Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

***FIRST DIVISION***

**AYALA CORPORATION,**
Petitioner,

**CTA Case No. 9024**
For: Refund

-versus-

Members:
**DEL ROSARIO, P.J., *Chairperson,***
**UY, and**
**MINDARO-GRULLA, JJ.**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
FEB 13 2018 : 2:37 pm

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# DECISION

***MINDARO-GRULLA, J.:***

This case involves a Petition for Review[1] filed by Ayala Corporation on April 8, 2015, before 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[2], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[3], as amended.

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[1] Docket, pp. 10-19

[2] 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 or internal revenue taxes, fees of 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

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

Petitioner seeks the issuance of a tax credit certificate (TCC) pertaining to its alleged excess or unutilized creditable withholding tax (CWT) for calendar years (CY) 2012 and 2013 in the aggregate amount of One Hundred Twenty-Eight Million Seven Hundred Thirty-Five Thousand Sixty-Eight Pesos and 63/100 (₱128,735,068.63).

Petitioner Ayala Corporation is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at 33rd Floor, Tower One Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.[4] It is registered with the Bureau of Internal Revenue (BIR) as a Large Taxpayer with Taxpayer Identification No. (TIN) 000-153-610-000. As a Large Taxpayer duly classified and notified by the BIR, petitioner is required to file its Quarterly and Annual Income Tax Returns and other BIR forms through the Electronic Filing and Payment System (EFPS).[5]

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

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(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; *Provided, 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;

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.

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[4] Par. 1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 178
[5] Par. 3, Joint Stipulation of Facts, JSFI, docket, pp. 178-179

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On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return (ITR) for CY 2012 through the EFPS[6] on April 15, 2013 and manually[7] on April 26, 2013, showing unutilized CWT in the amount of ₱66,355,174.63. Petitioner indicated its choice to seek the issuance of tax credit certificate for the alleged unutilized CWT in the Annual ITR for CY 2012.[8]

Petitioner filed its Annual ITR for CY 2013 through the EFPS[9] on April 10, 2014 and manually[10] on April 22, 2014, showing unutilized CWT of ₱62,379,894.00, which petitioner opted to claim as tax credit certificate.[11]

On March 2, 2015, petitioner filed an administrative claim for the issuance of tax credit certificate for its alleged unutilized creditable withholding taxes for CYs 2012 and 2013 in the aggregate amount of ₱128,735,068.63, computed as follows:

| CALENDAR YEAR | AMOUNT |
|---|---|
| 2012 | ₱ 66,355,174.63 |
| 2013 | 62,379,894.00 |
| **TOTAL** | **₱128,735,068.63** |

The administrative claim for the issuance of tax credit certificate was filed together with other supporting documents with the BIR Large Taxpayer Division.[12]

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[6] Exhibits "P-9-1" and "P-9-2"
[7] Exhibit "P-9-3"
[8] Line 37, 2012 Annual ITR, Exhibits "P-9-6" and "P-9-7"
[9] Exhibits "P-10-1" and "P-10-2"
[10] Exhibit "P-10-3"
[11] Exhibits "P-10-6" and "P-10-7"
[12] Par. 4, Joint Stipulation of Facts, JSFI, docket, p. 179

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In order to stop the running of the two-year prescriptive period for filing a refund claim, petitioner filed the instant Petition for Review before this Court on April 8, 2015.

Within the extended time granted by the Court, respondent filed his Answer[13] on July 1, 2015. Respondent interposed as special and affirmative defenses (1) that petitioner failed to exhaust administrative remedies prior to the filing of the instant Petition for Review; (2) that petitioner's claim must be denied for petitioner's failure to submit complete documents in support of its administrative claim for refund; and (3) that claims for refund are construed strictly against the taxpayer and in favor of the government.

The pre-trial conference was scheduled on September 17, 2015. Thus, respondent filed his Pre-Trial Brief on September 10, 2015[14]; while petitioner submitted its Pre-Trial Brief on September 11, 2015[15].

Subsequently, the parties filed their Joint Stipulation of Facts and Issues[16] on October 2, 2015 and a Supplemental Joint Stipulation of Facts and Issues[17] on October 22, 2015. Both the Joint Stipulation of Facts and Issues and the Supplemental Joint Stipulation of Facts and Issues were approved by the Court via Resolution[18] issued on October 29, 2015. In the same Resolution, the Court declared the pre-trial terminated. The Court likewise issued a Pre-Trial Order[19] on November 26, 2015.

Upon petitioner's motion, the Court commissioned Ms. Ma. Milagros F. Padernal of Uy Singson Abella & Co. as the Independent Certified Public Accountant (CPA) for the case on October 8, 2015.

Within the extended time granted by the Court, petitioner filed its Formal Offer of Evidence[20] on March 11, 2016, consisting of Exhibits "P-1" to "P-57-1", inclusive of sub-markings.

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[13] Docket, pp. 76-87
[14] Docket, pp. 84-90
[15] Docket, pp. 91-100
[16] Docket, pp. 178-181
[17] Docket, pp. 199-208
[18] Docket, p. 217
[19] Docket, pp. 279-296
[20] Docket, pp. 343-379

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In a Resolution[21] dated May 17, 2016, the Court admitted Exhibits "P-1" to "P-57-1" as petitioner's evidence, except for Exhibits "P-11-3", "P-11-8", "P-15-5", "P-18-1", "P-22", "P-48" to "P-48-1", and "P-49" to "P-49-1" for failure to correspond with documents actually marked; and "P-20-489", "P-33-185", "P-33-227", "P-33-228", "P-33-258", "P-33-625", "P-37-122", and "P-51-145" for not being found in the records.

As a result, petitioner filed an Urgent Motion for Partial Reconsideration[22] of the Court's May 17, 2016 Resolution on June 1, 2016.

On August 3, 2016[23], petitioner was given ten (10) days to file an amended Formal Offer of Evidence; thus, the resolution of the Urgent Motion for Partial Reconsideration was held in abeyance.

Petitioner filed its Amended Formal Offer of Evidence[24] on September 22, 2016. It was resolved by the Court via Resolution[25] dated December 13, 2016, admitting Exhibits "P-11-8", "P-15-5", "P-48" to "P-48-1" and "P-49" to "P-49-1", "P-33-185", "P-33-258", "P-33-625", "P-37-122", and "P-51-145".

Petitioner's documentary evidence which were admitted by the Court are as follows:

| Exhibit: | Description: |
|---|---|
| P-1 | Petitioner's Certificate of Registration issued by the Bureau of Internal Revenue (BIR). |
| P-2 | BIR Letter dated August 21, 1998 classifying the Petitioner as a Large Taxpayer. |
| P-3-1 | Petitioner's Original Annual Income Tax (ITR) for Calendar Year (CY) 2005 duly filed through Electronic Filing and Payment System (EFPS) on April 11, 2006 |
| P-3-2 | Filing Reference Number on the filing of Petitioner's Annual ITR for CY 2005 filed through the EFPS |
| P-3-3 | Petitioner's Annual ITR for CY 2005 manually filed with the Large Taxpayer Service Office (LTSO) on April 18, 2006 |
| P-3-4 | Petitioner's amended Annual ITR for CY 2005 duly filed through EFPS on May 31, 2006 |

[21] Docket, pp. 390-394
[22] Docket, pp. 404-419
[23] Docket, pp. 431-433
[24] Docket, pp. 447-495
[25] Docket, pp. 498-500

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| P-3-5 | Petitioner's amended Annual ITR for CY 2005 manually filed with the LTSO on June 02, 2006 |
| P-3-6 | Independent Auditors' Report with comparative Financial Statements attached to Petitioner's Annual ITR for CY 2005 |
| P-3-7 | Filing Reference Number on the filing of Petitioner's Amended Annual ITR for CY 2005 filed through the EFPS |
| P-4-1 | Petitioner's Annual ITR for CY 2007 duly filed through the EFPS |
| P-4-2 | Filing Reference Number on the filing of Petitioner's Annual ITR for CY 2007 filed through the EFPS |
| P-4-3 | Petitioner's Annual ITR for CY 2007 manually filed with the LTS on April 14, 2008 |
| P-4-4 | Independent Auditors' Report with comparative Financial Statements attached to Petitioner's Annual ITR for CY 2007 |
| P-5-1 | Petitioner's Annual ITR for CY 2008 duly filed through the EFPS on April 15, 2009 |
| P-5-2 | Filing Reference Number on the filing of Petitioner's Annual ITR for CY 2008 filed through the EFPS |
| P-5-3 | Petitioner's Annual ITR for CY 2008 manually filed with the LTSO on April 15, 2009 |
| P-5-4 | Independent Auditors' Report with comparative Financial Statemens attached to Petitioner's Annual ITR for CY 2008 |
| P-5-5 | Line 33 of Petitioner's Annual ITR for CY 2008 manually filed with the LTS |
| P-6-1 | Petitioner's Annual ITR for CY 2009 duly filed through the EFPS on April 13, 2010 |
| P-6-2 | Filing Reference Number on the filing of Petitioner's Annual ITR for CY 2009 filed through the EFPS |
| P-6-3 | Petitioner's Annual ITR for CY 2009 manually filed with the LTSO on April 15, 2010 |
| P-6-4 | Independent Auditor's Report with comparative Financial Statements attached to Petitioner's Annual ITR for CY 2009 |
| P-6-5 | Line 33 of Petitioner's Annual ITR for CY 2009 manually filed with the LTS |
| P-7-1 | Petitioner's Annual ITR for CY 2010 duly filed through the EFPS on April 14, 2011 |
| P-7-2 | Filing Reference Number on the filing of Petitioner's Annual ITR for CY 2010 filed through the EFPS |
| P-7-3 | Petitioner's Annual ITR for CY 2010 manually filed with the LTSO on April 15, 2011 |
| P-7-4 | Independent Auditors' Report with comparative Financial Statements attached to Petitioner's Annual ITR for CY 2010 |
| P-7-5 | Line 33 of Petitioner's Annual ITR for CY 2010 manually filed with the LTSO |
| P-7-6 | Line 33 of Petitioner's Annual ITR for CY 2010 filed with through the EFPS |
| P-8-1 | BIR System-generated message dated April 16, 2012 addressed to an officer of the Petitioner |
| P-8-2 | Petitioner's Annual ITR for CY 2011 manually filed with the LTSO on April 24, 2012 following the instruction in Revenue Memorandum Circular (RMC) No. 15-2012 |
| P-8-3 | Independent Auditors' Report with comparative Financial Statements attached to Petitioner's Annual ITR for CY 2011 |
| P-8-4 | Line 37 of Petitioner's Annual ITR for CY 2011 manually filed with the LTSO |

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| P-8-5 | Petitioner's Annual ITR for CY 2011 duly filed under EFPS on August 24, 2012 |
| P-8-6 | Filing Reference Number on the filing of Petitioner's Annual ITR for CY 2011 filed through the EFPS |
| P-8-7 | Line 37 of Petitioner's Annual ITR for CY 2011 filed through EFPS |
| P-8-8 | Notes to Financial Statements under Notes 24, page 56 |
| P-9-1 | Petitioner's Annual ITR for CY 2012 duly filed through the EFPS on April 15, 2013 |
| P-9-2 | Filing Reference Number on the filing Petitioner's Annual ITR for CY 2012 filed through the EFPS |
| P-9-3 | Petitioner's Annual ITR for CY 2012 manually filed with the LTSO on April 26, 2013 |
| P-9-4 | Independent Auditors' Report with comparative Financial Statements attached to Petitioner's Annual ITR for CY 2012 |
| P-9-5 | Signatures of the Petitioner's Treasurer and Managing Director and Chief Finance Officer as shown in page 3 of the ITR |
| P-9-6 | Line 37 of Petitioner's Annual ITR for CY 2012 manually filed with the LTSO |
| P-9-7 | Line 37 of Petitioner's Annual ITR for CY 2012 filed with through the EFPS |
| P-9-8 | Petitioner's Quarterly Income Tax Return for the First Quarter of CY 2012 filed through the EFPS on May 25, 2012 |
| P-9-9 | Petitioner's Quarterly Income Tax Return for the First Quarter of CY 2012 manually filed with the LTSO on May 25, 2012 |
| P-9-10 | Petitioner's Quarterly Income Tax Return for the Second Quarter of CY 2012 filed through the EFPS on August 24, 2012 |
| P-9-11 | Petitioner's Quarterly Income Tax Return for the Second Quarter of CY 2012 manually filed with the LTSO on August 28, 2012 |
| P-9-12 | Petitioner's Quarterly Income Tax Return for the Third Quarter of CY 2012 filed through the EFPS on November 22, 2012 |
| P-9-13 | Petitioner's Quarterly Income Tax Return for the Third Quarter of CY 2012 manually filed with the LTSO on November 26, 2012 |
| P-9-14 | Note 25 appearing on page 61 of the Independent Auditors' Report as attached to the Petitioner's Annual ITR for CY 2012 |
| P-10-1 | Petitioner's Annual ITR for CY 2013 duly filed through the EFPS on April 10, 2014 |
| P-10-2 | Filing Reference Number on the filing of Petitioner's Annual ITR for CY 2013 filed through the EFPS on April 10, 2014 |
| P-10-3 | Petitioner's Annual ITR for CY 2013 manually filed with the LTSO on April 22, 2014 |
| P-10-4 | Independent Auditors' Report with comparative Financial Statements attached to Petitioner's Annual ITR for CY 2013 |
| P-10-5 | Signatures of the Petitioner's Treasurer and Managing Director and Chief Finance Officer as shown in page 1 of the ITR |
| P-10-6 | Line 21 of Petitioner's Annual ITR for CY 2013 manually filed with the LTSO |

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| P-10-7 | Line 37 of Petitioner's Annual ITR for CY 2013 filed with through EFPS |
| P-10-8 | Petitioner's Quarterly Income Tax Return for the First Quarter of CY 2013 filed through the EFPS on May 30, 2013 |
| P-10-9 | Petitioner's Quarterly Income Tax Return for the First Quarter of CY 2013 manually filed with the LTSO on June 04, 2013 |
| P-10-10 | Petitioner's Quarterly Income Tax Return for the Second Quarter of CY 2013 filed through the EFPS on August 28, 2013 |
| P-10-11 | Petitioner's Quarterly Income Tax Return for the Second Quarter of CY 2013 manually filed with the LTSO on August 30, 2013 |
| P-10-12 | Petitioner's Quarterly Income Tax Return for the Third Quarter of CY 2013 filed through the EFPS on November 20, 2013 |
| P-10-13 | Petitioner's Quarterly Income Tax Return for the Third Quarter of CY 2013 manually filed with the LTSO on November 27, 2013 |
| P-10-15 | Schedule 1, page 3 of Petitioner's Annual ITR for CY 2013 manually filed with the LTSO |
| P-10-16 | Schedule 3, page 4 of Petitioner's Annual ITR for CY 2013 manually filed with the LTSO |
| P-11-1 | Petitioner's Annual ITR for CY 2014 duly filed through the EFPS on April 01, 2015 |
| P-11-2 | Filing Reference Number on the filing of Petitioner's Annual ITR for CY 2014 filed through the EFPS on April 01, 2015 |
| P-11-4 | Petitioner's Annual ITR for CY 2014 manually filed with the LTSO on April 01, 2015 |
| P-11-5 | Independent Auditors' Report with comparative Financial Statements attached to Petitioner's Annual ITR for CY 2014 |
| P-11-6 | Page 6, Schedule 7, Line 1 of Petitioner's Annual ITR for CY 2014 filed through the EFPS |
| P-11-7 | Page 6, Schedule 7, Line 1 of Petitioner's Annual ITR for CY 2014 filed with LTSO |
| P-11-9 | Line 31A of Petitioner's Quarterly Income Tax Return for the First Quarter of CY 2014 filed under EFPS |
| P-11-10 | Petitioner's Quarterly Income Tax Return for the First Quarter of CY 2014 manually filed with the LTSO on June 10, 2014 |
| P-11-11 | Line 30A of Petitioner's Quarterly Income Tax Return for the First Quarter of CY 2014 filed with LTSO |
| P--11-12 | Petitioner's Quarterly Income Tax Return for the Second Quarter of CY 2014 filed through the EFPS on August 26, 2014 |
| P-11-13 | Petitioner's Quarterly Income Tax Return for the Second Quarter of CY 2014 manually filed with the LTSO on August 28, 2014 |
| P-11-14 | Petitioner's Quarterly Income Tax Return for the Third Quarter of CY 2014 filed through the EFPS on November 05, 2014 |
| P-11-15 | Petitioner's Quarterly Income Tax Return for the Third Quarter of CY 2014 manually filed with the LTSO on November 06, 2014 |

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| P-12-1 | Administrative Claim for issuance of TCC filed by Petitioner on March 02, 2015 |
| P-12-2 | BIR Stamped Received dated March 02, 2015 appearing on the upper portion of Exhibit P-12-1 |
| P-12-3 | Signature of Petitioner's Officer appearing on page 6 of Exhibit P-12-1 |
| P-13-1 | CTA Decision in CTA Case No. 7754 dated March 16, 2011 |
| P-13-2 | Page 12 of CTA Decision in CTA Case No. 7754 |
| P-13-3 | Page 13 of CTA Decision in CTA Case No. 7754 |
| P-13-4 | Page 11 of CTA Decision in CTA Case No. 7754 |
| P-13-5 | Sworn Statement of Maria Susana C. Bables submitted in CTA Case No. 7754 consisting of 10 pages |
| P-13-6 | Supplemental Sworn Statement of Maria Susana C. Bables submitted in CTA Case No. 7754 consisting of 3 pages |
| P-13-7 | Report submitted by the Independent Certified Public Accountant (CPA) in CTA Case No. 7754 consisting of 11 pages excluding its annexes and supporting documents |
| P-13-8 | Sworn Statement of the ICPA Ma. Milagros F. Padernal submitted in CTA Case No. 7754 consisting of 16 pages |
| P-14-1 | CTA Decision in CTA Case No. 8262 dated November 11, 2013 consisting of 20 pages |
| P-14-2 | CTA Amended Decision in CTA Case No. 8262 dated March 21, 2014 consisting of 8 pages |
| P-14-3 | Sworn Statement of Maria Susana C. Bables submitted in CTA Case No. 8262 consisting of 17 pages |
| P-14-4 | Supplemental Sworn Statement of Maria Susana C. Bables submitted in CTA Case No. 8262 consisting of 2 pages |
| P-14-5 | Final Amended Report submitted by the ICPA in CTA Case No. 8262 consisting of twenty-three (23) pages excluding its annexes and supporting documents |
| P-14-6 | Sworn Statement of the ICPA Ma. Milagros F. Padernal submitted in CTA Case No. 8262 consisting of seven (7) pages |
| P-15-1 | Judicial Affidavit of Maria Susana C. Bables submitted in CTA Case No. 8629 consisting of forty-three (43) pages |
| P-15-2 | The First Folder of ICPA Report submitted in CTA Case No. 8629 consisting of twenty-three (23) pages excluding its annexes and supporting documents |
| P-15-3 | The Second Folder of ICPA Report submitted in CTA Case No. 8629 consisting of lists and schedules from Exhibit P-16 to P-54 and their sub-markings |
| P-15-4 | Judicial Affidavit of the ICPA Ma. Milagros F. Padernal consisting 14 pages |
| P-16 | Judicial Affidavit of the ICPA Ma. Milagros F. Padernal consisting of 4 pages |
| P-17 | Summary of Annual ITR filed to the BIR thru EFPS for CYs 2005 to 2014 and Quarterly ITR for CY 2014 |
| P-17-1 | 2005 Amended Annual ITR |
| P-18 | Summary of Annual ITR manually filed with the BIR for CYs 2005 to 2014 and Quarterly ITR for CY 2014 |
| P-18-1 | 2005 Amended Annual ITR manually filed with the BIR on June 2, 2006 |
| P-19 | Schedule of Creditable Taxes Withheld (CTW) for CYs 2012 and 2013 |

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| P-20 | Summary of CTW for CYs 2012 and 2013 supported by Original Certificate of CWT at Source (BIR Form No. 2307) issued by Payor in the Petitioner's name |
| P-20-1 to P-20-245 | Copies of Original Certificate of CTW at Source (BIR Form No. 2307) issued for CY 2012 |
| P-20-246 to P-20-248 and P-20-250 to P-20-519 | Copies of Original Certificate of CTW at Source (BIR Form No. 2307) issued for CY 2013 |
| P-21 | Summary of CTW for CYs 2012 and 2013 supported by Original Certificate of CWT at Source (BIR Form No. 2307) issued by Payor not in the Petitioner's name and stamped "Received" by BIR LTDO |
| P-21-1 to P-21-9 | Copies of Original Certificate of CTW at Source (BIR Form No. 2307) |
| P-23 to P-23-1 (1/7) to (7/7) | Summary of Rental Income for CY 2012 and its general ledger |
| P-24 to P-24-1 (1/12 to 12/12) | Summary of Directors' Fees for CY 2012 and its general ledger |
| P-25 to P-25-1 (1/11 to 11/11) | Summary of Other Income for CY 2012 and its general ledger |
| P-26 to P-26-1 (1/3 to 3/3) | Summary of Proceeds from Sales of Land CY 2012 and its general ledger |
| P-27 | Summary of Others – Various Accounts for CY 2012 |
| P-27-1 | Copy of the General ledger – Interest Income – Taxable-Miscellaneous for CY 2012 |
| P-27-2 | Copy of the General ledger – Interest Income – Taxable - Peso MMP for CY 2012 |
| P-27-3 | Copy of the General ledger – Employee Benefits-Sports for CY 2012 |
| P-28 to P-28-1 (1/8 to 8/8) | Summary of Rental Income for CY 2013 and its general ledger |
| P-29 to P-29-1 (1/12 to 12/12) | Summary of Directors' Fees for CY 2013 and its general ledger |
| P-30 to P-30-1 (1/13 to 13/13) | Summary of Other Income for CY 2013 and its general ledger |

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| P-31 | Summary of Others-Various Accounts for CY 2013 |
| P-31-1 | Copy of the general ledger – Interest Income Taxable – Miscellaneous for CY 2013 |
| P-31-2 | Copy of the general ledger – Interest Income – Taxable-Peso MMP for CY 2013 |
| P-32 | Summary of Comparison of Payor's Name and Amount of Income Payment between Summary of CTW supported by original certificate of CWT (BIR Form 2307) issued by Payor in Petitioner's name and Summaries of Rental Income, Directors' Fees, Other Income, Proceeds from Sale of Land and Others – Various Accounts for CYs 2012 and 2013 |
| P-33 | Summary of Comparison of Payor's Name and Amount of Income Payment between the Summaries of Rental Income, Directors' Fees, Other Income, Proceeds from Sale of Land and Others – Various Accounts and Petitioner's Official Receipts, Bank Credit Memos and Bank Statements for CYs 2012 and 2013 |
| P-33-1 to P-33-116 | Copy of the Official Receipts, Bank Credit Memo and Bank Statements |
| P-33-117 to P-33-317 | Copy of the Official Receipts, Bank Credit Memo and Bank Statements |
| P-33-165 | Copy of Official Receipt No. 25925 |
| P-33-259 | Copy of Official Receipt No. 58411 |
| P-33-318 to P-33-549 | Copy of the Official Receipts, Bank Credit Memo and Bank Statements |
| P-33-550 to P-33-627 | Copy of the Official Receipts, Bank Credit Memo and Bank Statements |
| P-34 | Schedule of Computation of Taxable Income for CY 2012 |
| P-35 | Schedule of Computation of Taxable Income for CY 2013 |
| P-36 | Schedule of CWT for CYs 2005 and 2007 |
| P-37 | Summary of CWT for CYs 2005 and 2007 supported by Original Certificates of CTW at Source (BIR Form No. 2307) issued by the Payor in Petitioner's name and stamped "Received" by BIR Large Taxpayers Assistance Division for CYs 2005 and 2007 |
| P-37-1 to P-37-133 | Copy of the Certificates of CTW at Source (BIR Form No. 2307) |
| P-38 | Summary of CWT for CYs 2005 and 2007 supported by Original Certificates of CTW at Source (BIR Form No. 2307) issued by the Payor allegedly not in Petitioner's name and stamped "Received" by BIR Large Taxpayers Assistance Division for CY 2007 |
| P-38-1 to P-38-7 | Copy of the Certificates of CTW at Source (BIR Form No. 2307) |
| P-39 | Summary of CWT for CYs 2005 and 2007 supported by Original Withholding Tax Remittance Return for Transactions involving Real Property other than Capital Asset including Taxable and Exempt (BIR Form No. 1606) issued by the Payor in Petitioner's name and stamped "Received" by BIR Large Taxpayers Assistance Division for CY 2007 |

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| P-39-1 to P-39-3 | Copy of the Withholding Tax Remittance Returns for Transactions involving Real Property other than Capital Assets including Taxable and Exempt (BIR Form 1606) |
| P-40 | Summary of CWT for CYs 2005 and 2007 supported by Original Certificate of Final Tax Withheld (BIR Form No. 2306) issued by the Payor allegedly not in Petitioner's name and stamped "Received" by BIR Large Taxpayers Assistance Division for CY 2007 |
| P-40-1 | Copy of the Certificates of Creditable Final Tax Withheld (BIR Form No. 2306) |
| P-41 | Summary of CWT for CYs 2005 and 2007 allegedly not supported by Original Certificate CWT at source (BIR Form No. 2307) or Withholding Tax Remittance Return for transactions involving Real Property other than Capital Asset including Taxable and Exempt (BIR Form No. 1606) issued by the Payor for CYs 2005 and 2007 |
| P-42 to P-42-1 (1/2 to 2/2) | Summary of Rental Income for CY 2005 and its general ledger |
| P-43 to P-43-1 (1/2 to 2/2) | Summary of Directors' Fees for CY 2005 and its general ledger |
| P-44 to P-44-1 (1/2 to 2/2) | Summary of Other Income for CY 2005 and its general ledger |
| P-45 to P-45-1 (1/3 to 3/3) | Summary of Rental Income for CY 2007 and its general ledger |
| P-46 to P-46-1 (1/3 to 3/3) | Summary of Directors' Fees for CY 2007 and its general ledger |
| P-47 to P-47-1 (1/2 to 2/2) | Summary of Other Income for CY 2007 and its general ledger |
| P-50 | Summary of Comparison of Payor's name and Amount of Income Payment between Schedule of CTW at Source and Summaries of Rental Income, Director's Fees, Other Income, Proceeds from Sale of Land, net of cost, and Proceeds from Sale of Other Assets, net of cost, for CYs 2005 and 2007 |
| P-51 | Summary of Comparison of Payor's name and Amount of Income Payment between the Summaries of Rental Income, Director's Fees, Other Income, Proceeds from Sale of Land, net of cost, and Proceeds from sale of Other Assets, net of costs and Petitioner's Official Receipts, Credit Memos and Bank Statements for CYs 2005 and 2007 |
| P-51-1 to P-51-62 | Copy of the Official Receipts, Bank Credit Memo and Bank Statements |

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| P-51-63 to P-51-242 | Copy of the Official Receipts, Bank Credit Memo and Bank Statements |
| P-51-144 | Copy of Official Receipt No. 56772 |
| P-52 | Schedule of Computation of Taxable Income for CY 2005 |
| P-53 | Schedule of Computation of Taxable Income for CY 2007 |
| P-54 | Judicial Affidavit of Maria Susana C. Bables, Petitioner's Manager/Associate Director, consisting of fifty-three (53) pages and notarized on September 11, 2015 |
| P-54-1 | Signature of Maria Susana C. Bables appearing on page 52 of the Judicial Affidavit |
| P-55 | Supplemental Judicial Affidavit of Maria Susana C. Bables submitted in the present case consisting of seven (7) pages |
| P-55-1 | Signature of Maria Susana C. Bables appearing on page 6 of the Supplemental Judicial Affidavit |
| P-56-1 | The First Binder of ICPA Report consisting of twenty-nine (29) pages excluding its annexes and supporting documents |
| P-56-2 | Signature of the ICPA appearing on page twenty-nine (29) of the First Folder |
| P-56-3 | The Second Folder of ICPA Report consisting of lists and schedules from Exhibit P-17 to P-53 and their sub-markings |
| P-57 | Judicial Affidavit of the ICPA Ma. Milagros F. Padernal consisting of 21 pages |
| P-57-1 | Signature of the ICPA Ms. Ma. Milagros F. Padernal appearing on page 20 of the Judicial Affidavit |

On the other hand, during the hearing on May 17, 2016, respondent, through counsel, manifested that he will no longer present evidence.[26]

The Court declared the case submitted for decision on February 22, 2017,[27] considering the filing of respondent's Memorandum[28] on January 13, 2017 and of petitioner's Memorandum[29] on February 16, 2017.

The parties submitted the following issues for the Court's resolution:[30]

1. Whether or not petitioner is entitled to the issuance of TCC in the total amount of ₱128,735,068.63 pertaining to its excess or unutilized CWTs for the CYs 2012 and 2013?

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[26] Docket, pp. 395-396
[27] Docket, p. 546
[28] Docket, pp. 504-516
[29] Docket, pp. 519-544
[30] Pre-Trial Order, docket, p. 281

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2. Whether or not petitioner's claim for issuance of TCC in the total amount of ₱128,735,068.63 is duly substantiated by sufficient evidence showing that the excess or unutilized CWTs were generated in CYs 2012 and 2013?

3. Whether or not petitioner's claim for issuance of TCC was filed within the two-year prescriptive period?

4. Whether or not petitioner's claim for issuance of TCC in the total amount of ₱128,735,068.63 was carried over to CY 2014?

Petitioner's claim for issuance of tax credit certificate finds legal basis in Section 76 of the NIRC of 1997, as amended, which is quoted hereunder for ready reference:

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

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Section 2.58.3 of Revenue Regulations (RR) No. 02-98[31] should be read in conjunction with the above-quoted provision for it provides the following requisites pertinent to claims for refund or issuance of tax credit certificate for unutilized creditable withholding taxes:

1. The claim for refund must be filed with the Commissioner of Internal Revenue within the two-year prescriptive period from the date of payment of tax, as prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended;

2. It must be shown in the return of the recipient that the income payment 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 therefrom.[32]

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[31] SECTION 2.58.3. *Claim for Tax Credit or Refund.* –
xxx
(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.
Proof of remittance is the responsibility of the withholding agent.
(C) *Excess Credits* – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.
(1) If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefor, within two years after the payment of the tax (Ref. Secs. 204(c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer. xxx

[32] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991

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As to the first requisite, Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the mandatory prescriptive period within which to file a claim for refund, to wit:

> "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." *(Emphasis supplied)*
>
> "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

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payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Pursuant to the above provisions and as held in the case of *ACCRA Investments Corporation vs. Court of Appeals*[33], the two-year prescriptive period for claiming refund of overpaid income tax or creditable withholding tax commences on the date of filing of the Final Adjustment Return. It is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[34] This guiding principle was repeated in the more recent case of *Commissioner of Internal Revenue, et al. vs. Primetown Property Group, Inc.*[35], where it was held that the two-year prescriptive period is reckoned from the filing of the Final Adjustment Return.

Based on the afore-cited cases, petitioner has two years from the date of filing of the Final Adjustment Return within which to file a claim for refund or issuance of tax credit certificate for its alleged excess creditable withholding taxes both in the administrative and judicial levels.

The present claim covers taxable years 2012 and 2013 for which petitioner electronically filed its Annual ITR on April 15, 2013[36] and on April 10, 2014[37], respectively. Counting from these dates, the administrative claim which was filed on March 2, 2015[38] and the Petition for Review which was filed on April 8, 2015[39] were filed well within the two-year prescriptive period. Thus, petitioner complied with the first requisite.

The Court will now proceed to determine petitioner's compliance with the second and third requisites.

Section 76 of the NIRC of 1997, as amended, prescribes two options to a taxable corporation whose total quarterly income tax payments in a given taxable year would exceed its total income tax due. The taxpayer may either file a tax refund (either in the form of

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[33] G.R. No. 96322, December 20, 1991
[34] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992
[35] G.R. No. 162155, August 28, 2007
[36] Exhibit "P-9-1"
[37] Exhibit "P-10-1"
[38] Exhibit "P-12-1"
[39] Docket, p. 10

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cash or tax credit certificate) or carry over the excess credit. However, once the carry-over option is taken actually or constructively, it becomes irrevocable for that taxable period.[40] The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer.[41]

The claimant-corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, whether to request a refund or to claim an automatic tax credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.[42]

A scrutiny of petitioner's Annual Income Tax Returns for CYs 2012 and 2013 reveals that petitioner had total tax credits in the respective amounts of ₱123,217,247.63 and ₱103,722,413.00, consisting of the following:

| | | |
|---|---|---|
| **AITR for CY 2012** *(Exh. "P-9-1")* | | |
| Prior Year's Excess Credits other than MCIT | | ₱ 56,862,073.00 |
| Creditable Tax Withheld for the First Three Quarters | ₱25,595,352.64 | |
| Creditable Tax Withheld for the Fourth Quarter | 40,759,821.99 | 66,355,174.63 |
| **Total Tax Credits** | | **₱123,217,247.63** |
| | | |
| **AITR for CY 2013** *(Exh. "P-10-1")* | | |
| Prior Year's Excess Credits other than MCIT | | ₱ 41,342,519.00 |
| Creditable Tax Withheld for the First Three Quarters | ₱29,132,812.00 | |
| Creditable Tax Withheld for the Fourth Quarter | 33,247,082.00 | 62,379,894.00 |
| **Total Tax Credits** | | **₱103,722,413.00** |

Records reveal that the prior year's excess credits reported in petitioner's 2012 and 2013 Annual ITRs, which originated from the creditable taxes withheld for the years 2005 to 2007, were duly supported by Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) with certain exceptions found by the Court-

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40 *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 14, 2005; *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007

41 *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009

42 *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999

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commissioned Independent CPA firm, Uy Singson Abella & Co., through its Partner, Ms. Ma. Milagros F. Padernal, as shown below:

| **2005**[43] | |
|---|---|
| Prior year's excess credits | ₱ 14,080,672.00 |
| Creditable taxes withheld for the year | 39,557,208.00 |
| Total tax credits | 53,637,880.00 |
| Less: Tax due | 5,612,835.72 |
| Amount claimed for issuance of TCC[44] | 39,557,208.00 |
| CWTs with exceptions found by ICPA (from prior year's excess credits)[45] | 4,066,120.00 |
| **Amount allowable for carry over to 2006** | **₱ 4,401,716.28** |

| **2006** | |
|---|---|
| Prior year's allowable excess credits | ₱ 4,401,716.28 |
| Creditable taxes withheld for the year | 34,133,265.00 |
| Total tax credits | 38,534,981.28 |
| Less: Tax due | 9,478,115.96 |
| CWTs with exceptions found by ICPA[46] | - |
| **Amount allowable for carry over to 2007** | **₱ 29,056,865.32** |

| **2007**[47] | |
|---|---|
| Prior year's allowable excess credits | ₱ 29,056,865.32 |
| Creditable taxes withheld for the year | 33,769,015.00 |
| Total tax credits | 62,825,880.32 |
| Less: Tax due | 10,269,099.44 |
| CWTs with exceptions found by ICPA[48] | 189,484.31 |
| **Amount allowable for carry over to 2008** | **₱ 52,367,296.57** |

| **2008**[49] | |
|---|---|
| Prior year's allowable excess credits | ₱ 52,367,296.57 |
| Creditable taxes withheld for the year | 44,288,865.00 |
| Total tax credits | 96,656,161.57 |
| Less: Tax due | 8,908,985.78 |
| Amount claimed for issuance of TCC[50] | 44,288,865.00 |
| **Amount allowable for carry over to 2009** | **₱ 43,458,310.79** |

| **2009**[51] | |
|---|---|
| Prior year's allowable excess credits | ₱ 43,458,310.79 |
| Creditable taxes withheld for the year | 57,921,704.00 |

[43] Exhibit "P-3-5"
[44] CTA Case No. 7754, March 16, 2011
[45] Exhibit "P-13-7", p. 6
[46] Exhibit "P-15-2", p. 13
[47] Exhibit "P-4-1"
[48] Exhibit "P-56-1", pp. 16-17
[49] Exhibit "P-5-1"
[50] CTA Case No. 8262, November 11, 2013
[51] Exhibit "P-6-1"

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| | | |
|---|---|---|
| Total tax credits | | 101,380,014.79 |
| Less: Tax due | | 11,306,546.70 |
| Amount claimed for issuance of TCC[52] | | 57,921,704.00 |
| **Amount allowable for carry over to 2010** | **₱** | **32,151,764.09** |

| | | |
|---|---|---|
| **2010**[53] | | |
| Prior year's allowable excess credits | ₱ | 32,151,764.09 |
| Creditable taxes withheld for the year | | 67,374,728.00 |
| Total tax credits | | 99,526,492.09 |
| Less: Tax due | | 11,879,600.62 |
| Amount claimed for issuance of TCC[54] | | 67,374,728.00 |
| **Amount allowable for carry over to 2011** | **₱** | **20,272,163.47** |

| | | |
|---|---|---|
| **2011**[55] | | |
| Prior year's allowable excess credits | ₱ | 20,272,163.47 |
| Creditable taxes withheld for the year | | 59,728,412.40 |
| Other credits – 2005 CWTs disallowed by this Court[56] | | 39,557,208.00 |
| Total tax credits | | 119,557,783.87 |
| Less: Tax due | | 7,222,902.33 |
| Amount claimed for issuance of TCC[57] | | 59,728,412.40 |
| CWTs with exceptions found by ICPA (from 2005 CWTs)[58] | | 198,320.96 |
| **Amount allowable for carry over to 2012** | **₱** | **52,408,148.18** |

Petitioner's Minimum Corporate Income Tax (MCIT) due for the years 2012 and 2013 in the respective amounts of ₱15,519,554.22 and ₱8,046,836.00, totaling ₱23,566,390.22, can be fully offset against the allowable prior year's excess credits of ₱52,408,148.18 from CY 2012, leaving the balance of allowable prior year's excess credits at the end of CY 2013 in the amount of ₱28,841,757.96.

Considering that only the prior year's excess credits were carried over to the subsequent quarters/years, the unutilized CWT for CYs 2012 and 2013 in the respective amounts of ₱66,355,174.63 and ₱62,379,894.00, totaling ₱128,735,068.63, for which petitioner opted to be issued a tax credit certificate[59], may be refunded pursuant to Section 76 of the NIRC of 1997, as amended.

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[52] CTA Case No. 8262, November 11, 2013
[53] Exhibit "P-7-1"
[54] CTA Case No. 8629, March 11, 2016
[55] Exhibit "P-8-5"
[56] CTA Case No. 7754, March 16, 2011
[57] CTA Case No. 8629, March 11, 2016
[58] Exhibit "P-56-1", pp. 16-17
[59] Exhibits "P-9-7", "P-10-7", and "P-12-1"

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However, as earlier mentioned, petitioner must likewise comply with Section 2.58.3(B) of RR No. 2-98, which also requires that:

> "SECTION 2.58.3. *Claim for Tax Credit or Refund.* –
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.**" *(Emphasis supplied)*

Petitioner submitted the Schedule of Creditable Taxes Withheld[60] for the years 2012 and 2013 and the related Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307).[61] Upon verification of these documents, the Independent CPA provided a summary of petitioner's claimed creditable withholding taxes for CYs 2012 and 2013 in the respective amounts of ₱66,355,174.63 and ₱62,379,894.38, detailed as follows:[62]

| Exhibit | BIR Form No. 2307 | 2012 | 2013 | Total |
|---|---|---|---|---|
| "P-20" | Supported with original BIR Form No. 2307 in the Petitioner's name and included in the Alphalist stamped "Received" by BIR's Large Taxpayers Assistance Division | *₱ 66,042,460.95* | *₱ 62,168,828.45* | *₱ 128,211,289.40* |
| "P-21" | Supported with original BIR Form No. 2307 not in the Petitioner's name and included in the Alphalist stamped "Received" by BIR's Large Taxpayers Assistance Division | 201,000.00 | 181,500.00 | 382,500.00 |
| "P-22" | Not supported | 150,561.28 | 9,878.00 | 160,439.28 |
| | Tax base, exchange rates and rounding-off differences | (38,847.60) | 19,687.93 | (19,159.67) |
| | | *₱ 312,713.68* | *₱ 211,065.93* | *₱ 523,779.61* |
| | | ***₱ 66,355,174.63*** | ***₱ 62,379,894.38*** | ***₱ 128,735,069.01*** |

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[60] Exhibit "P-19"

[61] Exhibits "P-20-1" to "P-20-519" and "P-21-1" to "P-21-9"

[62] Exhibit "P-56-1", p. 9

The above claims that are supported by BIR Forms No. 2307 not in the petitioner's name (marked as Exhibit "P-21"), and not supported by BIR Forms No. 2307 (marked as Exhibit "P-22"), including the exchange rates and rounding-off differences, amounting to ₱312,713.68 in CY 2012 and ₱211,065.93 in CY 2013, or a total amount of ₱523,779.61, require a downward adjustment to the petitioner's claim.

Further, it has been noted that the following claims supported with original BIR Forms No. 2307 in the name of petitioner with related income tax withheld amounting to ₱72,919.20 in 2012 were dated outside the period of claim, hence, shall constitute an additional disallowance on petitioner's claim:

| Exhibit No. | Period Covered | Payor | Amount of Income Payment | Amount of Taxes Withheld |
|---|---|---|---|---|
| ***2012*** | | | | |
| **Directors' Fees** | | | | |
| "P-20-121" to "P-20-122" | December 2011 | BPI Globe Banko Inc. | ***₱ 138,000.00*** | ***₱ 20,700.00*** |
| **Other Income** | | | | |
| "P-20-173" | December 2011 | Bank of the Philippine Islands | ₱ 1,562,460.00 | ₱ 31,249.20 |
| "P-20-199" | December 2011 | Integrated Microelectronics, Inc. | 135,000.00 | 20,250.00 |
| "P-20-228" | January to March 2011 | Stream International Global Services Philippines | 27,000.00 | 540.00 |
| | | | ***₱ 1,724,460.00*** | ***₱ 52,039.20*** |
| **Others – Various Accounts** | | | | |
| "P-20-243" | July to September 2011 | Stream International Global Services Philippines | ***₱ 9,000.00*** | ***₱ 180.00*** |
| | | **Total – 2012** | **₱ 1,871,460.00** | **₱ 72,919.20** |

Indeed, petitioner was able to satisfy the second requirement and established the fact of withholding for CYs 2012 and 2013 only in the respective amounts of ₱65,969,541.75 and ₱62,168,828.45, or in the sum of ₱128,138,370.20, as computed below:

| | 2012 | 2013 | Total |
|---|---|---|---|
| Supported with original BIR Form No. 2307 in the Petitioner's name and included in the Alphalist stamped "Received" by BIR's Large Taxpayers Assistance Division | ₱ 66,042,460.95 | ₱ 62,168,828.45 | ₱ 128,211,289.40 |
| Less: CWTs dated outside the period of claim | 72,919.20 | - | 72,919.20 |
| | **₱ 65,969,541.75** | **₱ 62,168,828.45** | **₱ 128,138,370.20** |

Anent the third requisite of proving that the income upon which the subject taxes were withheld was included and reported in its

Annual Income Tax Returns for CYs 2012 and 2013, petitioner presented Schedule of Creditable Taxes Withheld[63], Summaries[64] of Rental Income, Directors' Fees, Other Income, Proceeds from Sale of Land and Others – Various Accounts for CYs 2012 and 2013 and the corresponding general ledgers (GLs)[65] for CYs 2012 and 2013, Schedule[66] of Comparison of Payor's Name and Amount of Income Payment Between Schedule of Creditable Tax Withheld At Source and Summaries of Rental Income, Directors' Fees, Other Income, Proceeds from Sale – Land and Others-Various Accounts, Schedule[67] of Comparison of Payors' Name and Amount of Income Payment Between Summaries of Rental Income, Directors' Fees, Other Income, Proceeds from Sale – Land And Others-Various Accounts, petitioner's official receipts, bank credit memo and bank statements[68], and Schedules of Computation of Taxable Income for CYs 2012[69] and 2013[70].

The amounts of Rental Income, Directors' Fees, Other Income, Proceeds from Sale of Land and Others – Various Accounts With Income Taxes Withheld per general ledgers of CYs 2012 and 2013 were accordingly traced to those reflected in the petitioner-prepared Schedules of Computation of Taxable Income for CYs 2012 and 2013, except for some rounding-off differences, as follows:

| **Particulars** | **Exhibit No.** | **Per General Ledger (Income With Tax Withheld)** | **Per Schedule of Computation of Taxable Income** | **Exhibit No.** | **Difference*** |
|---|---|---|---|---|---|
| ***2012*** | | | | | |
| Rental income | "P-23" | ₱ 116,171,623.76 | ₱ 116,171,624.00 | | ₱ (0.24) |
| Directors fees | "P-24" | 41,825,250.00 | 41,825,250.00 | | - |
| Other income | "P-25" | 374,711,236.03 | 374,711,236.00 | | 0.03 |
| Proceeds from sale of land | "P-26" | 56,799,842.87 | 56,799,843.00 | | (0.13) |
| Others – various | "P-27" | 32,305,694.44 | 32,305,694.00 | | 0.44 |
| **Total** | | **₱ 621,813,647.10** | **₱ 621,813,647.00** | "P-34" | |
| | | | | | |
| ***2013*** | | | | | |
| Rental income | "P-28" | ₱ 117,935,306.82 | ₱ 117,935,307.00 | | ₱ (0.18) |
| Directors fees | "P-29" | 39,236,366.00 | 39,236,366.00 | | - |
| Other income | "P-30" | 384,944,839.95 | 384,944,840.00 | | (0.05) |

[63] Exhibit "P-19"
[64] Exhibits "P-23" to "P-31"
[65] Exhibits "P-23-1" to "P-31-2"
[66] Exhibit "P-32"
[67] Exhibit "P-33"
[68] Exhibits "P-33-1" to "P-33-627"
[69] Exhibit "P-34"
[70] Exhibit "P-35"

| | | | | | |
|---|---|---|---|---|---|
| Others – various | "P-31" | 11,159,379.80 | 11,159,379.80 | | - |
| **Total** | | **₱ 553,275,892.57** | **₱ 553,275,892.80** | "P-35" | |

**Due to rounding-off*

Furthermore, the amounts of gross revenue and selected cost and expense accounts reflected in the taxable income column of the petitioner-prepared Schedule of Computation of Taxable Income for CYs 2012 and 2013 tally with the total amounts of sales/revenues/fees, and non-operating and other income and selected deductible costs and expenses accounts reflected in the Annual Income Tax Returns for CYs 2012 and 2013 duly stamped "Received" by the BIR as follows:

| | **Exhibit No.** | **2012** | **Exhibit No.** | **2013** |
|---|---|---|---|---|
| Gross revenue reflected in the taxable income column per Schedule of Computation of Taxable Income | "P-34" | ₱ 1,038,824,829.00 | "P-35" | ₱ 699,023,543.00 |
| Gross revenue reflected in the Annual Income Tax Return duly stamped "Received" by the BIR | "P-9-1" | 1,038,824,828.79 | "P-10-1" | 699,023,543.00 |
| *Rounding-off difference* | | *₱ 0.21* | | *₱ -* |
| | | | | |
| Costs and expenses reflected in the taxable income column per Schedule of Computation of Taxable Income | "P-34" | ₱ 4,181,429,250.00 | "P-35" | ₱ 4,398,033,040.00 |
| Costs and expenses reflected in the Annual Income Tax Return duly stamped "Received" by the BIR | "P-9-1" | 4,181,429,250.00 | "P-10-1" | 4,398,033,040.00 |
| *Difference* | | *₱ -* | | *₱ -* |

However, there were income payments per the Summary of Certificate of Creditable Taxes Withheld Supported by Original Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) Issued by the Payor in the Petitioner's Name for CYs 2012 and 2013[71] that cannot be traced or differed with the income amounts indicated in the Summaries[72] of Rental Income, Directors' Fees, Other Income, Proceeds from Sale – Land and Others-Various Accounts. Some items with discrepancy were accounted for by petitioner but failed to submit proof (*i.e.*, journal entries traced to subsidiary and general ledgers) to support such; while other discrepancies remained unaccounted. As such, this Court cannot ascertain whether said income payments

[71] Exhibit "P-20"

[72] Exhibits "P-23" to "P-31"

pertain to one and the same transactions; hence, the related creditable withholding taxes in the amount of ₱46,414,695.77 shall be disallowed, detailed as follows:

| Exh. No. | Period Covered | Payor | Amount of Income Payment | Amount of Taxes Withheld |
|---|---|---|---|---|
| ***2012*** | | | | |
| **Rental Income** | | | | |
| "P-20-11" | 1st Quarter | Honda Cars Makati, Inc. | ₱ 5,554,880.50 | ₱ 277,744.03 |
| "P-20-12" | 1st Quarter | Honda Cars Makati, Inc. | 1,380,070.32 | 69,003.52 |
| "P-20-14" | 1st Quarter | Honda Cars Makati, Inc. | 4,358,590.98 | 217,929.55 |
| "P-20-32" | December 2012 | Isuzu Automotive Dealership, Inc. - Alabang Branch | 1,675,772.80 | 83,788.64 |
| "P-20-36" | 4th Quarter | Isuzu Cebu, Inc. - Mandaue Branch | 974,459.20 | 48,722.96 |
| "P-20-40" | June 2012 | Integrated Microelectronics Inc. | 20,000.00 | 1,000.00 |
| | | *Subtotal* | *₱ 13,963,773.80* | *₱ 698,188.70* |
| **Directors' Fees** | | | | |
| "P-20-60" to "P-20-95" | 1st to 4th Quarter | Ayala Land Inc. | *₱ 9,500,000.00* | *₱ 1,425,000.00* |
| **Other income** | | | | |
| "P-20-174" | May 2012 | Bank of the Philippine Islands | ₱ 22,400.00 | ₱ 448.00 |
| "P-20-176" to "P-20-178" | 4th Quarter | Bank of the Philippine Islands | 36,581,296.78 | 3,721,625.94 |
| "P-20-180" | December 2012 | BPI Family Savings Bank Inc. | 3,003,307.94 | 60,066.16 |
| "P-20-184" | August 2012 | Dataone Asia (Philippines) Inc. | 100,000.00 | 2,000.00 |
| "P-20-187" to "P-20-189" | 2nd to 4th Quarter | Globe Telecoms Inc. | 37,284,052.87 | 5,452,146.40 |
| "P-20-193" to "P-20-198" | 2nd to 4th Quarter | Integrated Microelectronics Inc. | 17,428,648.88 | 2,614,135.91 |
| "P-20-200" to "P-20-201" | 1st and 3rd Quarter | Integreon Managed Solutions (Philippines) Inc. | 167,533.30 | 312.50 |
| "P-20-203" | May 2012 | Liveit Investments Limited - Philippine Regional Operating Headquarters | 3,200.00 | 64.00 |
| "P-20-207" | 2nd Quarter | Manila Water Company | 28,171,420.36 | 4,225,713.05 |
| "P-20-212" | December 2012 | Manila Water Company | 27,077,458.47 | 4,061,618.77 |
| "P-20-227" | 1st Quarter | Stream International Global Services Philippines | 25,000.00 | 500.00 |
| | | *Subtotal* | *₱ 149,864,318.60* | *₱ 20,138,630.73* |
| **Proceeds from Sale of Land** | | | | |
| "P-20-244" | December 2012 | Amaia Land Corp. | *₱ 126,785,270.00* | *₱ 7,607,116.20* |
| **Others - Various Accounts** | | | | |
| "P-20-5" to "P-20-7" | 2nd to 4th Quarter | Honda Cars Alabang | ₱ 554,481.76 | ₱ 11,089.64 |
| "P-20-14" and "P-20-238" to "P-20-242" | 1st to 4th Quarter | Honda Cars Makati, Inc. | 695,313.69 | 13,906.27 |
| "P-20-18" to "P-20-20" | 2nd to 4th Quarter | Honda Cars Pasig (A Branch of Honda Cars Makati, Inc.) | 472,586.99 | 9,451.73 |
| | | *Subtotal* | *₱ 1,722,382.44* | *₱ 34,447.64* |
| | | ***Total – 2012*** | ***₱ 301,835,744.84*** | ***₱ 29,903,383.27*** |
| | | | | |
| ***2013*** | | | | |
| **Rental Income** | | | | |
| "P-20-251" | 1st Quarter | Honda Cars Alabang | ₱ 9,392,972.13 | ₱ 469,648.61 |

| Exh. No. | Period Covered | Payor | Amount of Income Payment | Amount of Taxes Withheld |
|---|---|---|---|---|
| "P-20-254" | August 2013 | Honda Cars Global City | 2,563,056.02 | 128,152.80 |
| "P-20-255" | 1st Quarter | Honda Cars Makati, Inc. | 7,089,043.00 | 354,452.15 |
| "P-20-257" to "P-20-258" and "P-20-260" | 3rd Quarter | Honda Cars Makati, Inc. | 14,787,192.58 | 739,359.64 |
| "P-20-261" to "P-20-262" and "P-20-264" | 4th Quarter | Honda Cars Makati, Inc. | 11,825,274.18 | 591,263.70 |
| "P-20-279" | 1st Quarter | Isuzu Cebu Inc. - Mandaue Branch | 1,324,898.20 | 66,244.91 |
| | | *Subtotal* | *₱ 46,982,436.11* | *₱ 2,349,121.81* |
| **Directors' Fees** | | | | |
| "P-20-293" | 3rd Quarter | ALFM Peso Bond Fund Inc. | ₱ 30,000.00 | ₱ 4,500.00 |
| "P-20-301" | 3rd Quarter | ALFM Dollar Bond Fund Inc. | 10,000.00 | 1,500.00 |
| | | *Subtotal* | *₱ 40,000.00* | *₱ 6,000.00* |
| **Other Income** | | | | |
| "P-20-442" to "P-20-446" | 2nd and 4th Quarter | Bank of the Philippine Islands | ₱ 30,629,127.19 | ₱ 4,317,582.54 |
| "P-20-447" | December 2013 | BPI Family Savings Bank Inc. | 3,534,260.42 | 70,685.21 |
| "P-20-456" and "P-20-458" | 2nd and 4th Quarter | Globe Telecom, Inc. | 36,479,054.00 | 5,444,465.15 |
| "P-20-460" | 4th Quarter | Honda Cars Makati, Inc. | 219,780.00 | 4,395.60 |
| "P-20-465" | December 2013 | HR Mall, Inc. | 8,190,449.00 | 1,228,567.35 |
| "P-20-470" | 1st Quarter | Integrated Microelectronics, Inc. | 134,465.00 | 20,319.75 |
| "P-20-473" and "P-20-475" | 4th Quarter | Integrated Microelectronics, Inc. | 16,076,176.00 | 2,411,426.40 |
| | | *Subtotal* | *₱ 95,263,311.61* | *₱ 13,497,442.00* |
| **Others - Various Accounts** | | | | |
| "P-20-509" | 1st Quarter | BPI Rental Corporation | 3,150,000.00 | 630,000.00 |
| "P-20-251" to "P-20-252" | 1st to 2nd Quarter | Honda Cars Alabang | 306,459.13 | 6,129.19 |
| "P-20-512" to "P-20-519" | 1st to 4th Quarter | Honda Cars Makati, Inc. | 882,367.49 | 17,647.36 |
| "P-20-265" to "P-20-266" | 1st to 2nd Quarter | Honda Cars Pasig (A Branch of Honda Cars Makati, Inc.) | 248,606.92 | 4,972.14 |
| | | *Subtotal* | *₱ 4,587,433.54* | *₱ 658,748.69* |
| | | ***Total – 2013*** | ***₱ 146,873,181.26*** | ***₱ 16,511,312.50*** |
| | | **Grand Total – 2012 and 2013** | **₱ 448,708,926.10** | **₱ 46,414,695.77** |

Accordingly, and in compliance with the third requisite, out of the total amount of ₱128,138,370.20 creditable withholding taxes which was properly supported with BIR Forms No. 2307, only the amount of ₱81,723,674.43 creditable withholding tax shall be granted, considering that this is the amount which corresponds to the income payments which were verified to have been included in petitioner's taxable gross income per its Annual Income Tax Returns for CYs 2012 and 2013, thus:

| | CY 2012 | CY 2013 | TOTAL |
|---|---|---|---|
| Claimed Creditable Withholding Taxes with valid BIR Forms No. 2307 | ₱ 65,969,541.75 | ₱ 62,168,828.45 | ₱ 128,138,370.20 |

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| | | | |
|---|---|---|---|
| Less: CWT, the related income payments of which per Schedule of Creditable Taxes Withheld differ with the income payments reflected in the Summaries of Rental Income, Directors' Fees, Other Income, Proceeds from Sale - Land and Others-Various Accounts | 29,903,383.27 | 16,511,312.50 | 46,414,695.77 |
| **Refundable Excess CWT** | **₱ 36,066,158.48** | **₱ 45,657,515.95** | **₱ 81,723,674.43** |

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱81,723,674.43**, representing petitioner's excess or unutilized creditable withholding taxes for calendar years 2012 and 2013.

**SO ORDERED.**

Cielito N. Mindaro-Grulla

**CIELITO N. MINDARO-GRULLA**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

**ERLINDA P. UY**
Associate Justice

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice
Chairperson, 1st Division