REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PSI DEVELOPMENT CORPORATION, *Petitioner,*	**C.T.A. EB NO. 318** **(C.T.A. CASE NO. 6926)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** APR 3 0 2008 GrAppolinario 1:30 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by PSI Development Corporation (hereafter "petitioner") under *Section 11 of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)* in relation to

Rule 43 of the 1997 Rules of Civil Procedure, as amended, which seeks to set aside the Decision dated July 11, 2007 rendered by the First Division of this Court in the C.T.A. Case No. 6926, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED**."

Petitioner's Motion for Reconsideration and Supplement to the Motion For Reconsideration were denied by the First Division in its Resolution dated September 17, 2007, the dispositve portion of which reads as follows:

> "**WHEREFORE**, Petitioner's Motion for Reconsideration and Supplement to the Motion for Reconsideration are hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

The facts, as culled from the records, are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, authorized to engage in high rise development and construction of real estate of all kinds, and also manages, operates, or disposes buildings, houses, apartment and other immovable, whether as principal, agent or broker, with principal address at New Medical City, Meralco Complex, Ortigas Center, Ortigas Avenue, Pasig City.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue with exclusive and original jurisdiction to (i) interpret the provisions of *RA 8424* (The Tax Code); (ii) to decide disputed assessments; (iii) to refund internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code and other laws administered by the Bureau of Internal Revenue, subject to the exclusive appellate jurisdiction of the CTA.

Petitioner engaged the services of Summa Kumasai, Inc.-Kumasai Gumi ("SKI-KG JV") to construct the Medical Arts Tower Building, also known as the "New Medical City", situated at Meralco Avenue, Pasig City. Petitioner paid the amount of P152,599,090.91 inclusive of VAT, as partial consideration for the construction of the said building, as shown in a receipt with no. 153, dated February 15, 2002, issued by SKI-KG *(Exhibit "A.")*.

On April 10, 2002, petitioner filed an original quarterly VAT Return for the first quarter of 2001. On March 29, 2004, petitioner filed an amended return reflecting the purchases of capital goods in the amount of P155,425,000 and the corresponding input VAT in the amount of P14,129,545.00, and also requested for a refund of P14,129,545.00, representing the unutilized input VAT on the purchase of capital goods in connection with the construction costs of the building.

Respondent's inaction prompted the petitioner to elevate the case before this Court. On April 12, 2004, petitioner filed with this Court a Petition for Review, docketed as C.T.A. Case No. 6926.

For failure of respondent to file his answer within the reglementary period, petitioner filed a "Motion for Order of Default and *Ex-Parte* Presentation of Evidence," which the Court granted and respondent was declared in default and petitioner was allowed to present evidence *ex-parte*.

Thereafter, the petitioner presented both testimonial and documentary evidence *ex-parte*.

On July 11, 2007, the First Division rendered the assailed Decision dismissing the Petition for Review for insufficiency of evidence.

On August 6, 2007, petitioner filed a "Motion for Reconsideration" and "Supplement to the Motion For Reconsideration" on August 28, 2007.

In a Resolution dated September 17, 2007, the First Division denied the "Motion for Reconsideration" and "Supplement to the Motion For Reconsideration" for lack of merit.

ISSUES

Hence, this Petition for Review raising the following issues, to wit:

I

THE HONORABLE CTA FIRST DIVISION ERRED WHEN IT APPLIED THE RULE ON STRICTISSIMI JURIS IN THE APPRECIATION OF THE EVIDENCE PRESENTED BY THE PETITIONER-APPELLANT.

II

THE EVIDENCE PRESENTED BY THE PETITIONER-APPELLANT, WHICH WERE UNCONTROVERTED BY REASON OF DEFAULT OF THE RESPONDENT, ARE

IN COMPLIANCE WITH THE REQUIREMENTS OF THE TAX CODE AND REVENUE REGULATIONS AND ARE SUFFICIENT TO PROVE THAT THE BUILDING IS A CAPITAL GOOD OWNED AND USED IN THE BUSINESS OF THE PETITIONER-APPELLANT.

On February 4, 2008, without necessarily giving due course to the petition, We required respondent to file her comment, not a motion to dismiss, within ten (10) days from notice.

Despite notice, respondent failed to file her comment.

Hence, the instant petition is now deemed submitted for decision.

<u>THE COURT *EN BANC'S* RULING</u>

The petition is bereft of merit.

Being interrelated, the first and second issues will be discussed jointly.

Petitioner contends that the First Division erred in denying its claim and should have applied the rule on *"preponderance of evidence"* and not the principle of *"strictissimi juris"* in the appreciation of the evidence it presented.

We do not agree.

It is well to note that the present action instituted by herein petitioner is a claim for tax refund. It is a doctrinal rule in taxation that claims for tax refund/credit, as in the instant case, are in the nature of claims for exemption. Accordingly, the law relied upon is not only construed in *strictissimi juris* against the taxpayer, but also the proofs presented entitling a taxpayer to an exemption are *strictissimi* scrutinized. *(M.E. Holding Corporation vs Court of Appeals, G.R. No. 160193, March 3, 2008; Atlas Consolidated Mining and Development Corporation vs Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008).*

Going now to the merits of the case, the rule is that, in order for a refund or issuance of tax credit certificate of unutilized input VAT paid on capital goods may be granted, petitioner 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

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4) that the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

As to the first requisite, there is no dispute that petitioner is a VAT-registered entity as evidenced by the Certificate of Registration issued by the BIR *(Exhibit "G)*.

As regards the second requisite, it is essential first to determine the nature of the capital goods or properties as basis for refund or issuance of tax credit certificate. *Section 4.106-1 (b) of Revenue Regulations No.7-95* provides that *"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) of the NIRC of 1997[now Section 34 (F)]*, and used directly or indirectly in the production or sale of taxable goods or services.

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

1) useful life greater than one year;

2) treated as depreciable assets under Section 34 (F); and

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3) used directly or indirectly in the production or sale of taxable goods or services.

At this point, the First Division ruled that petitioner's evidence is inadequate to convince the court of the fact that the downpayment of P152,599.090.91 is a payment made for the purchase of "capital goods" used for the construction of the Medical Arts Tower building. Thusly:

"Although, the downpayment in the amount of P152,599,090.91, inclusive of VAT, for the construction of the Medical Tower Building to SKI-KG JV is established, the Court cannot ascertain whether the said payment should be classified as payment for capital goods. The testimonies of witness Amy Ydel, petitioner's accountant, and Ms. Benita J. Macalagay, petitioner's Chief Operating Officer, as to the purpose of constructing the subject building are conflicting. Ms. Ydel testified that petitioner was selling shares for a corresponding unit of the building; while Ms. Macalagay testified that petitioner leases commercial spaces.

Ms. Amy Ydel Testified:

'JUSTICE BAUTISTA:
Q. Is this Medical Arts Building, the units to be sold or to be rented by the doctors who occupy the units of the building?

MS. YDEL:
A. The Medical Arts Tower, sir, is selling shares for the doctors after they buy the share, a unit is assigned to them for them to practice their profession.

JUSTICE BAUTISTA:
Q. So, one (1) share is equivalent to one (1) unit?

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MS. YDEL:
A. It depends on the number of square meters and the floors. There is an equivalent number of shares for each unit.

JUSTICE BAUTISTA:
Q. For each unit?

MS. YDEL:
A. Yes, sir.

xxx xxx xxx'

On the other hand, Ms. Benita J. Macalagay testified:

'ATTY. AZARAGGA:
Q. Ms. Witness, can you please state what essentially the business of the petitioner?

MS. MACALAGAY:
A. PSI Development Corporation is involved in realty development, and management of building, particularly the Medical Arts Tower.

ATTY. AZARRAGA:
Q. And how do you know that petitioner is involved in the foregoing business?

MS. MACALAGAY:
A. Because as COO, of course, and because I'm involved in the business operation of the company on a day to day business.

ATTY. AZARRAGA:
Q. Could you please describe what do you mean of the day to day business being involved by petitioner?

MS. MACALAGAY:
A. We lease commercial spaces in the building.

ATTY. AZARRAGA:
Q. Why is that you are leasing the commercial spaces?

> MS. MACALAGAY:
> A. We are leasing as our business because this is not a condominium corporation.'
>
> In view of the conflicting testimonies of said witnesses, petitioner should have presented its Books of Accounts (Journal and Ledger), Audited Financial Statements, as well as its Income Tax Return, so that this Court may be able to ascertain whether petitioner had really capitalized the payment made to the contractor and that the related depreciation was recognized. Absence of such important documents is fatal to petitioner's claim."

After a careful examination of the evidence adduced by the petitioner, We sustain the findings of the First Division that the testimonial and documentary evidence presented by the petitioner is insufficient to grant its claim for tax refund.

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 documentary evidence necessary to support its claim, such as its books, 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."*

As to the petitioner's allegation that the uncontroverted evidence presented by the petitioner is sufficient to prove that the building is a *"capital good"* is likewise untenable.

While it is true that respondent was unable to file his answer and petitioner was allowed to present its evidence ex-parte, it does not imply the admission of facts and the cause of action of the petitioner (*Monarch Insurance vs. Court of Appeals, 333 SCRA 71*). The 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 *(Commissioner of Internal Revenue vs. Seagate Technology [Philippines], 451 SCRA 132)*. Petitioner failed to discharge this burden.

Moreover, the evidence presented ex-parte by the petitioner is subject to Court's evaluation and it is up to the Court's sound judgment whether it shall be given credence or not.

With the foregoing premises, the Court finds no necessity to discuss the other requisites. GH

In the light of the laws and jurisprudence on the matter, We see no reason to reverse the assailed Decision dated July 11, 2007 and Resolution dated September 17, 2007 of the First Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and accordingly **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Official Business)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice