REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PANAY POWER CORPORATION, *Petitioner,*	**CTA Case No. 10870**
	Members:
-versus-	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 15 2025 10:20 a.m.

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DECISION

MANAHAN, *J.*:

THE CASE

Before this Court is a *Petition for Review* praying of this Court that a judgment be rendered:

(1) Declaring petitioner entitled to a refund of the unutilized and excess creditable expanded withholding tax in the amount of [₱15,798,383.00][1] representing petitioner's unutilized and excess creditable withholding tax (CWT) withheld by its customers for the taxable year (TY) 2019;

(2) Ordering respondent to refund or issue a tax credit certificate to petitioner in the amount of [₱15,798,383.00]; and

(3) Granting petitioner such other reliefs as may be just and equitable in the premises.[2]

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[1] The amount of refund originally prayed for by the petitioner was ₱16,279,531.00, but the same was reduced to ₱15,798,383.00, which is the amount of refund the Independent Certified Public Accountant (ICPA) concluded that petitioner is entitled to, Refer to par. 50 and Prayer, petitioner's *Memorandum*, Docket – Vol. II, pp. 621 and 626, respectively.

[2] Prayer, *Petition for Review*, Docket – Vol. I, p. 13.

THE PARTIES

Petitioner Panay Power Corporation is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at Barangay Ingore, La Paz, Iloilo City, Iloilo.[3] It is registered as a taxpayer with the Bureau of Internal Revenue (BIR) Revenue District Office No. 121 - Excise LT Division I, with Taxpayer Identification No. 004-964-861-00000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue with office address at BIR Building, Diliman, Quezon City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On June 1, 2020, petitioner filed its *Annual Income Tax Return* (BIR Form No. 1702-RT) (Annual ITR) for TY 2019,[6] which reflected the following Tax Credits/Payments:[7]

Schedule 7 - Tax Credits/Payments	
Prior Year's Excess Credits Other Than MCIT	₱ 14,510,342.00
Creditable Tax Withheld from Previous Quarter/s per BIR Form No. 2307	10,561,241.00
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	5,718,290.00
Total Tax Credits/Payments	**₱ 30,789,873.00**

The said Annual ITR for TY 2019 also reflected an overpayment of ₱26,252,118.00, computed as follows:[8]

Part II – Total Tax Payable	
Total Income Tax Due (Overpayment)	₱ 4,537,755.00
Less: Total Tax Credits/Payments	30,789,873.00
Total Amount Payable (Overpayment)	**(₱26,252,118.00)**

Petitioner marked the option *"To be refunded"* for overpayment in its Annual ITR for TY 2019.[9]

[3] Par. 1, Stipulated Fact, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 338; Exhibit "P-1", Docket – Vol. I, pp. 510 to 527.
[4] Exhibit "P-2", Docket – Vol. I, pp. 528 to 529.
[5] Par. 1, Summary of Admitted Fact, JSFI, Docket – Vol. I, p. 338.
[6] Exhibit "P-3", BIR Records, pp. 150 to 157.
[7] Exhibit "P-3", BIR Records, pp. 150 to 157, at p. 152.
[8] Exhibit "P-3", BIR Records, pp. 150 to 157, at p. 157.
[9] Exhibit "P-3", Line 21, BIR Records, p. 157.

On February 15, 2022, petitioner filed with the BIR, the letter of even date, together with the *Application for Tax Credits/Refunds* (BIR Form No. 1914),[10] requesting for the refund of excess and unutilized CWTs for TY 2019, in the amount of ₱16,279,531.00.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on May 30, 2022.[11] The case was initially raffled to this Court's First Division.

On September 16, 2022, respondent filed his *Answer*,[12] interposing the following special and affirmative defenses, to wit:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
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> xxx xxx xxx
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> 8. In the instant case, petitioner did not provide supporting documents to show that income from which creditable withholding tax being claimed was declared in the Annual Income Tax Return (AITR). There is no direct linkage between the creditable withholding tax and the income as reflected in the AITR.
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> xxx xxx xxx
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> 11. However, compliance with the afore-quoted requirements will not suffice if petitioner failed to comply with the prescribed checklist of requirements to be submitted involving claims for unutilized creditable withholding tax pursuant to **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).
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> xxx xxx xxx
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> 14. Respondent would like to emphasize that the law and Bureau of Internal Revenue issuances provide 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**. The fact of withholding of taxes is one thing, the actual remittance of the same is another.
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> xxx xxx xxx
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> 19. Moreover, Revenue Regulations No. 2-2006 (Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income

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[10] Exhibits "P-6" and "P-6-A", Docket – Vol. I, pp. 540 to 541. Although the date received stamped on these documents is "FEB 15 202**1**", the year appears to be erroneous as it was corrected to "202**2**" in the copies found in the BIR Records, pp. 164 to 165.
[11] Docket – Vol. I, pp. 6 to 19.
[12] Docket – Vol. I, pp. 148 to 157.

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) provides:

xxx xxx xxx

24. In cases such as this, before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before *trial de novo* proceeds and disposes of the issue of refund entitlement under substantive law, it must first be proved that there was procedural compliance in pursuing the administrative claim leading to the appellate proceedings.

25. In *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, the Highest Tribunal held:

> 'A judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit**. Second, cases filed in the CTA are litigated de novo. Thus, a respondent should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first[] place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.' *(Emphasis Supplied)*

xxx xxx xxx"

Respondent then transmitted the *BIR Records* of the present case on September 19, 2021, consisting of 218 pages in one (1) folder.[13]

[13] *Compliance* dated September 16, 2022, Docket – Vol. I, pp. 159 to 161.

The Pre-Trial Conference was set and held on November 24, 2022.[14] Prior thereto, petitioner's *Pre-Trial Brief* was filed on November 21, 2022,[15] while *Respondent's Pre-Trial Brief* was submitted on November 22, 2022.[16]

On December 14, 2022, the parties filed their *Joint Stipulation of Facts and Issue*,[17] which was approved in the Resolution dated January 10, 2023,[18] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated February 6, 2023 was then issued.[19]

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Reymonda Aida B. Obrero,[20] its Financial Operations Head; and (2) Mr. Nikkolai F. Canceran,[21] the Court-commissioned Independent Certified Public Accountant (ICPA).[22]

The *Report* of the ICPA was submitted on May 22, 2023.[23]

The case was then transferred to this Court's Third Division pursuant to the Notice of Resolution dated May 29, 2023.[24]

On July 19, 2023, petitioner filed its *Formal Offer of Evidence*,[25] to which respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on July 31, 2023.[26] In the Resolution dated November 3, 2023,[27] the Court admitted petitioner's offered exhibits, *except* the following: (1) Exhibits "P-57-1-1", "P-68-1-1", and "P-79-1-1", for not being found in the records of the case; and (2) Exhibits "P-18", "P-20", "P-90", "P-91", "P-57-1" to "P-57-3", "P-68-1", "P-68-2", "P-68-3", "P-79-1" to "P-79-3", "P-89-1", and "P-91-1" to "P-91-3", for failure to present the originals for comparison.

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[14] Notice of Pre-Trial Conference dated October 5, 2022, Docket – Vol. I, pp. 165 to 165-B; Minutes of the hearing held on, and Order dated, November 24, 2022, Docket – Vol. I, pp. 328 to 330 and 332 to 334, respectively.
[15] Docket – Vol. I, pp. 166 to 176.
[16] Docket – Vol. I, pp. 323 to 326.
[17] Docket – Vol. I, pp. 338 to 341.
[18] Docket – Vol. I, p. 355.
[19] Docket – Vol. I, pp. 359 to 367.
[20] Exhibit "P-9", Docket – Vol. I, pp. 201 to 214; Minutes of the hearing held on, and Order dated, July 4, 2023, Docket – Vol. I, pp. 496 to 498.
[21] Exhibit "P-11", Docket – Vol. I, pp. 483 to 491; Minutes of the hearing held on, and Order dated, July 4, 2023, Docket – Vol. I, pp. 496 to 498.
[22] *Oath of Commission* dated March 23, 2023, Docket – Vol. I, p. 386; Minutes of the hearing held on, and Order dated, March 23, 2023, Docket – Vol. I, pp. 383 to 385 and 389 to 390, respectively.
[23] Exhibit "P-10", Docket – Vol. I, pp. 417 to 475.
[24] Docket – Vol. I, p. 476-A.
[25] Docket – Vol. I, pp. 500 to 509.
[26] Docket – Vol. I, pp. 547 to 549.
[27] Docket – Vol. II, pp. 561 to 562.

In the meantime, respondent filed his *Manifestation & Motion* on October 9, 2023,[28] stating that there is still no finalized report on the investigation, thus, he will no longer present his witness, which the Court noted in the Minute Resolution dated October 18, 2023.[29]

Thereafter, upon petitioner's *Motion for Partial Reconsideration (of the Resolution dated 3 November 2023 on Petitioner's Formal Offer of Evidence)* filed on November 29, 2023,[30] and respondent having failed to file a comment,[31] the Court, in the Resolution dated May 24, 2024,[32] granted petitioner's *Motion for Partial Reconsideration*, and admitted Exhibits "P-18", "P-20", "P-90", "P-91", "P-57-1" to "P-57-3", "P-68-1", "P-68-2", "P-68-3", "P-79-1" to "P-79-3", "P-89-1", and "P-91-1" to "P-91-3".

Respondent filed his *Memorandum* on December 19, 2023,[33] while petitioner submitted its *Memorandum* on June 28, 2024.[34]

The present case was submitted for decision on July 11, 2024.[35]

THE ISSUE

The parties submit the following issue for this Court's resolution:

> "Whether or not Petitioner is entitled to a refund in the amount of Php 16,279,531.00 representing Petitioner's alleged unutilized and excess CWT withheld by its customers for the taxable year 2019."[36]

Petitioner's arguments:

Petitioner argues that all the requisites for granting a refund of unutilized and excess CWT were duly proven in the present *Petition*

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[28] Docket – Vol. II, pp. 553 to 555.
[29] Docket – Vol. II, p. 557.
[30] Docket – Vol. II, pp. 564 to 570.
[31] Records Verification Report dated February 12, 2024, issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 592.
[32] Docket – Vol. II, pp. 597 to 599.
[33] Docket – Vol. II, pp. 578 to 588.
[34] Docket – Vol. II, pp. 605 to 627.
[35] Minute Resolution dated July 11, 2024, Docket – Vol. II, p. 631.
[36] Stipulated Issue, JSFI, Docket – Vol. I, pp. 338 to 339.

as: (1) the claim for refund was filed within the two-year prescriptive period as provided under Sections 204 and 229 of the 1997 National Internal Revenue Code (NIRC), as amended; (2) the fact of withholding by petitioner's customers is established by the *Certificates of Creditable Tax Withheld at Source* indicating the amount of income payment and the amount of tax withheld therefrom; (3) 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 (ITR) for TY 2019; and (4) petitioner did not carry over the excess and unutilized CWT subject of the claim for refund to the succeeding quarter or year.

Respondent's counter-arguments:

Respondent contends that petitioner is not entitled to the claim for refund of CWT since: (1) petitioner did not provide supporting documents to show that income from which CWT being claimed was declared in the Annual ITR; (2) petitioner failed to comply with the prescribed checklist of requirements to be submitted involving claims for unutilized CWT pursuant to Revenue Memorandum Order (RMO) No. 53-98 and failed to prove compliance with Revenue Regulations (RR) No. 2-2006; and (3) petitioner failed to present evidence to prove actual remittance of the alleged taxes to the BIR.

THE RULING

The present *Petition for Review* is partly meritorious.

The submission of complete documents stated in RMO No. 53-98 and RR No. 2-2006 is not a requirement for a grant of tax refund.

Before delving into the merits of this case, this Court shall first address respondent's contention that petitioner's failure to prove compliance with the submission of relevant documents pursuant to RMO No. 53-98 and RR No. 2-2006 in the administrative level render its *Petition for Review* vulnerable and weak, and unworthy of refund. Respondent contends that failure on the part of the taxpayer to submit relevant documents on the administrative level, makes the administrative claim for refund or credit *pro-forma* and shall be construed as if no administrative claim was filed at all.

Respondent's position lacks merit.

A cursory reading of RMO No. 53-98[37] and RR No. 2-2006[38] shows that nowhere is it stated that the non-submission of the documents enumerated therein would *ipso facto* result in the denial of the claim for tax refund or credit. In fact, RR No. 2-2006 merely imposes a penalty of fine for non-submission of the information or statement required therein, but not the outright denial of any claim for tax refund or credit.

Moreover, in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[39] the Supreme Court, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*,[40] pointed out that there is nothing under RMO No. 53-98 that requires the submission of complete documents for a grant of a 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)*:
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> > The CIR's reliance on RMO 53-98 is misplaced. <u>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</u>. 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.

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37 SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

38 SUBJECT: Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld at Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.

39 G.R. No. 207112, December 8, 2015.

40 G.R. No. 205055, July 18, 2014.

> Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'
>
> Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.

As explained earlier and underlined in *Team Sual* above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal 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." *(Emphases added)*

It must be noted that while the above case involves a claim for tax refund or credit of unutilized value-added tax, *We* find that the principle enunciated therein is also applicable in a claim for tax refund or issuance of tax credit certificate of unutilized CWT.

As held in the *Pilipinas Total Gas* case, 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 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. Moreover, the Supreme Court categorically ruled that the failure of the taxpayer to submit the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund.

In any case, even when this Court ought to disregard the said ruling in the *Pilipinas Total Gas* case, and petitioner was indeed *not* able to submit the required documents at the administrative level, the same is of no moment. In *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.),*[41] the Supreme Court ruled as follows:

> "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.
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> 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:
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>> 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, <u>including those that may not have been submitted to the CIR</u> as the case is being essentially decided in the first instance.**" *(Emphasis and underscoring added)*

Since this case is being essentially decided in the first instance, as respondent's inaction on petitioner's claim for refund prompted the latter to seek judicial recourse, this Court may give credence to all evidence presented by petitioner, including those that may not have

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

been submitted at the administrative level. As a corollary, this Court cannot give credence to the said argument of respondent regarding petitioner's failure to submit the supposed required documents at the administrative level.

Petitioner complied with Section 76 of the 1997 NIRC, as amended, and has not carried over the excess CWTs being claimed for refund.

Pertinent to the resolution of the present case is Section 76 of the 1997 NIRC, as amended, which is quoted hereunder for ready reference, *viz.*:

> "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:
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> (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.
>
> 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."

The above provision discusses the two (2) options of a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. The taxpayer may either: (1) carry-over the excess amount to the succeeding taxable quarters/years until it is fully utilized; or (2) file a claim for refund in the form of cash or tax credit certificate. However, once the carry-over option is taken actually or constructively it becomes irrevocable for that taxable period.[42] The phrase "*for that taxable period*" refers

[42] *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018, citing the case of *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,

to the TY when the excess income tax, subject of the option, was acquired by the taxpayer.[43]

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 facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[44]

A perusal of petitioner's Annual ITR for TY 2019[45] shows that petitioner had income tax credits in the total amount of ₱30,789,873.00,[46] consisting of the: (i) prior year's excess tax credits in the amount of ₱14,510,342.00,[47] and (ii) CWTs accumulated during the four (4) quarters of TY 2019, in the aggregate amount of ₱16,279,531.00 (the sum of ₱10,561,241.00 and ₱5,718,290.00),[48] as follows:

Prior Year's Excess Credits Other Than MCIT		₱ 14,510,342.00
Add: Creditable Taxes Withheld – Taxable year 2019:		
From Previous Quarter/s	₱10,561,241.00	
For the 4th Quarter	5,718,290.00	16,279,531.00
Total Tax Credits		**₱30,789,873.00**

Petitioner claims that its minimum corporate income tax (MCIT) due in the amount of ₱4,537,755.00[49] for TY 2019 was paid using a portion of its prior year's excess credits of ₱14,510,342.00. This leaves the prior year's excess tax credits in the amount of ₱9,972,587.00 and creditable taxes withheld during the TY 2019 in the amount of ₱16,279,531.00, or a total of ₱26,252,118.00, unutilized as of December 31, 2019, as shown below:

2015; *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 156637 & 162004, December 14, 2005; *Systra Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 176290, September 21, 2007.

[43] *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; *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.

[44] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.

[45] Exhibit "P-3", BIR Records, pp. 150 to 157.

[46] Exhibit "P-3", Schedule 7, Line 12, BIR Records, p. 152.

[47] Exhibit "P-3", Schedule 7, Line 1, BIR Records, p. 152.

[48] Exhibit "P-3", Schedule 7, Lines 5 and 6, respectively, BIR Records, p. 152.

[49] Exhibit "P-3", Lines 16, 43 and 44, BIR Records, pp. 156 to 157.

Prior Year's Excess Credits other than MCIT	₱ 14,510,342.00
Less: Income Tax Due (MCIT)	4,537,755.00
Balance of Prior Year's Excess Credits	₱ 9,972,587.00
Add: Creditable Taxes Withheld – taxable year 2019	16,279,531.00
Excess Creditable Taxes Withheld as of December 31, 2019	**₱26,252,118.00**

With regard to the prior year's excess credits, Section 2.58.3 of RR No. 2-98 provides that the excess CWTs for a TY, which were opted to be carried-over to the succeeding TY, are automatic credits against the income tax due of such succeeding TY, so long as the amount of excess CWTs is evidenced by the ITR for the TY when such excess credits arose, to wit:

> "Sec. 2.58.3. *Claim for tax credit or refund.* —
>
> xxx xxx xxx
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> (C) Excess Credits. – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided **he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits**, and on which return he has not opted for a cash refund or tax credit certificate." *(Emphasis added)*

Simply put, the submission of the Annual ITR for the preceding TY (TY 2018 in this case), is sufficient to substantiate the "Prior Year's Excess Credits other than MCIT" reported in a taxpayer's Annual ITR for the current TY (*i.e.*, taxable year 2019).

In this case, petitioner presented its Annual ITR for TY 2018, showing the excess tax credits amounting to ₱27,055,127.00,[50] which consisted of the balance of prior year's excess credits of ₱14,510,342.00 (₱16,048,225.00[51] less ₱1,537,883.00[52]) and CWTs during TY 2018 in the amount of ₱12,544,785.00 (₱9,462,566.00[53] plus ₱3,082,219.00[54]), as shown below:

[50] Exhibit "P-12", Line 20, p. 1 of 8, USB.
[51] Exhibit "P-12", Schedule 7, Line 1, p. 6 of 8, USB.
[52] Exhibit "P-12", Lines 16 and 44, pp. 1 and 2 of 8, respectively, USB.
[53] Exhibit "P-12", Schedule 7, Line 5, p. 6 of 8, USB.
[54] Exhibit "P-12", Schedule 7, Line 6, p. 6 of 8, USB.

Prior Year's Excess Credits other than MCIT	₱16,048,225.00	
Less: Income Tax Due (MCIT)	1,537,883.00	
Balance of Prior Year's Excess Credits		₱14,510,342.00
Add: Creditable Taxes Withheld – Taxable year 2018:		
CWT – 1st Three Quarters	₱9,462,566.00	
CWT – 4th Quarter	3,082,219.00	12,544,785.00
Excess CWT as of December 31, 2018		**₱27,055,127.00**

In its Annual ITR for TY 2018, petitioner indicated the option *"To be refunded"* for its excess and unutilized CWTs for TY 2018.[55] Since the balance of the prior year's excess credits as of the end of TY 2018 in the amount of ₱14,510,342.00, as computed above, per Annual ITR for TY 2018, which was carried-over to the succeeding TY 2019 as "Prior Year's Excess Credits other than MCIT" in the amount of ₱14,510,342.00,[56] is more than enough to cover the MCIT due of ₱4,537,755.00[57] for the TY 2019, the CWTs during TY 2019 in the amount of ₱16,279,531.00 remained unutilized as of the end of TY 2019.

Further, in its Annual ITR for TY 2019, petitioner indicated the option *"To be refunded"* for its excess and unutilized CWTs for TY 2019.[58] Also, the CWTs during TY 2019 in the amount of ₱16,279,531.00 was not carried over to the succeeding taxable periods as only the balance of prior year's excess tax credits as of the end of TY 2019, in the amount of ₱9,972,587.00, was reflected in petitioner's 1st, 2nd and 3rd Quarterly ITRs[59] and Annual ITR[60] for the TY 2020 as "Prior Year's Excess Credits – Taxes Withheld"/"Prior Year's Excess Credits other than MCIT".

Thus, the claimed CWTs for TY 2019 in the amount of ₱15,798,383.00[61] may be a proper subject of a claim for credit or refund, pursuant to the afore-quoted Section 76 of the 1997 NIRC, as amended.

Requisites to claim a tax credit or refund of excess and unutilized CWT.

[55] Exhibit "P-12", Line 21, p. 1 of 8, USB.
[56] Exhibit "P-3", Schedule 7, Line 1, BIR Records, p. 152.
[57] Exhibit "P-3", Lines 16, 43 and 44, BIR Records, pp. 156 to 157.
[58] Exhibit "P-3", Line 21, BIR Records, p. 157.
[59] Exhibits "P-5", "P-16" and "P-17", Line 31A, Docket – Vol. I, p. 535 and USB, respectively.
[60] Exhibit "P-4", Line 44, Docket – Vol. I, p. 531.
[61] The amount of refund originally prayed for by the petitioner was ₱16,279,531.00, but the same was reduced to ₱15,798,383.00, which is the amount of refund the ICPA concluded that petitioner is entitled to, Refer to par. 50 and Prayer, petitioner's *Memorandum*, Docket – Vol. II, pp. 621 and 626, respectively.

In addition to the requisites provided under Section 76 of the 1997 NIRC, as amended, jurisprudence and pertinent RR provide that in order for a taxpayer to be entitled to a refund or an issuance of tax credit certificate for unutilized excess CWTs, the following three (3) requisites must be complied with:

1. The claim for refund must be filed within the two (2)-year prescriptive period as provided under Sections 204(C) and 229 of the 1997 NIRC, as amended;

2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld must be included in the return of the recipient.[62]

Thus, it behooves petitioner to establish the foregoing requisites.

Petitioner's administrative and judicial claims for refund were timely filed.

Anent the *first* requisite, the pertinent provisions are Sections 204(C) and 229 of the 1997 NIRC, as amended, which provide:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> 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

[62] *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; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; *Citibank N.A. vs. Court of Appeals*, et al., G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; Section 2.58, Revenue Regulations No. 2-98, as amended.

overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*

"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 added)*

The above-stated provisions mandate that the administrative and judicial remedy of filing a claim for refund of erroneously or excessively paid tax must be done within two (2) years from the date of payment of the tax.

It is well-settled that the two (2)-year prescriptive period for claiming a refund of overpaid income tax/CWTs commences to run on the date of filing of the Final Adjustment Return[63] (or Annual ITR). This is so because it is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[64] In other words, it is only logical to reckon the two (2)-year prescriptive period from the time the Final Adjustment Return or the Annual ITR was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer paid an amount exceeding its annual income tax liability.[65]

Here, petitioner filed its Annual ITR[66] for TY 2019 *via* the electronic filing and payment system or eFPS of the BIR on June 1,

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[63] *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.*, G.R. No. 83736, January 15, 1992; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, May 29, 1995.
[64] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.
[65] *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.
[66] Exhibit "P-3", BIR Records, pp. 150 to 157.

2020. Thus, counting from June 1, 2020, petitioner had until June 1, 2022, within which to file both its administrative and judicial claims.

Considering that petitioner filed its administrative claim for refund with the BIR on February 15, 2022,[67] and the present judicial claim was filed on May 30, 2022,[68] both claims for refund of unutilized/excess CWTs were seasonably filed within the two (2)-year prescriptive period.

Petitioner established the fact of withholding but only to the extent of ₱15,349,118.89.

With regard to the *second* and *third* requisites, Section 2.58.3(B) of RR No. 2-98, as amended, 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 added)*

The *second* requisite mandates petitioner to prove the fact of withholding of the claimed CWTs through a copy of the statement duly issued by the payor (withholding agent) to the payee showing the names of the payor and payee, the income payment and the amount of tax withheld therefrom.

In *Commissioner of Internal Revenue vs. Philippine National Bank,*[69] the Supreme Court held that the *Certificate of Creditable Tax Withheld at Source* (BIR Form No. 2307), complete in relevant details, is the competent proof to establish the fact that taxes are withheld.

[67] Exhibits "P-6" and "P-6-A", Docket – Vol. I, pp. 540 to 541.
[68] Docket – Vol. I, pp. 6 to 19.
[69] G.R. No. 180290, September 29, 2014.

The present claim consists of alleged excess and unutilized CWTs amounting to ₱15,798,383.00. The ICPA prepared a "List of BIR Form No. 2307 with No Exception"[70] of the said amount based on petitioner's 2019 Summary Alphalist of Withholding Tax (SAWT) relative to creditable income taxes withheld, to wit:

Exhibit No.	Name of Payor	Income Payment	CWT
"P-48"	AKLAN ELECTRIC COOPERATIVE, INC.	₱ 5,323,981.62	₱ 106,479.63
"P-49"	AKLAN ELECTRIC COOPERATIVE, INC.	8,047,430.31	160,948.61
"P-50"	AKLAN ELECTRIC COOPERATIVE, INC.	6,406,583.15	128,131.66
"P-51"	ILOILO 1 ELECTRIC COOPERATIVE, INC.	16,137,478.00	322,749.56
"P-52"	ILOILO 1 ELECTRIC COOPERATIVE, INC.	12,846,204.00	256,924.08
"P-53"	ILOILO 1 ELECTRIC COOPERATIVE, INC.	12,492,458.50	249,849.17
"P-55"	PANAY ELECTRIC COMPANY, INC.	21,405,014.50	428,100.29
"P-56"	PANAY ENERGY DEVELOPMENT CORPORATION	2,427,217.99	48,544.36
"P-57"	TOLEDO HOLDINGS CORPORATION	1,274,999.50	25,499.99
"P-58"	AKLAN ELECTRIC COOPERATIVE INC	6,673,103.20	133,462.06
"P-59"	AKLAN ELECTRIC COOPERATIVE INC	8,910,479.64	178,209.59
"P-60"	AKLAN ELECTRIC COOPERATIVE INC	11,463,032.10	229,260.64
"P-61"	ILOILO 1 ELECTRIC COOPERATIVE INC	13,891,853.00	277,837.06
"P-62"	ILOILO 1 ELECTRIC COOPERATIVE INC	19,756,439.00	395,128.78
"P-63"	ILOILO 1 ELECTRIC COOPERATIVE INC	26,968,250.00	539,365.00
"P-64"	PANAY ELECTRIC COMPANY INC	22,051,763.50	441,035.27
"P-65"	PANAY ELECTRIC COMPANY INC	21,296,110.50	425,922.21
"P-66"	PANAY ELECTRIC COMPANY INC	27,573,469.50	551,469.39
"P-67"	PANAY ENERGY DEVELOPMENT CORPORATION	19,332,879.87	386,657.60
"P-68"	TOLEDO HOLDINGS CORPORATION	1,289,166.50	25,783.33
"P-69"	AKLAN ELECTRIC COOPERATIVE, INC.	11,929,476.73	238,589.53
"P-70"	AKLAN ELECTRIC COOPERATIVE, INC.	7,522,277.91	150,445.56
"P-71"	AKLAN ELECTRIC COOPERATIVE, INC.	6,576,616.33	131,532.33
"P-72"	ILOILO 1 ELECTRIC COOPERATIVE, INC.	33,393,707.00	667,874.14
"P-73"	ILOILO 1 ELECTRIC COOPERATIVE, INC.	22,713,306.54	454,266.13
"P-74"	ILOILO 1 ELECTRIC COOPERATIVE, INC.	22,635,417.27	452,708.35
"P-75"	PANAY ELECTRIC COMPANY, INC.	30,496,497.50	609,929.95
"P-76"	PANAY ELECTRIC COMPANY, INC.	39,098,857.50	781,977.15
"P-77"	PANAY ELECTRIC COMPANY, INC.	47,660,602.51	953,212.05
"P-78"	PANAY ENERGY DEVELOPMENT CORPORATION	17,713,284.50	354,265.69
"P-80"	AKLAN ELECTRIC COOPERATIVE INC	5,670,023.58	113,400.47
"P-81"	AKLAN ELECTRIC COOPERATIVE INC	7,453,810.75	149,076.22
"P-82"	AKLAN ELECTRIC COOPERATIVE INC	8,272,080.30	165,441.61
"P-83"	ILOILO 1 ELECTRIC COOPERATIVE INC	22,463,205.89	449,264.11
"P-84"	ILOILO 1 ELECTRIC COOPERATIVE INC	23,438,267.50	468,765.35
"P-85"	ILOILO 1 ELECTRIC COOPERATIVE INC	21,075,502.50	421,510.05
"P-86"	PANAY ELECTRIC COMPANY INC	43,065,282.49	861,305.65
"P-87"	PANAY ELECTRIC COMPANY INC	33,075,531.69	661,510.63
"P-88"	PANAY ELECTRIC COMPANY INC	26,741,751.76	534,835.04
"P-89"	PANAY ENERGY DEVELOPMENT CORPORATION	38,381,724.00	767,634.48
"P-89"	PANAY ENERGY DEVELOPMENT CORPORATION	54,520,234.50	1,090,404.69
"P-90"	SOUTHERN CROSS DISTRIBUTION INC	453,776.79	9,075.54
	Total	**₱789,919,149.92**[71]	**₱15,798,383.00**

[70] Exhibit "P-10", Annex C-2, Docket – Vol. I, p. 471.
[71] Sum based on actual footing.

In determining the CWT amount to be refunded or credited, it is necessary to verify not only whether the claim is supported by the required BIR Forms; it must also correspond with the income included in the tax return of the claimant, upon which the taxes were withheld. Thus, We shall first delve into whether petitioner established the fact of withholding to the CWTs sought to be refunded or credited, then proceed to verify whether the income with which the claimed CWTs relate were reported as part of gross income in the ITR.

The Court examined the aforesaid BIR Forms No. 2307 and found that majority of the forms has no significant exceptions in the claimed CWT amount of ₱15,798,383.00. However, in the course of examining the individual CWT certificates (BIR Form No. 2307) submitted in support of the present claim, the Court noted that CWT amounting to ₱449,264.11 with incorrect Tax Identification Number of petitioner shall be disallowed, as follows:

Exhibit	Payor	Income Payment	CWT
"P-83"	Iloilo 1 Electric Coop. Inc.	₱22,463,205.89[72]	₱449,264.11

Thus, in relation with the *second* requisite, only CWT amounting to ₱15,349,118.89 (₱15,798,383.00 less ₱449,264.11) which emanates from income payments amounting to ₱767,455,944.03 (₱789,919,149.92 less ₱22,463,205.89) is valid.

Proof of actual remittance is not indispensable.

Respondent further contends that the proof of actual remittance of the taxes withheld to the BIR is indispensable in a claim for refund of excess CWT.

We again disagree with respondent.

In *Commissioner of Internal Revenue vs. Philippine National Bank*,[73] the Supreme Court ruled as follows:

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[72] Amount of income payment per BIR Form No. 2307 is actually ₱22,463,205.**69** but amount of income payment per "List of BIR Form No. 2307 with No Exception" is ₱22,463,205.**89**, Exhibit "P-10", Annex C-2, Docket – Vol. I, p. 471.

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

> "Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **<u>Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits</u>. 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 responsibility of withholding and remitting income taxes**.
>
> This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*,[74] citing the Court of Tax Appeals' explanation, is instructive:
>
> > **. . . proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner**. Section 2.58.3(B) of Revenue Regulations No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. **In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. 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**." *(Emphases and underscoring added)*

Thus, respondent's contention that proof of actual remittance of the taxes withheld to the BIR is indispensable lacks merit.

However, not all of the income upon which the taxes were withheld were declared as part of income in the Annual ITR.

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[74] G.R. No. 179617, January 19, 2011.

As regards the *third* requisite, petitioner must prove that the income payments amounting to ₱767,455,944.03 from which the valid CWTs of ₱15,349,118.89 were withheld were declared as part of petitioner's gross income in its Annual ITR.

In its Annual ITR for TY 2019, petitioner declared total Net Sales/Revenues/Receipts/Fees of ₱1,066,380,084.00[75] and Other Taxable Income of ₱8,309,262.00[76] or in the aggregate amount of ₱1,074,689,346.00.

An examination of petitioner's "Summary of Revenues and Other Income" amounting to ₱1,074,689,348.57[77] (broken down below) as lifted by the ICPA from the general ledger (GL), reveals that the revenues reported therein tally with the total revenues per petitioner's 2019 Annual ITR.

Description	**Total Revenue Amount**	**Annex Reference**[78]
Breakdown of the Energy Fees	₱ 630,305,388.06	Annex B-1
Breakdown of the Fuel and Other Passed on Cost	303,699,355.65	Annex B-2
Breakdown of the Interco Sales – Energy Fee	45,647,168.10	Annex B-3
Breakdown of the Interco Sales – Fuel and Other Passed on Cost	48,346,448.25	Annex B-4
Breakdown of the Service Level Agreement Fees	38,381,724.03	Annex B-5
Total Revenue for the Year 2019	**₱1,066,380,084.09**	
Breakdown of Interest Income	₱ 3,062,469.82	Annex B-6
Breakdown of Miscellaneous Income	5,246,794.66	Annex B-7
Total Other Income for Taxable Year 2019	**₱ 8,309,264.48**	
Total Revenue and Other Income for Taxable Year 2019	**₱1,074,689,348.57**	

To ascertain whether the income payments of ₱767,455,944.03 from the related valid CWTs amounting to ₱15,349,118.89 was part of petitioner's gross income of ₱1,074,689,346.00 and declared in its 2019 Annual ITR, petitioner submitted in evidence the related Billing Statements/Journal Vouchers (JV),[79] Official Receipts,[80] Breakdown of the Energy Fees,[81] Breakdown of the Fuel and Other Passed on Cost,[82] Breakdown of the Interco Sales – Energy Fee,[83] Breakdown of

[75] Exhibit "P-3", Line 30, BIR Records, p. 156.
[76] Exhibit "P-3", Line 33, BIR Records, p. 156.
[77] Exhibit "P-10", Annex B, Docket – Vol. I, p. 435; Minor difference of ₱2.57 (₱1,074,689,348.57 less ₱1,074,689,346.00).
[78] Exhibit "P-10", Annexes B-1 to B-7, Docket – Vol. I, pp. 436 to 467.
[79] Exhibits "P-48-1" to "P-91-3", USB.
[80] Exhibits "P-48-1-1" to "P-90-1-1", USB.
[81] Exhibit "P-10", Annex B-1, Docket – Vol. I, pp. 436 to 450.
[82] Exhibit "P-10", Annex B-2, Docket – Vol. I, pp. 451 to 458.

the Interco Sales – Fuel and Other Passed on Cost,[84] Breakdown of the Service Level Agreement Fees,[85] Breakdown of Interest Income,[86] and Breakdown of Miscellaneous Income.[87]

Upon examination of the aforementioned documents and matching the same to the income reflected in the Summary of CWTs *vis-à-vis* the Breakdown of Revenues[88] lifted from the GL, as well as to the Billing Statements/JVs/Official Receipts, the Court finds that petitioner sufficiently showed that the income payments upon which the claimed CWTs were based were reported as part of the gross income in its 2019 Annual ITR, ***except*** for the difference in income amounting to ₱17,573,760.68 and its corresponding CWT of ₱351,475.21, wherein the amount of income payments per certificate (BIR Form No. 2307) exceeded the amount reflected per Annual ITR/GL, computed as follows:

Name of Payor	**BIR Form No. 2307**		**Income lifted from GL**	**Difference in Amount of Income**	**CWT (Difference x 2%)**
	Exhibit No.	**Income per CWT**			
Panay Energy Development Corporation	"P-67"	₱ 3,944,190.50	₱1,759,119.32[89]	₱2,185,071.18	₱43,701.42
		15,388,689.50	-	15,388,689.50	307,773.79
	Total	**₱19,332,880.00**	**₱1,759,119.32**	**₱17,573,760.68**	**₱351,475.21**

Albeit the ₱17,573,760.68 difference in income is supported by Billing Statement Nos. 1216 and 1220,[90] such transactions cannot be traced to the revenue and other income declared in the 2019 Annual ITR.

Thus, in compliance with the *third* requisite, petitioner was able to prove that the income payments of ₱749,882,183.35 (₱767,455,944.03 less ₱17,573,760.68), with corresponding CWT of ₱14,997,643.68, formed part of the income reported in its 2019 Annual ITR, *viz*:

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[83] Exhibit "P-10", Annex B-3, Docket – Vol. I, p. 459.
[84] Exhibit "P-10", Annex B-4, Docket – Vol. I, p. 460.
[85] Exhibit "P-10", Annex B-5, Docket – Vol. I, p. 461.
[86] Exhibit "P-10", Annex B-6, Docket – Vol. I, pp. 462 to 466.
[87] Exhibit "P-10", Annex B-7, Docket – Vol. I, p. 467.
[88] Exhibit "P-10", Annexes B-1 to B-7, Docket – Vol. I, pp. 436 to 467.
[89] Supported by Billing Statement No. 1210 and Official Receipt No. 3403A, Exhibits "P-67-1" and "P-67-1-1", respectively, USB; Included in the "Breakdown of the Energy Fees" and "Breakdown of the Fuel and Other Passed on Cost", Exhibit "P-10", Annexes B-1 and B-2, Docket – Vol. I, pp. 436 to 458.
[90] Exhibits "P-67-2" and "P-67-3", USB.

Claimed CWT		₱15,798,383.00
Less:		
CWT Not Properly Supported with BIR Form No. 2307	₱449,264.11	
CWT related to income payment which cannot be traced to ITR	351,475.21	800,739.32
Refundable unutilized CWT		**P14,997,643.68**

In sum, petitioner sufficiently proved that it is entitled to a refund or issuance of tax credit certificate in the amount of ₱14,997,643.68, representing its unutilized CWTs for TY 2019, pursuant to Section 76 in relation to Sections 204(C) and 229 of the 1997 NIRC, as amended.

ACCORDINGLY, the present *Petition for Review* is **PARTIALLY GRANTED**. Respondent is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner, the reduced amount of **₱14,997,643.68**, representing petitioner's unutilized CWTs for the TY 2019.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice