REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PANAY POWER CORPORATION, *Petitioner,*	**CTA Case No. 10499**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** OCT 16 2023, 3:00PM

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DECISION

REYES-FAJARDO, J.:

Before the Court is a Petition for Review[1] filed by Panay Power Corporation (Panay Power) on May 17, 2021 against the Commissioner of Internal Revenue (CIR) seeking the refund or issuance of a tax credit certificate in the amount of ₱12,544,784.81 representing alleged excess and unutilized creditable withholding taxes (CWT) relative to taxable year 2018.

FACTS

Petitioner Panay Power Corporation 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.[2] It is engaged in the business of generation, collection, and distribution of electricity.[3] It is registered with the Large Taxpayers Service, Revenue District Office No. 121 - Excise LT Division I, Bureau

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[1] Docket - Vol. I, pp. 7-24.

[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket - Vol. I, p. 310; Exhibit "P-1", Docket - Vol. I, pp. 74 to 91.

[3] Par. 3, Stipulation of Facts, JSFI, Docket - Vol. I, p. 310.

of Internal Revenue (BIR), with Tax Identification Number (TIN) 004-964-861-00000.[4]

Respondent is the head of the BIR, empowered to perform the duties of the office, including acting upon and approving claims for refund or tax credit. Its office address is at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

On April 12, 2019, Panay Power filed its Annual Income Tax Return (ITR)[6] relative to taxable year 2018 through the Electronic Filing and Payment System. It declared an overpayment of income tax in the aggregate amount of ₱27,055,127.00, computed as follows:[7]

Net Taxable Income		₱(143,783,906.00)
Income Tax Due Other Than MCIT		-
Minimum Corporate Income Tax		₱1,537,883.00
Total Income Tax Due		₱1,537,883.00
Less Prior Year's Excess Credits Other Than MCIT		16,048,225.00
Subtotal		₱(14,510,342.00)
Less Creditable Tax Withheld per BIR Form No. 2307		
From Previous Quarter/s	₱9,462,566.00	
For the 4th Quarter	3,082,219.00	12,544,785.00
Net Tax Payable (Overpayment)		**₱(27,055,127.00)**

Panay Power opted to be refunded of any overpayment by marking the corresponding portion in the ITR.[8] It carried over the amount representing its prior years' excess credits net of tax due (₱14,510,342.00) to taxable year 2019; leaving the credits accrued from taxable year 2018 (₱12,544,785.00) unutilized.[9]

On September 18, 2020, Panay Power filed a claim before the BIR Excise LT Division I (administrative claim) seeking the refund or issuance of tax credit certificate relative to the above-mentioned excess and unutilized credits (₱12,544,785.00).[10]

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4 Par. 4, Stipulation of Facts, JSFI, Docket - Vol. I, p. 310; Exhibit "P-2", Docket - Vol. I, pp. 92 to 93.
5 Par. 2, Stipulation of Facts, JSFI, Docket - Vol. I, p. 310.
6 BIR Form No. 1702.
7 Par. 5, Stipulation of Facts, JSFI, Docket - Vol. I, p. 311.
8 Par. 6, Stipulation of Facts, JSFI, Docket - Vol. I, p. 311.
9 Par. 7, Stipulation of Facts, JSFI, Docket - Vol. I, p. 311.
10 Par. 8, Stipulation of Facts, JSFI, Docket - Vol. I, p. 311.

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On account of the CIR's inaction on its administrative claim, Panay Power filed the instant petition[11] on May 17, 2021 (judicial claim).

Proceedings before the Court

The CIR filed an Answer[12] and submitted[13] the BIR Records of the case on October 27, 2021 and February 11, 2022, respectively.

The parties submitted their respective pre-trial briefs[14] and attended the scheduled pre-trial conference,[15] where the CIR manifested that it will no longer present documentary and testimonial evidence. Thereafter, the Court resolved[16] to approve the parties' Joint Stipulation of Facts and Issues[17] and issued a Pre-Trial Order[18] dated April 5, 2022.

During trial, the following persons testified for Panay Power: (1) Ms. Reymonda Aida B. Obrero,[19] Vice President/Controller, Panay Power; and (2) Atty. Walter L. Abela, Jr.,[20] the Court-commissioned Independent Certified Public Accountant (ICPA).

The ICPA's Report and Supplemental Report were submitted to the Court on May 16, 2022[21] and May 23, 2022,[22] respectively.

Panay Power filed its Formal Offer of Evidence (FOE)[23] on July 5, 2022. As the CIR had no express objection,[24] the Court resolved to admit petitioner's offered exhibits.[25]

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11 Par. 9, Stipulation of Facts, JSFI, Docket - Vol. I, p. 311.
12 Docket - Vol. I, pp. 266 to 271.
13 *Compliance* dated February 2, 2021, Docket - Vol. I, pp. 285 to 287.
14 For respondent, see Docket - Vol. I, pp. 276-277. For petitioner, see Docket - Vol. I, pp. 291-300.
15 *Notice of Pre-trial Conference* dated November 18, 2021, Docket - Vol. I, pp. 275 to 275-2; Minutes of the Hearing held on, and Order dated, February 24, 2022, Docket - Vol. I, pp. 303 to 307.
16 In a Resolution dated March 21, 2022. Docket - Vol. I, p. 319.
17 Docket - Vol. I, pp. 310-317.
18 Docket - Vol. I, pp. 352-364.
19 Exhibit "P-9", Docket - Vol. I, pp. 66 to 73; Minutes of the Hearing held on, and Order dated, May 24, 2022, Docket - Vol. II, pp. 504 to 511.
20 Exhibit "P-10", Docket - Vol. I, pp. 340 to 344; Exhibit "P-10-2", Docket - Vol. I, pp. 416 to 422; Exhibit "P-33", Docket - Vol. I, pp. 426 to 434; Minutes of the Hearing held on, and Order dated, May 24, 2022, Docket - Vol. II, pp. 504 to 511.
21 Docket - Vol. I, pp. 375 to 412.
22 Docket - Vol. I, pp. 436 to 502.
23 Docket - Vol. II, pp. 525 to 537.
24 Docket - Vol. II, pp. 539 to 541.
25 Resolution dated August 5, 2022. Docket - Vol. II, pp. 544 to 547.

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After the parties filed their respective Memoranda,[26] the case was submitted for decision on September 22, 2022.[27]

ISSUE

The Court is tasked to ascertain Panay Power's entitlement to a refund or credit of alleged excess and unutilized CWT relative to taxable year 2018.

Petitioner's Arguments

Panay Power anchors its claim on Section 76 of the National Internal Revenue Code of 1997 (Tax Code), as amended. It avers as follows: *First,* the excess and unutilized CWT accrued in 2018 is the proper subject of the instant claim.[28] The amount (₱12,544,785.00) was expressly intended to be refunded, as specified in its 2018 Annual ITR. Further, it was not carried over to succeeding periods.[29] *Second,* it filed administrative and judicial claims within the reglementary period prescribed by the Tax Code.[30] *Third,* the amount claimed forms part of its 2018 gross income and consists of taxes withheld by customers from its payments to Panay Power for services rendered in 2018 as evidenced by the corresponding CWT Certificates (BIR Form No. 2307).[31]

Respondent's Arguments

The CIR counters that Panay Power failed to exhaust administrative remedies before elevating the case to the Court. Consequently, the Court has no jurisdiction over the instant claim.[32] Additionally, the CIR denies Panay Power's entitlement to a refund or credit[33] on account of the latter's (a) failure to present proof of actual remittance of the CWTs sought to be refunded[34] and (b) failure to

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[26] For respondent, Docket - Vol. II, pp. 563 to 574. For petitioner, Docket - Vol. II, pp. 577 to 595.
[27] Minute Resolution dated September 22, 2022, Docket - Vol. II, p. 596.
[28] Docket - Vol. I, p. 10-11.
[29] Docket - Vol. I, p. 12.
[30] Docket - Vol. I, p. 18.
[31] Docket - Vol. I, p. 18-19.
[32] Docket - Vol. I, p. 269.
[33] Memorandum dated August 18, 2022, Docket - Vol. II, pp. 563-574.
[34] Docket - Vol. II, p. 569.

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submit complete supporting documents required by Revenue Memorandum Order No. 53-98.[35]

OUR RULING

Panay Power's Petition for Review is partly meritorious.

Subject of the present case is alleged excess and unutilized CWT, which Panay Power seeks to refund pursuant to Section 76 of the Tax Code, *viz.*:

> SECTION 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.

In this regard, it is already settled that the requisites for claiming a tax refund or credit of CWT are as follows:[36] *First*, the claim must be filed with the CIR within the two (2)-year period from the date of payment of the tax; *Second*, it must be shown on the return that the income received was declared as part of the gross income; and *third*,

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[35] Docket - Vol. II, p. 570-571.

[36] *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348, February 23, 2022; *Commissioner of Internal Revenue v. Team [Philippines] Operations Corp.*, G.R. No. 179260, April 2, 2014.

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the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.

After a careful evaluation of the evidence offered in support of the instant judicial claim, We find in favor of granting Panay Power a refund or credit to the extent of ₱10,844,787.22

Panay Power's administrative and judicial claims were filed within the time prescribed by law.

Excess and unutilized CWT under Section 76 of the Tax Code arises from the overpayment of quarterly income tax. When the taxpayer pays an amount in excess of the tax due, such overpayment is regarded as erroneous. In this regard, the prescriptive period set out in Sections 204 and 229 governs claims for refund or credit of excess or unutilized CWT, *viz.*:

> SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. -
>
> x x x x
>
> (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, [t]hat a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> x x x x
>
> 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, of any sum alleged to have been excessively or in any manner wrongfully 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, [t]hat the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

The above provisions require both administrative and judicial claims to be filed within the same two-year prescriptive period.[37]

In this regard, We note that the timeliness of Panay Power's administrative and judicial claims is no longer in question.[38] However, the CIR submits that the Court does not have jurisdiction over the instant claim on account of Panay Power's failure to exhaust administrative remedies. To recall, Panay Power filed the present petition without awaiting on the CIR's decision on its administrative claim.

The CIR's argument has no merit.

In *Commissioner of Internal Revenue v. Philippine Bank of Communications*,[39] the Supreme Court held that "[w]ith reference to Section 229 of the NIRC, the only requirement for a judicial claim of tax credit/refund to be maintained is that a claim of refund or credit has been filed before the CIR; **there is no mention in the law that the claim before the CIR should be acted upon first before a judicial claim may be filed**." (Emphasis supplied)

The *first requisite* (timeliness) having been satisfied, We now evaluate whether the *second* and *third requisites* have likewise been met.

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[37] *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348, February 23, 2022.
[38] Par. 9, Stipulation of Facts, JSFI, Docket - Vol. I, p. 311.
[39] G.R. No. 211348, February 23, 2022.

Corresponding income reported in AFS/ITR and fact of withholding.

The present claim consists of alleged excess and unutilized CWTs amounting to ₱12,544,784.81. The ICPA prepared a breakdown[40] of this amount based on Panay Power's 2018 Summary Alphalist of Withholding Tax (SAWT) relative to creditable income taxes withheld as per BIR Form No. 2307, to wit:

Billing Statement Number	2307 Date	Customer Name	Gross Income	Tax Withheld	Exhibit Reference
N/A	Jan-Mar	Toledo Holdings Corp.	₱1,970,625.50	₱ 39,412.51	"P-12"
N/A	Apr-Jun	Toledo Holdings Corp.	1,927,235.50	38,544.71	"P-12-1"
1134	January	Panay Electric Co., Inc.	23,637,576.50	472,751.53	"P-12-2"
1140&1142	February	Panay Electric Co., Inc.	21,226,480.00	424,529.60	"P-12-3"
1148	March	Panay Electric Co., Inc.	22,852,605.00	457,052.10	"P-12-4"
1152	April	Panay Electric Co., Inc.	22,513,870.50	450,277.41	"P-12-5"
1159	May	Panay Electric Co., Inc.	21,793,890.50	435,877.81	"P-12-6"
1162	June	Panay Electric Co., Inc.	26,726,498.50	534,529.97	"P-12-7"
1153	Jan-Mar	Panay Energy Dev. Corp.	1,634,139.50	32,682.79	"P-12-8"
1157, 1163 & 1164	Apr-Jun	Panay Energy Dev. Corp.	1,479,941.50	29,598.83	"P-12-9"
1154	April	Aklan Electric Coop., Inc.	6,338,629.54	126,772.59	"P-12-10"
1160	May	Aklan Electric Coop., Inc.	7,256,801.31	145,136.03	"P-12-11"
1165	June	Aklan Electric Coop., Inc.	7,959,420.97	159,188.42	"P-12-12"
1138	January	Aklan Electric Coop., Inc.	5,774,490.20	115,489.80	"P-12-13"
1146	February	Aklan Electric Coop., Inc.	5,888,949.58	117,778.99	"P-12-14"
1150	March	Aklan Electric Coop., Inc.	6,984,797.41	139,695.95	"P-12-15"
1166	July	Panay Electric Co., Inc.	26,147,193.00	522,943.86	"P-12-16"
1170	August	Panay Electric Co., Inc.	21,633,670.00	432,673.40	"P-12-17"
1173	September	Panay Electric Co., Inc.	21,577,849.50	431,556.99	"P-12-18"
1179	October	Panay Electric Co., Inc.	21,387,422.50	427,748.45	"P-12-19"
1182	November	Panay Electric Co., Inc.	21,441,822.00	428,836.44	"P-12-20"
1188	December	Panay Electric Co., Inc.	21,617,756.50	432,355.13	"P-12-21"
1171, 1174 & 1180	Jul-Sep	Panay Energy Dev. Corp.	1,391,310.50	27,826.21	"P-12-22"
1181, 1189, 1193 & 1197	Oct-Dec	Panay Energy Dev. Corp.	5,148,272.50	102,965.45	"P-12-23"
1169	July	Aklan Electric Coop., Inc.	5,566,961.89	111,339.24	"P-12-24"
1175	August	Aklan Electric Coop., Inc.	5,485,410.67	109,708.21	"P-12-25"
1177	September	Aklan Electric Coop., Inc.	2,395,664.78	47,913.29	"P-12-26"
1183	October	Aklan Electric Coop., Inc.	4,734,570.00	94,691.40	"P-12-27"
1186	November	Aklan Electric Coop., Inc.	4,219,270.32	84,385.41	"P-12-28"
1192	December	Aklan Electric Coop., Inc.	4,778,302.39	95,566.05	"P-12-29"
N/A	Jul-Sep	Toledo Holdings Corp.	1,371,994.50	27,439.89	"P-12-30"
N/A	Oct-Dec	Toledo Holdings Corp.	1,303,333.00	26,066.66	"P-12-31"

[40] Summary of 2018 CWTs, Annex A, Exhibit "P-11", Docket – Vol. I, pp. 388 to 389.

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Billing Statement Number	2307 Date	Customer Name	Gross Income	Tax Withheld	Exhibit Reference
1139	January	Iloilo 1 Electric Coop., Inc.	26,308,442.00	526,168.84	"P-12-32"
1147	February	Iloilo 1 Electric Coop., Inc.	20,722,252.50	414,445.05	"P-12-33"
1151	March	Iloilo 1 Electric Coop., Inc.	20,510,139.50	410,202.79	"P-12-34"
1158	April	Iloilo 1 Electric Coop., Inc.	21,378,261.50	427,565.23	"P-12-35"
1172	July	Iloilo 1 Electric Coop., Inc.	21,975,450.00	439,509.00	"P-12-36"
1185	October	Iloilo 1 Electric Coop., Inc.	19,957,880.50	399,157.61	"P-12-37"
1161	May	Iloilo 1 Electric Coop., Inc.	24,447,682.00	488,953.64	"P-12-38"
1167	June	Iloilo 1 Electric Coop., Inc.	23,577,356.50	471,547.13	"P-12-39"
1176	August	Iloilo 1 Electric Coop., Inc.	21,013,423.00	420,268.46	"P-12-40"
1178	September	Iloilo 1 Electric Coop., Inc.	21,657,466.50	433,149.33	"P-12-41"
1187	November	Iloilo 1 Electric Coop., Inc.	26,036,846.50	520,736.93	"P-12-42"
1190	December	Iloilo 1 Electric Coop., Inc.	23,485,497.50	469,709.95	"P-12-43"
1141	-	Panay Energy Dev. Corp.	1,788.00	35.76	
		Total	**₱627,239,242.06**	**₱12,544,784.84**[41]	

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.[42] 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 as part of gross income* in the AFS and ITR.

The ***fact of withholding*** is established by the CWT certificates (BIR Form No. 2307) which evidence that the corresponding withholding tax was withheld and remitted to the government by the Panay Power's customers, as withholding agents. However, in the course of examining the individual CWT certificates (BIR Form No. 2307) submitted in support of the present claim, We noted the following exceptions:

Billing Statement Number	2307 Date	Customer's Name	Gross Income	Tax Withheld	Exhibit Reference
Supporting BIR Form No. 2307 is dated 2017					
1139	January	Iloilo 1 Electric Coop., Inc.	₱26,308,442.00	₱ 526,168.84	"P-12-32"
CWT without supporting BIR Form No. 2307					
1141	-	Panay Energy Dev. Corp.	1,788.00	35.76	
		Total	**₱26,310,230.00**	**₱526,204.60**	

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[41] With ₱0.03 minor difference per claim.

[42] *Supra* note 37.

Stated differently, while the tax withheld by Iloilo 1 Electric Cooperative, Inc. from the amount billed by Panay Power (*i.e.*, Billing Statement No. 1139) is supported by the corresponding BIR Form No. 2307, said certificate is dated "2017" and, thus, out-of-period (*i.e.*, present claim consists of 2018 CWTs). On the other hand, no BIR Form No. 2307 was submitted to support the tax supposedly withheld by Panay Energy Development Corporation from the amount billed as per Billing Statement No. 1141. For these reasons, the amount of ₱526,204.60 shall be disallowed from Panay Power's total claim.

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,[43] 2018 Official Receipts,[44] 2018 General Ledger,[45] 2017 General Ledger,[46] Schedule of 2018 Billing Statements which were subjected to CWT,[47] Schedule of 2018 Official Receipts net of CWTs,[48] Schedule of Total Revenues per 2018 General Ledger,[49] Schedule of Total Intercompany Interest Income per 2018 General Ledger,[50] Schedule of Total Revenues per 2017 General Ledger related to 2018 CWTs,[51] and Schedule of Total Revenues per 2017 General Ledger.[52]

In particular, the ICPA traced (a) the income reflected in the Summary of 2018 CWTs[53] to the 2018 reported revenues in its 2018 General Ledger,[54] and (b) the total revenues per the 2018 General Ledger (GL) to that reported in the (i) 2018 Audited Financial Statements (AFS),[55] as part of *Net Fees, Finance Income,* or *Other Income,*[56] and (ii) 2018 ITR,[57] as part of *Net Sales/Revenues/Receipts/Fees (Sale of Services)*[58] or *Other Taxable Income*.[59]

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43 Exhibits "P-13" to "P-13-50", USB marked as Exhibit "P-11-2".
44 Exhibits "P-14" to "P-14-48", USB marked as Exhibit "P-11-2".
45 Exhibit "P-27", USB marked as Exhibit "P-11-2".
46 Exhibit "P-28", USBs marked as Exhibits "P-11-2" and "P-30-2".
47 Annex B, Exhibit "P-11", Docket - Vol. I, p. 390.
48 Annex C, Exhibit "P-11", Docket - Vol. I, p. 391.
49 Annex D, Exhibit "P-11", Docket - Vol. I, pp. 392 to 408.
50 Annex E, Exhibit "P-11", Docket - Vol. I, p. 409.
51 Annex F, Exhibit "P-11", Docket - Vol. I, p. 410.
52 Annex H, Exhibit "P-30", Docket - Vol. I, pp. 442 to 501.
53 Annex A, Exhibit "P-11", Docket - Vol. I, pp. 388 to 389.
54 Annex D, Exhibit "P-11", Docket - Vol. I, pp. 392 to 408; Exhibit "P-27", USB marked as Exhibit "P-11-2".
55 Exhibit "P-4", Docket- Vol. I, pp. 107 to 175.
56 Statements of Comprehensive Income, Exhibit "P-4", Docket- Vol. I, p. 112
57 Item 7, Results of the Procedures Performed, Exhibit "P-4", Docket - Vol. I, pp. 384 to 386.
58 Item 30, ITR, Exhibit "P-4", Docket - Vol. I, p. 98.
59 Item 33, ITR, Exhibit "P-4", Docket - Vol. I, p. 98.

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Based on these procedures, We arrive at the following findings:

First, included in the present claim are taxes withheld by Toledo Holdings Corporation (THC) from income payments made to Panay Power in the aggregate amount of ₱6,573,188.50, computed as follows:

2307 Date	Gross Income	Tax Withheld	Exhibit No.
January-March	₱ 1,970,625.50	₱ 39,412.51	"P-12"
April-June	1,927,235.50	38,544.71	"P-12-1"
July-September	1,371,994.50	27,439.89	"P-12-30"
October-December	1,303,333.00	26,066.66	"P-12-31"
Total	**₱6,573,188.50**	**₱131,463.77**	

The ICPA reported that the above-enumerated income payments pertained to interest payments from loan agreements between Panay Power and THC. Panay Power recorded these as "Interest Income - Intercompany" in the 2018 General Ledger. In turn, these were reported as *Finance Income* and *Other Income* in the 2018 AFS and 2018 Annual ITR, respectively, as confirmed by the ICPA.

Second, Panay Power included in its 2018 SAWT, upon which the present claim is based, gross income amounting to ₱7,959,420.97 billed to Aklan Electric Cooperative, Inc. (AKELCO) as per Billing Statement No. **1165.**[60] However, only ₱6,297,945.48 of said amount was traced to the corresponding 2018 General Ledger entries, *viz.*:

		Gross Income	Tax Withheld
Per BIR Form No. 2307 (June)[61]		₱7,959,420.97	₱159,188.42
Per 2018 General Ledger Entries[62]			
Entry # 16795	₱3,720.00		
Entry # 16796	3,454,652.20		
Entry # 16797	2,839,573.28	6,297,945.48	125,958.91[63]
		₱1,661,475.49	**₱33,229.51**

Upon further verification, We found that Billing Statement No. **1165**, which charged AKELCO based on the *accrued*/estimated electricity purchased, was superseded by Billing Statement No. **1168,**[64]

[60] Exhibit "P-13-23", USB marked as Exhibit "P-11-2".

[61] Exhibit "P-12-12", USB marked as Exhibit "P-11-2".

[62] Annex D, Exhibit "P-11", Docket - Vol. I, p. 399.

[63] Corrected/*Should be* amount of tax withheld = Actual gross income per GL multiplied by CWT rate = ₱6,297,945.48 * 2.00% = ₱125,958.91.

[64] Exhibit "P-13-26", USB marked as Exhibit "P-11-2".

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to charge AKELCO for *actual* electricity purchased. In the 2018 General Ledger, the amount charged in Billing Statement No. 1165 (₱7,959,420.97) was initially recorded[65] as revenues but also reversed[66] later on, in view of the aforesaid adjustment. In turn, Panay Power recorded the adjusted billing[67] to reflect the amounts in Billing Statement No. 1168.

Notably, while the billing was already adjusted, the CWT Certificate evidencing this income payment[68] shows that AKELCO nonetheless withheld tax at the rate of 2% from the unadjusted amount based on Billing Statement No. 1165 (₱7,959,420.97).

In other words, only the amount reflected on Billing Statement No. 1168 (₱6,297,945.48) could be confirmed as reported in the 2018 General Ledger and, consequently, the 2018 AFS and ITR. In which case, the correct amount of tax withheld by AKELCO *should have been* ₱125,958.91. As the CWT claimed on this transaction is overstated, the excess of ₱33,229.51 shall be **disallowed** from the present claim.

Third, Panay Power issues Billing Statements to charge its customers for electricity fees based on the latter's consumption. The amounts billed are recorded as revenues in the general ledger. When a customer pays the amount billed, Panay Power issues a corresponding Official Receipt and, on its face, identifies the Billing Statement reference number and amount of electricity fees to which the payment corresponds.

During 2018, collected payments from AKELCO amounting to ₱51,253,693.11, net of withholding tax amounting to ₱1,025,073.87 (part of the present claim), representing electricity fees charged to the latter for a given period. Verily, the amounts of collections and taxes withheld were traced to the corresponding CWT Certificates and 2018 SAWT Entries (*i.e.*, to ascertain the fact of withholding). However, the electricity fees indicated on the Official Receipts do not correspond to those charged in the Billing Statements and, consequently, to the revenue entries in the 2018 General Ledger, *viz.*:

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65 Entry Nos. 14543-45, Annex D, Exhibit "P-11", Docket - Vol. I, p. 398.
66 Entry Nos. 16068-70, Annex D, Exhibit "P-11", Docket - Vol. I, p. 399.
67 Annex D, Exhibit "P-11", Docket - Vol. I, p. 399.
68 Exhibit "P-12-12", USB marked as Exhibit "P-11-2".

qN

Tax Withheld		Revenue / Electricity Fees						
Per. 2307/OR		Per Official Receipt			Per Billing Statement / General Ledger			
Exh	Amount	Ref	Exh	Amount	BS Ref	Exh	GL Ref	Amount
"P-12-10"	₱126,772.59	3251	"P-14-13"	₱6,338,629.54	1154	"P-13-14"	36169	₱6,603,934.73
"P-12-11"	145,136.03	3262	"P-14-23"	7,256,801.31	1160	"P-13-18"	36640	7,331,901.87
"P-12-13"	115,489.80	3218	"P-14-22"	5,774,490.20	1138	"P-13-1"	34567	5,812,548.54
"P-12-14"	117,778.99	3228	"P-14-4"	5,888,949.58	1146	"P-13-6"	35325	5,982,750.98
"P-12-15"	139,695.95	3239	"P-14-6"	6,984,797.41	1150	"P-13-10"	35726	7,050,009.79
"P-12-24"	111,339.24	3286	"P-14-24"	5,566,961.89	1169	"P-13-27"	37553	5,810,592.58
"P-12-25"	109,708.21	3297	"P-14-25"	5,485,410.67	1175	"P-13-33"	38020	5,565,137.98
"P-12-27"	94,691.40	3320	"P-14-36"	4,734,570.00	1183	"P-13-41"	38885	4,825,746.10
"P-12-28"	84,385.41	3334	"P-14-37"	4,219,270.32	1186	"P-13-43"	39248	4,338,490.60
"P-12-29"	95,566.05	3346	"P-14-38"	4,778,302.39	1192	"P-13-48"	39682	4,795,936.53
	₱1,140,563.67			**₱57,028,183.31**				**₱58,117,049.70**

Stated differently, the amounts collected from AKELCO net of withholding tax (in the aggregate amount of ₱57,028,183.31) do not match the revenues recorded in the 2018 General Ledger (in the aggregate amount of (₱58,117,049.70). There is no submission on the record that explains this variance. As it could not be ascertained that the income payments to which the above-enumerated amounts claimed as CWT relate formed part of Panay Power's reported income per ITR, the amount of ₱1,140,563.67 shall also be **disallowed**.

Submission of complete documents upon filing of administrative claim; Proof of actual remittance, not indispensable to judicial claim.

The CIR's remaining counter-arguments also do not persuade.

First, the basic rule is that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed *waived*. To stress, the litigant is required to plead all objections available at the earliest opportunity. Otherwise, it will no longer be regarded as effective refutations to the counter-party's claims.[69]

Here, the CIR raised the above-mentioned defenses (*i.e.*, non-submission of complete documents and of proof of actual remittance) for the first time in its Memorandum dated August 18, 2022.[70]

[69] Also see Section 9, Rule 15, Rules of Court, as amended.
[70] Docket – Vol. II, pp. 563-574.

Certainly, these could have been raised in its Answer. The belatedness of the CIR's invocation of these arguments bars consideration thereof. Courts look with disfavor on piecemeal arguments in motions/pleadings filed by the parties.[71]

Second, at any rate, the CIR's arguments are nonetheless unmeritorious. These matters have already been settled by jurisprudence.

In *Commissioner of Internal Revenue v. Philippine Bank of Communications*,[72] the Supreme Court declared that the claimant's failure to comply with the requirements of its administrative claim for CWT refund/credit (*i.e.*, does not preclude its judicial claim).

Further, in *Commissioner of Internal Revenue v. Team [Philippines] Operations Corp.*,[73] the Supreme Court also confirmed that proof of actual remittance of taxes withheld is not required in establishing a claimant's entitlement to a refund or credit of excess and unutilized CWT. In any case, Panay Power's claim is supported by the CWT Certificates (BIR Form No. 2307) issued by the individual payors/customers and We have verified the same. As mentioned above, the certificates demonstrate the *fact of withholding* and, to Our mind, constitute *prima facie* evidence of actual remittance of the corresponding tax by the withholding agent. Inasmuch as the CIR has not offered evidence to refute this presumption, We are inclined to uphold the probative value of these certificates.

Summary

Based on the foregoing discussions, We find that Panay Power is entitled to the refund or credit of the amount of ₱10,844,787.06, computed as follows:

Total claim	₱12,544,784.84
less Disallowed Items	
Out-of-period/unsubstantiated	(526,204.60)
Overstated CWT	(33,229.51)
Not established as forming part of 2018 reported revenues	(1,140,563.67)
Net claim/to be refunded or credited	**₱10,844,787.06**

[71] *Tung Ho Steel Enterprises Corp. v. Ting Guan Trading Corp.*, G.R. No. 182153, April 7, 2014.
[72] *Supra* note 37.
[73] G.R. No. 179260, April 2, 2014.

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 ₱10,844,787.06. representing its excess and unutilized CWTs relative to taxable year 2018.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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