

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MERCK SHARP & DOHME
(I.A.) LLC – PHILIPPINE
BRANCH,

Petitioner,

- versus -

CTA CASE NO. 9803

Members:

UY, *Chairperson*,
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, JJ.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 11 2022

C. 9:00 a.m.

x-----x

AMENDED DECISION

UY, JJ.:

For this Court's resolution are the following:

1) petitioner's ***Motion for Partial Reconsideration (of Decision promulgated on June 25, 2021)*** filed on July 28, 2021, with respondent's ***Opposition (Re: Motion for Reconsideration of the Decision promulgated 25 June 25 2021)*** filed on November 2, 2021; and

2) respondent's ***Motion for Partial Reconsideration*** filed on July 28, 2021, with petitioner's ***Comment (on Respondent's Motion for Partial Reconsideration dated July 21, 2021)*** filed on February 18, 2022.

In both motions, the parties pray for the partial reconsideration of the Court's Decision dated June 25, 2021, the dispositive portion of which reads:

UY

"WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the total amount of ₱35,005,704.93 representing petitioner's excess and unutilized Creditable Withholding Tax for the calendar year ended December 31, 2015.

SO ORDERED."

***Petitioner's Motion for
Partial Reconsideration***

In its *Motion*, petitioner argues that the disallowance of the excess and unutilized creditable withholding tax (CWT) amounting to ₱20,749,354.79 should be reconsidered because the said amount was actually withheld from the income payments made to petitioner and the same were indisputably reported by petitioner as part of its gross income in the calendar year 2015.

Likewise, petitioner claims that the disallowance of the CWT withheld by petitioner's distributor and certain direct customers amounting to ₱19,606,236.28 should be reconsidered as it sufficiently established, through its voluminous exhibits, that the income payments from which such amount were withheld as CWT formed part of petitioner's declared income for calendar year 2015.

Respondent's Opposition

In his opposition, respondent reiterates the ruling in the assailed Decision that the CWTs amounting to ₱20,749,354.79 should be disallowed due to incorrect TIN of the petitioner (for Organon Philippines, Inc.), dated outside the period of claim (for customer Bayer Philippines, Inc.) and BIR Form 2307 not readable (for customer Mercury Drug Corporation).

Respondent contends that it is incumbent upon petitioner to prove that it is entitled to the refund sought. Failure to prove the same is fatal to its claim for tax refund. It is a well-settled principle in taxation that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the



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law. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic and statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications.

Respondent asserts that petitioner failed to discharge its burden of establishing its claim for a tax refund or credit.


***Respondent's Motion for
Partial Reconsideration***

In his *Motion*, respondent argues that the Court erred in ruling that petitioner is entitled to the refund in the reduced amount of ₱35,005,704.93 allegedly representing excess and unutilized CWT for calendar year ended December 31, 2015.

Respondent claims that it is a vital requirement as provided by law that petitioner must show in its tax return that the income from which the withholding tax was withheld formed part of its gross income.

Respondent insists that petitioner failed to provide supporting documents that would show that the income from which CWT was declared in the Annual Income Tax Return (AITR), and that there is no direct linkage between the CWT and the income as reflected in the AITR.

Respondent further asserts that in claims for refund, petitioner should adduce every single document that will prove entitlement to its claim. Respondent maintains that petitioner must comply with Revenue Memorandum Order (RMO) No. 53-98 (*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*) and Revenue Regulations (RR) No. 2-2006 (*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*).



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Allegedly, for a claim of refund to prosper, it is incumbent upon the taxpayer-claimant to prove actual remittance of the withheld taxes to the Bureau of Internal Revenue (BIR). Aside from showing the fact of withholding of taxes, the actual remittance of the same is another.

According to respondent, petitioner miserably failed to substantiate its administrative claim for refund. Respondent avers that petitioner failed to submit the complete requirements under RMO No. 53-98, for there is no record of petitioner even submitting complete documents to substantiate its administrative claim for refund.

Lastly, respondent maintains that petitioner's failure to submit relevant documents deprived respondent of the opportunity and time to study petitioner's claim for refund and to fully exercise its function.

Petitioner's Comment

Petitioner counter-argues that respondent's motion for partial reconsideration should be denied for not raising any new, cogent, or substantial ground to warrant a modification of the Court's Decision dated June 25, 2021.

Petitioner reiterates that the Independent Certified Public Accountant (ICPA) has ascertained the income payments subjected by petitioner's customers to CWT were reported by petitioner as part of its gross income in its Income Tax Return for TY 2015.

Petitioner submits that respondent merely stated general allegations and did not even remotely address the foregoing facts proven by petitioner through the ICPA nor the findings of the Court.

THE COURT'S RULING

After careful and thorough consideration of the arguments raised by petitioners in its ***Motion for Partial Reconsideration*** and a second hard look at the evidence on record, We find the same partly meritorious.

On the other hand, We find no merit in respondent's ***Motion for Partial Reconsideration***.



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In the assailed Decision, the Court disallowed the CWTs amounting to ₱20,749,354.79 on the basis of the following:

<u>Customer Name</u>	<u>Exhibit</u>	<u>Income Payment</u>	<u>EWT Amount</u>	<u>Reasons</u>
Bayer Philippines, Inc.	"P-27"	8,828,966.80	88,289.67	Dated Outside the Period of Claim
Organon Philippines, Inc.	"P-29"	30,788,963.27	4,618,344.49	Incorrect TIN of the Petitioner
Organon Philippines, Inc.	"P-31"	26,402,682.47	3,960,402.37	Incorrect TIN of the Petitioner
Organon Philippines, Inc.	"P-32"	23,539,596.47	3,530,939.47	Incorrect TIN of the Petitioner
Organon Philippines, Inc.	"P-35"	25,923,987.07	3,888,598.06	Incorrect TIN of the Petitioner
Mercury Drug Corporation	"P-40"	466,278,073.00	4,662,780.73	BIR Form 2307 Not Readable
		<u>581,762,269.08</u>	<u>20,749,354.79</u>	

We shall now resolve the foregoing grounds invoked by petitioner in its Motion for Partial Reconsideration.

Income payment of Bayer Philippines, Inc. to Petitioner in the amount of ₱8,828,966.80 (Exhibit "P-27")

According to petitioner, the income payment of Bayer Philippines, Inc. to Petitioner in the amount ₱8,828,966.80 was made during the calendar year of 2015. Petitioner submits that the said income payment and CWT were traced by the ICPA to petitioner's declared annual income for the calendar year 2015 in the ICPA Report.

Petitioner further submits an explanation from the ICPA through a judicial affidavit (Attached as Annex "A") in its Motion for Partial Reconsideration, explaining that the income payment of Bayer Philippines Inc. to petitioner in the amount of ₱8,828,966.80 can be traced to the Revenue General Ledger of petitioner for 2015 and that there is just a difference in the timing of the recognition of the income and expense between Petitioner and Bayer Philippines, Inc.

According to petitioner, the CWT amounting to ₱88,289.67 related to the ₱8,828,966.80 income payment of Bayer Philippines, Inc. to petitioner should not have been disallowed simply on the

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reason that the Withholding Certificate for such CWT was dated outside the period of claim because such CWT and income payment were found to have been recognized and declared by petitioner in 2015, within the period of claim.

We are not convinced.

Petitioner is reminded that this Court is not bound by the findings of the ICPA as provided under Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, to wit:

“SEC. 3. *Findings of independent CPA.* – xxx. The findings and conclusions of the ICPA 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.”

As stated in the assailed Decision¹, upon further scrutiny and verification, the Court disallowed the CWT amounting to ₱88,289.67 related to the income payment of Bayer Philippines, Inc., amounting to ₱8,828,966.80, for being supported by CWT with covering the period from January 1, 2016 to March 31, 2016. Clearly, dated beyond the petitioner’s refund claim, which is for the year 2015.

Moreover, petitioner’s assertion that the income payment of ₱8,828,966.80 can be traced to the Revenue General Ledger of petitioner for 2015 and that there is just a difference in the timing of the recognition of the income and expense between petitioner and Bayer Philippines, Inc., is untenable for failure of petitioner to provide supporting documents to substantiate the alleged timing difference. Aside from petitioner’s bare allegations that the discrepancies were due to timing difference, it failed to establish that the income of ₱8,828,966.80 from which CWT in the amount of ₱88,289.67 was withheld, indeed formed part of petitioner’s taxable gross income for 2015. Petitioner failed to show proof such as its 2016 General Ledger for the Court to ascertain whether the said income was NOT actually recorded in its 2016 books. Consequently, the disallowance shall remain.

¹ Decision dated June 25, 2021, CTA Case No. 9803, p. 16, paragraph 2, Docket, Vol. 2, p. 601.

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*Petitioner's TIN in the Withholding
Certificates covering the income
payments of Organon Philippines
(Exhibits "P-29", "P-31", "P-32",
and "P-35")*

Petitioner avers that the TIN indicated in the CWT covering the income payments of Organon Philippines, Inc. and marked as Exhibits "P-29", "P-31", "P-32", and "P-35", is a simple typographical error.

Petitioner seeks the indulgence of this Court to take into consideration the typographical error on the entries in Exhibits "P-29", "P-31", "P-32", and "P-35", and in support thereof, petitioner attached the judicial affidavit dated July 28, 2021, of Paula Mae A. Francisco, petitioner's Tax Officer, explaining that the Withholding Certificates that were marked and submitted by the ICPA as Exhibits "P-29", "P-31", "P-32", and "P-35" were the re-issued original Withholding Certificates from Organon Philippines, Inc., upon the request of petitioner.

According to petitioner, the TIN of petitioner in the re-issued WTC marked as Exhibits "P-29", "P-31", "P-32", and "P-35" was incorrectly indicated as **041-474-947-000**. The correct TIN of petitioner is **004-474-947-000**; and that there was a simple mistake or typographical error in the second and third digits in the TIN of petitioner indicated in the re-issued WTC which were pre-marked as Exhibits "P-29", "P-31", "P-32", and "P-35".

Petitioner further avers that the ICPA actually examined the BIR Certified True Copies of the WTC covering the same income payments of Organon Philippines, Inc, which bore the correct TIN of petitioner; and that there is no doubt that the income payments of Organon Philippines, Inc. to petitioner in the total amount of ₱106,655,229.28 was made, recognized, and declared during the calendar year 2015.

Petitioner submits that the Court should be guided by the ruling of the Supreme Court in the case of *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*,² (BPI case).

We find merit in petitioner's contention.

² G.R. No. 122480, April 12, 2000.

Section 8 of RA No. 1125, as amended by RA No. 9282, provides as follows:

“SEC. 8. *Court of record; seal; proceedings.* – The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but **such proceedings shall not be governed strictly by technical rules of evidence.” (*Emphasis supplied*)**

Based on the foregoing, it is clear that this Court’s proceedings shall not be governed strictly by technical rules of evidence.

Moreover, as correctly invoked by petitioner, in the *BPI* case, the Supreme Court allowed the appreciation of the document attached to the Motion for Reconsideration filed before the CTA. In said case, the Supreme Court pointed out that the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that procedural rules should not bar courts from considering undisputed facts to arrive at a just determination of a controversy, to wit:

“More important, a copy of the Final Adjustment Return for 1990 was attached to petitioner’s Motion for Reconsideration filed before the CTA. A final adjustment return shows whether a corporation incurred a loss or gained a profit during the taxable year. In this case, that Return clearly showed that petitioner incurred P52,480,173 as net loss in 1990. xxx xxx xxx In denying the Motion for Reconsideration, however, the CTA ignored the said Return. In the same vein, the CA did not pass upon that significant document.

True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering



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undisputed facts to arrive at a just determination of controversy.” (Emphases supplied)

Thus, one of the primary considerations in the adjudication of cases is the ascertainment of the truth and veracity of the factual allegations of the parties. Technicalities should not be used to defeat substantive rights, especially those that have been established as a matter of fact.³

In this case, We find valid justification for the liberal application of procedural rules.

Upon examination of the supporting documents attached to petitioner’s Motion for Partial Reconsideration, the Court is convinced that petitioner was able to show that the TIN indicated in Exhibits “P-29”, “P-31”, “P-32”, and “P-35” were merely typographical errors. Furthermore, it bears noting that, while respondent opposed petitioner’s Motion for Partial Reconsideration, he interposed no objection as regards the CWTs attached to petitioner’s motion. Also, respondent failed to controvert the veracity of the same.

Thus, considering that respondent failed to object thereto in its ***Opposition (Re: Motion for Reconsideration of the Decision promulgated 25 June 25 2021)***; and considering further that the subject pieces of evidence are crucial to arrive at a just determination of this case, the Court deems it proper to favorably consider the following CWTs:

Customer Name	Exhibits	Income Payment	EWT Amount
Organon Philippines, Inc.	“P-29”	30,788,963.27	4,618,344.49
Organon Philippines, Inc.	“P-31”	26,402,682.47	3,960,402.37
Organon Philippines, Inc.	“P-32”	23,539,596.47	3,530,939.47
Organon Philippines, Inc.	“P-35”	25,923,987.07	3,888,598.06

It bears reiterating that one of the three essential conditions for the grant of a claim for refund of creditable withholding income tax is to show the fact of withholding established by a copy of a statement duly issued by the payor to the payee showing the amount paid and

³ Filinvest Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 146941, August 9, 2007.

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the amount of the tax withheld therefrom.⁴ The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld.⁵ Hence, petitioner is only required to establish the fact of withholding through the CWTs (BIR Form No. 2307) duly issued by its payors.⁶

Here, the Court finds that Exhibits "P-29", "P-31", "P-32" and "P-35" duly establish the fact of withholding, thereby satisfying the above-mentioned condition.

*Income payment of Mercury
Drug Corporation to Petitioner
in the amount of
₱466,278,073.00 (Exhibit "P-
40")*

Petitioner avers that a readable Exhibit "P-40" was duly admitted by this Court through its Resolution dated June 16, 2020 and that the income payment of Mercury Drug Corporation to petitioner in the amount of ₱466,278,073.00 was made during the calendar year 2015.

We find merit in petitioner's contention.

After careful review of the evidence on record, the Court finds that a readable scanned copy of Exhibit "P-40" saved under the filename "Scanned original BIR Form 2307 with tax withheld of ₱4,662,780.73" was submitted and admitted by the Court on June 16, 2020. Hence, the input VAT of ₱4,662,780.73 shall be reconsidered by the Court as petitioner's valid claim.

In summary, the disallowance by the Court as found in the assailed decision is **reduced** from ₱20,749,354.79 to ₱88,289.67 pertaining to petitioner's related income payments of ₱8,828,966.80 listed as follows:

⁴ Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.), G.R. No. 231581, April 10, 2019.

⁵ Commissioner of Internal Revenue vs. Philippine National Bank, G.R. No. 180290, September 29, 2014.

⁶ *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations, Corporation*, G.R. No. 171742, June 15, 2011, citing *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.

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<u>Customer Name</u>	<u>Exhibit</u>	<u>Income Payment</u>	<u>EWT Amount</u>	<u>Reasons</u>
Bayer Philippines, Inc.	"P-27"	₱8,828,966.80	₱88,289.67	Dated Outside the Period of Claim

Disallowance of the CWT withheld by petitioner's distributor and certain direct customers amounting to ₱19,606,236.28.

Petitioner contends that the disallowance of the CWT withheld by petitioner's distributor and certain direct customers amounting to ₱19,606,236.28 should be reconsidered as it sufficiently established through voluminous exhibits that the income payments from which such amount were withheld as CWT formed part of petitioner's declared income calendar year 2015, to wit:

Exhibit	Customer Name	Income Payment	CWT Amount
"P-22"	Zuellig Pharma Corp.	₱362,884,093.00	₱3,628,840.93
"P-23"	Zuellig Pharma Corp.	494,192,499.00	4,941,924.99
"P-28"	Zuellig Pharma Corp.	493,843,186.00	4,938,431.86
"P-42"	Globo Asiatico	93,785.00	937.85
"P-47"	A. Menarini	3,348,013.50	66,960.27
"P-53"	Zuellig Pharma Corp.	602,914,038.00	6,029,140.38
TOTAL		₱1,957,275,614.50	₱19,606,236.28

Petitioner alleges that the income payments of Zuellig Pharma Corp. (Exhibits "P-22", "P-23", "P-28", "P-53"), A. Menarini (Exhibit "P-47") and Globo Asiatico Enterprises, Inc. (Exhibit "P-42") formed part of petitioner's declared income for calendar year 2015 as detailed in the ICPA Report. In support thereof, petitioner submits the testimony of Katherine O. Constatino by way of judicial affidavit dated July 27, 2021. Hence, petitioner invites the court to trace back the income said payments.

Petitioner asserts that there is more than preponderance of evidence on the side of petitioner that proves its entitlement to the refund of ₱40,355,591.07 of its excess and unutilized CWT for the calendar year December 2015 that was disallowed.

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We partly agree with petitioner's contentions.

Upon re-evaluation, petitioner was able to sufficiently establish the income payments amounting to ₱1,953,927,601.00 formed part of petitioner's declared income with corresponding CWT amounting to ₱19,539,276.01, from petitioner's customers, Zuellig Pharma Corp. (*Exhibits "P-22", "P-23", "P-28" and "P-53"*) and Globo Asiatico (*Exhibit "P-42"*), to wit:

Exhibit	Customer Name	Income Payment	CWT Amount
"P-22"	Zuellig Pharma Corp.	₱362,884,093.00	₱ 3,628,840.93
"P-23"	Zuellig Pharma Corp.	494,192,499.00	4,941,924.99
"P-28"	Zuellig Pharma Corp.	493,843,186.00	4,938,431.86
"P-42"	Globo Asiatico	93,785.00	937.85
"P-53"	Zuellig Pharma Corp.	602,914,038.00	6,029,140.38
TOTAL		<u>₱1,953,927,601.00</u>	<u>₱ 19,539,276.01</u>

The Court was able to trace and verify the abovementioned income payments to the General Ledger (*Exhibits "P-56", "P-57", "P-58", "P-790", "P-791" and "P-792"*) corresponding with the Summary of Reference Numbers (*Exhibit "P-59"*) and Summary of Sales (*Exhibit "P-60"*).

However, with regard to the income payment from A. Menarini (*Exhibit "P-47"*) amounting to ₱3,348,013.50 with corresponding CWT of ₱66,960.27, We retain the denial thereof for failure to establish that the said income payment formed part of petitioner's declared income.

To reiterate, the Court is not bound to simply accept the ICPA report and is allowed to verify and make its own findings.

Notably, in the Summary of Reference Numbers (*Exhibit "P-59", page 7 of 8*), there is no reference number indicated in the columns Billing Invoice, Invoice Group, Billing Date, Other Reference, and Clearing Document for its customer A. Menarini with CWT amounting to ₱66,960.27. The Court is unable to ascertain petitioner's related income to the General Ledger. Hence, the disallowance shall remain.

In sum, out of the total claim CWT of ₱75,361,296.00, petitioner has sufficiently proven its entitlement to the refund, representing

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unutilized excess CWT for CY 2015 in the **modified** amount of **₱75,206,037.06**, with the corresponding computation:

Creditable Withholding Tax Per Claim		₱75,361,296.00
Less: Disallowances		
Not Supported by Proper BIR Form 2307	88,298.67	
Untraceable Income Declared in CY 2015	66,960.27	155,258.94
Refundable Excess CWT		<u>₱75,206,037.06</u>

Respondent's Motion for Partial Reconsideration

Respondent's *Motion for Partial Reconsideration* is bereft of merit.

A perusal of the arguments raised by respondent in his motion for partial reconsideration are not new and are mere reiterations which have been addressed and resolved by the Court in the assailed Decision.

To reiterate, non-submission of complete documents enumerated under RMO No. 53-98 and RR No. 2-2006 at the administrative level is not fatal to a claim for refund at the judicial level. The Court made it very clear that nowhere in the said issuances is it stated that the non-submission of the documents enumerated therein would *ipso facto* result to the denial of the claim for tax refund or credit.

Hence, respondent's assertion that the instant refund claim must be denied due to the alleged non-compliance with RMO No. 53-98 and RR No. 2-2006 must necessarily fail.

As to the issue that petitioner failed to provide supporting documents to show that the income from which the CWT sought to be refunded was declared in the AITR, the same has been extensively discussed and resolved by the Court in the assailed Decision, wherein it was found that petitioner was able to show only partial compliance with the third requisite, *i.e.*, *that the income upon which the taxes were withheld was included in the return of the recipient, or declared as part of the gross income.*

Hence, We shall not belabor, in this Amended Decision, to repeat the disquisitions made therein.

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Partial Reconsideration* is **PARTIALLY GRANTED**. While, respondent's *Motion for Partial Reconsideration* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated June 25, 2021 is hereby amended to read as follows:

"WHEREFORE, in view of the foregoing considerations, petitioner's **Motion for Reconsideration** is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of the petitioner the total amount of **₱75,206,037.06** representing petitioner's excess and unutilized Creditable Withholding Tax for the calendar year ended December 31, 2015.

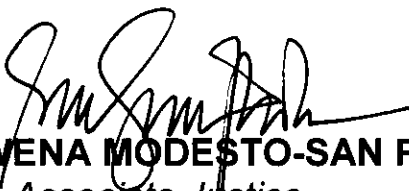
SO ORDERED."

SO ORDERED.


ERLINDA P. UY
Associate Justice


WE CONCUR:


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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


ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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