REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1421 (CTA Case No. 8632)
-versus-	
PHILIPPINE BANK OF COMMUNICATIONS, *Respondent.*	

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PHILIPPINE BANK OF COMMUNICATIONS, *Petitioner,*	CTA EB No. 1423 (CTA CASE No. 8632)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 23 2017 4:22 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision are the Petitions for Review under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision dated September 9, 2015[2] and the Resolution dated January 19, 2016[3] rendered by the Third Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated September 9, 2015:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-SEVEN MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND SEVEN HUNDRED TWENTY ONE AND 33/100 PESOS (PHP27,275,721.33)** representing petitioner's unutilized creditable withholding taxes for taxable year 2010.
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> **SO ORDERED.**

Resolution dated January 19, 2016:

> **WHEREFORE,** from the foregoing, petitioner's "Motion for Reconsideration" and respondent's "Motion for Reconsideration (Re: Decision Promulgated 09 September 2015)" are hereby **DENIED**, for lack of merit. Consequently,

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

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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[2] Penned by Associate Justice Lovell R. Bautista concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban, *En Banc* Docket, pp. 24-55.

[3] Penned by Associate Justice Lovell R. Bautista concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban, *En Banc* Docket, pp. 56-61.

the Decision dated September 9, 2015 is hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

The facts of the case, as recited by the Third Division in its Decision, read as follows:

"Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at PBCom Tower, 6795 Ayala Avenue corner VA Rufino Street. Makati City.

Respondent Commissioner of Internal Revenue ("CIR") is [head of] the government agency charged with the assessment, collection and enforcement of all national internal revenue taxes, fees and charges, including forfeitures, penalties and fines connected therewith, and is being represented by legal officers of the Legal Division at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.

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On April 4, 2013, petitioner filed with the BIR Large Taxpayers Service-Regular Large Taxpayers Audit Division II an administrative claim for refund or issuance of a TCC of excess CWT for taxable year 2010 in the amount of PhP33,950,357.40.

There being no action on the part of respondent, petitioner filed the instant Petition for Review on April 11, 2013 citing as legal basis Sections 58(D) and 76 in relation to Sections 204 and 229 of the 1997 National Internal Revenue Code, as amended ("Tax Code").

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Petitioner contends that it is entitled to the refund or issuance of TCC of its excess/unutilized CWT amounting to PhP33,950,357.40 pursuant to Sections 58(D) and 76 in relation to Sections 204 and 229 of the Tax Code.

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> It submits that the requisites for an application for refund provided in ***VJ Properties, Inc. vs. Commissioner of Internal Revenue*** have been complied with - (*i*) the claim for refund/issuance of TCC was filed within two (2) years as prescribed under the Tax Code; (*ii*) the income upon which the taxes were withheld were included as part of the gross income declared in the return of the taxpayer; (*iii*) 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 (*iv*) the taxpayer applying for refund must satisfactorily prove that the claimed amount was not carried over/applied to the succeeding year. Therefore, it is entitled to its claim of refund.
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> Respondent argues in the following manner: (*i*) that petitioner failed to submit complete documents in support of its administrative claim for refund pursuant to Revenue Memorandum Order ("RMO") No. 53-98 and Revenue Regulation ("RR") No. 2-2006; (*ii*) that petitioner failed to exhaust administrative remedies before elevating the case before the Court; and (*iii*) that petitioner failed to substantiate its claim for refund or issuance of a TCC, as prescribed by Section 76 of the Tax Code and as ruled by the Supreme Court in ***CIR vs. Team [Philippines] Operations Corporation***" (Citation omitted; Emphases in the original.)

The Third Division held that out of the ₱33,950,357.40 claim of Philippine Bank of Communications (PBCom), the amount of ₱3,524,557.87 shall be reduced for not being supported by BIR Form No. 2307, leaving a balance of ₱30,425,799.53. From that amount, the Third Division disallowed ₱636,435.68 as the BIR Forms No. 2307 corresponding thereto are either with erasures or without PBCom's TIN or with erasure as to the amount with countersignature different from the signature appearing in the blank provided for the "Payor/Payor's Authorized Representative". Likewise, the amount of ₱144,000.00 was

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also disallowed for failure to present the corresponding BIR Form No. 2307, leaving the total balance of ₱29,789,363.85. Lastly, out of said amount, only the amount of ₱27,275,721.33 were verified to have been included in PBCom's General Ledger and annual Income Tax Return (ITR) for the taxable year 2010.

Separate Motions for Reconsideration[4] of the parties were denied by the Third Division as per Resolution promulgated on January 19, 2016, hence, the respective Petitions for Review[5] were filed.

The CIR argues in his Petition for Review that PBCom failed to submit complete documents in support of its administrative claim for refund under RMO No. 53-98; that PBCom failed to exhaust administrative remedies when it filed its claim for refund only on April 4, 2013 then filed the Petition for Review before the Court on April 11, 2013, or only after seven days from filing of its administrative claim; that PBCom failed to prove its entitlement to refund; that the amount of ₱42,827.55 pertaining to disallowed amount for refund was not actually deducted therefrom; and lastly, claims for refund must be construed strictly against the taxpayer.

On the other hand, PBCom, in its Petition for Review argues that it was able to prove entitlement to refund with respect to the whole amount by presenting its BIR Certification to confirm remittance of the creditable withholding tax (CWT); that the fact of withholding has been established through BIR Form No. 2307 even in the absence of TIN number and/or erasure in the date but with countersignature; that the income upon which the income taxes were withheld at source was actually included as part of the gross income declared in the 2010 annual ITR of PBCom; that the amount of ₱42,827.55 pertaining to disallowed amount for refund was actually deducted therefrom; and that the strict construction of law on claims

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[4] Division Docket, pp. 1125-51.
[5] *En Banc* No. 1421 Docket, pp. 6-21; *En Banc* No. 1423 Docket, pp. 1-17.

for refund is applicable only when there is doubt or ambiguity in its language.

We rule.

The CIR's reliance on RMO No. 53-98 regarding the sufficiency of supporting documents submitted by PBCom is misplaced. This Court ruled in the case of *Commissioner of Internal Revenue vs. Visayas Geothermal Power Company Inc.,*[6] that the law does not require the taxpayer to submit the documents prescribed by RMO No. 53-98 as a pre-condition to the claim for refund.

Regarding the proper supporting documents, the Supreme Court in the case of *Pilipinas Total Gas Inc., vs. Commissioner of Internal Revenue*[7] pointed out that a taxpayer's failure to submit the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund. The Supreme Court explained that RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities.[8] There is nothing stated in the issuance that would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund.[9]

In the case of *Commissioner of Internal Revenue vs. Dakudao & Sons. Inc.,*[10] this Court held that:

> "Third, anent petitioner's contention that it is imperative for respondent to show proof of compliance with the checklist of requirements to be submitted involving a claim for xxx refund/ tax credit in accordance with the requirements set forth under

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[6] CTA EB No. 282, November 20, 2007.
[7] G.R. No. 207112, December 8, 2015.
[8] *Ibid.*
[9] *Ibid.*
[10] CTA EB No. 1150, May 12, 2015.

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RMO No. 53-98, this Court agrees with respondent that said RMO is for tax audit investigation and not for refund xxx. The same is explicit in its objective, which is to "identify the documents to be required from a taxpayer during audit."

RMO No. 53-98 merely prescribes the documents required for submission by a taxpayer upon audit of his tax liabilities per type of tax, as well as the different mandatory audit reporting requirements to be prepared, submitted and attached to a tax audit docket by a Revenue Officer. The case at bar being a claim for refund xxx, and not a tax audit investigation, said RMO is not applicable.

However, assuming arguendo that respondent failed to submit the complete documents listed in RMO No. 53-98, this Court has consistently held that the term "complete documents" should be understood to refer to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Moreover, it is basic that petitioner ought to know the tax records of all taxpayers.[11]

Judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the "complete documents" in support of its administrative claim for refund. The non-submission of supporting documents in the administrative level is not lethal to a claim for refund.

In this respect, this Court has consistently ruled that the requirements listed under RMO No. 53-98

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[11] Citing *Diageo Philippines vs. Commissioner of Internal Revenue,* CTA Case No. 7846 and 7865, January 16, 2012, further citing *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et. al.,* G.R. No. 122480, April 12, 2000, and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

refer mainly to the requirements for refund or tax credit in the administrative level for purposes of establishing the authenticity of a taxpayer's claim for refund or credit. However, in the judicial level or when the case is elevated to the Court, it is the duty of the claimant to prove its entitlement to the claim for refund or credit, and the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[12]"

The case of *Ayala Corporation vs. Commissioner of Internal Revenue*[13] is on point, to wit:

"It must be stressed that Revenue Memorandum Order (RMO) No. 53-98, dated June 1, 1998 and entitled *'Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket'*, refers mainly to the requirements in the administrative level for claims for refund/tax credit, wherein the taxpayer is required to submit for audit purposes, all his/its pertinent documents/records, to establish the veracity of his/its claim. However, when a taxpayer's claim reaches the judicial level or when the claim is elevated to this Court, the Rules of Court and this Court's own Rules govern the matter of proving the said claim.

Moreover, RR 2-2006, indeed, prescribes the attachment of the *Summary of Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT)* to tax returns, with claimed tax credits due to creditable tax withheld at source. However, this Court, in numerous cases, held that the following are the requisites that must be complied with in order to claim a Tax Credit Certificate or Refund of excess creditable withholding tax (CWT): (a) that the claim for refund was filed within the two-year prescriptive period as provided under Section

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[12] Citing *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership; Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*, CTA EB Nos. 863, 865, October 23, 2012.

[13] CTA Case No. 8262, March 21, 2014; affirmed in CTA EB No. 1152, January 14, 2016.

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> 204(C) in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended; (b) 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 (c) that the income upon which the taxes were withheld were included in the return of the recipient. These requisites were also adopted by the Supreme Court in the case of *United International Pictures AB vs. Commissioner of Internal Revenue."* (Citations omitted.)

More importantly, the Court of Tax Appeals is not precluded from accepting PBCom's/taxpayer's evidence assuming these were not presented in the administrative level.[14] Cases filed in the Court of Tax Appeals are litigated *de novo*.[15]

PBCom therefore, need not comply with all the documents prescribed in RMO No. 53-98 and RR No. 2-2006 before it can claim its unutilized CWT. It just needs to comply with the three conditions enumerated above.[16]

As to the alleged failure on the part of PBCom to exhaust administrative remedies, the Supreme Court consolidated cases of *CBK Power Company Limited vs. Commissioner of Internal Revenue*[17] and *Commissioner of Internal Revenue vs. CBK Power Company Limited*[18] are relevant, *viz:*

> "The Commissioner laments that he was deprived of the opportunity to act on the administrative claim for refund of excess final withholding taxes covering taxable year 2003 which

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[14] *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 180290, September 29, 2014.
[15] *Ibid.*, citing *CIR vs. Manila Mining Corporation*, 505 Phil. 650, 664 (2005) [Per J. Carpio Morales, Third Division]; *C.F. Sharp & Company, Inc. v. Commissioner of Customs,* 130 Phil. 777, 782 (1968) [Per J. J.P. Bengzon, *En Banc*].
[16] *Jardine Lloyd Thompson Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8471, April 14, 2015.
[17] G.R. Nos. 193383-84, January 14, 2015.
[18] G.R. Nos. 193407-08, January 14, 2015.

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CBK Power filed on March 4, 2005, a Friday, then the following Wednesday, March 9, 2005, the latter hastily elevated the case on petition for review before the CTA. He argues that the failure on the part of CBK Power to give him a **reasonable time** to act on said claim is violative of the doctrines of exhaustion of administrative remedies and of primary jurisdiction.

For its part, CBK Power maintains that it would be prejudicial to wait for the Commissioner's ruling before it files its judicial claim since it only has 2 years from the payment of the tax within which to file both its administrative and judicial claims.

The Court rules for CBK Power.

Sections 204 and 229 of the NIRC pertain to the refund of **erroneously** or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. xxx

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xxx Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.

xxx. There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.

In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David* (Kiener), wherein it was held that in no wise does the law, *i.e.*, Section 306 of the old Tax Code

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(now, Section 229 of the NIRC), imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action. In *Kiener*, the Court went on to say that the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow xxx

xxx xxx xxx"
(Emphasis in the original; citations omitted)

Thus, there was no violation of the requisite exhaustion of administrative remedies in this case.

As to the ₱42,827.55 that was allegedly not deducted from the claim, it must be noted that the said amount forms part of the ₱3,524,557.87 that was already deducted from the amount claimed by PBCom.[19]

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B. ***Other Findings***		
Sale of property		
Findings	***Reference (Exhibit P-92)***	***Amount of Creditable Withholding Tax***
1. Creditable withholding tax payment supported by original BIR Form 1706 stamped received by the bank	Annex A1-4	₱ 921,000.00
2. Creditable withholding tax payment supported by original BIR Form 2307 without the date indicated therein	Annex A1-5	47,400.00
3. Creditable withholding tax payment supported by original BIR Form 1606	Annex A1-6	450,000.00
4. Over claimed creditable withholding tax payment	Annex A1-7	3.00
Sub-total		**₱ 1,418,403.00**
Lease income		
1. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN without countersignature	Annex A2-3	₱ 5,999.03
2. Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim	Annex A2-4	1,070,717.65
3. Supporting documents not available for verification	Annex A2-5	581,621.98
4. Under claimed creditable withholding tax payment	Annex A2-6	(929.56)
Sub-total		**₱ 1,657,409.10**
Interest income on commercial and trade loans		
1. Creditable withholding tax payment supported by original BIR Form 2307 but with different Company TIN indicated therein	Annex A3-6	₱ 116,313.45

In the assailed Decision, the Court's Third Division disallowed PBCom's claimed CWT in the amount of ₱4,160,993.55, as summarized below, for failure to meet the third condition set forth in the cases of *CIR vs. Team (Philippines) Energy Corp.*[20] and *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals*[21] - that is, the fact of withholding is established by a copy of a statement duly

2.	Creditable withholding tax payment supported by original BIR Form 2307 without the Company's TIN indicated therein and with erasure in amount of withholding tax without countersignature	Annex A3-7	36,410.29
3.	Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the amount without countersignature but can be recomputed	Annex A3-8	18,172.17
4.	Creditable withholding tax payment supported by original BIR Form 2307 without the Company's TIN indicated therein and with erasure in amount of withholding tax without countersignature but the withholding tax can be recomputed using the tax base and related withholding tax rate as indicated in the Form	Annex A3-9	56,000.47
5.	Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN without countersignature	Annex A3-10	81,053.56
6.	Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the amount of withholding tax without countersignature	Annex A3-11	30,231.36
7.	Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the year without countersignature	Annex A3-12	3,836.16
8.	Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim	Annex A3-13	39,352.93
9.	Creditable withholding tax payment supported by photocopy of BIR Form 2307	Annex A3-14	23,164.90
10.	Creditable withholding tax payment supported by original BIR Form 2307 without signature	Annex A3-15	4,475.63
11.	Supporting documents not available for verification	Annex A3-16	53,411.65
12.	Under claimed creditable withholding tax payment	Annex A3-17	(56,504.35)
Sub-total			**₱ 405,918.22**
Reimbursements			
1.	Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim	Annex A4-2	₱ 38,111.45
2.	Supporting documents not available for verification	Annex A4-3	4,716.11
3.	Under claimed creditable withholding tax payments	Annex A4-4	(0.01)
Sub-total			**₱ 42,827.55**
TOTAL - Other Findings			**₱ 3,524,557.87**
GRAND TOTAL			**₱ 33,950,357.40**

However, out of the ICPA recommended amount of PhP33,950,357.40, the amount of PhP3,524,557.87, which was classified by the ICPA under the caption "B. Other Findings" shall be reduced therefrom for not being supported by BIR Form No. 2307.

[20] CTA EB No. 694 (CTA Case No. 7603), April 13, 2012.
[21] G.R. No. 155682, March 27, 2007.

issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom:

Findings	**Reference *(Exhibit P-92)***	**Amount of CWT**
A. Creditable withholding tax payments duly supported by original BIR Form 2307 and BIR Certification	Annexes A1-3, A3-2, A3-3, and A3-5	₱ 636,435.68
B. Other Findings	Annexes A1-4 to A1-7, A2-3 to A2-6, A3-6 to A3-17 and A4-2 to A4-4	3,524,557.87
Total		**₱ 4,160,993.55**

The amount of ₱636,435.68 pertains to the CWT found by the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Edwin F. Ramos, to be duly supported by original BIR Form No. 2307 and BIR Certification[22] but which the Court's Third Division disallowed on the following grounds:

> "Likewise, the CWT of PhP144,000.00 under *Annex "A1-3" of "Sale of Property"* shall be disallowed for petitioner's failure to present the corresponding BIR Form No. 2307. The BIR Certification confirming the remittance of PhP144,000.00 CWT cannot be a substitute to BIR Form No. 2307.
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> Also, petitioner's claimed CWT under *Annexes "A3-2," "A3-3" and "A3-5" of "Interest income on commercial and trade loans"* shall be disallowed because of the following reasons, respectively:
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> a) The supporting BIR Form No. 2307 did not indicate petitioner's TIN;
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> b) The countersignature on the corrections made in BIR Forms No. 2307 marked as *Exhibits "P-48.31," "P-48.518," and "P-48.666" of Annex "A3-3"* is not similar with

[22] Under letter A of the ICPA Findings.

the signature appearing in the blank provided for the "Payor/Payor's Authorized Representative" and the remaining exhibits/BIR Forms No. 2307 do not bear petitioner's TIN; and

c) The countersignature on the corrections made in all the exhibits/BIR Forms No. 2307 in *Annex "A3-5"* is not similar with the signature appearing in the blank provided for the "Payor/Payor's Authorized Representative"."

On the other hand, the amount of ₱3,524,557.87 pertains to the CWT which the ICPA classified in his report under the caption "B. *Other Findings*", and disallowed by the Court's Third Division for not being supported by BIR Form No. 2307.[23]

In its Petition, PBCom alleges that the third condition of establishing the fact of withholding is complied with by the issuance of a BIR Certification confirming the remittance of the ₱144,000.00 CWT under Annex "A1-3". PBCom further argues that the said requirement has been complied with by the issuance of BIR Form No. 2307, despite the absence of PBCom's Taxpayer's Identification Number (TIN) so long as its name and address are properly indicated therein.

While Section 2.58(B) of RR No. 2-98, as amended, implementing Section 58(B) of the NIRC of 1997, as amended, and existing jurisprudence require the presentation of the Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) as evidence of the fact of withholding, the same do not preclude the taxpayer from submitting proofs of payment/remittance of CWT such as Withholding Tax Remittance Returns (BIR Form No. 1606).

In *Philippine National Bank vs. Commissioner of Internal Revenue*[24], the Supreme Court noted that BIR Form No. 1606 contains the "very same key information that

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[23] *Supra* note 19.
[24] G.R. No. 206019, March 18, 2015.

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would be gathered from BIR Form No. 2307," which suffices to prove the fact of withholding, *viz*:

> "It must be noted that PNB had already presented the Withholding Tax Remittance Returns (BIR Form No. 1606) relevant to the transaction. The said forms show that the amount of P74,400,028.49 was withheld and paid by PNB in the year 2003. It contains, among other data, the name of the payor and the payee, the description of the property subject of the transaction, and the determination of the taxable base, and the tax rate applied. These are the very same key information that would be gathered from BIR Form No. 2307.
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> While perhaps it may be necessary to prove that the taxpayer did not use the claimed creditable withholding tax to pay for his/its tax liabilities, there is no basis in law or jurisprudence to say that BIR Form No. 2307 is the only evidence that may be adduced to prove such non-use."

Considering that BIR Form No. 1606 contains the same key information as that of BIR Form No. 2307, it necessarily follows that BIR Form No. 1606 can likewise prove the fact of withholding.

Similarly, the BIR Certification[25] contains key information that establishes the fact of remittance - *e.g.* name and TIN of taxpayer, date of payment, bank code and the amount of tax paid - which necessarily proves the fact of withholding. Said Certification, which was signed by the Chief of the Revenue Accounting Division, certify that the collections listed therein were remitted per Consolidated Report on Daily Collection and Central Bank Credit Advice/Bureau of Treasury - Journal Entry Voucher, and were not included in the list of dishonored checks (BIR Form No. 12.58) on file with the Division.

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[25] Exhibit P-54.

However, with regard to the Capital Gains Tax Return (BIR Form No. 1706), the same cannot be considered as valid proof of CWT because what is reflected therein is capital gains tax and not CWT.

As to the allegation of PBCom that the withholding has been established through BIR Form No. 2307 even in the absence of TIN number and/or erasure in the date but with countersignature, it must be realized that the Division found out that the countersignature on the corrections made in BIR Forms No. 2307 is not similar with the signature appearing in the blank provided for the "Payor/Payor's Authorized Representative."

The certificate of creditable tax withheld at source readily identifies the payor, the income payment and the tax withheld.[26] As stated in the case of *Commissioner of Internal Revenue vs. Philippine National Bank,*[27] "it is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes."[28] To expound:

> "Moreover, as correctly held by the Court of Tax Appeals En Banc, the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended xxx"[29]

More importantly, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer.[30] It must be kept in mind that the TIN serves as identification of taxpayers in relation to their payment with the BIR. Absent this, even with the taxpayer's name, it

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[26] *Supra* note 14.
[27] *Ibid.*
[28] Citing *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals,* G.R. No. 155682, March 27, 2007.
[29] *Supra* note 14.
[30] *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, etseq.,* G.R. Nos. 184360 & 184361, and 184384, February 19, 2014.

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cannot be verified if indeed the taxpayer paid the correct amount to the government. Well entrenched in our jurisprudence is that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[31] Accordingly, the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[32]

Thus, the certificates with corrections not properly countersigned and with incomplete details, such as absence of PBCom's TIN, are properly disallowed.

Guided by these premises, the following previously disallowed CWT may be reconsidered for refund, subject to the second condition, that is, it must be shown on the return of the recipient that the income payment received was declared as part of the gross income:

Findings	Annex	Amount of CWT
A. Creditable withholding tax payments duly supported by original BIR Form 2307 and BIR Certification		
Sale of property		
3. Creditable withholding tax payment supported by BIR certification confirming the remittance of taxes withheld	A1-3	₱ 144,000.00
B. Other Findings		
Sale of property		
3. Creditable withholding tax payment supported by original BIR Form 1606	A1-6	450,000.00
Total		**₱ 594,000.00**

Records show that only a portion of the income related to the CWT of ₱144,000.00 was included in the general ledger and considered in the Annual ITR. Out of the profit of ₱118,000.00, only ₱115,988.20 was traced in the general ledger. Thus, proportional to this profit, only the CWT

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[31] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.,* G.R. No. 127105. June 25, 1999.
[32] *Citibank N.A. vs. Court of Appeals*, G.R. No. 107434. October 10, 1997.

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amounting to ₱141,544.92, as computed below, can be the subject of refund:

Profit/loss on asset sold/exchanged (PLASE) traced in the general ledger	₱115,988.20
Divided by: Profit/loss on asset sold/exchanged (PLASE) related to the subject CWT	118,000.00
Multiply: Subject CWT	144,000.00
CWT Valid for Refund	**₱141,544.92**

On the other hand, PBCom failed to show that the income payments related to the CWT of ₱450,000.00 were declared as part of its gross income. Notably, the ICPA did not include in his report a schedule showing such. Thus, the same shall be disallowed.

As earlier mentioned, the Court's Third Division found that from the amount of ₱29,789,363.85 CWT supported with BIR Forms No. 2307, only the amount of ₱27,275,721.33 CWT were verified to have been included in PBCom's general ledger and Annual ITR as found by the ICPA in compliance with the second condition for the refund of excess CWT.

However, PBCom disagrees arguing that the Court's Third Division failed to consider the findings of the ICPA specifically with regard to the CWT in the amounts of ₱261,059.17,[33] ₱194,268.84,[34] ₱15,631.52,[35] ₱6,911.73,[36] ₱715.00,[37] ₱435,594.28,[38] ₱34,944.08,[39] ₱68,023.66,[40] ₱50,425.90,[41] ₱14,618.89,[42] ₱44,752.10,[43] ₱3,219.17,[44]

[33] Under Annex B2-4.
[34] Under Annex B3-1.
[35] Under Annex B3-2.
[36] Under Annex B3-3.
[37] Under Annex B3-4.
[38] Under Annex B3-5.
[39] Under Annex B3-6.
[40] Under Annex B3-7.
[41] Under Annex B3-8.
[42] Under Annex B3-9.
[43] Under Annex B3-10.
[44] Under Annex B3-11.

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₱1,153.24,[45] ₱2,412.44,[46] ₱22,169.57,[47] ₱28,561.97,[48] ₱10,862.16,[49] ₱15,850.81,[50] ₱104,446.53,[51] ₱2,505.83,[52] and ₱7,713.12.[53]

Contrary to PBCom's claim, the CWT in the amounts of ₱194,268.84,[54] ₱15,631.52,[55] ₱6,911.73,[56] ₱715.00,[57] ₱435,594.28,[58] ₱34,944.08,[59] ₱15,850.81,[60] were considered and formed part of the ₱27,275,721.33 CWT granted by the Court's Third Division.[61]

As to the CWT in the amounts of ₱261,059.17,[62] ₱68,023.66,[63] ₱50,425.90,[64] ₱14,618.89,[65] ₱44,752.10,[66] ₱3,219.17,[67] ₱1,153.24,[68] ₱2,412.44,[69] ₱22,169.57,[70] ₱28,561.97,[71] and ₱10,862.16,[72] ₱104,446.53,[73] ₱2,505.83,[74] and ₱7,713.12,[75] the Court's Third Division correctly disallowed the same because the corresponding BIR Forms No. 2307 do not bear PBCom's TIN or have alterations but the countersignature on the corrections made is not similar with the signature appearing on the blank

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[45] Under Annex B3-12.
[46] Under Annex B3-13.
[47] Under Annex B3-14.
[48] Under Annex B3-15.
[49] Under Annex B3-16.
[50] Under Annex B3-17.
[51] Under Annex B3-24.
[52] Under Annex B3-25.
[53] Under Annex B3-26.
[54] Under Annex B3-1.
[55] Under Annex B3-2.
[56] Under Annex B3-3.
[57] Under Annex B3-4.
[58] Under Annex B3-5.
[59] Under Annex B3-6.
[60] Under Annex B3-17.
[61] Decision, p. 28, Division Docket, Vol. 2, p. 1120.
[62] Under Annex B2-4.
[63] Under Annex B3-7.
[64] Under Annex B3-8.
[65] Under Annex B3-9.
[66] Under Annex B3-10.
[67] Under Annex B3-11.
[68] Under Annex B3-12.
[69] Under Annex B3-13.
[70] Under Annex B3-14.
[71] Under Annex B3-15.
[72] Under Annex B3-16.
[73] Under Annex B3-24.
[74] Under Annex B3-25.
[75] Under Annex B3-26.

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provided for the "Payor/Payor's Authorized Signature", as stated earlier.

In view of the foregoing, the amount originally granted for refund in the assailed Decision shall be increased to ₱27,417,266.25, as computed below:

Claim for refund originally granted in the assailed Decision	₱ 27,275,721.33
Add: CWT supported by BIR Certification	141,544.92
Total Creditable Withholding Taxes for Refund	**₱ 27,417,266.25**

WHEREFORE, premises considered, the instant Petition for Review filed by the Commissioner of Internal Revenue docketed as CTA EB No. 1421 is **DENIED** for lack of merit and the Petition for Review filed by Philippine Bank of Communications docketed as CTA EB No. 1423 is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated September 9, 2015 and the Resolution dated January 19, 2016 are hereby **MODIFIED**. The Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **TWENTY-SEVEN MILLION FOUR HUNDRED SEVENTEEN THOUSAND TWO HUNDRED SIXTY SIX AND 25/100 PESOS** (**₱27,417,266.25**) representing Philippine Bank of Communication's unutilized creditable withholding taxes for taxable year 2010.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(Joins Presiding Justice's Concurring and Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(Joins Presiding Justice's Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

(Joins Presiding Justice's Concurring and Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PHILIPPINE BANK OF COMMUNICATIONS,
Respondent.

CTA EB NO. 1421
(CTA Case No. 8632)

x---x

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1423
(CTA Case No. 8632)

Present:
Del Rosario, *PJ,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:

MAY 23 2017 4:22 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia*'s denial of the Petition for Review filed by the Commissioner of Internal Revenue (CIR) for lack of merit.

Anent the Petition for Review filed by Philippine Bank of Communications (PBCom), I concur with the *ponencia's* conclusion that PBCom is entitled to a refund in the <u>increased</u> amount of ₱27,417,266.25.00.

The point of my dissent, however, is the *ponencia's* outright exclusion of the creditable withholding taxes (CWTs) which are supported by BIR Forms No. 2307 issued in favor of PBCom by its suppliers which do not indicate PBCom's Tax Identification Number (TIN).

It is settled that a taxpayer claiming for a tax credit or refund of creditable withholding tax must establish, among others, the fact of withholding **by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.**[1] On this point, the pronouncement of the Supreme Court in ***Commissioner of Internal Revenue vs. Philippine National Bank***[2] relative to the requisite information to establish the fact of withholding is enlightening:

> "The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld.
>
> In Banco Filipino Savings and Mortgage Bank v. Court of Appeals, this Court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes:
>
>> 'In fine, the document which may be accepted as evidence of the third condition, that is, the **fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.**
>>
>> Xxx xxx xxx.
>
> Moreover, as correctly held by the Court of Tax Appeals *En Banc*, **the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury**, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, which reads: xxx xxx xxx.
>
> Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is

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[1] *Commissioner of Internal Revenue vs. TeaM (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013, citing *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010, 615 SCRA 417, 424, citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 548 Phil. 32, 36-37 (2007).

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

false; or (3) it was not issued regularly." (Boldfacing supplied; citations omitted)

In fine, the following are indispensable in proving the fact of withholding: (a) the document issued to the payee must emanate from the payor itself; (b) it must indicate the name of the payor; (c) it must indicate the income payment which is the basis of the tax withheld; (d) it must reflect the amount of tax withheld; and (e) it must state the nature of the tax paid.

Applying the foregoing to the case at bar, I submit that the BIR Forms No. 2307 which indicate PBCom's name and address and the amount of CWT withheld by the payor, *albeit without PBCom's TIN*, are complete in relevant details necessary to aid the Court in evaluating PBCom's refund claim. For one, PBCom's name and address appearing on said BIR Forms No. 2307 may be cross-referenced with PBCom's BIR Certificate of Registration (Exhibit "P-3") which states therein PBCom's registered name and address as well as its TIN. Moreover, a perusal of said BIR Forms No. 2307 reveal that they also indicate the names of the payors, the income payments upon which withholding were made and the nature of the taxes paid.

Thus, absent any proof that BIR Forms No. 2307 are incomplete as to the relevant details enumerated above, or are false or irregularly issued, it is my view that the same are sufficient to aid the Court in determining whether PBCom has established the fact of withholding.

Unlike Value-Added Tax official receipts and official invoices which are required by Section 113 of the National Internal Revenue Code (NIRC) of 1997, as amended, to indicate the seller's TIN, otherwise, the same would be insufficient to prove input taxes, **there is no law or jurisprudence which categorically states that the absence of the payee's TIN in BIR Form No. 2307 would *ipso facto* result in the denial of its claimed CWT.**

All told, I **VOTE** to **DENY** the CIR's Petition for Review for lack of merit and **PARTIALLY GRANT** PBCom's Petition for Review. Accordingly, the assailed September 9, 2015 Decision and January 19, 2016 Resolution of the Court in Division should be **AFFIRMED with MODIFICATION** to include the following: (a) ₱141,544.92 CWT pertaining to PBCom's Sale of Property (Annex A1-3); and, (b) the CWTs supported by BIR Forms No. 2307 which are complete in relevant details, albeit without PBCom's TIN indicated thereon, upon verification that the income payments subjected to withholding were declared as part of PBCom's gross income for taxable year 2010.

ROMAN G. DEL ROSARIO
Presiding Justice