Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SONOMA SERVICES, INC., Petitioner,	**CTA Case No. 9026**
	Members: **CASTAÑEDA, JR.**, *Chairperson*, **CASANOVA,** *and* **MANAHAN,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 0 5 2017 3:15 p.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review, filed on April 10, 2015 by petitioner Sonoma Services, Inc., involving petitioner's claim for refund in the amount of ₱4,880,190.40 allegedly representing petitioner's excess and unutilized creditable withholding taxes (CWT) for calendar year (CY) ended December 31, 2012.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at the 35th Floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.[1]

Petitioner is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 8, Revenue District Office (RDO) No. 50, with Taxpayer Identification Number 220-868-954-000.[2]

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[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 208.
[2] Par. 3, Admitted Facts, JSFI, Ibid, p. 209.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.

Petitioner filed its Annual Income Tax Return (ITR) for CY 2012 with the BIR, through the Electronic Filing and Payment System (EFPS), on April 13, 2013,[3] indicating therein its option to claim for refund its excess and unutilized CWT for CY 2012.[4]

On September 11, 2014, petitioner filed with the BIR, RDO No. 50 an administrative claim for refund of excess and unutilized CWT for CY 2012 in the amount of ₱4,880,190.40.[5]

To date, respondent has neither approved nor denied petitioner's administrative claim for refund of excess and unutilized CWT for CY 2012.[6] Hence, the instant Petition for Review filed on April 10, 2015.

In his Answer[7], filed on June 11, 2015 by registered mail, respondent raised the following special and affirmative defenses:

> "3. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses;
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> 4. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;
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> 5. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
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> 6. It is explicitly stated under Section 76 of the NIRC of 1007 *(sic)*, as amended, that once a taxpayer chooses the option to carry-over, it shall be irrevocable for

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[3] Par. 5, Admitted Facts, JSFI, Id., p. 209.
[4] Par. 6, Admitted Facts, JSFI, Id., p. 209.
[5] Par. 7, Admitted Facts, JSFI, Id., p. 209.
[6] Par. 8, Admitted Facts, JSFI, Id., p. 209.
[7] Docket (Vol. I), pp. 65-67.

that taxable period and no application for a tax refund or tax credit certificate shall then be allowed (**Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005**). Petitioner, therefore, must proved that it did not carry-over its 2012 alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years, otherwise, petitioner is precluded from claiming a cash refund or for issuance of tax credit certificate its excess tax credit for taxable year 2012.

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

8. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (**Emmanuel & Zenaida Aguilar v. Commissioner, CA-G.R. No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206**);

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

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

A Notice of Pre-Trial Conference was issued by the Court on June 29, 2015, setting the case for pre-trial conference on August 6, 2015.[8] Accordingly, Petitioner's Pre-Trial Brief[9] was filed on July 31, 2015, while Respondent's Pre-Trial Brief[10]was filed on August 4, 2015.

The parties submitted their Joint Stipulation of Facts and Issues[11] on August 26, 2015. Thereafter, on September 2, 2015, the Court issued a Pre-Trial Order[12] approving the same and the pre-trial was deemed terminated.

On September 21, 2015, upon petitioner's motion, this Court commissioned Madonna Mia S. Dayego, as Independent Certified Public Accountant (ICPA).[13]

During trial, petitioner presented Ms. Vanessa Maturana-Besas[14], petitioner's Financial Accountant and Madonna Mia S. Dayego[15], the Independent CPA, as its witnesses.

Petitioner formally offered Exhibits "P-1" to "P-31", inclusive of sub-markings,[16] which were all admitted in evidence.[17]

On the other hand, respondent manifested that he will no longer present evidence in this case.[18]

The case was submitted for decision on July 20, 2016[19] taking into consideration petitioner's Memorandum,[20] filed on June 20, 2016, and respondent's Manifestation (in Lieu of Submission of Memorandum),[21] filed on June 29, 2016 by registered mail, stating that he is adopting all the pleadings filed in relation to this case as his memorandum.

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[8] Docket (Vol. I), pp. 69-70.
[9] Ibid, pp. 85-95.
[10] Id., pp. 203-206.
[11] Id., pp. 208-214.
[12] Id., pp. 226-230.
[13] Minutes of Hearing dated September 21, 2015, Id., p. 237.
[14] Minutes of the Hearing dated September 21, 2015, Id., p. 237; Exhibit "P-31".
[15] Minutes of Hearing dated November 4, 2015, Id., p. 324; Exhibit "P-29".
[16] Formal Offer of Evidence filed on November 23, 2015; Docket (Vol. II), pp. 325-345.
[17] Resolutions dated February 4, 2016 and April 25, 2016, Ibid, pp. 760-761 and pp. 773-774, respectively.
[18] Minutes of Hearing dated November 4, 2015, Docket (Vol. I), p. 324.
[19] Resolution dated July 20, 2016, Docket (Vol. II), p. 805.
[20] Ibid, pp. 783-801.
[21] Id., pp. 802-803.

"The parties agreed that the main issue[22] to be resolved in this case is:

'WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR ITS EXCESS AND UNUTILIZED CWT FOR CY 2012 IN THE AMOUNT OF ₱ 4,880,190.40.'

This issue may be broken down into the following sub-issues:

1. Whether or not petitioner's excess and unutilized CWT for CY 2012 in the amount of ₱4,880,190.40 are duly substantiated by documentary evidence.

2. Whether or not the income from which the CWTs being claimed for refund were withheld was reported as part of the revenues declared in petitioner's Annual ITR.

3. Whether or not petitioner exercised the option to carry-over its excess and unutilized CWT for CY 2012 to the succeeding taxable periods.

4. Whether or not petitioner filed its administrative and judicial claims for refund of excess and unutilized CWT for CY 2012 within the two-year prescriptive period provided under Sections 204(C) and 229, National Internal Revenue Code of 1997."

Petitioner anchors its claim for refund of its excess and unutilized CWT on Sections 58(D) and 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provide:

SEC. 58. *Returns and Payment of Taxes Withheld at Source.* –

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[22] Issues, JSFI, Docket (Vol. I), pp. 209-210.

(D) *Income of Recipient* – Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but **the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204**; xxx

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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 a tax credit certificate shall be allowed therefor." (*Emphasis supplied*)

Based on the afore-quoted provisions, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.[23]

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, either to carry over the excess credit or to claim a refund. To ease the administration of tax collection, these remedies are in the alternative and the choice of one precludes the other.[24]

Since petitioner marked the box corresponding to the option "To be Refunded"[25] in its Annual Income Tax Return (ITR) for CY 2012, the CWTs for CY 2012 in the amount of ₱4,880,190.40 may be a proper subject of a claim for refund pursuant to Section 76 of the NIRC of 1997, as amended.

In its Annual ITR for CY 2012[26], petitioner had total tax credits of ₱8,874,756.55 which consisted of prior year's excess tax credits in the amount of ₱3,994,566.15 and creditable taxes withheld during the year 2012 in the amount of ₱4,880,190.40 (₱4,535,190.40 plus ₱345,000.00).

Petitioner claims that its regular corporate income tax (RCIT) due for CY 2012 in the amount of ₱1,479,209.10 was paid by applying a portion of its prior year's excess credits of ₱3,994,566.15. This leaves the prior year's excess tax credits in the amount of ₱2,515,357.05 and creditable taxes withheld during the CY 2012 in the amount of ₱4,880,190.40 totaling ₱7,395,547.45 unutilized as of December 31, 2012, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 3,994,566.15
Less: Tax Due (RCIT)	1,479,209.10
Balance of Prior Year's Excess Credits	₱ 2,515,357.05
Add: Creditable Taxes Withheld – CY 2012	4,880,190.40
Excess Creditable Taxes Withheld as of December 31, 2012	**₱ 7,395,547.45**

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[23] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

[24] *Ibid.* citing *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.

[25] Exhibit "P-1", below Line 37.

[26] Exhibit "P-1".

In support of its prior year's excess tax credits of ₱3,994,566.15, petitioner presented various Certificates of Creditable Taxes Withheld at Source (BIR Form 2307) for the CY 2011 duly issued by its withholding agents, sufficient to cover petitioner's RCIT due for CY 2012 in the amount of ₱1,479,209.10.

However, in addition to the requisites provided under Section 76 of the NIRC of 1997, as amended, jurisprudence and pertinent BIR Revenue Regulations[27] provide that the following requisites must be further complied with in order that the subject claim may be granted:

1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204 (C) and 229 of the NIRC of 1997, as amended;

2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld must be included in the return of the recipient.

Anent the first requisite, the pertinent provisions are Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
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> (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,

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[27] *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; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; *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; Section 2.58, Revenue Regulations No. 2-98, as amended.

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.

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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 therefore, 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." (*Emphasis supplied*)

It is well settled that the reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit of excess income tax paid/withheld, both in the administrative and judicial levels, commences from the date of filing of the Final Adjustment Return (or the Annual Income Tax Return)[28]. It is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know

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[28] *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.,* G.R. No. 96322, December 20, 1991; *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals,* G.R. No. 83736, January 15, 1992; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.,* G.R. No. 105208, May 29, 1995.

whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[29]

In the instant case, records show that petitioner electronically filed its CY 2012 Annual ITR on April 13, 2013[30]. Counting from this date, petitioner had until April 13, 2015 within which to file its administrative claim as well as its judicial claim for refund.

Thus, petitioner's administrative claim for refund filed on September 11, 2014[31] and the subsequent appeal via a Petition for Review filed before this Court on April 10, 2015 are well within the two-year prescriptive period provided by law. Clearly, the first requisite has been complied with.

Petitioner likewise complied with the second requisite. It presented the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)[32] duly issued to it by various withholding agents for CY 2012, reflecting CWTs in the total amount ₱4,880,190.40, detailed as follows:

Exhibit	Withholding Agent	Period Covered	Income Payments	Taxes Withheld
Management Fees				
P-16-1	Corullon Holdings, Inc.	Jan to Mar 2012	₱ 1,850,000.00	₱ 277,500.00
P-16-2	Corullon Holdings, Inc.	July to Sept 2012	1,650,000.00	247,500.00
P-16-3	Elija Holdings, Inc.	Jan to Mar 2012	1,850,000.00	277,500.00
P-16-4	Elija Holdings, Inc.	July to Sept 2012	1,650,000.00	247,500.00
P-16-5	FBC Holdings, Inc.	Jan to Mar 2012	1,850,000.00	277,500.00
P-16-6	FBC Holdings, Inc.	July to Sept 2012	1,650,000.00	247,500.00
P-16-7	Fercat Holdings, Inc.	Jan to Mar 2012	1,850,000.00	277,500.00
P-16-8	Fercat Holdings, Inc.	July to Sept 2012	1,650,000.00	247,500.00
P-16-9	Francisco R. Elizalde Jr.	March 2012	100,000.00	10,000.00
P-16-10	Francisco R. Elizalde Jr.	October 2012	200,000.00	20,000.00
P-16-11	Francisco R. Elizalde Jr.	December 2012	100,000.00	10,000.00
P-16-12	Gilmon Holdings, Inc.	Jan to Mar 2012	1,850,000.00	277,500.00
P-16-13	Gilmon Holdings, Inc.	July to Sept 2012	1,650,000.00	247,500.00
P-16-14	Mermac Inc.	Jan to Mar 2012	2,150,000.00	322,500.00
P-16-15	Mermac Inc.	July to Sept 2012	2,230,000.00	334,500.00
P-16-16	Reinosa Holdings, Inc.	Jan to Mar 2012	1,850,000.00	277,500.00
P-16-17	Reinosa Holdings, Inc.	July to Sept 2012	1,650,000.00	247,500.00
P-16-18	San Puente Holdings, Inc.	Jan to Mar 2012	1,850,000.00	277,500.00

[29] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992.
[30] Exhibit "P-1".
[31] Par. 7, JSFI, Admitted Facts, Docket (Vol. I), p. 209; Exhibit "P-6".
[32] Exhibits "P-16-1" to "P-16-30".

P-16-19	San Puente Holdings, Inc.	July to Sept 2012	1,650,000.00	247,500.00
P-16-20	Jaime Zobel de Ayala	Oct to Dec 2012	1,500,000.00	225,000.00
	Sub-total		***₱30,780,000.00***	***₱4,597,000.00***
Sale of Real Property				
P-16-21	Vanessa M. Besas	Apr to June 2012	₱ 1,073,280.00	₱ 64,396.80
P-16-22	Vanessa M. Besas	Oct to Dec 2012	180,000.00	10,800.00
P-16-23	Krystal E. Gamit	Apr to June 2012	1,073,280.00	64,396.80
P-16-24	Krystal E. Gamit	Oct to Dec 2012	180,000.00	10,800.00
P-16-25	Henry M. Oriña and Lykieng Oriña	Oct to Dec 2012	210,000.00	12,600.00
P-16-26	Eileen May V. Jocson	Oct to Dec 2012	180,000.00	10,800.00
P-16-27	Maria Socorro A. Ligon	Oct to Dec 2012	180,000.00	10,800.00
P-16-28	Roselle Sharon R. Mendoza	Oct to Dec 2012	210,000.00	12,600.00
P-16-29	Marilyn S. Ocampo	Apr to June 2012	1,073,280.00	64,396.80
P-16-30	Marilyn S. Ocampo	Oct to Dec 2012	360,000.00	21,600.00
	Sub-total		***₱ 4,719,840.00***	***₱ 283,190.40***
	TOTAL			**₱4,880,190.40**

We now proceed to the determination of whether petitioner complied with the third requisite.

The certificates show that the CWTs of ₱4,597,000.00 were withheld on management fees received by petitioner amounting to ₱30,780,000.00, which formed part of the income declared by petitioner in its Annual ITR and Audited Financial Statements (AFS) for CY 2012 amounting to ₱50,000,000.00, as evidenced by its official receipts[33], cash receipts book[34] and general ledger[35].

On the other hand, the CWTs of ₱283,190.40 were withheld on the income payments of ₱4,719,840.00 pertaining to the sale of properties and equipment.

Upon verification of petitioner's official receipts[36], general journal[37], cash receipts book[38] and general ledger[39], the Court finds that the gain realized from the said sale amounting to ₱1,703,234.65, as shown below, was included in the return of the petitioner as part of the "Other Taxable Income Not Subjected to Final Tax" amounting to ₱2,653,070.25[40]:

[33] Exhibits "P-17-1-1" to "P-17-1-20".
[34] Exhibit "P-17-2".
[35] Exhibit "P-19-1".
[36] Exhibits "P-18-1" to "P-18-10".
[37] Exhibit "P-20-1".
[38] Exhibit "P-17-2".
[39] Exhibit "P-20-2".
[40] Line 19, Exhibit "P-1".

Exhibit	Withholding Agent	Period Covered	Selling Price/Income Payments	Cost of Property	Gain on Sale	Taxes Withheld
P-16-21	Vanessa M. Besas	Apr to June 2012	₱ 1,073,280.00	₱ 796,434.82	₱ 276,845.18	₱ 64,396.80
P-16-22	Vanessa M. Besas	Oct to Dec 2012	180,000.00	75,276.11	104,723.89	10,800.00
P-16-23	Krystal E. Gamit	Apr to June 2012	1,073,280.00	796,434.82	276,845.18	64,396.80
P-16-24	Krystal E. Gamit	Oct to Dec 2012	180,000.00	75,276.11	104,723.89	10,800.00
P-16-25	Henry M. Oriña and Lykieng Oriña	Oct to Dec 2012	210,000.00	87,822.12	122,177.88	12,600.00
P-16-26	Eileen May V. Jocson	Oct to Dec 2012	180,000.00	75,276.11	104,723.89	10,800.00
P-16-27	Maria Socorro A. Ligon	Oct to Dec 2012	180,000.00	75,276.11	104,723.89	10,800.00
P-16-28	Roselle Sharon R. Mendoza	Oct to Dec 2012	210,000.00	87,822.12	122,177.88	12,600.00
P-16-29	Marilyn S. Ocampo	Apr to June 2012	1,073,280.00	796,434.82	276,845.18	64,396.80
P-16-30	Marilyn S. Ocampo	Oct to Dec 2012	360,000.00	150,552.21	209,447.79	21,600.00
	Total		**₱4,719,840.00**	**₱3,016,605.35**	**₱1,703,234.65**	**₱283,190.40**

As such, petitioner was able to establish that the income related to the CWTs being claimed for refund was declared as part of the income in its 2012 Annual ITR, in compliance with the third requisite.

In sum, petitioner has sufficiently proven its entitlement to a cash refund representing unutilized excess creditable withholding taxes for CY 2012 in the amount of ₱4,880,190.40.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED.** Accordingly, respondent is **ORDERED** to **REFUND** in favor of petitioner the amount of **₱4,880,190.40** representing its excess and unutilized creditable withholding taxes for the CY ended December 31, 2012.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice