REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PACIFIC PLAZA CONDOMINIUM CORPORATION, *Petitioner,*	**CTA CASE NO. 10199**
	Members:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	FEB 10 2023

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3:45 p.m.

DECISION

CUI-DAVID, J.:

Before the Court is a Petition for Review[1] filed by petitioner Pacific Plaza Condominium Corporation ("Petitioner") on October 23, 2019, praying for the refund or credit in the amount of ₱3,185,128.81, allegedly representing its erroneously paid value-added tax (VAT) for the 3rd and 4th quarters of calendar year (CY) 2017.

THE PARTIES

Petitioner is a non-stock, non-profit corporation registered with the Securities and Exchange Commission (SEC) on January 4, 1989 under the provisions of Republic Act (RA) No. 4726, otherwise known as "The Condominium Act". It owns and holds title to the common areas of Pacific Plaza Condominium Project, manages, administers, maintains, and preserves the condominium project, and such other purposes as may be necessary, incidental, or convenient to the accomplishment of said purposes.[2] It is duly registered with the Bureau of Internal

[1] Docket – Vol. I, pp. 6-13.
[2] Exhibit "P-1", *id.*, Vol. II, pp. 349-383.

Revenue (BIR) with Taxpayer Identification Number (TIN) 000-658-172-000.[3]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested with authority to carry out all the functions, duties, and responsibilities of said office, including *inter alia,* the power to decide, approve, and grant claims for refund or tax credit for overpaid or erroneously paid or collected internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served summons and other legal processes of the Court.[4]

THE FACTS

On October 31, 2012, the BIR issued Revenue Memorandum Circular (RMC) No. 65-2012[5] clarifying that association dues, membership fees, and other assessments/charges collected by a condominium corporation are subject to VAT since they constitute income payment or compensation for the beneficial services it provides to its members and tenants.[6]

Petitioner filed its quarterly VAT return (BIR Form No. 2550-Q) for the 3rd quarter (covering July 1, 2017 to September 30, 2017) on October 23, 2017.[7] It filed its amended 4th quarterly VAT return (covering October 1, 2017 to December 31, 2017) on March 1, 2018.[8]

On October 23, 2019, petitioner filed with the BIR Revenue District Office (RDO) No. 50-South Makati its administrative claim for refund/tax credit of ₱3,185,128.81 for its erroneously paid VAT for the 3rd and 4th quarters of CY 2017[9] and subsequently, this Petition for Review.

After having granted an extension by the Court,[10] respondent filed his Answer[11] on January 6, 2020, interposing affirmative defenses.

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[3] Exhibit "P-2", *id.*, pp. 384.
[4] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. I, p. 152.
[5] Clarifying the Taxability of Association Dues, Membership Fees, and Other Assessments/Charges Collected by Condominium Corporations
[6] *Id.*, II. Value-Added Tax
[7] Exhibit "P-1240", *id.*, pp. 404-406.
[8] Exhibit "P-1244", *id.*, pp. 414-416.
[9] Exhibit "P-4", *id.*, pp. 509-512.
[10] Order dated November 21, 2019, Docket – Vol. I, p. 54.
[11] *Id.*, pp. 55-59.

On January 8, 2020, the Court issued a Notice of Pre-Trial Conference[12] setting a Pre-Trial Conference on February 13, 2020. Accordingly, respondent filed a Pre-Trial Brief[13] on January 22, 2020, while petitioner filed its Pre-Trial Brief[14] on February 10, 2020.

On February 13, 2020, the Pre-Trial Conference proceeded where the Court granted both parties fifteen (15) days within which to file their Joint Stipulation of Facts and Issues (JSFI).[15] On March 13, 2020, the parties submitted their JSFI.[16] On June 10, 2020, the Second Division issued a Pre-Trial Order,[17] approving the said JSFI, and thereby, terminating the Pre-Trial Conference.

In the trial that ensued, petitioner presented two (2) witnesses: (1) Ms. Melanie Habana (Ms. Habana), petitioner's General Manager, and (2) Mr. Adan T. Delamide (Mr. Delamide), duly-commissioned Independent Certified Public Accountant (ICPA).

In her Sworn Statement,[18] Ms. Habana testified that:

a. she is petitioner's General Manager;

b. she is responsible for the management of the day-to-day activities of the petitioner;

c. her duties also include preparation, review, and custody of petitioner's tax returns and financial statements and compliance with the BIR requirements;

d. petitioner reported gross receipts of ₱14,750,204.42 and ₱11,543,938.34 for the 3rd and 4th quarters of CY 2017, respectively;

e. that petitioner was liable for output VAT in the amount of ₱1,770,024.53 and ₱1,385,272.60 for the 3rd and 4th quarters of CY 2017, respectively, as shown in their 3rd and 4th quarterly VAT returns;

f. petitioner applied its allowable input VAT and tax credits (*i.e.*, VAT payments for previous two months) amounting to (a) ₱1,130,499.94 and ₱259,626.81,

[12] *Id.*, pp. 61-62.
[13] *Id.*, pp. 63-66.
[14] *Id.*, pp. 118-125.
[15] Order dated February 13, 2020, *id.*, p. 136.
[16] *Id.*, pp. 152-157.
[17] *Id.*, pp. 159-161.
[18] Sworn Statement of Ms. Melanie Habana to Questions Propounded by Atty. Ian Jerrick B. Inandan, Exhibit "P-7", *id.*, pp. 70-80.

respectively, for the 3rd quarter of CY 2017 and (b) ₱1,279,526.82 and ₱50,645.92, respectively, for the 4th quarter of CY 2017, which are reflected in its electronically-filed Quarterly VAT returns covering the said periods.

g. as proof of filing of the 3rd and 4th quarterly VAT returns, the BIR acknowledged the receipt of the same through a Filing Reference Number;

h. on October 23, 2019, petitioner filed a letter dated October 22, 2019 and an Application for Tax Credits/Refund (BIR Form No. 1914) with RDO No. 50 requesting the refund of its erroneously paid output VAT for the 3rd and 4th quarters of CY 2017 in the amount of ₱3,185,128.81; and

i. to date, the BIR has neither approved nor denied the Corporation's administrative claim for erroneously paid output VAT for the 3rd and 4th quarters of CY 2017.

On cross-examination, respondent's counsel asked Ms. Habana if there are any payment for the use of condominium amenities/facilities (*e.g.*, pool, fitness center, parking, function room). She replied that there are no fees for unit owners/residents. She also confirmed that petitioner's administrative and judicial claim for refund were filed on the same day.

On July 30, 2020, petitioner filed its *Omnibus Motion 1. Motion for Leave of Court to Recall Witness; and 2. Motion to Set Commissioner's Hearings*[19] praying to recall its witness Ms. Habana, in lieu of its witness Mr. Noli Yap and to set Commissioner's Hearings for the comparison of its exhibits, which the Second Division granted on September 1, 2020.[20]

On October 7, 2020, Ms. Habana testified anew through her Supplemental Sworn Statement[21] that the output VAT in the amounts of ₱1,770,024.53 and ₱1,385,272.60 as shown in its 3rd and 4th quarterly VAT return for CY 2017, respectively, were computed from the amounts actually received from its members as indicated on the official receipts (ORs) issued by the petitioner during said period.

[19] *Id.*, pp. 164-169.
[20] *Id.*, p. 172.
[21] Exhibit "P-7-c", *id.*, pp. 198-202.

Lastly, petitioner's witness Mr. Delamide testified by way of his Sworn Statement[22] and Supplemental Sworn Statement[23] that: (1) based on their verification and without prejudice to such additional VAT ORs that may be presented, they believe that petitioner's claim for refund should be granted at a reduced amount of ₱1,666,589.79, representing the VAT on association dues proven to have been collected from the unit owners for the 3rd and 4th quarters of CY 2017 and remitted to the BIR in the same period;[24] and (2) that petitioner paid to the BIR the VAT on association dues collected from its customers as stated on the summary list of sales.[25]

On May 24, 2020, after completing the presentation of its testimonial evidence, petitioner filed its *Amended Formal Offer of Evidence (With Manifestation and Submission)*[26] consisting of Exhibits "P-1" to "P-4", "P-7" to "P-1254", inclusive of sub-markings. On July 19, 2020, respondent filed *via* registered mail a *Comment/Opposition (to Petitioner's Formal Offer of Evidence)*[27] which was received by the Court on September 30, 2020.

In the Resolution dated November 12, 2021,[28] the Court admitted all of petitioner's exhibits, inclusive of their sub-markings.

On February 7, 2022, respondent presented his lone witness Atty. Philipp King S. Cartagena, Revenue Officer of RDO No. 50, who testified on direct examination by way of his Judicial Affidavit[29] and Supplemental Judicial Affidavit[30] that: (1) petitioner's claim for refund is unsubstantiated and wanting in factual and legal basis;[31] and (2) petitioner failed to present supporting documents to substantiate its claim for VAT refund despite reasonable notice given pursuant to a Tax Verification Notice (TVN).

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[22] Exhibit "P-1253", *id.*, pp. 257-265.
[23] Exhibit "P-1254", *id.*, pp. 283-287.
[24] Exhibit "P-1253", *id.*, Answer to Q14, p. 261.
[25] Exhibit "P-1254", *id.*, Answers to Qs 7-8, pp. 284-285.
[26] Docket – Vol. II, pp. 343-443.
[27] *Id.*, pp. 568-578.
[28] *Id.*, pp. 584-585.
[29] Exhibit "R-5", Docket – Vol. I, pp. 128-134.
[30] Exhibit "R-6", Docket – Vol. II, pp. 594-603.
[31] Exhibit "R-5", Docket – Vol. I, Answers to Qs 5-14, pp. 129-130.

On February 24, 2022, respondent filed a *Formal Offer of Evidence*,[32] with petitioner's *Comment (Re: Respondent's Formal Offer of Evidence)*.[33]

On March 30, 2022, the Court admitted all exhibits of respondent, inclusive of their sub-markings. With the admission of respondent's exhibits, respondent is deemed to have rested his case. The Court also ordered the parties to file their respective memoranda.

Upon the filing of petitioner's *Memorandum*[34] on May 5, 2022 and respondent's *Memorandum*[35] that was received by the Court on May 17, 2022, the instant case was submitted for Decision on May 24, 2022.[36]

ISSUES

As the parties so stipulated,[37] the issues for the Court's determination are —

> WHETHER OR NOT THIS COURT HAS JURISDICTION OVER THE CASE FOR (A) PETITIONER'S FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES OR (B) FILING THE PETITION PREMATURELY;
>
> WHETHER OR NOT THE CONDOMINIUM ASSOCIATION DUES COLLECTED BY PETITIONER FROM ITS MEMBERS ARE SUBJECT TO VAT UNDER SECTION 105, TAX CODE;
>
> WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF VAT OF PHP3,185,128.81, WHICH IT PAID ON THE CONDOMINIUM ASSOCIATION DUES IN LIGHT OF THE SUPREME COURT'S PRONOUNCEMENT IN <u>ASSOCIATION OF NON-PROFIT CLUBS, INC. V. BUREAU OF INTERNAL REVENUE</u>;[38] AND
>
> WHETHER OR NOT PETITIONER IS ORGANIZED AND OPERATED EXCLUSIVELY FOR PLEASURE, RECREATION, AND OTHER NON-PROFIT PURPOSE.

In support of the above, petitioner argues that the condominium dues it collected from its members are not subject to VAT under Section 105 of the National Internal Revenue Code

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[32] Docket – Vol. II, pp. 609-617.
[33] *Id.*, pp. 619-623.
[34] *Id.*, pp. 627-653.
[35] *Id.*, pp. 654-670. Filed on May 5, 2022 *via* registered mail.
[36] *Id.*, p. 672.
[37] Issues, JSFI, Docket – Vol. I, p. 153.
[38] G.R. No. 228539, June 26, 2019 (*Underscoring on the original*).

of 1997 (NIRC of 1997 or Tax Code), as amended, because the act of collecting membership fees, assessment dues and the like is not considered a sale, barter or exchange of goods or properties, or sale of services in the course of trade or business, invoking the Supreme Court ruling in *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue*[39] (*ANPC*). Moreover, condominium corporations are prohibited from engaging in activities for profit under the Condominium Act, citing the case of *Yamane v. BA Lepanto Condominium Corporation* (*Yamane*).[40]

Petitioner submits that the Court has jurisdiction over its judicial claim for refund under Sections 204(C) and 229 of the Tax Code, which provide that the taxpayer has a period of two (2) years from the date of payment to file its judicial claim for refund, provided that a prior administrative claim was filed with the BIR. Petitioner cites the case of *CBK Power Company Limited v. Commissioner of Internal Revenue*,[41] which held that nowhere in the law, *i.e.*, Section 306 of the old Tax Code (now Section 229 of the NIRC of 1997), implies that the CIR first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the CIR's action.

Respondent, on the other hand, avers that petitioner is not the same nor similarly situated with ANPC. According to respondent, petitioner failed to prove that it is exclusively organized for non-profit purposes. Assuming that petitioner is organized for non-profit purposes, the conduct of its business outside said purposes is still subject to VAT. Respondent stresses that the gross receipts of condominium corporations, including association dues, membership fees, and other assessments/charges are subject to VAT pursuant to RMC No. 65-2012 and Section 105 of the NIRC of 1997, as amended. In action for tax refund or credit, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement thereof. Respondent insists that petitioner failed to sufficiently prove and demonstrate that the subject taxes were erroneously or illegally collected.

Respondent further argues that petitioner failed to observe the exhaustion of administrative remedies in this case. Assuming that an administrative claim for refund has been filed on October 23, 2019, he was not given an opportunity to act on said claim because it was filed on the same day of filing this

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[39] *Id.*
[40] G.R. No. 154993, October 25, 2005.
[41] G.R. Nos. 193383-84, January 14, 2015

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present petition. Hence, the Court has nothing to review absent his decision. Respondent adds that petitioner's filing of its claim for refund at the eleventh hour disregards the *raison d'être* of the period allowed under the law. Respondent concludes that to give due course to the petition is to disregard the *bona fide* compliance with the filing of an administrative claim for refund, defeating the letter and spirit of the law.

THE RULING OF THE COURT

The Court has jurisdiction over the Petition for Review.

The requisites for a valid claim for refund/credit under Sections 204 (C) and 229 of the NIRC of 1997, as amended, were met.

In a claim for refund or credit of erroneously paid or illegally collected taxes, the taxpayer-claimant must comply with the requisites set forth 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 —
>
> ...
>
> (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. (*Emphasis supplied*)
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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**, 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.
>
> **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. (*Emphasis supplied*)

Section 204 refers to the CIR's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed within two years from payment of the tax. On the other hand, Section 229 requires two conditions for the filing of judicial claims: (1) an administrative claim must be filed *first*; and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.[42]

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. The Supreme Court has previously declared that "timeliness of the filing of the claim is mandatory and jurisdictional. The Court of Tax Appeals cannot take cognizance of a judicial claim for refund filed either prematurely or out of time." [43]

Accordingly, petitioner had two years from the date of payment or remittance to the BIR of the erroneously paid VAT to file a claim for refund or credit, both administrative and judicial.

Here, petitioner filed both claims on October 23, 2019, which is within the two-year prescriptive period, as shown below:

[42] *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, July 27, 2021.
[43] *Id.*

Filing & Payment Date (BIR Form No. 2550-Q)	**2-year prescriptive period**	**Administrative Claim Filed**	**Judicial Claim Filed**
10/23/2017	10/23/2019	10/23/2019	10/23/2019
03/01/2018	03/01/2020	10/23/2019	10/23/2019

Petitioner admits that it simultaneously filed its administrative and judicial claims on October 23, 2019.[44]

In its Petition for Review filed with the Court on October 23, 2019 at 4:18 P.M.,[45] it attached a copy of its Application for Tax Credits/Refunds (BIR Form No. 1914) with the stamp "Received" by BIR RDO No. 50 on the same day, October 23, 2019.[46] This shows that an administrative claim was filed *first* with the BIR before its judicial claim given that the proof of filing of the former was already attached to its Petition for Review.

Respondent argues that the instant Petition for Review should be dismissed for failure of petitioner to exhaust administrative remedies. It further argues that the filing of both the administrative and judicial claims for refund on the *same* day, is akin to the concurrent filing of the subject claims, hence, non-compliant with the "prior filing" requirement set forth under Section 229 of the Tax Code; and that the simultaneous filing of the claims on October 23, 2019 has deprived respondent of the real opportunity to act on petitioner's administrative claim for refund.[47]

We disagree with respondent.

The above arguments of respondent have been squarely addressed and passed upon in *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc. (Carrier Air Conditioning)*[48] where it was emphasized that from the plain language of Section 229, it does not matter how far apart the administrative and judicial claims were filed, or whether the CIR was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period and that the administrative claim must be filed first.

[44] Petition for Review, Docket – Vol. I, par. 8, p. 8; Sworn Statement of Ms. Melanie Habana, Exhibit "P-7", Answers to Qs 18-19, Docket – Vol. I, p. 75.
[45] *Id.*, p. 6.
[46] *Id.*, p. 45.
[47] Respondent's Memorandum, pars. 5-16, Docket – Vol. II, pp. 655-661.
[48] G.R. No. 226592, July 27, 2021.

In *Carrier Air Conditioning,* the Supreme Court cited the case of *CBK Power Company Limited v. CIR (CBK Power Company),*[49] and rejected the CIR's argument, *viz.*:

> In this case, petitioner assails respondent's filing of the judicial claim before the Court of Tax Appeals sans any ruling by them on the administrative claim.
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> This same issue has been squarely passed upon in *CBK Power Company Limited v. Commissioner of Internal Revenue.* The Commissioner argued that since the judicial claim was filed merely **five days** after the administrative claim had been filed, they were not given a reasonable time to act on the claim. The Commissioner contended that the taxpayer's filing of the judicial claim violates the doctrines of **exhaustion of administrative remedies** and primary jurisdiction.
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> This Court rejected the Commissioner's argument. It ruled that Sections 204 and 229 of the 1997 National Internal Revenue Code require **only** that the administrative claim be filed before the judicial claim and that **both claims be filed within two years from the payment of the tax.** Hence, the taxpayer properly filed its judicial claim without awaiting the Commissioner's action on its administrative claim, as long as the judicial claim was filed within the two-year prescriptive period. ... (*Emphasis supplied*)

Still in *Carrier Air Conditioning,* the Supreme Court further held that Section 229 of the Tax Code does not require that the CIR first act on the taxpayer's claim, and that the taxpayer cannot go to court without the CIR's action. As long as these two acts fall within the two-year period, there is no legal impediment to the judicial claim for refund, citing that this Court likewise allowed judicial claims filed simultaneously, or one to 28 days from the administrative claim's filing, *viz.*:

> Sections 204 and 229 fixed the same period of two years for filing an administrative claim for refund before the Bureau of Internal Revenue and to sue before the Court of Tax Appeals. *CBK Power Company* explained that **as long as these two acts fall within the two-year period, there is no legal impediment to the judicial claim for refund.**
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> Consequently, from the plain language of the law, it does not matter how far apart the administrative and judicial claims were filed, or whether the Commissioner of Internal Revenue was actually able to rule on the administrative claim, so long as both claims were filed within the two-year prescriptive period.

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[49] G.R. Nos. 193383-84 and G.R. Nos. 193407-08, January 14, 2015.

> Thus, in *CBK Power Company*, as with subsequent cases, this Court upheld the propriety of the taxpayer's judicial claim instituted as early as ***five and 13 days*** **after** the administrative claim had been filed, on the ground that both claims were filed within the two-year prescriptive period.
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> The **Court of Tax Appeals** likewise allowed judicial claims filed **simultaneously,** or one to 28 days from the administrative claim's filing, on the same ground that both claims were filed within the two-year prescriptive period. (*Emphasis supplied*)

Applying the foregoing rulings in *Carrier Air Conditioning* and *CBK Power Company*, this Court finds proper the petitioner's filing of its judicial claim on October 23, 2019, after it had filed its administrative claim on the same day and even without respondent's ruling. Such action of petitioner does not violate the principle of exhaustion of administrative remedies.

Hence, petitioner has complied with the above requisites of Section 229 of the NIRC of 1997, as amended, giving this Court jurisdiction over the instant case.

The condominium association dues collected by petitioner from its members are *not* subject to VAT under the NIRC of 1997, as amended.

Respondent claims that at the time petitioner filed its quarterly VAT returns for the 3rd and 4th quarters of calendar year 2017 on October 23, 2017 and March 1, 2018, respectively, gross receipts of condominium corporations including association dues, membership fees, and other assessments/charges are clearly subject to VAT under RMC No. 65-2012.[50]

Respondent further emphasizes that RMC No. 65-2012 is a BIR issuance clarifying the taxability of association dues, membership fees, and other assessments/charges collected by condominium corporations. It has not been amended/repealed by subsequent issuance nor has it been struck down by the Court during the time material to this case.[51]

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[50] Memorandum, Docket – Vol. II, pars. 25-27, pp. 664-665.
[51] *Id.*

It likewise argues that petitioner is a condominium corporation which appears to be engaged in income-generating activities such as leasing activities due to the rentals it received; hence, it cannot invoke the *ANPC case*, which involves a recreational club, as its basis for its claim for refund.[52]

Respondent's arguments are specious.

In *BIR v. First E-Bank Tower Condominium Corporation* (*First E-Bank*),[53] the Supreme Court cited *ANPC* in emphasizing that a condominium corporation's collection of association dues is *not* subject to VAT. More, the Supreme Court struck down as ***void*** RMC No. 65-2012, *viz.*:

> In fine, the collection of association dues, membership fees, and other assessments/charges is purely for the benefit of the condominium owners. It is a necessary incident to the purpose to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance.
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> As held in Yamane, *"[t]he profit motive in such cases is hardly the driving factor behind such improvements, if it were contemplated at all. Any profit that would be derived under such circumstances would merely be incidental, if not accidental."* More, a condominium corporation is especially formed for the purpose of holding title to the common area and exists only for the benefit of the condominium owners. Nothing more.
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> **RMC No. 65-2012**, sharply departs from *Yamane* and the law on condominium corporations. It invalidly declares that the amounts paid as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter, thus, subject to income tax, **value-added tax**, and withholding tax.
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> ... ...
>
> Clearly, **RMC No. 65-2012** expanded, if not altered, the list of taxable items in the law. **RMC No. 65-2012**, therefore, is **void**. Besides, where the basic law and a rule or regulation are in conflict, the basic law prevails.
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> As established in *Yamane*, the expenditures incurred by condominium corporations on behalf of the condominium owners are not intended to generate revenue nor equate to the cost of doing business.
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> ... ...

[52] Memorandum, Docket – Vol. II, pars. 32-33, p. 666.
[53] G.R. Nos. 215801 & 218924, January 15, 2020.

Second. Association dues, membership fees, and other assessments/charges do not arise from transactions involving the sale, barter, or exchange of goods or property. Nor are they generated by the performance of services. As such, they are ***not*** **subject to value-added tax per Section 105 of RA 8424**, *viz.*: ...

... ...

Both under **RA 8424** (Sections 106, 107, and 108) and the **TRAIN Law**, there, too, is no mention of association dues, membership fees, and other assessments/charges collected by condominium corporations being subject to VAT. And rightly so. For when a condominium corporation manages, maintains, and preserves the common areas in the building, it does so only for the benefit of the condominium owners. It cannot be said to be engaged in trade or business, thus, the collection of association dues, membership fees, and other assessments/charges is not a result of the regular conduct or pursuit of a commercial or an economic activity, or any transactions incidental thereto.

Neither can it be said that a condominium corporation is rendering services to the unit owners for a fee, remuneration or consideration. Association dues, membership fees, and other assessments/charges form part of a pool from which a condominium corporation must draw funds in order to bear the costs for maintenance, repair, improvement, reconstruction expenses and other administrative expenses.

... ...

Too, ***ANPC*** held that membership fees, assessment dues, and the like collected by recreational clubs are not subject to value-added tax "*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.*" **This principle equally applies to condominium corporations which are similarly situated with recreational clubs** insofar as membership fees, assessment dues, and other fees of similar nature collected from condominium owners are devoted to the operations and maintenance of the facilities of the condominium. In sum, **RMC No. 65-2012 illegally imposes value-added tax on association dues, membership fees, and other assessments/charges collected and received by condominium corporations**.

... ...

A final word

> **RMC No. 65-2012** is **invalid** for ordaining that "gross receipts of condominium corporations including association dues, membership, fees, and other assessments/charges are subject to VAT, income tax and income payments made to it are subject to applicable withholding taxes." A law will not be construed as imposing a tax unless it does so clearly and expressly. In case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. Taxes, as burdens that must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares. *(Emphasis supplied)*

From the foregoing, the very nature of a condominium corporation negates the application of the Tax Code provisions on VAT.[54] Association dues are the incidental consequence of a condominium corporation's responsibility to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance.[55] Association dues do not involve a sale, barter or exchange of goods or properties, or sale of a service; hence, they are not subject to VAT under Section 105 of the NIRC of 1997, as amended.[56]

Further, an examination of petitioner's Articles of Incorporation[57] shows that the primary purpose for which it is created is to own or hold titles to the common areas of Pacific Plaza Condominium Project and to manage, administer, maintain, and preserve the same pursuant to RA No. 4726.[58] In order to further said purpose, it has the power to collect and enforce payment of assessments or charges against its members to defray the costs and expenses in the management, administration, maintenance, and preservation of the project. Thus, the existence of petitioner is primarily for the benefit of its condominium owners. Its collection of association dues does not redound to its benefit.

Having established that the association dues collected by petitioner from its members are *not* subject to VAT under Section 105 of the NIRC of 1997, as amended, We shall now

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[54] *Delos Santos v. Commissioner of Internal Revenue*, G.R. No. 222548, June 22, 2022.
[55] *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*, G.R. Nos. 215801 & 218924, January 15, 2020.
[56] *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue*, G.R. No. 228539, June 26, 2019.
[57] Exhibit "P-1", Docket – Vol. II, pp. 349-383.
[58] The Condominium Act, June 18, 1966.

proceed to determine whether it was able to *prove* its entitlement to VAT refund or credit.

Petitioner failed to prove payment to the BIR of the amount claimed for refund.

To claim for refund of erroneously paid tax, there must be convincing proof of actual payment.

A taxpayer who claims for refund or credit under Section 229 of the NIRC of 1997, as amended, on the ground of erroneous payment, must be able to prove that it has paid the tax and such payment was erroneous.

Petitioner reflected in its quarterly VAT returns for the 3rd and 4th quarters of CY 2017 the following figures:

CY 2017	3rd Quarter	4th Quarter	Total
Vatable Sales/Receipt	₱14,750,204.42	₱11,543,938.34	₱26,294,142.76
Output Tax Due	₱1,770,024.53	₱1,385,272.60	₱3,155,297.13
Less: Allowable Input Tax			
Domestic Purchases of Goods Other than Capital Goods	₱358,793.95	₱226,561.54	₱585,355.49
Domestic Purchase of Services	771,705.99	1,052,965.28	1,824,671.27
Total Allowable Input Tax	₱1,130,499.94	₱1,279,526.82	₱2,410,026.76
Net VAT Payable	₱639,524.59	₱105,745.78	₱745,270.37
Less: Tax Credits/Payments			
Monthly VAT Payments -previous two months	₱259,626.81	₱50,645.92	₱310,272.73
Tax Still Payable	₱379,897.78	₱55,099.86	₱434,997.64
Add: Penalties			
Surcharge	-	₱13,774.97	₱13,774.97
Interest	-	1,056.71	1,056.71
Compromise	-	15,000.00	15,000.00
Total Penalties	-	₱29,831.68[59]	₱29,831.68
Total Amount Payable	₱379,897.78	₱84,931.54	₱464,829.32

Based on petitioner's 3rd and 4th Quarterly VAT Returns for CY 2017, its total claim of ₱3,185,128.81 consists of the output tax due of ₱3,155,297.13 and penalties of ₱29,831.68.

[59] Reflected in the amended Quarterly VAT Return for the 4th quarter of CY 2017 as ₱29,831.67 (with ₱0.01 difference), Line 28D, Exhibit "P-1244", Docket – Vol. II, p. 415.

The said output tax due of ₱3,155,297.13 was paid through:

1. petitioner's utilization of its input tax credits of ₱2,410,026.76; and

2. monthly/quarterly VAT payments of ₱745,270.37.

To be able to refund the VAT on association dues which petitioner claims to have erroneously paid to the BIR, evidence or proof of payment of the subject VAT through the aforesaid two (2) items is necessary.

First, with regard to the input tax credits of ₱2,410,026.76, petitioner *failed* to substantiate the same through VAT invoices (in cases of domestic purchases of goods) or official receipts (in cases of domestic purchases of services) pursuant to Section 110(A)(1),[60] in relation to Section 113(A)(1) and (2)[61] of the NIRC of 1997, as amended.

A perusal of the evidence offered by petitioner shows that it did not adduce evidence to prove the allowable input tax declared in its VAT Returns. The evidence presented and offered by petitioner include: original and amended Quarterly VAT Returns for the subject period; monthly VAT declarations with eFPS Payment Details; monthly summary list of sales; VAT official receipts covering the association dues collected from unit owners; and Application for Tax Credits/Refunds dated October 22, 2019, requesting the refund of erroneously paid or collected VAT for refund.[62] None can be found in the records of the case to support the input tax credits of ₱2,410,026.76.

Second, as regards the monthly/quarterly VAT payments of ₱745,270.37, petitioner was able to prove that it paid the said amount as evidenced by the eFPS[63] Payment Details attached to its Monthly/Quarterly VAT Returns, shown as follows:

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[60] 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: ... (*Emphasis supplied*)

[61] 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**. (*Emphasis supplied*)

[62] Amended Formal Offer of Evidence, Docket – Vol. II, pp. 343-443.

[63] Electronic Filing and Payment System.

Exhibit No.[64]	**BIR Form No.**	**Tax Period**	**Payment Transaction Number**	**Date of Payment**	**Amount Paid**
"P-1238"	2550M	07/31/2017	179056295	08/18/2017	₱259,626.81
"P-1240"	2550Q	09/30/2017	179900194	10/23/2017	379,897.78
"P-1241"	2550M	10/31/2017	170340851	11/21/2017	50,645.92
"P-1244"	2550Q	12/31/2017	181773559	03/01/2018	55,099.86[65]
Total Monthly/Quarterly VAT Payments					**₱745,270.37**

It must be emphasized that the recovery of any national internal revenue tax by way of refund or credit extends only to that erroneously paid or remitted to the BIR. Accordingly, only the output tax of ₱745,270.37, which was proven to have been actually paid may be refunded provided that the same corresponds to association dues, membership fees, and other assessments/charges which are not subject to VAT as ruled in *First E-Bank*.[66]

Based on the examination of petitioner's supporting Quarterly VAT Returns, Monthly VAT Declarations,[67] VAT official receipts (ORs)[68] generated from its Computerized Accounting System (CAS),[69] Summary of VAT Returns and VAT Collections, Summary of VAT ORs versus VAT Returns, and Summary of VAT Collections for the months of July to December of CY 2017,[70] the Court-commissioned ICPA[71] noted that there is a difference in the amount of ₱299,066.94 between the total output VAT declared per Quarterly VAT Returns for the 3rd and 4th quarters of CY 2017 and the total output VAT reflected in the VAT ORs for the same quarters, *viz.*:[72]

Total Output Tax per Quarterly VAT Returns	₱3,155,297.13
Total Output Tax per VAT ORs provided	2,856,230.19
Difference	**₱299,066.94**

Further, out of the ₱2,856,230.19 output VAT supported by VAT ORs, only the amount of ₱1,666,589.79 was verified by the ICPA as output VAT collected on association dues for the 3rd and 4th quarters of CY 2017, as follows:[73]

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[64] Docket – Vol. II, pp. 401, 406, 409 and 416.
[65] Total payment of ₱84,931.54 less penalties of ₱29,831.68, Exhibit "P-1244", Docket, pp. 414 to 416.
[66] G.R. Nos. 215801 & G.R. No. 218924, January 15, 2020.
[67] Exhibits "P-1238" to "P-1244", Docket – Vol. II, pp. 399 to 416.
[68] Exhibits "P-9" to "P-1237", Supplemental Sworn Statement of Ms. Melanie T. Habana – Folders 1 and 2.
[69] Supported with BIR permit to use CAS, Exhibit "P-8", Supplemental Sworn Statement of Ms. Melanie T. Habana – Folder 1.
[70] Annexes A to H, Exhibit "P-1253-C", Docket – Vol. I, pp. 238 to 253.
[71] Delamide & Lock through its Partner, Mr. Adan T. Delamide.
[72] No. II.5, Annexes A and B, Exhibit "P-1253-C", Docket – Vol. I, pp. 235, 238 and 239, respectively.
[73] No. II.6, No. 8 and Annex A, Exhibit "P-1253-C", Docket – Vol. I, pp. 235, 236 and 238, respectively.

Period	Association dues
July	₱232,916.47
Aug	18,919.41
Sept	928,351.46
	₱1,180,187.33[74]
Oct	₱313,985.86
Nov	19,062.85
Dec	153,353.75
	₱486,402.46
TOTAL	**₱1,666,589.79**

However, the Court finds that the aforesaid output tax of ₱1,666,589.79 should be further reduced by ₱500.00 representing the discrepancy between the VAT reflected per OR No. 6564 with that shown per schedule, *viz.*:[75]

Exhibit No.	Date	OR No.	Registered Name	VAT per Schedule	VAT per OR	Difference
"P-149"	July 5, 2017	6564	THE CORPORATE PARTNERSHIP FOR MGT. IN BUSINESS, INC.	₱14,928.98	₱14,428.98	₱500.00

Thus, out of the ₱3,155,297.13 total output VAT declared per VAT Returns, only the amount of ₱1,666,089.79 was actually proven to have been collected from association dues for the 3rd and 4th quarters of CY 2017 which should not be subject to VAT.

Hence, in the absence of contrary evidence, the balance of ₱1,489,207.34 shall be considered as VATable transactions, computed as follows:

CY 2017	3rd Quarter	4th Quarter	Total
Output VAT due per Quarterly VAT Returns	₱1,770,024.53	₱1,385,272.60	₱3,155,297.13
Less: Output VAT on association dues	(1,179,687.33)[76]	(486,402.46)	(1,666,089.79)
Output VAT related to VATable transactions	**₱590,337.20**	**₱ 898,870.14**	**₱1,489,207.34**

[74] With ₱0.01 rounding-off difference.
[75] Annexes C to H, Exhibit "P-1253-C", Docket – Vol. I, pp. 240 to 253.
[76] ₱1,180,187.33 less ₱500.00.

After applying the monthly/quarterly VAT payments of ₱745,270.37 against its output tax due of ₱1,489,207.34, petitioner still has net output VAT payable of ₱743,936.97 as follows:

CY 2017	**3rd Quarter**	**4th Quarter**	**Total**
Output VAT related to VATable transactions	₱590,337.20	₱898,870.14	₱1,489,207.34
Less: Substantiated input VAT	-	-	-
Less: Actual VAT paid	(639,524.59)	(105,745.78)	(745,270.37)
Net Output VAT still due/(overpayment)	**₱(49,187.39)**	**₱793,124.36**	**₱743,936.97**

As explained earlier, the input tax credit of ₱2,410,026.76 was not considered in the above computation for failure of petitioner to fully substantiate the same with official receipts, sales invoices, or other pertinent documents, despite the presentation of the Court-commissioned ICPA.

To reiterate, in claim for tax refund or credit of erroneously or excessively paid tax, the applicant must prove not only entitlement to the claim but also the fact of erroneous payment to the BIR.

Consequently, petitioner has no excess over the output VAT that could be refunded. Thus, since there is no excess payment which may be the subject of a claim for refund or credit, petitioner's claim must be denied.

Actions for tax refund, as in the instant case, are in the nature of a claim for exemption. As such, the law is not only construed in *strictissimi juris* against the taxpayer, the pieces of evidence presented entitling a taxpayer to an exemption must also be *strictissimi* scrutinized and duly proven.[77] Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented. They are not intended to be liberally construed.[78]

The taxpayer has the burden to show that it has strictly complied with the conditions for the grant of the tax refund. Here, petitioner is duty-bound to prove every minute aspect of its entitlement to the claimed VAT refund.

[77] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.
[78] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 221694 (Notice), January 19, 2021.

In the absence of proof of wrongful payment, the Court has no other recourse but to deny petitioner's claim for refund of erroneously paid VAT.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED.**

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Special 2nd Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice