REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

VALLE VERDE COUNTRY CLUB, INC., *Petitioner,*	**CTA Case No. 10306**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:**
	OCT 0 6 2023 ; 3:00PM

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DECISION

DEL ROSARIO, P.J.:

Before this Court is a Petition for Review[1] filed on July 22, 2020 by petitioner Valle Verde Country Club, Inc. against respondent Commissioner of Internal Revenue, praying that judgment be rendered ordering respondent to refund or issue tax credit certificate (TCC) in favor of petitioner in the amount of ₱7,449,368.98 representing output value-added tax (VAT) remitted on membership fees, assessment dues and similar charges for the period covering April 2018 to July 2019.

THE PARTIES

Petitioner Valle Verde Country Club, Inc. is a non-stock, non-profit corporation duly registered with the Securities and Exchange Commission (SEC) with Registration No. 61790 and with a registered address at Capt. Henry Javier St., Bo Ugong, Pasig City, 1604.[2] It was established primarily "to foster, promote, conduct legitimate athletic exercises, sports, recreational and social activities as well as

[1] Docket, pp. 6-20.
[2] Par. 1, Petition for Review, Docket, p. 6; Exhibit "P-3", Docket, p. 35.

entertainments of all sorts."[3] Petitioner is a VAT-registered entity with Bureau of Internal Revenue (BIR) Certificate of Registration No. 3RC0000789880 and Tax Identification Number (TIN) No. 000-903-152-000.[4]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) duly appointed to perform the duties of his office, including, *inter alia*, the power to decide claims for tax refund or tax credit subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4 of the Tax Code and Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

THE FACTS

On August 3, 2012, the BIR issued Revenue Memorandum Circular (RMC) No. 35-2012,[6] clarifying the taxability of clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes. It subjected to VAT the gross receipts of recreational clubs including but not limited to membership fees, assessment dues, rental income, and service fees.

Thereafter, petitioner complied with RMC No. 35-2012 and started to subject to VAT the membership fees and assessment dues charged to its members which were remitted to the BIR through Monthly VAT Declarations (BIR Form No. 2550-M) and Quarterly VAT Returns (BIR Form No. 2550-Q).[7]

Petitioner filed its Monthly VAT Declarations and Quarterly VAT Returns on the following dates:

Monthly VAT Declaration/ Quarterly VAT Return	Date of Filing
April 2018	May 19, 2018[8]
May 2018	June 20, 2018[9]
June 2018 (3rd Quarter of FY ending September 2018 [FY 2018])	July 24, 2018[10]

[3] Exhibit "P-2-1", Docket, p. 26.
[4] Exhibit "P-3", Docket, p. 35.
[5] Par. 1, I. Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 252.
[6] SUBJECT: Clarifying the Taxability of Clubs Organized and Operated Exclusively for Pleasure, Recreation, and Other Non-Profit Purposes.
[7] Par. 8, Petition for Review, Docket, p. 8; No. 20 Q&A, Judicial Affidavit of Ana Liza L. Regaspi, Exhibit "P-23", Docket, pp. 163-164.
[8] Exhibit "P-5-1", Docket, pp. 444-445.
[9] Exhibit "P-6-1", Docket, pp. 447-448.
[10] Exhibit "P-7-1", Docket, pp. 450-451.

July 2018	August 20, 2018[11]
August 2018	September 20, 2018[12]
September 2018 (4th Quarter of FY 2018)	October 25, 2018[13]
October 2018	November 20, 2018[14]
November 2018	December 20, 2018[15]
December 2018 (1st Quarter of FY ending September 2019 [FY 2019])	January 24, 2019[16]
January 2019	February 20, 2019[17]
February 2019	March 19, 2019[18]
March 2019 (2nd Quarter of FY 2019)	April 24, 2019[19]
April 2019	May 15, 2019[20]
May 2019	June 20, 2019[21]
June 2019 (3rd Quarter of FY 2019)	July 22, 2019[22]
July 2019	August 20, 2019[23]

On September 17, 2014, the Association of Non-Profit Clubs, Inc. (ANPC), a group of recreational clubs wherein petitioner is a member, filed a petition for declaratory relief before the Regional Trial Court of Makati City, Branch 134 (RTC Makati) in Special Civil Case No. 14-985 seeking to declare RMC No. 35-2012 invalid, unjust, oppressive, confiscatory and in violation of the due process clause of the Constitution. RTC Makati denied the petition as well as the request for reconsideration.[24]

ANPC elevated the case to the Supreme Court. The Supreme Court in *Association of Non-Profit Clubs, Inc. vs. Bureau of Internal Revenue*[25] *(ANPC case)* granted ANPC's petition and set aside the decision of RTC Makati, *viz.*:

> "**WHEREFORE**, the petition is **GRANTED**. The Decision dated July 1, 2016 and the Order dated November 7, 2016 of the Regional Trial Court of Makati City, Branch 134, in Special Civil Case No. 14-985, are hereby **SET ASIDE**. The Court **DECLARES** that

[11] Exhibit "P-8-1", Docket, pp. 453-454.
[12] Exhibit "P-9-1", Docket, pp. 456-457.
[13] Exhibit "P-10-1", Docket, pp. 459-460.
[14] Exhibit "P-11-1", Docket, pp. 462-463.
[15] Exhibit "P-12-1", Docket, pp. 465-466.
[16] Exhibit "P-13-1", Docket, pp. 468-469.
[17] Exhibit "P-14-1", Docket, pp. 471-472.
[18] Exhibit "P-15-1", Docket, pp. 474-475.
[19] Exhibit "P-16-1", Docket, pp. 477-478.
[20] Exhibit "P-17-1", Docket, pp. 480-481.
[21] Exhibit "P-18-1", Docket, pp. 483-484.
[22] Exhibit "P-19-1", Docket, pp. 486-487.
[23] Exhibit "P-20-1", Docket, pp. 489-490.
[24] Par. 9, Petition for Review, Docket, p. 8; *Association of Non-Profit Clubs, Inc. (ANPC), herein represented by its authorized representative, Ms. Felicidad M. Del Rosario, vs. Bureau of Internal Revenue (BIR), herein represented by Hon. Commissioner Kim S. Jacinto-Henares,* G.R. No. 228539, June 26, 2019.
[25] G.R. No. 228539, June 26, 2019.

> membership fees, assessment dues, and fees of similar nature collected by clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofit purposes do not constitute as: **(a)** 'the income of recreational clubs from whatever source' that are 'subject to income tax'; and **(b)** part of the 'gross receipts of recreational clubs' that are 'subject to [Value Added Tax].' Accordingly, Revenue Memorandum Circular No. 35-2012 should be interpreted in accordance with this Decision.
>
> **SO ORDERED.**"

With the declaration of the Supreme Court that membership fees, assessment dues, and other fees collected by clubs are not subject to VAT, petitioner ceased to subject to VAT the membership fees and association dues it collected from its members. The last time petitioner remitted VAT on those charges was on July 2019.[26]

On July 20, 2020,[27] petitioner filed an administrative claim for refund or issuance of TCC with BIR Revenue District Office (RDO) No. 43 – Pasig City in the amount of ₱7,449,368.98 representing the VAT paid on membership fees, assessment dues and other charges for the period April 2018 to July 2019.[28]

On July 22, 2020, petitioner filed the present Petition for Review,[29] claiming to protect its interest considering the two (2)-year prescriptive period under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

On December 15, 2020, within the extended period,[30] respondent filed his Answer.[31]

Respondent's Pre-Trial Brief[32] was filed on March 9, 2021 while petitioner's Pre-Trial Brief[33] was filed on March 16, 2021. The Pre-Trial Conference was held on July 1, 2021.[34]

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[26] Par. 11, Petition for Review, Docket, p. 8; No. 23 Q&A, Judicial Affidavit of Ana Liza L. Regaspi, Exhibit "P-23", Docket, pp. 164.
[27] Exhibit "P-21-1", Docket, p. 85.
[28] Exhibits "P-21" and "P-22", Docket, pp. 85-91 and 92.
[29] Docket, pp. 6-20.
[30] Resolution dated December 21, 2020, Docket, p. 191.
[31] Docket, pp. 182-188.
[32] Docket, pp. 206-210.
[33] Docket, pp. 225-229.
[34] Minutes of Hearing and Order dated July 1, 2021, Docket, pp. 241-244 and 245-246.

On July 13, 2021, the parties filed their Joint Stipulation of Facts and Issues[35] which was approved by the Court in the Resolution dated July 27, 2021 thereby terminating the Pre-Trial.[36] On November 18, 2021, the Court issued the Pre-Trial Order.[37]

Upon motion[38] of petitioner, the Court commissioned Atty. Clifford E. Chua, as Independent Certified Public Accountant (ICPA), on December 7, 2021.[39]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Ms. Ana Liza L. Regaspi,[40] petitioner's Accounting Manager; and, Atty. Clifford E. Chua,[41] the Court-commissioned ICPA.

On April 6, 2022, petitioner filed its Formal Offer of Evidence.[42] In the Resolution dated June 13, 2022,[43] the Court admitted most of petitioner's exhibits in evidence, but a number of Exhibits were denied admission for not being found in the records of the case and for being blurred or not properly scanned. In the same Resolution, petitioner was deemed to have rested its case.

Thereafter, respondent presented his lone witness, Revenue Officer Wilfredo M. Pantino.[44]

On June 30, 2022, Respondent's Formal Offer of Evidence was filed.[45] In the Resolution dated August 11, 2022, the Court admitted all of respondent's formally offered evidence, and respondent was deemed to have rested his case.[46]

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[35] Docket, pp. 252-255.
[36] Docket, p. 268.
[37] Docket, pp. 307-321.
[38] Docket, pp. 256-258.
[39] Minutes of Hearing and Order dated December 7, 2021, Docket, pp. 326-328 and 329-331.
[40] Exhibit "P-23", Judicial Affidavit of Ana Liza L. Regaspi, Docket, pp. 156-168; and Minutes of Hearing and Order dated December 7, 2021, Docket, pp. 326-328 and 329-331.
[41] Exhibit "P-42", Judicial Affidavit of Atty. Clifford E. Chua, Docket, pp. 338-344; and Minutes of Hearing and Order dated March 29, 2022, Docket, pp. 424-426 and 427-428.
[42] Docket, pp. 431-442.
[43] Docket, pp. 496-499.
[44] Exhibit "R-8", Judicial Affidavit, Docket, pp. 211-216; and Minutes of the Hearing and Order dated June 28, 2022, Docket, pp. 500-502 and 503-504.
[45] Docket, pp. 507-509.
[46] Docket, pp. 517-518.

Petitioner filed its Memorandum[47] on September 27, 2022, while respondent failed to file his memorandum as per Records Verification dated October 11, 2022.[48]

On October 24, 2022, the case was submitted for decision.[49]

ISSUE

The parties stipulated the following issue for the Court's resolution:

> Whether or not petitioner is entitled to tax refund in the amount of ₱7,449,368.98 representing its VAT for the period of April 2018 to July 2019.[50]

PARTIES' ARGUMENTS

Petitioner argues that: (i) RMC No. 35-2012 is contrary to the long-standing position of all the recreational clubs that the membership fees, association dues and fees of similar nature are not subject to VAT since these collections are used to defray the expenses of the club, thus, there is no VATable sales, exchange or barter to speak of; (ii) the Supreme Court has resolved that membership fees, association dues and fees of similar nature are not subject to VAT; (iii) VAT imposed and remitted to the BIR on membership fees, assessment dues and fees of similar nature were "erroneously or illegally assessed or collected", thus those payments may be the proper subject of tax refund or issuance of TCC as provided under Sections 204(C) and 229 of the NIRC of 1997, as amended; (iv) the doctrine of *solutio indebiti* is applicable in this case as the government received something it is not entitled to; and, (v) petitioner was able to comply with the requirements to claim tax refund under Section 229 of the NIRC of 1997, as amended.[51]

On the other hand, respondent counter-argues that: (i) taxes collected are presumed to be in accordance with laws and regulations; (ii) petitioner's alleged claim for refund is subject to administrative routinary investigation by the BIR; (iii) petitioner must prove compliance with the requirements in claiming for refund as provided in

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[47] Docket, pp. 519-535.
[48] Docket, p. 536.
[49] Docket, p. 537.
[50] IV. Issues to be Tried or Resolved, Pre-Trial Order, Docket, p. 316.
[51] Memorandum, Docket, pp. 519-535.

Sections 204 and 229 of the NIRC of 1997, as amended; and, (iv) the burden of proof is upon petitioner to establish its right to the claimed refund.[52]

THE COURT'S RULING

The principle of *solutio indebiti* cannot supplant the mandatory application of Section 229 of the NIRC of 1997, as amended, in tax refund cases

Petitioner argues that the principle of *solutio indebiti* is applicable in this case as the government received something it is not entitled to in the form of VAT remittances on membership dues and other similar charges. It contends that it is rightful, just and reasonable to refund the VAT collected based on interpretation of law that was invalidated by the Supreme Court.

In *Commissioner of Internal Revenue vs. Manila Electric Company (MERALCO)*,[53] the Supreme Court ruled on the non-applicability of the principle of *solutio indebiti* with regard to filing of internal revenue tax refund claims, *viz.*:

> "In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi-contract or *solutio indebiti* under Article 1145 of the New Civil Code. There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. **Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid.**
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> Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. **Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, 'a taxpayer must prove not only his entitlement to a refund, but also his**

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[52] Answer, Docket, pp. 182-188.
[53] G.R. No. 181459, June 9, 2014.

> **compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.**'" *(Boldfacing supplied)*

The ruling in *MERALCO* was reiterated in *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*[54] and more recently in *Commissioner of Internal Revenue vs. San Miguel Corporation*[55] where the Supreme Court further held that there can be no exception from the application of the two (2)-year prescriptive period based on equity considerations because equity cannot be applied when there is clear statutory law governing the matter.

Thus, to be entitled to a refund of erroneously paid taxes, petitioner must comply with the requisites provided for under Sections 204(C) and 229 of the NIRC of 1997, as amended, which read:

> "**SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*.** – The Commissioner may -
>
> xxx xxx xxx
>
> (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,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.**" *(Boldfacing supplied)*
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> xxx xxx xxx
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> "**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, 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.

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[54] G.R. No. 182582, April 17, 2017.
[55] G.R. Nos. 180740 & 180910, November 11, 2019.

> **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,* That 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." *(Boldfacing supplied)*

Pursuant to the afore-quoted provisions, a taxpayer must prove the following requisites to be entitled to a refund or TCC of erroneously or illegally collected tax:

1. The tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and,

2. The claim for refund or credit must have been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

Timeliness of the administrative and judicial claim for refund or tax credit certificate

Before delving into the merits of petitioner's claim for refund or TCC, the Court shall determine the timeliness of the filing of petitioner's administrative and judicial claims.

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the prescriptive period for the filing of the administrative and judicial claims for refund or recovery of tax erroneously or illegally collected. Section 204(C) of the NIRC of 1997, as amended, applies to administrative claims for refund while Section 229 of the same Code pertains to judicial claims.[56]

Under Section 204(C), an administrative claim for refund or credit must be filed within two years from payment of the tax. Section 229, on the other hand, prescribes two conditions for an action to recover erroneously paid or illegally collected taxes, namely: (1) that an administrative claim must first be filed with the Bureau of Internal

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[56] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019.

Revenue; and, (2) that the judicial claim must be filed within two years from payment of the tax. Reading the two provisions together, both administrative and judicial claims must be filed within the two-year period. Furthermore, the administrative claim must be filed before the judicial claim.[57] The primary purpose of filing an administrative claim is to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded.[58]

In the present case, petitioner's Application for Tax Credits/Refunds (BIR Form No. 1914) was filed before the BIR RDO No. 43 on July 20, 2020;[59] while its Petition for Review was filed with the Court on July 22, 2020.[60] This shows that petitioner filed an administrative claim *first* with the BIR before its judicial claim.

Upon verification, records reveal that petitioner made the following payments on the following dates for its Monthly VAT Declarations (BIR Form No. 2550-M) and Quarterly VAT Returns (BIR Form No. 2550-Q) for the covered period:

2018			
Return Period	**BIR Form No.**	**Date of Payment**	**Amount of VAT Paid**
April	2550M	May 19, 2018[61]	₱ 581,280.97[62]
May	2550M	June 21, 2018[63]	310,930.23[64]
June	2550Q	July 24, 2018[65]	620,992.37[66]
July	2550M	August 20, 2018[67]	998,141.67[68]
August	2550M	September 20, 2018[69]	623,514.75[70]
September	2550Q	October 25, 2018[71]	526,714.46[72]
October	2550M	November 20, 2018[73]	617,985.33[74]
November	2550M	December 20, 2018[75]	798,098.06[76]

[57] *Commissioner of Internal Revenue vs. Carrier Air Conditioning Philippines, Inc., G.R. No. 226592, July 27, 2021.*
[58] *Metropolitan Bank & Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.
[59] Exhibit "P-22", Docket, p. 92.
[60] Docket, p. 6.
[61] Exhibit "P-5", Docket, p. 443.
[62] Exhibit "P-5-3", Docket, p. 445.
[63] Exhibit "P-6", Docket, p. 446.
[64] Exhibit "P-6-3", Docket, p. 448.
[65] Exhibit "P-7", Docket, p. 449.
[66] Exhibit "P-7-3", Docket, p. 451.
[67] Exhibit "P-8", Docket, p. 452.
[68] Exhibit "P-8-3", Docket, p. 454.
[69] Exhibit "P-9", Docket, p. 455.
[70] Exhibit "P-9-3", Docket, p. 457.
[71] Exhibit "P-10", Docket, p. 458.
[72] Exhibit "P-10-3", Docket, p. 460.
[73] Exhibit "P-11", Docket, p. 461.
[74] Exhibit "P-11-3", Docket, p. 463.
[75] Exhibit "P-12", Docket, p. 464.
[76] Exhibit "P-12-3", Docket, p. 466.

December	2550Q	January 25, 2019[77]	981,962.09[78]
		Subtotal	*6,059,619.93*
		2019	
Return Period	**BIR Form No.**	**Date of Payment**	**Amount of VAT Paid**
January	2550M	February 20, 2019[79]	2,002,315.86[80]
February	2550M	March 19, 2019[81]	860,694.20[82]
March	2550Q	April 24, 2019[83]	943,444.40[84]
April	2550M	May 15, 2019[85]	472,751.09[86]
May	2550M	June 20, 2019[87]	582,046.44[88]
June	2550Q	July 22, 2019[89]	338,183.47[90]
July	2550M	August 20, 2019[91]	722,720.41[92]
		Subtotal	*5,922,155.87*
	TOTAL		**₱ 11,981,775.80**

Petitioner argues that the amount of refund claim of ₱7,449,368.98 is within the two (2)-year prescriptive period to file the application. The monthly return periods of April and May 2018 which were paid on May 19, 2018 and June 21, 2018, respectively, are part of the quarter ending June 2018. Thus, petitioner avers that it has until July 23, 2020 or two (2) years from the date of payment thereof to file a refund claim. Petitioner anchors its arguments on Section 114 (A) of the NIRC of 1997, as amended, and Section 4-114-1 of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 13-2018,[93]

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[77] Exhibit "P-13", Docket, p. 467.
[78] Exhibit "P-13-3", Docket, p. 469.
[79] Exhibit "P-14", Docket, p. 470.
[80] Exhibit "P-14-3", Docket, p. 472.
[81] Exhibit "P-15", Docket, p. 473.
[82] Exhibit "P-15-3", Docket, p. 475.
[83] Exhibit "P-16", Docket, p. 476.
[84] Exhibit "P-16-3", Docket, p. 478.
[85] Exhibit "P-17", Docket, p. 479.
[86] Exhibit "P-17-3", Docket, p. 481.
[87] Exhibit "P-18", Docket, p. 482.
[88] Exhibit "P-18-3", Docket, p. 484.
[89] Exhibit "P-19", Docket, p. 485.
[90] Exhibit "P-19-3", Docket, p. 487.
[91] Exhibit "P-20", Docket, p. 488.
[92] Exhibit "P-20-3", Docket, p. 490.
[93] **SEC.4-114-1. Filing of Return and Payment of VAT.**

(A) *Filing or Return.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer. The term "taxable quarter" shall mean that quarter that is synchronized with the income tax quarter of the taxpayer (i.e., the calendar quarter or fiscal quarter): Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis: Provided, finally That beginning January 1, 2023, the filing and payment required under the Tax Code shall be done within twenty-five (25) days following the close of each taxable quarter.

Amounts reflected in the monthly VAT declarations for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT returns shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter. xxx which lay down the procedure for the filing and payment of VAT. It argues that for VAT purposes, what is controlling is the Quarterly VAT returns required to be filed by VAT-registered taxpayers within 25 days following the close of each taxable quarter as it reflects the result of all the VATable transactions for the three-month period. The monthly VAT declarations facilitate advance collection of VAT as those payments are credited in the quarterly VAT return. The monthly VAT declaration is similar to the function of quarterly income tax returns (ITR), the payments on the latter are credited to the annual ITR. Therefore, if the tax is paid in installments, the two (2)-year prescriptive period to file the refund shall be counted from the final payment, in this case, from July 24, 2018 or the date of payment of the Quarterly VAT Return for June 2018 which includes April and May 2018.

Petitioner insists that the filing of its administrative and judicial claims on July 20, 2020 and July 22, 2020, respectively, were within the two (2)-year prescriptive period. Citing the cases of *Commissioner of Internal Revenue vs. TMX Sales*[94] *(TMX)* and *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[95] *(Atlas)*, petitioner contends that the prescriptive period for the monthly VAT returns for April and May 2018 should be reckoned not from May 19, 2018 and June 21, 2018, respectively, when it remitted the VAT to the BIR, but rather, from the time its quarterly VAT return ending June 30, 2018 was paid or on July 24, 2018.

The Court finds merit in petitioner's argument.

In *TMX*, the Supreme Court held that the two (2)-year prescriptive period provided in Section 229 of the NIRC of 1997, as amended, should be counted from the filing of the final adjustment return, because it is only during that date that the exact liability or refundability of tax can be determined, *viz.*:

> "xxx [T]he filing of quarterly income tax returns required in Section 85 (now Section 68) and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 (now Section 69) which provides for the filing of adjustment returns and final payment of income tax. **Consequently, the two-year prescriptive period provided in Section 292 (now Section 230) of the Tax Code**

[94] G.R. No. 83736, January 15, 1992.
[95] G.R. Nos. 141104 and 148763, June 8, 2017.

> **should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax.**" *(Boldfacing supplied)*

This was reiterated by the Supreme Court in *Commissioner of Internal Revenue vs. Philippine Bank of Communications,*[96] *(PBCOM)* wherein it was held that Sections 204(C) and 229 of the NIRC, as amended, provide for a two (2)-year prescriptive period in claiming a tax credit/refund from the date of the filing of the final adjustment return. The Supreme Court, citing *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.),* [97] elucidated:

> "Indeed, the two-year period in filing a claim for tax refund is crucial. While the law provides that the two-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that **the two-year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise.** Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures." *(Boldfacing supplied)*

In *Atlas*, the Supreme Court held that VAT is computed and paid on a purely quarterly basis and that until the VAT-registered taxpayer prepares and submits its quarterly VAT return, there is no way of knowing with certainty just how much output VAT it is due to pay for the quarter, to wit:

> It is true that unlike corporate income tax, which is reported and paid on installment every quarter, but is eventually subjected to a final adjustment at the end of the taxable year, **VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. However, it is also equally true that until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just** how much input VAT the taxpayer may apply against its output VAT; **how much output VAT it is due to pay for the quarter** or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/credit. It should be recalled that not only may a VAT-registered taxpayer directly apply against his output VAT due the input VAT it had paid on its importation or local purchases of goods and services during the quarter; the taxpayer is also given the

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[96] G.R. No. 211348, February 23, 2022.
[97] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines. Inc.,* G.R. No. 231581, April 10, 2019.

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> option to either (1) carry over any excess input VAT to the succeeding quarters for application against its future output VAT liabilities, or (2) file an application for refund or issuance of a tax credit certificate covering the amount of such input VAT. **Hence, even in the absence of a final adjustment return, the determination of any output VAT payable necessarily requires that the VAT-registered taxpayer make adjustments in its VAT return every quarter**, taking into consideration the input VAT which are creditable for the present quarter or had been carried over from the previous quarters." *(Boldfacing supplied)*

Considering the foregoing, it is only after the filing of the quarterly VAT return that a taxpayer's VAT liability or refundability of output VAT can be determined. Applying by analogy the ruling in *TMX* and *PBCOM*, it is logical therefore to conclude that the two (2)-year period within which petitioner should file its claim for refund or issuance of TCC in this case should be reckoned from the date of the filing of its quarterly VAT returns.

A perusal of the records reveals that petitioner made the following payments on the following dates for its Monthly VAT Declarations (BIR Form No. 2550-M) and Quarterly VAT Returns (BIR Form No. 2550-Q):

Return Period	Date of Payment (BIR Form No. 2550-M and 2550-Q)	2-Year Prescriptive Period	Administrative Claim Filed	Judicial Claim Filed
April 2018	May 19, 2018[98]	July 24, 2020	July 20, 2020	July 22, 2020
May 2018	June 21, 2018[99]		July 20, 2020	July 22, 2020
June 2018 (3rd Quarter of FY 2018)	July 24, 2018[100]		July 20, 2020	July 22, 2020
July 2018	August 20, 2018[101]	October 25, 2020	July 20, 2020	July 22, 2020
August 2018	September 20, 2018[102]		July 20, 2020	July 22, 2020
September 2018 (4th Quarter of FY 2018)	October 25, 2018[103]		July 20, 2020	July 22, 2020
October 2018	November 20, 2018[104]	January 25, 2021	July 20, 2020	July 22, 2020
November 2018	December 20, 2018[105]		July 20, 2020	July 22, 2020
December 2018 (1st Quarter of FY 2019)	January 25, 2019[106]		July 20, 2020	July 22, 2020
January 2019	February 20, 2019[107]	April 24, 2021	July 20, 2020	July 22, 2020
February 2019	March 19, 2019[108]		July 20, 2020	July 22, 2020

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[98] Exhibit "P-5", Docket, p. 443.
[99] Exhibit "P-6", Docket, p. 446.
[100] Exhibit "P-7", Docket, p. 449.
[101] Exhibit "P-8", Docket, p. 452.
[102] Exhibit "P-9", Docket, p. 455.
[103] Exhibit "P-10", Docket, p. 458.
[104] Exhibit "P-11", Docket, p. 461.
[105] Exhibit "P-12", Docket, p. 464.
[106] Exhibit "P-13", Docket, p. 467.
[107] Exhibit "P-14", Docket, p. 470.
[108] Exhibit "P-15", Docket, p. 473.

March 2019 (2nd Quarter of FY 2019)	April 24, 2019[109]		July 20, 2020	July 22, 2020
April 2019	May 15, 2019[110]	July 22, 2021	July 20, 2020	July 22, 2020
May 2019	June 20, 2019[111]		July 20, 2020	July 22, 2020
June 2019 (3rd Quarter of FY 2019)	July 22, 2019[112]		July 20, 2020	July 22, 2020
July 2019	August 20, 2019[113]	Cannot be determined[114]	July 20, 2020	July 22, 2020

Given the above output VAT payments on membership fees, assessment dues and similar charges for the period covering April 2018 to July 2019, petitioner made the first payment and remittance to the BIR on May 19, 2018 under the Monthly VAT Declaration for April 2018. This first payment of output VAT is covered by the 3rd Quarter of FY 2018 wherein the Quarterly VAT Return was filed on July 24, 2018. Counting two (2) years from said date, petitioner had until July 24, 2020, at the earliest, within which to file its administrative and judicial claims for refund for the subject covered period. Clearly, petitioner's administrative claim filed on July 20, 2020, and the subsequent judicial claim before this Court filed on July 22, 2020 were within the two (2)-year period prescribed by law.

The membership fees, assessment dues, and the like collected by petitioner from its members are _not_ subject to VAT under the NIRC of 1997, as amended.

RMC No. 35-2012[115] categorically subjected the gross receipts of recreational clubs, including but not limited to membership fees, assessment dues, rental income and service fees to VAT, to wit:

"b. Value-Added Tax

Section 105 of the National Internal Revenue Code of 1997, as amended, provides:

SECTION 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods

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[109] Exhibit "P-16", Docket, p. 476.
[110] Exhibit "P-17", Docket, p. 479.
[111] Exhibit "P-18", Docket, p. 482.
[112] Exhibit "P-19", Docket, p. 485.
[113] Exhibit "P-20", Docket, p. 488.
[114] Petitioner failed to present its 4th Quarterly VAT Return for FY 2019. Thus, the Court cannot determine the date of filing of said return which is the reckoning date for the two (2)-year prescriptive period for the payment of VAT for July 2019.
[115] SUBJECT: Clarifying the Taxability of Clubs Organized and Operated Exclusively for Pleasure, Recreation, and Other Non-Profit Purposes, August 3, 2012.

or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

xxx xxx xxx

The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity. (Emphasis omitted)

The above provision is clear — even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services.

xxx xxx xxx

Clearly, the gross receipts of recreational clubs including but not limited to membership fees, assessment dues, rental income, and service fees are subject to VAT." (*Boldfacing supplied*)

In *Association of Non-Profit Clubs, Inc. vs. Bureau of Internal Revenue,*[116] the Supreme Court declared as invalid the BIR's interpretation in RMC No. 35-2012 that membership fees, assessment dues, and the like are part of "the gross receipts of recreational clubs" that are "subject to VAT". Membership fees, assessment dues, and the like collected by recreational clubs do not involve the sale, barter, exchange of goods or property, nor are they generated by the performance of services, as such, they are not subject to VAT per Section 105 of the NIRC of 1997, as amended, *viz.*:

"In the same way, **the Court declares as invalid the BIR's interpretation in RMC No. 35-2012 that membership fees, assessment dues, and the like are part of 'the gross receipts of recreational clubs' that are 'subject to VAT.'**

It is a basic principle that **before a transaction is imposed VAT, <u>a sale, barter or exchange of goods or properties, or sale of a service is required</u>**. This is true even if such sale is on a cost-reimbursement basis. Section 105, Chapter I, Title IV of the 1997 NIRC reads:

Section 105. *Persons Liable.*— Any person who, in the course of trade or business, **sells, barters, exchanges, leases goods or properties, renders services**, and any person who **imports goods** shall be **subject to the value-added tax (VAT)** imposed in Sections 106 to 108 of this Code.

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[116] G.R. No. 228539, June 26, 2019.

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> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the **buyer, transferee** or **lessee** of the goods, properties or services. This rule shall likewise apply to existing contracts of **sale or lease of goods, properties or services** at the time of the effectivity of Republic Act No. 7716.
>
> The phrase "*in the course of trade or business*" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it **sells exclusively to members or their guests**), or government entity.
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business. (Emphases supplied)

> As ANPC aptly pointed out, membership fees, assessment dues, and the like are not subject to VAT because in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/maintenance of the facilities of the organization. **As such, there could be no "sale, barter or exchange of goods or properties, or sale of a service" to speak of, which would then be subject to VAT under the 1997 NIRC.**" (*Boldfacing supplied*)

This was reiterated by the Supreme Court in *Commissioner of Internal Revenue vs. Federation of Golf Clubs of the Philippines, Inc.*,[117] to wit:

> "**As to VAT, the Court interpreted that RMC No. 35-2012 erroneously included the gross receipts of recreational clubs on membership fees, assessment dues, and the like as subject to VAT because Section 105 of the 1997 NIRC specified the taxability of only those which deal with the "sale, barter or exchange of good or properties, or sale of service."** In collecting such fees from their members, recreational clubs are not selling any kind of service, in the same way that the members are not procuring service from them. Thus, "there could be no sale, barter or exchange of goods or properties, or sale of a service to speak of, which would then be subject to VAT under the 1997 NIRC." (*Boldfacing supplied*)

Based on the afore-quoted pronouncements, recreational clubs are not selling any kind of service when they are collecting membership

[117] G.R. No. 226449, July 28, 2020.

fees, assessment dues, and the like from their members, nor are the members procuring services from the recreational clubs. As such, there could be no "sale, barter or exchange of goods or properties, or sale of a service" to speak of, which would then be subject to VAT under the NIRC of 1997, as amended. Thus, recreational club membership fees, assessment dues and similar charges are *not* subject to VAT under Section 105 of the NIRC of 1997, as amended.

Petitioner failed to prove that a portion of its VAT payments pertains to the amount subject of the claim.

As provided under Section 229 of the NIRC of 1997, as amended, a taxpayer who claims for refund or credit on the ground of erroneous payment must prove that it has paid the tax and such payment was erroneous. Likewise, as held in *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*[118], a taxpayer claiming for a tax credit or refund must not only prove its entitlement to the claim but it must also show compliance with all the documentary and evidentiary requirements thereto.

A perusal of petitioner's eFPS Payment Details attached to its monthly VAT Declarations and Quarterly VAT Returns reveals that it made monthly and quarterly VAT payments in the total amount of ₱11,981,775.80 for the period April 2018 to July 2019, as follows:

Exhibit No.	BIR Form No.	Tax Period	Payment Transaction Number	Date of Payment	Amount Paid
P-5[119]	2550-M	04/30/2018	183147056	05/19/2018	₱ 581,280.97
P-6[120]	2550-M	05/31/2018	183569224	06/21/2018	310,930.23
P-7[121]	2550-Q	06/30/2018	183997799	07/24/2018	620,992.37
P-8[122]	2550-M	07/31/2018	184477520	08/20/2018	998,141.67
P-9[123]	2550-M	08/31/2018	184976200	09/20/2018	623,514.75
P-10[124]	2550-Q	09/30/2018	185459596	10/25/2018	526,714.46
P-11[125]	2550-M	10/31/2018	185960408	11/20/2018	617,985.33
P-12[126]	2550-M	11/30/2018	186476172	12/20/2018	798,098.06

[118] G.R. No. 183531, March 25, 2015.
[119] Docket, p. 443.
[120] Docket, p. 446.
[121] Docket, p. 449.
[122] Docket, p. 452.
[123] Docket, p. 455.
[124] Docket, p. 458.
[125] Docket, p. 461.
[126] Docket, p. 464.

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P-13[127]	2550-Q	12/31/2018	197088901	01/25/2019	981,962.09
P-14[128]	2550-M	01/31/2019	197606054	02/20/2019	2,002,315.86
P-15[129]	2550-M	02/28/2019	197960907	03/19/2019	860,694.20
P-16[130]	2550-Q	03/31/2019	198505227	04/24/2019	943,444.40
P-17[131]	2550-M	04/30/2019	198918373	05/15/2019	472,751.09
P-18[132]	2550-M	05/31/2019	199427558	06/20/2019	582,046.44
P-19[133]	2550-Q	06/30/2019	199814777	07/22/2019	338,183.47
P-20[134]	2550-M	07/31/2019	190334273	08/20/2019	722,720.41
Total Monthly/Quarterly VAT Payments					**₱ 11,981,775.80**

The above monthly and quarterly VAT Payments are derived by applying petitioner's creditable input tax credits against its output tax for the period April 2018 to July 2019.

Petitioner's VAT returns declared the following Output VAT for the period April 2018 to July 2019:

CY 2018			
Period	**Gross Receipts Subjected to VAT**		
	Exhibit No.	**Amount**	**Output VAT**
April	P-5-2[135]	7,320,167.65	878,420.12
May	P-6-2[136]	9,736,034.86	1,168,324.18
June	P-7-2[137]	8,768,011.30	1,052,161.36[138]
July	P-8-2[139]	11,580,442.39	1,389,653.09
August	P-9-2[140]	7,638,012.47	916,561.50
September	P-10-2[141]	7,684,793.47	922,175.22[142]
October	P-11-2[143]	10,377,282.82	1,245,273.94
November	P-12-2[144]	10,822,018.92	1,298,642.27

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[127] Docket, p. 467.
[128] Docket, p. 470.
[129] Docket, p. 473.
[130] Docket, p. 476.
[131] Docket, p. 479.
[132] Docket, p. 482.
[133] Docket, p. 485.
[134] Docket, p. 488.
[135] Docket, p. 444.
[136] Docket, p. 447.
[137] Docket, p. 450.
[138] This is derived by subtracting the Output Taxes for April and May 2018 to the Total Output Tax for the quarter ending **June 2018**, or [3,098,905.66 - (878,420.12 + 1,168,324.18)].
[139] Docket, p. 453.
[140] Docket, p. 456.
[141] Docket, p. 459.
[142] This is derived by subtracting the Output Taxes for July and August 2018 to the Total Output Tax for the quarter ending **September 2018**, or [3,228,389.80 - (1,389,653.09+ 916,561.50)]; with .01 difference.
[143] Docket, p. 462.
[144] Docket, p. 465.

December	P-13-2[145]	14,937,152.52	1,792,458.30[146]
	Subtotal	*88,863,916.40*	*10,663,669.98*
CY 2019			
Period	**Gross Receipts Subjected to VAT**		
	Exhibit No.	**Amount**	**Output VAT**
January	P-14-2[147]	22,624,635.90	2,714,956.31
February	P-15-2[148]	9,165,297.38	1,099,835.69
March	P-16-2[149]	10,255,574.13	1,230,668.90[150]
April	P-17-2[151]	6,529,756.55	783,570.79
May	P-18-2[152]	7,603,663.44	912,439.61
June	P-19-2[153]	6,501,787.18	780,214.46[154]
July	P-20-2[155]	8,406,468.51	1,008,776.22
	Subtotal	*71,087,183.09*	*8,530,461.98*
TOTAL		**159,951,099.49**	**19,194,131.94**[156]

With regard to its total creditable input tax for the period April 2018 to July 2019, petitioner reflected in its VAT Returns a total amount of ₱7,212,356.16, broken down as follows:

Tax Period	**BIR Form No.**	**Input Tax**				**Total Allowable Input Tax**[157] **[(a) + (b) – (c)]**
		Exhibit No.	**On Domestic Purchases of Goods Other than Capital Goods**[158] **(a)**	**On Domestic Purchase of Services**[159] **(b)**	**Less: Input Tax Allocable to Exempt Sale**[160] **(c)**	
2018						
April	2550-M	P-5-1	230,256.03	80,728.99	13,845.87	297,139.15
May	2550-M	P-6-1	208,331.98	682,639.70	33,577.72	857,393.96

145 Docket, p. 468.
146 This is derived by subtracting the Output Taxes for October and November 2018 to the Total Output Tax for the quarter ending **December 2018**, or [4,336,374.51 - (1,245,273.94+ 1,298,642.27)].
147 Docket, p. 471.
148 Docket, p. 474.
149 Docket, p. 477.
150 This is derived by subtracting the Output Taxes for January and February 2019 to the Total Output Tax for the quarter ending **March 2019**, or [5,045,460.89 - (2,714,956.31+ 1,099,835.69)]; with .01 difference.
151 Docket, p. 480.
152 Docket, p. 483.
153 Docket, p. 476.
154 This is derived by subtracting the Output Taxes for April and May 2019 to the Total Output Tax for the quarter ending **June 2019**, or [2,476,224.86 - (783,570.79 + 912,439.61)].
155 Docket, p. 489.
156 With 0.02 difference.
157 Item 21 for BIR Form No. 2550-M and Item 24 for BIR Form No. 2550-Q.
158 Item 18F for BIR Form No. 2550-M and Item 21F for BIR Form No. 2550-Q.
159 Item 18J for BIR Form No. 2550-M and Item 21J for BIR Form No. 2550-Q.
160 Item 20C for BIR Form No. 2550-M and Item 23C for BIR Form No. 2550-Q.

June	2550-Q	P-7-1	169,038.26[161]	275,145.31[162]	13,014.59[163]	431,168.98
July	2550-M	P-8-1	109,911.11	296,744.02	15,143.71	391,511.42
August	2550-M	P-9-1	139,579.33	169,411.35	15,943.93	293,046.75
September	2550-Q	P-10-1	127,669.39[164]	287,578.39[165]	19,787.03[166]	395,460.75
October	2550-M	P-11-1	114,648.09	538,294.77	25,654.25	627,288.61
November	2550-M	P-12-1	165,536.00	351,928.64	16,920.43	500,544.21
December	2550-Q	P-13-1	386,756.37[167]	447,125.78[168]	23,385.94[169]	810,496.21
		Subtotal	*1,651,726.56*	*3,129,596.95*	*177,273.47*	*4,604,050.04*
			2019			
January	2550-M	P-14-1	278,559.70	446,581.27	12,500.52	712,640.46
February	2550-M	P-15-1	107,748.84	141,077.16	9,684.52	239,141.48
March	2550-Q	P-16-1	134,701.07[170]	166,066.45[171]	13,543.02[172]	287,224.50
April	2550-M	P-17-1	165,835.64	165,256.70	20,272.65	310,819.69
May	2550-M	P-18-1	181,076.26	166,691.43	17,374.51	330,393.18

[161] This is derived by subtracting the Input Taxes on *"Domestic Purchases of Goods Other than Capital Goods"* for April (Exhibit "P-5-1") and May 2018 (Exhibit "P-6-1") to that for the quarter ending **June 2018**, or [607,626.27 - (230,256.03+208,331.98)].
[162] This is derived by subtracting the Input Taxes on *"Domestic Purchases of Services"* for April (Exhibit "P-5-1") and May 2018 (Exhibit "P-6-1") to that for the quarter ending **June 2018**, or [1,038,514.00 - (80,728.99+682,639.70)].
[163] This is derived by subtracting the "*Input Tax Allocable to Exempt Sales*" for April (Exhibit "P-5-1") and May 2018 (Exhibit "P-6-1") to that for the quarter ending **June 2018**, or [60,438.18 - (13,845.87+33,577.72)].
[164] This is derived by subtracting the Input Taxes on *"Domestic Purchases of Goods Other than Capital Goods"* for July (Exhibit "P-8-1") and August 2018 (Exhibit "P-9-1") to that for the quarter ending **September 2018**, or [377,159.83 - (109,911.11+139,579.33)].
[165] This is derived by subtracting the Input Taxes on *"Domestic Purchases of Services"* for July (Exhibit "P-8-1") and August 2018 (Exhibit "P-9-1") to that for the quarter ending **September 2018**, or [753,733.76 - (296,744.02+169,411.35)].
[166] This is derived by subtracting the "*Input Tax Allocable to Exempt Sales*" for July (Exhibit "P-8-1") and August 2018 (Exhibit "P-9-1") to that for the quarter ending **September 2018**, or [50,874.67 - (15,143.71+15,943.93)].
[167] This is derived by subtracting the Input Taxes on *"Domestic Purchases of Goods Other than Capital Goods"* for October (Exhibit "P-11-1") and November 2018 (Exhibit "P-12-1") to that for the quarter ending **December 2018**, or [666,940.46 - (114,648.09+165,536.00)].
[168] This is derived by subtracting the Input Taxes on "*Domestic Purchases of Services*" for October (Exhibit "P-11-1") and November 2018 (Exhibit "P-12-1") to that for the quarter ending **December 2018**, or [1,337,349.19 - (538,294.77+351,928.64)].
[169] This is derived by subtracting the "*Input Tax Allocable to Exempt Sales*" for October (Exhibit "P-11-1") and November 2018 (Exhibit "P-12-1") to that for the quarter ending **December 2018**, or [65,960.62 - (25,654.25+16,920.43)].
[170] This is derived by subtracting the Input Taxes on *"Domestic Purchases of Goods Other than Capital Goods"* for January (Exhibit "P-14-1") and February 2019 (Exhibit "P-15-1") to that for the quarter ending **March 2019**, or [521,009.61 - (278,559.70+141,077.16)].
[171] This is derived by subtracting the Input Taxes on *"Domestic Purchases of Services"* for January (Exhibit "P-14-1") and February 2019 (Exhibit "P-15-1") to that for the quarter ending **March 2019**, or [753,724.88 - (446,581.27+141,077.16)].
[172] This is derived by subtracting the "*Input Tax Allocable to Exempt Sales*" for January (Exhibit "P-14-1") and February 2019 (Exhibit "P-15-1") to that for the quarter ending **March 2019**, or [35,728.06 - (12,500.52+9,684.52)].

June	2550-Q	P-19-1	170,632.25[173]	277,099.18[174]	5,700.44[175]	442,030.99
July	2550-M	P-20-1	128,275.95	172,225.41	14,445.54	286,055.82
		Subtotal	*1,166,829.71*	*1,534,997.60*	*93,521.20*	*2,608,306.12*
		TOTAL	**₱ 2,818,556.27**	**₱4,664,594.55**	**₱ 270,794.67**	**₱7,212,356.16**

To summarize, petitioner's total Monthly/Quarterly VAT Payments of ₱11,981,775.80 was computed by deducting the total creditable input tax of ₱7,212,356.16 to the total output tax of ₱19,194,131.94 for the period April 2018 to July 2019, *viz:*

Particular	**Amount**
Total Output Tax Due	₱ 19,194,131.94
Less: Creditable Input Tax	(7,212,356.16)
VAT Amount Payable (Overpayment)	**₱ 11,981,775.80**

Based on the above computation, it can be gleaned that the amount of Total Output Tax of ₱19,194,131.94 was paid by petitioner through: (1) application of its creditable input tax against its output tax; and, (2) monthly/quarterly VAT payments for the excess thereof. Hence, in order to refund the claim of VAT on membership fees, assessment dues and other similar charges petitioner alleges to have erroneously paid, it must provide evidence showing payment of the two (2) aforementioned items.

First, with regard to petitioner's creditable input tax, it must be emphasized that Sections 204 and 229 of the 1997 NIRC, as amended, must be read in conjunction with the provision of Section 4.110-8 of RR No. 16-2005, which states that in order for input taxes to be available as tax credits, they must be substantiated and reported in the VAT returns of the taxpayer.[176]

An examination of the documents adduced by petitioner as evidence shows that it did not include *any* evidence to prove the allowable input tax declared in its Monthly VAT Declarations and Quarterly VAT Returns. The evidence presented and offered by petitioner include: Summary of VAT Remittance for the period January

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[173] This is derived by subtracting the Input Taxes on *"Domestic Purchases of Goods Other than Capital Goods"* for April (Exhibit "P-17-1") and May 2019 (Exhibit "P-18-1") to that for the quarter ending **June 2019**, or [517,544.15 - (165,835.64+181,076.26)].
[174] This is derived by subtracting the Input Taxes on *"Domestic Purchases of Services"* for April (Exhibit "P-17-1") and May 2019 (Exhibit "P-18-1") to that for the quarter ending **June 2019**, or [609,047.31- (165,256.70+166,691.43)].
[175] This is derived by subtracting the Input Taxes on "*Input Tax Allocable to Exempt Sales"* for April (Exhibit "P-17-1") and May 2019 (Exhibit "P-18-1") to that for the quarter ending **June 2019**, or [43,347.60- (20,272.65+17,374.51)].
[176] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 221694 (Notice), January 19, 2021.

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2018 to July 2019;[177] Monthly VAT Declarations with eFPS Payment Details;[178] Quarterly VAT Returns with eFPS Payment Details;[179] VAT ORs covering the subject period;[180] and Application for Tax Credits/Refunds dated July 20, 2020.[181] Notably, supporting documents relevant to petitioner's substantiation of its applied creditable input tax were absent. Therefore, the Court could not determine the veracity of the above total input tax credits as petitioner failed to substantiate the same by way of VAT invoices for domestic purchases of goods and VAT Official Receipts (ORs) for domestic purchases of services as provided under Section 110(A)(1)[182], in relation to Section 113(A)(1) and (2)[183] of the NIRC of 1997, as amended.

Second, with regard to petitioner's monthly/quarterly VAT payments of ₱11,981,775.80 for the period April 2018 to July 2019, as discussed earlier, petitioner was able to prove that it paid the said amount through eFPS Payment Details attached to its monthly VAT Declarations and Quarterly VAT Returns.

To reiterate, only the output tax proven to have been paid may be refunded provided that the same or a portion thereof, as in this case, corresponds to the membership fees, association dues, and other similar charges which are not subject to VAT as ruled in the ANPC case.

In its *Petition,*[184] petitioner alleges that out of its total gross receipts of ₱159,951,099.49 subjected to VAT for the period April 2018

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[177] Exhibit "P-4", Docket, p. 36.
[178] Exhibits "P-5", "P-5-1", "P-6", "P-6-1", "P-8", "P-8-1", "P-9", "P-9-1", "P-11", "P-11-1", "P-12", "P-12-1", "P-14", "P-14-1", "P-15", "P-15-1", "P-17", "P-17-1", "P-18", "P-18-1", "P-20", and "P-20-1", Docket, pp. 443-445, 446-448, 452-454, 455-457, 461-463, 464-466, 470-472, 473-475, 479-481, 482-484, and 488-490.
[179] Exhibits "P-7", "P-7-1", "P-10", "P-10-1", "P-13", "P-13-1", "P-16", "P-16-1", "P-19", and "P-19-1", Docket, pp. 449-451, 458-460, 467-469, 476-478 and 485-487.
[180] Exhibits "P-25-001" to "P-25-1210", "P-26-001" to "P-26-1343", "P-27-001" to "P-27-1147", "P-28-001" to "P-28-1258", "P-29-001" to "P-29-1230", "P-30-001" to "P-30-1214", "P-31-001" to "P-31-1444", "P-32-001" to "P-32-1345", "P-33-001" to "P-33-1559", "P-3-001" to "P-34-2589", "P-35-001" to "P-35-1194", "P-36-001" to "P-36-1247", "P-37-001" to "P-37-1142", "P-38-001" to "P-38-1278", "P-39-001" to "P-39-1098", and "P-40-001" to "P-40-1324".
[181] Docket, Vol. II, pp. 431-442.
[182] SEC. 110. *Tax Credits.* –
A) *Creditable Input Tax* –
(1) Any input tax evidenced by a **VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: ... *(Boldfacing supplied)*
[183] SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* –
(A) *Invoicing Requirements.* – A VAT -registered person shall issue:
(1) **A VAT invoice for every sale**, barter or exchange **of goods or properties**; and
(2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services**. *(Boldfacing supplied)*
[184] CTA Docket, Vol. II, p. 9.

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to July 2019, ₱62,078,074.80 with a corresponding output VAT of ₱7,449,368.98 pertain to membership fees, assessment dues and similar charges charged to its members in accordance with RMC No. 35-2012. The amount of ₱7,449,368.98 in fine represents petitioner's total claim, to wit:

CY 2018					
Period	**Gross Receipts Subjected to VAT**			**Alleged Membership Fees, Assessment Dues and Other Similar Charges**	
	Exhibit No.	**Amount**	**Output VAT**	**Amount**	**Output VAT**
April	P-5-2[185]	7,320,167.65	878,420.12	2,741,573.99	328,988.88
May	P-6-2[186]	9,736,034.86	1,168,324.18	2,705,172.52	324,620.70
June	P-7-2[187]	8,768,011.30	1,052,161.36[188]	2,587,880.43	310,545.65
July	P-8-2[189]	11,580,442.39	1,389,653.09	2,689,030.61	322,683.67
August	P-9-2[190]	7,638,012.47	916,561.50	2,870,448.51	344,453.82
September	P-10-2[191]	7,684,793.47	922,175.22[192]	2,629,622.14	315,554.66
October	P-11-2[193]	10,377,282.82	1,245,273.94	4,403,763.82	528,451.66
November	P-12-2[194]	10,822,018.92	1,298,642.27	4,000,000.00	480,000.00
December	P-13-2[195]	14,937,152.52	1,792,458.30[196]	5,601,683.29	672,202.00
	Subtotal	*88,863,916.40*	*10,663,669.98*	*30,229,175.31*	*3,627,501.04*
CY 2019					
Period	**Gross Receipts Subjected to VAT**			**Alleged Membership Fees, Assessment Dues and Other Similar Charges**	
	Exhibit No.	**Amount**	**Output VAT**	**Amount**	**Output VAT**
January	P-14-2[197]	22,624,635.90	2,714,956.31	17,368,303.57	2,084,196.43
February	P-15-2[198]	9,165,297.38	1,099,835.69	2,687,658.74	322,519.05
March	P-16-2[199]	10,255,574.13	1,230,668.90[200]	2,873,785.71	344,854.29
April	P-17-2[201]	6,529,756.55	783,570.79	2,173,562.23	260,827.47
May	P-18-2[202]	7,603,663.44	912,439.61	2,107,142.86	252,857.14

[185] Docket, p. 444.
[186] Docket, p. 447.
[187] Docket, p. 450.
[188] This is derived by subtracting the Output Taxes for April and May 2018 to the Total Output Tax for the quarter ending **June 2018**, or [3,098,905.66 - (878,420.12 + 1,168,324.18)].
[189] Docket, p. 453.
[190] Docket, p. 456.
[191] Docket, p. 459.
[192] This is derived by subtracting the Output Taxes for July and August 2018 to the Total Output Tax for the quarter ending **September 2018**, or [3,228,389.80 - (1,389,653.09+ 916,561.50)]; with .01 difference.
[193] Docket, p. 462.
[194] Docket, p. 465.
[195] Docket, p. 468.
[196] This is derived by subtracting the Output Taxes for October and November 2018 to the Total Output Tax for the quarter ending **December 2018**, or [4,336,374.51 - (1,245,273.94+ 1,298,642.27)].
[197] Docket, p. 471.
[198] Docket, p. 474.
[199] Docket, p. 477.
[200] This is derived by subtracting the Output Taxes for January and February 2019 to the Total Output Tax for the quarter ending **March 2019**, or [5,045,460.89 - (2,714,956.31+ 1,099,835.69)]; with .01 difference.
[201] Docket, p. 480.
[202] Docket, p. 483.

June	P-19-2[203]	6,501,787.18	780,214.46[204]	1,832,500.00	219,900.00
July	P-20-2[205]	8,406,468.51	1,008,776.22	2,805,946.38	336,713.57
	Subtotal	*71,087,183.09*	*8,530,461.98*	*31,848,899.49*	*3,821,867.95*
TOTAL		**159,951,099.49**	**19,194,131.94**[206]	**62,078,074.80**	**7,449,368.98**[207]

Based on petitioner's Monthly VAT Declarations and Quarterly VAT Returns for the covered period, petitioner claims that its total output tax due of ₱19,194,131.94 consists of the amount of ₱11,744,762.96 representing the gross receipts correctly subjected to VAT while the amount of ₱7,449,368.98 subject of the claim for refund pertains to the alleged membership fees, assessment dues and similar charges collected from its members in accordance with RMC No. 35-2012.

As support, petitioner presented VAT ORs[208] it issued for the gross receipts it reported for the covered period of April 2018 to July 2019 in the total amount of ₱159,951,099.49. Upon perusal of petitioner's VAT ORs, it is noted that pertinent details therein that would categorically identify the portion of the gross receipts pertaining to the alleged membership dues, assessment fees and other charges subject of the claim were absent. Even the nature of the payment as provided in the aforesaid VAT ORs was proven to be at best ambiguous. For instance, in most of the VAT ORs, payments were made for "DUE", "ACCT", "CONSUMABLES", "CHECK#", "PR#". Clearly, said documents could not be solely relied upon by the Court in determining the veracity of petitioner's claim.

No other pieces of evidence were adduced by petitioner that would verify its claim that the total output tax of ₱7,449,368.98 was actually the total output tax from membership dues, assessment fees and other similar charges. The only document that provides for and corroborates the breakdown of petitioner's gross receipts is the Report[209] of the Court-commissioned ICPA, Atty. Clifford E. Chua.

In his examination, Atty. Chua noted that out of the ₱19,194,131.94 total output VAT reflected in petitioner's VAT Returns

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[203] Docket, p. 486.
[204] This is derived by subtracting the Output Taxes for April and May 2019 to the Total Output Tax for the quarter ending **June 2019**, or [2,476,224.86 - (783,570.79 + 912,439.61)].
[205] Docket, p. 489.
[206] With 0.02 difference.
[207] *Id;* with 0.01 difference.
[208] Exhibits "P-25-1" to "P-25-1210", "P-26-1" to "P-26-1343", "P-27-1" to "P-27-1147", "P-28-1" to "P-28-1258", "P-29-1" to "P-29-1230", "P-30-1" to "P-30-1214", "P-31-1" to "P-31-1444", "P-32-1" to "P-32-1345", "P-33-1" to "P-33-1559", "P-34-1" to "P-34-2589", "P-35-1" to "P-35-1194", "P-36-1" to "P-36-1247", "P-37-1" to "P-37-1142", "P-38-1" to "P-38-1278", "P-39-1" to "P-39-1098", "P-40-1" to "P-40-1324".
[209] Exhibit "P-41", pp. 4-5.

for the period April 2018 to July 2019, only ₱18,702,299.17 were supported by petitioner's VAT ORs. Further, of the total ₱18,702,299.17 output VAT, ₱7,412,656.00 were verified by Atty. Chua to pertain to the membership fees, assessment dues and other similar charges for the period April 2018 to July 2019, to wit:

> "c. With respect to procedure 3, I traced the collections reflected in the ORs and ascertained if the same pertain to membership fees, assessment dues and similar charges under existing rules and regulations and as interpreted in the Supreme Court ruling which is not subject to VAT or for income from facilities, sales of food and other services, penalties or other charges which is subject to VAT. The results of procedure are detailed in Annexes "Q" to "FF" and summarized below:

Period Covered	VATable Sales	VAT	Membership Dues	VAT from Membership Dues	Other Charges	VAT from Other Charges
April 2018	6,991,530.94	838,983.71	2,740,851.43	328,902.17	4,250,679.51	510,081.54
May 2018	9,526,567.48	1,143,188.10	2,701,052.71	324,126.33	6,825,514.77	819,061.77
June 2018	8,224,352.08	986,922.25	2,587,502.25	310,500.27	5,636,849.83	676,421.98
July 2018	8,295,435.21	995,452.22	2,687,471.39	322,496.57	5,607,963.82	672,955.65
August 2018	7,682,910.16	921,949.22	2,869,880.93	344,385.71	4,813,029.23	577,563.51
September 2018	7,552,798.36	906,335.80	2,627,712.89	315,325.55	4,925,085.46	591,010.26
October 2018	10,421,435.30	1,250,572.24	4,399,219.91	527,906.39	6,022,215.39	722,665.85
November 2018	10,969,520.21	1,316,342.43	3,996,442.96	479,573.15	6,973,077.25	836,769.28
December 2018	15,923,200.53	1,910,784.06	5,595,823.49	671,498.82	10,327,377.04	1,239,285.24
January 2019	27,111,923.41	3,253,430.81	17,290,851.64	2,074,902.20	9,821,071.77	1,178,528.61
February 2019	7,026,401.04	843,168.12	2,685,182.81	322,221.94	4,341,218.22	520,946.19
March 2019	7,763,044.35	931,565.32	2,872,987.13	344,758.46	4,890,057.21	586,806.87
April 2019	6,413,389.35	769,606.72	2,171,245.59	260,549.47	4,242,143.76	509,057.25
May 2019	7,238,524.31	868,622.92	2,107,142.86	252,857.14	5,131,381.46	615,765.77
June 2019	6,436,161.27	772,339.35	1,636,001.29	196,320.15	4,800,159.98	576,019.20
July 2019	8,275,299.14	993,035.90	2,802,763.97	336,331.68	5,472,535.17	656,704.22
TOTAL	**155,852,493.14**	**18,702,299.17**	**61,772,133.25**	**7,412,656.00**	**94,350,359.87**	**10,702,836.32**

In his Judicial Affidavit,[210] Atty. Chua testified that he checked petitioner's VAT ORs with its accounting records and billing statements in order to ascertain that the collections reflected in the VAT ORs pertain to membership fees and assessment dues subject of the claim:

> "17. Q: Based on your report, how did you ascertain that the collections reflected in the ORs pertain to membership fees and/or assessment dues?
>
> "A: **We checked the collections reflected in the OR with the Petitioner's accounting records** to ascertain that the amounts pertain to members *(sic)* fees and/or assessment dues. In addition, **we also checked the billing statements in their records for validation.**" *(Boldfacing supplied)*

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[210] Exhibit "P-42", CTA Docket Vol. II, pp. 338-343.

However, the only relevant documents included by petitioner in its Formal Offer of Evidence[211] were the VAT ORs, Summary of VAT Remittance, Monthly VAT Declarations and Quarterly VAT Returns with eFPS Payment Details, and Application for Tax Credits/Refunds. Notably, the accounting records and the billing statements Atty. Chua mentioned in his Judicial Affidavit which may have been relevant to determine the veracity of the alleged membership fees, assessment dues and other similar charges subject of the claim were absent.

Thus, petitioner was not able to meet the burden of proof required for a taxpayer in a claim for refund or tax credit as it failed to provide supporting documents to prove the veracity of the breakdown of the gross receipts with its corresponding alleged erroneous payment of output tax, as stated in its Petition and ICPA's Report.

It must be emphasized that, although the findings of the ICPA are accorded with respect, the same are not conclusive upon the Court. Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals, as amended, provides that the Court is not bound by the findings of the ICPA, *viz.*:

> "**SEC. 3. *Findings of independent CPA.*** -The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusion subject to verification.**" *(Boldfacing supplied)*

Therefore, the Court has the discretion to either adopt (completely or partially) or even disregard the findings and conclusions of the ICPA, after making its own verification and evaluation of the evidence on record. In brief, the Court still has the final say as to whether or not petitioner has proven its claim after it has evaluated the evidence presented. In the present case, the Court cannot simply give credence to the ICPA's unsubstantiated assertion that the total amount of ₱61,772,133.25 with its corresponding output tax of ₱7,412,656.00 were verified to represent the total membership dues, assessment fees and other similar charges erroneously paid by the petitioner for the period April 2018 to July 2019.

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[211] Docket, pp. 431-442.

It is a time-honored principle that in an application for a tax refund or certificate, a taxpayer needs to establish not only that the same is justified under the law, but also the amount that ought to be refunded. If said amount cannot be ascertained with particularity, there is cause to deny the refund, or allow it only to the extent of the sum that is actually proven as due.[212] It bears stressing further that taxes are the lifeblood of the government. Hence, tax laws must not only be faithfully and strictly implemented; they must not likewise be liberally construed.[213] As such, actions for tax refunds or credit are in the nature of tax exemptions which must be construed in *strictissimi juris* against the taxpayer and the pieces of evidence entitling him or her to an exemption must also be *strictissimi* scrutinized and duly proven.[214] The claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[215] Petitioner, unfortunately, failed to discharge this burden.

WHEREFORE, premises considered, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[212] *Far East Bank and Trust Co. vs. Commissioner of Internal Revenue*, G.R. No. 138919. May 2, 2006.
[213] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 221694, January 19, 2021.
[214] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.
[215] *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

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