission income of P50,729,369.07 corresponding to the 1996 creditable withholding taxes of P2,728,236.16 with valid certificates (see Schedule 1 above) and the gross commission income of P41,140,407.00 reported in the 1996 ITR. Accordingly, the withholding taxes related to the discrepancy in '96 income of P9,588,962.07 should be deducted from the total creditable withholding taxes of P2,728,236.18 resulting to a net amount of P2,212,539.78 creditable withholding taxes pertaining to the income of P41,140,407.00 reflected in the '96 ITR computed as follows:

Schedule 3

1996 Creditable withholding taxes w/ proper certificates		P 2,728,236.18
Less: Creditable taxes pertaining to the discrepancy in 1996 gross income per ITR and per certificates		
Gross income per 1996 valid certificates (Sch. 1)	P 50,729,369.07	
Gross income per 1996 ITR	41,140,407.00	
Discrepancy in 1996 gross income	P 9,588,962.07	
Divided by gross income per '96 valid certificates	50,729,369.07	
% of Discrepancy in 1996 gross income to total gross income per 1996 valid certificates	18.902191%	
Multiplied by total creditable withholding taxes	P 2,728,236.18	515,696.40
1996 Creditable withholding taxes pertaining to the declared income per 1996 ITR		P 2,212,539.78

For calendar year 1997, it can be concluded that Petitioner declared all of the gross commission income of P36,087,617.68 from which the claimed creditable taxes of

P1,803,758.00 were withheld since a higher amount of gross commission income of P40,049,858.00 is reflected in Petitioner's 1997 annual income tax return.

Concerning the third issue, Petitioner's 1996 and 1997 annual income tax returns established that it was not able to fully utilize its 1996 excess tax credits for calendar year ended December 31, 1996 against its income tax liability for the succeeding year.

Section 69 (now Section 76) of the Tax Code provides thus:

> "Section 69. *Final adjustment return.* – Every corporation liable to tax under Section 24 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 excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year."

Based on the aforequoted provision of the Tax Code, if a taxpayer's total quarterly income tax payments and creditable income tax payments for a taxable year is greater than what it should have paid based on its final adjustment return for the same taxable year, it can either request for a refund of overpaid income tax or automatically apply the same as tax credit to the succeeding year.

Petitioner's 1996 annual income tax return showed a taxable income of P2,823,055.00 with a corresponding income tax due of P988,069.00 which was offset against the total reported creditable withholding taxes in 1996 of P2,750,976.00.00. Since the latter amount was higher than Petitioner's 1996 income tax liability, there remains an amount of 1996 excess unutilized tax credits of P1,762,907.00 which Petitioner opted to apply as tax credits to the succeeding year 1997 pursuant to Section 69 of the Tax Code. While Petitioner applied the 1996 excess tax credits of P1,762,907.00 against its 1997 income tax due of P759,876.00 indicated in the 1997 return, still there remains an amount of excess 1996 tax credits of P1,003,031.00 as of December 31, 1997. Since Petitioner can apply the 1996 excess tax credits only to the succeeding year 1997 as set forth under Section 69 of the Tax Code, Petitioner opted the same to be refunded together with the 1997 reported creditable withholding taxes of P1,803,758.00 or the sum of P2,806,789.00.

Furthermore, Petitioner's declarations in its 1996 and 1997 annual income tax returns are for all intents and purposes presumed to be made in good faith and are true and correct considering that they were made and executed under penalties of perjury. (***Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 4693 and 4439, dated July 29, 1993 and July 5, 1993***)

The Supreme Court, in the case of ***Citibank N. A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, dated October 10, 1997***, held that:

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. The grant of a refund is founded on the assumption that the tax return is valid: that is, the facts stated therein are true and correct. In fact

even without Petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC."

Finally, based on the above findings, Petitioner proved that it complied with the three aforementioned basic requirements for refund of excess unutilized creditable withholding tax as provided under Revenue Regulations No. 6-85, as amended, and under prevailing jurisprudence on the matter but only insofar as its claim for refund of P2,235,778.90.

Moreover, Petitioner established that it did not carry-over to the succeeding year 1998 the claimed excess tax credits as of 1997 since no amount was indicated as "Prior Year's Excess Credit" in its 1998 annual income tax return (Exh. G)

Therefore, it is only proper that a refund be granted to Petitioner in the amount of P2,235,778.90 representing excess unutilized creditable withholding taxes as of December 31, 1997 computed as follows:

<u>For calendar year 1996</u>

Income Tax Due per 1996 ITR		P 988,069.00
Less: Tax Credits		
1.) Creditable taxes withheld in 1996 corresponding to the gross income declared per the 1996 ITR (see Schedule 3 above)		2,212,539.78
Tax Refundable		P(1,224,470.78)

<u>For calendar year 1997</u>

Income Tax Due per 1997 ITR		P 759,876.00
Less: Tax Credits		
1.) Prior year's excess credit	P 1,224,470.78	
2.) Creditable taxes withheld during the year with proper withholding tax certificates (see Schedule 2 above)	1,771,184.12	2,995,654.90
Tax Refundable		P(2,235,778.90)

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or in the alternative **ISSUE A TAX CREDIT CERTIFICATE** in favor of the Petitioner in the reduced amount of P2,235,778.90 representing the excess unutilized creditable taxes withheld at source for calendar year ended December 31, 1996 and December 31, 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge