

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER EN BANC

PROFESSIONAL SERVICES, INC.,
Petitioner,

C.T.A. E.B. NO. 506
(C.T.A. CASE NO. 7280)

Present:

- versus -

ACOSTA, P.J.
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JUN 02 2010

3:30 pm

X-----X

D E C I S I O N

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on August 10, 2009 assailing the Decision dated February 24, 2009 of the Former First Division of this Court (Court in Division)¹ which denied petitioner's claim for refund or issuance of tax credit certificate representing unutilized input value-added tax (VAT) paid by petitioner on the purchase of capital goods during the second quarter of 2002 to fourth quarter of 2004, and

¹ Ponencia of Associate Justice Caesar A. Casanova concurred by Presiding Justice Ernesto D. Acosta, and Associate Justice Lovell R. Bautista.



the Resolution dated July 6, 2009 denying petitioner's Motion for Reconsideration of said decision, in CTA Case No. 7280, entitled "Professional Services, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent".

THE FACTS

As found by the Court in Division, the facts are as follows:

PSI Development Corporation² is a corporation duly organized under the laws of the Philippines, with principal office at the Medical City Building, San Miguel Avenue corner Lourdes Road, Mandaluyong City. It was issued Securities and Exchange Commission (SEC) Certificate of Registration No. A200011403 dated August 7, 2000, and is licensed to engage in the development and management of buildings, houses, apartments and other structures and immovables. Likewise, it is registered with the Regional District Office (RDO) No. 41 of the Bureau of Internal Revenue (BIR) in Mandaluyong City as a VAT taxpayer engaged in real estate buying, developing, subdividing, and selling; with Tax Identification Number (TIN) No. 207-524-318-000 and OC No. 3RC0000087275 dated August 30, 2000.

On the other hand, respondent Commissioner of Internal Revenue is the government official vested with the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law.

Petitioner, PSI Development Corporation, caused the construction of the "Medical Arts Tower" (Tower) and as the owner thereof, filed a formal

² The original petitioner-corporation in CTA Case No. 7280, being a wholly owned subsidiary of Professional Services, Inc.

claim for the refund or issuance of tax credit certificate of the input VAT incurred on the purchase of capital goods/property with respondent's Revenue District No. 41 of Mandaluyong, on June 30, 2005.

Considering that the subject period to claim was about to lapse, petitioner sought judicial recourse on the same day by filing a Petition for Review entitled "PSI Development Corporation, petitioner, vs. Commissioner of Internal Revenue, respondent", docketed as CTA Case No. 7280, and assigned to the First Division of this Court, also seeking the refund or issuance of tax credit certificate representing the same unutilized input value-added tax (VAT) paid by petitioner on the purchase of capital goods during the second quarter of 2002 to fourth quarter of 2004.

After the filing of an Answer by respondent on August 8, 2005, and the approval of the parties' Joint Stipulation of Facts and Issues (JSFI) in the Resolution dated October 14, 2005, petitioner presented its evidence. Thereafter, the Court in Division admitted petitioner PSI Development Corporation's documentary exhibits in the Resolution dated June 18, 2007

In a Manifestation and Motion for Substitution of Party filed on April 30, 2008, petitioner PSI Development Corporation stated that a merger was executed between it and Professional Services, Inc., with the latter as the surviving corporation. Hence, in the Resolution dated May 27, 2008, the Court in Division granted said motion and amended the caption in CTA Case No. 7280, wherein Professional Services, Inc. was named as the petitioner therein.



During the supposed presentation of respondent's evidence held on May 15, 2008, respondent's counsel manifested that he was submitting the case for decision considering that no report of investigation was forwarded to him and thus, he had no evidence to present for respondent.

The Court ordered the parties to submit their respective memorandum in the Resolution dated May 19, 2008. Only petitioner filed its Memorandum on July 8, 2008. In the Resolution dated July 14, 2008, the case was submitted for decision, sans respondent's Memorandum.

On February 24, 2009, the Court in Division rendered its assailed Decision, the dispositive portion of which states:

"WHEREFORE, premises considered, the Petition for Review seeking refund or issuance of a tax credit certificate in the amount of P75,323,454.55 allegedly representing input value added tax ('VAT') paid on the purchase of capital goods during the second quarter of 2002 to fourth quarter of 2004 is hereby **DENIED**.

SO ORDERED."³

Subsequently, the Court *a quo* denied herein petitioner's Motion for Reconsideration of the aforesaid Decision in the Resolution dated July 6, 2009 as it found no valid or cogent reason to either alter or modify the assailed Decision.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision dated February 24, 2009 and Resolution dated July 6, 2009 of the Court in Division, be annulled and set aside and a new one be issued: (a) granting petitioner's claim for refund in the amount of P75,323,454.55 representing the excess or unused input tax attributable to petitioner's

³ Docket, p. 61.



purchases of capital goods incurred from March 2002 to June 2004; or (b) in the alternative, allowing petitioner to introduce its Audited Financial Statements as well as its books of accounts and other documents in a proceeding called for such purpose in order to validate the capital expenditure incurred for the construction of the Tower in addition to the evidence already introduced before the Court in Division.

In the Resolution dated October 7, 2009⁴, this case was given due course by the Court *En Banc* and both parties were directed to file their respective memorandum. Both petitioner and respondent complied and filed their respective Memorandum on November 12, 2009⁵. Consequently, this case was considered submitted for decision on November 23, 2009.⁶

Hence, this Decision.

THE ISSUES

The issues presented are as follows:

(a) Whether or not the Court in Division committed error in denying petitioner's claim for refund on the unutilized input VAT arising from purchase of services for the construction of capital goods; and

(b) Whether or not petitioner has fully complied with the requirements enunciated in the present case and other requirements for its claim for refund, particularly on the submission of its books of accounts, audited financial statements and income tax return.

⁴ Docket, pp. 165-166.

⁵ Petitioner's Memorandum; Docket, pp. 167-191; Respondent's Memorandum; Docket, pp. 308-321.

⁶ Resolution dated November 23, 2009; Docket, p. 322.



Petitioner's Arguments:

It is petitioner's contention that the Court in Division failed to consider other available definition of capital goods, such as: "capital expenditure involves payment which creates and enhances what is essentially a separate and distinct asset. Statutorily, capital expenditures are specified as amounts paid out for ***new building*** or for ***permanent improvements or betterments*** made to increase the value of any property or estate or amounts expended in restoring property or in making good exhaustion thereof for which an allowance is or has been made". Applying the said definition, since the Medical Arts Tower (Tower) is a building owned by petitioner, and the payments made by petitioner to the construction company for services and materials for its construction are considered expenditures for capital goods by virtue of the nature and origin of said expenditure, the subject claim for refund representing input VAT arising from purchase of services for the construction of capital goods should allegedly be granted.

Consequently, petitioner maintains that there was no more need to present the books of account (journal and ledger), income tax returns (ITRs), and the audited financial statements (AFS) to validate whether the expenditure for the construction of the Tower has been capitalized and depreciated. Allegedly, neither the provisions of the National Internal Revenue Code (NIRC) of 1997 nor the Revenue Regulations (RR) No. 7-95 require that a claim for refund should be supported by the aforesaid documents. Therefore, it is petitioner's stand that it has sufficiently



established its claim based on the evidence presented before the Court in Division which were not rebutted by respondent.

However, in the alternative, petitioner now offers to present before the Court *En Banc* its AFS, as well as its books of accounts and other documents, in order to prove that the expenditure for the construction of the Tower has been capitalized and properly entered under the "Construction in Progress" account in addition to the evidence previously introduced at the division level.

Respondent's counter-arguments:

In the Memorandum filed by respondent, through the Office of the Solicitor General, on November 12, 2009, respondent argues that the Court in Division was correct in ruling that petitioner offered no evidence to prove capitalization and depreciation considering that **"only goods and properties used by the taxpayer in its VAT-taxable business, subject to depreciation or amortization in accordance with the Tax Code, are considered capital goods"**, pursuant to Section 4.106-1(b), RR No. 7-95, and further emphasized in *Commissioner of Internal Revenue vs. Mirant Pagbilao Corp.*, 504 SCRA 484, October 16, 2006.

In addition, respondent explains that there is no showing that petitioner's input taxes were indeed not applied against any output VAT liability and that transactions of petitioner prior to June 30, 2003 should be denied for being outside the two (2) year prescriptive period. Thus, respondent prays that the instant petition be dismissed for lack of merit.



THE COURT EN BANC'S RULING

The petition has no merit.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review reveal that the grounds relied upon and the matters raised herein are mere restatements of the arguments presented before the Court in Division, which had already been exhaustively discussed and passed upon by the court *a quo* when it rendered its assailed Decision and Resolution promulgated on February 24, 2009 and July 6, 2009, respectively.

Time and again, pursuant to Section 112(B) of the National Internal Revenue Code (NIRC) of 1997, *as amended*, this Court has consistently recognized the rule that, in order for a refund or issuance of tax credit certificate of unutilized input VAT paid on capital goods may be granted, the taxpayer, petitioner in this case, must comply with the following requirements:

- 1) That petitioner is a VAT registered entity;
- 2) That input taxes claimed were paid on capital goods duly supported by VAT invoices and/or official receipt;
- 3) that petitioner did not offset or apply the claimed input VAT payment on capital goods against any output VAT liability; and
- 4) That the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

As correctly found by the court *a quo*, petitioner is a VAT-registered entity as evidenced by its Certificate of Registration.⁷

⁷ Exhibit "B", CTA Case No. 7280.



With respect to the requisite necessitating that input taxes claimed were paid on capital goods, We look into the nature of capital goods or properties. The pertinent provision thereon is Section 4.106-1(b) of Revenue Regulations (RR) No. 7-95, in relation to Section 34(F) of the NIRC of 1997, *as amended*, quoted hereunder as follows:

“SEC. 4.106-1. Refunds or tax credits of input tax. –

xxx

xxx

xxx

(b) **Capital Goods** — Only VAT-registered persons may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be ratable portion corresponding to the taxable operations.

'Capital goods or properties' refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f) [now Section 34 (F)], used directly or indirectly in the production or sale of taxable goods or services.” (*Emphasis Ours*)

Pursuant to the above provision, the purchased goods and properties must have the following characteristics to qualify as capital goods:

- 1) useful life greater than one year;
- 2) treated as depreciable assets under Section 34 (F); and
- 3) used directly or indirectly in the production or sale of taxable goods or services.



343

In the assailed Decision, the Court in Division found petitioner's evidence inadequate to convince the court that petitioner indeed capitalized the payments made for the construction of the Medical Arts Tower Building, and that the related depreciation was recognized. At most, petitioner has merely proven that it had indeed paid for the construction cost of said building upon its presentation of official receipts and VAT returns but offered no evidence to prove capitalization and depreciation.

Additionally, the Court in Division held that in order that petitioner may be entitled to the claim for refund of unutilized input VAT paid on capital goods, it does not only mean that the capital goods are depreciable in nature, but the claimant must have treated the same as depreciable asset or as part of its properties/assets in its books. And the absence of such established fact was fatal to petitioner's claim.

We agree with the foregoing pronouncement of the Court in Division.

Section 34(F) of the NIRC of 1997, *as amended*, explicitly provides that "*capital goods*" should not only be depreciable in nature but the same should be treated as depreciable asset. In this regard, petitioner failed to submit the necessary documentary evidence to support its claim, such as its books of accounts, audited financial statements and income tax returns. The Court, therefore, cannot determine with certainty whether or not it has treated the building as its "*capital good*".

We hereby adopt the explanation given by the Court in Division in the assailed Resolution dated July 6, 2009 why petitioner's failure to present appropriate evidence to establish its claim is fatal. Thus:

"The Medical Arts Tower indeed has a useful life greater than one year. The requisite, however, that it be treated as a depreciable asset and be used directly or indirectly in the production or sale of taxable goods or services cannot be presumed as its necessary consequence. Petitioner needs to support its claim that it actually treated the tower as a depreciable asset and was used directly or indirectly in the production or sale of taxable goods or services.

As stated in the Decision, the official receipts and VAT returns merely proved that petitioner had paid for the construction cost. In addition, the Articles of Incorporation simply enumerated petitioner's purposes, while the Omnibus Loan and Security Agreement only proved the source of the funds used to pay for construction of the tower. Likewise, Ms. Benita Macala's testimony that petitioner leased office spaces in the tower would not be availing, as it is well-settled that mere allegation is neither evidence nor equivalent to proof. The submitted pieces of evidence would only establish that petitioner indeed owned the Medical Arts Tower; which as previously stated was already admitted by the parties in their Joint Stipulation of Facts and Issues. No evidence was offered to prove that the said building had been treated as a depreciable asset and used directly or indirectly in the production or sale of taxable goods or services.

Petitioner insists that the Medical Arts Tower, by its very nature, is subject to depreciation. It must be emphasized, however, that for the said building to be considered 'capital goods', it does not only mean that the 'capital goods' is depreciable in nature, but rather it must be treated as depreciable asset, or as part of the claimant's 'properties/assets' in its books.

Petitioner could have easily presented its Books of Accounts (Journal and Ledger), Audited Financial Statements, and Income Tax Return, to prove that it had capitalized the payments made to the contractor and the related depreciation were recognized. Instead petitioner merely insisted that the offered documents and the parties' stipulation in the Joint Stipulation of Facts and Issues are sufficient to support its claim."⁸

As to the alternative remedy offered by petitioner before the Court *en banc* that it now intends to present its Audited Financial Statements, as well

⁸ Annex "C", Petition for Review; Docket, pp. 79-80.

as its books of accounts (journals and ledger) and other appropriate documents, in order to prove that the expenditure for the construction of the Tower has been capitalized and properly entered under the "Construction in Progress" account, this Court cannot allow the same at this point in time.

It bears stressing that the reception and evaluation of documentary evidence are done at the Division level of this Court. The Justices of this Court, sitting as members of the Court *en banc*, should no longer be burdened with the performance of adjudicatory functions as this function is properly performed at the Division level of this Court.

Petitioner, upon receipt of the assailed Decision dated February 24, 2009, had every opportunity to present and attach the said documents before the Court in Division to establish its claim when it filed its Motion for Reconsideration on March 18, 2009. However, it merely insisted that the evidence it already presented before the Court in Division were sufficient.

Thus, while petitioner not only failed to present the required documentary evidence before the Court *a quo*, it also failed to offer an acceptable explanation why, for the first time on appeal, the said subject audited financial statements, as well as its books of accounts (journals and ledger) and other appropriate documents, must be admitted and considered by the Court *En Banc*, when it had all the opportunity to present said documents at the division level of this Court.

Consequently, We find no sufficient legal basis to relax our procedural rules regarding admission of documentary evidence considering that proof of

346

ms

authenticity and veracity thereof, vital to petitioner's cause of action, are best threshed out and presented before the Court in Division of this Court.

To reiterate, the rule in this jurisdiction is that "[t]ax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person claiming the exemption".⁹ Consequently, petitioner, as claimant of tax refund, bears the burden of proving the factual basis of its claim; and showing, by words too plain to be mistaken, that the legislature intended to exempt it.¹⁰ Petitioner failed to discharge this burden.

Correspondingly, this Court finds no reversible error committed by the Court in Division when it rendered the Decision dated February 24, 2009 and Resolution dated July 6, 2009.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

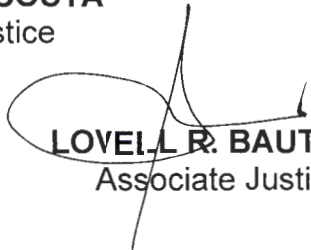
SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:

On Leave
ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice

⁹ *Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation*, 204 SCRA 377 (1991); and *Commissioner of Internal Revenue vs. S. C. Johnson & Son, Inc.*, 309 SCRA 87 (1999).

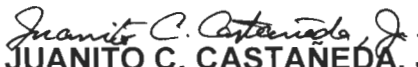
¹⁰ *Commissioner of Internal Revenue vs. Seagate Technology [Philippines]*, 451 SCRA 132.


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.


JUANITO C. CASTANEDA, JR.
Acting Presiding Justice