REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BATINO REALTY CORPORATION,
Petitioner,

CTA Case No. 9542

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 18 2018

10:00 a.m.

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DECISION

CASTAÑEDA, JR., ***J.:***

THE CASE

This is a *Petition for Review*[1] filed by Batino Realty Corporation pursuant to Section 112(C) of the National Internal Revenue Code of 1997, as amended (1997 NIRC) in relation to Section 2, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), praying that judgment be rendered ordering the refund of its alleged unutilized input value-added tax (VAT) in the amount of **EIGHT HUNDRED**

[1] Docket, pp. 10-18.

THIRTY FIVE THOUSAND FOUR HUNDRED NINETY-NINE PESOS AND 25/100 (₱835,499.25).

THE FACTS

Petitioner Batino Realty Corporation alleges that it is a domestic corporation duly organized and existing under Philippine laws with principal office address located at Calamba Premier International Park, Prinza, Calamba, Laguna.[2] It also alleges that it is engaged in the business of leasing real estate.[3]

Respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office including, *inter alia*, the power to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes, as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner allegedly entered into an agreement with Samsung Electro-Mechanics Phils. Corp. (SEMPHIL) on March 27, 2013 whereby the latter extended a loan to petitioner in the amount of Two Hundred Fourteen Million Eighty Thousand Pesos (₱214,080,000.00), with 6.5% interest per annum.[4] The loan is allegedly payable in annual installments of Three Million Pesos (₱3,000,000.00) per year over a period of 38 years, with the balance to be re-negotiated by the parties.[5] The interest on the loan is allegedly payable monthly, based on the outstanding balance of the loan, on or before the 25th day of each calendar month.[6]

Petitioner also allegedly subjected to VAT its interest payments for its loan obligation to SEMPHIL.[7]

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[2] *Id.*, p. 11.
[3] *Id.*, p. 12.
[4] *Id.*; Exhibit "P-16", Docket, pp. 155-156.
[5] *Id.*
[6] *Id.*
[7] Exhibit "P-16", Docket, pp. 156-158.

Petitioner allegedly filed its Amended Quarterly VAT Returns for the 3rd and 4th quarters of calendar year 2014 on September 27, 2016.[8]

Petitioner likewise alleges that its unutilized input VAT for the 3rd and 4th quarters of calendar year 2014 amounting to P416,216.18 and P419,283.07, respectively, arose from the payment of its loan with interest on installments to SEMPHIL, which is rooted from a single isolated transaction.[9]

On September 30, 2016, petitioner allegedly filed an administrative claim for refund before the BIR.[10]

On February 24, 2017, petitioner filed the present Petition for Review.

Within the extended period granted by this Court, respondent filed his Answer[11] on April 24, 2017.

Pre-trial conference for the case was held on May 25, 2017.[12] Petitioner filed its *Pre-Trial Brief*[13] on May 19, 2017. Respondent filed his *Pre-Trial Brief*[14] likewise on May 19, 2017.

On June 9, 2017, the parties filed their *Joint Stipulation of Facts and Issues*[15], which this Court approved and adopted in the Pre-Trial Order[16] dated June 27, 2017.

During trial, petitioner presented: (1) Ms. Analyn P. Puyo,[17] Accounting Manager of SEMPHIL; and (2) Ms. Ma. Luzvilla P. Opulencia,[18] petitioner's Corporate Treasurer. *ge*

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[8] Docket, pp. 12-13.
[9] *Id.*, p. 14.
[10] *Id.*, p. 13.
[11] *Id.*, pp. 100-104.
[12] Minutes of the Hearing dated May 25, 2017, Docket, p. 127.
[13] Docket, pp. 114-120.
[14] *Id.*, pp. 123-125.
[15] *Id.*, pp. 142-143.
[16] *Id.*, pp. 149-152.
[17] Minutes of the Hearing dated July 3, 2017, Docket, p. 238.
[18] *Id.*

On July 10, 2017, petitioner filed its *Formal Offer of Exhibits*.[19]

On August 16, 2017, this Court issued a Resolution[20] admitting, as petitioner's evidence, Exhibits "P-14", "P-15", "P-16", and "P-17", subject to this Court's final evaluation and/or appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case. This Court, however, denied the admission of Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", and "P-13", for failure to present the originals for comparison.

On August 29, 2017, petitioner filed a *Motion for Reconsideration (of the RESOLUTION dated 16 AUGUST 2017)*[21] wherein petitioner prayed for a setting of a Commissioner's Hearing for the marking of the excluded exhibits and their comparison with the originals thereof. This Court denied the said Motion in a Resolution[22] dated September 27, 2017.

During the hearing dated October 23, 2017, respondent, through its counsel, manifested that he will no longer present any evidence.[23] Accordingly, the parties are granted a period of thirty (30) days from said date within which to file their respective memoranda.

On November 22, 2017, petitioner filed its *Memorandum Ad Cautelam (For Petitioner Batino Realty Corporation)*.[24] Within the extended period granted by this Court, respondent filed his *Memorandum*[25] on December 21, 2017.

On December 27, 2017, this Court received the *Petition for Certiorari*[26] allegedly filed by petitioner before the Supreme Court.

In a Resolution dated January 8, 2018,[27] the present case was submitted for decision. yz

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[19] Docket, pp. 240-247.
[20] *Id.*, pp. 254-255.
[21] *Id.*, pp. 258-263.
[22] *Id.*, pp. 273-275.
[23] Minutes of the Hearing dated October 23, 2017, Docket, p. 276.
[24] Docket, pp. 278-289.
[25] *Id.*, pp. 297-303.
[26] *Id.*, pp. 306-341.
[27] *Id.*, p. 305.

THE ISSUES

The parties agreed that the main issues to be resolved by this Court are the following:[28]

a. Whether or not the Honorable Court has jurisdiction over the pending case; and

b. Whether or not Petitioner's request for VAT refund can be legally allowed.

THE COURT'S RULING

The Petition for Review shall be denied.

At the outset, it bears stressing that tax refunds are in derogation of State's taxing power.[29] Such being the case, tax refunds, like tax exemptions, are strictly construed against the taxpayer and liberally in favor of the State.[30] Consequently, the taxpayer is charged with the heavy burden of proving clearly the factual basis of its claim.[31] The taxpayer must show that it has strictly complied with all the statutory and administrative requirements for the grant of the tax refund.[32] Failure to present sufficient evidence to justify the claim for refund is fatal.[33] Any doubt as to whether a tax exemption exists is resolved against the taxpayer.[34]

Sections 112(A) and (C) of the National Internal Revenue Code of 1997, as amended (1997 NIRC), provides:

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[28] Joint Stipulation of Facts and Issues (JSFI), Docket, p. 142.
[29] *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*, G.R. No. 133834, August 28, 2006, 499 SCRA 668.
[30] *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. No. 190506, June 13, 2016, 793 SCRA 200;
[31] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005, 461 SCRA 375, 376.
[32] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015, 748 SCRA 615; *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010, 624 SCRA 358.
[33] *Id.*
[34] *Manila Electric Company v. City Assessor*, G.R. No. 166102, August 5, 2015, 765 SCRA 85; *Digital Telecommunications Philippines, Inc. v. City Government of Batangas*, G.R. No. 156040, December 11, 2008, 573 SCRA 632.

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the

Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the foregoing provisions, in order to be entitled to refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. the taxpayer-claimant must be VAT-registered;

2. there must be zero-rated or effectively zero-rated sales;

3. input taxes were incurred or paid;

4. such input taxes are attributable to zero-rated or effectively zero-rated sales;

5. said input taxes were not applied against any output VAT liability; and

6. the claim was filed within the prescribed periods both in the administrative and judicial levels.

After careful evaluation of the parties' arguments as well as the evidence duly presented, this Court holds that petitioner failed to sufficiently prove any of the foregoing requisites. Save for the judicial affidavits of its witnesses,[35] no other evidence was duly presented by petitioner to prove that it has strictly complied with all the statutory and administrative requirements for the grant of refund as well as to establish the factual basis therefor. The testimonies of petitioner's witnesses are not sufficient to convince this Court that petitioner is entitled to its claim.

Note also that petitioner explicitly based its judicial claim on Section 112 of the 1997 NIRC, which refers to refund of creditable input tax attributable to zero-rated or effectively zero-rated sales. On

[35] Exhibits "P-14" to "P-17".

the other hand, the particular transaction alleged by petitioner in its Petition for Review and upon which petitioner based its claim, is a transaction that is not subject to zero-rated VAT. Considering that the transaction involved is alleged to be not subject to VAT and the petitioner seeks the refund of erroneously paid VAT, the Petition for Review should have been based on Section 229 of the 1997 NIRC. Therefore, the present Petition for Review lacks legal basis.

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

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(On Leave)
CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the 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.

ROMAN G. DEL ROSARIO
Presiding Justice