REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ARROW FREIGHT CORPORATION,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10064

Members:

CASTAÑEDA, JR., *Chairperson,*
and
BACORRO-VILLENA, *JJ.*

Promulgated:

JUL 13 2021 11:00 AM

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

The present *Petition for Review* filed on April 11, 2019 prays for the refund in the amount of ₱9,188,766.00, allegedly representing petitioner's unutilized creditable withholding taxes (CWTs) for the year 2016.[1]

[1] Summary of the Case, Pre-Trial Order dated July 31, 2019, Docket – Vol. I, p. 278.

THE PARTIES

Petitioner Arrow Freight Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal business address at 368 F. San Diego St., Veinte Reales, Valenzuela City.[2] Pursuant to its Amended Articles of Incorporation, the purpose for which it was formed is to *"engage in the business of hauling and transporting passengers, freight goods, wares, produce, merchandise and other property by means of trucks, buses, trailers, vans and other forms of motor vehicle or conveyance as a common carrier or otherwise, in any point or part of the Philippines and in such foreign countries as may be allowed by Philippine Law, and to acquire, own, operate, lease and dispose of like business"*.[3] It is also registered with the Bureau of Internal Revenue (BIR) and has applied for registration as value-added tax (VAT) taxpayer, among other tax types. It secured a BIR Certificate with VAT-registered Taxpayer Identification No. 000-231-942-000.[4]

Respondent Commissioner of Internal Revenue is empowered to perform the duties of his office, including acting upon protests cases and approval of claims for refund or tax credit as provided by law and implementing regulations,[5] with office at BIR National Office Bldg., BIR Road, Diliman, Quezon City.[6]

THE FACTS

On January 29, 2018, petitioner filed an administrative claim for refund in the amount of ₱9,188,766.00, allegedly representing its excess unutilized CWTs for calendar year 2016.[7]

The BIR then issued the *Letter of Authority* (LOA) No. LOA-024-2018-00000007 (SN: eLA201500096676) dated February 26, 2018,[8] authorizing certain revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax and other taxes for the period from

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[2] Par. 2, *Petition for Review* vis-a-vis Par. 3, *Answer to the Petition for Review*, Docket – Vol. I, pp. 11 and 79, respectively.
[3] Par. 4, *Petition for Review* vis-a-vis Par. 3, *Answer to the Petition for Review*, Docket – Vol. I, pp. 11 and 79, respectively; Exhibits "P-1" and "P-2", Docket – Vol. I, pp. 339 to 349.
[4] Par. 5, *Petition for Review* vis-a-vis Par. 3, *Answer to the Petition for Review*, Docket – Vol. I, pp. 11 and 79, respectively; Exhibit "P-3", Docket – Vol. I, p. 350.
[5] Par. A(1), *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 271.
[6] Par. 3, *Petition for Review* vis-a-vis Par. 3, *Answer to the Petition for Review*, Docket – Vol. I, pp. 11 and 79, respectively.
[7] Exhibit "P-12", Docket – Vol. I, pp. 464 to 471.
[8] Exhibit "R-1", Docket – Vol. II, p. 563.

January 1, 2016 to December 31, 2016. Petitioner received the said LOA on February 28, 2018.[9]

Subsequently, the BIR issued against petitioner the *Preliminary Assessment Notice* dated June 24, 2019, which the latter received on June 28, 2019;[10] and the *Final Assessment Notice*, with *Formal Letter of Demand* (FAN/FLD) No. 38191/ 22947 dated September 16, 2019, which petitioner received on October 8, 2019,[11] assessing it for deficiency taxes for taxable year 2016.

On April 11, 2019, petitioner filed the present *Petition for Review*.[12]

In his *Answer to the Petition for Review* filed on May 31, 2019,[13] respondent raised the following special and affirmative defenses, to wit: (1) there is no sufficient proof to establish that petitioner is entitled to claim refund in the amount of ₱9,188,766.00; and (2) claims for refund partake the nature of tax exemption, hence, are not favored and to be construed *strictisssimi juris* against the person or entity claiming the refund.

The Pre-Trial Conference was set and held on July 4, 2019.[14] Prior thereto, the *Pre-Trial Brief for the Respondent* and *Pre-Trial Brief for the Petitioner* were separately filed on June 28, 2019.[15]

On July 19, 2019, the parties submitted their *Joint Stipulation of Facts and Issues*.[16] Thereafter, the Pre-Trial Order dated July 31, 2019 was issued.[17]

Trial then ensued.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Virginia M. Rudio,[18] petitioner's

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[9] *Id.*
[10] Exhibit "R-7", Docket – Vol. II, pp. 585 to 591.
[11] Exhibits "R-8" and "R-9", Docket – Vol. II, pp. 593 to 605.
[12] Docket – Vol. I, pp. 10 to 22.
[13] Docket – Vol. I, pp. 79 to 82.
[14] *Notice of Pre-Trial Conference* dated June 7, 2019, Docket – Vol. I, pp. 83 to 84; Minutes of the hearing held on, and Order dated, July 4, 2019, Docket – Vol. I, pp. 259 to 262.
[15] Docket – Vol. I, pp. 85 to 88, and 95 to 102, respectively.
[16] Docket – Vol. I, pp. 271 to 276.
[17] Pre-Trial Order dated July 31, 2019, Docket – Vol. I, pp. 278 to 281.
[18] Exhibit "P-13", Docket – Vol. I, pp. 108 to 118; Minutes of the hearing held on, and Order dated, August 14, 2019, Docket – Vol. I, pp. 299 to 301.

Accounting Section Manager; and (2) Ms. Madonna Mia S. Dayego,[19] the Court duly-commissioned Independent Certified Public Accountant (ICPA).[20]

On September 13, 2019, *Report* of the ICPA was submitted to this Court.[21]

Petitioner filed its *Formal Offer of Evidence* on September 25, 2019;[22] while respondent submitted his *Comment/Opposition on Formal Offer of Evidence* on October 1, 2019.[23] In the Resolution dated 21, 2019,[24] the Court admitted petitioner's exhibits, *except* for Exhibits "P-10" and "P-11", for failure to present the originals for comparison.

Thus, on November 11, 2019, petitioner filed its *Motion for Partial Reconsideration*,[25] praying that Exhibit "P-11" be admitted as its evidence. Respondent did not comment thereon.[26]

In the Resolution dated January 27, 2020,[27] the Court granted petitioner's *Motion for Partial Reconsideration*, and admitted Exhibit "P-11" in evidence.

Respondent likewise presented his documentary and testimonial evidence. The testimonies of the following Revenue Officers were proferred by respondent, to wit: (1) Ms. Indira D. Ganias;[28] and (2) Ms. Brigida C. De Perio.[29]

Thereafter, respondent filed his *Formal Offer of Exhibits* on March 13, 2020.[30] Petitioner failed to file its comment thereon.[31] In

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[19] Exhibit "P-48", Docket – Vol. I, pp. 320 to 325; Minutes of the hearing held on, and Order dated, September 23, 2019, Docket – Vol. I, pp. 326 and 327.
[20] *Oath of Commission* dated August 14, 2019, Docket – Vol. I, p. 298; Minutes of the hearing held on, and Order dated, August 14, 2019, Docket – Vol. I, pp. 299 to 301, respectively.
[21] Docket – Vol. I, pp. 308 to 316.
[22] Docket – Vol. I, pp. 328 to 337.
[23] Docket – Vol. I, pp. 475 to 476.
[24] Docket – Vol. II, pp. 478 to 479.
[25] Docket – Vol. II, pp. 480 to 483.
[26] Records Verification dated December 17, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 547.
[27] Docket – Vol. II, pp. 549 to 550.
[28] Exhibit "R-11", Docket – Vol. I, pp. 89 to 94; Minutes of the hearing held on February 26, 2020, Docket – Vol. II, pp. 553.
[29] Exhibit "R-12", Docket – Vol. II, pp. 541 to 546; Minutes of the hearing held on February 26, 2020, Docket – Vol. II, pp. 553.
[30] Docket – Vol. II, pp. 559 to 562.
[31] Records Verification dated June 4, 20202019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 608.

the Resolution dated June 16, 2020,[32] the Court admitted all of respondent's exhibits.

Petitioner's *Memorandum* was filed on July 16, 2020;[33] while respondent's *Memorandum* was submitted on September 21, 2020.[34]

On October 6, 2020, the present case was considered submitted for decision.[35]

THE ISSUE

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

> "WHETHER PETITIONER IS ENTITLED FOR TAX REFUND FOR THE UNUTILIZED CREDITABLE WITHHOLDING TAX (CWT) FOR THE YEAR 2016 AMOUNTING TO PHP9,188,766.00"[36]

Petitioner's arguments:

Petitioner argues that the claim for refund should be granted because all the elements necessary for the grant of refund of unutilized CWT are present.

Respondent's counter-arguments:

Respondent posits that the subject claim for refund is still subject to the administrative routinary investigation/examination by the BIR; that settled is the rule that taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable; that petitioner failed to substantiate the amount of ₱9,188,766.00, representing excess CWTs for the year 2016, was erroneously paid or remitted to the BIR; that the subject taxpayer has pending tax delinquency in the BIR in the amount of ₱2,979,791.99, representing deficiency income tax, VAT, expanded withholding tax, and improperly accumulated earnings tax, for taxable year 2016, as evidenced by the FAN/FLD

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[32] Resolution dated June 16, 2020, Docket – Vol. II, pp. 610 to 611.
[33] Docket – Vol. II, pp. 612 to 629.
[34] Docket – Vol. II, pp. 631 to 639.
[35] Resolution dated October 6, 2020, Docket – Vol. II, p. 644.
[36] Par. B, JSFI, Docket – Vol. I, p. 271.

No. 38191/ 22947 dated September 16, 2019; that it is incumbent upon the taxpayer to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code; that failure to prove the same is fatal to its claim for refund; and that claims for refund are construed strictly against herein taxpayer for the same partakes the nature of exemption from taxation, and as such, they are looked upon with disfavor.

THE COURT'S RULING

The present *Petition for Review* should be denied.

Petitioner's compliance with Section 76 of the NIRC of 1997.

Pertinent to the resolution of the present case is Section 76 of the National Internal Revenue Code (NIRC) of 1997, which is quoted hereunder for easy reference, to wit:

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

succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

The above provision prescribes two (2) options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. The taxpayer may either file a tax refund (either in the form of cash or tax credit certificate) or carry over the excess credit. However, once the carry-over option is taken actually or constructively it becomes irrevocable for that taxable period.[37] The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[38]

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[39]

A perusal of the Annual Income Tax Return (ITR) of petitioner for 2016[40] shows that it had total tax credits of ₱33,893,197.00[41], determined as follows:

Prior Year's Excess Credits Other Than MCIT		₱ 24,520,974.00
Add: Creditable Tax Withheld – 2016		
for the first three quarters	₱9,035,824.00	
for the 4th Quarter	336,399.00	9,372,223.00
Total Tax Credits		**₱ 33,893,197.00**

Petitioner claims that its *Minimum Corporate Income Tax* (MCIT) due for 2016 in the amount of ₱183,457.00[42] was paid using a portion of its accumulated CWTs during the four (4) quarters of taxable year 2016 of ₱9,372,223.00, thus leaving the creditable taxes withheld during the same year in the amount of ₱9,188,766.00

[37] *Philam Asset Management, Inc., vs. Commissioner of Internal Revenue,* G.R. Nos. 156637/162004. December 14, 2005; *Systra Philippines, Inc., vs. Commissioner of Internal Revenue,* G.R. No. 176290, September 21, 2007.
[38] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.
[39] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.,* G.R. No. 112024, January 28, 1999.
[40] Exhibit "P-4", Docket – Vol. I, pp. 351 to 358.
[41] Exhibit "P-4" (Schedule 7), Docket – Vol. I, at p. 356.
[42] Exhibit "P-4", Line 43, Docket – Vol. I, p. 352.

(which is the subject of the claim for refund), and the prior year's excess credits remain intact in the amount of ₱24,520,974.00, or a total of ₱33,709,740.00, unutilized as of December 31, 2016, as shown below:

Creditable Taxes Withheld –TY 2016	₱ 9,372,223.00
Less: Income Tax Due (MCIT)	183,457.00
Balance of Creditable Taxes Withheld – 2016	₱ 9,188,766.00
Add: Prior Year's Excess Credits other than MCIT	24,520,974.00
Excess CWTs as of December 31, 2016	**₱33,709,740.00**

Considering that petitioner opted for a refund by marking the box corresponding to the option *"To be refunded"*[43] in its Annual ITR for the taxable year 2016, and carried over only the amount of ₱24,520,974.00 (which is the prior year's excess credits) in its Annual ITR for taxable year 2017,[44] the CWTs for 2016 in the amount of ₱9,188,766.00 may be the proper subject of a claim for credit or refund, pursuant to the afore-quoted Section 76 of the NIRC of 1997.

Petitioner's compliance with the requisites to claim a refund or credit for unutilized excess CWTs.

Aside from the requirement provided under Section 76 of the NIRC of 1997, however, jurisprudence and the pertinent BIR Revenue Regulations provide that the following requisites must be further complied with in order that the subject claim may be granted:

1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204 (C) and 229 of NIRC of 1997;

2. The fact of withholding must be 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

[43] Exhibit "P-4", Line 21, Docket – Vol. I, p. 351.
[44] Exhibit "P-8", Schedule 7, Docket – Vol. I, p. 370.

3. The income upon which the taxes were withheld must be included in the return of the recipient.[45]

With regard to the *first* requisite, the pertinent provisions are Sections 204 (C) and 229 of the NIRC of 1997, which read as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may-
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused 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 unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from**

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[45] *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; Section 2.58, Revenue Regulations No. 2-98, as amended.

> **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." *(Emphasis added)*

It is well settled that the two-year prescriptive period for claiming a refund of overpaid income tax/CWTs commences to run on the date of filing of the Final Adjustment Return[46] (or Annual ITR). It is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[47]

The present claim pertains to taxable year 2016 for which petitioner filed its Annual ITR on April 12, 2017. Counting from this date, petitioner had until April 12, 2019, within which to file a claim for refund of its excess CWTs, both in the administrative and judicial levels. Thus, petitioner timely filed with the BIR its administrative claim for refund on January 29, 2018,[48] and its judicial claim for refund, through the present *Petition for Review*, on April 11, 2019.[49]

Moreover, the *second* and *third* requisites are stated under Section 2.58.3(B) of Revenue Regulations (RR) No. 2-98, as amended, which reads:

> "Sec. 2.58.3. *Claim for tax credit or refund.* —
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the**

[46] *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, May 29, 1995.
[47] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.
[48] Exhibit "P-12", Docket – Vol. I, pp. 464 to 471.
[49] Docket – Vol. I, pp. 10 to 22.

withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. *(Emphasis added)*

To prove the fact of withholding of the subject claim, petitioner submitted various *Certificates of Creditable Tax Withheld at Source* (BIR Form No. 2307),[50] duly issued by its various withholding agents covering the subject period, as well as the *Schedule of Creditable Taxes Withheld* for 2016,[51] reflecting CWTs in the total amount of ₱9,372,222.26, with related income payments amounting to ₱410,111,657.56.

Upon verification, however, although supported by withholding tax certificates, the Court finds that the CWTs in the total amount of ₱749,000.49, should be disallowed from petitioner's claim for the reasons hereunder stated, to wit:

Exhibit	Payor	Income Payment	Tax Withheld
Supporting Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307) were not signed by the payor			
"P-19-52"	BenguetCorp Nickel Mines Inc.	₱ 9,738,031.51	₱ 194,760.63
"P-19-63"	BenguetCorp Nickel Mines Inc.	7,563,957.13	151,279.14
"P-19-66	BenguetCorp Nickel Mines Inc.	7,613,529.38	152,270.59
"P-19-68"	BenguetCorp Nickel Mines Inc.	2,030,719.81	40,614.40
"P-19-71"	BenguetCorp Nickel Mines Inc.	2,667,857.14	53,357.14
"P-19-90"	BenguetCorp Nickel Mines Inc.	462,018.73	9,240.37
"P-19-124"	BenguetCorp Nickel Mines Inc.	223,214.29	4,464.29
"P-19-126"	BenguetCorp Nickel Mines Inc.	5,603,280.44	112,065.61
"P-19-133"	Dominus Construction & Services Corporation	325,915.18	3,259.16
"P-19-134"	Dominus Construction & Services Corporation	588,750.00	5,887.50
"P-19-135"	Dominus Construction & Services Corporation	736,504.46	7,365.04
"P-19-136"	Dominus Construction & Services Corporation	420,357.14	4,203.57
"P-19-137"	Dominus Construction & Services Corporation	328,794.64	3,287.95
	Subtotal	***₱38,302,929.85***	***₱ 742,055.39***
Supporting Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307) were not signed by the payor and with incorrect TIN of the payee indicated in the certificate.			
"P-19-113"	BenguetCorp Nickel Mines Inc.	₱ 347,255.21	₱ 6,945.10
	Subtotal	***₱ 347,255.21***	***₱ 6,945.10***

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[50] Exhibits "P-19-1" to "P-19-137".
[51] Exhibit "P-18".

		TOTAL	**₱38,650,185.06**	**₱ 749,000.49**

Correspondingly, petitioner was able to satisfy the *second* requisite, but only to the extent of the said duly substantiated CWTs in the amount of ₱8,623,221.77 (₱9,372,222.26 less ₱749,000.49).

As regards the *third requisite*, to prove that the income payments related to the claimed CWTs formed part of petitioner's declared income per ITR, petitioner presented its *Statements of Account* (SOAs),[52] *Sales Invoices* (SIs),[53], *Debit Memos* (DMs),[54] *Journal Vouchers* (JVs),[55] *General Ledger* (GL),[56] *Monthly Trial Balance* (MTB),[57] and *Monthly Revenue Summary* (MRS),[58] for taxable years 2013 to 2016. Likewise, petitioner submitted its *Cash Receipts Book* (CRB),[59] *Summary of Accounts Receivable Adjustments* (SARA),[60] and *Monthly Summary of Fuel Withdrawal* (SFW),[61] only for taxable year 2016.

According to the Court-commissioned ICPA, Ms. Madonna Mia S. Dayego of M. F. Padernal and Co., the related income pertaining to trucking services, including rentals of equipment and revenue from trading from which the CWTs being claimed for refund were withheld, were reported as part of the petitioner's gross income subject to income tax in taxable year 2016.[62]

As part of its verification, the ICPA traced the payor's name and amount of income payments totaling ₱410,111,656.90, with corresponding CWTs of ₱9,372,222.26[63], against the customer's name and the amount of income reflected in the CRB for 2016, SARA for 2016, SOAs, SIs and DMs for taxable years 2013 to 2016. The result of such verification is summarized as follows:[64] *gr*

[52] Exhibits "P-22-1" to "P-22-220".
[53] Exhibits "P-22-221" to "P-22-243".
[54] Exhibits "P-22-244" to "P-22-247".
[55] Exhibits "P-36-1" to "P-36-142", "P-37-1" to "P-37-110", "P-38-1" to "P-38-123", "P-39-1" to "P-39-96", and "P-40-1" to "P-40-10"
[56] Exhibits "P-32-1" to "P-32-3", "P-33-1" to "P-33-3", "P-34-1" to "P-34-3", and "P-35-1" to "P-35-5".
[57] Exhibits "P-32", "P-33", "P-34", and "P-35".
[58] Exhibits "P-23-1-1" to "P-23-1-12; "P-23-2-1 to P-23-2-12"; "P-23-3-1" to "P-23-3-12"; "P-23-4-1" to "P-23-4-12"; "P-23-5-1" to "P-23-5-12"; "P-23-6-1" to "P-23-6-12"; "P-23-7-1" to "P-23-7-12"; "P-23-8-1" to "P-23-8-12".
[59] Exhibits "P-22-249."
[60] Exhibit "P-22-248.
[61] Exhibits "P-30-1" to "P-30-12".
[62] Exhibit "P-15", No. 7, p. 7 of 32.
[63] Exhibit "P-19".
[64] Exhibit "P-15", Table 8, p. 11 of 32.

Revenues from Summary of CWT Traced to CRB, SOA, SI, DM and SARA

Exhibit No.	**Particulars**	**Amount of Income Payments**	**Equivalent Tax Withheld**
"P-19"/ "P-22-249"	Per Summary of Creditable Taxes Withheld supported by original Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by payor in the petitioner's name and per CRB for TY 2016	**₱410,111,656.90**	**₱9,372,222.26**
Revenue from Trucking Services			
"P-22-1" to "P-22-220"	Traced to SOA		
	Taxable year 2013	₱ 125,860.71	₱ 2,570.79
	Taxable year 2014	25,717,388.24	1,285,869.41
	Taxable year 2015	110,960,097.73	2,386,242.27
"P-22-248"	Taxable year 2016	*278,646,662.51*	*5,823,332.33*
	SOA adjustments per SARA, net of VAT	*(17,318,267.99)*	*(346,365.36)*
	Overstatement of income payments per SOA compared to BIR Form No. 2307	*(446,428.57)*	*(8,928.57)*
		260,881,965.95	5,468,038.40
Total amount traced to SOAs		***₱397,685,312.63***	***₱9,142,720.87***
Revenue from Trading			
"P-22-221" to "P-22-243"	Traced to SIs		
	Taxable year 2016	₱ 2,062,568.66	₱ 27,933.55
	Overstatement of income payments per SI compared to BIR Form No. 2307	(5,507.14)	(55.07)
Total amount traced to SIs		***₱ 2,057,061.52***	***₱ 27,878.48***
"P-22-244" to "P-22-247"	Traced to DMs		
	Taxable year 2015	₱ 977,232.15	₱ 19,544.65
	Taxable year 2016	541,250.00	10,825.00
Total amount traced to DMs		***₱ 1,518,482.15***	***₱ 30,369.65***
Rounding off		***0.05***	***(0.03)***
Total amount traced to SOAs/SIs/DMs		**₱401,260,856.35**	**₱9,200,968.97**
"P-22"	**Unsupported by SOAs/SIs/DMs**	**₱ 8,850,800.55**	**₱ 171,253.29**

As ascertained by the ICPA, the resulting difference of ₱171,253.29, as shown in the above table, represents tax withheld per BIR Form No. 2307, for which the corresponding SOAs/SIs/DMs were not presented. Such being the case, there was no basis for tracing the recording in the books of the related income payments of ₱8,850,800.55. Hence, this will require a downward adjustment to petitioner's claim in the amount of ₱171,253.29.[65]

However, it must be noted that out of the difference of ₱171,253.29, the CWTs in the amount of ₱24,003.22[66] already

[65] Exhibit "P-15", Par. c4, p. 12 of 32.

[66]

	Exhibit	**Income Payment**	**CWT**
Dominus Construction & Services Corporation	"P-19-133"	₱ 325,915.18	₱ 3,259.16
	"P-19-134"	588,750.00	5,887.50
	"P-19-135"	736,504.46	7,365.04
	"P-19-136"	420,357.14	4,203.57

formed part of the disallowed CWTs in the total amount of ₱749,000.49, as discussed under the *second requisite*.

Moreover, the income payments per SOAs, SIs and DMs were traced by the ICPA to the petitioner-prepared MRS for the taxable years 2013 to 2016. The results of the comparison and tracing are summarized as follows:[67]

Revenue from Trucking Services – SOAs Traced to MRS

Per SOAs (Exhibit No. P-22, see Table above)			Per MRS – Related to the Petitioner's Claim					Difference	
Year	**Amount Of Income Payment**	**Equivalent Tax Withheld**	**Exhibit No.**	**Year**	**Account Title**	**Amount of Income Payment**	**Equivalent Tax Withheld**	**Amount of Income Payment**	**Equivalent Tax Withheld**
2013	₱ 125,860.71	₱ 2,570.79	"P-24"	2013	Freight-General Cargo / Revenue-Tacloban	₱ 123,700.00	₱ 2,474.00	₱ 2,160.71	₱ 96.79
			"P-25"	2014	Revenue from SCNP-BNMI	25,714,756.32	1,285,737.81		
					Rounding-off	(0.02)	-		
2014	25,717,388.24	1,285,869.41				25,714,756.30	1,285,737.81	2,631.94	131.60
			"P-26"	2015	Revenue from SCNP-BNMI	110,777,412.64	2,382,588.64		
			"P-27"	2015	Freight-General Cargo / Revenue-Tacloban	94,900.00	1,898.00		
					Rounding-off	(2.78)	(0.13)		
2015	110,960,097.73	2,386,242.27				110,872,309.86	2,384,486.51	87,787.87	1,755.76
			"P-28"	2016	Revenue from SCNP-BNMI	276,957,721.09	5,789,553.43		
			"P-29"	2016	Freight-General Cargo / Revenue-Tacloban	1,211,220.00	24,224.40		
					Rounding-off	2.69	0.13		
2016	278,646,662.51	5,823,332.33				278,168,943.78	5,813,777.96	477,718.73	9,554.37
	₱415,450,009.19	**₱9,498,014.80**				**₱414,879,709.94**	**₱9,486,476.28**	**₱570,299.25**	**₱11,538.52**

Revenue from Trading – SIs and DMs Traced to SFW

Per SIs and DMs (Exhibit No. P-22, see Table above)			Per SFW – Related to the Petitioner's Claim					Difference	
Year	**Amount Of Income Payment**	**Equivalent Tax Withheld**	**Exhibit No.**	**Year**	**Account Title**	**Amount of Income Payment**	**Equivalent Tax Withheld**	**Amount of Income Payment**	**Equivalent Tax Withheld**
SIs									
			"P-31"	2016	Revenue from Trading	₱2,031,882.92	₱27,626.70		
					Rounding-off	0.02	-		
2016	₱ 2,062,568.66	₱27,933.55				₱2,031,882.94	₱27,626.70	₱ 30,685.72	₱ 306.85
DMs									
2015	₱ 977,232.15	₱19,544.65	-	-		-	-	₱ 977,232.15	₱ 19,544.65
2016	541,250.00	10,825.00	-	-		-	-	541,250.00	10,825.00
	₱ 1,518,482.15	₱30,369.65	-	-		-	-	₱ 1,518,482.15	₱ 30,369.65

	"P-19-137"	328,794.64	3,287.95
	Total	**₱2,400,321.42**	**₱24,003.22**

[67] Exhibit "P-15", Tables 9 and 10, p. 13 of 32.

Revenue from Trucking Services – SOAs Traced to MRS										
Per SOAs (Exhibit No. P-22, see Table above)			**Per MRS – Related to the Petitioner's Claim**						**Difference**	
Year	**Amount Of Income Payment**	**Equivalent Tax Withheld**	**Exhibit No.**	**Year**	**Account Title**	**Amount of Income Payment**	**Equivalent Tax Withheld**		**Amount of Income Payment**	**Equivalent Tax Withheld**
	₱3,581,050.81	**₱58,303.20**				**₱2,031,882.94**	**₱27,626.70**		**₱1,549,167.87**	**₱30,676.50**

The total difference in the income payments amounting to ₱2,119,467.12,[68] with corresponding tax withheld of ₱42,215.02,[69] pertained to revenue from trucking services per SOA[70] and revenue from trading per SIs and DMs[71] which were not traced to the petitioner-prepared MRS and SFW, respectively, due to the absence of supporting details/breakdowns to match the information in the MRS and SFW. As such, this requires a further downward adjustment of ₱42,215.02 to the petitioner's claim.[72]

Furthermore, the total revenue from trucking services per petitioner-prepared MRS was then traced to the total revenue recorded per JVs[73] and Year-end Client's Adjusting Entries[74] posted in the GLs for taxable years 2013 to 2016[75], and summarized in the MTB for the same taxable years[76] under Revenue from SCNP-BNMI and Freight-General Cargo/Revenue-Tacloban. Moreover, the total revenue from trading per petitioner-prepared SFW was traced to the total revenue per JVs[77] posted in GL for taxable year 2016[78] and summarized in MTB for taxable years 2016[79]. The results of the foregoing procedures are summarized as follows:[80]

Comparison of Total Revenue from Trucking Services per MRS, JV and GL/MTB									
	Amount of Income Payment							**Rounding-off Difference**	
	Per MRS				**Exhibit No.**	**Per JVs (d)**	**Per GL/MTB (e)**		
Particulars	**Exhibit No.**	**Related to the Petitioner's Claim (a)**	**Other Transactions (b)**	**Total (c) = (a) + (b)**				**MRS vs. JVs (c) – (d)**	**JV vs. GL/MTB (d) – (e)**
Taxable year 2013									
Revenue from SCNP-BNMI	"P-23-1"	₱ –	₱760,564,224.15	₱760,564,224.15		₱760,564,226.99	₱760,564,226.60	(₱2.84)	₱0.39
Freight – General Cargo						11,751,041.13	11,878,041.13		

[68] ₱570,299.25 (from Trucking Services) plus ₱1,549,167.87 (from Trading).
[69] ₱11,538.52 (from Trucking Services) plus ₱30,676.50 (from Trading).
[70] Income payments of ₱570,299.25 and CWT of ₱11,538.52.
[71] Income payments of ₱1,549,167.87 and CWT of ₱30,676.50.
[72] Exhibit "P-15", p. 14 of 32.
[73] Exhibits "P-36-1" to "P-36-142", "P-37-1" to "P-37-110", "P-38-1" to "P-38-123", and "P-39-1" to "P-39-96".
[74] Exhibit "P-38-124".
[75] Exhibits "P-32-1" to "P-32-3", "P-33-1" to "P-33-3", "P-34-1" to "P-34-3", and "P-35-1" to "P-35-4".
[76] Exhibits "P-32", "P-33", "P-34", and "P-35".
[77] Exhibits "P-40-1" to "P-40-10".
[78] Exhibit "P-35-5".
[79] Exhibit "P-35".
[80] Exhibit "P-15", Tables 11 and 12, pp. 16 to 17 of 32.

Comparison of Total Revenue from Trucking Services per MRS, JV and GL/MTB

Particulars	Amount of Income Payment							Rounding-off Difference	
	Per MRS				Exhibit No.	Per JVs (d)	Per GL/MTB (e)		
	Exhibit No.	Related to the Petitioner's Claim (a)	Other Transactions (b)	Total (c) = (a) + (b)				MRS vs. JVs (c) – (d)	JV vs. GL/MTB (d) – (e)
Revenue – Tacloban						1,497,500.00	1,370,500.00		
	"P-23-2"/ "P-24-1"	123,700.00	13,124,841.13	13,248,541.13		13,248,541.13	13,248,541.13	–	–
Total		₱123,700.00	₱773,689,065.28	₱773,812,765.28	"P-36"/ "P-32"	₱773,812,768.12	₱773,812,767.73	(₱2.84)	(₱0.39)
Taxable year 2014									
Revenue from SCNP-BNMI	"P-23-3"/ "P-25-1"	₱25,714,756.32	₱560,217,599.04	₱585,932,355.36		₱585,932,353.97	₱585,932,353.97	₱1.39	₱ –
Freight – General Cargo						9,998,099.07	9,998,099.07		
Revenue – Tacloban						20,804,496.98	20,804,496.98		
	"P-23-4"	–	30,802,596.07	30,802,596.07		30,802,596.05	30,802,596.05	0.02	–
Total		₱25,714,756.32	₱591,020,195.11	₱616,734,951.43	"P-37"/ "P-33"	₱616,734,950.02	₱616,734,950.02	₱1.41	₱ –
Taxable year 2015									
Revenue from SCNP-BNMI	"P-23-5"/ "P-26-1"	₱110,777,412.64	₱656,402,135.93	₱767,179,548.57		₱767,179,548.54	₱767,179,548.54	₱0.03	₱ –
Freight – General Cargo						4,229,242.86	4,229,242.86		
Revenue – Tacloban						16,075,540.31	16,075,540.31		
	"P-23-6"/ "P-27-1"	94,900.00	20,209,883.19	20,304,783.19		20,304,783.17	20,304,783.17	0.02	–
Total		₱110,872,312.64	₱676,612,019.12	₱787,484,331.76	"P-38"/ "P-34"	₱787,484,331.71	₱787,484,331.71	₱0.05	₱ –
Taxable year 2016									
Revenue from SCNP-BNMI	"P-23-7"/ "P-28-1"	₱276,957,721.09	₱91,129,771.89	₱368,087,492.98		₱368,087,493.34	₱368,087,493.34	(₱0.36)	₱ –
Freight – General Cargo						2,343,341.43	2,343,341.43		
Revenue – Tacloban						1,157,449.15	1,157,449.15		
Revenue - Hauling Pamp						4,419,830.28	4,419,830.28		
	"P-23-8"/"P-29-1"	1,211,220.00	6,709,400.89	7,920,620.89		7,920,620.86	7,920,620.86	0.03	–
Total – TY 2016		₱278,168,941.09	₱97,839,172.78	₱376,008,113.87	"P-39"/ "P-35"	₱376,008,114.20	₱376,008,114.20	(₱0.33)	

Comparison of Revenue from Trading per SFW, JV and GL/MTB for Taxable Year 2016

Particulars	Amount of Income Payment				Rounding-off Difference
	Per SFW	Exhibit	Per JVs	Per GL/MTB	

	Exhibit No.	Related to the Petitioner's Claim [Table 11] (a)	Other Transactions (b)	Total (c) = (a) + (b)	No.	(d)	(e)	Per SFW vs. JVs (c) – (d)	JV vs. GL/MTB (d) – (e)
Taxable year 2016									
Revenue from Trading	"P-30"/ "P-31-1"	₱2,031,882.92	₱23,400,546.76	₱25,432,429.68	"P-40"/ "P-35-5"	₱25,432,429.71	₱25,432,429.71	(₱0.03)	₱ -

The amounts of revenue from trucking services for the taxable years 2013 to 2016, and revenue from trading for taxable year 2016 tally with the revenue from trucking services and sale of goods accounts reflected in the petitioner-prepared *Schedule of Computation of Taxable Income* for taxable years 2013 to 2016,[81] except for rounding-off differences. Also, the amounts of Gross Revenue reflected in the taxable income column of the petitioner-prepared *Schedule of Computation of Taxable Income* for the taxable years 2013 to 2016 tally with the total amounts of Sales/Revenues/Fees, and Non-Operating and Other Income reflected in the Annual ITRs for taxable years 2013 to 2016.[82]

In view of the foregoing, petitioner has sufficiently proved that the income payments related to the CWTs of ₱9,158,753.95 formed part of the gross income declared in its Annual ITRs for the taxable years 2013 to 2016, determined as follows:

Particulars	Amount of Income Payment	Tax Withheld
Amount per Summary of Creditable Taxes Withheld[83]	₱ 410,111,656.90	₱ 9,372,222.26
Less: Downward Adjustments		
SOAs/SIs/DMs not presented for review	8,850,800.55	171,253.29
Not traced to MRS	570,299.25	11,538.52
Not traced to MSFW	1,549,167.87	30,676.50
Total downward adjustments	*10,970,267.67*	*213,468.31*
Total	**₱ 399,141,389.23**	**₱ 9,158,753.95**

Petitioner then is considered to have complied with the *third requisite*, relative to the amount of ₱9,158,753.95.

In sum, on the basis of its evidence, petitioner was able to prove an unutilized excess CWTs for taxable year 2016 in the amount of ₱8,250,300.42, computed as follows:

[81] Exhibits "P-41" to "P-44".
[82] Exhibits "P-16-1" to "P-16-4".
[83] Exhibit "P-19".

Particulars	Tax Withheld
Creditable Taxes Withheld in Taxable Year 2016	₱ 9,372,223.00[84]
Less: Income Tax Due (MCIT)	183,457.00
Amount of Claim per *Petition for Review*	₱ 9,188,766.00
Less: Disallowed CWTs as per this Court's verification of the supporting BIR Form No. 2307 (as discussed under the *second requisite*)	749,000.49
Less: Downward Adjustments	
SOAs/SIs/DMs not presented for review (as adjusted)	147,250.07[85]
Not traced to MRS	11,538.52
Not traced to SFW	30,676.50
Total downward adjustments	*189,465.09*
Valid CWTs	**₱8,250,300.42**

However, petitioner is <u>not</u> entitled to the said unutilized excess CWTs for taxable year 2016, in view of the assessments made by respondent against it, for the same taxable year.

The issue of petitioner's claim for tax refund is intertwined with the issue of the proper taxes that are due from petitioner. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund becomes questionable. In that case, the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid.[86]

In this case, petitioner's ITR for taxable year 2016 was put into question when respondent presented the issued FAN/FLD No. 38191/ 22947 dated September 16, 2019 against petitioner for taxable year 2016. The said notices were received by the latter on October 8, 2019.[87] In the said FAN/FLD, the BIR assessed petitioner with, *inter alia*, deficiency income tax amounting to ₱190,925,996.45, including surcharges and interests,[88] computed as follows:

Total Income Tax Due	₱113,031,576.10
Less: Tax Credits and Payments	

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[84] Actual CWTs per Summary of Creditable Taxes Withheld in TY 2016 is ₱9,372,222.26. Rounding-off difference of ₱0.74.
[85] ₱171,253.29 less ₱24,003.22.
[86] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.
[87] Exhibits "R-8" and "R-9", Docket – Vol. II, pp. 593 to 605.
[88] Exhibits "R-8" and "R-9", Docket – Vol. II, at pp. 593 and 601, respectively.

Prior year's excess credits	₱24,520,974.00	
CWT 2307	9,372,223.00	
Total	₱33,893,197.00	
Less: carried over to next period	24,520,974.00	9,372,223.00
Basic Deficiency Income Tax		₱103,659,353.10
Add: 50% Surcharge	₱51,829,676.55	
20% Interest from 04/16/2017 to 12/31/2017	14,705,096.18	
20% Interest from 01/01/2018 to 08/31/2019	20,731,870.62	87,266,643.35
Total Deficiency Income Tax		**₱190,925,996.45**

However, petitioner did not refute the said assessments, including the foregoing deficiency income tax assessment amounting to ₱190,925,996.45.

It is settled that all presumptions are in favor of the correctness of tax assessments. The good faith of the tax assessors and the validity of their actions are thus presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. Hence, it is incumbent upon the taxpayer to credibly show that the assessment was erroneous in order to relieve himself from the liability it imposes.[89]

It is noteworthy that petitioner did not object to the admissibility of FAN/FLD No. 38191/ 22947 dated September 16, 2019 when these documents were formally offered by respondent before this Court. In fact, petitioner did not even comment on respondent's *Formal Offer of Exhibits*.[90] Hence, petitioner is deemed to have admitted the validity of these documents. Petitioner's failure to object to the offered evidence renders it admissible, and the Court cannot, on its own, disregard such evidence.[91]

In view of the said presumption and considering that petitioner is deemed to have admitted the validity of the FAN/FLD No. 38191/ 22947 dated September 16, 2019 issued against petitioner for taxable year 2016, petitioner is required to pay its tax obligations by virtue thereof, pursuant to Section 6(A) of the NIRC of 1997, which states that: 9r

[89] *Commissioner of Internal Revenue vs. Secretary of Justice, et al.*, G.R. No. 177387, November 9, 2016.
[90] Records Verification dated June 4, 20202019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 608.
[91] Refer to *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

"SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

xxx xxx xxx

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

xxx xxx xxx." *(Emphasis added)*

Since the deficiency income tax assessed by the BIR for taxable year 2016 amounted to ₱190,925,996.45, the same exceeds the determined unutilized excess CWTs for taxable year 2016 in the amount of ₱8,250,300.42. Correspondingly, petitioner is not entitled to the latter amount.

WHEREFORE, premises considered, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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's Division.

JUANITO C. CASTAÑEDA, JR.
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