REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8471

Members:

CASTAÑEDA JR., Chairperson
CASANOVA,
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

APR 1 4 2015

11:10 a.m.

X- X

DECISION

Casanova, J.:

This Petition for Review[1], filed by petitioner Jardine Lloyd Thompson Insurance Brokers, Inc. on April 13, 2012, seeks the refund or issuance of Tax Credit Certificate in the amount of Ten Million One Hundred Sixty Six Thousand Eight Hundred Forty Eight Pesos (₱10,166,848.00), representing its alleged excess and unutilized creditable income taxes withheld for calendar year (CY) 2009.

[1] Docket (Vol. I), pp. 10-20.

The facts, as found in the records of this case are as follows:

Petitioner Jardine Lloyd Thompson Insurance Brokers, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 25th Floor, Philamlife Tower, 8767 Paseo de Roxas, Makati City.[2] It is engaged in the business of insurance brokerage, and as such, receives commission income from various insurance companies.[3] Petitioner is registered with the Bureau of Internal Revenue (BIR) and was issued Tax Identification Number (TIN) 000-125-711-000 and BIR Certificate of Registration bearing RDO Control No. 8RC0000019169.[4]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said Office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

On April 14, 2010, petitioner filed with the BIR its Annual Income Tax Return (ITR) for Calendar Year ending December 31, 2009 (CY 2009). Thereafter, on April 12, 2011, petitioner filed an Amended Annual Income Tax Return for CY 2009.[6] Petitioner indicated on the face of both its Annual ITR and Amended Annual ITR for CY 2009 its option to claim for the refund of its excess and unutilized creditable withholding taxes for CY 2009.[7]

On April 25, 2011, petitioner filed with the BIR, Large Taxpayers Service IV-Regular Taxpayer, an administrative claim for refund of excess and unutilized creditable withholding taxes for CY 2009 in the amount of ₱10,166,848.00.[8] To date, respondent has yet to resolve petitioner's administrative claim for refund of excess and unutilized creditable withholding taxes for CY 2009.[9] Consequently, petitioner filed the instant Petition for Review on April 13, 2012.[10]

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[2] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 94.
[3] Par. 1.1 Stipulated Facts, JSFI, Docket (Vol. I), p. 94.
[4] Par. 2 Stipulated Facts, JSFI, Docket (Vol. I), p. 95.
[5] Par. 3 Stipulated Facts, JSFI, Docket (Vol. I), p. 95.
[6] Par. 4 Stipulated Facts, JSFI, Docket (Vol. I), p. 95.
[7] Par. 5 Stipulated Facts, JSFI, Docket (Vol. I), p. 95.
[8] Par. 6 Stipulated Facts, JSFI, Docket (Vol. I), p. 95.
[9] Par. 7 Stipulated Facts, JSFI, Docket (Vol. I), p. 95.
[10] Docket (Vol. I), pp. 10-20.

Within the extended time granted by the Court[11], respondent filed her Answer[12] on June 8, 2012, interposing the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Petitioner should fully comply with the provisions stated in Revenue Regulations 6-85 and the requirements enumerated in the case of CIR vs. PERF Realty Corp., GR No. 163345 dated July 4, 2008, which states that:

   'The CTA, citing Section 10 of Revenue Regulations 6-85 and Citibank, N.A. vs. Court of Appeals, determined the requisites for a claim for refund, thus:

   1) That the claim for refund was filed within the two (2) year period as prescribed under Section 230 (now Section 229) of the National Internal Revenue Code;

   2) That the income upon which the taxes were withheld was included in the return of the recipient;

   3) That the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

   X X X.'

5. Petitioner must also prove that the excess income payments were not carried-over to the succeeding quarters or taxable years. This Honorable Court has denied several claims for refund when the taxpayer failed to prove that such excess income payments

[11] Resolution dated May 16, 2012, Docket (Vol. I), p. 47.
[12] Docket (Vol. I), pp. 49-56.

were not carried over. (Millennium Business Services, Inc. vs. CIR, CTA Case No. 7441; and UPSI Management, Inc. vs. CIR, CTA Case No. 7762)

6. Petitioner must comply with provisions of the 'irrevocability clause' of Section 76 of the National Internal Revenue Code of 1997, as amended wherein it is stated that:

> **'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)

6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

7. The case of Ang Tibay vs. Court of Industrial Relations GR No. L-46496, states the primary rights which must be respected even in an administrative proceeding:

   1) **The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.** In the language of Chief Hughes, in *Morgan v. U.S.,* 304 U.S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129, 'the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.

   (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. (Chief Justice Hughes in Morgan v. U.S. 298 U.S. 468, 56 S. Ct. 906, 80 law. ed. 1288.) In the language of this court in *Edwards vs. McCoy,* 22 Phil., 598, 'the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.'

   (3) 'While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support it is a nullity, a place when directly attached.' (Edwards vs. McCoy, supra.) This principle emanates from the more fundamental is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

   (4) **Not only must there be some evidence to support a finding or**

conclusion (City of Manila vs. Agustin, G.R. No. 45844, promulgated November 29, 1937, XXXVI O. G. 1335), **but the evidence must be 'substantial.'** (Washington, Virginia and Maryland Coach Co. v. national labor Relations Board, 301 U.S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) It means such relevant evidence as a reasonable mind accept as adequate to support a conclusion.' (Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-Stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.) . . . The statute provides that "the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent inn (sic) judicial proceedings would not invalidate the administrative order. (Interstate Commerce Commission v. Baird, 194 U.S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; Interstate Commerce Commission v. Louisville and Nashville R. Co., 227 U.S. 88, 93 33 S. Ct. 185, 187, 57 Law. ed. 431; United States v. Abilene and Southern Ry. Co. S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.)'

(5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.** (Interstate Commerce Commission vs. L. & N.

R. Co., 227 U.S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) **Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them.** It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer (sic) any industrial or agricultural dispute or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal, a (sic) justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers. (Section 10, ibid.)

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with the right to appeal to board or commission, but in our case there is no such statutory authority.

> (7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it.

Petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence, then the decision will probably be contrary to petitioner. Only the evidence presented will be reviewed by the quasi-judicial body. An administrative claim is meant to expedite the proceedings where all the relevant evidence is presented. Petitioner, however, instead chose not to submit any evidence to support its claim.

8. Sections 204 (c) and 229 of the Tax Code require the taxpayer to file a written claim for refund before he could file a judicial claim for refund:

> 'Section 204 (c) xxx 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 xxx.'

> 'Section 229. 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 it 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 xxx.'

9. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (**Asiatic Petroleum Co. vs Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670**).'

The case was set for Pre-Trial Conference on July 12, 2012.[13] Petitioner filed its Pre-Trial Brief[14] on July 9, 2012 while respondent filed hers on July 16, 2012[15]. Thereafter, the parties filed their Joint Stipulation of Facts and Issues[16] on September 21, 2012. This was adopted by the Court in the Pre-Trial Order[17] promulgated on October 1, 2012.

On November 8, 2012, upon petitioner's Motion for commissioning of Independent Certified Public Accountant[18], the Court commissioned Ms. Katherine O. Constantino as the Independent Certified Public Accountant (Independent CPA).[19]

During trial, petitioner presented the following witnesses: Ms. Maria Esperanza Rosario R. Dellosa, its Assistant Vice President and Ms. Katherine O. Constantino, the Court-commissioned Independent CPA.

On February 28, 2013, petitioner filed its Formal Offer of Evidence[20] with respondent's Comment (Re: Petitioner's Formal Offer of Evidence)[21] filed on March 7, 2013. In a Resolution dated March 22, 2013[22], the Court admitted petitioner's Exhibits "A, A-1, B, C, C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, D, D-1, E, F, F-1, G, G-1, H, I,

[13] Notice of Pre-Trial Conference, June 11, 2012, Docket (Vol. I), p. 57.
[14] Docket (Vol. I), pp. 59-68.
[15] Docket (Vol. I), pp. 74-78.
[16] Docket (Vol. I), pp. 94-98.
[17] Docket (Vol. I), pp. 100-105.
[18] Docket (Vol. I), pp. 231-233.
[19] Docket (Vol. I), p. 241.
[20] Docket (Vol. 2), pp. 562-578.
[21] Docket (Vol. 2), pp. 990-993.
[22] Docket (Vol. 2), pp. 997-998.

I-1, I-2, I-3, I-4, I-5, I-6, I-7, J, K, K-1, K-2, K-3, L, M, M-1, O, O-1, P, P-1, P-2, Q, R, R-1 to R-229, S, T, U, V-1 to V-65, W-1 to W-32, X-1 to X-145, X-147 to X-370, Y-1 to Y-13, Z, AA-1 to AA-13, BB, CC, CC-1, DD, DD-1, DD-2, DD-3, DD-4, DD-5, DD-6, EE, EE-1, EE-2, EE-3, GG, HH, II, JJ, KK, LL, MM, NN, NN-1, OO, OO-1, PP, PP-1, QQ-1 to QQ-1157, RR, SS-1 to SS-5323, TT, UU, UU-1, UU-2, UU-3, VV, WW, XX, YY, ZZ, ZZ-1, AAA and AAA-1". The Court, however, denied the admission of Exhibit "VV-66 to VV-76 and X-146" for not being found in the records of the case. The Court in a Resolution[23] dated May 31, 2014, admitted Exhibit "V-66 to V-76".

On April 5, 2013, the instant case was transferred to the Second Division pursuant to the Order[24] dated April 5, 2013.

During the July 24, 2013 hearing[25], respondent presented her sole witness, Revenue Officer Hannah Thea Tulio, who examined petitioner's administrative claim for refund and formally offered her evidence. The Court also admitted respondent's Exhibits "1, 2 and 3".[26]

Petitioner was allowed to present rebuttal evidence and its witness, Ms. Dellosa, was recalled by the Court. It submitted its Supplemental Formal Offer of Evidence[27] on September 12, 2013. Respondent filed her Comment (Re: Petitioner's Supplemental Formal Offer of Evidence)[28] on October 24, 2013. Petitioner filed a Reply (Re: Comment to petitioner's Supplemental Formal Offer of Evidence)[29] on November 14, 2013. In a Resolution[30] dated November 28, 2013, the Court admitted petitioner's Exhibits "DDD", "EEE", "FFF" and "FFF-1". Its Exhibits "BBB" and "CCC" were denied for failure of petitioner to present the original documents for comparison. Upon motion of the petitioner[31], the Court reconsidered and admitted Exhibits "BBB" and "CCC" in a Resolution[32] dated February 28, 2014.

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[23] Docket (Vol. 2), pp. 1022-1023.
[24] Docket (Vol. 2), p. 999
[25] Docket (Vol. 2), p. 1037.
[26] Resolution dated July 24, 2013, Docket (Vol. 2), p. 1039.
[27] Docket (Vol. 2), pp. 1055-1058.
[28] Docket (Vol. 2), pp. 1101-1105.
[29] Docket (Vol. 2), pp. 1110-1118.
[30] Docket (Vol. 2), pp. 1120-1122.
[31] Motion for Partial Reconsideration (Re: Resolution dated November 28, 2013), Docket (Vol. 2), pp. 1135-1145
[32] Docket (Vol. 2), pp. 1153-1154.

Petitioner submitted its Memorandum on April 30, 2014[33] while respondent filed hers within the extended period of time granted by the Court, on May 26, 2014[34]. Thus, in a Resolution dated May 28, 2014[35], the instant petition was considered submitted for decision.

The parties submitted the following issues[36] for this Court's resolution:

1. Whether or not petitioner had unutilized creditable withholding taxes for CY 2009 in the amount of Php10,166,848.00.

2. Whether or not petitioner's unutilized creditable withholding taxes amounting to Php10,166,848.00, for CY 2009 are duly substantiated by documentary evidence.

3. Whether or not the income from which the subject creditable withholding taxes were withheld were reported as part of petitioner's income in its Annual Income Tax Return for CY 2009.

4. Whether or not petitioner's unutilized creditable withholding taxes for CY 2009 were applied against its income tax liability for the succeeding taxable years.

5. Whether petitioner has complied with the provisions of Sections 204 and 229 of the NIRC of 1997, as amended, in the prescriptive period for filing of administrative and judicial claims for refund and/or issuance of a tax credit certificate.

6. Whether petitioner has exhausted all administrative remedies before filing this petition and whether this Court has jurisdiction over the petition for review.

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[33] Docket (Vol. 2), pp. 1210-1235.
[34] Docket (Vol. 2). pp. 1237-1248.
[35] Docket (Vol. 2), p. 1249.
[36] Stipulated Issues, JSFI, Docket (Vol. 1), pp. 96-97

7. Whether petitioner is entitled to its claim for refund in the amount of Php10,166,848.00 representing creditable income taxes for CY 2009."

The above-mentioned issues may be summarized as follows:

> "Whether or not petitioner is entitled to its claim for refund or issuance of tax credit certificate in the amount of Php10,166,848.00 representing its unutilized creditable withholding taxes for CY 2009."

Petitioner contends that its evidence clearly show an excess and unutilized CWT of ₱10,166,848.00 for CY 2009; that it did not apply the same against its income tax liability for the same period and that it did not carry it over to the succeeding taxable periods. Petitioner likewise, alleges that it filed both its administrative and judicial claims for refund within two (2) years from the date of filing its Annual ITR for CY 2009, in accordance with Sections 204(C) and 229 of the NIRC of 1997, as amended. That it has complied with all administrative requirements before filing the instant Petition, thus, vesting the Court with jurisdiction over the case. Lastly, petitioner argues that it is entitled to the refund or issuance of a TCC for its excess and unutilized CWT for CY 2009, in the aggregate amount of ₱10,166,848.00, since it has complied with all the requirements for claiming a refund of excess and unutilized CWT.

Respondent, on the other hand, argues that the instant claim for refund should be denied for petitioner's failure to submit complete documents in support of its administrative claim for refund. That, assuming the denial by inaction may be subject to judicial review, she submits that such denial was proper and must be sustained on appeal.

Petitioner anchors its claim on Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, which states:

> "**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
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> (B) Carry-over the excess credit; or
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> (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 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."

Pursuant to the above-mentioned provision, a corporation entitled to a tax credit or refund of the excess income taxes paid in a given taxable year 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.

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 facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[37]

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

An examination of petitioner's Amended Annual Income Tax Return[38] for the CY 2009, filed with the BIR on April 12, 2011 shows that petitioner had total tax credits of ₱58,004,266.51[39] which is comprised of the prior year's excess credits in the amount of ₱47,837,418.51[40] and creditable taxes withheld during the year 2009 in the amount of ₱10,166,848.00 (₱6,950,055.00[41] plus ₱3,216,793.00[42]). Petitioner's income tax for CY 2009 in the amount of ₱1,739,641.50[43] was paid using a portion of its prior year's excess credits of ₱47,837,418.51. This leaves the prior year's excess credits in the amount of ₱46,097,777.01 and creditable taxes withheld during the year 2009 in the amount of ₱10,166,848.00, totaling to ₱56,264,625.01 unutilized as of December 31, 2009, as shown below:

Income Tax – 2009	₱ 1,739,641.50
Less: Prior Year's Excess Credits	47,837,418.51
Balance of Prior Year's Excess Credits	₱ 46,097,777.01
Add: Creditable Taxes Withheld – 2009	10,166,848.00
Excess Creditable Taxes Withheld as of December 31, 2009	₱ 56,264,625.01

Since petitioner marked the option "To be refunded" in its Annual Income Tax Return for CY 2009[44] and reflected only the amount of ₱46,097,777.00 as "Prior Year's Excess Credits" in its Annual Income Tax Returns for 2010[45], the unutilized creditable withholding taxes for taxable year 2009 in the amount of ₱10,166,848.00 may be the subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

However, in addition to the requisite provided under Section 76 of the NIRC of 1997, petitioner must also satisfy the following three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit:

1. The claim for refund was filed with the Commissioner of Internal Revenue from the date of payment of the tax;

[38] Exhibit "C"
[39] Exhibit "C-6"
[40] Exhibit "C-3"
[41] Exhibit "C-5"
[42] Exhibit "C-4"
[43] Exhibit "C-2"
[44] Exhibit "C-8"
[45] Exhibit "I-1"

2. It is shown on the return of the recipient that the income payment received was declared as part of the gross income; and

3. The fact of withholding is 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.[46]

Respondent argues that compliance with the afore-quoted requirements will not suffice if petitioner failed to comply with the prescribed checklist of requirements to be submitted involving claims for unutilized creditable withholding tax pursuant to Revenue Memorandum Order (RMO) No. 53-98[47]. She further argues that petitioner must also prove its compliance with Revenue Regulations (RR) 2-2006 to give support to the validity of its claim for unutilized creditable withholding tax for CY 2009 and that with all the administrative requirements continuing up to judicial review.

Petitioner, however, alleges that it has complied with all administrative requirements before filing the instant Petition, thus the Court was vested with jurisdiction over the case.

In the case of *Ayala Corporation vs. Commissioner of Internal Revenue*[48], the Second Division of this Court discussed both RMO No. 53-98 and RR 2-2006 in relation to claims for unutilized creditable withholding tax, to wit:

> "It must be stressed that Revenue Memorandum Order (RMO) No. 53-98, dated June 1, 1998 and entitled 'Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket', refers mainly to the requirements in the administrative level for claims for refund/tax credit, wherein the taxpayer is required to submit for audit

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[46] *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils) Operations Corporation]*, G.R. 179260, April 2, 2014, citing the case of *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals*, G.R. No. 155682, March 27, 2007.
[47] Checklist of Documents to be Submitted by a Taxpayer Upon Audit of His Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.
[48] CTA Case No. 8262, March 21, 2014.

purposes, all his/its pertinent documents/records, to establish the veracity of his/its claim. However, when a taxpayer's claim reaches the judicial level or when the claim is elevated to this Court, the Rules of Court and this Court's own Rules govern the matter of proving the said claim.

Moreover, RR 2-2006, indeed, prescribes the attachment of the *Summary of Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source* (SAWT) to tax returns, with claimed tax credits due to creditable tax withheld at source. However, this Court, in numerous cases, held that the following are the requisites that must be complied with in order to claim a Tax Credit Certificate or Refund of excess creditable withholding tax (CWT): (a) that the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended; (b) that the fact of withholding is 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 (c) that the income upon which the taxes were withheld were included in the return of the recipient. These requisites were also adopted by the Supreme Court in the case of *United International Pictures AB vs. Commissioner of Internal Revenue".*

Petitioner, therefore, need not comply with all the documents prescribed in RMO No. 53-98 and RR 2-2006 before it can claim its unutilized creditable withholding tax. It just needs to comply with the three conditions enumerated above.

The first condition is pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended, which, respectively, provides:

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

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

"SEC. 229. **Recovery of Tax Erroneously or Illegally Collected.** – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

In the case of *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and Bank of the Philippines Islands as Liquidator of Paramount Acceptance Corporation*[49], the Supreme Court ruled that the two-year period should be computed from the time of actual filing of the Adjustment Return or Annual Income Tax

[49] G.R. No. 117254, January 21, 1999.

Return because, at that point, it can already be determined whether there has been an overpayment by the taxpayer.

A perusal of the records shows that petitioner filed its Original Annual Income Tax Return on April 14, 2010[50]. Counting from this date, petitioner had until April 13, 2012 within which to file its administrative claim as well as its judicial claim for refund or tax credit of excess and unutilized creditable income taxes withheld for CY 2009. Petitioner filed its administrative claim for refund with the BIR on April 25, 2011[51], while the instant Petition for Review[52] was filed on April 13, 2012. Thus, petitioner filed both its administrative and judicial claims for refund or issuance of Tax Credit Certificate within two (2) years from the date of filing of its Annual ITR for CY 2009, in accordance with Sections 204(C) and 229 of the NIRC of 1997, as amended. The first condition, therefore, has been complied with by petitioner.

The Court finds it prudent to determine next whether petitioner has complied with the third condition. That is, to prove the fact of withholding of the claimed CWT 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.

In the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[53], the Supreme Court held that the Certificate of Creditable Tax withheld at Source (BIR Form No. 2307) is the competent proof to establish the fact that taxes are withheld, to wit:

> "**The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld.** It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.
>
> In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, this court declared that a certificate is complete in the relevant details that would aid the courts

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[50] Exhibit "C-9"
[51] Par. 6 Stipulated Facts, JSFI, Docket (Vol. I), p. 95; Exhibit "D"
[52] Docket (Vol. I), pp. 10-20.
[53] G.R. No. 180290, September 29, 2014.

in the evaluation of any claim for refund of excess creditable withholding taxes:

> In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
>
> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. **It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes.** (Emphasis supplied, citations omitted)

Moreover, as correctly held by the Court of Tax Appeals En Banc, **the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury**, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, which reads:

> SEC. 267. Declaration under Penalties of Perjury. – Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing

> information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.
>
> Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly." (Emphasis supplied)

The Court-commissioned Independent CPA firm, Constantino Guadalquiver & Co., through its Partner, Ms. Katherine O. Constantino, presented a summary of the verified BIR Forms No. 2307 or Certificates of Creditable Tax Withheld at Source supporting petitioner's claimed creditable withholding taxes for CY 2009 in the amount of ₱10,166,848.27, as follows:[54]

Findings		***Reference (Exhibit "O")***	***Taxes Withheld***
A.	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	*ANNEX 1-a*	₱6,280,750.25
B.	CWT duly supported by original BIR Form 2307 but without Petitioner's TIN indicated therein	*ANNEX 1-b*	1,879,483.35
C.	CWT duly supported by original BIR Form 2307 but with incorrect Petitioner's TIN indicated therein	*ANNEX 1-c*	563,359.10
D.	CWT supported by photocopied BIR Form 2307	*ANNEX 1-d*	797,932.26
E.	CWT not supported by BIR Form 2307	*ANNEX 1-e*	645,323.31
TOTAL			**₱10,166,848.27**

Further examination reveals that of the ₱6,280,750.25 creditable withholding tax found by the ICPA to be duly supported by original BIR Forms No. 2307, the amount of ₱16,566.67, broken down below, should be denied because the dates indicated in the corresponding BIR Forms No. 2307 were altered:

[54] Exhibit "O"

Exhibit	Withholding Agent	INCOME	Taxes Withheld
R-34	Asalus Corporation	₱ 2,100.00	₱ 210.00
R-35	Asalus Corporation	15,605.77	1,560.58
R-36	Asalus Corporation	11,388.15	1,138.82
R-37	Asalus Corporation	89,387.70	8,938.77
R-38	Asalus Corporation	3,487.70	348.77
R-39	Asalus Corporation	43,697.27	4,369.73
		₱ 165,666.59	**₱ 16,566.67**

Thus, the amount of ₱6,280,750.25 creditable withholding taxes verified by the ICPA to be validly supported by BIR Forms No. 2307 shall be reduced to ₱6,264,183.58.

With regard to the claimed creditable withholding taxes in the amounts of ₱1,879,483.35 and ₱563,359.10, while the related BIR Forms No. 2307 do not bear petitioner's TIN or that the TIN indicated therein is incorrect, however, petitioner's name and address are properly indicated therein, hence, the said BIR Forms No. 2307 shall be given credence and probative value by this Court.

The remaining claimed creditable withholding taxes in the amounts of ₱797,932.26 and ₱645,323.31 totaling ₱1,443,255.57, shall be disallowed from petitioner's claim for being supported by photocopied BIR Form No. 2307 and not being supported by BIR Form 2307, respectively.

Thus, petitioner was able to satisfy the third condition but only to the extent of ₱8,707,026.03, broken down as follows:

CWT duly supported by BIR Forms No. 2307	₱ 6,264,183.58
CWT duly supported by original BIR Form 2307 but without Petitioner's TIN indicated therein	1,879,483.35
CWT duly supported by original BIR Form 2307 but with incorrect Petitioner's TIN indicated therein	563,359.10
TOTAL	**₱ 8,707,026.03**

Anent the second condition, out of the ₱8,707,026.03 substantiated creditable withholding taxes, only the amount of ₱1,356,786.92 of which the related income payments were traced to be included in the Amended Annual Income Tax Return[55], Audited FS[56] and General Ledgers[57], for the CY 2009, as computed below:[58]

		Amount	Exhibit "O"
A. Commission and service income			
1. CWT duly supported by original BIR Forms No. 2307		₱ 420,808.25	*Annex 3a, 4a, 5-a and 6-a*
Less: CWT already disallowed for not being properly supported by BIR Forms No. 2307	₱16,566.67		
Less: CWT the related income of which was not traced to the General Ledger revenue account			
Exh. "O" Annex 5-a, p. 8; Exh. R-37	(3,792.09)		
Exh. "O", Annex 5-a, p. 9; Exh. R-38	(207.90)	(12,566.68)	
2. CWT duly supported by original BIR Forms No. 2307 without petitioner's TIN indicated therein but petitioner's name and address were properly indicated therein		908,645.35	*Annex 3b, 4b, 5-b and 6-b*
B. Rental income		39,900.00	*Annex 9*
Total		**₱1,356,786.92**	

In view of the foregoing, the Court finds that petitioner has sufficiently proven its entitlement to the refund of its excess and unutilized creditable income taxes withheld for CY 2009, but only to the extent of ₱1,356,786.92.

55 Exhibit "C".
56 Exhibit "S".
57 Exhibits "T" and "RR".
58 Exhibit "O"

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱1,356,786.92**, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2009.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
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
Chairpersonship, 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