Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

UNITED COCONUT PLANTERS BANK,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8083
For: Tax Refund

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated on:
DEC 1 2 2012
1:30 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on April 15, 2010 by United Coconut Planters Bank (UCPB) as petitioner, against the Commisioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3 (a) (2), in relation to Rule

[1] Sec. 7. *Jurisdiction.* – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
x x x x x x

8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)[2]. It involves a claim for refund or issuance of a tax credit certificate (TCC) in the amount of ₱94,349,285.00, allegedly representing its excess or unutilized creditable withholding tax (CWT) for taxable year 2007.

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[2] Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; P*rovided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

Petitioner is a domestic banking corporation duly organized to operate as an expanded commercial bank by the *Bangko Sentral ng Pilipinas* (BSP), with principal office address at UCPB Building, 7907 Makati Avenue, Makati City.[3]

Respondent, on the other hand, is the duly appointed Commissioner of of Internal Revenue (CIR), vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 15, 2008, petitioner, manually and through the Electronic Filing and Payment System (EFPS), filed its Annual Income Tax Return for the taxable year 2007,[4] which showed Minimum Corporate Income Tax (MCIT) in the amount of ₱3,752,889.00, Creditable Tax Withheld for the First Three Quarters in the amount of ₱56,544,195.00, and Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter in the amount of ₱37,805,090.00; leaving petitioner a Tax Overpayment in the amount ₱201,769,407.00. The MCIT due was allegedly offset against Prior Year's Excess Credits in the amount of ₱111,173,011.00. Petitioner manifested its

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[3] Par. 1.03, Joint Stipulation of Facts and Issues, docket, p. 1339.
[4] Exhibits "I" and "J".

intention to be issued a tax credit certificate by marking the box "To be issued a Tax Credit Certificate" on the said Tax Return.

On April 12, 2010, petitioner filed an administrative claim for refund before the Bureau of Internal Revenue, requesting the issuance of a tax credit certificate or refund of the amount ₱94,349,285.71, representing excess or unutilized creditable withholding tax for the taxable year 2007.[5]

Respondent did not act upon the written claim for refund, hence, petitioner filed the instant Petition for Review before this Court on April 15, 2010.

In her Answer[6] filed on June 7, 2010, respondent interposed the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

7) Assuming but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue;

8) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

9) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;

10) It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code as amended;

11) In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to

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[5] Exhibit "U".
[6] Docket, pp. 1261-1263.

discharge the said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206)*;

12) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor. *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."*

Thereafter, on June 21, 2010, notice was issued for a pre-trial conference which was set for July 22, 2010.

Petitioner filed its Pre-trial Brief on July 19, 2010; while respondent filed her Pre-trial Brief on July 21, 2010.

On August 11, 2010, the parties filed with this Court their Joint Stipulation of Facts and Issues, which was later approved in a Resolution dated August 16, 2010. In the same Resolution, the pre-trial conference was deemed terminated.

During trial, petitioner presented three (3) witneses, namely: Ms. Jennifer Anne Z. Coronel, Mr. Emmanuel Y. Mendoza, and Ms. Cynthia Almirez.

On July 18, 2011, petitoner filed its Formal Offer of Documentary Evidence, offering Exhibits "A" to "KKK". In a Resolution dated August 26, 2011, this Court admitted Exhibit "A" to "O" and "Q" to "KKK", inclusive of their subu-markings. In another Resolution dated October 24, 2011, (upon petitioner's Motion for Partial Reconsideration of the Resolution dated 26 August 2011), this Court admitted Exhibit "P". Thereafter, petitioner was deemed to have formally rested its case.

The documentary evidence formally offered and admitted are as follows:

Exhibits	Description
A	2006 Annual Income Tax Return (BIR Form No. 1702) of UCPB filed on 16 April 2007 through the Electronic Filing and Payment System ("EFPS") (7 pages)
B	2006 Annual Income Tax Return (BIR Form No. 1702) of UCPB duly stamped received by the Bureau of Internal Revenue ("BIR") on 17 April 2007 with attachments (11 pages)
C	2007 Quarterly Income Tax Return (BIR Form No. 1702Q) of UCPB for the first quarter filed on 30 May 2007 through EFPS with attachments duly stamped received by the BIR on 31 May 2007 (7 pages)
C-1	UCPB SAWT for the month of January 2007 (1 page)
C-2	UCPB SAWT for the month of February 2007 (1 page)
C-3	UCPB SAWT for the month of March 2007 (1 page)
D	2007 Quarterly Income Tax Return (BIR Form No. 1702Q) of UCPB for the first quarter duly stamped received by the BIR on 31 May 2007 (1 page)
E	2007 Amended Quarterly Income Tax Return (BIR Form No. 1702Q) of UCPB for the first quarter filed on 19 November 2007 through EFPS with attachments (4 pages)
F	2007 Quarterly Income Tax Return (BIR Form No. 1702Q) of UCPB for the second quarter filed on 29 August 2007 through EFPS with attachments (8 pages)
F-1	UCPB SAWT for the month of April 2007 (1 page)
F-2	UCPB SAWT for the month of May 2007 (1 page)

F-3	UCPB SAWT for the month of June 2007 (1 page)
G	2007 Amended Quarterly Income Tax Return (BIR Form No. 1702Q) of UCPB for the second quarter filed on 19 November 2007 through EFPS with attachments (4 pages)
H	2007 Quarterly Income Tax Return (BIR Form No. 1702Q) of UCPB for the third quarter filed on 29 November 2007 through EFPS with attachments (11 pages)
H-1	UCPB SAWT for the month of July 2007 (3 pages)
H-2	UCPB SAWT for the month of August 2007 (1 page)
H-3	UCPB SAWT for the month of September 2007 (2 pages)
I	2007 Annual Income Tax Return of UCPB filed on 15 April 2008 through EFPS with attachments (12 pages)
I-1	UCPB SAWT for the month of October 2007 (2 pages)
I-2	UCPB SAWT for the month of November 2007 (2 pages)
I-3	UCPB SAWT for the month of December 2007 (1 page)
I-4	For overpayment, UCPB's choice of "To be issued a Tax Credit Certificate" in 2007
J	2007 Annual Income Tax Return of UCPB duly stamped received by the BIR on 15 April 2008 (8 pages)
J-1	For overpayment, UCPB's choice of "To be issued a Tax Credit Certificate" in 2007
K	2008 Quarterly Income Tax Return (BIR Form 1702Q) of UCPB for the first quarter filed on 30 May 2008 through EFPS (7 pages)
K-1	UCPB SAWT for the month of January 2008 (1 page)
K-2	UCPB SAWT for the month of February 2008 (1 page)
K-3	UCPB SAWT for the month of March 2008 (1 page)
L	2008 Quarterly Income Tax Return (BIR Form 1702Q) of UCPB for the second quarter filed on 29 August 2008 through EFPS with attachments (8 pages)

L-1	UCPB SAWT for the month of April 2008 (1 page)
L-2	UCPB SAWT for the month of May 2008 (1 page)
L-3	UCPB SAWT for the month of June 2008 (1 page)
M	2008 Quarterly Income Tax Return (BIR Form 1702Q) of UCPB for the third quarter filed on 28 November 2008 through EFPS with attachments (9 pages)
M-1	UCPB SAWT for the month of July 2008 (2 pages)
M-2	UCPB SAWT for the month of August 2008 (2 pages)
M-3	UCPB SAWT for the month of September 2008 (2 pages)
N	2008 Annual Income Tax Return (BIR Form 1702) of UCPB duly stamped received by the BIR on 15 April 2009 with attachments. (13 pages)
O	2008 Annual Income Tax Return (BIR Form 1702) of UCPB filed on 17 April 2009 through EFPS with attachments (13 pages)
O-1	UCPB SAWT for the month of October 2008 (2 pages)
O-2	UCPB SAWT for the month of November 2008 (2 pages)
O-3	UCPB SAWT for the month of December 2008 (2 pages)
P	Certified True Copy of Memorandum dated 13 April 2009 issued by the BIR re: Advice on EFPS unavailability (4 pages)
Q	2008 Amended Annual Income Tax Return (BIR Form 1702) of UCPB filed on 17 June 2009 through the EFPS with attachments (7 pages)
R	2008 Amended Annual Income Tax Return (BIR Form 1702) of UCPB duly stamped received by the BIR on 17 June 2009 (3 pages)
S	2008 Amended Annual Income Tax Return of UCPB filed on 14 September 2009 through EFPS with attachments duly stamped received by the BIR on 14 September 2009 (11 pages)
T	2008 Amended annual Income Tax Return of UCPB duly stamped received by the BIR on 14 September 2009 (3 pages) c

U	Letter dated 06 April 2010
V	Amended Articles of Incorporation of United Coconut Planters Bank
W	Affidavit of Jennifer Anne Z. Coronel
W-1	Signature of Jennifer Anne Z. Coronel
X	Judicial Affidavit dated 3 December 2010 of Emmanuel Y. Mendoza
X-1	Signature of Emmanuel Y. Mendoza
Y	2009 Annual Income Tax Return of UCPB
Z-1 to Z-1099	Certificates of Creditable Tax Withheld at Source (BIR Form Nos. 2307) issued to UCPB by its various withholding agents for the year 2007
AA-1 to AA-643	UCPB's Contracts to Sell, Deeds of Absolute Sale, Trial Balance Summary, Transaction Sheets, General Ledger ("GL") of Real and Other Properties Acquired ("ROPA") with related income payments booked in 2007
BB-1 to BB-569	UCPB's Contracts to Sell, Deeds of Absolute Sale, Trial Balance Summary, Transaction Sheets, GL of ROPA with related income payments booked in other taxable year
CC-1 to CC-27	UCPB's Contracts to Sell, Deeds of Absolute Sale, Trial Balance Summary, Transaction Sheets, GL of ROPA with related income payments booked in other taxable year
DD	Creditable Withholding Tax on ROPA Schedule
EE	GL of Miscellaneous Assets – Creditable Withholding Tax on ROPA
MM-1 to MM-17	Additional Contracts to Sell, Deeds of Absolute Sale, Trial Balance Summary, Transaction Sheets, GL ROPA with related income payments booked in 2007
NN-1 to NN-31	Additional Contracts to Sell, Deeds of Absolute Sale, Trial Balance Summary, Transaction Sheets, GL ROPA with related income payments booked in 2007

FF-1 to FF-9a	Schedule and GL of Branches
GG-1	Schedule of Creditable Withholding Tax on Commercial Loans Processing and Operations Department
GG-2	GL Accrued Interest Receivable -5% Gross Receipts Tax ("GRT")
GG-3	GL Accrued Interest Receivable – Loans & Discounts
GG-4	GL Miscellaneous Assets – 2% Creditable Withholding Tax – Loans Processing Department
GG-5	GL Interest Income Time Loan – 5% GRT
GG-6	GL Interest Income Time Loan – 5% GRT
GG-7	GL Interest Income Time Loan – 1% GRT
GG-8	GL Interest Income Restructured Loan – 5% GRT
GG-9	GL Interest Income Restructured Loan – 1% GRT
GG-10	GL Interest Income Restructured Loan – 1% GRT
GG-11	Service Charge – Loans
HH-1	Schedule of Creditable Withholding Tax on Treasury
HH-2	GL Miscellaneous Assets – 2% Creditable Withholding Tax – Local Money Market Department
HH-3	GL Fees and Commission – Treasury
II-1	Schedule of Creditable Withholding Tax on Consumer Finance Department
II-2	GL Miscellaneous Asset – 2% Creditable Withholding Tax – Consumer Finance Department
JJ-1	Schedule of Creditable Withholding Tax – Trust
JJ-2	GL Miscellaneous Asset – 2% Creditable Withholding Tax – Trust
JJ-3	GL Fees and Commission – Trust Banking Division
KK-1 to KK-13	Schedules of Creditable Withholding Tax – Trade Services Department

KK-14 to KK-15	GL of Miscellaneous Assets – 2% CWT Trade Services Department
KK-16 to KK-34	Various GL Related to Income Payments on Trade Services Department
LL-1	Schedule of Financial Accounting Department (Rent, Int., Outsourcing and Professional Fees)
LL-2 to LL-3	GL on Miscellaneous Assets – Financial Accounting Department
FF-1 to FF-9a	Schedule and GL of Branches
LL-1	Schedule of Financial Accounting Department (Rent, Int., Outsourcing and Professional Fees)
LL-4 to LL-5	GL related to income payments – Rental
LL-1	Schedule of Financial Accounting Department (Rent, Int., Outsourcing and Professional Fees)
LL-6	GL on Miscellaneous Assets – Creditable Withholding Tax on income payments subjected to 10% and 15% Expanded Withholding Tax
LL-7 to LL-9	GL related to income payments subjected to 10% and 15% Expanded Withholding Tax
OO	ICPA Progress Report dated 12 November 2010
OO-1	Signature of Emmanuel Y. Mendoza
QQ	ICPA Final and Amended Report dated 03 December 2010
QQ-1	Signature of Emmanuel Y. Mendoza
CCC-1 to CCC-2	Head Office and Branches Trial Balance for the taxable year 2007
DDD-1 to DDD-26	GL of interest income, bank commission and fee, and other income accounts for taxable year 2007
EEE	Supplemental Report dated 25 April 2011 to the Report dated 3 December 2010

EEE-1	Signature of Emmanuel Y. Mendoza
FFF	Judicial Affidavit dated 27 April 2011 of Emmanuel Y. Mendoza
FFF-1	Signature of Emmanuel Y. Mendoza
PP	UCPB letter to the ICPA dated 12 November 2010
RR	2007 Quarterly Income Tax Return (BIR Form No. 1702Q) of UCPB for the first quarter electronically filed ("e-filed") on 30 May 2007 with Filing Reference No. 130700001639520, certified by the Bureau of Internal Revenue ("BIR")
RR-1	UCPB Summary of Alpha List of Withholding Taxes ("SAWT") for the month of January 2007, certified by the BIR
RR-2	UCPB Summary of Alpha List of Withholding Taxes ("SAWT") for the month of February 2007, certified by the BIR
RR-3	UCPB Summary of Alpha List of Withholding Taxes ("SAWT") for the month of March 2007, certified by the BIR
RR-4	2007 Amended Quarterly Income Tax Return (BIR Form No. 1702Q) of UCPB for the first quarter e-filed on 19 November 2007 with Filing Reference No. 130700001897557, certified by the BIR
SS	2007 Quarterly Income Tax Return (BIR Form No. 1702Q) of UCPB for the second quarter e-filed on 29 August 2007 with Filing Reference No. 130700001772893, certified by the BIR
SS-1	UCPB SAWT for the month of April 2007, certified by the BIR
SS-2	UCPB SAWT for the month of May 2007, certified by the BIR
SS-3	UCPB SAWT for the month of June 2007, certified by the BIR
SS-4	2007 Amended Quarterly Income Tax Return (BIR Form No. 1702Q) of UCPB for the second quarter e-filed on 19 November 2007 with Filing Reference No. 130700001897581, certified by the BIR
TT	2007 Quarterly Income Tax Return (BIR Form No. 1702Q) of UCPB for the third quarter e-filed on 29

	November 2007 with Filing Reference No. 130700001915605, certified by the BIR
TT-1	UCPB SAWT for the month of July 2007, certified by the BIR
TT-2	UCPB SAWT for the month of August 2007, certified by the BIR
TT-3	UCPB SAWT for the month of September 2007, certified by the BIR
UU	2007 Annual Income Tax Return of UCPB e-filed on 15 April 2008 with Filing Reference No. 120800002188823, certified by the BIR
UU-1	UCPB SAWT for the month of October 2007, certified by the BIR
UU-2	UCPB SAWT for the month of November 2007, certified by the BIR
UU-3	UCPB SAWT for the month of December 2007, certified by the BIR
VV	2008 Quarterly Income Tax Return (BIR Form 1702Q) of UCPB for the first quarter e-filed on 30 May 2008 with Filing Reference No. 130800002268867, certified by the BIR
WW	2008 Quarterly Income Tax Return (BIR Form 1702Q) of UCPB for the second quarter e-filed on 29 August 2008 with Filing Reference No. 130800002434823, certified by the BIR
XX	2008 Quarterly Income Tax Return (BIR Form 1702Q) of UCPB for the third quarter e-filed on 28 November 2008 with Filing Reference No. 130800002604190, certified by the BIR
YY	2008 Annual Income Tax Return (BIR Form 1702) of UCPB e-filed on 17 April 2009 with Filing Reference No. 120900002906606, certified by the BIR
ZZ	2008 Amended Annual Income Tax Return (BIR Form 1702) of UCPB e-filed on 17 June 2009 with Filing Reference No. 120900003040311, certified by the BIR
AAA	2008 Amended Annual Income Tax Return (BIR Form 1702) of UCPB e-filed on 14 September 2009 with Filing Reference No. 120900003223008, certified by the BIR

BBB	Affidavit of Jennifer Anne Z. Coronel dated 1 February 2011
BBB-1	Signature of Jennifer Anne A. Coronel
GGG	Bangko Sentral ng Pilipinas (BSP) letter dated 29 May 2008 re: Monetary Board Resolution No. 590 dated 15 May 2008
HHH	2007 Audited Financial Statements of UCPB
III	2008 Audited Financial Statements of UCPB
JJJ	2009 Audited Financial Statements of UCPB
KKK	Judicial Affidavit of Cynthia A. Almirez
KKK-1	Signature of Cynthia A. Almirez

Respondent then presented her lone witness in the person of Mr. Junely Ivanhoe S. Fernandez.

On November 28, 2011, respondent filed her Formal Offer of Evidence, offering Exhibits "1", "2" and "3". On December 26, 2011, this Court resolved to admit said exhibits. Furthermore, it was noted that the Exhibit formally offered as Exhibit "3" is actually marked as Exhibit "2-a". Thereafter, respondent was deemed to have formally rested her case.

Respondent's documentary evidence are as follows:

Exhibits	Description
1	Progress Report dated September 12, 2011
2	Judicial Affidavit of Junely Ivanhoe S. Fernandez
3	Signature of Junely Ivanhoe S. Fernandez

On February 23, 2012, the case was submitted for decision, considering respondent's Memorandum filed on February 3, 2012 and petitioner's Memorandum filed on February 20, 2012.

The parties submitted the following issues[7] for the Court's resolution:

> "2.01. Whether or not petitioner has complied with the provisions of Sections 204 (c) and 229 of the National Internal Revenue Code of 1997, as amended, relative to the prescriptive period for filing of administrative and judicial claims for refund and/or issuance of a tax credit certificate.
>
> 2.02. Whether or not petitioner has established the withholding of the amount of Ninety Four Million Three Hundred Forty Nine Thousand Two Hundred Eighty Five Pesos (P94,349,285.00) with copies of the withholding statements duly issued by the various payors of petitioner, showing the amount paid and the amount of tax withheld therefrom;
>
> 2.03. Whether or not petitioner's alleged unutilized creditable withholding taxes in the amount of Ninety Four Million Three Hundred Forty Nine Thousand Two Hundred Eighty Five Pesos (P94,349,285.00) has been utilized or carried over to the succeeding years;
>
> 2.04. Whether or not petitioner is entitled to refund and/or issuance of tax credit certificate in the amount of Ninety Four Million Three Hundred Forty Nine Thousand Two Hundred Eighty Five Pesos (P94,349,285.00) representing unutilized withholding tax credits for the calendar year 2007; and
>
> 2.05. Whether or not the respondent Commissioner of Internal Revenue erred when it failed to act on petitioner's claim for refund/credit of its excess and unutilized creditable withholding taxes in 2007 through the issuance of a TCC."

The foregoing issues may be summarized as -

> "Whether or not petitioner is entitled to a refund or issuance of tax credit certificate for its alleged excess creditable

[7] Docket, p. 1339.

withholding tax in the amount of P94,349,285.00 for taxable year 2007."

But necessarily, the timeliness of petitioner's claim for refund is to be determined.

The pertinent provisions are Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, which are quoted hereunder for ready reference:

> "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 stamps 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."
>
> "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 therefor, 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."

The above provisions mandate that the administrative and the judicial remedies of filing a claim for refund of erroneously or excessively paid tax must be done within two (2) years from the date of payment of the tax. For actions for refund of excess corporate income tax, the Supreme Court held that the two-year prescriptive period should be counted from the filing of the final adjustment return, because it is only during that date that the exact tax liability or the refundable amount of tax can be determined.[8]

Suffice it to say that the instant case involves the taxable year 2007. Petitioner filed its Annual Income Tax Return (BIR Form No. 1702) on April 15, 2008.[9] Counting from this date, the administrative claim filed by petitioner on April 12, 2010[10] and the subsequent appeal by way of a Petition for Review filed before this Court on April 15, 2010[11], both fell within the two-year prescriptive period allowed by law.

On the issue of whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of ₱94,349,285.00, representing unutilized CWT for taxable year 2007, it is well-settled that a

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[8] Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals, G.R. No. 83736, dated January 15, 1992; ACCRA Investments Corporation vs. The Honorable Court of Appeals, et. al., G.R. No. 96322, December 20, 1991.
[9] Exhibits "I" and "J".
[10] Exhibit "U".
[11] Docket, pp. 5-30.

taxpayer claiming a tax credit or refund of CWT must comply with the following requisites:[12]

1. The claim must be filed with the BIR Commissioner within the two-year period from the date of payment of the tax;
2. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld; and
3. It must be shown on the return that the income received was declared as part of the gross income.

As stated earlier, the first requisite has been satisfied.

With regard to the second requisite, petitioner through Mr. Emmanuel Y. Mendoza, the Court-commissioned Independent CPA (ICPA), presented a summary of verified BIR Form No. 2307 or Certificate of Creditable Tax Withheld at Source, the details of which are presented below:

	Findings	Annex	CWT on Income payments subjected to 6% EWT	CWT on Income payments subjected to 2% EWT	CWT on Income payments subjected to 5% EWT	CWT on Income payments subjected to 10% and 15% EWT	Total
1.	Supported with BIR Form No. 2307 with no exceptions noted	A-1, A-2, A-3 and A-4	P 86,804,752.75	P3,619,742.48	P 183,658.49	P 39,141.57	P90,647,295.29
2.	Supported by BIR Form No. 2307 but covering periods outside the taxable year of claim	A-5		97,661.62			97,661.62

[12] Commissioner of Internal Revenue vs. Far East Bank and Trust Company (now Bank of the Philippine Islands), G.R. No. 173854, March 15, 2010.

3. Supported by BIR Form No. 2307 wherein the tax base used in computing the amount of CWT is the lower amount between the FMV and Selling price	A-6	3,383,381.91				3,383,381.91
4. Supported by BIR Form No. 2307 with no payor's signature	A-7		221.15			221.15
5. Supported by BIR Form No. 2307 wherein the amount of CWT is not tie-up compared to the bank's list/schedule of CWT	A-8		209,021.88			209,021.88
Sub-total		P90,188,134.66	P3,926,647.13	P183,658.49	P39,141.57	P94,337,581.85
CWT with no supporting BIR Form No. 2307	A-9		1,976.50	8,236.02		10,212.52
TOTAL		P90,188,134.66	P3,928,623.63	P191,894.51	P39,141.57	P94,347,794.37

A perusal of the ICPA Reports[13] and the presented certificates[14] shows that out of the total claimed CWT of ₱94,349,285.00, only the amount of ₱94,337,581.85 is supported by the required BIR Form No. 2307. The difference of ₱11,703.15 has no supporting certificates; thus, shall be deducted outright from petitioner's claim.

Moreover, the certificates which were dated outside the period of claim with the corresponding CWT of ₱97,661.62 and the certificate without the payor's signature amounting to ₱221.15 should also be disallowed, details of which are as follows:

Certificates covering period outside the period claim

Exhibit	Payor	Period Covered		Tax Withheld
Z-1068	Bistro Americano	01-Oct-06	31-Dec-06	P 29,629.75
Z-1069	Lepanto	01-Oct-06	31-Dec-06	7,013.66
Z-1070	Stepan Philippines	01-Dec-06	31-Dec-06	9,497.42
Z-1071	Aldiz Incorporated	01-Jun-06	30-Jun-06	3,873.73
Z-1072	Aldiz Incorporated	01-Jun-06	30-Jun-06	6,772.30

[13] Exhibits "OO", "QQ", and "EEE".
[14] Exhibits "Z-1" to "Z-1099".

Z-1073	Aldiz Incorporated	01-Jul-06	31-Jul-06	275.05
Z-1074	Aldiz Incorporated	01-Jul-06	31-Jul-06	9,223.46
Z-1075	Aldiz Incorporated	01-Aug-06	31-Aug-06	1,003.76
Z-1076	Aldiz Incorporated	01-Aug-06	31-Aug-06	8,171.38
Z-1077	Aldiz Incorporated	01-Sep-06	30-Sep-06	1,567.97
Z-1078	Aldiz Incorporated	01-Oct-06	31-Oct-06	7,409.06
Z-1079	Aldiz Incorporated	01-Oct-06	31-Oct-06	1,313.53
Z-1080	Aldiz Incorporated	01-Nov-06	30-Nov-06	528.42
Z-1081	Aldiz Incorporated	01-Dec-06	31-Dec-06	660.18
Z-1082	Columbian Autocar Corp.	01-Dec-06	31-Dec-06	1,967.18
Z-1083	Aldiz Incorporated	01-Dec-06	31-Dec-06	8,754.77
Total				P97,661.62

Certificate without the payor's signature

Exhibit	Payor	Period Covered		Tax Withheld
Z-1091	MD Express Manila, Inc.	28-Dec-07	28-Dec-07	P 221.15

In fine, petitioner complied with the second requisite but only to the extent of ₱94,239,699.08 out of the total claim of ₱94,349,285.00, computed as follows:

Claimed CWT for taxable year 2007	P 94,349,285.00
Less: Unsupported by certificates	11,703.15
CWT supported by certificate dated outside the period claim	97,661.62
CWT supported by certificate without the payor's signature	221.15
CWT validly supported by BIR Form No. 2307	P94,239,699.08

The CWT amounting to ₱94,239,699.08, which are validly supported by certificates, can be brokendown as follows:

CWT on Income Payments Subjected to 6% EWT	P 90,188,134.66
CWT on Income Payments Subjected to 2% EWT	3,828,764.36
CWT on Income Payments Subjected to 5% EWT	183,658.49
CWT on Income Payments Subjected to 10% and 15% EWT	39,141.57
TOTAL	P94,239,699.08

Anent the third requisite, the Court verified through the ICPA findings and observations as stated in his Reports whether the income payments were part of the total income declared in the 2007 Annual ITR.

The CWT on income payments subjected to six percent (6%) pertains to sales of real property and other properties acquired (ROPA). ROPA includes real and other properties, other than those used for banking purposes or held in the investment portfolio, acquired by the bank judicially or extra-judicially in settlement of loans.[15]

Based on the ICPA findings, of the ₱90,188,134.66 total CWT from sale of ROPA, the CWT of ₱62,546,248.64 the related loss of which in the amount of ₱759,777,881.06 was verified to have been included in petitioner's General Ledger, ₱68,751,167.34 of which was declared in petitioner's 2007 Annual Income Tax Return, while the remaining ₱691,026,713.72 was charged as deferred losses of petitioner in 2007. Petitioner defers the booking of some of its losses incurred from the sale of ROPA because according to the Management, the bank is currently under rehabilitation of the BSP and the Philippine Deposit Insurance Corporation (PDIC) and such losses are to be staggered for ten (10) years.[16]

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[15] Exhibit "EEE", page 2.
[16] Exhibit "FFF", pages 6-7; Exhibit "EEE", pages 2-4.

On the other hand, the related loss on the remaining ₱27,641,886.02[17] CWT was either recorded in petitioner's General Ledger in taxable years other than year 2007 or it cannot be traced in petitioner's General Ledger in any taxable year.

The net loss from assets sold or exchanged reported in petitioner's General Ledger[18] and Trial Balance[19] for the taxable year 2007 amounted to ₱212,401,216.67. The said amount includes net loss of ₱68,751,167.34 arising from the sale of ROPA that were subjected and related to creditable withholding taxes amounting to ₱62,546,248.64. The net loss during the year amounting to ₱212,401,216.67 was reported in the Annual Income Tax Return for the taxable year 2007.

The CWT on income payments subjected to two percent (2%) refers to interest income collected from loans and fees from trade services. Interest income is recognized as they are earned.

As found by the ICPA, the interest income collected from petitioner's loans and fees from trade services in 2007 related to the claimed 2% CWT of ₱3,928,623.63 (inclusive of the disallowed CWT) amounts to ₱182,255,132.41, detailed as follows:

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[17] Annexes "A-8" and "A-9" of ICPA Report dated April 25, 2011
[18] Exhibits "DDD-1" to "DDD-26".
[19] Exhibits "CCC-1" to "CCC-2".

FINDINGS	ANNEX	AMOUNT OF CWT	TOTAL AMOUNT OF RELATED INCOME PAYMENT
1. Related income payments recorded in taxable year 2007 are equal to the amount reported (as tax base) in BIR Form No. 2307	A-10	P 2,795,269.55	P 139,764,149.27
2. Related income payments recorded in taxable year 2006 but are equal to the amount reported (as tax base) in BIR Form No. 2307	A-10	15,704.48	785,224.04
3. Related income payments recorded in taxable year 2007 are lower compared to the amount reported (as tax base) in BIR Form No. 2307	A-11	470,939.43	11,189,759.56
4. Related income payments recorded in taxable years 2007 and 2006 are lower compared to the amount reported (as tax base) in BIR Form No. 2307 (out of the total P633,573.55 related income payment of Aldiz Inc., P15,704.96 were booked in 2006 and remaining P617,868.59 were booked in 2007)	A-11	13,892.51	617,868.59
5. Related income payments recorded in taxable year 2007 are higher compared to the amount reported (as tax base) in BIR Form No. 2307	A-12	553,728.18	27,794,442.28
6. Related income payments recorded in taxable years 2007 and 2006 are higher compared to the amount reported (as tax base) in BIR Form No. 2307 (out of the total P2,053,188.98 related income payment of Aldiz Inc., P1,851,189.60 were booked in 2006 and remaining P201,999.38 were booked in 2007)	A-12	41,055.72	201,999.38
		P3,890,589.87	P180,353,443.15
7. Related income payments not reported in bank's books and Annual Income Tax Return for taxable year 2007	A-13	38,033.76	1,901,689.26
TOTAL		P3,928,623.63	P182,255,132.41

As ascertained by the ICPA, the total interest income and other income of petitioner for the taxable year 2007 amounted to ₱4,297,811,186.95 and ₱1,732,031,877.87, respectively. As verified, out of the total income payments related to interest income and fees from trade services that were subjected to CWT amounting to ₱182,255,132.41, ₱106,800,262.65 was reported as interest income and fees from trade services (under Interest

Income and Other Income accounts) in petitioner's General Ledger and Trial Balance for the taxable year 2007 and 2007 Annual Income Tax Return.

The CWT on income payments subjected to five percent (5%) pertains to rental income. The total amount of rental income that was subjected to CWT amounted to ₱3,837,744.74; while the CWT withheld on the said income amounted to ₱191,894.51.

The total other income of petitioner for the taxable year 2007 amounted to ₱1,732,031,877.87. The ICPA verified that the total rental income that was subjected to creditable withholding taxes amounting to ₱3,837,744.74 was reported as rental income (under Other Income account) in petitioner's General Ledger and Trial Balance for the taxable year 2007 and Annual Income Tax Return for taxable year 2007.

The CWT on income payments subjected to ten percent (10%) and fifteen percent (15%) pertains to income arising from outsourcing and professional fees. The total amount of income from outsourcing and professional fee that was subjected to CWT amounted to ₱271,943.83 and the same was reported in petitioner's General Ledger and included in the 2007 Annual ITR of petitioner.

Based on the above findings and observations, petitioner's claim substantiated by CWT and the related income payments/loss declared in the Annual ITR may be summarized as follows:

FINDINGS	INCOME PAYMENTS/LOSS	TAXES WITHHELD
Income payments subjected to 6% CWT properly supported with BIR Form No. 2307	(P68,751,167.34)	P 62,546,248.64
Income payments subjected to 2% CWT properly supported with BIR Form No. 2307	106,800,262.65	3,828,764.36
Income payments subjected to 5% CWT properly supported with BIR Form No. 2307	3,673,169.80	183,658.49
Income payments subjected to 10% and 15% CWT properly supported with BIR Form No. 2307	271,943.83	39,141.57
TOTAL		**P66,597,813.06**

As stated by petitioner and as verified by the ICPA, the income payments related to the CWT of ₱66,597,813.06 formed part of the declared income/loss in the Annual ITR of 2007; nevertheless, the Court cannot ascertain its veracity.

The total other income amounting to ₱1,147,598,768.00 and the net loss from asset sold/exchanged amounting to ₱212,401,216.67 reported in the Annual ITR that includes the income payments or loss from which the ₱66,597,813.06 CWT were withheld, has no breakdown as to its components.

Although petitioner submitted before this Court documents like General Ledger,[20] Trial Balance,[21] Audited Financial Statements for 2007,[22] 2008 [23] and 2009,[24] Annual Income Tax Returns for 2007[25] and 2008,[26] Quarterly

[20] Exhibits "DDD-1" to "DDD-26".
[21] Exhibits "CCC-1" to "CCC-2".
[22] Exhibit "HHH".
[23] Exhibit "III".
[24] Exhibit "JJJ".
[25] Exhibit "I".
[26] Exhibit "ZZ".

Income Tax Returns for 2007[27] and 2008,[28] Schedules and other supporting documents; however, petitioner failed to present detailed General Ledger, reconciliation schedules or any other documents whereby the Court can trace the discrepancy and can determine with certainty that the income payments related to the claimed CWT formed part of its taxable gross income in its 2007 Annual ITR. Failure to present the foregoing documents is fatal to petitioner's claim.

Notwithstanding the Report of the ICPA, the Court is not bound by his findings. The Report submitted by the ICPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such Report is still within the province of the Court. In addition, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[29]

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[30] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation

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[27] Exhibits "RR-4", "SS-4" and "TT".
[28] Exhibits "W", "WW", and "XX".
[29] First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue, CTA EB Case No. 563, March 1, 2011.
[30] Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue, G.R. No. 107434. October 10, 1997.

of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[31]

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

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

C E R T I F I C A T I O N

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division

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[31] Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et. al., G.R. No. 127105, June 25, 1999.