REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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UCPB PROPERTIES, INC., Petitioner,	**C.T.A. CASE NO. 6677 and 6723** Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 20 2007, 1:00PM

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DECISION

BAUTISTA, *J.*:

This is a claim for refund and/or issuance of a tax credit certificate representing unutilized input value-added tax (VAT) paid on purchases of capital goods covering the periods January 1, 2001 to March 31, 2001 and April 1, 2001 to December 31, 2001, in the respective amounts of P2,959,538.00 and P3,084,422.00 or a total of P6,043,960.00.

UCPB Properties, Inc. (Petitioner) is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal office at the 8th Floor, UCPB Building, 7907 Makati Avenue, Makati City. It is principally engaged in the business of home building and home development, real estate buying and selling, subdividing, and developing lands, and other properties. It is registered as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code of 1997 (Tax Code) with Taxpayer Identification Number (TIN) 000-172-912-000 and Bureau of Internal Revenue (BIR) Certificate of Registration No. 15797.[1]

Commissioner of Internal Revenue (Respondent) is the duly appointed officer of the BIR with the authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credit of overpaid internal revenue taxes as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.[2]

For the four (4) quarters of taxable year 2001, petitioner filed its Quarterly VAT Returns with the BIR on April 25, 2001, July 13, 2001, October 10, 2001, and September 4, 2002,[3] disclosing the following entries:

		INPUT VAT		
Exhibit	**Year 2001**	**Carried-over From Previous Quarter**	**On Domestic Purchases for the Quarter**	**Total**
A	1st quarter	P120,479,520.49	P 5,221,640.24	P125,701,160.73
B	2nd quarter	125,701,160.73	3,628,510.19	129,329,670.92
C	3rd quarter	129,329,670.92	2,044,267.97	131,373,940.62
D	4th quarter	131,373,940.62	2,551,328.41	133,925,269.03
			P13,445,746.81	

Petitioner alleged that the input VAT payment of P13,445,746.81 included input VAT paid on capital goods purchased in the amount P6,043,960.00, broken down as follows:

Year 2001	**Input VAT on Capital Goods Purchased**
1st quarter	P 2,959,538.00
2nd quarter	1,852,265.00
3rd quarter	921,440.00
4th quarter	310,717.00
	P 6,043,960.00

[1] Paragraphs 1, 3, and 4, Joint Stipulation of Facts and Issues, *Rollo,* page 70.
[2] Paragraph 2, Joint Stipulation of Facts and Issues, *Rollo,* page 70.
[3] Exhibits "A", "B", "C", and "D".

Relying on Section 112(B) of the Tax Code, as amended, which allows the refund/tax credit of unutilized input VAT attributable to purchases of capital goods, petitioner filed an administrative claim for refund and/or issuance of a tax credit certificate in the amount of P6,043,960.00 on March 24, 2003.[4]

In order to suspend the running of the two-year prescriptive period within which it can judicially claim the amount of P6,043,960.00, petitioner filed with this Court on April 21, 2003 and July 11, 2003, two separate Petitions for Review docketed as CTA Case Nos. 6677 and 6723, respectively:

CTA Case No.	Date of Filing of Petition for Review	Period Covered	Claimed Input VAT
6677	April 21, 2003	Jan. 1, 2001 – Mar. 31, 2001	P 2,959,538.00
6723	July 11, 2003	Apr. 1, 2001 – Dec. 31, 2001	3,084,422.00
			P 6,043,960.00

On August 26, 2003, petitioner filed a Motion for the consolidation of the two cases considering that the same involve the same parties and issues. The Court granted the motion in open court on September 1, 2003, followed by a confirming Resolution dated September 3, 2003.[5]

After trial and petitioner's submission of its Memorandum, the case was submitted for decision on June 13, 2007.[6]

As jointly stipulated by the parties, the issues[7] to be resolved by this Court are:

"1. Whether or not Petitioner incurred and has unutilized VAT input taxes in the amounts of P2,959,538.00 and P3,084,422.00 for the 1st quarter of 2001 and for the period April 1, 2001 to December 31, 2001, respectively, arising from its purchases of capital goods;

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[4] Exhibits "G", "G-1" to "G-3".
[5] *Rollo,* pages 49-53.
[6] *Rollo,* page 397.
[7] Joint Stipulation of Facts and Issues, page 72.

2. Whether or not the unutilized VAT input taxes in the amounts of P2,959,538.00 and P3,084,422.00 generated from Petitioner's purchases of capital goods during the 1st quarter of 2001 and for the period April 1, 2001 to December 31, 2001, respectively, are properly substantiated by documentary evidence in the form of invoices and official receipts;

3. Whether or not the amounts of P2,959,538.00 and P3,084,422.00 representing the unutilized VAT input taxes generated from the Petitioner's purchases of capital goods during the 1st quarter of 2001 and for the period April 1, 2001 to December 31, 2001, respectively, remained unapplied against any output tax liability of the Petitioner in the same and/or subsequent taxable quarters;

4. Whether or not the instant Petitions were filed within the two-year prescriptive period as provided for in Section 112(B) of the Tax Code; and

5. Whether or not Petitioner is entitled to a refund and/or issuance of tax credit certificate for the unutilized input VAT payments in the amounts of P2,959,538.00 and P3,084,422.00 for the 1st quarter of 2001 and the period April 1, 2001 to December 31, 2001, respectively."

All these issues can be summarized by the last jointly stipulated issue.

Petitioner anchors its claim on Section 112(B) of the Tax Code, as amended, which states that:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** –
>
> xxx
>
> (B) *Capital goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years, after the close of the taxable quarter when the importation or purchase was made."

Sections 4.106-1(b) and 4.104-5 of Revenue Regulations No. 7-95[8] implementing Section 112(B) provide:

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[8] Dated December 9, 1995.

"**SEC. 4.106-1.** ***Refunds or tax credits of input tax.*** -
(a) xxx

(b) *Capital Goods* - Only a VAT-registered person 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 the 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), used directly or indirectly in the production or sale of taxable goods or services."

"**SEC. 4.104-5.** ***Substantiation of claims for input tax credit.*** — (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(a) and 238 of the Code. xxx"

Based on the foregoing, petitioner has to comply with the following requisites in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased:

1. It is a VAT registered entity;

2. Its input taxes claimed were paid on capital goods duly supported by VAT invoices and official receipts;

3. It did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and

4. The claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.[9]

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[9] BASF Philippines, Inc. vs. Commissioner of Internal Revenue (CTA Case No. 6283, February 10, 2004) affirmed on January 5, 2006 in CTA E.B. No. 47.

Based on the evidence presented, only the first, third, and fourth requisites were satisfied. Petitioner, however, failed to comply with the second requirement of substantiation of claimed input taxes by VAT invoices and official receipts.

The fact that petitioner is a VAT-registered entity is admitted by both parties.[10] It was also established that the input VAT claim of P6,043,960.00 was not applied against any output VAT incurred during the four quarters of 2001 and succeeding quarters.[11] And the administrative and judicial claims for refund/tax credit certificate were timely filed within the two-year prescriptive period reckoned from April 25, 2001; July 13, 2001; October 10, 2001; and September 4, 2002, the respective dates when petitioner filed its VAT returns for the first, second, third, and fourth quarters of 2001. The administrative claim was filed on March 24, 2003 and the two Petitions for Review were filed with this Court on April 21, 2003 and July 11, 2003, docketed as CTA Case Nos. 6677 and 6723, respectively.

As for the second requisite, petitioner was able to substantiate P5,938,923.36 out of the input VAT of P6,043,959.57 by various checks, vouchers, suppliers' invoices and official receipts,[12] as verified and reported by the commissioned auditing firm.[13] But it failed to prove that its input VAT was paid on its purchase of capital property, Forbes Tower. To be precise, petitioner failed to prove that Forbes Tower, a residential condominium property located at Valero St., Makati City, is a capital property.

According to Section 4.106-1(b) of Revenue Regulations No. 7-95, in order for items purchased to be classified as capital goods or properties, a taxpayer must show that the good or properties (1) have an economic useful life of more than one year; (2) are treated as depreciable assets under Section 29(f) [now Section 34 (F)

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[10] Paragraph 4, Joint Stipulation of Facts and Issues, *Rollo,* page 70.
[11] Exhibits "A", "B", "C", "D", "E", "F", "T", "U" and "W".
[12] Exhibits "AA" to "AA-434".
[13] Exhibit "GG".

of the Tax Code, as amended[14]]; and (3) are used directly or indirectly in the production or sale of taxable goods or services.

There is no question that Forbes Tower has an economic useful life of more than one year. However, petitioner failed to sufficiently prove compliance with the second and third requisites.

Initially, Forbes Tower (with 150 residential units and 297 parking slots) was constructed by petitioner with the intention to sell the same, as can be gleaned from petitioner's License to Sell No. 97-02-2034 issued by the Housing and Land Use Regulatory Board (HLURB) on February 27, 1997[15], *viz*:

> "This License is **issued for the sale of** saleable lots/units/lots with units in *THE FORBES TOWER CONDOMINIUM* (150 RESIDENTIAL UNITS/ 297 PARKING SLOTS) located at Valero St., Salcedo Village, Makati City pursuant to Sec. 5 of PD 957 and its rules and regulations.
>
> The project owner(s) UCPB Properties, Inc., and developer(s) UCPB PROPERTIES, INC., is (are) obliged to comply strictly with the following: [Emphasis supplied]

However, petitioner's Audited Financial Statements for the years ended December 31, 2002 and December 31, 2001[16] revealed that Forbes Tower was recorded as *Investment in Real Estate for Sale and Lease* and that petitioner intended for some units therein to be leased out, as shown below:

> "Condominium for sale (certain units in Forbes Tower in 2001) are carried at cost less allowance for probable losses. x x x
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> Condominium units for lease (Forbes Tower in 2001) and furniture and fixtures furnishing those units are carried at cost less accumulated depreciation and any impairment in value. xxx"

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[14] **Section 34.** *Deductions from Gross Income.* - Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
xxx
(F) *Depreciation.* -
(1) General Rule. - There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including reasonable allowance for obsolescence) of property used in the trade or business. xxx.
[15] Exhibit "H".
[16] Exhibit "DD".

Forbes Tower would have been a partly depreciable asset with respect to those units which were allegedly being leased out if these were indeed used in the leasing business of petitioner. As the lessor of Forbes Tower, petitioner should have an interest over the same because it stands to suffer any economic loss as a result of the decrease in value of the property due to the realization of depreciation.[17] But petitioner failed to submit the corresponding lease contracts and other documents as proof that certain units of Forbes Tower were actually leased out and that the rental income derived was subjected to VAT.

For petitioner's failure to prove that Forbes Tower is used in its leasing business, the same cannot qualify as capital property, as contemplated under Section 4.106-1(b) of Revenue Regulations No. 7-95.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

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[17] 5 MERTENS Law of Federal Income Taxation, §23A.33, pages 67-68.

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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division