REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BETHLEHEM HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9789

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

DEC 03 2021 8:30 am

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DECISION

MANAHAN, J.:

This Petition for Review filed on March 23, 2018 by petitioner Bethlehem Holdings, Inc., prays that judgment be rendered ordering respondent Commissioner of Internal Revenue (CIR), to refund or issue a tax credit certificate (TCC) in favor of petitioner in the amount of Php8,004,578.00 representing alleged excess and unutilized creditable withholding taxes (CWTs) for calendar year (CY) 2015.

THE PARTIES

Petitioner Bethlehem Holdings, Inc. is a domestic corporation duly organized and existing under Philippine laws.[1] It is registered with the Bureau of Internal Revenue (BIR), under Tax Identification Number (TIN) 006-731-601-000, with registered address at 3F Globe Telecom Tower 1, Pioneer

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[1] Exhibit "P-1", Docket – Vol. II, pp. 638 and 651.

Highlands corner Madison Streets, Barangay Barangka, Ilaya, Mandaluyong City.[2]

Respondent CIR is the duly appointed head of the BIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

On March 7, 2018, petitioner filed with the BIR, an *Application for Tax Credits / Refunds* (BIR Form No. 1914),[3] and a letter dated March 1, 2018,[4] applying for the refund of its alleged unutilized CWTs for CY 2015, in the amount of ₱8,004,578.00.

Without waiting for the decision of the respondent on its application for tax credit /refund, petitioner filed a Petition for Review with this Court on March 23, 2018.[5] The case was initially raffled to this Court's Third Division.

Respondent filed his *Answer* to the Petition for Review on May 16, 2018. [6]

The Pre-Trial Conference was set and held on July 31, 2018.[7] Prior thereto, respondent's Pre-Trial Brief was filed on July 26, 2018;[8] while petitioner's Pre-Trial Brief was submitted on July 27, 2018.[9]

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[2] Exhibit "P-2", Docket – Vol. II, p. 652.
[3] Exhibit "P-8-a", Docket – Vol. II, p. 732.
[4] Exhibit "P-8", Docket – Vol. II, p. 731.
[5] Docket, pp. 10 to 20.
[6] Docket, pp. 70 to 75.
[7] *Notice of Pre-trial Conference* dated May 21, 2018, Docket – Vol. I, pp. 112 to 113; Minutes of the hearing held on, and Order dated, July 31, 2018, Docket – Vol. I, pp. 477 to 479.
[8] Docket – Vol. I, pp. 123 to 125.
[9] Docket – Vol. I, pp. 462 to 475.

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On August 13, 2018, respondent transmitted the BIR Records for this case, consisting of three hundred forty-six (346) pages in one (1) folder.[10]

On August 15, 2018, the parties submitted their Joint Stipulation of Facts and Issues (JSFI).[11] Subsequently, the Pre-Trial Order dated September 10, 2018 was issued,[12] reiterating, *inter alia*, the facts and issue stipulated in the said JSFI, and deeming the termination of the Pre-Trial Conference.

Due to the reorganization of the Court's three Divisions, the Court issued an Order dated September 25, 2018 transferring the instant case to the First Division.[13]

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Mr. James Kenneth Venta,[14] petitioner's Comptroller and Administrative Head; and (2) Mr. Glenn Ian D. Villanueva,[15] the Court-commissioned Independent Certified Public Accountant (ICPA).[16]

The report of the said ICPA was submitted to the Court on February 20, 2019.[17]

Petitioner filed its Formal Offer of Evidence (With Motion To Set Commissioner's Hearing) on June 14, 2019.[18] Respondent, however, failed file his comment thereon.[19] In the Resolution dated September 13, 2019,[20] the Court granted petitioner's Motion To Set Commissioner's Hearing, and set the

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[10] Respondent's *Compliance with Explanation* dated August 13, 2018, Docket – Vol. I, pp. 484 to 485.
[11] Docket – Vol. I, pp. 486 to 491.
[12] Docket – Vol. I, pp. 500 to 505.
[13] Docket – Vol. 1, p. 506.
[14] Exhibit "P-154" (*Sworn Statement of Mr. James Kenneth Venta* dated July 24, 2018), Docket – Vol. I, pp. 131 to 148; Minutes of the hearing held on, and Order dated, March 12, 2019, Docket – Vol. I, pp. 593 to 595.
[15] Exhibit "P-154" (*Sworn Statement of Mr. Glenn Ian D. Villanueva* dated December 18, 2018), Docket – Vol. I, pp. 600 to 609; Minutes of the hearing held on, and Order dated, May 30, 2019, Docket – Vol. I, pp. 611 to 614.
[16] *Oath of Commission* dated January 22, 2019, Docket – Vol. I, p. 549; Minutes of the hearing held on, and Order dated, January 22, 2019, Docket – Vol. I, pp. 546 to 548, and 550 to 551, respectively.
[17] Exhibit "P-138", Docket – Vol. I, pp. 564 to 577.
[18] Docket – Vol. II, pp. 618 to 636.
[19] Records Verifications dated July 18, 2019 issued by this Court's Judicial Records Division, Docket – Vol. II, p. 861.
[20] Docket – Vol. II, pp. 871 to 872.

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commissioner's hearing on October 17, 2019, and held in abeyance the resolution of petitioner's Formal Offer of Evidence.

After the conduct of the said commissioner's hearing, petitioner filed its Supplemental Formal Offer of Evidence on October 22, 2019.[21] Respondent again failed to submit his comment thereon.[22]

In the Resolution dated February 4, 2020,[23] the Court admitted petitioner's exhibits, *except* for Exhibits "P-24" to "P-25", for failure to submit the originals thereof for comparison.

Thereafter, on October 19, 2020, respondent filed an Urgent Motion to Cancel Respondent's Presentation of Evidence due to the lack of witnesses.[24] Thus, in the Order dated October 20, 2020,[25] the Court granted respondent's Urgent Motion, and ordered the parties to file their respective memoranda.

On November 19, 2020, petitioner filed its *Memorandum*.[26] Respondent, on the other hand, failed to file his memorandum.[27]

This case was submitted for decision on December 9, 2020.[28]

THE ISSUE

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

> "Whether or not petitioner is entitled to its claim for refund of excess and unutilized CWT for CY 2015 in the amount of Php8,004,578.00." [29]

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[21] Docket – Vol. II, pp. 878 to 880.
[22] Records Verifications dated November 5, 2019 issued by this Court's Judicial Records Division, Docket – Vol. II, p. 892.
[23] Docket – Vol. II, pp. 898 to 900.
[24] Docket – Vol. II, pp. 909 to 910.
[25] Docket – Vol. II, pp. 912 to 913.
[26] Docket – Vol. II, pp. 913 to 934.
[27] Records Verification dated November 25, 2020 issued by this Court's Judicial Records Division, Docket – Vol. II, p. 936.
[28] Docket – Vol. II, p. 938.
[29] Issue, JSFI, Docket – Vol. I, pp. 486 to 487.

Petitioner's arguments:

Petitioner submits that it complied with the applicable prescriptive periods for filing its administrative and judicial clams for refund of excess CWT for CY 2015 by narrating that it filed its 2015 Annual Income Tax Return (ITR) on March 23, 2016 via the electronic Filing and Payment System (eFPS) and subsequently amended the same on September 29, 2017, also via eFPS. Petitioner then reveals that on March 7, 2018, it filed an administrative claim for refund of its excess CWTs for CY 2015 with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 41. This was followed by the filing of a Petition for Review with the Court on March 23, 2018.

On the legal bases of its claim for refund, petitioner asserts that it is entitled to the claim for refund based on the clear wordings of Section 58 (D) and Section 76 of the 1997 National Internal Revenue Code (NIRC), as amended, which provide, to wit:

> "Section 58. *Returns and Payment of Taxes Withheld at Source.*
>
> xxx xxx xxx
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> (D) Income Recipient. – Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of the recipient, but the excess of the amount of the tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204, if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56."

> "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
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> (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."

It also maintains that sufficient documents were submitted to prove that it complied with the requisites well-established by jurisprudence in claims for refund of this nature, to wit:

a) That the administrative and judicial claims for refund were filed within the two-year prescriptive period provided under Sections 204 (C) and 229 of the 1997 NIRC, as amended;
b) That the income upon which the CWT was withheld was included as part of the gross income declared in its ITR;
c) The fact of withholding is established by copies of statements duly issued by the withholding agents, showing the amounts and the amount of tax withheld therefrom.

Respondent's counter-arguments:

Respondent primarily contends that the claim for refund of petitioner must fail for its failure to exhaust administrative remedies because the BIR was not given an opportunity to examine the same to enable the office to render a sound decision on the matter. He alleges that petitioner has yet to submit the documents required by the BIR pursuant to Revenue Memorandum Order (RMO) No. 19-2015 which mandates a taxpayer requesting for refund to be subjected to audit. Respondent alleges that the petitioner was in bad faith when it filed the administrative claim for refund two weeks before its right to claim the same prescribes, hence prohibiting the BIR to study the matter further and if necessary, issue an assessment.

Further, respondent alleges that petitioner's audited financial statements (AFS) for 2015 do not reveal that it has excess CWTs or even accumulated CWTs in 2015 that may be earmarked for refund. Assuming without admitting that the petitioner has indeed excess CWTs for 2015, respondent failed to adhere to the "irrevocability doctrine" which dictates that if a taxpayer claiming a refund had already carried over its excess CWTs for such taxable year to the succeeding year, it is barred from claiming said excess as a refund.

Respondent also contravenes the allegation of petitioner that it carried over the *balance* of its prior year's excess credits of CY 2015 to the succeeding year because a perusal of petitioner's annexes attached to its Petition reveals that the amount carried over does not equate to the amount stated in its Final Adjustment Return. Respondent avers that the correct amount that should have been carried over is Php85,299,780.00 which includes the amount that the petitioner is claiming for refund since said amount was not earmarked for refund in the instant case.

Lastly, respondent disagrees with petitioner that it has sufficiently complied with the requirements for claiming excess/unutilized CWTs and concludes that the claimant has the burden of proof to establish the factual basis of its claim because tax refunds, like tax exemptions, are strictly construed against the taxpayer, citing the case of *Paseo Realty and Development Corporation vs. Court of Appeals.*

THE COURT'S RULING

The instant *Petition for Review* has merit.

It has been well-established by jurisprudence[30] that the requisites for claiming a refund of excess CWTs are as follows:

(1) the claim for refund was filed within the two-year prescriptive period;

(2) 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 of tax withheld therefrom; and

[30] *CIR vs. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019.

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(3) the income upon which the taxes were withheld was included in the ITR of the recipient as part of the gross income.[31]

Thus, it behooves petitioner to show compliance with each of the said requisites.

Aside from the above requisites, petitioner must also show that it has not carried-over its excess CWTs for 2015 to the succeeding taxable years or periods, in accordance with Section 76 of the 1997 NIRC, as amended.

For an orderly disposition of the instant case, this Court shall first determine whether petitioner has shown by competent evidence, its compliance with the above requisites.

Section 76 of the NIRC of 1997 states as follows:

> "SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
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> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.**" (emphasis supplied)

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[31] *Commissioner of Internal Revenue vs. Cebu Holdings, Inc.*, G.R. No. 189792, June 20, 2018.

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Based on the foregoing provision, a corporation that is entitled to a tax refund or a tax credit for excess payment of quarterly income taxes may carry over and credit the excess income taxes paid in a given taxable year against the estimated income tax liabilities of the succeeding quarters. Once chosen, the carry-over option shall be considered irrevocable for that taxable period, and no application for a tax refund or issuance of a tax credit certificate shall then be allowed.[32]

In the amended Annual ITR for CY 2015,[33] petitioner marked the option "To be refunded" for the overpayment of income tax. Based thereon, the income tax payable (/overpayment) of the latter is presented as follows:

Total Income Tax Due (Overpayment)	₱ 971,547.00
Less: Total Tax Credits/Payments	86,416,585.00
Net Tax Payable (Overpayment)	₱ 85,445,038.00
Add: Total Penalties	0
Total Amount Payable (Overpayment)	**₱ 85,445,038.00**

The said Total Tax Credits are broken down as follows:[34]

Prior Year's Excess Credits other than MCIT		₱ 78,412,007.00
Add: Creditable Taxes Withheld – CY 2015		
Creditable tax withheld for the first three quarters	₱6,250,562.00	
Creditable tax withheld per BIR Form 2307 for the fourth quarter	1,754,016.00	8,004,578.00
Total Tax Credits		**₱ 86,416,585.00**

Petitioner claims that its Minimum Corporate Income Tax (MCIT) due in the amount of ₱971,547.00[35] for CY 2015 was

[32] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637/162004, December 14, 2005.
[33] Exhibit "P-4", Docket – Vol. II, pp. 707 to 715.
[34] Exhibit "P-4" (Schedule 7), Docket – Vol. II, at p. 712.
[35] Exhibit "P-4" (Line 45), Docket – Vol. II, p. 708.

paid using a portion of its prior year's excess credits of ₱78,412,007.00. In such case, the latter amount shall be reduced to ₱77,440,460.00 to be carried-over to CY 2016. Upon verification of petitioner's Quarterly ITRs and Annual ITR for CY 2016,[36] the said amount of ₱77,440,460.00 remains intact and was carried-over to the said periods. Correspondingly, the amount of ₱8,004,578.00, representing petitioner's CWTs for CY 2015 which is the amount being claimed herein was not carried-over to the succeeding taxable year. Also, there is no indication that said amount of ₱8,004,578.00 was carried-over to CY 2017.[37]

Apropos, the unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.[38] As a corollary, unlike the remedy of refund or tax credit certificate, the option of carry-over under Section 76 is not subject to any prescriptive period.[39] In addition, to avoid confusion, the Supreme Court has properly explained the phrase *"for that taxable period"* in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands* [40] where the High Court held that the phrase merely identifies the excess income tax, subject of the option, by referring to the *"taxable period when it was acquired by the taxpayer."*[41]

Moreover, the law does not prevent a taxpayer who originally opted for a refund or tax credit certificate from shifting to the carry-over of its excess creditable taxes to the taxable quarters of the succeeding taxable years. However, in case the taxpayer decides to shift its option to carry-over, it may no longer revert to its original choice due to the irrevocability rule. As Section 76 unequivocally provides, once the option to carry-over has been made, it shall be irrevocable. Furthermore, the provision seems to suggest that there are no qualifications or

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[36] Exhibits "P-9", "P-10", "P-11", and "P-12-a", Docket – Vol. II, pp. 733 to 735, 736 to 738, 739 to 741, and 751 to 759, respectively.
[37] Exhibit "P-13", Docket – Vol. II, pp. 881 to 888.
[38] *Asiaworld Properties Philippine Corporation vs. Commissioner of Internal Revenue*, G.R. No. 171766, July 29, 2010; *Commissioner of Internal Revenue vs. The Philippine American Life and General Insurance Company*, G.R. No.175124, September 29, 2010.
[39] *University Physicians Services, Inc.-Management, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205955, March 7, 2018.
[40] G.R. No. 178490, July 7, 2009.
[41] *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012.

conditions attached to the rule on irrevocability.[42] To be sure, the irrevocability rule admits of no qualification or conditions.[43]

With the foregoing established jurisprudence, it is impliedly recognized that it is possible that a taxpayer would have, in a taxable year, not only its excess CWTs for such taxable year, but also its non-refundable carried over excess CWTs from the previous years that are not yet fully utilized. Thus, this Court disagrees with the theory of respondent that petitioner cannot compartmentalize the excess CWTs into partly carried over and partly refunded, and that the whole must either be refunded, or carried-over, alternatively, and not cumulatively. A contrary interpretation will transgress the irrevocability rule, wherein unutilized CWTs that were carried-over from the previous taxable year(s) may already be refunded in a subsequent taxable year; and a qualification or condition for such rule would then be provided. Clearly, such is *not* the intent of Section 76 of the 1997 NIRC, as amended.

With the foregoing disquisitions, the Court finds that petitioner has *not* carried-over its excess CWTs for 2015 in the amount of ₱8,004,578.00 to the succeeding taxable years or periods.

We shall then proceed to determine petitioner's compliance with the requisites for claiming a refund of excess CWTs.

To recall, the *first* requisite for claiming a refund of excess CWTs is that the claim for refund was filed within the two (2)-year prescriptive period pursuant to Sections 204(C) and 229 of the 1997 NIRC, as amended, quoted as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may-
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the

[42] *University Physicians Services, Inc.-Management, Inc. vs. Commissioner of Internal Revenue*, supra.
[43] *Id.*

> 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 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 supplied)

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[44] (or Annual ITR). This is so because 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.[45] In other words, it is only logical to reckon the two-year prescriptive

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[44] *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.

[45] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.

period from the time the Final Adjustment Return or the Annual ITR was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer paid an amount exceeding its annual income tax liability.[46]

In this case, petitioner filed its Annual ITR for CY 2015 on March 23, 2016[47] (which was later amended on September 29, 2017)[48]. Counting two (2) years from the filing of the original Final Adjustment Return or Annual ITR, petitioner had until March 23, 2018, within which to file both administrative and judicial claims for refund of its alleged unutilized/excess CWTs for CY 2015.

Considering that petitioner filed its administrative claim for refund with BIR on March 7, 2018,[49] while the instant judicial claim was filed on March 23, 2018,[50] both claims for refund of unutilized/excess CWTs were seasonably filed within the two-year prescriptive period.

Respondent, however, argues that assuming *arguendo* that petitioner has a right to claim for a tax refund, its claim for the same has yet to be subjected to administrative investigation and/or examination. He points out that petitioner filed the judicial claim for refund before he can render a decision on the petitioner's administrative claim.

Respondent's reasoning is specious.

Petitioner need not wait for the resolution on the administrative claim for refund before filing the judicial claim. In *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.,*[51] the Supreme Court ruled as follows:

> "Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify,

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[46] *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.
[47] Exhibit "P-3", Docket – Vol. II, pp. 653 to 663.
[48] Exhibit "P-4", Docket – Vol. II, pp. 707 to 715.
[49] Exhibits "P-8" and "P-8-a", Docket – Vol. II, pp. 731 to 732.
[50] Docket, pp. 10 to 20.
[51] G.R. No. 216130, August 3, 2016.

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> **Section 229 of the Tax Code** – [then Section 306 of the old Tax Code] – **however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed.** In *CBK Power Company, Ltd. v. CIR*,[52] the Court enunciated:
>
>> 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 (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."(emphasis supplied)
>
> In the case at bar, records show that both the administrative and judicial claims for refund of respondent for its erroneous withholding and remittance of FWT were indubitably filed within the two-year prescriptive period. Notably, **Section 229 of the Tax Code, as worded, only required that an administrative claim should first be filed. It bears stressing that respondent could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had respondent awaited the action of petitioner knowing fully well that the prescriptive period was about to lapse, it would have resultantly forfeited its right to seek a judicial review of its claim, thereby suffering irreparable damage.**" *(Emphases added)*

For as long as the administrative claim and the judicial claims were filed within the two-year prescriptive period, then there is exhaustion of administrative remedies.[53]Had petitioner waited for the resolution on its administrative claim even beyond the two-year prescriptive period, it could no longer validly seek judicial recourse after the expiration thereof.

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[52] G.R. Nos. 193383-84 & 193407-08, January 14, 2015.
[53] *CIR vs. Univation Motors Philippines, Inc.*, G.R. No. 231581, April 10, 2019.

Hence, the filing of the judicial claim on March 23, 2018 by petitioner is proper.

As regards the remaining requisites, the Court finds that petitioner has sufficiently proven compliance by means of competent evidence.

To reiterate, the *second* and *third* requisites for claiming a refund of excess CWTs are: (i) 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 of tax withheld therefrom, and (ii) that the income upon which the taxes were withheld was included in the ITR of the recipient as part of the gross income, respectively.

The said requisites are provided 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 withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**. (emphasis supplied)

Anent the *second* requisite, the Supreme Court (SC), in *Commissioner of Internal Revenue vs. Philippine National Bank*,[54] held as follows:

> "The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.

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

> In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals,*[55] 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:
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> xxx xxx xxx
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> 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
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> xxx xxx xxx
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> 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 false; or (3) it was not issued regularly."

Based on the afore-quoted SC ruling, it is undeniable that the fact of withholding may be established by presenting the pertinent certificates of creditable tax withheld at source complete with relevant details.

Again, a perusal of its Amended ITR for CY 2015[56] shows that petitioner had total tax credits of ₱86,416,585.00, which consisted of the following:

Prior Year's Excess Credits other than MCIT		₱ 78,412,007.00
Add: Creditable Taxes Withheld – CY 2015		
Creditable tax withheld for the first three quarters	₱6,250,562.00	

[55] 548 Phil. 32 (2007).
[56] Exhibit "P-4", Docket - Vol. II, pp. 707 to 714.

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Creditable tax withheld per BIR Form 2307 for the fourth quarter	1,754,016.00	8,004,578.00
Total Tax Credits		**₱ 86,416,585.00**

As already noted, the MCIT due in the amount of ₱971,547.00[57] for CY 2015 was paid using a portion of its prior year's excess credits of ₱78,412,007.00, thus, leaving petitioner's prior year's excess credits in the amount of ₱77,440,460.00, and the CWTs during the CY 2015 in the amount of ₱8,004,578.00, or a total of ₱85,445,038.00, which was unutilized as of December 31, 2015, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 78,412,007.00
Less: Tax Due (MCIT)	971,547.00
Balance of Prior Year's Excess Credits	₱ 77,440,460.00
Add: Creditable Taxes Withheld – CY 2015	8,004,578.00
Excess Creditable Withholding Taxes as of December 31, 2015	**₱ 85,445,038.00**

With the foregoing information, We shall first look into whether petitioner was able to prove the said amount of ₱78,412,007.00, representing its prior year's excess credits. Relative thereto, petitioner submitted various *Certificates of Creditable Taxes Withheld at Source* (CWT certificates) for the CYs 2009 to 2014 issued by its withholding agents,[58] as well as, the Schedules of Creditable Taxes Withheld for the CYs 2009 to 2014,[59] reflecting CWTs in total amount of ₱86,374,133.37.

Upon verification, the Court finds that, out of the CWTs from prior years, the amount of ₱7,256,880.10 shall be disallowed as the supporting CWT certificates bear the incorrect TIN of the petitioner, to wit:

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[57] Exhibit "P-4" (Line 45), Docket – Vol. II, p. 708.
[58] Exhibits "P-15" to "P-23", "P-26" to "P-118".
[59] Exhibit "P-138", Annex B-1 to B-6, Docket – Vol. II, pp. 582 to 587.

Exhibit	Payor	Indicated TIN of Petitioner	Tax Withheld
"P-32"	Broadcast Enterprises and Affiliated Media (Beam) Inc.	232-023-754-000	₱ 1,015,815.10
"P-36"	Altimax Broadcasting Co Inc.	232-023-754-000	6,241,065.00
	TOTAL		**₱ 7,256,880.10**

Upon further verification, it appears that the prior years' tax credits of petitioner amounted to ₱86,374,133.37; but the same shall be reduced by the amount of disallowance totalling ₱7,256,880.10 and its prior years' income tax liabilities in the total amount of ₱7,997,163.22. Thus, the substantiated prior years' excess tax credits of petitioner amounted only to ₱71,120,090.05, as determined below:

CWT for CY 2009 (Annex B-1 of Exhibit "P-138")		₱ 13,928,803.57
CWT for CY 2010 (Annex B-2 of Exhibit "P-138")		16,644,390.40
CWT for CY 2011 (Annex B-3 of Exhibit "P-138")		14,124,170.02
CWT for CY 2012 (Annex B-4 of Exhibit "P-138")		13,816,757.35
CWT for CY 2013 (Annex B-5 of Exhibit "P-138")		14,465,222.76
CWT for CY 2014 (Annex B-6 of Exhibit "P-138")		13,394,789.27
Total		**₱ 86,374,133.37**
Less: Disallowances		7,256,880.10
Valid CWTs for CY 2009 to 2014		₱ 79,117,253.27
Less: Income Taxes Due		
CY 2009[60]	₱ 0.00	
CY 2010[61]	0.00	

[60] Exhibit "P-134", Line 29, Docket – Vol. II, p. 855.
[61] Exhibit "P-133", Line 28, Docket – Vol. II, p. 852.

CY 2011[62]	2,209,777.00	
CY 2012[63]	2,120,567.22	
CY 2013[64]	1,860,538.00	
CY 2014[65]	1,806,281.00	7,997,163.22
Excess tax credits as of December 31, 2014		**₱ 71,120,090.05**

In any event, the substantiated prior year's excess tax credit of ₱71,120,090.05 is nonetheless sufficient to cover petitioner's tax liability for CY 2015 in the amount of ₱971,547.00.

As a corollary, since petitioner carried over only the amount of ₱77,440,461.00, as We have determined earlier, the CWTs for the CY 2015 in the amount of ₱8,004,578.00 may be the subject of a claim for refund or issuance of tax credit certificate.

Moreover, to prove the fact of withholding of the subject claim, petitioner submitted various CWT certificates duly issued by its various withholding agents covering CY 2015,[66] as well as the Schedule of Creditable Taxes Withheld for the subject period,[67] reflecting CWTs in the total amount of ₱8,004,577.61, with related income payments of ₱53,363,850.69.

Upon verification thereof, the CWT certificates covering the total amount of ₱8,004,577.61 are complete in their relevant details, such as the respective amount of income and the corresponding amount of tax withheld therefrom, as well as a statement that they were made under the penalties of perjury. There being no evidence that the said CWT certificates are not complete, or that they are false or were not issued regularly, the same CWT certificates establish the fact of withholding and thus, petitioner is deemed to have complied with the *second* requisite.

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[62] Exhibit "P-132", Line 32, Docket – Vol. II, p. 848.
[63] Exhibit "P-131", Line 32, Docket – Vol. II, p. 842.
[64] Exhibit "P-130", Line 44, Docket – Vol. II, p. 832.
[65] Exhibit "P-129", Line 44, Docket – Vol. II, p.823.
[66] Exhibits "P-119" to "P-126".
[67] Exhibit "P-138", Annex A, Docket – Vol. II, p.581.

As to the *third* requisite to the effect that the income items upon which taxes were withheld were included in its Annual ITR for CY 2015 as part of its gross income, petitioner presented its Billing Statements,[68] Official Receipts,[69] Sales Journal,[70] General Ledger (GL),[71] and Trial Balance (TB),[72] for CY 2015.

As ascertained by the ICPA, the income payments related to the claimed CWTs were reported as part of the petitioner's gross income subject to tax in the CYs 2014 and 2015. Upon verification, the Court finds that out of the total income payments of ₱53,363,850.69 related to the claimed CWT of ₱8,004,578.00, the income payments amounting to ₱51,967,942.08, recorded in the GL as management fees, were all declared as taxable income in the Annual ITR for CY 2015, while the remaining income payments of ₱1,395,908.63 which pertain to the net management fees accrued in 2014 but collected in 2015, were traced to 2014 GL and AFS and verified to have been part of the declared income in the ITR for 2014.[73] Below is the summary of the timing of recording of the management fees in the GL/AFS and their declaration as taxable revenues in the ITR, *viz.*

Exhibit No.	**Particulars**	**Amount of Income Payment**	**Amount of Taxes Withheld**
"P-119" to "P-126"	Per Summary of Creditable Taxes Withheld supported by original BIR Form No. 2307 issued by payor in the petitioner's name	**₱53,363,850.69**	**₱8,004,577.61**
	Income payments recorded in the GL for 2015 and reported as revenue in the ITR for 2015	51,967,942.08	7,795,191.31
"P-151"	Altimax	*36,690,599.16*	
"P-152"	BEAM	*15,277,342.92*	

[68] Exhibits "P-14-c" to "P-14-d", Docket – Vol. II, pp. 773 to 774.
[69] Exhibits "P-14-e" to "P-14-f", Docket – Vol. II, p. 775.
[70] Exhibit "P-14-b", Docket – Vol. II, p. 760 to 772.
[71] Exhibits "P-151" to "P-152".
[72] Exhibit "P-14-a", Docket – Vol. II, pp. 889 to 890.
[73] Exhibit "P-138", Docket – Vol. II, pp. 569 to 574.

	Income payments recorded in the GL for 2014 and reported as revenue in the ITR for 2014	1,395,908.63	209,386.29
"P-146"	Accrued management fee from Altimax which was recorded under JV20141246 on December 31, 2014	*1,962,725.38*	
"P-148"	Audit adjusting entry made on December 31, 2014 to correct the balance of accrued revenue from Altimax	*(566,816.75)*	
TOTAL		**₱53,363,850.71**	**₱8,004,577.61**
Difference		**(0.02)**	**0.00**

Verily, with the foregoing findings, petitioner is considered then to have complied with the *third* requisite.

For having complied with the requisites for claiming a refund of excess CWTs and shown that the amount thereof was not carried-over to succeeding periods, the instant Petition for Review must perforce be granted.

In sum, petitioner has sufficiently proven its entitlement to a refund or issuance of a tax credit certificate in the amount of ₱8,004,577.61, representing its excess and unutilized CWTs for CY 2015.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND**, or **ISSUE A TAX CREDIT CERTIFICATE** in, the amount of **₱8,004,577.61**, in favor of petitioner, representing its excess and unutilized CWTs for CY 2015.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice