REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILAM PROPERTIES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8635

Members:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, *JJ.*

Promulgated:

DEC 03 2015
11:30 a.m.

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AMENDED DECISION

BAUTISTA, J:

For resolution is petitioner's "Motion for Reconsideration" filed on August 4, 2015; without respondent's comment/opposition despite due notice.

On July 13, 2015, the Court promulgated a Decision, disposing of the case as follows:

> **WHEREFORE**, in view of the foregoing, the Petition for Review, filed by petitioner Philam Properties Corporation, claiming for a refund or issuance of a TCC of its excess/unutilized creditable withholding taxes amounting to Fifteen Million Two Hundred Twenty-Two Thousand Eight Hundred Sixty One Pesos (Php15,222,861.00) for the period starting from January 1 to December 31, 2010, is hereby **DENIED** for insufficiency of evidence.

of its excess Creditable Withholding Taxes ("CWT"), *i.e.*, the income upon which the taxes were withheld were included in the return of the recipient.

The Court found a Php26,412,281.83 difference between the amount of gross income *per* CWT certificates (Php95,898,116.17) *vis-a-vis* the amount declared in petitioner's 2010 Annual Income Tax Return ("ITR") (Php122,310,398.00). Further, the Court was unable to determine the items which make up the gross income *per* 2010 ITR since petitioner failed to present sufficient proof of its components and the report of the Court-commissioned Independent Certified Public Accountant ("ICPA") did not provide any additional information thereon.

In its Motion for Reconsideration, petitioner asserts that the gross income *per* CWT certificates for CY 2010 is Php119,394,047.81 and not Php95,898,116.17, as stated in the Decision. Petitioner explains that the amount of Php95,898,116.17 represents income payments with original certificates (marked as *Exhibits* "P-23.1" to "P-23.616"), official receipts, and was properly reported in its 2010 books. The remaining income payments amounting to Php23,495,931.64 (Php119,394,047.81 less Php95,898,116.17) correspond to CWT in the amount of Php3,127,253.03 and were all properly accounted for in *Exhibits* "P-21.1" to "P-26-85," as shown in the schedule below:

Exhibit "P-20"	Particulars	Income Payment	CWT
Annex "C"	CWT where certificates provided were not original (*Exhibits* "P-21.1" to "P-21.4")	Php 36,600.00	Php 1,830.00
Annex "D"	CWT where certificates provided were claimed twice (*Exhibits* "P-22.1" to "P-22.13")	986,765.28	51,278.27
Annex "F"	CWT supported with original certificates and ORs with related income recorded in 2009 books (*Exhibits* "P-24.1" to "P-24.18")	2,589,395.43	388,409.32
Annex "G"	CWT supported with original certificates with related income not recorded in 2010 books (*Exhibits* "P-25.1" to "P-25.4")	60,100.00	4,005.00
Annex "H"	CWT supported with original certificates partly valid and partly with exception (*Exhibits* "P-26.1" to "P-26.85")		
	Recorded in 2010 books with related ORs dated 2010	10,810,645.90	1,159,884.50
	Recorded in 2010 books with ORs not yet provided	1,614,153.28	80,707.66
	Not recorded in 2010 books with ORs not yet provided	165,421.65	21,692.25
	Not recorded in 2010 books with ORs dated 2010	2,786.40	417.96
	Recorded in 2009 books with ORs dated 2010	3,308,278.18	495,641.73
	Recorded in 2010 books with ORs dated 2009	15,615.00	780.75
	Recorded in 2010 books with ORs dated 2011	3,906,170.32	585,925.55
	CWT not supported with certificates	-	336,680.04
TOTAL		**Php 23,495,931.44**	**Php 3,127,253.03**

Petitioner points out that the total gross income from which the CWT were actually withheld is Php119,567,041.00 and not Php122,310,398.00. The former amount represents operating income, as reflected in Schedule 1 (Schedule of Sales/Revenues/Receipts/Fees), Section A of its 2010 ITR[1], to wit:

Sale of Goods/Properties	Creditable Tax Withheld		Taxable Amount
Sale of Services	Php	13,463,493.00	Php 82,792,680.00
Lease of Properties		1,753,067.00	36,774,361.00
TOTAL	**Php**	**15,216,560.00**	**Php 119,567,041.00**

On the other hand, the amount of Php122,310,398.00 found by the Court, consists of petitioner's operating income, as enumerated above, and includes "Non-operating and taxable other income" in the amount of Php2,743,356.72[2].

Petitioner submits that all income payments reflected in the Certificates of Tax Withheld at Source can be traced to the detailed general ledger where the nature of income payment, payor, date paid, Official Receipt ("OR") No. and amount of CWT are posted. The information posted in the general ledger is consistent with the entries in the Audit Trail Listing where transactions are grouped by document type (*i.e.* official receipt). To further lend support to the entries in the General Ledger, the Allocation Report provides the allocation between income and CWT *per* payor.

Considering that petitioner submitted its detailed general ledger[3], Audit Trail Listing[4], Allocation Report[5], Reconciliation Schedules, Certificates of Tax Withheld at Source, ORs and other supporting documents, petitioner avers that it has proven that the income payments from which the CWT were withheld were properly reported in its declared gross income *per* 2010 ITR. Hence, it complied with the second requisite for the refund or issuance of a TCC of its excess CWT, contrary to the findings of the Court.

On August 6, 2015, the Court ordered respondent to comment on petitioner's Motion for Reconsideration within fifteen (15) days from receipt thereof. Based on the records, BIR-RR # 8 - Makati City, Legal Division received the same August 13, 2015. Hence, respondent had until August 28, 2015 to file her comment.

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[1] *Exhibit* "P-3."
[2] *Exhibit* "P-3," Line 20B.
[3] *Exhibit* "P-28."
[4] *Exhibit* "P-29."
[5] *Exhibit* "P-30."

On September 9, 2015, the Judicial Records Division issued a Records Verification Report stating that respondent failed to file a comment as of that date.

After a second look and careful examination of the ICPA Report, together with petitioner's supporting documents, the Court finds the instant Motion partly meritorious.

The Court-commissioned ICPA summarized the results of its verification of petitioner's claimed CWT in the amount of Php15,222,861.59, as follows:

Findings	*Exhibit* "P-20"	*Exhibit*	CWT
a. Creditable Withholding Taxes where Certificates of CWT provided were not original	*Annex* "C"	"P-21.1" to "P-21.4"	Php 1,830.00
b. Creditable Withholding Taxes where Certificates of CWT provided were claimed twice	*Annex* "D"	"P-22.1" to "P-22.13"	51,278.27
c. Creditable Withholding Taxes Supported with Original CWT Official Receipts provided With related Income recorded in 2010 Books	*Annex* "E"	"P-23.1" to "P-23.616"	12,095,607.56
d. Creditable Withholding Taxes Supported with Original CWT Official Receipts provided With related Income recorded in 2009 Books	*Annex* "F"	"P-24.1" to "P-24.18"	388,409.32
e. Creditable Withholding Taxes Supported with Original CWT Official Receipts not provided With related Income recorded in 2010 Books	*Annex* "G"	"P-25.1" to "P-25.4"	4,005.00
f. Creditable Withholding Taxes	*Annex* "H"	"P-26.1" to "P-26.85"	
Supported with Original CWT			
CWT partly valid and partly with exception			
Broken down as follows:			
1. Recorded in 2010 books with related ORs dated 2010			1,159,884.50
2. Recorded in 2010 books with ORs not yet provided			80,707.66
3. Not recorded in 2010 books with ORs not yet provided			21,692.25
4. Not recorded in 2010 books with ORs dated 2010			417.96
5. Recorded in 2009 books with ORs dated 2010			495,641.73
6. Recorded in 2010 books with ORs dated 2009			780.75
7. Recorded in 2010 books with ORs dated 2011			585,925.55
g. Creditable Withholding Taxes Not supported with CWTs			336,680.04
TOTAL CREDITABLE WITHHOLDING TAXES			**Php 15,222,860.59**

The foregoing shows that out of the claimed Php15,222,860.59, CWT in the amounts of Php1,830.00, Php51,278.27 and Php336,680.04 (*under items a, b and g of the Findings*) are not properly supported with Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307), and should be disallowed. Thus, petitioner complied with the third requisite of proving the fact of withholding but only to the extent of Php14,833,072.69, computed as follows:

Amount of claimed CWT	Php 15,222,861.00
Less: Disallowances	
CWT supported by certificates which are not original copies	1,830.00

CWT certificates which were claimed twice	51,278.27
CWT not supported with certificates	336,680.04
CWT PROPERLY SUPPORTED WITH CERTIFICATES	**Php 14,833,072.69**

With regard to the second requisite of establishing that the income payments related to the claimed CWT were declared in petitioner's ITR, the Summary of Creditable Withholding Tax[6] for the year 2010 shows that the claimed CWT of Php15,222,860.59 pertains to income payments in the amount of Php119,394,047.81, which is lower by Php172,993.19 when compared with the Php119,567,041.00 operating income reflected in petitioner's ITR for the same year. The ICPA reconciled the discrepancy as follows:

	***Exhibit* "P-20"**	**Amount**
Total Income Reported in 2010 ITR		**Php 119,567,041.00**
Add/(Deduct):		
Income/Collections not subject to withholding taxes	*Annex* "I"	(7,736,531.81)
Income accrued in 2010	*Annex* "J"	7,340,752.15
Unsupported CWTs (for collection)	*Annex* "K"	(3,424,748.82)
2010 Income uncollected as of Dec. 31, 2010	*Annex* "L"	(3,191,046.54)
Collection of prior years' income with CWT in 2010	*Annex* "M"	5,773,298.27
2010 CWTs claimed twice	*Annex* "N"	986,765.27
With 2010 CWTs recorded as other income in 2010	*Annex* "O"	42,000.00
Other items	*Annex* "P"	36,518.29
Net amount		**(172,993.19)**
TOTAL INCOME IN 2010 CWT		**Php 119,394,047.81**

Based on the above reconciliation schedule, certain income items were deducted from the Php119,567,041.00 gross operating income *per* ITR, indicating that these were reported in petitioner's 2010 ITR but do not form part of petitioner's claim, thus, the same shall no longer be discussed, namely:

	***Exhibit* "P-20"**	**Amount**
Income/Collections not subject to withholding taxes	*Annex* "I"	(Php 7,736,531.81)
Unsupported CWT (for collection)	*Annex* "K"	(3,424,748.82)
2010 Income uncollected as of Dec. 31, 2010	*Annex* "L"	(3,191,046.54)

However, the Court finds it necessary to examine the income items which were added to the Php119,567,041.00 gross operating income *per* ITR because these were reflected in the certificates but were not reported in petitioner's 2010 ITR, to wit:

	***Exhibit* "P-20"**	**Amount**
Income accrued in 2010	*Annex* "J"	Php 7,340,752.15
Collection of prior years' income with CWT in 2010	*Annex* "M"	5,773,298.27
2010 CWT claimed twice	*Annex* "N"	986,765.27
With 2010 CWT recorded as other income in 2010	*Annex* "O"	42,000.00
Other items	*Annex* "P"	36,518.29

[6] *Exhibit* "P-20;" *Annex* "A."

With reference to the reconciling item of Php7,340,752.15, a perusal of petitioner's Schedule of Accrued Income for 2010[7] shows that the same pertains to various reversing entries for accruals of management/marketing fees and rental income. Considering that the amount of Php7,340,752.15 was reflected in the CWT certificates and petitioner failed to establish that it reported the same in its 2010 ITR or prior years, the corresponding CWT in the amount of Php632,253.43, as computed below, should be disallowed:

	Amount	Rate	EWT		
Reversal Entry - to correct PJ10844 - adjustment on rental income of Regus Inc. for Dec/09 (PJ10903)	1/1/2010	JV50	Php 64,134.00		
adjustment Dec/09-Nov/10 rental income from Regus Inc, based on restructured lease; efffective Dec/09	12/31/2010	RJ332	4,614,594.00		
Reversal Entry - adjustment on rental income of Innove Communication 01/01/10-01/14/10 (PJ10837)	1/1/2010	JV27	(29,806.45)		
adjustment on rental income of Innove Communication 1/01/11-1/14/11	12/31/2010	JV1438	39,672.40		
Rental Income			4,688,593.95	5%	Php 234,429.70
Project Management/Marketing Fees			2,652,158.20	15%	397,823.73
TOTAL			**Php 7,340,752.15**		**Php 632,253.43**

As to the reconciling item of Php5,773,298.27, the ICPA reported that this amount represents income earned in the year 2009 but was only collected and consequently subjected to withholding tax during 2010.[8] However, other than its ITR, petitioner failed to submit its audited financial statements, general ledger and other related documents for the year 2009 to aid the Court in verifying if the gross income of Php5,773,298.27 was actually declared by petitioner in its 2009 ITR. Thus, the Court shall now determine the related CWT that should be disallowed.

Records show that the Php5,773,298.28 income payments were included in the Php11,818,918.49 income payments received by petitioner for which CWT in the amount of Php1,772,837.78 was actually withheld, detailed as follows[9]:

Payor/Withholding Agent	Income Payments	2010 Income	2009 Income	CWT
PHILAMLIFE TOWER MANAGEMENT CORP	Php3,980,663.87	Php1,626,203.86	Php2,354,460.01	Php597,099.58
PHILPLANS FIRST INC	225,000.00	-	225,000.00	33,750.00
PHILAMLIFE TOWER CONDOMINIUM CORP	709,347.33	249,212.00	460,135.33	106,402.10
THE PHIL. AMERICAN & GENERAL INSURANCE CO.	1,140,432.60	-	1,140,432.60	171,064.89
THE PHIL. AMERICAN & GENERAL INSURANCE CO.	665,565.60	-	665,565.60	99,834.84
THE PHIL. AMERICAN & GENERAL INSURANCE CO.	313,776.80	-	313,776.80	47,066.53
THE PHIL. AMERICAN & GENERAL INSURANCE CO.	244,620.43	-	244,620.43	36,693.06

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[7] *Exhibit* "P-20;" *Annex* "J."
[8] *Exhibit* "P-20," pp. 8-9; *Annex* "M."
[9] *Exhibit* "P-20;" *Annex* "M."

THE PHIL. AMERICAN & GENERAL INSURANCE CO.	4,539,511.86	4,170,204.35	369,307.51	680,926.78
TOTAL	**Php11,818,918.49**	**Php6,045,620.21**	**Php5,773,298.28**	**Php1,772,837.78**

The amount composing the CWT of Php1,772,837.78 can be individually traced to the ICPA's previously summarized classification of CWT, *viz.*:

Findings	*Exhibit* "P-20"	CWT
CWT supported by original certificates and official receipts and the related income was recorded in 2009 Books	*Annex* "F"	
PHILPLANS FIRST INC		Php 33,750.00
THE PHIL. AMERICAN & GENERAL INSURANCE CO.		171,064.89
THE PHIL. AMERICAN & GENERAL INSURANCE CO.		99,834.84
THE PHIL. AMERICAN & GENERAL INSURANCE CO.		47,066.53
THE PHIL. AMERICAN & GENERAL INSURANCE CO.		36,693.06
subtotal		*388,409.32*
CWT supported by original certificates and official receipts and the related income was recorded in 2010 Books	*Annex* "H," (included in Item No. 1)	
PHILAMLIFE TOWER MANAGEMENT CORP		243,930.58
THE PHIL. AMERICAN & GENERAL INSURANCE CO.		625,530.65
subtotal		*869,461.23*
CWT supported by original certificates, without official receipts and income payments not recorded in 2010 Books	*Annex* "H," (included in Item No. 3)	
PHILAMLIFE TOWER CONDOMINIUM CORP		19,625.50
subtotal		*19,625.50*
CWT supported by original certificates and official receipts but the related income was recorded in 2009 Books	*Annex* "H," (included in Item No. 5)	
PHILAMLIFE TOWER MANAGEMENT CORP		353,169.00
PHILAMLIFE TOWER CONDOMINIUM CORP		86,776.60
THE PHIL. AMERICAN & GENERAL INSURANCE CO.		55,396.13
subtotal		*495,341.73*
TOTAL		**Php 1,772,837.78**

Out of the Php1,772,837.78 CWT, the amounts of Php388,409.32 Php19,625.50 and Php495,341.73 totalling Php903,376.55 shall be denied, as petitioner failed to establish that it declared the related income payments of Php5,773,298.27 in its prior year's ITR.

With reference to the reconciling income of Php986,765.27, the corresponding CWT in the amount of Php51,278.27[10] has already been disallowed earlier for having been claimed twice by petitioner.

Anent the reconciling amount of Php42,000.00 with the related CWT of Php6,300.00[11], the ICPA stated that this refers to income payments which were included under petitioner's other taxable income in the ITR. However, only the following income payments of Php28,000.00 with the related CWT of Php4,200.00 were traced to petitioner's general ledger[12] and ITR[13] for taxable year 2010:

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[10] *Exhibit* "P-20;" *Annex* "N."
[11] *Exhibit* "P-20;" *Annex* "O."
[12] *Exhibit* "P-28."
[13] *Exhibit* "P-33."

Payor/Withholding Agent	Income Payment	CWT	OR No.	*Exh.* No. of Certificate
PHILAM TOWER REALTY CORPORATION	Php 3,500.00	Php 525.00	8416	"P-26.17"
PHILAMLIFE TOWER CONDOMINIUM CORP	3,500.00	525.00	8415	"P-26.19"
PHILAMLIFE TOWER CONDOMINIUM CORP	3,500.00	525.00	8414	"P-26.26"
PHILAMLIFE TOWER CONDOMINIUM CORP	3,500.00	525.00	8567	"P-26.36"
PHILAMLIFE TOWER MANAGEMENT CORP	3,500.00	525.00	8566	"P-26.38"
PHILAMLIFE TOWER MANAGEMENT CORP	3,500.00	525.00	8670	"P-23.553"
PHILAMLIFE TOWER MANAGEMENT CORP	3,500.00	525.00	8672	"P-26.71"
PHILAMLIFE TOWER MANAGEMENT CORP	3,500.00	525.00	8671	"P-26.73"
TOTAL	**Php 28,000.00**	**Php 4,200.00**		

Thus, the CWT of Php2,100.00 (Php6,300.00 less Php4,200.00) related to the untraced income payments of Php14,000.00 (Php42,000.00 less Php28,000.00) shall be disallowed.

Lastly, as to the reconciling amount of Php36,518.29 with the related CWT of Php2,052.30, the same pertains to the difference in the income payments, as reflected in the certificates and as recorded in petitioner's books, *viz.*:

	CWT *per* Certificate	Income Payment			CWT Related to the Diff. in Income Payment
		Per Certificate	*Per* Books	Difference	
BNP PARIBAS	Php 147.00	Php 2,940.00	Php -	Php 2,940.00	Php 147.00
CHARTIS PHILIPPINES INSURANCE COMPANY	55,241.28	368,175.15	365,863.81	2,311.34	346.80
KUMON PHILIPPINES INC	615.00	12,300.00	-	12,300.00	615.00
NOKIA PHILIPPINES INC	1,890.00	37,800.00	36,000.00	1,800.00	90.00
NOKIA PHILIPPINES INC	2,439.52	48,790.43	46,990.43	1,800.00	90.00
NOKIA PHILIPPINES INC	1,890.00	37,800.00	36,000.00	1,800.00	90.00
NOKIA SIEMENS NETWORKS PHILIPPINES INC	945.00	18,900.00	18,000.00	900.00	45.00
NOKIA SIEMENS NETWORKS PHILIPPINES INC	945.00	18,900.00	18,000.00	900.00	45.00
NOKIA SIEMENS NETWORKS PHILIPPINES INC	315.00	6,300.00	6,000.00	300.00	15.00
NOKIA SIEMENS NETWORKS PHILIPPINES INC	630.00	12,600.00	12,000.00	600.00	30.00
SUN MIRCORSYSTEM PHILIPPINES INC	538.50	10,770.00	-	10,770.00	538.50
Rounding of Difference	-	-	-	(3.05)	
TOTAL	**Php 65,596.30**	**Php 575,275.58**	**Php538,854.24**	**Php 36,418.29**	**Php2,052.30**

Of the Php2,052.30 CWT related to the Php36,418.29 discrepancy in income payments, the amount of Php615.00 has already been disallowed for not being supported by original copies of certificates. Hence, only the remaining CWT in the amount of Php1,437.30 shall be disallowed for petitioner's failure to prove that it declared the corresponding income payments in its ITR.

In sum, out of the total CWT of Php15,222,861.00, only the amount of Php13,293,905.41, as computed below, was duly supported with certificates and the related income formed part of the taxable income reflected in petitioner's 2010 Annual ITR:

Amount of claimed CWT	Php 15,222,861.00
Less: Disallowances	
CWT supported by certificates which are not original copies	1,830.00
CWT certificates which were claimed twice	51,278.27
CWT not supported by certificates	336,680.04
CWT pertaining to the reversing entries for accruals of management/marketing fees and rental income	632,253.43
CWT pertaining to the ₱5,773,298.27 income payments collected in 2010 but allegedly reported in the 2009 ITR	903,376.55
CWT pertaining to petitioner's Other Income which were not traced to the general ledger and ITR for 2010	2,100.00
CWT related to the difference in the income payments as reflected per certificates and as recorded in petitioner's books	1,437.30
PROPERLY SUBSTANTIATED CWT	**Php 13,293,905.41**

However, records reveal that petitioner failed to substantiate its prior year's excess credits of Php43,223,634.00[14]. 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 Php15,222,861.00, it had enough prior years' excess credits to cover its declared income tax liability for taxable year 2010 in the amount of Php12,681,617.80[15]. A mere allegation that it has prior year's excess credits in its Annual ITR will not suffice.

Relevantly, in the case of *Commissioner of Internal Revenue v. Nissan Motor Philippines, Inc.*[16], 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, *viz.*:

> 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 on 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-

[14] *Exhibit* "P-3," Line 30A.
[15] *Exhibit* "P-3," Line 29.
[16] CTA *EB* No. 137, October 6, 2006.

bound to prove its entitlement to the entire amount of its claim for refund.

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 [Php]82,751.91, **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 [Php]478,645.00. The other components are Nissan Motor's Minimum Corporate Income Tax (MCIT) amounting to [Php]3,958,694.00 and the total amount of withheld taxes for the taxable year 2000 amounting to [Php]8,656,236.00. These components are shown on Nissan Motor's Annual Income Tax Return as follows:

Aggregate Income Tax Due			[Php] 3,958,694.00
Less:	Tax Credits/Overpayment		
	Prior Year's Excess Credits	[Php]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)			**([Php]5,176,187.00)**

It is undeniable that Nissan Motor's prior year's excess credits formed part of its *Total Tax Credits/Payments* amounting to [Php]9,134,881.00 that was used or applied to cover its MCIT

> liability for the taxable year 2000 and that the *Tax Overpayment* of [Php]5,176,187.00 resulted from its Total Tax Credits/Payments less its MCIT liability. Cleary, **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' 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/Payment* 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 [Php]478,645.00 is concerned. . . ." [Emphases ours]

Applying the foregoing to the case at bar and inasmuch as petitioner failed to substantiate its prior year excess credits of Php43,223,634.00, the substantiated CWT of Php13,293,905.41 shall be applied against its income tax liability for CY 2010 in the amount of Php12,681,617.80[17]. Therefore, petitioner's refundable excess CWT for taxable year 2010 amounted only to Php612.287.61, computed as follows:

Income Tax Due	Php 12,681,617.80
Less: Properly Substantiated CWT	(13,293,905.41)
REFUNDABLE EXCESS CWT	**(Php 612,287.61)**

In view of the foregoing, petitioner's Motion for Reconsideration is hereby **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision promulgated on July 13, 2015 is hereby modified to read as follows:

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[17] *Exhibit* "P-3," Line 29.

WHEREFORE, premises considered, the Petition for Review, filed by petitioner Philam Properties Corporation, claiming for a refund or issuance of a TCC of its excess/unutilized creditable withholding taxes amounting to Fifteen Million Two Hundred Twenty-Two Thousand Eight Hundred Sixty One Pesos (Php15,222,861.00) for the period starting from January 1 to December 31, 2010, is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **Six Hundred Twelve Thousand Two Hundred Eighty Seven and 61/100 Pesos (Php612,287.61)** representing petitioner's unutilized excess creditable withholding taxes for taxable year 2010.

SO ORDERED.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division's Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice