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SECOND DIVISION

[G.R. No. 189792. June 20, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **CEBU HOLDINGS, INC.,** *respondent.*

SYLLABUS

1. TAXATION; WITHHOLDING TAXES; REQUISITES FOR CLAIMING A REFUND OF EXCESS CREDITABLE WITHHOLDING TAXES, ENUMERATED.— The requisites for claiming a refund of excess creditable withholding taxes are: (1) the claim for refund was filed within the two-year prescriptive period; (2) the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount of tax withheld therefrom; and (3) the income upon which the taxes were withheld was included in the income tax return of the recipient as part of the gross income.

2. ID.; ID.; ID.; WHEN PRIOR YEAR'S EXCESS CREDITS HAVE ALREADY BEEN FULLY APPLIED AGAINST A TAXABLE YEAR'S INCOME TAX LIABILITY, THE UNSUBSTANTIATED TAX CREDITS OF THAT TAXABLE YEAR CAN NO LONGER BE CARRIED OVER AND APPLIED AGAINST ITS INCOME TAX LIABILITY FOR THE SUCCEEDING TAXABLE YEAR; CASE AT BAR— The ruling of the CTA First Division and the CTA *En Banc* clearly affects respondent's income tax liability for taxable year 2003 precisely because respondent carried over the amount of ₱16,194,108.00 as prior year's excess credits, to which it is not entitled. Respondent is once again trying to evade the adverse effect of the ruling of the CTA First Division that respondent (petitioner therein) failed to substantiate almost all of its claimed prior year's excess credits, especially since respondent already carried over and applied the amount of ₱16,194,108.00 as prior year's excess creditable tax against the income tax due for the succeeding taxable year 2003. To reiterate, the CTA First Division already ruled that respondent (petitioner therein) failed to substantiate its prior year's excess credits of ₱30,150,767.00 except for the amount of ₱288,076.04,

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> which can be applied against respondent's income tax liability for taxable year 2002. Thus, since respondent's prior year's excess credits have already been fully applied against its 2002 income tax liability, the ₱16,194,108.00 unsubstantiated tax credits in taxable year 2002 could no longer be carried over and applied against its income tax liability for taxable year 2003. Nevertheless, it is incumbent upon petitioner to issue a final assessment notice and demand letter for the payment of respondent's deficiency tax liability for taxable year 2003. x x x In this case, no pre-assessment notice is required since respondent taxpayer carried over to taxable year 2003 the prior year's excess credits which have already been fully applied against its income tax liability for taxable year 2002.

APPEARANCES OF COUNSEL

Mildo Flor C. Sison and *Elner A. Reyes* for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 29 July 2009 Decision and the 9 October 2009 Resolution of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 478. The CTA *En Banc* affirmed the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division which ordered the issuance of a tax credit certificate in the reduced amount of ₱2,083,878.07[2] representing the excess creditable taxes for taxable year 2002 in favor of respondent Cebu Holdings, Inc. (respondent).

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] The dispositive portion of the Decision dated 10 November 2008 of the CTA First Division erroneously ordered petitioner to issue a tax credit certificate in favor of respondent in the amount of **₱2,083,868.07** instead of **₱2,083,878.07**, which is the correct amount of "Refundable Excess Tax Credits" as computed by the CTA First Division. The amount stated in the dispositive portion is clearly a typographical error.

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The Facts

Respondent is a registered real estate developer. On 15 April 2003, respondent filed with the Bureau of Internal Revenue (BIR) its Income Tax Return (ITR) for the year ending 31 December 2002, which states:

Sales/Revenues/Receipts/Fees	395,529,877
Less:	213,551,009
Cost of Sales/Services	181,978,868
Gross Income from Operation	
Add: Non-Operation and Other Income	9,170,916
Total Gross Income	191,149,784
Less: Deductions	147,535.224
Taxable Income	43,614,560
Tax Rate	32.00%
Income Tax	13,956,659
MCIT	4,377,937
Tax Due	**13,956,659**
Less:	
Prior Year's Excess Credits	33,468,076
Creditable Tax Withheld for the First Three Quarters	12,130,450
Creditable Tax Withheld for Fourth Quarter	6,861,605
Total Tax Credits/Payments	52,460,131
Tax Payable/(Overpayment)-prior year's tax credit	(19,511,417)
Tax Payable/(Overpayment)-current year's tax credit	**(18,992.055)**[3]

Respondent indicated in its ITR that it is opting to be issued a tax credit certificate for the alleged overpayment of ₱18,992,055.00.

Subsequently, respondent filed an amended ITR for taxable year 2002, which states:

Sales/Revenues/Receipts/Fees	395,529,877
Less: Cost of Sales/Services	213,551,009
Gross Income from Operation	181,978,868
Add: Non-Operation and Other Income	9,170,916
Total Gross Income	191,149,784
Less: Deductions	147,535,224
Taxable Income	43,614,560

[3] *Rollo*, p. 49. Emphasis supplied.

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Tax Due (32%)	13,956,659
Less: Tax Credits/Payments	
Prior Years' Excess Credits	30,150,767
Creditable Tax Withheld for the First Three Quarters	12,130,450
Creditable Tax Withheld for the Fourth Quarter	6,861,605
Total Creditable Tax Withheld — 2002	18,992,055
Total Tax Credits/Payments	49,142,822
Tax Payable (Overpayment)	(35,186,163)[4]

Respondent likewise indicated in its amended ITR that it is opting to be issued a tax credit certificate for the alleged overpayment of ₱18,992,055.00.

On 4 March 2005, respondent filed with the BIR a written claim for a tax credit certificate in the amount of ₱18,992,055.00. When petitioner failed to act upon respondent's claim, respondent filed a Petition for Review with the CTA First Division on 15 April 2005.

On 6 June 2006, the CTA First Division granted respondent's request for the appointment of an Independent Certified Public Accountant (CPA) under Rule 13 of the Revised Rules of the Court of Tax Appeals. The Court- commissioned Independent CPA filed his Final and Consolidated Report on 3 August 2006.

The report of the Independent CPA states:

Summary of Findings

In summary, based on the procedures performed to verify the accuracy of the amount of overpaid income tax/excess Creditable Withholding Taxes (CWTs) as of the year ended December 31, 2002 amounting to PhP18,992,054.91 and the propriety of the documents supporting the claim for refund or tax credit of the Company on the present case at hand, we present below our findings and observations according to the particular source of creditable taxes, as follows:

Real Estate Sales- PhP 6,067,093.08

A. CWTs supported by original Withholding Tax Remittance Return duly stamped "Received"

[4] Records (CTA First Division), p. 224.

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	by the Authorized Agent Bank and were machine validated with its supporting Contract to Sell or Deed of Sale (Annex 1)	₱5,764,623.06
B.	CWT supported by Certificate Authorizing Registration; no related income declared during the taxable year 2002 (Annex 2)	18,856.25
C.	CWT[s] supported by original Withholding Tax Remittance Return not stamped "Received"; but were Machine Validated by the Authorized Agent Bank (Annex 3)	141,087.59
D.	CWT[s] supported by original Withholding Tax Remittance Return duly stamped "Received" by Authorized Agent Bank but were not Machine Validated by the Authorized Agent Bank; but supported by BIR-Collections and Reconciliation System (Annex 4)	142,526.18
TOTAL — CWTs per reviewed certificates		₱6,067,093.08
	Unaccounted Difference – passed due to immateriality	(0.00)
TOTAL — CWTs claimed per December 31, 1998 [sic] Amended ITR		₱6,067,093.08

Real Estate Leasing- Php 12,800,461.83

E.	CWTs supported by original Certificates of Creditable Tax Withheld at Source (Annex 5)	₱9,707,369.69
F.	CWTs not supported by Certificates of Creditable Tax Withheld at Source Withholding Tax (Annex 6)	67,710.10
G.	CWTs filed out of period (Annex 7)	2,818,260.83
H.	Double Claim (Annex 8)	213,124.04
TOTAL — CWTs per reviewed certificates		₱12,806,464.66
Unaccounted difference – passed due to immateriality		(6,002.83)
TOTAL — CWTs claimed per December 31, 1998 [sic] Amended ITR		₱12,800,461.83

Other Income- Management Fees - Php 124,500.00

I.	CWTs supported by original Certificates of Creditable Tax Withheld at Source (Annex 9)	₱ 124,500.00

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TOTAL — CWTs per reviewed certificates	₱ 124,500.00
Unaccounted Difference	(00.00)
TOTAL — CWTs claimed per December 31, 1998 [sic] Amended ITR	₱ 124,500.00[5]

The Ruling of the CTA First Division

The CTA First Division agreed with the findings of the Independent CPA, except for the amount of ₱3,857.33 which the Independent CPA erroneously included as part of the Creditable Withholding Taxes (CWTs) filed out of period in the amount of ₱2,818,260.83. The CTA First Division found that the certificate supporting the creditable tax of ₱3,857.33 shows that the same was withheld in taxable year 2002. Thus, the CTA First Division held that only the amount of ₱2,814,403.50 pertains to "CWTs filed out of period," after deducting the amount of ₱3,857.33 from ₱2,818,260.83.

The CTA First Division further held that out of the total creditable tax withheld of ₱18,992,055.00, only the amount of ₱15,877,961.02 represents respondent's valid claim for taxable year 2002. The CTA First Division disallowed CWTs totaling ₱3,114,093.89:

CWT supported by Certificate Authorizing Registration	₱ 18,856.25
CWTs not supported by Certificate of Creditable Tax Withheld at Source Withholding Tax	67,710.10
CWTs filed out of period	2,814,403.50
Double Claim	213,124.04
Disallowed Creditable Withholding Taxes	**₱3,114,093.89**[6]

The CTA First Division also found a discrepancy in respondent's revenue from sales of real properties in the amount of ₱120,964,737.00 as indicated in its ITR, which is lower by ₱19,999.70 compared to the amount of ₱120,984,736.70 gross sales stated in its withholding tax remittance returns. For failure of respondent to account for the discrepancy in sales of real properties amounting to ₱19,999.70, the CTA First Division disallowed CWTs in the amount of ₱999.99, computed as follows:

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[5] *Rollo*, pp. 215-216. Emphasis in the original.

[6] *Id*. at 115. Emphasis in the original.

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Sales of Goods/Properties per income tax return	₱ 120,964,737.00
Less: Sales of Real properties per withholding tax remittance returns	₱ 120,984,736.70
Discrepancy in sales of real properties	₱ 19,999.70
Multiply by : 5% withholding tax rate	0.05
Disallowed Creditable Withholding Taxes	**₱ 999.99**[7]

The CTA First Division also disallowed the ₱124,500.00 CWTs pertaining to management fees amounting to ₱2,490,000.00 for failure of respondent to indicate such amount under "Sales of Services" in its ITR. Although respondent reported a "Miscellaneous" income of ₱4,205,134.00, it failed to submit documents to prove that the ₱2,490,000.00 management fees formed part of its Miscellaneous income of ₱4,205,134.00. The CTA First Division stated:

Hence, [respondent] complied with the third requisite but only to the extent of ₱15,752,461.03, out of the total claimed creditable withholding taxes of ₱15,877,961.02 with valid proofs of withholding, to wit:.

Claimed creditable withholding taxes w/ valid proofs of withholding		₱ 15,877,961.02
Less:	a. Creditable taxes withheld pertaining to the discrepancy in sales of real properties per income tax return and per withholding tax remittance return	999.99
	b. Creditable taxes withheld pertaining to the management fees of ₱2,490,000.00	124,500.00
Claimed creditable taxes withheld pertaining to [respondent's] declared income in its 2002 income tax return		**₱ 15,752,461.03**[8]

The CTA First Division further ruled that respondent failed to substantiate the ₱30,150,757.00[9] prior year's excess credits, except for the amount of ₱288,076.04.

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[7] *Id*. at 117. Emphasis in the original.

[8] *Id*. at 117-118. Emphasis in the original.

[9] The amount stated in the amended ITR representing Prior Year's Excess Credits is ₱30,150,767.00.

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In its Decision dated 10 November 2008, the CTA First Division held:

In sum, out of the reported prior year's excess credits of ₱30,150,757.00, only the amount of ₱288,076.04 shall be applied against the income tax liability for taxable year 2002 in the amount of ₱13,956,659.00. The remaining income tax liability of ₱13,668,582.96 shall be offset against the substantiated creditable taxes withheld in taxable year 2002 in the amount of ₱15,752,461.03, leaving a refundable excess tax credits of only ₱2,083,878.07, computed as follows:

Sales/Revenues/Receipts/Fees	₱395,529,877.00
Less: Cost of Sales/Services	213,551,009.00
Gross Income from Operation	₱181,978,868.00
Add: Non-operation & Other Income	9,170,916.00
Total Gross Income	₱191,149,784.00
Less: Deductions	147,535,224.00
Taxable Income	₱ 43,614,560.00
Tax Due (32%)	₱ 13,956,659.00
Less: Prior year's excess credits	288,076.04
Tax Still Due	₱ 13,668,582.96
Less: Substantiated Creditable Taxes Withheld	15,752,461.03
Refundable Excess Tax Credits	**₱ 2,083,878.07**

WHEREFORE, the instant *Petition for Review* is hereby GRANTED. Accordingly, [the Commissioner of Internal Revenue] is hereby ORDERED TO ISSUE TAX CREDIT CERTIFICATE in favor of [Cebu Holdings, Inc.] in the reduced amount [of] ₱2,083,8[7]8.07, representing excess creditable taxes for taxable year 2002.[10]

Petitioner and respondent filed separate Motions for Partial Reconsideration which were both denied by the CTA First Division in a Resolution dated 12 March 2009.[11]

On 26 March 2009, respondent filed an Urgent Motion to Withdraw the Petition for Review in C.T.A. Case No. 7218 on

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[10] *Rollo*, p. 119. Emphasis in the original.

[11] *Id*. at 135-136.

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the ground that it shall no longer pursue its claim for a tax credit certificate. Instead, respondent is opting to carry forward the excess creditable income taxes to the succeeding taxable quarters of the succeeding taxable years until the same have been fully utilized. In a Resolution dated 5 May 2009,[12] the CTA First Division denied respondent's motion.

On 16 April 2009, petitioner filed a petition for review before the CTA *En Banc*, assailing the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division.

The Ruling of the CTA *En Banc*

The CTA *En Banc* affirmed the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division. The CTA *En Banc* agreed with the finding of the CTA First Division that respondent is entitled only to ₱2,083,878.07 of tax credit certificate representing excess creditable taxes for taxable year 2002. The CTA *En Banc* further ruled that respondent's claim for refund filed with the BIR on 4 March 2005 and the Petition for Review filed on 15 April 2005 were within the reglementary period.

As regards the unsubstantiated ₱16,194,108.00 prior year's tax credit which was carried over by respondent for taxable year 2003, the CTA *En Banc* held that since the refund claim pertains only to the taxable year 2002, the alleged tax deficiency for taxable year 2003 cannot be offset against the excess creditable taxes covered by the refund claim.

Petitioner filed a Motion for Reconsideration which the CTA *En Banc* denied for lack of merit. Hence, this petition for review.

Petitioner asserts that respondent is not entitled to the ₱2,083,878.07 refund of excess creditable withholding tax for taxable year 2002. Furthermore, petitioner reiterates that respondent is liable for deficiency income tax for taxable year 2003 because respondent erroneously carried over the amount of ₱16,194,108.00 as prior year's excess credits, to which it is not entitled, to the succeeding taxable year 2003.

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[12] *Id*. at 137-138.

The Issues

Petitioner raises the following issues:

1. Whether respondent is entitled to a tax credit certificate in the amount of ₱2,083,878.07, representing respondent's excess creditable taxes for taxable year 2002; and
2. Whether respondent is liable for deficiency income tax for taxable year 2003.

The Court's Ruling

The petition is partly meritorious.

The requisites for claiming a refund of excess creditable withholding taxes are: (l) the claim for refund was filed within the two-year prescriptive period; (2) the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount of tax withheld therefrom; and (3) the income upon which the taxes were withheld was included in the income tax return of the recipient as part of the gross income.[13]

Respondent complied with all the requisites, albeit the CTA First Division found some discrepancies with the claimed refund and the amount to which respondent is entitled for refund.

First, respondent filed the claim for refund within the two-year prescriptive period. As found by the CTA First Division and CTA *En Banc*, respondent filed its claim for refund with the BIR on 4 March 2005 and the Petition for Review before the CTA on 15 April 2005, which both fell within the two-year prescriptive period counting from the date respondent filed its ITR on 15 April 2003.

Second, as proof of taxes withheld, respondent submitted the Certificate Authorizing Registration, Withholding Tax

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[13] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, 752 Phil. 375 (2015); *Rep. of the Philippines v. Team (Phils.) Energy Corp*., 750 Phil. 700 (2015); *Commissioner of Internal Revenue v. Team (Phils.) Operations Corp*., 731 Phil. 141 (2014).

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Remittance Returns, and Certificates of Creditable Tax Withheld at Source, upon which the Independent CPA based his report.

Third, respondent submitted its amended 2002 ITR to show that the income upon which the taxes were withheld was included in its ITR. However, upon comparison with the Certificates of Creditable Tax Withheld at Source and Withholding Tax Remittance Returns, the CTA First Division and the CTA *En Banc* found certain discrepancies and held that out of the total claimed CWT of ₱15,877,961.02, respondent was only able to provide valid proofs of withholding for the amount of ₱15,752,461.03.

Thus, the CTA First Division correctly held that respondent is entitled to a refundable excess tax credits of ₱2,083,878.07 after deducting the substantiated prior year's excess credits (₱288,076.04) and the substantiated CWT (₱15,752,461.03) from the total tax due (₱13,956,659.00).

However, as pointed out by petitioner, respondent erroneously carried over the amount of ₱16,194,108.00 as prior year's excess credits, to which it is not entitled, to the succeeding taxable year 2003 as shown in respondent's Annual ITR for the year 2003.[14] The fact that respondent carried over the amount of ₱16,194,108.00 as prior year's excess credits to the succeeding taxable year 2003 was even mentioned in the Decision dated 10 November 2008 of the CTA First Division.[15] It should be stressed that the amount of ₱16,194,108.00 is the remaining

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[14] *Rollo*, p. 181. Annex P.

[15] *Id*. at 110-111. On pages 5 and 6 of its Decision, the CTA First Division stated that: "Out of the total tax credits of ₱49,142,822.00, petitioner [Cebu Holdings, Inc.] utilized the amount of ₱13,956,659.00 to answer for its income tax liability for taxable year 2002; leaving an excess tax credits of ₱35,186,163.00, consisting of the creditable taxes withheld for taxable year 2002 in the amount of ₱18,992,055.00 and the remainder of the prior year's excess credits of ₱16,194,108.00 x x x. Out of the income tax overpayment of ₱35,186,163.00, only the amount of ₱16,194,108.00 was carried over as prior year's excess credits to the succeeding taxable year 2003 as shown in petitioner's [Cebu Holdings, Inc.] amended Annual Income Tax Return for taxable year 2003."

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portion of the claimed prior year's excess credits in the amount of ₱30,150,767.00 after deducting the ₱13,956,659.00 tax due in respondent's amended ITR for taxable year 2002. **But the CTA First Division categorically ruled that respondent (petitioner therein) failed to substantiate its prior year's excess credits of ₱30,150,767.00 except for the amount of ₱288,076.04, which can be applied against respondent's income tax liability for taxable year 2002.** The CTA First Division stated:

> Petitioner [Cebu Holdings, Inc.] alleges that no amount of the creditable taxes withheld in taxable year 2002 was utilized since its prior year's excess credits of ₱30,150,7[6]7.00 were more than enough to offset its income tax liability for taxable year 2002 in the amount of ₱13,956,659.00.
>
> **However, petitioner failed to substantiate its prior year's excess credits of ₱30,150,7[6]7.00, save for the amount of ₱288,076.04**, computed as follows:
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> x x x x x x x x x
>
> **In sum, out of the reported prior year's excess credits of ₱30,150,7[6]7.00, only the amount of ₱288,076.04 shall be applied against the income tax liability for taxable year 2002 in the amount of ₱13,956,659.00.** The remaining income tax liability of ₱13,668,582.96 shall be offset against the substantiated creditable taxes withheld in taxable year 2002 in the amount of ₱15,752,461.03, leaving a refundable excess tax credits of only ₱2,083,878.07 x x x.[16] (Emphasis supplied)

Such categorical pronouncement of the CTA First Division affects respondent's claim for excess creditable income taxes which can be carried over to succeeding taxable years. Thus, when the CTA First Division denied respondent's Motion for Partial Reconsideration of the Decision dated 10 November 2008, respondent filed an "Urgent Motion to Withdraw Petition for Review." In its motion, respondent stated that "it shall no longer pursue its claim for tax credit certificate and, instead carry forward the said excess creditable income taxes to the

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[16] *Id*. at 118-119.

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succeeding taxable quarters of the succeeding taxable years until the same will have been fully utilized."[17] Clearly, respondent filed the motion in order to avoid the adverse effect of the ruling of the CTA First Division that respondent (petitioner therein) failed to substantiate almost all of its claimed prior year's excess credits, especially since respondent already carried over and applied the amount of ₱16,194,108.00 as prior year's excess creditable tax against the income tax due for the succeeding taxable year 2003. The CTA First Division denied for lack of merit respondent's Urgent Motion to Withdraw Petition for Review.

It should be emphasized that respondent no longer appealed the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division to the CTA *En Banc*. Neither did respondent appeal the CTA *En Banc* Decision dated 29 July 2009, which affirmed the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division.

In the Decision dated 10 November 2008 of the CTA First Division, the substantiated prior year's excess credits have already been fully applied against respondent's income tax liability for taxable year 2002. Thus, respondent no longer has any remaining prior year's excess creditable tax which can be carried over and applied against its income tax due for the succeeding taxable year 2003.

Clearly, respondent erred when it carried over the amount of ₱16,194,108.00 as prior year's excess credits to the succeeding taxable year 2003, resulting in a tax overpayment of ₱7,653,926.00 as shown in its 2003 Amended ITR:

Aggregate Income Tax Due	₱ 25,567,685
Less: Tax Credits/Payments	
Prior Year's Excess Credits	**16,194,108**
Creditable Tax Withheld for the First Three Quarters	6,472,176
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	10,555,327

[17] Records (CTA First Division), pp. 377-378.

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Total Tax Credits/Payments	33,221,611
Total Tax Payable/(Overpayment)	**(₱ 7,653,926)**[18]

Considering that respondent's prior year's excess credits have already been fully applied against its 2002 income tax liability, the ₱16,194,108.00 unsubstantiated tax credits in taxable year 2002 could no longer be carried over and applied against its income tax liability for taxable year 2003. Thus, the amount of ₱16,194,108.00 as prior year's excess credits should be deleted, making respondent liable for income tax in the amount of ₱8,540,182.00 for taxable year 2003 as computed below:

Aggregate Income Tax Due	₱ 25,567,685
Less:Tax Credits/Payments	
Prior Year's Excess Credits	**0**
Creditable Tax Withheld for the First Three Quarters	6,472,176
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	10,555,327
Total Tax Credits/Payments	**17,027,503**
Total Tax Payable/(Overpayment)	**₱ 8,540,182**

Respondent argues that the alleged deficiency income tax for taxable year 2003 has no bearing on the case which merely involves a claim for a tax credit certificate for taxable year 2002.

We cannot subscribe to respondent's reasoning. The ruling of the CTA First Division and the CTA *En Banc* clearly affects respondent's income tax liability for taxable year 2003 precisely because respondent carried over the amount of ₱16,194,108.00 as prior year's excess credits, to which it is not entitled. Respondent is once again trying to evade the adverse effect of the ruling of the CTA First Division that respondent (petitioner therein) failed to substantiate almost all of its claimed prior year's excess credits, especially since respondent already carried over and applied the amount of ₱16,194,108.00 as prior year's excess creditable tax against the income tax due for the succeeding taxable year 2003. To reiterate, the CTA First Division already ruled that respondent (petitioner therein) failed

[18] *Rollo*, p. 181, Annex P. Emphasis supplied.

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to substantiate its prior year's excess credits of ₱30,150,767.00 except for the amount of ₱288,076.04, which can be applied against respondent's income tax liability for taxable year 2002. Thus, since respondent's prior year's excess credits have already been fully applied against its 2002 income tax liability, the ₱16,194,108.00 unsubstantiated tax credits in taxable year 2002 could no longer be carried over and applied against its income tax liability for taxable year 2003.

Nevertheless, it is incumbent upon petitioner to issue a final assessment notice and demand letter for the payment of respondent's deficiency tax liability for taxable year 2003. Section 228 of the National Internal Revenue Code provides that:

> Section 228. *Protesting Assessment*. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayers of his findings: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) **When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year**; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non exempt persons.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis supplied)

In this case, no pre-assessment notice is required since respondent taxpayer carried over to taxable year 2003 the prior year's excess credits which have already been fully applied against its income tax liability for taxable year 2002.

WHEREFORE, the petition is **PARTIALLY GRANTED**. We **AFFIRM** with **MODIFICATION** the 29 July 2009 Decision and the 9 October 2009 Resolution of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 478. Petitioner Commissioner of Internal Revenue is ordered to: (a) issue a tax credit certificate to respondent Cebu Holdings, Inc. in the amount of **₱2,083,878.07**, representing excess creditable taxes for taxable year 2002; and (b) issue a final assessment notice and demand letter for the payment of respondent's deficiency tax liability in the amount of ₱8,540,182.00 for taxable year 2003.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.*, concur.