Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MCKINSEY & CO., (PHILS.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8078

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

Promulgated:

JUL 30 2012 2:26 p.m.

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DECISION

CASANOVA, *J.*:

Before this Court, is a Petition for Review,[1] filed by the petitioner seeking the refund or issuance of a tax credit certificate (TCC) in the amount of One Hundred Nineteen Million Six Hundred Ninety Three Thousand Five Hundred Ninety Nine Pesos (P119,693,599.00), representing its excess creditable withholding tax for taxable years 2007 and 2008.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, United States of America. It is authorized to transact business in the Philippines as a branch office primarily to engage in management consultancy services.[2]

Respondent is sued in her official capacity as the Commissioner of Internal Revenue, having been duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide

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[1] Docket (Vol. I), pp. 1-18.
[2] Joint Stipulation of Facts and Issues (JSFI), Stipulation of Facts, Par. 1, Docket (Vol. I), p. 000185.

disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code.[3]

For calendar year ending December 2006, petitioner reported a tax overpayment in the amount of P90,373,448.00 in its Annual Income Tax Return.[4] In the said return, petitioner indicated its intention to carry over the said tax overpayment by marking the box "To be carried over as tax credit next year/quarter."

On April 15, 2008, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for calendar year ending December 2007[5] which show a Minimum Corporate Income Tax (MCIT) of P2,721,265.00[6] The MCIT due is offsetted against Prior Year's Excess Credits other than MCIT in the amount of P90,373,448.00[7], Creditable Tax Withheld for the First Three Quarters in the amount of P26,246,133.00[8] and Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter in the amount of P17,721,832.00[9] This leaves the petitioner a Tax Overpayment in the amount of P131,620,148.00. Petitioner manifested its intention to avail of tax refund when it marked the box "To be refunded" on the said Tax Return.[10]

On April 17, 2009, petitioner filed its Annual Income Tax Return for calendar year ending 2008.[11] The said Income Tax Return reveals that it has a Minimum Corporate Income Tax in the amount of P2,388,293.00[12] which was offsetted against its Prior Year Excess Credits other than MCIT in the amount of P87,652,183.00,[13] Creditable Tax Withheld for the First Three Quarters in the amount P51,427,440.00 and Creditable Tax Withheld per BIR

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[3] Ibid, Par. 2, Docket (Vol. I), p. 000185.
[4] Exhibit "C".
[5] Exhibit "D".
[6] Exhibit "D-6".
[7] Exhibit "D-7".
[8] Exhibit "D-3".
[9] Exhibit "D-4".
[10] Exhibit "D-8".
[11] Exhibit "E" and "E-1".
[12] Exhibit "E-6".
[13] Exhibit "E-7".

Form No. 2307 for the Fourth Quarter in the amount of P24,298,192.00.[14] Petitioner indicated that it wishes to avail of a tax refund by marking the box with the said option.[15]

Thereafter, petitioner filed an administrative claim on March 31, 2010, before the BIR requesting for the issuance of a tax credit certificate in refund of excess creditable withholding tax for taxable years 2007 and 2008 in the amounts of P43,588,554.00 and P76,105,045.00, respectively.[16]

Alleging that respondent did not act upon its administrative claim, petitioner filed the instant Petition on April 14, 2010.

In her Answer[17] filed on June 2, 2010, respondent interposed the following Special and Affirmative Defenses:

> "4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
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> 5. Petition for review should be dismissed on the following grounds:
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> (a) Lack of cause of action on the part of the petitioner for non-exhaustion of administrative remedies. Considering that the petition for review was filed on April 14, 2010 or after fourteen (14) days from March 31, 2010 when the application for tax refund/credit was filed, the petitioner has not given the Commissioner the opportunity to decide on the claim. The taxpayer is given a period of two (2) years before appealing to the Court of Tax Appeals; and to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure ***(Bermejo vs. Collector, L-3028, July 29, 1950).*** The petition is pro-forma and was done merely to comply with the letter of the law and yet it disregarded the spirt or the very substance of the law. The petitioner should have filed its claim for refund at the earliest possible instance and should not have waited for few days of the expiration of the two-year period

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[14] Exhibit "E-4".
[15] Exhibit "E-8".
[16] Exhibit "A" and "A-1".
[17] Docket (Vol. I), pp. 000148-000151.

because by then it would be too late for the Commissioner to act on its claim thereby destroying the essence of the doctrine of exhaustion of administrative remedies.

Petitioner's utter disregard of the doctrine of exhaustion of administrative remedies will undoubtedly lead to undesirable results and unimaginable chaos. A taxpayer desirous to resort directly to the Court can effectively bypass the respondent Commissioner by filing an administrative claim for refund only days before the expiration of the 2-year prescriptive period then immediately thereafter, on the pretext of the 'inaction' of respondent and the prescriptive period will lapse, file a corresponding petition for review with the Honorable Court. Such course of action will render nugatory the authority granted by law upon respondent to act accordingly on the claims for refund. Consequently, the application for refund/credit is not impressed with merit.

(b) Lack of jurisdiction for there was no decision or inaction (tantamount to denial) by the Commissioner that the Court of Tax Appeals could review simply because he was not given the opportunity to reach that decision.

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

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

8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 76 in relation to Sections 204 and 229 of the 1997 Tax Code, as amended, including Revenue Regulations No. 2-98, as amended.

9. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western**

Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

After the presentation of its evidence, petitioner filed its Formal Offer of Evidence on June 29, 2011.

In a Resolution[18] promulgated on August 23, 2011, this Court admitted Exhibits "A" to "MM", "NN" to "ZZZ", "ZZZ-2" to "GGGG", and "HHHH" to "IIII", inclusive of their sub-markings, but denied the admission of Exhibits "MM-1", "MM-2", "ZZZ-1" and "GGGG-1" for failure of petitioner to identify the same during trial. However, upon petitioner's Motion for Partial Reconsideration (of the Resolution dated 23 August 2011),[19] the previously denied exhibits were admitted[20] by this Court in the October 24, 2011 Resolution.

On November 23, 2011, respondent's counsel manifested in open court that "no report on the investigation conducted with regard to petitioner's administrative claim for refund and that respondent is constrained to submit the case for decision." The Court granted both parties a period of thirty (30) days within which to file their respective Memorandum.[21]

Afterwards, the case was submitted for decision[22] taking into consideration petitioner's "Memorandum"[23] filed on January 12, 2012 sans respondent's Memorandum.[24]

The parties stipulated[25] on the following issues for resolution, to wit:

1. Whether or not Petitioner is entitled to tax refund or credit of excess CWT for taxable years 2007 and 2008.

2. Whether or not Petitioner has an excess CWT in the amount of P119,693,599.00 for taxable years 2007 and 2008.

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[18] Docket (Vol. II) pp. 000990-000991.
[19] Ibid, pp. 000994-000998.
[20] Resolution dated October 24, 2011, Docket (Vol. II), pp. 001006-001007.
[21] Minutes of the Hearing dated November 23, 2011, Docket (Vol. II), p. 001010.
[22] Resolution dated January 17, 2012, Docket (Vol. II), p. 001055.
[23] Docket (Vol. II), pp. 001021-001053 .
[24] Per Records Verification dated January 13, 2012, Docket (Vol. II), p. 001054.
[25] JSFI, Statement of Issues, Docket (Vol. I), p. 000188.

3. Whether or not the excess CWT for taxable years 2007 and 2008 were carried over and applied as tax credit to the succeeding taxable quarters/year(s).

4. Whether or not the income from which the taxes were withheld were included as part of gross income in Petitioner's 2007 and 2008 tax returns.

5. Whether or not Petition for Review should be dismissed for lack of cause of action on the part of Petitioner for non-exhaustion of administrative remedies by filing the instant Petition fourteen (14) days from the date of filing of the administrative claim for refund.

6. Whether or not the Honorable Court has jurisdiction over the instant Petition inasmuch as there was no decision or inaction of Respondent from which the appellate jurisdiction of the Honorable Court under Section 7(a)(1) and (2) of Republic Act No. 9282 can be properly invoked.

The foregoing issues may, however, be summed up into one: whether or not petitioner is entitled to a tax refund or credit in the amount of P119,693,599.00, representing its excess CWT for taxable years 2007 and 2008.

Anent the issue of whether or not the Petition for Review should be dismissed for non-exhaustion of administrative remedies, Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide as follows:

> "**SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may-
>
> xxx xxx xxx
>
> "(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamped that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the

taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund..."

"**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, 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."

It is settled in this jurisdiction that Sections 204 (C) and 229 were intended to govern all kinds of refund of internal revenue taxes — those taxes imposed and collected pursuant to the NIRC. Section 204 (C) applies to administrative claims filed with the Commissioner of Internal Revenue; while Section 229 refers to judicial actions for the recovery of tax erroneously or illegally collected. However, both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.[26] For actions for refund of excess corporate income tax, the High Tribunal ruled that the two (2)-year prescriptive should be counted from the filing of the final adjustment return

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[26] LISP-II Locators' Association, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7906, September 22, 2011.

because it is only during that date that the exact tax liability or refundability of the tax can be determined.[27]

Applying the foregoing provisions in the case at bench, the present claim covers taxable years 2007 and 2008 for which petitioner filed its Annual Income Tax Returns on April 15, 2008[28] and April 17, 2009[29], respectively. Counting two years from these dates, petitioner's administrative claim filed on March 31, 2010[30] and the subsequent appeal via a Petition for Review filed before this Court on April 14, 2010, were therefore timely filed within the two-year prescriptive period.

With regard to the issue on whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of ₱119,693,599.00, representing its unutilized CWT for taxable years 2007 and 2008, it is well-settled that a taxpayer claiming for a tax credit or refund of CWT must comply with the following requisites:[31]

1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax;

2) It must be shown on the return that the income received was declared as part of the gross income; and

3) 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.

As stated earlier, the first requisite has been satisfactorily met by the petitioner.

With respect to the third requisite, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307), detailed as follows:

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[27] Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals, G.R. No. 83736, January 15, 1992.
[28] Exhibit "D-1".
[29] Par. 5, Stipulation of Facts, Joint Stipulation of Facts and Issues, Docket, p. 000186.
[30] Exhibit "A-1".
[31] Commissioner of Internal Revenue, vs. Far East Bank & Trust Company (Now Bank of the Philippine Islands), G.R. No. 173854, March 15, 2010.

Exh	Period Covered	Withholding Agent	Income Payment	Income Tax Withheld
Taxable Year 2007				
O	12/29/2006	Holcim Philippines, Inc.	₱ 15,354,144.00	₱ 2,303,121.60
P	01//01/07 to 03/31/07	Holcim Philippines, Inc.	7,599,228.00	1,139,884.20
U	04/27/07 to 04/27/07	Coca-Cola Bottlers Phils, Inc.	24,541,200.00	3,681,180.00
W	07/20/07 to 07/20/07	Coca-Cola Bottlers Phils, Inc.	27,321,624.00	4,098,243.60
Q	03/25/07 to 06/30/07	Bus Processing Asso of the Phils.	38,104,437.00	3,810,443.70
R	04/01/07 to 06/30/07	Smart Communications, Inc.	10,511,940.00	1,576,791.00
S	04/01/07 to 06/30/07	Smart Communications, Inc.	30,760,370.00	4,614,055.50
T	04/01/07 to 06/30/07	Smart Communications, Inc.	83,633,440.00	12,545,016.00
V	07/01/07 to 09/30/07	Smart Communications, Inc.	30,273,280.00	4,540,992.00
X	10/01/07 to 12/31/07	Smart Communications, Inc.	35,192,176.00	5,278,826.40
		Subtotal – Year 2007	**₱ 303,291,839.00**	**₱ 43,588,554.00**
Taxable Year 2008				
Z	01/01/08 to 03/31/08	Smart Communications, Inc.	₱ 36,366,264.00	₱ 5,454,939.60
AA	01/01/08 to 03/31/08	Smart Communications, Inc.	11,886,152.00	1,782,922.80
BB	04/01/08 to 06/30/08	Smart Communications, Inc.	16,120,160.00	2,418,024.00
CC	04/01/08 to 06/30/08	Phil Long Distance Tel Company	54,999,999.99	8,250,000.00
GG	07/01/08 to 09/30/08	Smart Communications, Inc.	96,953,360.00	14,543,004.00
KK	10/01/08 to 12/31/08	Phil Long Distance Tel Company	91,666,666.65	13,750,000.00
HH	07/01/08 to 09/30/08	Ayala Corporation	36,000,000.00	5,400,000.00
Y	01/01/08 to 03/31/08	Bus Processing Asso of the Phils.	17,278,852.30	1,727,885.23
DD	05/01/08 to 05/31/08	Bank of the Philippine Islands	19,581,521.93	2,937,228.29
EE	05/01/08 to 05/31/08	Bank of the Philippine Islands	14,241,504.13	2,136,225.62
FF	06/01/08 to 06/30/08	Bank of the Philippine Islands	20,521,635.73	3,078,245.36
II	07/01/08 to 07/31/08	Bank of the Philippine Islands	18,887,506.00	2,833,125.90
JJ	07/01/08 to 09/30/08	Holcim Philippines, Inc.	2,990,317.50	448,547.63
LL	12/31/2008	San Miguel Corporation	75,632,640.00	11,344,896.00
		Subtotal – Year 2008	**₱ 513,126,580.23**	**₱ 76,105,044.42**
		Total – Years 2007 and 2008	**₱ 548,318,756.23**	**₱119,693,598.42**

Based on the foregoing table, it can be inferred that the certificates supporting petitioner's claimed excess/unutilized CWT for taxable year 2007 only showed the amount of ₱43,588,554.00 instead of the reported amount of ₱43,967,965.00. Since the difference of ₱379,411.00 is without supporting certificates, the same shall be deducted from petitioner's claim. Moreover, the certificate marked as Exhibit "O" with CWT of ₱2,303,121.60 is dated outside the period of claim, hence, must likewise be deducted from its claim. Consequently, the excess/unutilized CWT for taxable year 2007 with valid certificates amounted only to ₱41,285,432.40, computed as follows:

Claimed CWT for taxable year 2007	₱ 43,967,965.00
Less: Unsupported CWT	379,411.00
CWT supported by certificate dated outside the period of claim	2,303,121.60
Claimed CWT for taxable year 2007 with proper certificates	**₱ 41,285,432.40**

As regards petitioner's claimed excess/unutilized CWT for taxable year 2008, this Court notes that the CWT shown per certificates in the amount of ₱76,105,044.42 is higher than the CWT of ₱75,725,632.00 reflected per petitioner's 2008 Annual Income Tax Return. Applying Section 76 of the NIRC of 1997, as amended, which requires that the excess CWT be reflected on the Annual Income Tax Return any amount, therefore, in the supporting withholding tax certificates that exceeds the amount declared in the Annual Income Tax Return cannot be allowed. Thus, although the amount of ₱76,105,044.42 is supported by proper withholding tax certificates, only the declared CWT of ₱75,725,632.00 shall be deemed valid.

In fine, petitioner complied with the third requisite but only to the extent of ₱117,011,064.40 out of the total claimed CWT of ₱119,693,598.42 for taxable years 2007 and 2008, computed as follows:

	Amount of CWT w/ Proper Certificates
Taxable Year 2007	₱ 41,285,432.40
Taxable Year 2008	75,725,632.00
Total CWT w/ Proper Certificates	**₱ 117,011,064.40**

With reference to the second requisite, the certificates revealed that the creditable income taxes of ₱41,285,432.40 and ₱76,105,044.42 were withheld on management and technical consultancy fees received by petitioner in the amounts of ₱287,937,695.00 and ₱513,126,580.23 for taxable years 2007 and 2008, respectively, as shown below:

	Income Payment	Income Tax Withheld
Taxable Year 2007		
Total Amount per Certificates	₱ 303,291,839.00	₱ 43,588,554.00
Less: Certificate dated outside the period of claim	15,354,144.00	2,303,121.60
Total Amount per Valid Certificates	**₱ 287,937,695.00**	**₱ 41,285,432.40**
Taxable Year 2008	**₱ 513,126,580.23**	**₱ 76,105,044.42**

Petitioner's Accounting Officer, Mr. Wilfredo B. Agustin, in his Judicial Affidavit[32] dated March 1, 2011 explained that, while the gross income payments appearing in the certificates are lower than those reflected in petitioner's Annual Income Tax Returns for taxable years 2007 and 2008, such discrepancies were brought about by certain factors, namely: (1) the total sales/revenues reported in petitioner's income tax returns included not only the revenues from local customers which are subject to CWT, but also revenues from foreign affiliates which are non-residents and which are not required under the law to withhold CWT; (2) not all revenues from local customers have corresponding certificates of tax withheld, either because (a) the customers failed to withhold the CWT, or (b) the petitioner recorded or accrued income in its books in 2007 for which the corresponding payments and certificates of tax withheld were received in 2008; and (3) since petitioner billed its customers in US Dollars, there is foreign currency translation difference on account of the use by petitioner of a Peso-USDollar exchange rate in recording income in its books that is different from the Peso-USDollar exchange rate used by customers when they issued the certificates of tax withheld.[33]

[32] Exhibit "HHHH".
[33] Docket (Vol. II), p. 000938.

The abovementioned explanation of Mr. Wilfredo B. Agustin was corroborated by petitioner's documentary evidence: Audited Financial Statements [34], General Ledger, [35] Reconciliation Schedule of Revenues, [36] Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307)[37] and the related sales invoices.[38]

In other words, petitioner properly declared in its income tax return the gross income related to the substantiated CWT for taxable years 2007 and 2008 in the respective amounts of ₱41,285,432.40 and ₱75,725,632.00 or in the sum of ₱117,011,064.40.

We now proceed to the determination of whether the aforesaid CWT of ₱117,011,064.40 are unutilized and may be the proper subject of a claim for refund or issuance of tax credit certificate pursuant to Section 76 of the Tax Code, as amended, which provides:

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

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[34] Exhibit "N".
[35] Exhibits "WWW" and "XXX".
[36] Exhibits "ZZZ" and "AAAA".
[37] Exhibits "O" to "X", "Y" to "LL".
[38] Exhibits "MM" to "XX", "YY" to "VVV".

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

Based on the afore-cited section, a taxable corporation has two options in case of overpayment of income taxes: it may file a claim for refund (either in the form of cash or Tax Credit Certificate) or it may carry over the same to the succeeding taxable quarters/years until it is fully utilized. However, once the carry-over option is taken actually or constructively it becomes irrevocable for that taxable period.[39] The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[40]

A perusal of petitioner's Annual Income Tax Returns for taxable years 2007 and 2008 disclosed that petitioner's Minimum Corporate Income Tax (MCIT) due in the respective amounts of ₱2,721,265.00 and ₱2,388,293.00 totaling ₱5,109,558.00 were offset against the reported prior year's (2006) excess credits of ₱90,373,448.00, leaving the balance of the prior year's excess credits of ₱85,263,890.00 and creditable taxes withheld in 2007 and 2008 in the respective amount of ₱43,967,965.00 and ₱75,725,632.00 or in the total amount of ₱119,693,597.00, unutilized as of December 31, 2008, as shown below:

	2007	**2008**	**Total**
	(Exhibit "D")	*(Exhibit "E")*	
Gross income	₱136,063,265.00	₱119,414,646.00	₱ 255,477,911.00
Less: Deductions	136,063,265.00	119,414,646.00	255,477,911.00
Taxable income	₱ -	₱ -	₱ -
Minimum Corporate Income Tax Due (MCIT)	₱ 2,721,265.00	₱ 2,388,293.00	₱ 5,109,558.00
Less: Prior Year's Excess Credits	90,373,448.00	87,652,183.00	90,373,448.00
Balance of Prior Year's Excess Credits	₱ 87,652,183.00	₱ 85,263,890.00	₱ 85,263,890.00

[39] Philam Asset Management, Inc., vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005; Systra Philippines, Inc., vs. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007.

[40] Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009.

Add: Creditable Taxes W/held During the Year	43,967,965.00	75,725,632.00	119,693,597.00
Total Excess Tax Credits as of Dec. 31	**₱131,620,148.00**	**₱160,989,522.00**	**₱ 204,957,487.00**

In the instant case, petitioner unequivocally express its option to be refunded of its excess creditable withholding tax for taxable years 2007 and 2008 by placing an "x" mark in the box corresponding to the said choice.[41] Inasmuch as only the excess creditable withholding tax from taxable year 2006 were carried-over in petitioner's Quarterly Returns[42] and Annual Income Tax Returns[43] for taxable years 2008 and 2009, the substantiated CWT for taxable years 2007 and 2008 in the amount of ₱117,011,064.40 may be refunded pursuant to Section 76 of the NIRC of 1997, as amended.

However, records show that petitioner did not present its withholding tax certificates to prove the existence of its prior year's (2006) excess tax credits of ₱90,373,448.00. In the case of **Commissioner of Internal Revenue vs. Nissan Motor Philippines, Inc.**,[44] the Court *En Banc* emphasized the need for the taxpayer to substantiate its prior year's excess tax credit to establish the factual basis for its claim for refund, to wit:

> "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-bound to prove its entitlement to the entire amount of its claim for refund.
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> 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,

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[41] Exhibits "D-8" and "E-8".
[42] Exhibits "G", "H-2", "I-2", "J-2", "K-2", "L-2" and "M-2".
[43] Exhibits "E-7" and "F-2".
[44] CTA EB No. 137 & 139 (CTA Case No. 6622), October 6, 2006.

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			P3,958,694.00
Less:	Tax Credits/Overpayment		
	Prior Year's Excess Credits	P 478,645.00	
	xxx xxx xxx		
	xxx xxx xxx		
	Creditable Tax Withheld per BIR Form No. 2307 for the Fourt 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. 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 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/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 P478,645.00 is concerned. . . ." (*Emphasis supplied)*

In this regard, a mere allegation by the taxpayer that it has prior year's excess credits in its Annual Income Tax Returns will not suffice. Thus, in the case at bar, petitioner must prove that, other than the claimed amount of ₱117,011,064.40, it had enough prior year's excess credits to cover its declared MCIT liabilities for taxable years 2007 and 2008 in the respective amounts of ₱2,721,265.00[45] and ₱2,388,293.00,[46] totaling ₱5,109,558.00.

[45] Exhibit "D-6".
[46] Exhibit "E-6".

Inasmuch as petitioner failed to substantiate its prior year's excess credits of ₱90,373,448.00, the substantiated CWT for taxable years 2007 and 2008 in the amount of ₱117,011,064.40 shall be partially applied against the MCIT liabilities for the said years in the total amount of ₱5,109,558.00. Hence, petitioner is only entitled to a refund of excess CWT for taxable years 2007 and 2008 in the amount of ₱111,901,506.40, computed as follows:

	2007	2008	Total
Minimum Corporate Income Tax Due	₱ 2,721,265.00	₱ 2,388,293.00	₱ 5,109,558.00
Less: Substantiated Creditable Taxes Withheld during the year	41,285,432.40	75,725,632.00	117,011,064.40
Refundable Excess Tax Credits	**₱38,564,167.40**	**₱73,337,339.00**	**₱111,901,506.40**

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to refund to petitioner the amount of ₱111,901,506.40, representing its excess creditable withholding tax for taxable years 2007 and 2008.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

A T T E S T A T I O N

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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.

ERNESTO D. ACOSTA
Presiding Justice