REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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TULLET PREBON (PHILIPPINES) INC., Petitioner,	**CTA Case No. 10068**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 1 1 2022 4:10 p.m.

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DECISION

UY, J. :

Before this Court is a *Petition for Review*[1] filed by Tullet Prebon (Philippines), Inc. (TPPI), petitioner, on April 11, 2019, against the Commissioner of Internal Revenue (CIR), respondent, praying for the refund or issuance of a tax credit certificate (TCC) in the amount of ₱11,275,870.00, representing petitioner's excess and unutilized creditable withholding tax (CWT) for the calendar year ended December 31, 2016.

THE FACTS

Petitioner TPPI is a domestic corporation, duly organized and existing under the laws of the Republic of the Philippines, with principal office at 14th Floor RCBC Savings Bank Building, Bonifacio Global City, Taguig. It was incorporated with the primary purpose of operating as a broker between market participants in transactions

[1] Docket – Vol. 1, pp. 10 to 18.

involving, but not limited to, foreign exchange, deposits, interest rate instruments, fixed income securities, bonds/bills, repurchase agreements of fixed income securities, certificates of deposit, bankers' acceptances, bills of exchange, over-the-counter options of the aforementioned instruments, lesser developed country (LDC) debt, energy, and stock indexes and all related, similar or derivative products, other than acting as a broker for the trading of securities pursuant to the Revised Securities Act of the Philippines.[2]

Moreover, petitioner is a registered taxpayer of the Bureau of Internal Revenue (BIR), Large Taxpayers District Office (LTDO) with Tax Identification No. 004-653-622-000.[3]

On the other hand, respondent is the duly appointed CIR vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of the said office, including, *inter alia*, the power to decide, approve and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.[4]

On June 26, 2018, petitioner filed with the BIR, Regular LT Audit Division II, an administrative claim for refund of, or issuance of TCC, for excess and unutilized CWT for CY 2016 in the amount of ₱11,275,870.00.[5]

To date, respondent has neither approved nor denied petitioner's administrative claim for refund of, or issuance of TCC, for excess and unutilized CWT for CY 2016.[6]

Thus, petitioner filed the instant *Petition for Review*[7] on April 11, 2019 for the refund or issuance of a tax credit certificate (TCC) in the amount of ₱11,275,870.00, representing petitioner's excess and unutilized creditable withholding tax (CWT) for the calendar year ended December 31, 2016.

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[2] Exhibit "P-1," Amended Articles of Incorporation, Docket - Vol. 2, pp. 542 to 551.
[3] Exhibit "P-2," Docket – Vol. 2, p. 552.
[4] JSFI, Stipulated Facts, par. 1, Docket – Vol. 1, p. 250.
[5] JSFI, Stipulated Facts, par. 2, Docket – Vol. 1, p. 250.
[6] JSFI, Stipulated Facts, par. 3, Docket – Vol. 1, p. 251.
[7] Docket – Vol. 1, pp. 10 to 18.

Respondent filed his *Answer*[8] on June 13, 2019, interposing the following special and affirmative defenses: (1) the failure of the petitioner to exhaust its administrative remedies before elevating the case to the Honorable Court renders the case dismissible; and (2) petitioner is not entitled to the claim for refund of creditable withholding taxes.

After the *Pre-Trial Conference*[9] held on September 12, 2019, the parties submitted their *Joint Stipulation of Facts and Issues*[10] on October 14, 2019. The same was admitted and approved by the Court in the Resolution[11] dated October 17, 2019. Subsequently, the Court issued a *Pre-Trial Order*[12] on October 25, 2019.

Upon motion of petitioner filed on October 14, 2019[13], Madonna Mia S. Dayego was commissioned as the Independent Certified Public Accountant (ICPA) for the instant case on November 28, 2019.[14]

During trial, petitioner presented the following witnesses: 1) Philip G. Arabia;[15] and 2) Madonna Mia S. Dayego.[16] Upon completion of their testimonies, petitioner filed its *Formal Offer of Evidence*[17] on July 10, 2020, to which respondent filed his *Comment (to Petitioner's Formal Offer of Evidence)*[18] on July 22, 2020. In the Resolution[19] dated September 17, 2020, all of petitioner's exhibits were admitted, with the notation that the entries in Exhibit "P-15-5," or petitioner's 2015 Annual ITR Manually Filed with the BIR, are blurred/unreadable.

On October 9, 2020, petitioner filed a *Manifestation with Motion to Substitute Exhibit "P-15-5,"*[20] which was noted and granted in the Resolution[21] dated January 12, 2021.

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[8] Docket – Vol. 1, pp. 64 to 75.
[9] Docket – Vol. 1, pp. 228 to 229.
[10] JSFI, Docket – Vol. 1, pp. 250 to 255.
[11] Docket – Vol. 1, pp. 257 to 258.
[12] Docket - Vol. 1, pp. 260 to 265.
[13] *Motion to Commission Independent Certified Public Accountant,* Docket – Vol. 1, pp. 235 to 238.
[14] Docket, pp. 237 to 238.
[15] Exhibit "P-12," Docket – Vol. 1, pp. 102 to 112.
[16] Exhibit "P-13," Docket – Vol. 2, pp. 481 to 497.
[17] Docket – Vol. 2, pp. 515 to 541.
[18] Docket – Vol. 2, pp. 674 to 677.
[19] Docket – Vol. 2, pp. 681 to 682.
[20] Docket – Vol. 2, pp. 683 to 686.
[21] Docket – Vol. 2, pp. 708 to 710.

On January 19, 2021, respondent filed a *Manifestation*,[22] stating that he will not be presenting testimonial evidence, on account of the fact that there is no report of investigation of the claim for refund of petitioner.

Upon the filing of petitioner's *Memorandum*[23] on March 26, 2021 and respondent's *Memorandum*[24] on March 2, 2021, the case was submitted for Decision on May 31, 2021.[25]

Hence, this Decision.

THE ISSUE

The parties agreed that the main issue[26] to be resolved in this case is:

> "WHETHER PETITIONER IS ENTITLED TO THE CLAIM OF REFUND AMOUNTING TO ₱11,275,870.00, REPRESENTING ITS ALLEGEDLY EXCESS AND UNUTILIZED CREDITABLE WITHOLDING TAXES (CWT) FOR CALENDAR YEAR (CY) 2016."

Petitioner's arguments:

Petitioner avers that it filed its administrative and judicial claims for refund of excess and unutilized CWTs for CY 2016 within the two-year prescription period provided in Sections 204(C) and 229 of the NIRC of 1997, as amended.

In addition, petitioner states that its excess and unutilized CWT for the CY 2016 in the amount ₱12,481,971.00 are duly substantiated by documentary evidence.

Allegedly, the income upon which the CWTs being claimed for refund were withheld, was reported as part of the revenues declared in petitioner's Annual ITR.

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[22] Docket – Vol. 2, pp. 711 to 713.
[23] Docket – Vol. 2, pp. 730 to 755.
[24] Docket – Vol. 2, pp. 717 to 728.
[25] Docket – Vol. 2, p. 759.
[26] JSFI, Issue, Docket – Vol. 1, p. 251.

Finally, petitioner maintains that it did not exercise the option to carry over its excess and unutilized CWT for CY 2016 to the succeeding taxable periods.

Respondent's counter-arguments:

Respondent counters that failure of the petitioner to exhaust its administrative remedies before elevating the case to the Honorable Court renders the case dismissible.

It is respondent's assertion that petitioner is not entitled to the claim for refund of creditable withholding taxes.

THE COURT'S RULING

Petitioner's claim for refund of its excess and unutilized CWT is anchored on Section 76 of the NIRC of 1997, which provides:

> "**SEC. 76. - *Final Adjustment Return***. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
>
> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and

> no application for cash refund or issuance of a tax credit certificate shall be allowed therefor." (*Emphasis supplied.)*

In the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue,*[27] it was held that a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit, or (2) to apply for the issuance of a TCC or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period. The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[28]

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.[29]

In this case, petitioner clearly indicated its intention "To be issued a Tax Credit Certificate (TCC) by marking the box corresponding to the said choice in its Annual Income Tax Return (AITR) for Calendar Year (CY) 2016.[30]

A perusal of petitioner's AITR for CY 2016,[31] shows that it had total tax credits in the amount of ₱31,657,960.00,[32] which consists of prior year's excess credits amounting to ₱20,382,090.00[33] and creditable withholding taxes accumulated during the four (4) quarters of CY 2016 in the amount of ₱11,275,870.00 (₱9,401,642.00[34] plus ₱1,874,228.00[35]).

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[27] G.R. No. 176290, September 21, 2007.
[28] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.
[29] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.,* G.R. No. 112024, January 28, 1999.
[30] Exhibit "P-3," Line 21, Docket – Vol. 2, p. 553.
[31] Exhibit "P-3," Docket – Vol. 2, pp. 553 to 562.
[32] Exhibit "P-3," Schedule 7, Line 12, Docket – Vol. 2, p. 558.
[33] Exhibit "P-3," Schedule 7, Line 1, Docket – Vol. 2, p. 558.
[34] Exhibit "P-3," Schedule 7, Line 5, Docket – Vol. 2, p. 558.
[35] Exhibit "P-3," Schedule 7, Line 6, Docket – Vol. 2, p. 558.

Petitioner's income tax due for CY 2016 amounting to ₱810,236.00[36] was offset against prior year's excess credits of ₱20,382,090.00,[37] leaving a balance of the prior year's excess credits of ₱19,571,854.00, and creditable taxes withheld during CY 2016 in the amount of ₱11,275,870.00, or a total of excess tax credits as December 31, 2016 in the amount of ₱30,847,724.00,[38] detailed as follows:

Prior Year's Excess Credit		20,382,090.00
Less: Income Tax Due		810,236.00
Balance of Prior Year's Excess Credit		19,571,854.00
Add: Creditable Tax Withheld CY 2016		
From Previous Quarters	9,401,642.00	
For the Fourth Quarter	1,874,228.00	11,275,870.00
Excess Tax Credits as Dec. 31, 2016		30,847,724.00

Considering that petitioner opted to be issued a TCC, and since only the balance of prior year's excess credits in the amount of ₱19,571,854.00 was carried-over in the subsequent quarters of CY 2017, and reflected as "Prior Year's Excess Credits" in its First Quarterly ITR[39] and AITR[40] for CY 2017, the amount of ₱11,275,870.00 may be the proper subject of a claim for refund or issuance of TCC under Section 76 of the NIRC of 1997.

Conditions for the grant of a refund or issuance of a tax credit certificate representing any excess or unutilized creditable withholding tax.

In addition to the exercise of its option under Section 76 of the NIRC of 1997, as amended, jurisprudence[41] dictates that in order to be entitled to a refund or issuance of TCC for excess/unutilized CWT,

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[36] Exhibit "P-3," Part II, Line 16, Docket – Vol. 2, p. 553.
[37] Exhibit "P-3," Schedule 7, Line 1, Docket – Vol. 2, p. 558.
[38] Exhibit "P-3," Part II, Line 20, Docket – Vol. 2, p. 553.
[39] Exhibit "P-8," Line 31A, Docket – Vol. 2, p. 645.
[40] Exhibit "P-11," Schedule 7, Line 1, Docket – Vol. 2, p. 669.
[41] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),* G.R. No. 188016, January 14, 2015; *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.,* G.R. Nos. 155682, March 27, 2007; and *United International Pictures AB vs. Commissioner of Internal Revenue,* G.R. No.168331, October 11, 2012.

petitioner must still prove compliance with the following requirements, to wit:

> 1. That the claim for refund was filed within the two-year prescriptive period as provided under Section 204 (C) in relation to Section 229 of the NIRC of 1997, as amended;
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> 2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom;[42] and
>
> 3. That the income upon which the taxes were withheld was included in the return of the recipient, i.e., declared as part of the gross income.[43]

First Condition

The ***first condition*** is anchored on Section 229, in relation to Section 204 (C) of the NIRC of 1997, as amended, to wit:

> "**SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes***. -The Commissioner may
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

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[42] Section 2.58.3 (B) of Revenue Regulations No. 2-98.
[43] *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue,* G.R. No. 151857, April 28, 2005.

> "**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 provisions, both the administrative and the judicial claims must be filed within two (2) years from the date of payment of the tax. Timeliness of the filing of the claim is mandatory and jurisdictional. The court cannot take cognizance of a judicial claim for refund either prematurely or out of time.[44]

It must be emphasized that the two-year prescriptive period within which to claim a refund commences to run at the earliest, on the date of the filing of the adjusted final return[45]. This must be so because it is only on such date when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax.[46]

In the instant case, petitioner filed its AITR for CY 2016 through e-FPS on April 12, 2017.[47] Thus, counting two years therefrom,

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[44] *Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative,* G.R. No. 209776, December 7, 2016.
[45] *ACCRA Investments Corporation vs. Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.
[46] *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.*, G.R. No. 83736, January 15, 1992.
[47] Exhibit "P-3", Docket – Vol. 2, pp. 553 to 562.

petitioner had until April 12, 2019 to file both its administrative claim and judicial claim.

It appearing that petitioner's administrative claim was filed on June 26, 2018,[48] while the judicial claim via the instant *Petition for Review* was filed on April 11, 2019,[49] it is clear that both the administrative and the judicial claims were timely filed.

Considering that petitioner has sufficiently proven its compliance with the ***first condition,*** this Court has jurisdiction to entertain the instant Petition for Review.

Petitioner did not fail to exhaust administrative remedies.

At this juncture, this Court resolves to address respondent's argument that petitioner failed to exhaust its administrative remedies before elevating the case to this Court, which allegedly renders the case dismissible.

We are not convinced.

As earlier stated, based on Section 229 of the NIRC of 1997, as amended, the judicial claim for tax refund must be made within two (2) years from the date of payment of the tax or penalty, regardless of any supervening cause that may arise after such payment.

In the case of *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.,*[50] it was held that for as long as the administrative and judicial claims for refund were filed within the two-year reglementary period, there is no violation of the doctrine of exhaustion of administrative remedies, to wit:

> "The law only requires that an administrative claim be priorly filed. That is, to give the BIR at the administrative level an opportunity to act on said claim. In other words, for **as long as the administrative claim and the judicial claim were filed within the two-year**

[48] Exhibits "P-7" to "P-7-a", Docket – Vol. 2, pp. 640 to 643; JSFI, Stipulated Facts, par. 2, Docket – Vol. 1, p. 250.
[49] Docket – Vol. 1, pp. 10 to 18.
[50] G.R. No. 231581, April 10, 2019.

prescriptive period, then there was exhaustion of the administrative remedies."

In the instant case, there is no showing that respondent ever acted upon petitioner's administrative claim for refund from the time it was filed on June 26, 2018 up to the filing of its judicial claim on April 11, 2019. Considering that the two-year prescriptive period is about to end, petitioner was correct in filing its judicial claim within the said two-year prescriptive period under Section 229 of the NIRC of 1997, as amended.

Second and Third Conditions

With regard to the second and third conditions, reference is made to Section 2.58.3 (B) of RR No. 2-98[51], as amended, which states:

"**Sec. 2.58.3.** ***Claim for tax credit or refund***. –

xxx xxx xxx

(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." (*Emphasis supplied*)

According to the foregoing provision, 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.

Respondent, however, argues that in order for any claim for refund to prosper, it is incumbent upon the claimant to prove *actual remittance* of the same alleged withheld taxes to the BIR. Hence,

[51] *SUBJECT: 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.*

petitioner should have presented evidence to prove actual remittance of the alleged taxes to the BIR.

We are not swayed.

The certificates of creditable taxes withheld accomplished by petitioner's withholding agents showing the amount deducted and withheld from its income in support of the claim for tax refund, constitute competent and conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income.

In *Commissioner of Internal Revenue vs. Philippine National Bank,*[52] the Supreme Court affirmed that a certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld and that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits, to wit:

> "**The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld**. x x x
>
> xxx xxx xxx
>
> Thus, **upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly**.
>
> Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits**. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, **it 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**.

[52] G.R. No. 180290, September 29, 2014.

This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*, citing the Court of Tax Appeals' explanation, is instructive:

xxx xxx xxx

The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents." *(Emphasis supplied.)*

In view of the foregoing, it is evident that petitioner's compliance with the ***second condition*** may be shown through the presentation of the pertinent certificates of creditable tax withheld at source, which are complete in their relevant details and with a written statement that they were made under the penalties of perjury.

In order to prove its compliance with the second requisite, petitioner submitted the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)[53] and the Schedule of Creditable Taxes Withheld for the calendar year ended December 31, 2016.[54]

The Court-commissioned ICPA, Madonna Mia S. Dayego of M.F. Padernal and Co., examined the subject documents and presented in the ICPA Report dated January 13, 2020,[55] the result of the verification, as follows:

Particulars	Exhibit No.	Income Payment	Equivalent Tax Withheld
Supported by Original Certificates of BIR Form No. 2307:			
(a) Issued in the Petitioner's name and TIN	**P-18**	₱74,143,541.60	₱6,769,204.06
(b) Issued in the Petitioner's name and TIN – **amount of tax withheld per BIR Form No. 2307 is lower than tax withheld per Schedule**	**P-19**	19,912,176.64	1,864,600.40
(c) Issued in the Petitioner's name and TIN – **amount of tax withheld per BIR Form No. 2307**	**P-20**	22,238,189.64	1,812,994.91

[53] Exhibits "P-18-1" to "P-18-317," Exhibits "P-19-1" to "P-19-53," "P-20-1" to "P-20-50," "P-21-1," "P-22-1" to "P-22-4."
[54] Exhibit "P-17."
[55] Exhibit "P-14," Docket – Vol. 1, pp. 279 to 311.

is higher than tax withheld per Schedule			
(d) Issued in the Petitioner's TIN but **not in the Petitioner's name**	**P-21**	61,297.18	6,129.72
(e) Issued in the Petitioner's name and TIN but **outside the period of claim**	**P-22**	125,674.02	12,567.31
(f) Net discrepancy noted per Schedule and per original Certificates of BIR Form No. 2307 (see also Table 9): *Exhibit No. P-19 – ₱303,048.14; Exhibit No. P-20 – (₱ 298,561.65)*	**P-19 and P-20**	–	4,486.49
		116,480,879.08	*10,469,982.89*
Supported by Photocopies only or CWT Not Supported by Original Certificates of BIR Form No. 2307:			
(g) Supported by **photocopies only** of Certificates of BIR Form No. 2307 issued in the Petitioner's name and TIN	**P-18**	96,227.00	9,622.64
(h) Supported by **photocopies only** of Certificates of BIR Form No. 2307 issued in the Petitioner's name and TIN but **outside the period of claim**	**P-22**	154,095.18	15,409.52
(i) **Not supported** by original Certificate of BIR Form No. 2307	**P-23**	–	780,854.90
		250,322.18	*805,887.06*
Total amount per verification		₱116,731,201.26	11,275,869.95
Per Schedule of CWT (refer to Table 7)	**P-17**	–	11,275,869.95
Difference			₱ –

As specified in Item (f) in the aforecited table, a discrepancy is noted between the amount of tax withheld per the Petitioner-prepared Schedule of CWT for CY 2016[56] and the original certificates of BIR Form No. 2307,[57] amounting to ₱4,486.49, computed as follows:

Particulars	Exhibit	Per Schedule of CWT ("P-17")	Per Orig. Certificate of BIR Form 2307 ("P-19" and "P-20")	Difference	Remarks
(a)Issued in the petitioner's name and TIN-amount					Discrepancy noted recommended for **downward adjustment**

[56] Exhibit "P-17."
[57] Exhibits "P-19-1" to "P-19-53," and "P-20-1" to "P-20-50."

of tax withheld per BIR Form 2307 is lower than tax withheld per Sked	"P-19"	2,167,648.54	**1,864,600.40**	303,048.14	since the CWT per petitioner's claim is higher than CWT per BIR Form 2307
(b)Issued in the petitioner's name and TIN-amount of tax withheld per BIR Form 2307 is **higher** than tax withheld per Sked	"P-20"	**1,514,433.26**	1,812,994.91	-298,561.65	Discrepancy noted is covered by BIR Form No. 2307 but not claimed by the petitioner – **no effect** on the petitioner's Claim
Net Discrepancy		3,682,081.80	3,677,595.31	4,486.49	

It is noted that there were instances when the CWT, per certificate, exceeded those reflected per schedule/ITR, or vice-versa. Inasmuch as the basis of the instant claim for refund is the amount reflected in the Annual ITR as filed, this Court shall only consider the lesser of the two (2) amounts. Based from the foregoing, the following requires downward adjustments on the petitioner's claim for refund or issuance of TCC amounting to ₱1,127,632.23, broken down as follows:

Particulars	**Exhibit**	**Equivalent Tax Withheld**
Discrepancy noted per Schedule and per original Certificate of BIR Form No. 2307 where amount of Tax Withheld per BIR Form No. 2307 is lower than the tax withheld per Sked of petitioner's claim	"P-19"	303,048.14
Issued in petitioner's TIN but not in the petitioner's name	"P-21"	6,129.72
Issued in petitioner's name and TIN but outside the period of claim	"P-22"	12,567.31
Supported by photocopies only of Certificate of BIR Form No. 2307 issued in the petitioner's name and **TIN**	"P-18"	9,622.64
Supported by photocopies only of Certificate of BIR Form No. 2307 issued in the petitioner's name and TIN but outside the period of claim	"P-22"	15,409.52
Not supported by original Certificates of BIR Form No. 2307	"P-23"	780,854.90
Total Disallowances		**1,127,632.23**

In sum, petitioner was able to satisfy the ***second condition,*** but only to the extent of ₱10,148,237.77 computed as follows:

CWT Claim Per Petition For Review	11,275,870.00
Less: Disallowances	
Per ICPA Findings	1,127,632.23
Valid CWT	**10,148,237.77**

Anent the ***third condition***, petitioner must prove that the income payments, from which the substantiated CWT of ₱10,148,237.77 were withheld, were included in the return of the recipient, *i.e.*, declared as part of its gross income.

The Court agrees with the validation procedures and findings of the ICPA, that the income upon which the taxes were withheld was included in the return of the recipient/declared as part of the gross income, except for CWT amounting to ₱2,661,684.94, which were not traced to General Ledgers (GL) and Official Receipts (OR), to wit:

> "We traced the amount of income payments pertaining to brokerage fees-net as indicated in the Summaries of Creditable Taxes Withheld Supported by Original Certificates of BIR Form No. 2307 issued in the Petitioner's Name and TIN for CY 2016 **(marked as Exhibit Nos. P-18 to P-20)** against the amount of income posted in the Petitioner's GLs – Brokerage Fees-Net for the CYs 2016 and 2015 **(marked as Exhibit Nos. P-39 and P-40, respectively)** to determine whether or not these were properly reported in the AFS for the CYs 2016 and 2015 **(marked as Exhibit No. P-39-2 and P-40-1, respectively)**.
>
> We further traced and reviewed the corresponding ORs prepared by the Petitioner in the CY 2016 **(marked as Exhibit Nos. P-41-1 to P-41-23, P-41-26 to P-41-461, P-42-1 to P-42-122 and P-43-1 to P-43-119)**.
>
> xxx xxx xxx
>
> The results of our verification are shown in the following:

Particulars	Per Original Certificates of BIR Form No. 2307			Amount Covered by BIR Form No. 2307 TRACED to GLs - Brokerage Fees - Net and ORs			Difference - Recommended Downward Adjustment	
	Exh	Income	CWT	Exh	Income	CWT	Income	CWT
Issued in the Petitioner's Name and TIN	P-18	74,143,541.60	6,769,204.06	P-41	69,080,257.85	6,375,773.32	5,063,283.75	393,430.74
Issued in the Petitioner's Name and TIN - amount of tax withheld per BIR Form No. 2307 is lower than tax withheld per schedule	P-19	19,912,176.64	1,864,600.40	P-42	10,443,182.67	1,016,616.76	9,468,993.97	847,983.64
Issued in the Petitioner's Name and TIN - amount of tax withheld per BIR Form No. 2307 is higher than tax withheld per schedule	P-20	22,238,189.64	1,812,994.91					
Less: CWT not Claimed by petitioner		-	(298,561.65)					
		22,238,189.64	1,514,433.26	P-43	3,927,243.31	94,162.70	18,310,946.33	1,420,270.56
TOTAL		**116,293,907.88**	**10,148,237.72**		**83,450,683.83**	**7,486,552.78**	**32,843,224.05**	**2,661,684.94**

From the foregoing, petitioner was able to substantiate CWT amounting to ₱7,486,552.83, computed as follows:

CWT Claim Per Petition For Review		11,275,870.00
Less: Disallowances		
Per ICPA Findings	1,127,632.23	
Income NOT traced to GL/OR	2,661,684.94	3,789,317.17
Valid CWT		**7,486,552.83**

In sum, petitioner was able to sufficiently prove its entitlement to the issuance of a tax credit certificate of its excess and unutilized CWTs for CY 2016, but only up to the extent of ₱7,486,552.83.

Petitioner's alleged failure to submit the documents listed under RMO No. 53-98 and RR No. 2- 2006 in its administrative claim is not fatal to its judicial claim for refund.

Respondent asserts that petitioner failed to comply with a condition precedent, *i.e.,* to submit the required documents stated in Revenue Memorandum Order (RMC) No. 53-98 and Revenue Regulation (RR) No. 2-2006, which renders the instant Petition for Review dismissible.

We disagree.

A perusal of the provisions RMO No. 53-98[58] and RR No. 2-2006,[59] shows that the non-submission of the documents enumerated therein would not *ipso facto* result in the denial of the taxpayer's claim for refund or tax credit. Rather, RR No. 2-2006 merely imposes a fine for the non-submission of the information or statement required therein, without resorting to an outright denial of the claim for tax refund or credit.

In the case of *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.,*[60] it was held that the failure to submit the complete documents at the administrative level is *not* fatal to a taxpayer's claim for refund at the judicial level, brought about by the inaction of the CIR, to wit:

> "Petitioner CIR argued that failure of the respondent to submit the required complete documents as required by Revenue Memorandum Order No. 53-98 and Revenue Regulations No. 2-2006 rendered the petition with the CTA dismissible on the ground of lack of jurisdiction. It reasoned out that when a taxpayer prematurely filed a judicial claim with the CTA, the latter has no jurisdiction over the appeal.
>
> In the instant case, **respondent's failure to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction**. At this point, it is

[58] *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.*

[59] *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.*

[60] G.R. No. 231581, April 10, 2019.

necessary to determine the grounds relied upon by a taxpayer in filing its judicial claim with the CTA. The case *of Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* is instructive, thus:

> '**A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents**. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.'

In this case, it was the inaction of petitioner CIR which prompted respondent to seek judicial recourse with the CTA. Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. As a matter of fact, petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.

Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR. Thus, RA No. 1125 states:

> **Section 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 as 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.

The law creating the CTA 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. **Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund**.

Cases filed in the CTA are litigated *de novo* as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim." Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance."

In the instant case, the parties stipulated that to date, respondent has neither approved nor denied petitioner's administrative claim for refund of, or issuance of TCC, for excess and

unutilized CWT for CY 2016.[61] Hence, petitioner filed judicial claim before this Court on April 11, 2019.[62]

Applying the foregoing jurisprudential principles, respondent cannot invoke petitioner's alleged non-compliance with RMO No. 53-98 and RR No. 2-2006, as basis for the denial of petitioner's claim for tax refund or credit.

After all, it is settled that RMO No. 53-98 itself does *not* require the submission of complete documents in order to grant a claim for refund or credit, to wit:

> "As can be gleaned from the above, **RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess VAT**. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*:
>
> The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities x x x.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'
>
> xxx xxx xxx
>
> **Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal**

[61] JSFI, Stipulated Facts, par. 3, Docket – Vol. 1, p. 251.
[62] Docket – Vol. 1, pp. 10 to 18.

> **to its claim for tax credit or refund of excess unutilized excess VAT**. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. **After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs**. Simply put, **the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court**."[63] *(Emphasis and underscoring supplied)*

While the foregoing case involves a claim for tax refund or credit of unutilized VAT, We find the principle enunciated therein as applicable in a claim for tax refund or issuance of TCC of unutilized CWT.

Based on the afore-cited jurisprudence, RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities and is never intended as a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund. It is further stated that the failure of the taxpayer to submit the requirements listed under RMO No. 53-98 is not fatal to the taxpayer's claim for tax credit or refund.

In view thereof, there is no basis to conclude that petitioner's alleged non-compliance with RMO No. 53-98 and RR No. 2-2006 would be fatal to its claim for tax refund or credit.

It bears stressing that the CTA is a court of record, and the cases filed before it are litigated de novo and party litigants should prove every minute aspect of its case.[64] This Court is not precluded from accepting petitioner's evidence, even assuming these were not presented at the administrative level.[65] The question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[66]

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[63] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation)*, G.R. 205055, July 18, 2014.

[64] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[65] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

[66] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, in the reduced amount of ₱7,486,552.83, representing its excess and unutilized Creditable Withholding Tax for Calendar Year 2016.

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 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 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