REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AECOM PHILIPPINES CONSULTANTS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2744
(CTA Case No. 10008)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and,*
ANGELES, *JJ.*

Promulgated:
JUN 10 2024

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner AECOM Philippines Consultants Corporation (**petitioner/ APCC**), pursuant to Rule 43[2] of the Rules of Court, as amended[3], in

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[1] Filed on 14 April 2023, *rollo*, pp. 9-100, with annexes.
[2] *Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.*
[3] A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure.

accordance with Rule 8[4], Section 4(b)[5] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the reversal and setting aside of the Decision dated 07 December 2021[6] (**assailed Decision**) and Resolution dated 28 February 2023[7] (**assailed Resolution**) of the Court's Third Division and Special Third Division, respectively, in CTA Case No. 10008 entitled *AECOM Philippines Consultants Corporation v. Commissioner of Internal Revenue.*

PARTIES TO THE CASE

Petitioner is a corporation duly registered with the Philippine Securities and Exchange Commission (**SEC**) with Company Registration No. A200009369.[8] It is registered with the Bureau of Internal Revenue (**BIR**) with Taxpayer's Identification Number (**TIN**) 208-134-558-000, as shown in its BIR Certificate of Registration No. OCN 9RC0000335819.[9]

As stated in its Amended Articles of Incorporation[10] (**AOI**), petitioner is primarily engaged in providing a broad range of services including consultancy, technical and advisory support, environmental and safety audits, project management, and construction supervision. These services are offered across various sectors such as water resources, chemicals and waste management, infrastructure, environmental management, manufacturing, transportation, Information Technology and communications, agriculture, and land development in both urban and rural areas. Additionally, the company delivers scientific and technical expertise, data support, environmental assessments, site surveys, ground investigations, remediation, training, research, and project evaluation services in the Philippines or elsewhere. It performs all related activities necessary to support these endeavors but does not engage in fund management, securities, portfolio management, or any profession restricted under Philippine law.

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4 *Procedure in Civil Cases.*

5 SEC. 4. *Where to Appeal; Mode of Appeal.* —

...

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by **petition for review as provided in Rule 43 of the Rules of Court**. The Court *en banc* shall act on the appeal. (Emphasis supplied)

6 Division Docket, pp. 531-539. Penned by Associate Justice Maria Rowena Modesto-San Pedro, with Associate Justice Erlinda P. Uy (Ret.), concurring, and Associate Justice Ma. Belen M. Ringpis-Liban, dissenting.

7 Id., pp. 568-588.

8 See Certificate of Filing of Amended Articles of Incorporation, Exhibit "P-1", id., p. 418.

9 Exhibit "P-3", id., p. 435.

10 Exhibit "P-2", id., pp. 421-434.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) empowered to perform the duties of his or her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He or she may be served with summons and legal processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[11]

FACTS OF THE CASE

On 16 January 2017, petitioner filed its Original Annual Income Tax Return[12] (**ITR**) for the fiscal year (**FY**) ended 30 September 2016, using the BIR's Electronic Filing and Payment System (**eFPS**). Subsequently, on 30 January 2017, petitioner also filed an Amended Annual ITR[13] for the same fiscal period through the eFPS.

On 15 January 2019, petitioner filed a Letter-Claim for Refund[14] and an Application for Tax Credits/Refund (BIR Form No. 1914)[15] (collectively, "**administrative claim**") with the BIR Revenue District Office (**RDO**) No. 44 for the refund of its excess and unutilized creditable withholding tax (**CWT**) for the FY ended 30 September 2016 in the total amount of ₱17,184,958.00.

PROCEEDINGS BEFORE THE COURT IN DIVISION

With respondent's inaction on its administrative claim for refund[16], petitioner elevated the matter to the Court in Division by filing its prior Petition for Review[17] on 16 January 2019. The same was raffled to the Third Division[18] and docketed as CTA Case No. 10008.

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11 Paragraph 1, I. Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), id., p. 247.
12 Exhibit "P-4", id., pp. 436-443.
13 Exhibit "P-5", id., pp. 444-451.
14 Exhibit "P-13", id., pp. 486-491.
15 Exhibit "P-14", id., p. 492.
16 Supra at notes 14 and 15.
17 Division Docket, pp. 10-83, with annexes.
18 The Third Division is composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, and Associate Justice Ma. Belen M. Ringpis-Liban, as Member.

On 28 January 2019, the Third Division issued Summons[19] ordering respondent to file an Answer within fifteen (15) days from service. Respondent received the said Summons on 29 January 2019.[20]

After the Third Division granted two (2) extensions of time to respondent[21], the Answer[22] was filed on 04 April 2019. There, respondent cited the following special and affirmative defenses: (1) petitioner's refund claim is still subject to respondent's administrative investigation and/or examination; (2) taxes paid and collected are presumed to have been paid in accordance with law and regulations and thus, not refundable; (3) petitioner failed to prove the factual basis of its refund claim; (4) petitioner failed to comply with the requisites to successfully claim for a refund; and, (5) tax refunds are in the nature of tax exemptions and therefore are strictly construed against the taxpayer-claimant and in favor of the government.

On 10 April 2019, the Third Division issued a Notice of Pre-Trial Conference[23] and set the case for pre-trial on 25 July 2019. In compliance with the Court's order, petitioner filed its Pre-Trial Brief[24] on 18 July 2019, while respondent filed his or her Pre-Trial Brief[25] on 19 July 2019.

In reply to the Third Division's Resolution dated 09 May 2019[26], which ordered respondent to elevate the BIR Records for the case, a Manifestation[27] was filed on 23 May 2019, informing the Court that a docket for the case was not yet available. The Third Division noted the same in its Resolution dated 27 May 2019.[28]

During the 25 July 2019 Pre-Trial Conference, the Third Division granted the parties a period of thirty (30) days, or until 27 August 2019, within which to file their Joint Stipulation of Facts and Issues (**JSFI**). At the same hearing, the Third Division fixed the same deadline for petitioner's counsel to file a "Motion to Commission an Independent

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19 Division Docket, p. 84.
20 Id.
21 See Resolutions dated 06 March 2019 and 25 March 2019, id., pp. 91 and 97, respectively.
22 Id., pp. 98-101.
23 Id., pp. 102-103.
24 Id., pp. 112-125.
25 Id., pp. 219-221.
26 Id., p. 106.
27 Id., pp. 107-109.
28 Id., p. 111.

Certified Public Accountant [**ICPA**]". The said motion, along with the presentation of petitioner's and respondent's evidence, was scheduled for hearings on 12 September 2019, 17 October 2019, and 20 February 2020, respectively. Additionally, a continuance was scheduled for 21 November 2019, specifically for the ICPA's testimony.[29]

In compliance with the Court's directive, on 23 August 2019, the parties submitted their JSFI[30] and petitioner filed a "Motion to Avail of the Provisions of Rule 13 of the [RRCTA]"[31] (**Motion for Commissioning**), requesting the commissioning of Atty. Clifford E. Chua (**Atty. Chua**) as the ICPA.

On 02 September 2019, the Third Division[32] approved the parties' JSFI and deemed terminated the pre-trial.[33] It subsequently issued a Pre-Trial Order[34] on 11 September 2019.

During the 12 September 2019 hearing, the Third Division granted petitioner's Motion for Commissioning, thereby approving the appointment of Atty. Chua as the ICPA. He was given until 14 October 2019 to submit his ICPA Report and was directed to testify about this report on 21 November 2019, as previously scheduled.[35]

Meanwhile, on 17 September 2019, petitioner filed a "Motion to Reset Presentation of Petitioner's Witness Janis Myrtle Delos Reyes [**Delos Reyes**] Scheduled on October 17, 2019"[36] (**Motion to Reset**). In the Resolution dated 19 September 2019[37], the Third Division granted the Motion to Reset and moved the hearing to 29 October 2019. However, the Court later reset the hearing to 21 November 2019.[38]

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29 See Minutes of the Hearing and Order, both dated 25 July 2019, id., pp. 224 and 227-229, respectively.

30 Id., pp. 247-250.

31 Id., pp. 251-254.

32 The Third Division is composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, and Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, as Members.

33 See Resolution dated 02 September 2019, Division Docket, pp. 260-261.

34 Id., pp. 265-270.

35 See Minutes of the Hearing and Order, both dated 12 September 2019, id., pp. 271 and 273-274.

36 Id., pp. 275-281, with annex.

37 Id., p. 284.

38 See Notice of Resetting dated 21 October 2019, id., pp. 319-320.

In fulfillment of the Court's order, on 14 October 2019, ICPA Chua submitted his Report dated 11 October 2019.[39] The Third Division noted the same in the Minute Resolution dated 15 October 2019.[40]

In the trial that ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses: (1) Delos Reyes, petitioner's Senior Tax Accountant; and, (2) ICPA Chua.

On 21 November 2019, petitioner presented the testimonies of both its witnesses.[41] Delos Reyes was the first to take the witness stand, where she identified her Judicial Affidavit dated 18 July 2019.[42] In her testimony, she stated the following: (1) petitioner is a domestic corporation duly registered with the SEC and the BIR; (2) petitioner had duly filed its Quarterly ITRs and Annual ITR for the FY ended 30 September 2016, and for the succeeding periods; (3) petitioner timely filed an administrative claim for refund or issuance of a tax credit certificate (**TCC**) with the BIR in the total amount of ₱17,184,958.00, representing its excess and unutilized CWT for the FY ended 30 September 2016; (4) petitioner did not carry forward any part of the said excess and unutilized CWT to subsequent periods; (5) petitioner is entitled to the refund or issuance of a TCC in the total amount of ₱17,184,958.00 corresponding to the excess and unutilized creditable income taxes withheld for the FY ended 30 September 2016; and, (6) petitioner filed its judicial claim for refund or issuance of a TCC within the period prescribed by law.

On cross-examination, Delos Reyes attested that petitioner submitted documents supporting the refund claim according to the checklist of requirements. She stated that the BIR's RDO No. 044 received these documents on 15 January 2019, as stamped on both petitioner's Letter-Claim for Refund and BIR Form No. 1914.[43]

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39 Exhibit "P-20", id., pp. 285-317.
40 Id., p. 318.
41 See Minutes of the Hearing and Order, both dated 21 November 2019, id., pp. 348 and 349-350, respectively.
42 Exhibit "P-15", id., pp. 132-218, with exhibits.
43 TSN dated 21 November 2019, pp. 10-12.

Petitioner did not conduct any redirect examination.[44]

When it was ICPA Chua's turn to testify, he identified his Report dated 11 October 2019[45] as well as his Judicial Affidavit dated 30 October 2019.[46] He corroborated Delos Reyes' testimony and declared that he performed the following procedures to confirm that petitioner is entitled to the subject refund claim: (1) examined the original copy of petitioner's BIR Certificate of Registration; (2) examined the original copies of the Certificates of Tax Withheld (BIR Forms No. 2307) (**CWT Certificates**); (3) ascertained that the income taxes withheld by petitioner's clients/payors are duly supported by CWT Certificates; (4) ascertained that the CWT Certificates and the income payments upon which taxes were withheld were properly supported by the corresponding ORs; (5) ascertained that the income payments and the corresponding tax withheld by petitioner's clients/payors were reported in the books of accounts and Audited Financial Statements (**AFS**) for the period covered; (6) ascertained that the CWT Certificates and income payments upon which the income taxes were withheld formed part of petitioner's gross income and that the amount claimed for refund was declared in the ITR for the FY ended 30 September 2016; (7) examined the ITR for the FY ended 30 September 2016 and ascertained that the CWTs claimed for refund were not applied or utilized by petitioner against the income tax due; (8) ascertained that the amount claimed for refund was not carried over and applied in the succeeding fiscal period (or the FY ended 30 September 2017) in compliance with Section 76[47] of the National Internal Revenue Code (**NIRC**) of 1997, as amended; and, (9) ascertained that photocopies of the pertinent documents to be submitted to the CTA are faithful reproductions of the originals.

On cross-examination, ICPA Chua explained how he arrived at the improper CWT computation deducted from the subject refund claim. He also confirmed that the CWTs were not used as tax credits against petitioner's income tax liability in the taxable period in which the income payments were earned or received.[48]

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44 Id., p. 13.
45 Exhibit "P-20", supra at note 39.
46 Exhibit "P-19", Division Docket, pp. 326-345.
47 SEC. 76. *Final Adjustment Return.*
48 TSN dated 21 November 2019, pp. 22-25.

On redirect examination, ICPA Chua clarified that petitioner did not utilize the CWTs totalling ₱17,184,958.00 (as mentioned in page 9 of his Report) and thus should be available for refund.[49]

Respondent did not conduct any re-cross examination.[50]

On 26 December 2019, petitioner filed a "Motion to Recall Atty. Clifford E. Chua with Motion to Defer Filing of Formal Offer of Evidence"[51] (**Motion to Recall with Motion to Defer**), asking the Third Division (1) to allow ICPA Chua to testify anew to clarify his testimony regarding petitioner's revenue recognition and billing process, and (2) to defer the filing of its Formal Offer of Evidence (**FOE**) until ICPA Chua completes his testimony.

In the Resolution dated 09 January 2020[52], the Third Division granted petitioner's Motion to Defer and ordered respondent to comment on petitioner's Motion to Recall. However, respondent failed to file a comment thereto despite due notice.[53]

Thereafter, on 09 March 2020, in the interest of substantial justice, the Third Division granted petitioner's Motion to Recall, and thereby set the hearing for 09 June 2020, and directed petitioner's counsel to submit ICPA Chua's Supplemental Judicial Affidavit not later than 15 May 2020.[54]

On 04 June 2020, petitioner filed a "Motion for Postponement of Recall of the [ICPA] Scheduled on June 9, 2020 (with Motion to Defer Filing of [FOE]"[55] (**Motion for Postponement**), requesting that the Third Division reschedule the hearing to recall ICPA Chua. The need for postponement was due to operational disruptions caused by the COVID-19 pandemic, which prevented ICPA Chua from verifying petitioner's records necessary for executing his Supplemental Judicial Affidavit.

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49 Id., p. 26.
50 Id., p. 27.
51 Division Docket, pp. 357-360.
52 Id., p. 363.
53 *Per* Records Verification Report dated 07 February 2020, id., p. 364.
54 See Resolution dated 09 March 2020, id., pp. 368-369.
55 Id., pp. 370-374.

In the Resolution dated 19 June 2020[56], the Third Division granted petitioner's Motion for Postponement. It reset the hearing, previously scheduled for 09 June 2020, to 02 September 2020.

On 20 August 2020, petitioner filed ICPA Chua's Supplemental Judicial Affidavit dated 19 August 2020.[57] The Third Division noted the same in its Minute Resolution dated 25 August 2020.[58]

During the 02 September 2020 hearing[59], ICPA Chua identified his Supplemental Judicial Affidavit dated 19 August 2020, where he declared that: (1) petitioner records its revenue based on the percentage of completion method using cost-to-cost approach in accordance with the generally accepted accounting principles; (2) petitioner bills its clients in accordance with the terms of the contract applicable for each project and petitioner and its clients agree on the milestones that will trigger a billing; (3) he confirmed that income payments claimed were declared as sales/revenues in the Project Performance Report (**PPR**), supported by billing invoices and ORs that are also recorded in petitioner's Tax Recovery General Ledger and AFS, verifying their alignment with the income reported and taxes withheld as *per* CWT Certificates; (4) income payments subjected to CWT were reported as revenue in different fiscal years due to the timing differences between tax withholding at each payment by the client and revenue recognition based on the percentage of completion method; (5) the "Variance Column" in Annex "E" of his ICPA Report shows the differences between the Withholding Tax Base and the sum of revenue recognized from FY 2014-2016, indicating whether revenue recognized matches, exceeds, or falls short of amounts billed and collected, thus affecting how income payments subjected to CWT are reported in the PPR, AFS and Annual ITR; (6) negative variances in the "Variance Column" indicate that income payments subjected to CWT are already included in the revenue recognized in the AFS and Annual ITR, justifying a CWT refund, whereas positive variances show that not all such payments are reported, thus disallowing corresponding CWT refunds; (7) in his ICPA Report dated 11 October 2019[60] and Judicial Affidavit dated 30 October 2019[61],

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56 Id., pp. 378-379.
57 Exhibit "P-16", id., pp. 387-398.
58 Id., p. 400.
59 See Minutes of the Hearing and Order, both dated 02 September 2020, id., pp. 401 and 402-403, respectively.
60 Exhibit "P-20", supra at note 39.
61 Exhibit "P-19", supra at note 46.

however, the CWTs pertaining to these negative variances were deducted from the allowable tax refund; and, (**8**) accordingly, he increased the recommended refundable amount from ₱12,955,444.43 to ₱14,700.777.73.

On cross-examination, ICPA Chua explained that he reduced the total amount of CWTs with noted variances from ₱2,259,073.48 to ₱529,740.18 because he committed an error in his earlier computation. Specifically, he deducted the whole tax base (corresponding to those with noted variances) instead of only the CWT in arriving at the refundable amount.[62]

Petitioner did not conduct any redirect examination.[63]

On 10 September 2020, after completing the presentation of its testimonial evidence, petitioner filed its FOE[64] consisting of Exhibits "P-1" to "P-449", inclusive of sub-markings. Respondent failed to file a comment thereto despite due notice.[65]

In the Resolution dated 18 November 2020[66], the Third Division admitted petitioner's exhibits, except for Exhibits "P-171", "P-172", "P-179", "P-265", "P-283", "P-287", "P-385" and "P-440"[67], for not being found in the records. Considering the manifestation of respondent's counsel that respondent will no longer present any evidence, the Third Division gave the parties a period of 30 days within which to file their respective memoranda.

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62 TSN dated 02 September 2020, pp. 4-7.
63 Id., p. 7.
64 Division Docket, pp. 404-416.
65 *Per* Records Verification Report dated 06 October 2020, id., p. 494.
66 Id., pp. 498-499.
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Exhibit No.	Description
"P-171"	Invoices/Billing/Statement of Accounts.
"P-172"	
"P-179"	
"P-265"	
"P-283"	
"P-287"	
"P-385"	Prior Year's Certificate of Tax Withheld (BIR Form No. 2307 for FY 2015).
"P-440"	Prior Year's Certificate of Tax Withheld (BIR Form No. 2307 for FY 2014).

On 20 January 2021, petitioner filed its Memorandum.[68] Respondent, however, did not file a Memorandum.[69] Accordingly, on 28 January 2021, the Third Division considered the case submitted for decision.[70]

On 07 December 2021, the Third Division promulgated the assailed Decision[71], which denied petitioner's prior Petition for Review[72] for lack of merit. The dispositive portion reads:

> ...
>
> **WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In the assailed Decision, the Third Division held that petitioner's judicial claim should be barred due to a failure to exhaust administrative remedies, as it was filed on 16 January 2019—just one (1) day after petitioner filed its administrative claim on 15 January 2019. We quote hereunder the relevant discussion in the assailed Decision, *viz*:

> ...
>
> Although both the administrative claim and the judicial claim were filed within the two (2)-year prescriptive period, it cannot escape this Court's attention that petitioner did not give respondent full opportunity to decide the administrative claim.
>
> After petitioner filed the administrative claim for refund/TCC before respondent, it immediately filed the judicial claim before this Court just after the lapse of one (1) day. Certainly, a period of one (1) day is insufficient for respondent to decide the administrative claim for refund considering that the instant claim for refund has voluminous supporting documents. In fact, during trial, petitioner even had to commission the services of an ICPA to assist this Court in sorting out and summarizing the voluminous documents necessary for the resolution of the instant case.

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68 Id., pp. 500-523.
69 See Records Verification Report dated 21 January 2021, id., p. 526.
70 See Resolution dated 28 January 2021, id., p. 528.
71 Supra at note 6.
72 Supra at note 17.

These actions displayed a stark disregard of the rule requiring the exhaustion of administrative remedies. The rationale for the rule was elucidated in ***Ejera v. Merto***, as follows:

> "Thirdly, **the rule requiring the exhaustion of administrative remedies rests on the principle that the administrative agency, if afforded a complete chance to pass upon the matter again, will decide the same correctly**. There are both legal and practical reasons for the rule. The administrative process is intended to provide less expensive and speedier solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, therefore, the courts — for reasons of law, comity and convenience — will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been **given an opportunity to act and correct the errors committed in the administrative forum**."

Certainly, with **just one (1) day** given to respondent to resolve a claim for refund that involves voluminous supporting documents, 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."

In the recent case of ***Chin v. Maersk-Filipinas Crewing, Inc., et al.***, the Supreme Court even cautioned, to wit:

> "The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, **every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice**."

Judging from any perspective, with that measly one (1) day given to him, respondent cannot be said to have been given "every opportunity" "to resolve the matter and to exhaust all opportunities for a resolution" on the claim for refund/TCC of petitioner.

Obviously, the filing of the claim with respondent and giving him just one (1) day within which to decide the same before the judicial claim was filed was simply to meet the two (2)-year prescriptive period deadline. The filing of the administrative claim in the instant case appears to be merely *pro forma*, without any intent to avail of the remedy before respondent. Indeed, the filing of the judicial claim with the Court soon thereafter is a clear indication of blatant disregard of respondent's administrative powers.

This Court cannot turn a blind eye to the procedural infirmity extant in the instant case, much less be a partner in petitioner's disregard of the concept of exhaustion of administrative remedies.

Under the circumstances, then, this Court finds that petitioner's case should be barred for failure to exhaust administrative remedies.[73]

...

Subsequently, on 24 February 2022, petitioner filed a Motion for Reconsideration[74] (**MR**) on the assailed Decision, essentially arguing that: (1) the Third Division erred in ruling that 30 January 2017, *i.e.*, the date of filing the Amended Annual ITR, is the reckoning date for the counting of the two (2)-year period to file both the administrative and judicial claims for refund; and, (2) the Third Division erred in denying the claim for refund of its unutilized CWT for the FY ended 30 September 2016 for failure to exhaust administrative remedies.

As to its first point, petitioner asserted that the Third Division should have reckoned the two (2)-year period to file both administrative and judicial claims for a tax refund from the due date of the final adjusted return, *i.e.*, on 16 January 2017, as 15 January 2017 fell on a weekend (and not from the date of filing the Amended Annual ITR on 30 January 2017).

On the other hand, petitioner argued in its second point that neither Section 204(C)[75] nor Section 229[76] of the NIRC of 1997, as amended, require respondent to be given sufficient time to act on the

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73 Citations omitted, emphasis, italics and underscoring in the original text.

74 Division Docket, pp. 543-559.

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

...

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

76 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)

administrative claim for a refund before a judicial claim can be filed. Petitioner cited *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*[77] (**Univation**), where the Supreme Court clarified that as long as both the administrative and judicial claims are filed within the two (2)-year prescriptive period, administrative remedies are considered exhausted. Furthermore, petitioner pointed out that in *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*[78], the Supreme Court stated that the purpose of filing an administrative claim is to notify respondent that court action will follow if the illegally or erroneously paid tax is not refunded. Therefore, petitioner contended that filing the administrative claim before the judicial claim satisfies the requirement of exhausting administrative remedies.

Respondent likewise failed to file a comment on the points raised in petitioner's MR despite due notice.[79] On 28 February 2023, the Special Third Division[80] promulgated the assailed Resolution[81], denying petitioner's MR for lack of merit. The dispositive portion reads:

> ...
>
> **WHEREFORE**, in view of the foregoing, the present **Motion for Reconsideration** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In the assailed Resolution, the Special Third Division conceded that, as held in *Univation*, the two (2)-year prescriptive period to claim a refund starts, at the earliest, on the date of filing the adjusted final tax return, *i.e.*, on 16 January 2017. It then ruled on the merits of the case, considering the ruling in *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*[82] (**Carrier**). The Special Third Division explained that, although it believes filing the administrative claim with

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77 G.R. No. 231581, 10 April 2019.
78 G.R. No. 216130, 03 August 2016.
79 See Records Verification Report dated 24 March 2022, Division Docket, p. 564.
80 Pursuant to CTA Administrative Circular No. 01-2022 dated 21 June 2022, which reorganized the Second and Third Divisions of the Court effective 27 June 2022, Associate Justice Erlinda P. Uy (Ret.) became the Chairperson of the Second Division. Consequently, in this case, the Third Division became a Special Third Division, with Associate Justice Ma. Belen M. Ringpis-Liban as Chairperson, Associate Justice Maria Rowena Modesto-San Pedro as Member, and Associate Justice Erlinda P. Uy (Ret.) as Special Member.
81 Supra at note 7.
82 G.R. No. 226592, 27 July 2021.

respondent one (1) day before the two (2)-year period lapsed and the judicial claim the next day disregards the rule requiring exhaustion of administrative remedies, it is bound by the recent ruling in *Carrier*.

Specifically, the Special Third Division noted that in *Carrier*, the Supreme Court recognized the absence of a specific period in Section 229[83], in relation to Section 204(C)[84], of the NIRC of 1997, as amended. It acknowledged that this gap in the law can be addressed through appropriate legislation. For easy reference, We quote the relevant portion of the discussion in the assailed Resolution[85] as follows:

> ...
>
> In ***Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.***, the Supreme Court recognized the lack of any specific period fixed in ***Section 229 of the NIRC*** in relation to ***Section 204 of the NIRC*** and that the silence or insufficiency in the law is one that can be addressed by appropriate legislation:
>
> > "The Court of Tax Appeals likewise allowed judicial claims filed simultaneously, or one to 28 days from the administrative claim's filing, on the same ground that both claims were filed within the two-year prescriptive period.
> >
> > ...
> >
> > These cases show that the lack of a specific period fixed by the law within which the Commissioner must decide the claim has led to delays, to the taxpayer's prejudice. On the other hand, there were instances when the Commissioner was deprived of the opportunity to act on the matter within their jurisdiction because of the short interval between the filing of the administrative claim and the filing of the judicial claim. This is so because the law merely provides two years for a taxpayer to file the administrative claim and judicial claim, with the former required to be filed first.
> >
> > Nonetheless, the silence or insufficiency in the law on the reasonable period for the Commissioner's action is one that can be addressed not by judicial pronouncement, but by appropriate legislation."
>
> That there is an infirmity in the periods of filing was even raised by Justice Estela Perlas-Bernabe, who referred the same to the Senate for action in her Concurring Opinion:

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83 Supra at note 76.
84 Supra at note 75.
85 Supra at note 7.

> "Whether or not the CIR should be given a mandatory period of review of administrative claims as a condition precedent to the filing of a judicial claim goes into the wisdom of the law. It is well-settled that the Court cannot supplant its own wisdom with that of Congress as this goes beyond the purview of its power of judicial review. As the Court has held, "[t]he courts may or may not agree with the legislature upon the wisdom or necessity of the law. Their disagreement, however, furnishes no basis for pronouncing a statute illegal. If the particular statute is within the constitutional power of the legislature to enact, whether the courts agree or not in the wisdom of its enactment, is a matter of no concern."
>
> In this regard, the proper recourse against the curtailment of the CIR's power to first rule on administrative claim, as herein stated, is to seek the amendment of Section 229. "'[I]f the law is too narrow in scope, it is for the Legislature rather than the courts to expand it.' It is only when all other means of determining the legislative intention fail that a court may look into the effect of the law; otherwise, the interpretation becomes judicial legislation."
>
> Therefore, as now ruled by the *ponencia*, the Court is constrained to deny the present petition, but let a copy of this Decision be furnished to the Senate and the House of Representatives for their information, and for the possible enactment of remedial legislation.[86]

...

However, despite the foregoing, the Special Third Division still denied petitioner's MR, finding that (1) it failed to prove that the income payments of its alleged excess CWT were declared as part of its gross income subject to income tax, and (2) the existence and validity of its prior year's excess tax credits in the total amount of ₱31,373,540.00 had not been duly proven.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Following petitioner's receipt of a copy of the assailed Resolution on 15 March 2023[87], a "Motion for Extension of Time to file Petition for Review)"[88] was filed with the Court *En Banc* on 28 March 2023. On 14 April 2023 or within the fifteen (15)-day extended period granted,

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[86] Citations omitted, emphasis and italics in the original text.

[87] See Notice of Resolution dated 02 March 2023, Annex "A" to Petition for Review, supra at note 1, *rollo*, p. 44.

[88] Id., pp. 1-5.

petitioner filed the instant Petition for Review[89] seeking the reversal of the Third Division's assailed Decision and the Special Third Division's assailed Resolution.

On 09 May 2023, the Court *En Banc* directed respondent to file his or her comment within ten (10) days from notice.[90] However, respondent failed to file a comment despite due notice.[91]

Accordingly, the Court *En Banc* submitted the case for decision on 09 June 2023.[92]

ISSUES

In the present Petition for Review before the Court *En Banc*, petitioner assigns the following errors to the Special Third Division's actions[93]:

> I.
> THE SPECIAL THIRD DIVISION ERRED IN RULING THAT PETITIONER AECOM PHILIPPINES CONSULTANTS CORPORATION FAILED TO PROVE THAT ITS INCOME PAYMENTS WERE DECLARED AS PART OF THE GROSS INCOME REPORTED IN ITS ANNUAL INCOME TAX RETURN (ITR); AND,
>
> II.
> THE SPECIAL THIRD DIVISION ERRED IN RULING THAT PETITIONER AECOM PHILIPPINES CONSULTANTS CORPORATION'S PRIOR YEAR'S EXCESS TAX CREDITS WERE NOT DULY PROVEN.

PETITIONER'S ARGUMENTS

Firstly, petitioner insists that the income payments on which the income taxes were withheld were included in petitioner's AFS and also formed part of its gross income declared in its ITR for the FY ended 30 September 2016.

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89 Supra at note 1.
90 See *En Banc* Notice dated 09 May 2023, *rollo*, p. 101.
91 *Per* Records Verification dated 06 June 2023, id., p. 102.
92 See *En Banc* Notice dated 09 June 2023, id., p. 103.
93 See Part V. Assignment of Errors, Petition for Review, supra at note 1, pp. 15-16.

Petitioner submits that the revenues indicated in its PPRs for the FY ended 30 September 2016 were properly reported in the revenue portion of its ITR for FYs 2016, 2015 and 2014. It further alleges that the audit adjustments in the ICPA Report were made to reflect the correct amount of project cost and revenue for the period. This likewise confirms that the revenues indicated in the PPRs have indeed been declared as part of the gross income subject to income tax in the ITR.

Furthermore, petitioner asserts that, even assuming there are unexplained audit adjustments in the ICPA Report, it does not automatically entail a complete failure on its part to report or declare the subject income payments as part of its gross income. In other words, the discrepancy does not conclusively signify that it failed to comply with the requirement that "the income upon which the taxes were withheld were included in the return of the recipient" considering that it has presented other pieces of evidence to establish such fact of inclusion.

Citing various decisions of the Court *En Banc* and in Division[94], petitioner posits that if there are discrepancies in the amount of revenue from which the CWT was withheld compared to the amount of revenue declared in the AFS/ITR, a reduction or disallowance in the amount claimed proportional to the discrepancy is proper instead of denying the claim in full.

Secondly, in arguing that it has duly proven its prior year's excess tax credits, petitioner claims that ICPA Chua erroneously made reference to the AFS instead of the ITR for FY 2015 when he mentioned in his ICPA Report that "[he] likewise verified that the Prior Year[s'] Excess Credits from FY 2015 amounting to [₱]31,373,540.00 were actually recorded and forwarded by verifying the same in Part II of the [AFS] for FY 2015". According to petitioner, a perusal of its ITR for FY 2015 would

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94 *Procter & Gamble Distributing (Philippines), Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9634, 09 July 2020; *Zuellig Pharma Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8801, 05 September 2017; *Commissioner of Internal Revenue v. Philippine Bank of Communications* and *Philippine Bank of Communications v. Commissioner of Internal Revenue*, CTA EB Case Nos. 1421 and 1423 (CTA Case No. 8632), 23 May 2017; *Philam Properties Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8635, 03 December 2015; *Honda Cars Makati, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8466, 17 September 2015; *Ayala Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8262, 11 November 2013; *Philippine Bank of Communications v. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue v. Philippine Bank of Communications*, CTA EB Case Nos. 560 and 586 (CTA Case No. 7435), 01 June 2011.

reveal that it has a "Part II", which was mentioned in the ICPA Report. The said "Part II" of the ITR for FY 2015 allegedly contains information on the existence of valid prior year's excess tax credits amounting to ₱31,373,540.00.

RULING OF THE COURT

Before going into the merits of the case, We shall first determine the timeliness of the present petition.

THE PRESENT PETITION FOR REVIEW
WAS TIMELY FILED.

The Special Third Division issued the assailed Resolution[95] denying petitioner's MR[96] on the assailed Decision[97] on 28 February 2023. Petitioner received the assailed Resolution on 15 March 2023.[98]

Under Section 2(a)(1)[99], Rule 4, in relation to Section 3(b)[100], Rule 8, of the RRCTA, petitioner had fifteen (15) days from 15 March 2023, or until 30 March 2023, within which to file an appeal before this Court. On 28 March 2023, petitioner asked for an additional period of 15 days, or until 14 April 2023, within which to file a Petition for Review.[101] The Court *En Banc* granted the same in a Minute Resolution dated

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95 Supra at note 7.

96 Supra at note 74.

97 Supra at note 6.

98 See Notice of Resolution dated 02 March 2023, Annex "A" to Petition for Review, supra at note 1, p. 44.

99 **SEC 2**. *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied.)

100 **SEC. 3**. *Who may appeal; period to file petition.* —
...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

101 See Motion for Extension of Time to File Petition for Review, supra at note 88.

30 March 2023.[102] Accordingly, petitioner timely filed the present petition on 14 April 2023.[103]

We shall now determine the merits of this case.

THE SPECIAL THIRD DIVISION DID NOT ERR IN DENYING PETITIONER'S CLAIM FOR REFUND.

It is well-established that in order for a corporate taxpayer to successfully claim for a refund or issuance of a TCC involving excess creditable withholding taxes, the following requirements must be satisfied:

(1) The claim must be filed with the CIR within the two (2)-year period from the date of payment of the tax;

(2) It must be shown on the return of the recipient that the income 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 to the payee showing the amount paid and the amount of tax withheld.[104]

In applying the foregoing requisites to the present case, it is important to bear in mind the well-settled doctrine that actions for tax refund or credit, as in the present case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption are strictly scrutinized as the factual basis of the claim must be duly proven.[105] The burden is on the taxpayer to show

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[102] *Rollo*, p. 8.
[103] Supra at note 1.
[104] See *Commissioner of Internal Revenue v. Philippine Bank of* Communications, G.R. No. 211348, 23 February 2022.
[105] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, 31 January 2011.

that he has strictly complied with the conditions for the grant of the tax refund or credit.[106]

Here, the main error alleged to have been committed by the Special Third Division pertains to petitioner's compliance with the ***second requisite***. As aforementioned, this mandates petitioner to prove that the income payments subjected to CWTs were declared as part of its gross income.

In the assailed Resolution[107], the Special Third Division held that petitioner failed to prove that the income payments subjected to CWT were declared as part of its gross income, to wit:

> ...
>
> However, the Court disagrees with the ICPA's findings that the revenue indicated in the fiscal year 2016 PPRs were properly reported in the revenue portion of petitioner's ITRs for fiscal years 2016, 2015, and 2014. The ICPA attempted to reconcile the difference between the revenue reported in the PPRs with those reported in the ITRs for fiscal years 2016, 2015, and 2014:

Particulars	2016	Exhibit No.	2015	Exhibit No.	2014	Exhibit No.
Revenue per Books of Account (*i.e.*, PPRs)	211,592,127	P-326	163,781,345	P-327	162,231,494	P-328
Revenue per ITR	207,381,204	P-5	152,613,178	P-445	162,247,997	P-446
Audit Adjustments	4,213,226	Annex "G" of the ICPA Report	(11,168,166)	Annex "H" of the ICPA Report	16,503	Annex "I" of the ICPA Report
Variance	(2,303)		1		-	

> The said audit adjustments to reconcile the revenues per PPRs with the revenues per ITR are as follows:
>
> For Fiscal Year 2016:

Business Line	Exhibit No.	
3508 Power & Energy	P-326	33,484,565
3520 EM-Environmental Management		155,814,865
3661 PCC-CM		22,292,698
Total Revenue, per PPR for 2016		211,592,127
Total Revenue, per Audited Financial Statements/ITR for 2016		207,381,204

[106] *China Banking Corporation v. City Treasurer of Manila*, G.R. No. 204117, 01 July 2015.
[107] Supra at note 7.

Difference		4,210,923
Reconciliation:		
To Adjust revenue in relation to the adjustment in the project costs		5,114,106
To adjust revenue as of September 30, 2015.		(614,566)
2016 Project True-up/PJC Adjustments		(286,315)
Total		4,213,226
Variance/Unreconciled Difference		**(2,303)**

For Fiscal Year 2015:

Business Line	Exhibit No.	
3508 Power & Energy	P-327	3,380,904
3520 EM-Environmental Management		155,923,219
3661 PCC-CM		4,477,222
Total Revenue, per PPR for 2016		**163,781,345**
Total Revenue, per Audited Financial Statements/ITR for 2015		**152,613,178**
Difference		11,168,167
Reconciliation:		
To Adjust revenue in relation to the adjustment in the project costs		5,114,106
To reverse the expense and revenue from scrap sale transaction		(15,667,706)
To adjust revenue as of September 30, 2015.		(614,566)
Total		**(11,168,166)**
Variance/Unreconciled Difference		**1**

For Fiscal Year 2014:

Business Line	Exhibit No.	
3508 Power & Energy	P-328	1,545,336
3520 EM-Environmental Management		153,721,786
3661 PCC-CM		6,964,372
Total Revenue, per PPR for 2014		**162,231,494**
Total Revenue, per Audited Financial Statements/ITR for 2014		**162,247,997**
Difference		(16,503)
Reconciliation:		
To adjust for the proper valuation of revenue		16,503
Total		**16,503**
Variance/Unreconciled Difference		-

The ICPA, however, failed to explain in detail such audit adjustments in his ICPA Report. Thus, this Court is unable to verify whether the revenues as indicated in the PPRs have indeed

> been declared as part of the gross income subject to income tax in the ITR.
>
> ...
>
> Consequently, the Court finds that petitioner failed to prove that the income payments upon which the alleged excess CWTs were withheld were declared as part of the gross income subject to income tax.
>
> On this finding alone, the instant claim for refund fails.[108]
>
> ...

In the present Petition for Review, petitioner explained that determining whether the income payments were declared as part of gross income necessitates tracing the income payments relating to the creditable taxes withheld from the CWT Certificates to the revenues reported in the AFS and the Annual ITR. Based on petitioner's allegations, the tracing procedure can be summarized as follows:

(1) The income payment and withholding tax are determined from the individual CWT Certificates;

(2) The amount of income payment is traced to invoices and ORs that bear a particular Project Contract Code (**PCC**);

(3) The PCC is then presented as a line item in the PPR; and,

(4) The revenues reported *per* PPRs are properly reported *per* AFS and Annual ITR.

Taking into account the foregoing tracing procedure, it is essential for petitioner to first prove that the revenues reported *per* PPRs are properly reported in the Annual ITR. Once petitioner has proved that the revenues *per* PPRs are reported in the Annual ITR, the Court can proceed to determine whether the income payments shown in the CWT Certificates or BIR Forms No. 2307 were part of the revenues reported *per* PPRs.

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108 Citations omitted and emphasis in the original text.

In his Report, ICPA Chua made a finding that the revenues on the 2016, 2015 and 2014 PPRs were properly reported in the revenue portion of petitioner's AFS and the Annual ITRs for FYs 2016, 2015 and 2014, as shown below:

Particulars	2016	Exhibit No.	2015	Exhibit No.	2014	Exhibit No.
Revenue per Books of Account [*per* PPRs]	₱211,592,127.00	"P-326"	₱163,781,345.00	"P-327"	₱162,231,494.00	"P-328"
Revenue *per* ITR	207,381,204.00	"P-5"	152,613,178.00	"P-445"	162,247,997.00	"P-446"
Audit Adjustments	4,213,226.00	Annex "G" of the ICPA Report	(11,168,166.00)	Annex "H" of the ICPA Report	16,503.00	Annex "I" of the ICPA Report
Variance	(₱2,303.00)		₱1.00		₱-	

However, absent an explanation justifying the reconciling items or audit adjustments shown above, the Special Third Division ruled that it cannot simply adopt the ICPA's finding that the total sales/revenues declared in the ITR tally with the total sales/revenues reported in the PPRs.

In this regard, the Court *En Banc* sustains the Special Third Division's finding that the reconciling items or audit adjustments were not adequately explained in the ICPA Report.[109] Specifically, there is hardly any indication in the "[r]econciliations of the PPR (Revenue GL Account) with the [r]evenue [r]eflected in the AFS/[ITR]" for FYs 2016, 2015 and 2014 (see Annexes "G", "H" and "I" of the ICPA Report, respectively) on what caused or triggered the adjustments to the total revenues recorded *per* books or PPRs to arrive at the amounts reflected in the Annual ITRs.

Notably, the ₱4,210,923.00 discrepancy between the total amount of ₱211,592,127.00 reported in the PPR for FY 2016 and the Net Sales/Revenues/Receipts/Fees reflected in the Annual ITR, which amount to ₱207,381,204.00, casts doubt on the accuracy of the amounts presented in the PPR. Similarly, for FY 2015, the ₱11,168,167.00 discrepancy between the total amount of ₱163,781,345.00 reported in the PPR and the Net Sales/Revenues/Receipts/Fees reflected in the Annual ITR, amounting to ₱152,613,178.00, also casts doubt on the accuracy of the amounts presented in the PPR. The same goes for FY 2014, where

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109 Exhibit "P-20", supra at note 39.

the ₱16,503.00 discrepancy between the total amount of ₱162,231,494.00 reported in the PPR and the Net Sales/Revenues/Receipts/Fees reflected in the Annual ITR, amounting to ₱162,247,997.00, further casts doubt on the accuracy of the amounts presented in the PPR.

Contrary to petitioner's contention, requiring a detailed explanation for each of the audit adjustments is crucial as this confirms the accuracy of the total revenues declared in the Annual ITRs. Logically, and as previously noted, before determining whether the income payments shown in the CWT Certificates or BIR Forms No. 2307 were part of the revenues reported *per* PPRs, it must first be established that the revenues reported *per* PPRs match those declared in the Annual ITRs. Simply put, if the accuracy of the revenues declared in the Annual ITRs cannot be established, there is no point in tracing the income payments related to the creditable taxes withheld to the gross income declared therein.

It bears reiterating that the Court is not bound by the findings of the ICPA. Section 3, Rule 13 of the RRCTA, as amended, provides:

> ...
> 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 possessing 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 conclusion subject to verification.**[110]
> ...

As aptly explained in the assailed Resolution[111], the ICPA's findings are not conclusive upon the Court as the same are subject to verification, to determine its accuracy, veracity and merit. The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification. Accordingly, absent an explanation justifying the reconciling items or audit adjustments shown above, the Court cannot simply adopt the ICPA's finding that the total

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110 Emphasis supplied and italics in the original text.
111 Supra at note 7.

sales/revenues declared in the Annual ITRs tally with the total sales/revenues reported in the PPRs.

Considering that petitioner failed to match the revenues presented in the PPRs and the revenues declared in the Annual ITRs, the Court *En Banc* no longer finds it necessary to proceed with the determination of whether the income payments as shown in the CWT Certificates were part of the revenues reported *per* PPRs.

Accordingly, petitioner failed to show compliance with the ***second requisite***, *i.e.*, that the income payments (upon which the claimed CWTs were based) were reported as part of its gross income in its Annual ITRs. Verily, on this basis alone, petitioner's entire claim for refund must be denied.

Additionally, as to the second assignment of error, We cannot subscribe to petitioner's assertion that it has duly proven the existence and validity of its "Prior Year's Excess Credits other than MCIT" in the total amount of ₱31,373,540.00, since it failed to submit in evidence its Annual ITR for FY 2015, the previous taxable period.

As provided in Section 2.58.3 of Revenue Regulations (**RR**) No. 2-98[112], it is incumbent upon petitioner to present its ITR for the previous taxable period showing the amount of its excess withholding tax credits, *viz*:

> ...
> Sec. 2.58.3. *Claim for Tax Credit or Refund.* —
> ...
>
> (C) *Excess Credits.* - An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, **provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount**

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[112] Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

> **of his excess withholding tax credits**, and on which return he has not opted for a cash refund or tax credit certificate.[113]
>
> ...

Based on the foregoing, petitioner's Annual ITR for FY 2015 is a crucial piece of evidence. Without it, the Court has no means to verify that petitioner indeed has valid prior year's excess credits that it may use to settle its Regular Corporate Income Tax (**RCIT**) due for FY 2016. To be clear, it is not enough that the "Prior Year's Excess Credits other than MCIT" of ₱31,373,540.00 is reflected in petitioner's Amended Annual ITR for the FY 2016 (in Line 1 of Schedule 7).[114] There must be evidence showing that the same amount was reflected as excess tax credits in the previous taxable period, *i.e.*, FY 2015.

Accordingly, Court *En Banc* also upholds Special Third Division's finding that petitioner failed to prove the existence and validity of its prior year's excess credits, and therefore could not establish that the RCIT due for FY 2016 in the amount of ₱4,539,998.00 is deemed paid. This is another reason why the instant refund claim must fail.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner AECOM Philippines Consultants Corporation on 14 April 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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113 Emphasis supplied and italics in the original text.
114 Exhibit "P-5", supra at note 13, p. 449.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ON OFFICIAL BUSINESS

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice