REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ORION PROPERTY DEVELOPMENT, INC., Petitioner,	**CTA EB CASE NO. 423** (CTA CASE NO. 7000)
	Present:
- versus -	ACOSTA, PJ. CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, *and* PALANCA-ENRIQUEZ, *JJ*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 2 2 2009

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DECISION

CASANOVA, J:

This is an appeal, by way of a Petition for Review,[1] filed by the petitioner-Orion Property Development, Inc. (ORION) from the Amended Decision[2] (*Assailed Amended Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated September 12, 2008 in CTA Case No. 7000 entitled, *"Orion Property Development, Inc., vs. Commissioner of Internal Revenue"*, partially granting petitioner's "Motion for Reconsideration"[3] filed on January 30, 2008. Thus, the CTA Second Division's Decision[4] dated January 9, 2008 originally

[1] CTA En Banc Rollo, pp. 5-27.
[2] CTA Second Division Rollo, pp. 400-412.
[3] CTA Second Division Rollo, pp. 278-294.
[4] CTA Second Division Rollo, pp. 264-277.

denying petitioner's Petition for Review was modified. Accordingly, respondent-Commissioner of Internal Revenue (CIR) was ordered to refund or issue a tax credit certificate in favor of petitioner in the amount of TWENTY TWO MILLION ONE HUNDRED NINE THOUSAND EIGHT AND 41/100 PESOS (P22,109,008.41) representing petitioner's unutilized and excess creditable withholding taxes for fiscal year 2002.

The facts of the case, as culled from the records[5], are as follows:

> "Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at the 20th Floor, LKG Building, 6801 Ayala Avenue, Makati City[6]. It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer's Identification No. 002-921-267-000 and adopts a fiscal year covering from July 1 to June 30 for purposes of keeping its books of accounts and of filing its annual income tax returns.[7]
>
> Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with power, among others, to act on and approve claims for refund or tax credit as provided by law, with office address at BIR National Office Building, Diliman, Quezon City.[8]
>
> On October 15, 2002, petitioner filed its Original Annual Corporate Income Tax Return (ITR) for fiscal year ended June 30, 2002. Petitioner's Annual Income Tax Return for the said fiscal year reported zero taxable income, and an excess and unutilized creditable withholding tax credits in the amount of P31,130,235.00[9]. The Annual Income Tax Return showed the following details:

Sales/Revenues/Receipts/Fees	P 562,068,237.00
Less: Cost of Sales/Services	110,924,026.00
Gross Income from Operations	P 451,114,211.00

[5] January 9, 2008 Decision, pp. 1-5. Supra, note 4.
[6] Par. 1, Joint Stipulation of Facts & Issues (JSFI), CTA Second Division Rollo, p. 98.
[7] Par. 2, JSFI, CTA Second Division Rollo, p. 98.
[8] Par. 3, JSFI, CTA Second Division Rollo, p. 98.
[9] Par. 4, JSFI, CTA Second Division Rollo, p. 99.

Add: Non-operating & Other income	1,643,271.00
Total Gross Income	P 452,757,482.00
Less: Deductions	452,757,482.00
Taxable Loss	(P NIL)
Income Tax Due (32%)	-
Minimum Corporate Income Tax Due (MCIT)	P 9,055,150.00
Less: Tax Credits	
Prior Years Excess Credits	P 9,194,327.00
Creditable Tax Withheld for the first 3 Quarters	30,991,058.00
Total Tax Credits	40,185,385.00
Total Excess Creditable Taxes Withheld For 2002 per ITR	**(P 31,130,235.00)**[10]

However, on March 31, 2003, petitioner amended its Annual Corporate Income Tax Return for fiscal year ended June 30, 2002; this time reflecting a net loss and unutilized excess creditable withholding taxes in the amount of P31,118,710.00.[11] Petitioner's Amended Income Tax Return reported the following details:

Sales/Revenues/Receipts/Fees	P 562,038,237.00
Less: Cost of Sales/Services	109,991,200.00
Gross Income from Operations	P 452,047,037.00
Add: Non-operating & Other income	1,643,271.00
Total Gross Income	P 453,690,308.00
Less: Deductions	591,215,181.00
Taxable Loss	(P 137,524,873.00)
Income Tax Due (32%)	-
Minimum Corporate Income Tax Due (MCIT)	P 9,073,806.00
Less: Tax Credits	
Prior Years Excess Credits	P 9,201,458.00
Creditable Tax Withheld for the first 3 Quarters	30,991,058.00
Total Tax Credits	P 40,192,516.00
Total Excess Creditable Taxes Withheld For 2002 per ITR	**(P 31,118,710.00)**[12]

[10] Exhibit "B".
[11] Par. 5, JSFI, CTA Second Division Rollo, p. 99.
[12] Exhibit "C".

Petitioner filed its Annual Corporate Income Tax Return for fiscal year ended June 30, 2003 on October 15, 2003[13]. The said return reflected that petitioner was in a loss position. It also showed that the unutilized excess creditable withholding taxes pertaining to fiscal year 2002 which was originally applied against the Minimum Corporate Income Tax (MCIT) of P9,073,806.00 still left a balance of P31,118,710.00 as excess creditable withholding tax credits for 2002 that remained unutilized and was not carried forward to the succeeding fiscal year.[14]

On April 21, 2003, petitioner filed a letter with respondent, requesting refund or issuance of a tax credit certificate of its total excess and unutilized creditable withholding taxes for fiscal year ended June 30, 2002 in the amount of P31,118,710.00.[15]

However, to date, respondent has neither denied nor approved petitioner's administrative claim for refund or issuance of a tax credit certificate. Hence, petitioner filed this Petition for Review on June 3, 2004[16], in accordance with and within the period prescribed under Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997.

Respondent, in his Answer[17] filed on July 28, 2004, averred the following Special and Affirmative Defenses:

> '4. The petitioner has not shown or alleged that the amount claimed in the petition was not utilized in the succeeding quarters or years;
>
> 5. The petitioner has not shown that the income from which the alleged excess withholding taxes were withheld and subject of the instant claim for refund/tax credit was fully reported in the petitioner's income tax returns for Fiscal Year ending June 30, 2002;
>
> 6. Amendment of the income tax return is allowed only within a period of three (3) years from the filing thereof and provided that no notice of audit or investigation has yet been actually served on the taxpayer (Sec. 6(A), NIRC);

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[13] Exhibit "E".
[14] Par. 6, JSFI, CTA Second Division Rollo, p. 99.
[15] Par. 9, JSFI, CTA Second Division Rollo, p. 99.
[16] CTA Second Division Rollo, pp. 1-6.
[17] CTA Second Division Rollo, pp. 48-49.

7. The total withholding taxes withheld as shown in the Certificates of Creditable Withholding Tax Withheld At Source does not tally with the total tax credits reported in the petitioner's tentative and amended income tax returns for FY ending June 30, 1999 suggesting that said returns are not truthful and inaccurate;

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

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

12. Well-settled is the rule that a claim for refund is strictly construed against the claimants since it partakes of the nature of an exemption from taxation.'

Petitioner filed its Reply[18] to respondent's Answer on August 10, 2004.

Both parties having presented their testimonial and documentary evidence in support of their claims, the Court ordered the parties to simultaneously file their respective Memorandum. Only petitioner filed its Memorandum on March 29, 2007[19] and this case was submitted for decision on May 22, 2007."

After trial on the merits, the *CTA Second Division* promulgated a Decision[20] on January 9, 2008, the dispositive portion of which reads as follows:

"**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED."

Not satisfied with the above decision, ORION filed a "Motion for Reconsideration"[21] on January 30, 2008. On February 21, 2008, ORION filed a

[18] CTA Second Division Rollo, pp. 51-55.
[19] CTA Second Division Rollo, pp. 237-257.
[20] Supra, note 4.
[21] Supra, note 3.

"Supplemental Motion"[22] praying for leave of court to present additional witness and evidence. During the scheduled hearing on February 28, 2008, counsel for the respondent was given ten (10) days from said date within which to file a Comment on petitioner's motions. A Commissioner's hearing was also scheduled on March 12, 2008. On March 10, 2008, respondent filed a "Comment/Opposition (To Petitioner's Motion for Leave of Court to present Additional Evidence)"[23]. Petitioner filed a "Comment (To Respondent's Comment/Opposition)"[24] on March 18, 2008.

On March 28, 2008, petitioner filed a "Judicial Affidavit of Mr. Ronald P. Sugapong"[25]. Petitioner then submitted its "Formal offer of Evidence" on April 16, 2008 in compliance with the order of the CTA Second Division during the scheduled April 2, 2008 hearing. In a Resolution[26] promulgated on June 13, 2008, the CTA Second Division resolved petitioner's "Formal Offer of Evidence".

On September 12, 2008, the *CTA Second Division* promulgated the *Assailed Amended Decision*, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, petitioner's '**Motion for Reconsideration**' is hereby **PARTIALLY GRANTED** and this Court's Decision of January 9, 2008 denying petitioner's Petition for Review is hereby **MODIFIED.** Accordingly, respondent is hereby **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **TWENTY TWO MILLION ONE HUNDRED NINE THOUSAND EIGHT AND 41/100 PESOS (P22,109,008.41)**, representing petitioner's unutilized and excess creditable withholding taxes for fiscal year 2002.
>
> **SO ORDERED.**"

[22] CTA Second Division Rollo, pp. 354-358.
[23] CTA Second Division Rollo, pp. 363-368.
[24] CTA Second Division Rollo, pp. 369-374.
[25] CTA Second Division Rollo, pp. 375-378.
[26] CTA Second Division Rollo, p. 398.

Respondent-CIR filed a "Motion for Reconsideration"[27] on the Amended Decision on October 2, 2008. Petitioner filed an "Opposition/Comment (to Respondent's Motion for Partial Reconsideration"[28] on October 17, 2008. On December 3, 2008, the CTA Second Division promulgated a Resolution[29] denying CIR's Motion for Reconsideration for lack of merit.

On October 2, 2008, ORION filed an "Urgent Motion for Extension of Time to File Petition for Review"[30] with the *CTA En Banc*. In a Resolution[31] dated October 3, 2008, the Court *En Banc* granted the said motion thereby giving ORION a final and non-extendible period of fifteen (15) days from October 2, 2008, or until October 17, 2008, within which to file a Petition for Review. On October 17, 2008, ORION filed the instant Petition for Review[32] with the *CTA En Banc*, praying that the *Assailed Amended Decision* dated September 12, 2008, in CTA Case No. 7000 entitled, *"Orion Property Development, Inc., vs. Commissioner of Internal Revenue,"* be reversed and set aside, and, in lieu thereof, judgment be rendered ordering respondent-CIR to refund to, or issue a tax credit certificate in favor of ORION in the total amount of P30,680,575.41 representing petitioner's duly substantiated and unutilized excess CWT credits for fiscal year ended June 30, 2002.

Petitioner raised its sole issue[33] in the instant Petition for Review, to wit:

> WHETHER OR NOT THE HONORABLE COURT IN DIVISION ERRED IN PARTIALLY DISALLOWING PETITIONER'S CLAIM FOR REFUND OF UNUTILIZED CREDITABLE TAXES FOR FISCAL YEAR ENDING 30 JUNE 2002.

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[27] CTA Second Division Rollo, pp. 413-418.
[28] CTA Second Division Rollo, pp. 420-426. Should be "Opposition/Comment (To Respondent's Motion for Reconsideration)".
[29] CTA Second Division Rollo, pp. 429-431.
[30] CTA En Banc Rollo, p. 1-3.
[31] CTA En Banc Rollo, p. 7.
[32] Supra, note 1.
[33] Petition for Review *En Banc*, p. 5.

In support of this issue, ORION submits the following arguments/discussions[34]:

> WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION SERIOUSLY ERRED IN PARTIALLY DISALLOWING PETITIONER'S CLAIM FOR REFUND OF UNUTILIZED CREDITABLE TAXES FOR FISCAL YEAR ENDING 30 JUNE 2002 CONSIDERING THAT:
>
> A. THERE IS NO NEED TO SUBSTANTIATE PETITIONER'S PRIOR YEARS' EXCESS CREDITS, WHICH WAS APPLIED TO ITS 2002 MCIT LIABILITY, SINCE IT DOES NOT FORM PART OF PETITIONER'S CLAIM FOR REFUND, AND IS IRRELEVANT TO THE ISSUES RAISED IN THE INSTANT CASE.
>
> B. WITHOUT CONCEDING THE FOREGOING ARGUMENT, PETITIONER SHOULD BE DEEMED TO HAVE DULY SUBSTATIATED ITS PRIOR YEARS' EXCESS CREDITS; and
>
> C. THERE IS NO LEGAL OR FACTUAL BASIS TO CHARGE PETITIONER'S 2002 MCIT LIABILITY TO ITS DULY SUBSTANTIATED UNUTILIZED EXCESS CWT CREDITS.

The *CTA En Banc* promulgated a Resolution[35] on October 29, 2008, ordering the respondent to file a Comment on the said Petition for Review. On November 13, 2008, respondent-CIR filed a "Motion for Extension to File Comment"[36]. In a Resolution[37] dated November 26, 2008, the Court *En Banc* granted the said motion thereby giving CIR a final and non-extendible period of fifteen (15) days from November 13, 2008, or until November 28, 2008, within which to file a Comment on the said Petition for Review. On November 28, 2008, CIR filed a "Comment (To Petitioner's Petition for Review)" praying that judgment be rendered dismissing the Petition for Review for palpable utter lack

[34] Ibid.
[35] CTA En Banc Rollo, p. 56.
[36] CTA En Banc Rollo, pp. 57-58.
[37] CTA En Banc Rollo, p. 59.

of merit. On December 10, 2008, ORION filed a "Reply to Respondent's Comment"[38]. The Court *En Banc* promulgated a Resolution submitting the case for decision on December 18, 2008.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its *Assailed Amended Decision*.

As correctly found by the *CTA Second Division* in the *Assailed Amended Decision* and We quote, to wit:

> "Petitioner argues that the prior year's credit in the amount of P9,201,458.00, which amount was applied to its MCIT liability for 2002 in the amount of P9,073,806.00, is immaterial to the case at bar and was never raised as an issue in this case. Petitioner alleges that since the prior year's credit does not form part of its claim for refund because it was applied against its MCIT liability, there is no need for petitioner to substantiate the prior year's credit of P9,201,458.00.
>
> This Court finds petitioner's arguments misplaced.
>
> In the case of **Commissioner of Internal Revenue vs. Nissan Motor Philippines, Inc.**[39], the Court *En Banc* ruled that there was a need for petitioner Nissan Motor Phils. Inc. to substantiate its prior year's excess credit because it formed part of its claimed income tax overpayment reflected in its final adjustment return. For easy reference:
>
> > 'By asserting that it is not required to substantiate its prior year's excess tax credits, Nissan Motor in effect admits the finding of the Court in Division that it failed to substantiate the same. It may have lost sight of the fact that its Petition for Review in C.T.A. CASE No. 6622 is a judicial claim for refund which partakes of the nature of an exemption which is strictly construed against the claimant. It is well-settled that the claimant has the burden of proof to establish the factual basis of its claim for refund and the failure to discharge said burden is fatal to its claim. Nissan Motor, being the claimant, is duty-bound to prove its entitlement to the entire amount of its claim for refund.

[38] CTA EB Rollo, pp. 65-71.
[39] CTA EB No. 137, October 6, 2006.

Secondly, contrary to what Nissan Motor wants this Court to believe that there is no need to substantiate its prior year's excess credits, the Supreme Court had ruled that if the claim for refund is based on the taxpayer's final adjustment tax return, said claim should not be treated as a claim for refund of overpaid withholding taxes *per se*, thus:

> The petitioner corporation is not claiming a refund of overpaid withholding taxes, *per se*. **It is asking for the recovery of** the sum of P82,751.91, **the refundable or creditable amount determined upon the petitioner corporation's filing of its final adjustment return** on or before 15 April 1982 when its tax liability for the year 1981 fell due. The distinction is essential in the resolution of this case for it spells the difference between being barred by prescription and entitlement to refund. (*Emphasis supplied*)

In the above-quoted decision, the Supreme Court categorically made a distinction between a claim for refund of overpaid withholding taxes *per se* and a claim for refund of the refundable or creditable amount reflected on *the taxpayer's final adjustment return*. Nissan Motor's claim for refund is of the latter type, that is, based on the refundable amount indicated on Nissan Motor's final adjustment return for the taxable year 2000. A component of the refundable amount reflected on its final adjustment return is its prior year's excess credits of P478,645.00. The other components are Nissan Motor's Minimum Corporate Income Tax (MCIT) amounting to P3,958,694.00 and the total amount of withheld taxes for the taxable year 2000 amounting to P8,656,236.00. These components are shown on Nissan Motor's Annual Income Tax Return as follows:

Aggregate Income Tax Due		P 3,958,694.00
Less: Tax Credits/Payments		
Prior Year's Excess Credits	478,645.00	
xxx xxx xxx		
xxx xxx xxx		
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	8,656,236.00	
Total Tax Credits/Payments		**9,134,881.00**
Tax Payable/(Overpayment)		**(P5,176,187.00)**

> It is undeniable that Nissan Motor's prior year's excess credits formed part of its *Total Tax Credits/Payments* amounting to P9,134,881.00 that was used or applied to cover its MCIT liability for the taxable year 2000 and that the *Tax Overpayment* of P5,176,187.00 resulted from its Total Tax Credits/Payments less its MCIT liability. Clearly, **its prior year's excess credit is a part of Nissan Motor's *Tax Overpayment* reflected on its Annual Income Tax Return.**
>
> In one case, the Supreme Court had explained that 'money is fungible property' and the amount to be applied against the income tax due in the final adjustment return of petitioner may be taken from its excess credits in a prior year or from those withheld in the current year or from both. This emphasizes that a ***Tax Overpayment* is composed of the taxpayer's prior year's credits, current year's tax payments, creditable taxes withheld for the current year and even foreign tax credits (if applicable). It is therefore necessary to prove or substantiate each and every component of the *Total Tax Credits/Payments* reflected on Nissan Motor's final adjustment return, including its prior year's excess tax credits, because ultimately the remaining balance of the *Total Tax Credits/Payments* after deducting its *MCIT* liability becomes the *Tax Overpayment*** which is precisely the subject of Nissan Motor's claim for refund in C.T.A. CASE No. 6622.
>
> Nissan Motor failed to substantiate its prior year's excess tax credits, thus, it failed to meet the burden of proof required in order to establish the factual basis of its claim for refund insofar as its prior year's excess credits in the amount of P478,645.00 is concerned. xxx' (*Emphasis supplied*)

The present case is no different from the afore-quoted case. The subject claim in the amount of P31,118,710.00 (P40,192,516.00[40] total tax credits - P9,073,806.00 MCIT liability) actually represents petitioner's *excess tax credits* or *income tax overpayment* as shown in its final adjustment return for taxable year 2002. Clearly, petitioner's prior year's excess credits formed part of its total tax credits of P40,192,516.00, which was used to pay petitioner's MCIT liability for 2002, and that the claimed excess amount of P31,118,710.00 resulted from the total tax credits less the MCIT liability shown in petitioner's Income Tax Return.

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[40] P9,201,458.00 (prior year's excess credits) + P30,991,058.00 (creditable taxes withheld).

Thus, contrary to petitioner's assertion, the prior year's excess credits of P9,201,458.00 formed part of petitioner's claim for refund.

It bears stressing that the subject claim pertains to ***excess*** tax credits, *i.e.*, ***undiminished*** by any income tax liability. In this regard, petitioner must prove that, other than the claimed amount of P31,118,710.00, it had enough prior year's excess credits to cover its declared MCIT liability of P9,073,806.00 for taxable year 2002. A mere allegation that it has prior year's excess credits in its Income Tax Return for 2002 will not suffice.

Petitioner further avers that the deduction of the MCIT liability of P9,073,806.00 from its claim for refund is tantamount to offsetting of taxes. Such move is violative of the law and existing jurisprudence; and that by deducting the said amount, in effect, the Court is indirectly upholding an assessment of MCIT liability against petitioner, in violation of the rules laid down in the National Internal Revenue Code of 1997.

Again, this Court finds petitioner's contentions devoid of merit.

The Court is not assessing petitioner of any income tax liability. The denial of petitioner's claim for refund was based on its failure to prove its entitlement thereto. As this Court held:

> 'Moreover, petitioner has failed to substantiate the existence of the prior year's excess credits in the amount of P9,201,458.00. Save for the amount of P570,007.00, records are wanting of petitioner's withholding tax certificates corresponding to the creditable taxes withheld of P9,596,867.00. It is crucial for petitioner to prove that it has enough prior year's excess credits to cover its reported fiscal year 2002 MCIT liability in the amount of P9,073,806.00; otherwise, the said MCIT liability shall have to be deducted from petitioner's claimed fiscal year 2002 creditable withholding taxes in the amount of P30,991,058.00.'

Furthermore, petitioner questions this Court's finding that it failed to show that the income payments, to which the claimed excess creditable withholding taxes pertain, were declared as part of its gross income. Petitioner asserts that it presented and formally offered its duly registered journals and general ledger for the fiscal years ending June 30, 1998 until June 30, 2002[41] to prove such claim.

A re-examination of Exhibits 'N', 'N-1' until 'N-10' showed that the same merely consisted of the pages where the stamp of registration of

[41] Exhibits "N", "N-1" until "N-10".

the books of accounts appeared. The foregoing only proved that petitioner's general journals and ledger were duly registered. The pertinent pages where petitioner's transactions were supposed to be recorded were not submitted as documentary evidence; thus, making it impossible for the Court to verify whether the income payments were actually recorded in its books and reported in its Income Tax Return.

In support of its Motion for Reconsideration, however, petitioner submitted and formally offered in evidence its entire sales journals, general ledgers, and general journals covering fiscal years 1998 to 2002[42], including its audited financial statements for fiscal years 1998 to 2002[43], journal vouchers[44], schedule of petitioner's creditable withholding tax certificates as of June 30, 1999[45], withholding tax certificates for FY 1999[46], and the Judicial Affidavit of Mr. Ronald P. Sugapong[47].

A scrutiny of the documents presented shows that petitioner declared its income payments upon which the claimed creditable taxes were withheld, but only in the amount of P30,680,575.41 out of the reported creditable taxes withheld for the year 2002 in the amount of P30,991,058.03. As shown in petitioner's Certificates of Creditable Tax Withheld at Source (BIR Form 2307)[48], for the fiscal year ending June 30, 2002, petitioner received income payments amounting to P624,644,600.88 and creditable taxes withheld therefrom amounting to P30,991,058.03, detailed as follows:

EXH.	WITHHOLDING AGENT/PAYOR	PERIOD COVERED			INCOME PAYMENTS	TAX WITHHELD
On sale, exchange or transfer of real property other than capital assets						
D-2	Isagani & Ofelia Dayao	7/1/01	to	9/30/01	P 624,448.43	P 18,733.45
D-11	Roberto & Janet Escueta	7/1/01	to	9/30/01	699,767.53	20,993.03
D-12	Florencia M. Mendoza	7/1/01	to	9/30/01	552,927.27	16,587.82
D-13	Ferdinand & Nancy Mercado	7/1/01	to	9/30/01	636,363.64	19,090.91
D-10	Valentino R. Patron	7/1/01	to	9/30/01	620,000.00	18,600.00
D-8	Corazon R. Briones	10/1/01	to	12/31/01	656,964.13	19,708.92
D-9	Sophia V. Valencia	10/1/01	to	12/31/01	613,800.00	18,414.00
D-4	Asian Micro Realty Dev't. Inc.	1/1/02	to	3/31/02	3,966,816.14	119,004.49
D-6	Jesson C. Fabico	1/1/02	to	3/31/02	1,880,808.87	56,424.27
D-7	Miriam C. Fabico	1/1/02	to	3/31/02	1,111,704.87	33,351.14
D-5	Antonio B. Torrijos	1/1/02	to	3/31/02	1,245,000.00	37,350.00

[42] Exhibits "V" to" Z" and "AA" to "JJ".
[43] Exhibits "Q" to "U".
[44] Exhibits "FF -1" to "FF-16", "GG-1" to "GG-8", "HH-1", "HH-2", "II-1", "II-2" ,and "JJ-1" to "JJ-3".
[45] Exhibit "KK".
[46] Exhibits "KK-1" to "KK-10".
[47] Exhibit "LL".
[48] Exhibits "D-1" to "D-13".

D-1	Philippine National Bank	4/1/02 to 6/30/02	611,816,000.00	30,590,800.00
	Subtotal		**P 624,424,600.88**	**P 30,969,058.03**
On professional fees paid to juridical persons				
D-3	Luck Hock Venture Holdings	4/1/02 to 6/30/02	P 220,000.00	P 22,000.00
	Subtotal		**P 220,000.00**	**P 22,000.00**
	TOTAL		**P 624,644,600.88**	**P 30,991,058.03**

Likewise, upon verification of petitioner's Amended Income Tax Return[49] and Audited Financial Statements for fiscal year 2002[50], the same reflected an amount of P562,038,237.00 representing its Sales from Real Estate. Meanwhile, its general ledger and general journal entries showed the same amount, broken down as follows:

Date	Buyer	Reference	Unit Sold	Sales
31-Jul-01	Mariano Viñas	Sales Journal *Exh. Z*	B3 L11	P 691,159.09
31-Jul-01	Mariano Viñas	Sales Journal *Exh. Z*	B3 L12	691,159.09
31-Jul-01	Mariano Viñas	Sales Journal *Exh. Z*	B3 L13	691,159.09
				P 2,073,477.27
31-Mar-02	Jesson Falico	Sales Journal *Exh. Z*	B4 L19	P 776,095.85
31-Mar-02	Jesson Falico	Sales Journal *Exh. Z*	B4 L18	562,844.29
31-Mar-02	Jesson Falico	Sales Journal *Exh. Z*	B9 L3	541,868.73
				P 1,880,808.87
31-Mar-02	Miriam Falico	Sales Journal *Exh. Z*	B4 L22	P 555,852.43
31-Mar-02	Miriam Falico	Sales Journal *Exh. Z*	B4 L3	555,852.44
				P 1,111,704.87
30-Apr-02	Nick Yanga	Sales Journal *Exh. Z*	B3 L16	P 775,881.82
30-Apr-02	PNB	JV#2776 *Exh. JJ-1*	Mandaue Property	P 556,196,363.64
	TOTAL			**P 562,038,236.47**

From the aforementioned schedule, only the following income payments corresponding to petitioner's claim of creditable taxes in the amount of P30,680,575.41 withheld from petitioner's Sale/Exchange of Real Property were reported as part of petitioner's taxable gross income:

EXH.	WITHHOLDING AGENT/PAYOR	PERIOD COVERED	INCOME PAYMENTS	TAX WITHHELD
D-6	Jesson C. Fabico	1/1/02 to 3/31/02	P 1,880,808.87	P 56,424.27
D-7	Miriam C. Fabico	1/1/02 to 3/31/02	1,111,704.87	33,351.14
D-1	Philippine National Bank	4/1/02 to 6/30/02	611,816,000.00[51]	30,590,800.00

[49] Exhibit "C".
[50] Exhibit "U".
[51] inclusive of 10% VAT.

	TOTAL		P614,808,513.74	P 30,680,575.41

As to the income payments of P9,616,087.14[52] relating to the remaining claimed creditable taxes of P288,482.62 withheld from petitioner's Sale/Exchange of Real Property, the Court cannot ascertain whether petitioner declared the same in its Income Tax Returns for 1998 to 2001, considering petitioner's failure to account for the discrepancies in its Sales figures as shown in its Income Tax Returns, Audited Financial Statements, general ledger, general journal, and sales journal, to wit:

Sales	1998	1999	2000	2001
Per ITR	P15,578,328.00	N/A	P23,471,933.00	P7,974,572.00
Per Audited FS	P24,617,831.00	P20,592,521.00	P31,390,300.00	P7,974,572.00
Per General Ledger	P24,617,831.07	P20,717,259.44	P31,390,300.24	P8,607,165.73
Per General Journal	P20,079,951.97	P21,025,590.90	P31,456,908.25	P8,607,165.73
Per Sales Journal	P 5,762,463.68	P22,501,392.47	P21,850,821.38	P11,590,261.47

The same finding holds true with the income payments relating to the claimed creditable taxes of P22,000.00 withheld from petitioner's Professional Fees received from Luck Hock Venture Holdings. This Court cannot determine whether petitioner actually declared the corresponding income payment of P220,000.00, because of petitioner's failure to account for the discrepancies in the 'Other Income' figures shown in its Income Tax Return, Audited Financial Statements, general ledger, and general journal for the fiscal year 2002, as follows:

Other Income	2002
Per ITR	P728,587.00
Per Audited FS	P792,446.00
Per General Ledger	P728,586.96
Per General Journal	P220,000.00

In this regard, out of the reported creditable taxes withheld for taxable year 2002 in the amount of P30,991,058.03, the amounts of P288,482.62 and P22,000.00 or a total of P310,482.62 should be disallowed for petitioner's failure to prove that the corresponding income payments formed part of its taxable gross income. Consequently, only the remaining amount of P30,680,575.41 duly represents petitioner's creditable withholding taxes for taxable year 2002.

Finally, as regards petitioner's unsubstantiated prior year's excess credits which were applied against petitioner's MCIT liability for the year

[52] P624,424,600.88 less P 614,808,513.74.

2002, the same should likewise be deducted from this instant claim. Records disclose that the prior year's excess credits of P9,201,458.00 came about as a result of petitioner's reported creditable taxes withheld for the years 1998, 1999, 2000, 2001 in the total amount of P9,596,867.00, less its income tax payables for the years 1999 and 2001 in the amount of P395,408.00, as shown below:

Exhibit	Year	Income Tax Payable	CWT for the year	Excess Tax Credits
I-5	1998	-	5,854,434.00	5,854,434.00
I-6	1999	327,640.00	1,898,103.00	1,570,463.00
I-7	2000	-	1,274,323.00	1,274,323.00
I-8	2001	67,768.00	570,007.00	502,239.00
		395,408.00	**9,596,867.00**	**9,201,459.00**

Petitioner did not submit withholding tax certificates to prove the existence of the excess credits for fiscal years 1998 and 2000 in the respective amounts of P5,854,434.00 and P1,274,323.00. While petitioner submitted withholding tax certificates corresponding to the 1999 excess credits of P1,570,463.00[53], the same were denied admission by this Court for petitioner's failure to compare the same with the originals thereof. However, as regards the excess tax credits for fiscal year 2001 in the amount of P502,239.00, petitioner was able to present valid withholding tax certificates[54]. Therefore, out of the reported prior year's excess credits of P9,201,458.00, only the substantiated amount of P502,239.00 should be applied against petitioner's MCIT liability for fiscal year 2002 in the amount of P9,073,806.00.

In sum, petitioner has sufficiently proven its entitlement to a partial refund or issuance of a tax credit certificate, representing unutilized excess creditable withholding taxes for fiscal year 2002 in the amount of P22,109,008.41, computed as follows:

Minimum Corporate Income Tax (MCIT) Due	P 9,073,806.00
Less: Tax Credits	
Prior Year's Excess Credits	P 502,239.00
Creditable Taxes Withheld for the year 2002	30,680,575.41
Total Tax Credits	P 31,182,814.41
Refundable Excess Tax Credits	**P 22,109,008.41**

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed September 12, 2008 Amended

[53] Exhibits "KK-1" to "KK-10".
[54] Exhibits "D-14" to "D-33".

Decision of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the September 12, 2008 Amended Decision of the *CTA Second Division* in CTA Case No. 7000 entitled, *"Orion Property Development, Inc. vs. Commissioner of Internal Revenue"* is hereby **AFFIRMED *in toto*.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice