REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

SONY PHILIPPINES INCORPORATED	**CTA CASE NO. 10302**
Petitioner,	Members: **RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 30 2023 4:05 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before this Court is a **Petition for Review**,[1] filed on 10 July 2020 by **Sony Philippines Incorporated** ("**Sony**" or "**petitioner**") against respondent **Commissioner of Internal Revenue** ("**CIR**" or "**respondent**"), praying that judgment be rendered ordering respondent to refund a total amount of Fifty-Three Million Sixty Thousand Eight Hundred Fifty-Five Pesos (**Php53,060,855.00**), representing unutilized creditable withholding taxes ("CWT") for the fiscal year ending 31 March 2018 ("FY2018").

The Parties

Petitioner Sony Philippines Incorporated is a corporation duly organized and existing under the laws of the Philippines, with principal office address at 12th Floor Inoza Tower, 40th Street, Bonifacio Global City, Taguig City. It is primarily engaged in selling, marketing, manufacturing, procuring, and providing repair services for certain products bearing the trademark "Sony".[2] It is registered with the Bureau of Internal Revenue, under Regular

[1] Docket Vol. 1-3, pp. 10-1424, with annexes.
[2] Exhibit "P-2", Certificate of Filing Amended Articles of Incorporation, Docket Vol. 4, pp. 1747-1760.

Large Taxpayer Division I (Revenue District Officer [RDO] No. 116), with Taxpayer Identification No. 005-338-777-000.[3]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue ("BIR"), vested under appropriate laws with authority to carry out all the functions, duties and responsibilities of his office, including, *inter alia*, the power to decide, approve and grant claims for refund or tax credit of internal revenue taxes. He may be served with summons and other Court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

The Facts

On 13 July 2018, petitioner filed with the BIR, through Electronic Filing and Payment System (eFPS), its Annual Income Tax Return (AITR).[5] The same AITR was later amended on 27 July 2018.[6]

In its original and amended AITR, petitioner reported a gross income of Php1,085,547,654 and net taxable income of Php126,328,753. Consequently, petitioner reported a Regular Corporate Income Tax (RCIT) liability of Php37,898,626 for FY2018.[7]

Petitioner also had income tax credits in the total amount of Php312,804,837 consisting of prior year's excess credits in the amount of Php259,743,982 and CWT accumulated during the four quarters of FY2018 in the aggregate amount of Php53,060,855.[8]

After deducting its RCIT liability against income tax credits for FY2018, petitioner reported a tax overpayment of Php274,906,211, computed as follows:

Total Gross Income	1,085,547,654
Less: Itemized Deductions	(959,218,901)
Net Taxable Income	126,328,753
RCIT Due (30%)	37,898,626
Less: Tax Credits/Payments	

[3] Exhibit "P-3", Certificate of Registration, *id.*, p. 1761.
[4] Par. 5, Parties, Petition for Review, Docket Vol. 1, pp. 8-9.
[5] Exhibit "P-6", Annual Income Tax Return filed on 13 July 2018, Docket Vol. 4, pp. 1766-1773.
[6] Exhibit "P-7", Amended Annual Income Tax Return filed on 27 July 2018, *id.*, pp. 1774-1781.
[7] *Id.*
[8] *Id.*

Prior Year's Excess Credits	(259,743,982)	
CWT withheld for Q1 to Q3 of FY2018	(41,819,679)	
CWT withheld for Q4 of FY2018	(11,241,176)	(312,804,837)
Tax Overpayment		**(274,906,211)**

Petitioner emphasizes that it expressly indicated on the face of the original and amended AITRs its intent to refund the amount of Php53,060,855, representing the excess and unutilized CWT for FY2018. Petitioner further raises that it did not carry over the said excess and unutilized CWT credits in the quarterly[9] and annual[10] ITRs for FY2019.

On 8 July 2020, petitioner filed an administrative claim for refund before the BIR in relation to its excess and unutilized CWT for FY2018, which was not acted upon by the BIR.[11]

With the two (2)-year prescriptive period under ***Section 204 (C) and 229 of the National Internal Revenue Code of 1997, as amended*** ("***Tax Code***"), as amended, nearing its end, and considering that petitioner had yet to receive respondent's approval or denial of its administrative claim for refund, petitioner filed the instant Petition for Review[12] on 10 July 2020, which was raffled to the Third Division of this Court.

On 16 November 2020, respondent filed his Answer,[13] interposing certain special and affirmative defenses, and praying for the denial of the instant Petition for Review for lack of merit. He then transmitted the BIR Records of the case, consisting of 248 pages contained in one (1) folder, on 5 February 2021.[14]

On 21 May 2021, petitioner also submitted a Motion for Commissioning of Independent Certified Public Accountant (ICPA),[15] Mr. Joseph Cedric V. Calica, which the Court granted during the hearing held on 14 July 2021.[16]

[9] Exhibits "P-15" to "P-17", Quarterly Income Tax Returns for FY2019, Docket Vol. 4, pp. 1815-1822.
[10] Exhibit "P-9", Annual Income Tax Return for FY2019, *id.*, pp. 1782-1789.
[11] Par. 11, Statement of Material Facts and Proceedings, Petition for Review, Docket Vol. 1, p. 11; Exhibit "P-10", Letter to BIR dated 8 July 2020, Docket Vol. 4, pp. 1790-1797; Exhibit "P-11", Application for Tax Credits/Refund or BIR Form No. 1914, Docket, Vol. 4, p. 1798.
[12] *Supra* note 1.
[13] See Answer, Docket Vol. 3, pp. 1440-1449.
[14] See Compliance dated 5 February 2021, *id.*, pp.1457-1458.
[15] See Motion for Commissioning of Independent Certified Public Accountant (ICPA), Docket Vol. 4, pp. 1532-1554, with annexes.
[16] See Order dated 14 July 2021, *id.*, pp. 1583-1585.

Petitioner and respondent filed their Pre-Trial Briefs on 21 May 2021[17] and 9 July 2021,[18] respectively. Afterwards, the parties posted their Joint Stipulation of Facts and Issues[19] on 21 October 2021, which the Court admitted and approved in its Resolution,[20] dated 16 November 2021. Thus, on 2 December 2021, the Pre-Trial Order was rendered.[21]

During trial, petitioner presented the following witnesses who provided their direct testimonies through their respective judicial affidavits: (1) Mr. Neal C. Perez, Director of petitioner's Corporate Planning, Finance and Compliance Division;[22] (2) Mr. Jan Russel Aquino, the former Tax Compliance Officer of Petitioner's Legal and Finance and Compliance Divisions;[23] (3) Atty. Maria Regina A. Ruiz, the petitioner's Corporate Secretary;[24] and (4) Mr. Edward D. Roguel, a Partner in the Tax and Compliance Division of Punongbayan & Araullo accounting firm.[25]

On 27 October 2021, petitioner posted the judicial affidavit[26] of ICPA Calica with attached ICPA Report.[27] Soft copies of the Report and corresponding attachments were submitted to the Court on 19 November 2022.[28]

Petitioner formally offered its documentary evidence on 17 March 2022.[29] Respondent, meanwhile, filed his Comment[30] on 21 March 2022, where he also manifested that he would no longer present any witnesses. Then, in a Resolution,[31] dated 21 April 2022, the Court admitted petitioner's formally offered documentary evidence except Exhibits "P-12", "P-13", "P-14", "P-18", "P-19", "P-20", and "P-21" for failure to have these documents identified. The excluded exhibits were thereafter allowed to be attached as part of the records of the case as per Resolution dated 5 August 2022,[32] after a Motion to Tender Excluded Documentary Evidence[33] was filed by the petitioner.

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[17] See Petitioner's Pre-Trial Brief, *id.*, pp. 1555-1566.
[18] See Respondent's Pre-Trial Brief, *id.*, pp. 1575-1577.
[19] See Joint Stipulation of Facts and Issues, *id.*, pp. 1609-1615.
[20] See Resolution dated 16 November 2021, *id.*, p. 1679.
[21] See Pre-Trial Order, *id.*, pp. 1684-1689.
[22] Exhibit "P-1139", Judicial Affidavit in Lieu of Direct Testimony of Neal C. Perez, *id.*, pp. 1467-1474.
[23] Exhibit "P-1141", Judicial Affidavit in Lieu of Direct Testimony of Jan Russel Aquino, *id.*, pp. 1475-1485.
[24] Exhibit "P-1138", Judicial Affidavit in Lieu of Direct Testimony of Atty. Maria Regina A. Ruiz, *id.*, pp. 1486-1493.
[25] Exhibit "P-1140", Judicial Affidavit in Lieu of Direct Testimony of Mr. Edward D. Roguel, *id.*, pp. 1494-1503.
[26] Exhibit "P-1142", Judicial Affidavit of duly appointed Independent Certified Public Accountant, Joseph Cedric V. Calica, *id.*, pp. 1624-1644.
[27] Exhibit "P-1172". ICPA Report, *id.*, pp. 1645-1657.
[28] See Submission dated 19 November 2021, *id.* p. 1680.
[29] See Formal Offer of Evidence, *id.*, pp. 1704-1729.
[30] See Comment (on Petitioner's Formal Offer of Evidence with Manifestation), *id.*, pp. 2065-2067.
[31] See Resolution dated 21 April 2022, Docket Vol. 5, pp. 2072-2073.
[32] See Resolution dated 5 August 2022, *id.*, pp. 2117-2119.
[33] See Motion (to Tender Excluded Documentary Evidence), *id.*, pp. 2089-2092.

Thereafter, upon noting the Memoranda filed by petitioner and respondent on 9 June 2022[34] and 30 May 2022,[35] respectively, the instant case was submitted for decision on 23 August 2022.

The Issue

The sole issue for this Court's resolution is:

> WHETHER PETITIONER IS ENTITLED TO A REFUND OF ITS ALLEGED UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR FY2018 IN THE TOTAL AMOUNT OF PHP53,060,855.[36]

Arguments of the Parties

Petitioner's Arguments[37]

Petitioner argues that it is entitled to the claimed refund due to its compliance with all the necessary elements. Specifically, petitioner raises that:

1) The claim for refund was filed within the two (2)-year prescriptive period prescribed under the ***Tax Code***;
2) The income payment where the taxes were withheld were included as part of the gross income declared in the FY2018 AITR;
3) The fact of withholding is substantiated by BIR Form No. 2307 issued by the income payor to Petitioner;
4) Petitioner elected to refund the excess creditable withholding tax in the FY2018 AITR; and
5) The amount claimed for refund was not carried over or applied to the succeeding year.

Respondent's Counter-Arguments[38]

On the other hand, respondent counter-argues that petitioner failed to exhaust administrative remedies before elevating the case to the Court; thus, the case should be dismissed for prematurity or lack of cause of action.

Respondent also claims that petitioner is not entitled to the claim for refund of CWT due to the latter's failure to prove by clear and preponderance of evidence its right to the claim. Specifically, respondent raises that petitioner

[34] See Petitioner's Memorandum, *id.*, pp. 2094-2107.
[35] See Respondent's Memorandum, *id.*, pp. 2074-2086.
[36] See Pre-Trial Order, Docket Vol. 4, p. 1685.
[37] *Supra* note 34.
[38] *Supra* note 35.

did not provide supporting documents to show that income from which the CWT is claimed was declared in the AITR. Respondent also emphasizes that petitioner failed to comply with ***Revenue Memorandum Order ("RMO") No. 53-98***[39] and ***Revenue Regulations ("RR") No. 2-2006***.[40]

Lastly, respondent asserts that petitioner should have presented evidence to prove actual remittance of the withholding taxes to the BIR.

The Ruling of the Court

We deny the instant Petition for Review.

Section 76 of the Tax Code enumerates the options given to a taxpayer in the event that the sum of the quarterly tax payments during the taxable year is not equal to the total tax due on the entire taxable income for the year, to wit:

> "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 the 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 foregoing, when a corporation overpays its income tax liability, as shown on its final adjustment return, it has the option to either (1) carry over and apply the overpayment as tax credits against the income tax

[39] SUBJECT: 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, issued 25 June 1998.

[40] SUBJECT: Mandatory Attachments of the Summary 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 and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments, issued 5 January 2006.

liabilities of the succeeding taxable years; or (2) apply for a cash refund or issuance of a tax credit certificate within the prescribed period.[41] Such overpayment of income is usually occasioned by the over-withholding of taxes on the income payments to the corporate taxpayer.[42]

In exercising its option, the corporation must signify in its AITR, by marking the option box provided in the BIR Form, its intention to either carry-over the excess credits or claim a refund.[43] These remedies are in the alternative, and the choice of one precludes the other.[44] Moreover, once the carry-over option is taken actually or constructively, it becomes irrevocable for the taxable period.[45] The phrase "for the taxable period" refers to the taxable year when the excess income, subject of the option, was acquired by the taxpayer.[46]

A perusal of petitioner's original[47] and amended AITR[48] for FY2018 shows that it had total tax credits of Php312,804,837.00, broken down as follows:

Prior Year's Excess Credits Other Than MCIT		Php259,743,982.00
Add: Creditable Taxes Withheld – FY2018		
Creditable Tax Withheld from Previous Quarter/s per BIR Form No. 2307	41,819,679.00	
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	11,241,176.00	53,060,855.00
TOTAL TAX CREDITS		Php312,804,837.00

Petitioner utilized its "prior year's excess credits" for FY2018 in the amount of Php259,743,982.00 to pay for its income tax liability for the same period in the amount of Php37,898,626. Hence, the resulting overpayment in the amount of Php274,906,211 as shown in both the original and amended AITR comprises of the balance of the "prior year's excess credit" of

41 University Physicians Services, Inc. – Management, Inc. vs. Commissioner of Internal Revenue, G.R. No. 205955, 7 March 2018.
42 *Id.*
43 Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 206526, 28 January 2015, citing Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, 28 January 1999.
44 Republic of the Philippines vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation), G.R. No. 188016, 14 January 2015, citing Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos 156637 & 162004, 14 December 2005.
45 Axia Power Holdings Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 230847, 14 October 2020, citing Asiaworld Properties Philippine Corporation vs. Commissioner of Internal Revenue, G.R. No. 171766, 29 July 2010.
46 Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, 7 July 2009.
47 *Supra* note 5.
48 *Supra* note 6.

Php221,845,356[49] and the accumulated CWT during FY2018 in the amount of Php53,060,855.00.

Moreover, the FY2018 original and amended AITR duly show that petitioner marked the box corresponding to the option "To be refunded" clearly manifesting its intention to claim a refund of its excess CWTs for the period.

Further, as can be gleaned from its AITR for the subsequent period (FY2019),[50] petitioner reflected only the amount of Php221,845,356 as "prior year's excess credits". Thus, the excess CWTs for FY2018 in the amount of Php53,060,855.00 were not carried over in the succeeding taxable period and, therefore, may be the subject of a claim for refund or issuance of a tax credit certificate under ***Section 76 of the Tax Code.***

However, as emphasized by this Court in several cases, the refund of excess/unutilized CWT is dependent on the taxpayer-claimant's compliance with the following three (3) basic requirements:

1. The claim for refund was filed within the two (2)-year prescriptive period as provided under ***Section 204 (C) in relation to Section 229 of the Tax Code***;
2. 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
3. The income upon which the taxes were withheld were included in the return of the recipient, i.e., declared as part of the gross income.[51]

We shall now proceed with the determination of petitioner's compliance with the foregoing requisites for claiming a refund of excess CWTs.

First requisite: The claim for refund was filed within the two (2)-year prescriptive period

The prescriptive periods for the filing of refund claim in the administrative and judicial levels are covered by ***Section 204 (C)*** in relation to ***Section 229 of the Tax Code***. These provisions respectively state:

[49] Prior year's excess credits of Php259,743,982 less income tax due of Php37,898,626.
[50] *Supra* note 10.
[51] Commissioner of Internal Revenue vs. Philippine Bank of Communications, G.R. No. 211348, 23 February 2022; Rhombus Energy Inc. vs. Commissioner of Internal Revenue, G.R. No. 206362, 1 August 2018; Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 206526, 28 January 2015; Republic of the Philippines vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation), G.R. No. 188016, 14 January 2015.

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

x x x

(C) Credit or refund of 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.

x x x

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."
(Emphasis supplied.)

Based on the foregoing, it is clear that taxpayer-claimant must first file an administrative claim with the CIR within two (2) years from the date of payment of tax. The subsequent judicial claim must likewise be filed within the two (2)-year reglementary period. The timeliness of the filing of the claim is mandatory and jurisdictional. Thus, the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[52]

Moreover, it is well-settled that the reglementary period commences to run on the date of filing of the Final Adjustment Return or AITR

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[52] Commissioner of Internal Revenue vs. San Miguel Corporation, G.R. No. 180740, 11 November 2019.

In the case at bar, petitioner originally filed its FY2018 AITR[53] on 13 July 2018. Thus, counting two (2) years therefrom, petitioner had until 13 July 2020 to file both its administrative and judicial claims.

It appearing that petitioner's administrative claim[54] was filed on 8 July 2020, while the judicial claim via the instant Petition for Review[55] was filed on 10 July 2020, it is clear that both claims for refund were timely filed.

Second requisite: The fact of withholding is established by certificates of withholding tax

Section 2.58.3 (B) of RR No. 2-98, as amended, provides:

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

Gleaning from the foregoing, the fact of withholding is established by a copy of the withholding tax statement duly issued by the withholding agent to the payee, showing the amount paid and the amount of tax withheld therefrom.

Respondent, however, asserts that the same withholding tax statements should not suffice, and that the fact of actual remittance to the BIR must be proven.

The Court disagrees with the respondent.

The proof of actual remittance of taxes withheld is not indispensable in claims for refund or the issuance of tax credit certificates covering excess and unutilized CWT. Indeed, it is the withholding agent, not the taxpayer-claimant, who has the responsibility to prove actual remittance of withheld taxes to the BIR.

[53] *Supra* note 5.
[54] *Supra* note 11.
[55] *Supra* note 1.

The foregoing was categorically held in the case of ***Commissioner of Internal Revenue vs. Ayala Corporation***,[56] wherein the Supreme Court, citing ***Commissioner of Internal Revenue vs. Philippine National Bank***[57] and ***Philippine Airlines, Inc. vs. Commissioner of Internal Revenue ("PAL case")***,[58] ruled:

> "As correctly ruled by the CTA *En Banc*, **proof of actual remittance is not necessary for respondent's claim for refund of excess or unutilized creditable withholding tax (CWT) to prosper**. Notably, '[i]t is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.' **In establishing its entitlement to a claim for refund for CWT, respondent need only prove the fact that taxes were actually withheld through the presentation of the certificates of withholding issued by the corresponding withholding agents, as it did so in this case.** It is settled that 'the CTA's findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part of the Tax Court,' which does not obtain in this case. Hence, the instant petition must be denied." (Emphasis supplied; citations omitted.)

Moreover, in the ***PAL case***, the Supreme Court clarified that in case of non-remittance, the action should be against the withholding agent and not the income payee/refund claimant:

> "When a particular income is subject to a final withholding tax, it means that a withholding agent will withhold the tax due from the income earned to remit it to the Bureau of Internal Revenue. Thus, the liability for remitting the tax is on the withholding agent:
>
> x x x
>
> Clearly, the withholding agent is the payor liable for the tax, and any deficiency in its amount shall be collected from it. **Should the Bureau of Internal Revenue find that the taxes were not properly remitted, its action is against the withholding agent, and not against the taxpayer.**" (Emphasis supplied; citations omitted.)

Any such non-remittance should thus not be a ground for the disallowance of the income payee's refund application.

Meanwhile, to prove its compliance with the *second requirement*, petitioner submitted Certificate of Creditable Tax Withheld at Source (BIR Forms No. 2307) issued by its various payors and a schedule of CWT for FY2018. In his Report,[59] ICPA Calica summarized his findings as follows:

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[56] G.R. No. 256539 (Notice), 28 July 2021.
[57] G.R. No. 180290, 29 September 2014.
[58] G.R. Nos. 206079-80 & 206309, 17 January 2018.
[59] Exhibit "P-1172", ICPA Report, pp. 1645-1657.

Total Amount of Claim for Refund (1)	Php 53,060,855.00
Total Amount of Creditable Income Taxes withheld per Summary Alphalist of Withholding Tax at Source (SAWT)	53,061,269.46
Discrepancies in the amount of claim vs. amount per SAWT	(414.46)
Less: Exceptions noted on Creditable Withholding Taxes per BIR Form No. 2307	
(a) With incorrect or incomplete address[60]	840,642.23
(b) Not in the period covered by the claim[61]	2,693.19
(c) No BIR Form No. 2307 submitted[62]	11,348,255.32
Total amount of exceptions noted (2)	12,191,590.73
Total Amount of Unutilized Creditable Income Taxes Withheld Valid For Claim (Per ICPA) ([1]-[2])	**Php 40,869,264.60**

We take note of the ICPA's findings that out of the total claim for refund of Php53,060,855.00, only the amount of Php40,869,264.60 was properly supported by BIR Form No. 2307.

Upon further verification, however, the Court finds that CWTs amounting to Php5,452,000.56 should be also disallowed on the grounds stated in the table below:

Exhibit Number	Payor's Name	Amount of Income Payment	Tax Withheld
Unreadable TIN			
P-1144-A-6	ABENSON VENTURES INC	218,561,333.33	2,185,613.34
Incomplete Address			

60 Exhibit "P-1145-A", USB flash drive submitted by ICPA Calica on 19 November 2021.
61 Exhibit "P-1145-B", *id.*
62 Exhibit "P-1145-C", *id.*

P-1144-A-67	AUTOMATIC APPLIANCES INC	8,195,821.59	81,958.22
P-1144-A-68	AUTOMATIC APPLIANCES INC	12,469,145.76	124,691.46
P-1144-A-69	AUTOMATIC APPLIANCES INC	67,012.12	670.12
P-1144-A-70	AUTOMATIC APPLIANCES INC	12,925,554.78	129,255.54
P-1144-A-72	AUTOMATIC APPLIANCES INC	9,051,367.32	90,513.68
P-1144-A-75	AUTOMATIC APPLIANCES INC	279,909.90	2,799.10
P-1144-A-86	AXN NETWORKS PHILIPPINES INC	26,107.35	261.07
P-1144-A-279	DIGI KADEN INC	1,553,624.01	15,536.23
P-1144-A-280	DIGI KADEN INC	185,260.34	1,852.60
P-1144-A-282	DIGI KADEN INC	305,917.68	3,059.17
P-1144-A-282	DIGI KADEN INC	396,354.70	3,963.56
P-1144-A-283	DIGI KADEN INC	482,947.48	4,829.47
P-1144-A-284	DIGI KADEN INC	570,429.38	5,704.28
P-1144-A-285	DIGI KADEN INC	667,660.35	6,676.60
P-1144-A-28	DIGI KADEN INC	123,047.21	1,230.46
P-1144-A-287	DIGI KADEN INC	123,493.65	1,234.93
P-1144-A-288	DIGI KADEN INC	206,596.22	2,065.96
P-1144-A-289	DIGI KADEN INC	207,951.13	2,079.52
P-1144-A-290	DIGI KADEN INC	248,207.92	2,482.06
P-1144-A-291	DIGI KADEN INC	341,358.50	3,413.59
P-1144-A-292	DIGI KADEN INC	390,548.58	3,905.49
P-1144-A-293	DIGI KADEN INC	440,276.17	4,402.76
P-1144-A-294	DIGI KADEN INC	441,448.57	4,414.49
P-1144-A-295	DIGI KADEN INC	445,955.54	4,459.56
P-1144-A-296	DIGI KADEN INC	579,529.09	5,795.29
P-1144-A-297	DIGI KADEN INC	599,493.63	5,994.94
P-1144-A-298	DIGI KADEN INC	1,268,498.12	12,684.99
P-1144-A-299	DIGI KADEN INC	31,560.57	315.61
P-1144-A-300	DIGI KADEN INC	55,504.11	555.04
P-1144-A-301	DIGI KADEN INC	88,105.46	881.05
P-1144-A-302	DIGI KADEN INC	113,920.71	1,139.21
P-1144-A-303	DIGI KADEN INC	156,756.19	1,567.57
P-1144-A-304	DIGI KADEN INC	185,276.88	1,852.76
P-1144-A-305	DIGI KADEN INC	202,515.13	2,025.15
P-1144-A-306	DIGI KADEN INC	255,281.94	2,552.83
P-1144-A-307	DIGI KADEN INC	261,947.65	2,619.47
P-1144-A-308	DIGI KADEN INC	377,012.08	3,770.12
P-1144-A-309	DIGI KADEN INC	440,390.13	4,403.90
P-1144-A-310	DIGI KADEN INC	806,074.90	8,060.76
P-1144-A-311	DIGI KADEN INC	928,458.25	9,284.58
P-1144-A-312	DIGI KADEN INC	12,495.59	124.96

P-1144-A-313	DIGI KADEN INC	24,811.71	248.12
P-1144-A-314	DIGI KADEN INC	67,278.93	672.78
P-1144-A-315	DIGI KADEN INC	73,296.30	732.96
P-1144-A-316	DIGI KADEN INC	79,561.43	795.62
P-1144-A-317	DIGI KADEN INC	85,929.69	859.29
P-1144-A-318	DIGI KADEN INC	95,181.90	951.82
P-1144-A-319	DIGI KADEN INC	106,431.83	1,064.34
P-1144-A-320	DIGI KADEN INC	201,463.54	2,014.63
P-1144-A-321	DIGI KADEN INC	213,617.81	2,136.18
P-1144-A-322	DIGI KADEN INC	232,274.88	2,322.74
P-1144-A-323	DIGI KADEN INC	264,270.05	2,642.70
P-1144-A-324	DIGI KADEN INC	270,494.26	2,704.93
P-1144-A-325	DIGI KADEN INC	303,589.91	3,035.90
P-1144-A-326	DIGI KADEN INC	305,888.79	3,058.89
P-1144-A-327	DIGI KADEN INC	308,623.74	3,086.23
P-1144-A-328	DIGI KADEN INC	347,267.73	3,472.68
P-1144-A-329	DIGI KADEN INC	351,989.46	3,519.90
P-1144-A-330	DIGI KADEN INC	365,478.99	3,654.79
P-1144-A-331	DIGI KADEN INC	399,378.14	3,993.79
P-1144-A-332	DIGI KADEN INC	660,607.42	6,606.07
P-1144-A-333	DIGI KADEN INC	891,008.21	8,910.08
P-1144-A-334	DIGI KADEN INC	1,362,580.62	13,625.80
P-1144-A-335	DIGI KADEN INC	199,175.87	1,991.76
P-1144-A-336	DIGI KADEN INC	614,664.73	6,146.65
P-1144-A-337	DIGI KADEN INC	191,942.05	1,919.42
P-1144-A-338	DIGI KADEN INC	452,037.74	4,520.39
P-1144-A-339	DIGI KADEN INC	369,524.57	3,695.26
P-1144-A-340	DIGI KADEN INC	444,062.65	4,440.63
P-1144-A-341	DIGI KADEN INC	419,279.94	4,192.80
P-1144-A-342	DIGI KADEN INC	305,625.46	3,056.26
P-1144-A-343	DIGI KADEN INC	80,941.86	809.41
P-1144-A-344	DIGI KADEN INC	85,787.87	857.88
P-1144-A-345	DIGI KADEN INC	84,716.47	847.16
P-1144-A-346	DIGI KADEN INC	725,140.25	7,251.40
P-1144-A-347	DIGI KADEN INC	627,107.14	6,271.06
P-1144-A-348	DIGI KADEN INC	165,578.14	1,655.78
P-1144-A-349	DIGI KADEN INC	198,917.59	1,989.18
P-1144-A-350	DIGI KADEN INC	122,436.54	1,224.36
P-1144-A-351	DIGI KADEN INC	969,609.31	9,696.09
P-1144-A-352	DIGI KADEN INC	312,836.06	3,128.37
P-1144-A-353	DIGI KADEN INC	527,171.86	5,271.73
P-1144-A-354	DIGI KADEN INC	168,423.96	1,684.24
P-1144-A-355	DIGI KADEN INC	144,859.00	1,448.59
P-1144-A-356	DIGI KADEN INC	770,062.15	7,700.64
P-1144-A-357	DIGI KADEN INC	48,401.10	484.02
P-1144-A-358	DIGI KADEN INC	236,076.29	2,360.75
P-1144-A-359	DIGI KADEN INC	314,504.78	3,145.04

P-1144-A-360	DIGI KADEN INC	607,010.72	6,070.12
P-1144-A-361	DIGI KADEN INC	257,760.98	2,577.60
P-1144-A-362	DIGI KADEN INC	278,818.03	2,788.18
P-1144-A-363	DIGI KADEN INC	598,457.81	5,984.58
P-1144-A-364	DIGI KADEN INC	103,817.71	1,038.18
P-1144-A-365	DIGI KADEN INC	109,241.68	1,092.42
P-1144-A-366	DIGI KADEN INC	846,636.73	8,466.36
P-1144-A-367	DIGI KADEN INC	351,353.25	3,513.54
P-1144-A-368	DIGI KADEN INC	5,621.85	56.22
P-1144-A-369	DIGI KADEN INC	550,031.63	5,500.32
P-1144-A-370	DIGI KADEN INC	18,902.80	189.03
P-1144-A-371	DIGI KADEN INC	141,405.83	1,414.06
P-1144-A-372	DIGI KADEN INC	112,314.38	1,123.15
P-1144-A-373	DIGI KADEN INC	428,405.48	4,284.05
P-1144-A-374	DIGI KADEN INC	498,319.39	4,983.19
P-1144-A-375	DIGI KADEN INC	59,414.31	594.15
P-1144-A-376	DIGI KADEN INC	115,298.21	1,152.98
P-1144-A-377	DIGI KADEN INC	381,512.77	3,815.12
P-1144-A-378	DIGI KADEN INC	143,096.90	1,430.97
P-1144-A-379	DIGI KADEN INC	35,290.34	359.20
P-1144-A-380	DIGI KADEN INC	347,680.82	3,476.81
P-1144-A-381	DIGI KADEN INC	340,455.83	3,404.56
P-1144-A-382	DIGI KADEN INC	457,797.54	4,577.97
P-1144-A-383	DIGI KADEN INC	363,226.19	3,632.25
P-1144-A-384	DIGI KADEN INC	595,948.21	5,959.48
P-1144-A-385	DIGI KADEN INC	511,527.83	5,115.29
P-1144-A-386	DIGI KADEN INC	298,986.75	2,989.87
P-1144-A-387	DIGI KADEN INC	214,989.24	2,149.89
P-1144-A-388	DIGI KADEN INC	149,176.80	1,491.76
P-1144-A-389	DIGI KADEN INC	77,227.91	772.28
P-1144-A-390	DIGI KADEN INC	152,084.84	1,520.85
P-1144-A-391	DIGI KADEN INC	24,749.92	247.50
P-1144-A-392	DIGI KADEN INC	327,922.21	3,279.23
P-1144-A-393	DIGI KADEN INC	638,096.18	6,380.98
P-1144-A-394	DIGI KADEN INC	51,775.42	517.76
P-1144-A-395	DIGI KADEN INC	13,544.00	135.44
P-1144-A-396	DIGI KADEN INC	609,547.22	6,095.45
P-1144-A-397	DIGI KADEN INC	226,744.36	2,267.43
P-1144-A-398	DIGI KADEN INC	355,449.29	3,554.50
P-1144-A-399	DIGI KADEN INC	415,506.19	4,155.06
P-1144-A-400	DIGI KADEN INC	306,907.71	3,069.08
P-1144-A-401	DIGI KADEN INC	690,420.36	6,904.20
P-1144-A-403	DIGI KADEN INC	26,586.59	265.87
P-1144-A-404	DIGI KADEN INC	137,956.63	1,379.57
P-1144-A-405	DIGI KADEN INC	53,308.85	533.09
P-1144-A-406	DIGI KADEN INC	441,108.59	4,411.09
P-1144-A-407	DIGI KADEN INC	73,346.76	733.47

P-1144-A-408	DIGI KADEN INC	232,018.93	2,320.19
P-1144-A-409	DIGI KADEN INC	58,995.90	589.96
P-1144-A-410	DIGI KADEN INC	399,198.58	3,991.99
P-1144-A-411	DIGI KADEN INC	365,905.59	3,659.06
P-1144-A-412	DIGI KADEN INC	611,205.32	6,112.06
P-1144-A-413	DIGI KADEN INC	244,144.46	2,441.45
P-1144-A-414	DIGI KADEN INC	327,800.14	3,278.00
P-1144-A-415	DIGI KADEN INC	637,198.81	6,371.98
P-1144-A-416	DIGI KADEN INC	131,907.83	1,319.07
P-1144-A-417	DIGI KADEN INC	741,854.51	7,418.54
P-1144-A-418	DIGI KADEN INC	150,226.88	1,502.28
P-1144-A-419	DIGI KADEN INC	266,214.22	2,662.14
P-1144-A-420	DIGI KADEN INC	1,003,620.71	10,036.19
P-1144-A-421	DIGI KADEN INC	565,359.75	5,653.59
P-1144-A-422	DIGI KADEN INC	538,138.08	5,381.38
P-1144-A-423	DIGI KADEN INC	331,363.84	3,313.63
P-1144-A-424	DIGI KADEN INC	555,506.25	5,555.05
P-1144-A-425	DIGI KADEN INC	98,754.37	987.54
P-1144-A-426	DIGI KADEN INC	383,247.72	3,832.47
P-1144-A-427	DIGI KADEN INC	950,313.53	9,503.14
P-1144-A-428	DIGI KADEN INC	384,525.12	3,845.24
P-1144-A-429	DIGI KADEN INC	572,576.79	5,725.78
P-1144-A-430	DIGI KADEN INC	647,861.75	6,478.61
P-1144-A-431	DIGI KADEN INC	383,697.06	3,836.98
P-1144-A-432	DIGI KADEN INC	22,652.08	226.53
P-1144-A-433	DIGI KADEN INC	520,561.04	5,205.60
P-1144-A-434	DIGI KADEN INC	1,024,540.59	10,245.40
P-1144-A-436	DIGI KADEN INC	323,664.72	3,236.64
P-1144-A-437	DIGI KADEN INC	476,975.43	4,769.75
P-1144-A-438	DIGI KADEN INC	511,541.17	5,115.40
P-1144-A-439	DIGI KADEN INC	46,575.00	465.75
P-1144-A-440	DIGI KADEN INC	1,740,390.23	17,403.90
P-1144-A-441	DIGI KADEN INC	835,150.87	8,351.50
P-1144-A-442	DIGI KADEN INC	141,098.07	1,410.98
P-1144-A-443	DIGI KADEN INC	689,171.59	6,891.72
P-1144-A-444	DIGI KADEN INC	438,483.42	4,384.83
P-1144-A-445	DIGI KADEN INC	1,166,873.67	11,668.73
P-1144-A-446	DIGI KADEN INC	615,968.70	6,159.68
P-1144-A-594	LYCEUM OF THE PHIL UNIVERSITY INC	52,231.47	522.31
P-1144-A-741	RJ APPLIANCE INC	5,806,837.00	58,068.37
P-1144-A-721	RL APPLIANCE INC	4,655,172.38	46,551.72
P-1144-A-822	STAR APPLIANCE CENTER INC	12,322,098.48	123,220.99
Incorrect Address			

P-1144-A-85	AVID SALES CORPORATION	112,138,815.00	1,121,388.15
P-1144-A-778	SOLID ELECTRONICS CORPORATION	22,510,299.50	225,103.00
P-1144-A-778	SOLID ELECTRONICS CORPORATION	369,619.50	7,392.39
P-1144-A-780	SOLID ELECTRONICS CORPORATION	28,869,488.00	288,694.88
P-1144-A-780	SOLID ELECTRONICS CORPORATION	1,075,056.00	21,501.12
P-1144-A-782	SOLID ELECTRONICS CORPORATION	15,601,187.00	156,011.87
P-1144-A-782	SOLID ELECTRONICS CORPORATION	1,598,996.50	31,979.93
P-1144-A-784	SOLID ELECTRONICS CORPORATION	13,327,953.00	133,279.53
Incorrect TIN			
P-1144-A-724	RL APPLIANCE INC	487,883.99	4,878.84
TOTAL		**542,155,762.31**	**5,452,000.56**

Hence, petitioner was able to satisfy the second requirement but only up to the extent of Php35,417,263.71 computed as follows:

Amount of CWT Claimed	Php 53,060,855.00
Less: Disallowances	
Per ICPA	12,191,590.73
Per Court's further verification	5,452,000.56
TOTAL AMOUNT OF CWTS WITH PROPER BIR FORM 2307	Php 35,417,263.71

Third requisite: Petitioner failed to prove that the income from which taxes were withheld were declared part of the gross income

Anent the *third requirement*, petitioner must prove that the income payments from which the substantiated CWTs were withheld were declared part of its gross income. With this, it becomes necessary to trace the revenues recorded in the general ledger book to ascertain that the related income was duly reported as revenues for FY2018.

In his Report, ICPA Calica concluded that the income payments received by petitioner from its transactions subject to withholding tax were completely and correctly declared as part of gross income of the Company in the audited financial statements (AFS) and AITR for FY2018. He described the procedures performed to arrive at such conclusion as follows:

> "**3. Examination of Petitioner's Income Upon which the Taxes were Withheld**
>
> a) We **tied up the amount of income** upon which the taxes were withheld and declared in the return of the taxpayer for the fiscal year ended March 31, 2018 with the Company's annual sales in the audited financial statements and AITR (see Exhibits "P-1144, "P-1152", and "P-1153").
>
> b) We **ascertained that the income upon which the taxes were withheld were included as part of the gross income, properly recorded in the Company's books of accounts**, in relation to the sales found in the AITR and audited financial statements (see Exhibits "P-1152" to "P-1153")." (Emphasis supplied.)

The Court, however, emphasizes that it is not bound by the findings of the ICPA, as provided under ***Section 3, Rule 13 of the of the Revised Rules of the Court of Tax Appeals ("RRCTA")***[63] which states:

> "Sec. 3. Findings of independent CPA – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party processing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**"

[63] A.M. No. 05-11-07-CTA, 22 November 2005.

Based on the foregoing, the ICPA's findings are not conclusive upon the Court as the same are subject to its verification, to determine its accuracy, veracity and merit.[64] The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification.[65] It is essential for the petitioner to present evidence to support its compliance with the requirements of the law in order to pursue its claim for credit or refund.

Upon review of the Report, the Court observes that while ICPA Calica categorically finds for the proper recording of income in the Company's books, there was no mention of the tracing of such income in the general ledger books of petitioner, or of determining the actual itemized composition of the sales reported in the AITR and AFS. Instead, ICPA Calica merely made a general statement that he tied up the amount of income and ascertained that the income were indeed reported.

Further, while there was a reference to Exhibits "P-1144", "P-1152", and "P-1153" (i.e. Schedule of Creditable Income Tax Withheld, Amended AITR, and AFS, respectively), there was no mention of petitioner's submission of any general ledger account under which the reported sales were recorded.

Instead, only the General Ledger Transaction Listing under GL Number 49600 or Exhibit "P-1146" was examined by ICPA Calica. This lists petitioner's creditable withholding taxes but not the corresponding sales. ICPA Calica reported that he traced the unutilized creditable income tax withheld per schedule of total creditable withholding tax for the year to the general ledger, to verify whether these have been charged to petitioner's appropriate asset account. Again, it appears that only the asset account was traced by ICPA Calica, and not the revenue recorded by petitioner.

The Court has also independently examined the records and found that no general ledger or any similar document was presented by petitioner to aid Us in tracing the sales to the corresponding books and returns. We cannot even use Exhibit P-1144-A for such purpose as the amounts under columns "Amount of Income Payments" and "Amount of Income Payments Per Certificate of Creditable Tax Withheld at Source (BIR Form 2307)" do not match. Thus, We are unable to verify the veracity of petitioner's claim on having duly reported the sales corresponding to the subject withholding taxes.

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[64] Takenaka Corporation Philippine Branch v. Commissioner of Internal Revenue, G.R. No. 211589, 12 March 2018; Aecom Philippines Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2454, 9 December 2022

[65] Procter & Gamble Asia Pte. Ltd., v. Commissioner of Internal Revenue, C.T.A CEB Case No. 2301, 24 November 2021.

It now bears emphasis that tax refund claims, like the instant case, are considered derogations of the State's power of taxation; thus, like tax exemptions, they are strictly construed against the taxpayer and liberally in favor of the State.[66] Accordingly, the taxpayer-claimant has the burden of proving its entitlement to the applied refund.

In this case, the Court finds that petitioner failed to prove that the income from which the taxes were withheld were declared part of the gross income reported by petitioner in its books and returns.

Accordingly, the instant claim for refund must fail.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

A T T E S T A T I O N

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

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[66] Philippine National Bank vs. Commissioner of Internal Revenue, G.R. Nos. 242647 & 243814, 15 March 2022.

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