REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2911** (CTA Case No. 10499)
-versus-	Present: **DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
PANAY POWER CORPORATION, *Respondent.*	Promulgated: SEP 30 2025 3:15

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed on May 22, 2024, seeking the reversal of the Decision[2] ("Assailed Decision"), promulgated on October 16, 2023, and the Resolution[3] ("Assailed Resolution"), dated April 16, 2024, both issued by the Court's Special First Division ("Court in Division"); and praying for the rendering of a new decision denying respondent's entire claim for refund of alleged unutilized creditable withholding taxes (CWT) relative to taxable year ("TY") 2018.[4]

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[1] Petition for Review, *Rollo*, pp. 7-42, with annexes.
[2] Decision, dated October 16, 2023 ("Assailed Decision"), *id.* at 25-39.
[3] Resolution, dated April 16, 2024 (Assailed Resolution"), *id.* at 41-42.
[4] See Prayer, Petition for Review, *id.* at 16.

The Parties

Petitioner Commissioner of Internal Revenue ("CIR" or "petitioner") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who is granted with the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the *National Internal Revenue Code ("Tax Code") of 1997, as amended.*[5]

Panay Power Corporation ("respondent" or "Panay Power"), on the other hand, is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at La Paz, Ingore, Iloilo City, Iloilo. It is engaged in the business of generation, collection, and distribution of electricity, and is registered with the Large Taxpayers Service, Revenue District Office No. 121-Excise LT Division 1 of the BIR.[6]

The Facts

On April 12, 2019, respondent filed its Annual Income Tax Return ("AITR") for TY2018, declaring an overpayment of income tax in the aggregate amount of Php27,055,127.00, broken down as follows:

Net Taxable Income		P (143,783,906.00)
Income Tax Due Other Than MCIT		-
Minimum Corporate Income Tax		P1,537,883.00
Total Income Tax Due		P1,537,883.00
Less Prior Year's Excess Credits Other Than MCIT		16,048,225.00
Subtotal		P(14,510,342.00)
Less Creditable Tax Withheld per BIR Form No. 2307		
From Previous Quarter/s	P9,462,566.00	
For the 4th Quarter	3,082,219.00	12,544,785.00
Net Taxable Payable (Overpayment)		P(27,055,127.00)

Respondent opted to be refunded for the unutilized CWTs withheld in 2018 in the amount of Php12,544,785.00, thus carrying over the amount of Php14,510,342.00, representing its prior year's excess credits, to TY2019. It then filed with the BIR Excise Large Taxpayers Division I a claim for refund or issuance of tax credit certificate relative to the same TY2018 unutilized CWTs.

[5] See Par. 1, Parties, Petition for Review, *id.* at 8.
[6] See Par. 1, Facts, Assailed Decision, *id.* at 25.

Due to petitioner's inaction, respondent filed the original Petition for Review on May 17, 2021. Such judicial claim was raffled to the Court's First Division.

After a full-blown trial, the Court in Division rendered the Assailed Decision on October 16, 2023,[7] partially granting the original Petition for Review and directing petitioner to refund or issue a tax credit certificate in favor of respondent, the dispositive portion of which states:

> **WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Panay Power Corporation in the amount of P10,844,787.06, representing its excess and utilized CWTs relative to taxable year 2018.

Thereafter, on November 6, 2023, petitioner filed a Motion for Reconsideration,[8] which was denied by the Court in Division on April 16, 2024[9] due to lack of merit.

Undeterred, petitioner filed the current Petition for Review on May 22, 2024,[10] after being granted an extension of time to appeal to the Court *En Banc*.[11] Respondent, on the other hand, filed its Comment/Opposition on August 19, 2024.[12]

The Court *En Banc* then submitted the instant case for decision on September 6, 2024.[13]

The Issue

The lone issue, as identified by petitioner in the instant Petition for Review, is:

> WHETHER THE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND OF EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2018 FOR THE AMOUNT OF PHP10,844,787.06.

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[7] *Supra* note 2.
[8] Motion for Reconsideration, dated November 6, 2023, Division Docket, Vol. II pp. 615-620..
[9] See Assailed Resolution, dated April 16, 2024, *supra* note 3.
[10] *Supra* note 1.
[11] See Motion for Extension to File Petition for Review, *Rollo*, pp. 1-4; see also Resolution, dated May 9, 2024, granting petitioner additional 15 days from May 8, 2024 or until May 23, 2024, within which to file a Petition for Review with the CTA *En Banc*, *Rollo*, p. 6.
[12] Comment/Opposition [Re: Petitioner's Petition for Review] dated August 19, 2024, *id.* at 52-61.
[13] See Notice issued by CTA *En Banc*, *id.* at 82.

The Arguments

Petitioner's Arguments

Petitioner submits that respondent failed to comply with the requirements set forth under *Revenue Memorandum Order* ("*RMO*") *No. 53-98*[14] and *Revenue Regulations* ("*RR*") *No. 2-2006.*[15] Petitioner advances that such failure to submit all relevant documents stripped the BIR of the opportunity to determine the veracity of respondent's claim for refund or issuance of a tax credit certificate for the claimed amount; thus, making the judicial appeal vulnerable and weak, unworthy of refund.

Petitioner also highlights that respondent's documentary evidence failed to sufficiently establish a direct linkage between the creditable withholding tax and the income as reflected in the AITR. According to petitioner, if the income from which the CWT is attributed was not declared by respondent, such CWT must be disallowed from the claim.

Likewise, petitioner insists that it is incumbent upon the respondent to prove actual remittance of the alleged withheld taxes to the BIR as nothing should be refunded to respondent where there was no remittance of the alleged CWT to the BIR. Petitioner argues that respondent's non-presentation of the withholding agents to verify the Certificates of Creditable Tax Withheld at Source ("CWT certificates") and to prove the propriety of its claim for refund, and failure to establish the fact of remittance of the alleged withheld taxes by various payors to the BIR, are all fatal to the refund claim. Petitioner insists that under the Rules on Evidence, the CWT certificates must be identified and authenticated; and that the mere presentation of the Independent Certified Public Accountant ("ICPA") who opined and testified that the said certificates were faithful reproductions of the original, must be deemed insufficient.

Finally, petitioner invokes the well-entrenched rule that tax refunds are strictly construed against the taxpayer and in favor of the government. Thus, respondent-claimant must justify its entitlement to refund by words too plain to be mistaken and too categorical to be misinterpreted.

[14] 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, dated June 1, 1998.

[15] 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, dated December 1, 2005.

Respondent's Arguments

Respondent, in its Comment/Opposition, highlights that petitioner's Petition for Review is a mere rehash of previous arguments already resolved by the Court in Division in the Assailed Decision, thus, should be deemed without merit.

Nevertheless, respondent proceeds to rebut petitioner's contentions by emphasizing that the fact of withholding and remittance of the excess and unutilized CWTs were sufficiently established by the CWT certificates themselves. It also argues that petitioner has the capability to check in the BIR's system whether the withholding taxes reflected in the various CWT certificates have been remitted to the BIR as such income payors report these withholding tax information in the withholding tax returns filed with the BIR.

Moreover, respondent counters that there is nothing in the law which requires the submission of complete documents enumerated in *RMO No. 53-98* and *RR No. 2-2006*. Also, petitioner did not render a decision on respondent's administrative claim, thus, not informing the latter of the denial on the ground of its alleged failure to submit all the required documents.

The Ruling of the Court

The instant Petition for Review was timely filed before the Court En Banc

The Court *En Banc* shall first look into the timeliness of the filing of the Petition for Review before Us.

Under *Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA"),*[16] a party adversely affected by a decision or resolution of a Division of the CTA on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing a petition for review within 15 days from receipt of the assailed decision or resolution.

The Assailed Resolution herein was received by the petitioner on April 23, 2024,[17] thus, giving petitioner the deadline of May 8, 2024. However, on May 7, 2024, petitioner requested the Court *En Banc* for an extension of time to file its appeal.[18] The motion was granted on May 9, 2024, allowing petitioner until May 23, 2024 within which to file its Petition for Review.[19] Hence, the same was timely filed on May 22, 2024. ⁄

[16] A.M. No. 05-11-07-CTA, 22 November 2005.
[17] See Notice of Resolution, dated April 18, 2024, stamped received by BIR-NOB-Litigation Division on April 23, 2024, Division Docket, Vol II p. 636.
[18] See Motion for Extension to File Petition for Review, *supra* note 11.
[19] See Resolution, dated May 9, 2024, *supra* note 11.

Now, before delving into the merits of the case, the Court *En Banc* deems it proper to emphasize that it does not escape Our attention that the arguments laid down by petitioner are, as aptly pointed out by respondent, a mere rehash of the issues already ruled upon by the Court in Division in the Assailed Decision. On this ground alone, the Petition for Review should already be dismissed. Nonetheless, for full disposal of the case at hand, We shall pass upon the issues raised.

Failure to comply with the requirements of RMO No. 53-98 and RR No. 2-2006 does not ipso facto result in an outright denial of a refund claim.

According to petitioner, Panay Power failed to comply with the requirements set forth under *RMO No. 53-98* and *RR No. 2-2006*, which should be a valid ground for the judicial disallowance of the refund claim.

The CIR's arguments are unmeritorious.

Foremost, a cursory reading of the above revenue issuances reveals 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. Moreover, *Section 5 of RR No. 2-2006* merely imposes penalties for failure to file, keep or supply the statement, list or information required therein, without any mention on how such failure would affect a taxpayer's claim for refund.

Further, in the case of *Commissioner of Internal Revenue vs. Chevron Holdings, Inc. [Formerly Caltex (Asia) Limited] ("Chevron"),*[20] the Supreme Court, citing *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue ("Pilipinas Total Gas"),*[21] categorically debunked the CIR's insistence that all the documents enumerated in *RMO No. 53-98* must be submitted to support an application for tax refund or credit, to wit:

> The issue of whether the failure of the taxpayer to submit all the documents enumerated in RMO No. 53-98 is fatal to its judicial claim for VAT refund had been squarely raised and amply settled in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue.* The Court clarified:
>
> > Anent RMO No. 53-98, the CTA Division found that the said order provided a checklist of documents for the BIR to consider in granting claims for refund, and served as a guide for the courts in determining whether the taxpayer had submitted complete supporting documents.
> >
> > This should also be corrected.

[20] G.R. No. 233301, February 17, 2020.
[21] G.R. No. 207112, December 8, 2015.

To quote RMO No. 53-98:

. . . .

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 . . . ." 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."

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.

(Emphasis included; underscoring supplied)

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.***
>
> ***RMO No. 53-98 assumes relevance only on matters pertinent to an audit of tax liabilities. Thus, it finds no application in the present case since Chevron's claim is one for refund of its input tax.***
> (Emphasis and italics supplied.)

While the foregoing case involves a claim for VAT refund, We find the pronouncements therein equally applicable to refund claims for unutilized CWTs. Clearly, *RMO No. 53-98* is merely a guide to revenue officers as to what documents they may require taxpayers to present upon tax audits. It was never intended to set another condition on a taxpayer's entitlement to tax refunds. Thus, failure to submit the requirements therein should not be deemed fatal to a refund claim like the case at hand.

In any case, respondent cannot simply be faulted for its failure to submit complete documents absent any notice from the BIR that other documents are required, consistent with the ruling of the Supreme Court cited above.

More importantly, jurisprudence[22] has sufficiently settled that the Court of Tax Appeals is not limited by the evidence presented in the administrative claim in the BIR. Cases filed in the CTA are litigated *de novo*; thus, the Court may give credence to all evidence presented by respondent, including those not presented at the administrative level. As explained by the Supreme Court in the *Chevron* and *Pilipinas Total Gas* cases above, the question of whether the evidence submitted by taxpayer is sufficient to warrant the granting of its refund claim lies within the sound discretion and judgment of the Court; thus, any inadequacy of submissions at the administrative level should not be deemed fatal to its case.

Respondent has sufficiently established that the income from which the claimed CWTs were withheld were reported as part of gross income.

Petitioner argues that respondent's documentary evidence failed to sufficiently establish a direct linkage between the creditable withholding tax and the income as reflected in the AITR. According to petitioner, if the income from which the CWT is attributed was not declared by respondent, such CWT must be disallowed from the claim.

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22 *Tullet Prebon (Philippines), Inc. vs. Commissioner of Internal Revenue*, G.R. No. 257219, July 15, 2024; *Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, February 1, 2023.

We, however, note that petitioner only made a general and seemingly in passing objection to the Court in Division's findings regarding this matter reproduced below:

> 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 inquire into whether Panay Power 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 was part of the gross income in the AFS and ITR.
>
> . . . .
>
> That the income payments related to the claimed CWT formed part of Panay Power's reported income per ITR is evidenced by its 2018 Billing Statements, 2018 Official Receipts, 2018 General Ledger, 2017 General Ledger, Schedule of 2018 Billing Statements which were subjected to CWT, Schedule of 2018 Official Receipts net of CWTs, Schedule of Total Revenues per 2018 General Ledger, Schedule of Total Intercompany Interest Income per 2018 General Ledger, Schedule of Total Revenues per 2017 General Ledger related to 2018 CWTs, and Schedule of Total Revenues per 2017 General Ledger.
>
> In particular, the ICPA traced (a) the income reflected in the Summary of 2018 CWTs to the 2018 reported revenues in its 2018 General Ledger, and (b) the total revenues per the 2018 General Ledger (GL) to that reported in the (i) 2018 Audited Financial Statements (AFS), as part of Net Fees, Finance Income, or Other Income, and (ii) 2018 ITR, as part of Net Sales/Revenues/Receipts/Fees (Sale of Services) or Other Taxable Income.[23]

Gleaning from the foregoing, the Court in Division reviewed various documents submitted by respondent in order to ascertain that the income payments related to the claimed CWT formed part of Panay Power's reported income per ITR. Aside from this, the Court in Division even mentioned how the ICPA performed the tracing of the income to the taxpayer's books, financial statements, and return.

Meanwhile, in the instant Petition for Review, petitioner failed to raise how the foregoing documents reviewed and procedures performed by the Court should prove insufficient to show due reporting of corresponding income.

Inevitably, we find no compelling reason to disturb the Court in Division's findings regarding respondent's declaration of income from which the subject CWTs were withheld.

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[23] Decision, dated October 16, 2023, pp. 8-9, Division Docket Vol. II, pp. 607-608.

Proof of actual remittance of withheld taxes to the BIR is not necessary.

The CIR argues that it is incumbent upon Panay Power to prove actual remittance of the withheld taxes to the BIR as nothing should be refunded to the taxpayer where there was no remittance to the tax authorities in the first place.

We are not persuaded.

Echoing the clear pronouncement of the Court in Division in the Assailed Decision, the CWT certificates are the competent proof to establish the fact that taxes were withheld, and serve as *prima facie* evidence of actual remittance of the corresponding taxes by the withholding agent.

In the case of *Commissioner of Internal Revenue v. Honda Cars Makati, Inc.*,[24] citing *Commissioner of Internal Revenue v. Philippine National Bank*[25] and *Commissioner of Internal Revenue v. Asian Transmission Corporation*,[26] the High Court elucidated that payors of withholding taxes are constituted as withholding agents who hold the taxes in trust of the government. Any failure of the same agents to remit the taxes to the BIR should not prejudice a taxpayer-refund claimant, thus:

> . . .**[P]roof 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 Sections 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.
> (Emphasis in the original.)

Accordingly, the CIR's argument that the withholding agents should have been presented by Panay Power to verify the CWT certificates holds no valid ground. Moreso, the Court *En Banc* finds that insisting on requiring proof of actual remittance, apart from the CWT certificates, before an income recipient can validly use and report the subject taxes as credit, and subsequently claim for a corresponding

[24] G.R. No. 247792 (Notice), September 9, 2020.
[25] G.R. No. 180290, September 29, 2014
[26] G.R. No. 179617, January 19, 2011.

tax refund, would result to an undue burden on a taxpayer-income payee that could even impede on the thrust of affording enterprises the ease of doing business.

All told, the Court *En Banc* finds no reversible error in the decision of the Court in Division. While we agree with petitioner that claims for tax refunds, like tax exemptions, are construed *strictissimi juris* against the taxpayer, it is equally important to accentuate that when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.[27]

ACCORDINGLY, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated October 16, 2023, and the Resolution, dated April 16, 2024, of the Court's Special First Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

On leave
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[27] *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*, G.R. No. 215159, July 5, 2022.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice