REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MELCO RESORTS LEISURE (PHP) CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10807

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, *and*
ANGELES, *JJ.*

Promulgated:

APR 24 2025
3:40 p.m.

x- -x

DECISION

MANAHAN, *J.*:

Before the Court is a *Petition for Review* filed on March 11, 2022,[1] seeking refund of the amount of ₱102,337,628.70 representing petitioner's alleged erroneously or excessively paid expanded withholding tax ("**EWT**") for taxable year (TY) 2020.

THE PARTIES

Petitioner Melco Resorts Leisure (PHP) Corporation ("**Melco**") is a corporation organized and existing under the laws of the Philippines, with principal address at Asean cor. Roxas Boulevard, Barangay Tambo, Parañaque City.[2] It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification No. 008-362-871-00000.[3]

Respondent is the duly appointed Commissioner of Internal Revenue ("**CIR**") who holds office at the Bureau of Internal Revenue ("**BIR**") National Office.[4]

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[1] Docket – Vol. I., pp. 6-38.
[2] *Joint Stipulation of Facts and Issues* (*JSFI*), Stipulation of Facts, par. 1, Docket – Vol. II, p. 741; Exhibit "P-1", Docket – Vol. III, pp. 1068 to 1073.
[3] Exhibit "P-3", Docket – Vol. III, pp. 1077 to 1079.
[4] *JSFI*, Stipulation of Facts, par. 2, Docket – Vol. II, p. 741.

THE FACTS

On March 8, 2022, Melco filed with the Large Taxpayers Service of the BIR a letter dated March 7, 2022,[5] with Application for Tax Credits/Refunds (BIR Form No. 1914)[6] and supporting documents, for the refund or issuance of tax credit certificate of its alleged erroneously or excessively paid EWT for TY 2020 in the amount of ₱102,337,628.70.

On March 11, 2022, Melco filed the present *Petition for Review*. The CIR filed his *Answer* on June 6, 2022,[7] and transmitted the *BIR Records* of the case on July 29, 2022.[8]

On August 18, 2022, the Pre-Trial Conference for the case was held.[9] Prior thereto, both parties separately filed their pre-trial briefs on August 15, 2022.[10] The parties submitted their *Joint Stipulation of Facts and Issues* on September 19, 2022.[11] It was approved by the Court on October 10, 2022,[12] thus, the pre-trial was deemed terminated. The *Pre-Trial Order* was issued on December 5, 2022.[13]

During trial, Melco presented: (1) Ms. Eunice Rekha P. Pobre,[14] its Tax Manager; (2) Ms. Maria Neriza C. Banaria,[15] the Chief Financial Officer of Belle Corporation; and (3) Mr. Emmanuel Y. Mendoza,[16] the Court-commissioned independent certified public accountant ("**ICPA**").[17] The ICPA Report was filed on February 23, 2023. Meanwhile, counsel for the CIR manifested that he will no longer present evidence.[18]

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[5] Exhibit "P-60", Docket – Vol. 4, pp. 1593 to 1601.
[6] Exhibit "P-61", Docket – Vol. 4, p. 1602.
[7] Docket – Vol. II, pp. 671 to 678.
[8] *Compliance* dated July 29, 2022, Docket – Vol. II, pp. 689 to 691.
[9] *Order* dated August 18, 2022, Docket – Vol. II, pp. 723 to 723-B.
[10] *Pre-Trial Brief for Petitioner*, Docket – Vol. II, 698 to 720; *Pre-Trial Brief*, Docket – Vol. II, pp. 694 to 696.
[11] Docket – Vol. II, pp. 741 to 754.
[12] *Resolution* dated October 10, 2022, Docket – Vol. II, p. 780.
[13] Docket – Vol. II, pp. 819 to 844.
[14] Exhibit "P-70", Docket – Vol. I, pp. 186 to 205; Exhibit "P-70-2", Docket – Vol. II, pp. 854 to 859; Minutes of the hearing held on, and *Order* dated, January 24, 2023, Docket – Vol. II, pp. 940, and 941 to 943, respectively.
[15] Exhibit "P-71", Docket – Vol. II, pp. 763 to 776; and Minutes of the hearing held on, and *Order* dated, January 24, 2023, Docket – Vol. II, pp. 940, and 941 to 943, respectively.
[16] Exhibit "P-126", Docket – Vol. II, pp. 1004 to 1010; and Minutes of the hearing held on, and *Order* dated, March 8, 2023, Docket – Vol. III, pp. 1012 to 1013-A.
[17] *Id.*
[18] *Transcript of Stenographic Notes*, March 8, 2023, p. 15.

On March 28, 2023, Melco filed its formal offer of evidence.[19] The CIR did not file comment thereon.[20] In a *Resolution* dated May 26, 2023,[21] the Court admitted all of Melco's exhibits.

On December 6, 2023, the CIR filed a *Manifestation* stating that he is adopting the arguments contained in his *Answer* in place of a memorandum.[22] Melco filed its memorandum on April 5, 2024.[23] Thus, the case was submitted for decision on April 24, 2024.[24]

THE ISSUES

As stipulated by the parties, the issue is whether Melco is entitled to a refund or issuance of tax credit certificate in the amount of ₱102,337,628.70 representing its alleged erroneous or excessively paid EWT for TY 2020 under Section 229 of the Tax Code, as amended.

Petitioner's arguments

Melco explains that on March 22, 2021, its total rent for 2020 was reduced. Hence, the EWTs it paid on the accrued excess rent is deemed erroneously or excessively paid, since they pertain to taxes which are not legally due.

Respondent's counter-arguments

The CIR contends that Melco's failure to exhaust administrative remedies before filing the present judicial claim warrants the dismissal thereof. By filing the same merely three (3) days from the date of its administrative claim, Melco prevented the CIR from verifying the documents in support of its claim. Moreover, according to the CIR, Melco failed to submit the complete documents to prove its entitlement to the claim.

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[19] *Formal Offer of Evidence with Manifestation [On Offer of Provisionally Marked Exhibits P-6 to P-17 and P-30 to P-35 as Originals under Rule 130 of the Revised Rules of Court]*, Docket – Vol. III, pp. 1018 to 1067.
[20] *Records Verification* dated April 18, 2023, Docket – Vol. 4, p. 1707.
[21] Docket – Vol. 4, pp. 1714 to 1718.
[22] Docket – Vol. 4, pp. 1751 to 1753.
[23] Docket – Vol. 4, pp. 1761 to 1781.
[24] *Minute Resolution* dated April 24, 2024, Docket – Vol. 4, p. 1783.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

Sections 204(C) and 229 of the Tax Code governs the refund of taxes erroneously or excessively paid. Said provisions read:

> "**SEC. 204.** *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* —The Commissioner may —
>
> ...
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority... 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."[25]
>
> "**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."[26]

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[25] *Emphasis supplied.*
[26] *Emphasis supplied.*

The foregoing provisions clearly require that within two (2) years from the date of payment of the tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the Court. Both claims, however, must be filed within the 2-year reglementary period. Timeliness of filing the claims is mandatory and jurisdictional. It bears to stress that for the judicial claim, the Tax Code expressly provides that it be filed within the 2-year reglementary period "regardless of any supervening cause that may arise after payment."[27]

The foregoing provisions also require that the taxes which are the subject of the claim be erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax.[28] Hence, for the present claim to prosper, petitioner must establish not only that it timely filed the same; it must likewise prove that the EWT covered by the claim constitutes erroneously paid or illegally collected tax.

Petitioner's administrative and judicial claims for refund or issuance of tax credit certificate covering the months of February 2020 to December 2020 were timely filed.

The present claim stems from petitioner's alleged overpayment or over-remittance of EWTs for TY 2020. Below are the pertinent dates relative thereto:

PERIOD COVERED	DATE OF PAYMENT	TWO-YEAR PRESCRIPTIVE PERIOD
Jan. 2020	Feb. 12, 2020[29]	Feb. 14, 2022[30]
Feb. 2020	Mar. 12, 2020[31]	Mar. 14, 2022[32]
1st quarter 2020	Apr. 27, 2020[33]	Apr. 27, 2022

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[27] *Commissioner of Internal Revenue v. San Miguel Corporation*, G.R. Nos. 180740 and 180910, November 11, 2019 [Per J. Hernando, Second Division].
[28] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012 [Per J. Villarama, Jr., First Division].
[29] Exhibits "P-39" and "P-39-1", Docket – Vol. III, pp. 1384 to 1386.
[30] February 12, 2022 fell on a Saturday.
[31] Exhibits "P-40" and "P-40-1", Docket – Vol. II, pp. 1387 to 1389.
[32] March 12, 2022 fell on a Saturday.
[33] Exhibits "P-41" and "P-41-1", Docket – Vol. II, pp. 1390 to 1392.

Apr. 2020	May 22, 2020[34]	May 23, 2022[35]
May 2020	Jun. 15, 2020[36]	Jun. 15, 2022
2nd quarter 2020	Jul. 29, 2020[37]	Jul. 29, 2022
Jul. 2020	Aug. 12, 2020[38]	Aug. 12, 2022
Aug. 2020	Sep. 15, 2020[39]	Sep. 15, 2022
3rd Quarter 2020	Oct. 29, 2020[40]	Oct. 31, 2022[41]
Oct. 2020	Nov. 12, 2020[42]	Nov. 14, 2022[43]
Nov. 2020	Dec. 14, 2020[44]	Dec. 14, 2022
4th Quarter 2020	Jan. 28, 2021[45]	Jan. 30, 2023[46]

Petitioner's administrative claim was filed on **March 8, 2022**, while its judicial claim was filed on **March 11, 2022.** Thus, the same were timely filed insofar as the months of February 2020 to December 2020 are concerned. However, with respect to the month of January 2020, petitioner's claim has prescribed since it should have been filed on February 14, 2022, within two years from the date of its payment on February 12, 2020.

Petitioner argues that since the total EWT due on its final rental payment in 2020 should only be ₱13,949,801.89, and that such amount was already fully paid by February 2020, then it is the succeeding EWTs in excess of the actual EWT due which are erroneously or excessively paid, illustrated as follows:

MONTH FOR 2020	DATE OF PAYMENT	EWT PAID (5%)	EWT DUE	ALLEGED OVERPAYMENT
Jan.	Feb. 12, 2020	₱ 9,686,480.33	₱ 9,686,480.33	₱ -
Feb.	Mar. 12, 2020	9,686,038.66	4,263,321.56	5,422,717.10
Mar.	Apr. 27, 2020	9,685,901.16		9,685,901.16
Apr.	May 22, 2020	9,685,455.33		9,685,455.33
May	Jun. 15, 2020	9,687,351.16		9,687,351.16
Jun.	Jul. 29, 2020	9,686,776.16		9,686,776.16
Jul.	Aug. 12, 2020	9,690,426.16		9,690,426.16

[34] Exhibits "P-42" and "P-42-1", Docket – Vol. II, pp. 1393 to 1395.
[35] May 22, 2022 fell on a Sunday.
[36] Exhibits "P-43" and "P-43-1", Docket – Vol. II, pp. 1396 to 1398.
[37] Exhibits "P-44" and "P-44-1", Docket – Vol. II, pp. 1399 to 1401.
[38] Exhibits "45" and "P-45-1", Docket – Vol. II, pp. 1402 to 1404.
[39] Exhibits "P-46" and "P-46-1", Docket – Vol. II, pp. 1405 to 1408.
[40] Exhibits "P-47" and "P-47-1", Docket – Vol. II, pp. 1409 to 1411.
[41] October 29, 2022 fell on Saturday.
[42] Exhibits "P-48" and "P-48-1", Docket – Vol. II, pp. 1412 to 1414.
[43] November 12, 2022 fell on a Saturday.
[44] Exhibits "P-49" and "P-49-1", Docket – Vol. II, pp. 1415 to 1417.
[45] Exhibits "P-50" and "P-50-1", Docket – Vol. II, pp. 1418 to 1420.
[46] January 28, 2023 fell on a Saturday. cmv

Aug.	Sep. 15, 2020	9,693,067.83		9,693,067.83
Sep.	Oct. 29, 2020	9,695,551.16		9,695,551.16
Oct.	Nov. 12, 2020	9,696,201.16		9,696,201.16
Nov.	Dec. 14, 2020	9,696,467.83		9,696,467.83
Dec.	Jan. 28, 2021	9,697,713.66		9,697,713.66
	TOTAL	116,287,430.60	13,949,801.89	102,337,628.71

The Court disagrees.

In the *Supplemental Agreement to Contract to Lease* dated March 22, 2021,[47] petitioner's total annual rent for calendar year 2020 was reduced to ₱265,046,236.00, net of withholding tax:

> **Section 2. 2020 Monthly Rent**
>
> The Parties agree that the total annual Rent for the calendar year 2020 shall be Two Hundred Sixty-Five Million Forty-Six Thousand Two Hundred Thirty-Six Pesos (Php265,046,236.00), exclusive of value added tax and net of withholding tax, covering the gaming area only and no rent will be due on the non-gaming area. An overpayment of Three Hundred Eighteen Million Six Hundred Thirty-Five Thousand Four Hundred Sixty-Two Pesos (Php318,635,462.00) will be returned and paid by the Lessor to the Lessee no later than five (5) business days from the date of this Agreement without any set-off, condition, restriction, counterclaim, deduction or withholding.

Under the same agreement, said amount was to be paid monthly by petitioner:

> **RECITALS**
>
> ...
>
> (C) The Lessee agreed to pay to the Lessor monthly rent for the Leased Premises as provided in Section 5.01 of the Lease Agreement (the **Monthly Rent**).

Consequently, the monthly rent for 2020 was reduced to ₱22,087,186.33 [₱265,046,236.00 divided by twelve (12) months], net of EWT of ₱1,162,483.49. Since petitioner should pay the rent on a monthly basis, the withholding tax thereon

[47] Exhibits "P-36" and "P-36-1", Docket – Vol. III, pp. 1356 to 1379.

should also be recognized monthly. The alleged overpayments therefore are as follows:

MONTH FOR 2020	DATE OF PAYMENT	EWT PAID (5%)	EWT DUE	ALLEGED OVERPAYMENT
Jan.	Feb. 12, 2020	₱ 9,686,480.33	₱ 1,162,483.49	₱ 8,523,996.84
Feb.	Mar. 12, 2020	9,686,038.66	1,162,483.49	8,523,555.17
Mar.	Apr. 27, 2020	9,685,901.16	1,162,483.49	8,523,417.67
Apr.	May 22, 2020	9,685,455.33	1,162,483.49	8,522,971.84
May	Jun. 15, 2020	9,687,351.16	1,162,483.49	8,524,867.67
Jun.	Jul. 29, 2020	9,686,776.16	1,162,483.49	8,524,292.67
Jul.	Aug. 12, 2020	9,690,426.16	1,162,483.49	8,527,942.67
Aug.	Sep. 15, 2020	9,693,067.83	1,162,483.49	8,530,584.34
Sep.	Oct. 29, 2020	9,695,551.16	1,162,483.49	8,533,067.67
Oct.	Nov. 12, 2020	9,696,201.16	1,162,483.49	8,533,717.67
Nov.	Dec. 14, 2020	9,696,467.83	1,162,483.49	8,533,984.34
Dec.	Jan. 28, 2021	9,697,713.66	1,162,483.49	8,535,230.17
	TOTAL	116,287,430.60	13,949,801.89	102,337,628.72

As discussed, both administrative and judicial claims for refund or issuance of a tax credit certificate must be made within two (2) years from the date of payment of the tax, regardless of any supervening cause that may arise after payment. Thus, the claim covering the month of January has prescribed.

With regard to respondent's argument that petitioner failed to exhaust administrative remedies when it filed its judicial claim only three (3) days after filing its administrative claim, the Supreme Court already settled the same in this wise:[48]

> ... the CIR insists that respondent's claim for refund of the estate tax that the latter had previously paid should be denied for failure to exhaust administrative remedies. According to the CIR, the Estate's filing of its administrative claim with the BIR at 8:00 a.m. and its judicial claim before the CTA at 4:47 p.m. both on June 28, 2017 – just two days prior the lapse of the two-year period, deprived the BIR the opportunity to act on the administrative claim for refund. The CIR argues that, with less than nine hours given to him, he was not "afforded a complete chance to pass upon the matter" nor "given an opportunity to act and correct the errors committed in the administrative forum."

[48] *Commissioner of Internal Revenue v. Estate of Mr. Charles Marvin Romig,* G.R. No. 262092, October 9, 2024 [Per J. Hernando, First Division]. *am*

The contention is untenable.

> ***It is of no moment that there is only a short interval between the filing of the two claims. The law merely requires that both claims are filed within the two-year period.*** In *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, ... this Court held that, "from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the [CIR] was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period."

Having established that the instant claim was timely filed except for the month of January 2020, the Court shall now look into whether petitioner sufficiently proved that the subject EWTs paid are erroneous or illegal.

Petitioner erroneously paid EWTs for the months of February to December 2020 in the aggregate amount of ₱93,813,631.87

Petitioner leases land and building from Belle Corporation for its gaming and non-gaming operations.[49] As lessee, it pays the monthly rent stipulated in the *Contract of Lease*. For the months of January to March 2020, petitioner paid the total amount of ₱583,681,791.28, inclusive of VAT and net of 5% withholding tax.[50] However, due to the disruptions caused by the COVID-19 pandemic in March 2020, petitioner and Belle Corporation discussed rent modification or reduction for the year 2020.[51]

While the negotiations were ongoing, Belle Corporation continued to bill petitioner for the rent due for April to December 2020. Having accrued said rent, petitioner remitted the corresponding EWT, despite not paying the rent in view of the pending negotiations.[52]

Based on the originally filed *Monthly Remittance Form* (BIR Form No. 0619-E) and *Quarterly Remittance Returns of*

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[49] *Contract of Lease*, Exhibit "P-5", Docket – Vol. III, pp. 1097 to 1198.
[50] Exhibits "P-30" to "P-35" and "P-30-1" to "P-35-1", Docket – Vol. III, pp. 1344 to 1355.
[51] *Petition for Review*, par. 15-17, Docket – Vol. I, p. 10.
[52] *Id.*

Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-EQ), petitioner remitted EWTs in the total amount of ₱183,860,885.34 for TY 2020, the details of which are as follows:

PERIOD	EXHIBIT REFERENCE[53]	DATE OF PAYMENT	RETURN	AMOUNT PAID
Jan. 2020	"P-39" to "P-39-1"	Feb. 12, 2020	0619E	₱ 20,550,652.35
Feb. 2020	"P-40" to "P-40-1"	Mar. 12, 2020	0619E	19,075,402.30
Mar. 2020	"P-41" to "P-41-1"	Apr. 27, 2020	1601EQ	20,148,202.45
Apr. 2020	"P-42" to "P-42-1"	May 22, 2020	0619E	14,753,986.75
May 2020	"P-43" to "P-43-1"	Jun. 15, 2020	0619E	13,624,024.56
Jun. 2020	"P-44" to "P-44-1"	Jul. 29, 2020	1601EQ	11,213,373.66
Jul. 2020	"P-45" to "P-45-1"	Aug. 12, 2020	0619E	14,844,490.90
Aug. 2020	"P-46" to "P-46-1"	Sep. 15, 2020	0619E	13,362,974.22
Sep. 2020	"P-47" to "P-47-1"	Oct. 29, 2020	1601EQ	15,465,714.13
Oct. 2020	"P-48" to "P-48-1"	Nov. 12, 2020	0619E	13,450,393.93
Nov. 2020	"P-49" to "P-49-1"	Dec. 14, 2020	0619E	13,370,375.69
Dec. 2020	"P-50" to "P-50-1"	Jan. 28, 2021	1601EQ	14,001,294.40
			TOTAL:	**₱ 183,860,885.34**

Below is the detailed summary of the withholding taxes remitted, which shows that out of the remitted EWT of ₱183,860,885.34, the amount of ₱117,384,358.65 were related to ATC WC100 or withholding tax on rental:

ATC	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	TOTAL
	EXHIBIT "P-41"	EXHIBIT "P-44"	EXHIBIT "P-47"	EXHIBIT "P-50"	
WC011[54]	₱ 2,076,434.69	₱ 1,021,357.31	₱ 678,101.10	₱ 668,262.23	₱ 4,444,155.33
WC051[55]	309,449.88	0.00	0.00	32,142.92	341,592.80
WC100[56]	**29,423,528.98**	**29,062,682.65**	**29,540,619.35**	**29,357,527.67**	**117,384,358.65**
WC120[57]	3,624,258.05	2,131,219.99	2,815,226.79	3,126,490.42	11,697,195.25
WC140[58]	92,470.61	44,021.38	8,891.13	65,435.98	210,819.10
WC158[59]	5,318,540.02	698,541.08	1,674,416.01	2,511,207.88	10,202,704.99

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[53] Docket – Vol. III, pp. 1384 to 1420.
[54] Professional fees for corporation - gross income exceeded P720,000.00.
[55] Management and technical consultants corporation - gross income exceeded P720,000.00.
[56] Gross rental or lease for the continued use or possession of personal property in excess of ₱ 10,000.00 annually and real property used in business which the payor or obligor has not taken title or is not taking title, or in which has no equity; poles, satellites, transmission facilities and billboards.
[57] Income payments to certain contractors.
[58] Gross Commission of service fees of customs, insurance, stock, immigration and commercial brokers, fees of agents of professional entertainers and real estate service practitioners (RESPs)(i.e. real estate consultants, real estate appraisers and real estate brokers - gross income exceeds P720,000.00.
[59] Income Payment made by top withholding agents to their local/resident suppliers of goods other than those covered by other rates of withholding tax. *an*

WC160[60]	17,420,398.91	6,162,601.43	6,332,940.52	4,254,951.08	34,170,891.94
WC516[61]	33,600.00	0.00	0.00	0.00	33,600.00
WI010[62]	0.00	0.00	3,675.00	0.00	3,675.00
WI011[63]	1,475,575.96	470,961.13	2,619,309.35	806,045.84	5,371,892.28
TOTAL	**59,774,257.10**	**39,591,384.97**	**43,673,179.25**	**40,822,064.02**	**183,860,885.34**

Further review of the monthly *alphalists*[64] provided by petitioner reveals that out of the ₱117,384,358.65 EWTs on rental payments, ₱116,287,430.60 were for the account of Belle Corporation. A list of income payments with ATC WC100 from the *alphalist* is presented below:

EXHIBIT NO.	TIN	SUPPLIER NAME	PERIOD	AMOUNT	TAX RATE	TAX WITHHELD
"P-51", Line 57, Docket – Vol. III, p.1421.	000-156-011	Belle Corporation	Jan. 2020	₱ 193,729,606.60	5%	₱ 9,686,480.33
"P-51", Line 111, Docket – Vol. III, p.1422.	244-706-303	Digichive Philippines Corp	Jan. 2020	525,000.00	5%	26,250.00
"P-51", Line 235, Docket – Vol. III, p.1423.	000-664-386	Hotel and Restaurant Association of the Phils Inc	Jan. 2020	9,600.00	5%	480.00
"P-51", Line 278, Docket – Vol. III, p.1424.	000-387-423	Kooler Industries Inc	Jan. 2020	340,521.40	5%	17,026.07
"P-51", Line 389, Docket – Vol. III, p.1425.	009-110-822	Planogram Events Incorporated	Jan. 2020	250,000.00	5%	12,500.00
"P-51", Line 451, Docket – Vol. III, p. 1426.	003-058-789	SM Prime Holdings Inc	Jan. 2020	96,700.00	5%	4,835.00
"P-51-1", Line 55, Docket – Vol. III, p. 1429.	000-156-011	Belle Corporation	Feb. 2020	193,720,773.20	5%	9,686,038.66
"P-51-1", Line 114, Docket – Vol. III, p. 1430.	244-706-303	Digichive Philippines Corp	Feb. 2020	525,000.00	5%	26,250.00
"P-51-1", Line 129, Docket – Vol. III, p. 1430.	100-066-430	EM david Electronics Enterprise	Feb. 2020	570,350.00	5%	28,517.50
"P-51-1", Line 310, Docket – Vol. III, p. 1433.	202-726-661	Nandings Steel Beds Enterprises	Feb. 2020	4,017.80	5%	200.89
"P-51-1", Line 411, Docket – Vol. III, p. 1434.	003-058-789	SM Prime Holdings Inc	Feb. 2020	87,342.00	5%	4,367.10
"P-51-1", Line 497, Docket – Vol. III, p. 1435.	004-677-871	Wizard of Ads Inc	Feb. 2020	88,000.00	5%	4,400.00

[60] Income Payment made by top withholding agents to their local/resident suppliers of services other than those covered by other rates of withholding tax.
[61] Commissions, rebates, discounts and other similar considerations paid/granted to independent and/or exclusive sales representatives and marketing agents and sub-agents of companies, including multi-level marketing companies - gross income is more than P3M.
[62] Professional fees of individuals - gross income for the current year did not exceed P3M.
[63] Professional fees of individuals - gross income is more than P3M.
[64] Exhibits "P-51" to "P-51-11", Docket – Vol. III, pp. 1421 to 1485.

"P-51-2", Line 47, Docket – Vol. III, p. 1436.	000-156-011	Belle Corporation	Mar. 2020	193,718,023.20	5%	9,685,901.16
"P-51-2", Line 94, Docket – Vol. III, p. 1437.	244-706-303	Digichive Philippines Corp	Mar. 2020	525,000.00	5%	26,250.00
"P-51-2", Line 166, Docket – Vol. III, p. 1438.	276-580-995	Greencare Trading and Services	Mar. 2020	12,500.00	5%	625.00
"P-51-2", Line 278, Docket – Vol. III, p. 1439.	202-726-661	Nandings Steel Beds Enterprises	Mar. 2020	113,571.20	5%	5,678.56
"P-51-2", Line 290, Docket – Vol. III, p. 1439.	236-114-753	OMD Philippines Inc	Mar. 2020	3,071,250.00	5%	153,562.50
"P-51-2", Line 369, Docket – Vol. III, p. 1440.	003-058-789	SM Prime Holdings Inc	Mar. 2020	87,342.00	5%	4,367.10
"P-51-2", Line 417, Docket – Vol. III, p. 1441.	007-301-378	Tunog at Liwanag sa Teatro	Mar. 2020	995,982.20	5%	49,799.11
"P-51-3", Line 8, Docket – Vol. III, p. 1445.	000-156-011	Belle Corporation	Apr. 2020	193,709,106.60	5%	9,685,455.33
"P-51-4", Line 7, Docket – Vol. III, p. 1447.	000-156-011	Belle Corporation	May 2020	193,747,023.20	5%	9,687,351.16
"P-51-5", Line 34, Docket – Vol. III, p. 1449.	000-156-011	Belle Corporation	Jun. 2020	193,735,523.20	5%	9,686,776.16
"P-51-5", Line 209, Docket – Vol. III, p. 1451.	214-456-231	Preconcept Designs and Display Works	Jun. 2020	62,000.00	5%	3,100.00
"P-51-6", Line 32, Docket – Vol. III, p. 1455.	000-156-011	Belle Corporation	Jul. 2020	193,808,523.20	5%	9,690,426.16
"P-51-6", Line 214, Docket – Vol. III, p. 1457.	202-726-661	Nandings Steel Beds Enterprises	Jul. 2020	27,455.60	5%	1,372.78
"P-51-7", Line 26, Docket – Vol. III, p. 1460.	000-156-011	Belle Corporation	Aug. 2020	193,861,356.60	5%	9,693,067.83
"P-51-7", Line 53, Docket – Vol. III, p. 1460.	244-706-303	Digichive Philippines Corp	Aug. 2020	2,100,000.00	5%	105,000.00
"P-51-8", Line 36, Docket – Vol. III, p. 1464.	000-156-011	Belle Corporation	Sep. 2020	193,911,023.20	5%	9,695,551.16
"P-51-8", Line 70, Docket – Vol. III, p. 1464.	244-706-303	Digichive Philippines Corp	Sep. 2020	1,050,000.00	5%	52,500.00
"P-51-8", Line 124, Docket – Vol. III, p. 1465.	276-580-995	Greencare Trading and Services	Sep. 2020	42,750.00	5%	2,137.50
"P-51-8", Line 207, Docket – Vol. III, p. 1466.	008-949-141	MWM Terminals Inc	Sep. 2020	621,178.40	5%	31,058.92
"P-51-8", Line 218, Docket – Vol. III, p. 1466.	236-114-753	OMD Philippines Inc	Sep. 2020	5,390,100.00	5%	269,505.00
"P-51-9", Line 29, Docket – Vol. III, p. 1471.	000-156-011	Belle Corporation	Oct. 2020	193,924,023.20	5%	9,696,201.16
"P-51-9", Line 176, Docket – Vol. III, p. 1473.	000-387-423	Kooler Industries Inc	Oct. 2020	681,042.80	5%	34,052.14
"P-51-9", Line 217, Docket – Vol. III, p. 1473.	008-949-141	MWM Terminals Inc	Oct. 2020	32,000.00	5%	1,600.00

"P-51-9", Line 218, Docket – Vol. III, p. 1473.	202-726-661	Nandings Steel beds Enterprises	Oct. 2020	61,607.60	5%	3,080.38
"P-51-9", Line 230, Docket – Vol. III, p. 1474	236-114-753	OMD Philippines Inc	Oct. 2020	2,079,000.00	5%	103,950.00
"P-51-10", Line 28, Docket – Vol. III, p. 1476.	009-873-397	Bay City Commercial Ventures Corp	Nov. 2020	295,400.00	5%	14,770.00
"P-51-10", Line 32, Docket – Vol. III, p. 1476.	000-156-011	Belle Corporation	Nov. 2020	193,929,356.60	5%	9,696,467.83
"P-51-10", Line 206, Docket – Vol. III, p. 1478.	008-949-141	MWM Terminals Inc	Nov. 2020	32,000.00	5%	1,600.00
"P-51-11", Line 38, Docket – Vol. III, p. 1481.	000-156-011	Belle Corporation	Dec. 2020	193,954,273.20	5%	9,697,713.66
"P-51-11", Line 210, Docket – Vol. III, p. 1483.	008-949-141	MWM Terminals Inc	Dec. 2020	32,000.00	5%	1,600.00
"P-51-11", Line 225, Docket – Vol. III, p. 1484.	236-114-753	OMD Philippines Inc	Dec. 2020	2,129,850.00	5%	106,492.50
			TOTAL	2,347,687,173.00		117,384,358.65

On March 22, 2021, petitioner and Belle Corporation finalized and signed the *Supplemental Agreement to Contract of Lease*[65] which adjusted the total annual rent for TY 2020 to ₱265,046,236.00, exclusive of value added tax and net of withholding tax, covering only the gaming area and no rent will be due on the non-gaming area. The parties agreed that since petitioner already paid the amount of ₱583,681,791.28, Belle Corporation will return the overpayment to petitioner.

Thus, the new gross monthly rent of petitioner is ₱23,249,669.82, while the corresponding withholding tax is ₱1,162,483.49, computed below:

Annual Rent, net of withholding tax	₱ 265,046,236.00
Divided by: 95% to derive gross amount	0.95
Gross Annual Rent	**278,996,037.89**
Divided by: 12 months	12
Monthly Rent	**23,249,669.82**
Multiplied by: EWT Rate – Rental Payment	5%
Withholding Tax on New Monthly Rent	**1,162,483.49**

Since the claim for the month of January 2020 has already prescribed, the EWT remitted for such month can no longer be refunded. Accordingly, only the amount of

[65] Exhibits "P-36" and "P-36-1", Docket – Vol. III, pp. 1356 to 1379.

₱93,813,631.87 may be the proper subject of a claim for refund, as detailed below:

Period	Original Monthly Rent (A)	Tax Withheld (B)=(A) x 5%	New Monthly Rent (C)	Should be Tax Withheld (D) =(C) x 5%	Refundable (B) - (D)
Jan. 2020	193,729,606.60	9,686,480.33	23,249,669.82	1,162,483.49	- [66]
Feb. 2020	193,720,773.20	9,686,038.66	23,249,669.82	1,162,483.49	**8,523,555.17**
Mar. 2020	193,718,023.20	9,685,901.16	23,249,669.82	1,162,483.49	**8,523,417.67**
Apr. 2020	193,709,106.60	9,685,455.33	23,249,669.82	1,162,483.49	**8,522,971.84**
May 2020	193,747,023.20	9,687,351.16	23,249,669.82	1,162,483.49	**8,524,867.67**
Jun. 2020	193,735,523.20	9,686,776.16	23,249,669.82	1,162,483.49	**8,524,292.67**
Jul. 2020	193,808,523.20	9,690,426.16	23,249,669.82	1,162,483.49	**8,527,942.67**
Aug. 2020	193,861,356.60	9,693,067.83	23,249,669.82	1,162,483.49	**8,530,584.34**
Sep. 2020	193,911,023.20	9,695,551.16	23,249,669.82	1,162,483.49	**8,533,067.67**
Oct. 2020	193,924,023.20	9,696,201.16	23,249,669.82	1,162,483.49	**8,533,717.67**
Nov. 2020	193,929,356.60	9,696,467.83	23,249,669.82	1,162,483.49	**8,533,984.34**
Dec. 2020	193,954,273.20	9,697,713.66	23,249,669.87[67]	1,162,483.48[68]	**8,535,230.18**[69]
	2,325,748,612.00	**116,287,430.60**	**278,996,037.89**	**₱13,949,801.89**	**93,813,631.87**

Petitioner's declared rental expense for TY 2020 is only the reduced amount of ₱278,996,037.89

Pursuant to the *Supplemental Agreement to Contract of Lease,* petitioner returned to Belle Corporation the originally issued SOAs[70] and ORs[71] for the cancellation and issuance of a new SOA[72] and OR[73] with the reduced amount of rent. Petitioner then adjusted its records by reversing the unpaid portion of the accrued rent from April to December 2020.[74]

Petitioner's witness, Ms. Eunice Rekha P. Pobre, testified to prove that Belle Corporation issued a new SOA and OR

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[66] Barred by prescription.
[67] Adjusted to correspond the total amount.
[68] Adjusted to correspond the total amount.
[69] Adjusted to correspond the total amount.
[70] Exhibits "P-6" to "P-17" and "P-6-1" to "P-17-1", Docket – Vol. III, pp. 1199 to 1282.
[71] Exhibits "P-30" to "P-35" and "P-30-1" to "P-35-1", Docket – Vol. III, pp. 1344 to 1355.
[72] Exhibit "P-63", Docket – Vol. 4, pp. 1604 to 1605.
[73] Exhibit "P-64", Docket – Vol. 4, p. 1606.
[74] Exhibit "P-95", USB, marked as Exhibit "P-125-2."

showing the billings and collection of the reduced rentals for the TY 2020. The relevant portion of her testimony are as follows:[75]

> "Q-7 Why were the originals of the previously issued SOAs returned to Belle?
>
> A-7 The previously issued SOAs were returned to Belle in order to implement the negotiated reduction of rentals for the year 2020.
>
> ...
>
> Q-9 What happened after petitioner returned the SOAs to Belle?
>
> A-9 Belle stamped the original SOAs as 'cancelled'.
>
> ...
>
> Q-11 What happened, if any, after the cancellation of the previously issued SOAs, marked as **Exhibits 'P-6-1'** to **'P-17-1'**?
>
> A-11 Belle issued a new SOA dated December 31, 20202 in the amount of P278,996,073.89 to reflect the reduced rental for the period of January to December 2020. The new SOA is marked as **Exhibit 'P-63'**.
>
> ...
>
> Q-14 What happened, if any, after the cancellation of the previously issued ORs, marked as **Exhibits 'P-30'** to **'P-35'**?
>
> A-14 As previously mentioned, Belle issued a new OR dated December 29, 2020 in the net amount of P265,646,236, net of 5% withholding tax. The reduced gross rental amount of P278,996,073.89 was also indicated in the new OR. The new OR dated December 29, 2020 is marked as **Exhibit 'P-64'**."

Furthermore, as ascertained by the ICPA, the rent paid to Belle Corporation by petitioner was declared in its *Annual Income Tax Return* (BIR Form No. 1702-MX) ("**ITR**")[76] as an expense for TY 2020, included in the total cost of sales/services

[75] Exhibit "P-95", USB, marked as Exhibit "P-125-2".
[76] Exhibit "P-57", Docket – Vol. III, pp. 1510 to 1512.

amounting to ₱9,004,792,282.00, under Line 4[77] of Schedule 2 of the annual ITR, *viz*:[78]

PARTICULARS	EXEMPT	REGULAR	TOTAL
Direct charges – salaries, wages, and benefits	₱1,837,224,820.22	162,805,217.55	2,000,030,037.77
Direct charges – materials, supplies, and facilities	102,380,114.75	73,497,175.85	175,877,290.60
Direct charges – depreciation	694,170,396.41	287,418,304.42	981,588,700.83
Direct charges – rental	**281,796,549.89**	**58,792,150.28**	**340,588,700.17**
Direct charges – outside services	978,232.19	17,209,731.39	18,187,963.58
Direct charges – others	5,441,734,299.07	46,785,289.78	5,488,519,588.85
Total cost of sales/services per ITR	**8,358,284,412.53**	**646,507,869.27**	**9,004,792,281.80**

The reduced actual rent expense of ₱278,996,037.89 was reported as reconciling item in line 6.1, Schedule 10 of the annual ITR. Thus, only such reduced amount was claimed by petitioner as rent expense during the TY 2020.

Petitioner did not carry over the erroneous EWT payment in its subsequent filing

Petitioner amended its BIR Form No. 1601-EQ returns[79] for the four (4) quarters of TY 2020, in order to reflect the over remittance amounting to ₱102,337,628.70, which is the subject of the present claim. On the amended BIR Form No. 1601EQ for the 4th quarter of TY 2020,[80] petitioner checked the option "To be refunded." In order to prove that it did not carry over the amount of claim, petitioner submitted in evidence the BIR Forms 1601-EQ for the years 2021 and 2022[81] and BIR Form No. 0619-E for January 2023.[82] Based on these pieces of evidence, the over-remittance of ₱102,337,628.70 was, indeed, not carried over to the succeeding periods.

[77] Exhibit "P-57-1", Docket – Vol. III, at p. 1511.
[78] Exhibit "P-125", Docket – Vol. II, p. 980.
[79] Exhibits "P-53" to "P-56", Docket – Vol. III, pp. 1502 to 1509.
[80] Exhibit "P-56", Docket – Vol. III, pp. 1508 to 1509.
[81] Exhibits "P-97" to "P-104", USB, marked as Exhibit "P-125-2".
[82] Exhibit "P-105", USB, marked as Exhibit "P-125-2".

There is no double utilization on the part of the lessor

Pursuant to Section 58(B) of the Tax Code as implemented by Revenue Regulations No. 2-98, as amended, taxes withheld under the withholding tax system must be covered by withholding tax certificates, which are to be issued by the withholding agent or payor to the income recipient or payee. Taxes withheld which are supported by said certificates shall be allowed as tax credit against the payee's income tax liabilities.

Here, the initially issued withholding tax certificate (BIR Form No. 2307) to Belle Corporation was returned to petitioner. Petitioner replaced the same with a new BIR Form No. 2307 bearing the tax withheld in the amount of ₱13,949,801.89.[83]

To establish that the creditable withholding tax claimed for the year by Belle Corporation was based on the recent BIR Form No. 2307, petitioner presented as evidence the following documents:

1. BIR Form No. 1702-RT of Belle Corporation for TY 2020;[84]
2. *Summary Alphalist of Withholding Tax* (SAWT) for the months January to March 2020 of Belle Corporation;[85]
3. SAWT for the months May to June 2020 of Belle Corporation;[86]
4. SAWT for the months July to September 2020 of Belle Corporation;[87]
5. SAWT for the month of October 2020 of Belle Corporation;[88]
6. SAWT for the month of November 2020 of Belle Corporation;[89] and
7. SAWT for December 2020 of Belle Corporation.[90]

Verification of Belle Corporation's SAWT for the year 2020 reveals that the total creditable withholding taxes amounts to

[83] *Judicial Affidavit of Maria Neriza C. Banaria*, Exhibit "P-71", Docket - Vol. II, p. 770.
[84] Exhibit "P-66", Docket - Vol. 4, pp. 1689 to 1695.
[85] Exhibits "P-115" to "P-117", USB, marked as Exhibit "P-125-2".
[86] Exhibits "P-119" to "P-120", USB, marked as Exhibit "P-125-2".
[87] Exhibits "P-121" to "P-123", USB, marked as Exhibit "P-125-2".
[88] Exhibit "P-124", USB, marked as Exhibit "P-125-2".
[89] Exhibit "P-90", USB, marked as Exhibit "P-125-2".
[90] Exhibit "P-94", USB, marked as Exhibit "P-125-2".

₱231,467,391.00, which tied up with the tax credits reported in Belle Corporation's ITR. Further review of the SAWTS reveals that of the total claimed tax credits of ₱231,467,391.00, the amount of ₱13,949,801.89 pertains to the tax credit withheld by petitioner, which was reflected and evident on the December 2020 SAWT only. Thus, there is no double utilization of the subject claim on the part of petitioner and Belle Corporation.

In view of the foregoing, the Court finds that petitioner is entitled to refund the amount of ₱93,813,631.87, representing its erroneously or excessively paid withholding tax related to its rental payment to Belle Corporation for TY 2020.

ACCORDINGLY, the present *Petition for Review* filed on March 11, 2022 is **PARTIALLY GRANTED**. Respondent CIR is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** for the amount of **₱93,813,631.87** in favor of petitioner.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice