EN BANC

FILMINERA RESOURCES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1394
(CTA Case No. 8666)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban*, and*
Manahan, *JJ.*

Promulgated:

MAR 2 4 2017 11:35 a.m.

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Filminera Resources Corporation under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking nullification of the Decision[2] dated August 3, 2015 (Assailed Decision) and Resolution[3] dated November 11, 2015 (Assailed Resolution), both promulgated by the Second Division of this Court in CTA Case No. 8666 entitled *"Filminera Resources Corporation vs. Commissioner of Internal Revenue"* which denied petitioner's claim for refund or issuance of a tax

[1] Rollo, CTA EB NO. 1394, pp. 40- 70, with annexes.
[2] Ibid. pp. 10-31.
[3] Rollo, pp. 33-37.

credit certificate in the amount of P51,966,544.20, representing its alleged unutilized creditable input tax for the period of January 1, 2011 to March 31, 2011 for fiscal year ending June 30, 2011.

THE FACTS

The relevant antecedents stated in the assailed Decision are as follows:

> "Petitioner Filminera Resources Corporation is a domestic Corporation incorporated under the laws of the Republic of the Philippines engaged in the business of operating coal mines and prospecting explorations and mining in all other kinds of ores, metals, and mineral resources. It is duly registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-153-880-000.
>
> Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue empowered to perform the duties of her office, including, among others, the duty to act upon claims for refund or issuance of certificate of credit as provided by law. [H]e holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> On July 5, 2007, petitioner entered into an Ore Sales and Purchase Agreement with Phil. Gold Processing and Refining Corp. (PGPRC), a duly registered corporation with the Board of Investment[s] (BOI). Under the agreement, petitioner exclusively sells Pre-production Ore and ROM Ore to PGPRC. Petitioner alleges that PGPRC exports 100% of its processed gold and silver ores.
>
> On April 25, 2011, petitioner, through the Electronic Filing and Payment System (eFPS), filed its Quarterly VAT Return for the third quarter of fiscal year ending June 30, 2011.
>
> On January 29, 2013, petitioner filed an application for input tax credit for the third quarter of fiscal year ending June 30, 2011 with Revenue District Office No. 121 (Large Taxpayers Service Excise) in the total amount of P51,955,544.20, allegedly representing its unutilized or unapplied creditable input tax for the period of January 1, 2011 to March 31, 2011."

Records show that the Commissioner of Internal Revenue (CIR) failed to act on the administrative claim for refund or issuance of tax credit certificate of petitioner. Hence, on June 28, 2013, petitioner filed a Petition for Review[4] before the Court in Division.

In the Answer[5], the CIR avers that petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau; that the amount of P51,966,544.20 allegedly representing unutilized or unapplied creditable input tax for the period 1 January 2011 to 31 March 2011 was not properly documented; that in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit; that petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit; that there is no record submitting complete documents to substantiate its administrative claim for refund; that petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma; that the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund; and that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

In the Joint Stipulation of Facts and Issues[6], the parties agreed that the issue to be resolved by the Court is whether or not petitioner is entitled to a refund or tax credit in the amount of Php51,966,544.20 representing allegedly unutilized input VAT for the Third Quarter of Fiscal Year ending June 2011.

After trial on the merits and upon the submission of petitioner's memorandum, the case was submitted for decision on August 6, 2014.[7]

On August 3, 2015, the Court in Division rendered its Decision denying the Petition for Review on the reason that it failed to prove that the claimed input taxes were not applied against any output liability during and in the succeeding period of claim.

On August 18, 2015,[8] petitioner filed its "Motion for Reconsideration of the Decision dated 03 August 2015," praying that the decision be reversed and set aside.

On November 11, 2015, the Court in Division rendered the questioned Resolution.

Aggrieved, petitioner filed before the Court *En Banc* this Petition for Review.

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[4] Docket, CTA CASE NO. 8666, pp. 7-22, with annexes.
[5] Ibid. pp.600-612.
[6] Filed by the parties on September 27, 2013; Ibid. p. 647.
[7] Ibid. Resolution page 1049.
[8] Ibid. pp.1075-1084, with Annexes.

In the Resolution[9] dated February 4, 2016, respondent was directed by the Court *En Banc* to file his comment in this case. On February 19, 2016, respondent filed its "Comment (Re: Petition for Review)."[10]

In the Resolution dated March 22, 2015,[11] the Court gave due course to the Petition for Review and ordered the parties to file their respective memoranda.

On March 4, 2016, respondent filed a "Manifestation"[12] stating that he is adopting the arguments raised in the Comment to the Petition for Review as his Memorandum in this case. On April 14, 2016, petitioner filed its "Memorandum."[13]

In the Resolution[14] dated April 27, 2016, this case was deemed submitted for decision.

ISSUE

The issue in this case is whether the Court in Division erred in denying petitioner's claim for refund or issuance of a tax credit certificate in the amount of P51,966,544.20, representing alleged unutilized creditable input tax for the period of January 1, 2011 to March 31, 2011 for fiscal year ending June 30, 2011.

ARGUMENTS

Petitioner argues that it was able to sufficiently prove that it is engaged in zero-rated sales, being a VAT registered supplier to PGPRC, a BOI-registered purchaser whose products are 100% exported and thus, entitled to its claim for refund and/or issuance of tax credit certificate for the third quarter of fiscal year 2011; that while it is the observation of the Court that there was no amount indicated in the portion "VAT refund/TCC claimed" of the BIR Form 2550Q for the first quarter of 2012, there still appeared overpayments as indicated in item no. 29 of the BIR Form in the total amount of P310,416,997.85 which, indeed, covered the amount being claimed for refund/TCC of the instant petition in the amount of P51,966,544.20; that the Original Computer Print-Out of the Quarterly VAT Return (BIR Form No. 2550Q for the period July 1, 2011 to September 30, 2011 wherein it completely showed that petitioner has Total Available Input Tax in the amount of P417,509,030.79 for the following quarters: 1) March 2010, 2) June 2010, 3) September 2010, 4) December 2010, 5) March 2011, 6) June 2011, and 7)

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[9] Rollo, CTA EB No. 1394, pp. 106-107.
[10] Ibid. pp. 108-113.
[11] Ibid pp.115-116.
[12] Ibid. pp-117-118.
[13] Ibid. pp. 122-149.
[14] Ibid. pp. 151-152.

September 2011; that in the said BIR Form No. 2550Q for the period July 1, 2011 to September 30, 2011 it clearly showed that petitioner has a total VAT Refund/TCC claim from March 2010 to September 2011 in the total amount of P360,739,406.52 which is inclusive of the declarations of the petitioner in its BIR Form No. 2550Q for the first quarter of 2012 in the amount of P310,416,997.85 admitted into evidence as Exhibit P-17; that in support thereof, petitioner, in its Motion for Reconsideration before the Court in Division, attached and submitted the Original Computer Print-out of the BIR Form No. 2550Q for the period of July 1, 2011 to September 30, 2011 as Annex P-1 in order to correct the evidence previously offered into evidence as Exhibit P-17.

On the other hand, respondent counter-argues that the burden of establishing the factual basis of a claim for refund rests on the taxpayer and that entitlement thereto is for the taxpayer to prove and not for the government to disprove; that the document attached as "Annex P-1" to petitioner's Motion for Reconsideration had already been considered by the Court when it rendered the questioned Decision; and that the Court should not give credence to "Annex P-1" because it was not formally offered in evidence.

RULING OF THE COURT EN BANC

The Petition for Review before the Court in Division was anchored on the petitioner's claim for tax refund pursuant to Section 112 (A) of the NIRC of 1997, as amended.

Section 112(A) of the NIRC of 1997 provides:

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 or 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."

Pursuant to the above-quoted provision and as laid down by the Supreme Court in a number of cases[15], a taxpayer engaged in zero-rated or effectively zero-rated transactions may claim a refund or tax credit certificate for input taxes attributable to such sales upon compliance with the following requisites:

1. That the taxpayer must be VAT-registered;
2. That the claim for refund was filed within the two-year prescriptive period;
3. That there must be zero-rated or effectively zero-rated sales;
4. That input taxes were incurred or paid;
5. That such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales; and
6. That the input VAT payments were not applied against any output VAT liability.

The instant case involves input VAT on zero-rated sales incurred during the third taxable quarter of fiscal year ending June 30, 2011, which closed on March 31, 2011. Counting from said date, petitioner has until March 31, 2013 within which to file its administrative claim for refund. As found in the records of the case, petitioner filed an administrative claim for refund before the BIR on January 29, 2013. Thus, the 120-day period commenced to run from January 29, 2013 until May 29, 2013, the last day for the Commissioner of the BIR to decide the administrative claim. However, respondent failed to act on the administrative claim. Hence, petitioner had thirty (30) days from the lapse of the 120-day period or until June 28, 2013 within which to appeal the unacted claim to the Court of Tax Appeals. On June 28, 2013, petitioner filed a Petition for Review before the Court in Division. Thus, the filing of the administrative claim for refund before the BIR and the Petition for Review before the Court in Division both fell within the prescriptive period allowed by law.

After a careful review of the parties' arguments and the records of the case, this Court finds that the issue raised by petitioner Filminera Resources Corporation have been exhaustively discussed and resolved by the Court in Division in the assailed Decision and Resolution.

[15] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 195175 and 199645, August 10, 2015; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

The pertinent portions of the Assailed Decision are quoted as follows:

"Anent the first requisite, petitioner is a VAT-registered entity as evidenced by its Certificate of Registration No. OCN8RC0000036160 dated January 1, 1997, with Tax Identification Number 000-153-880-000.

As to the third requisite, petitioner alleges that Philippine Gold Processing and Refining Corporation, a BOI-registered entity, exports one hundred percent (100%) of its processed gold and silver ore. Its exports are paid in foreign currency duly accounted for based on the rules and regulations of the *Bangko Sentral ng Pilipinas*. xxx

xxx xxx xxx

To prove that its sales qualify for zero-rating, petitioner formally offered the following pieces of evidence:

1. BOI registration issued to PGPRC by the Board of Investments on February 7, 2008 with Registration No. 2008-042;
2. Export sales invoices and official receipts that petitioner issued to its sole customer, PGPRC;
3. Judicial Affidavit of petitioner's witness, Ms. Joy P. Dompor;
4. Legal opinion by BIR Assistant Commissioner James H. Roldan dated August 3, 2009, confirming that input VAT on PGPRC's purchases of goods and services attributable to zero-rated sales are available as tax credit;
5. BOI-ID certificate No. 2010-094 valid for the period July 10, 2011 to June 30, 2011, confirming that PGPRC exported 100% of its products; and
6. Ore Sales and Purchase Agreement dated July 5, 2007 executed by and between petitioner and PGPRC.

Petitioner was able to sufficiently prove that it is engaged in zero-rated sales, being a VAT-registered supplier to PGPRC, a BOI-registered purchaser whose products are 100% exported.

However, an examination of the sales invoices and official receipts submitted by petitioner shows that out of the reported zero-rated sales of P695,704,567.61, the amount of P435,000.00, *xxx,* pertains to petitioner's lease of land to PGPRC which cannot be considered as export sales contemplated under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and as implemented by Section 4.106-5 of RR No. 16-2005, thus the same cannot be regarded as sales subject to zero rating, xxx.;

Verily, only the sales in the amount of P695,269,567.61 (P695,704,567.61 less P435,000.00) qualify for VAT zero-rating.

After having resolved that petitioner's export sales for the third quarter of FY 2011 in the amount of P695,269,567.61 are subject to zero rating, the Court proceeds to determine whether or not petitioner incurred or paid input taxes in connection thereto and if said taxes were not applied against any output tax liability of petitioner.

Based on its Third Quarterly VAT Return for FY 2011, petitioner's input VAT from various purchases of goods and services amounts to P51,966,544.20, which is the subject of the present claim, broken down as follows:

Input taxes on Current Purchases (Exhibit P-17)	
Domestic Purchases of Goods Other Than Capital Goods	P 1,270,652.07
Domestic Purchase of Services *(Line 21J)*	50,695,892.13
Total Current Input VAT	P 51,966,544.20

To substantiate the foregoing input VAT, petitioner proffered in evidence various invoices and official receipts issued by its suppliers. Upon scrutiny, the Court finds that of the total claim of P51,966,544.20, only the amount of P49,489,584.45 is duly substantiated by the required evidence under Sections 110(A) and 113(A) and (B) of the NIRC of 1997 as amended, and as implemented by Sections 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-05. The remaining amount of P2,476,959.75 should be disallowed from its claim due to following reasons: xxx

Consequently, of the substantiated input VAT of P49,489,584.45, only the input VAT of P49,458,640.32 can be attributed to the substantiated zero-rated sales of P695,269,567.61, computed as follows:

Substantiated Zero-rated sales	P 695,269,567.61
Divided by Total Reported Zero-rated Sales	P 695,704,567.61
Multiplied by Substantiated Input VAT	P 49,489,584.45
Input VAT attributable to Substantiated Zero-rated Sales	P 49,458,640.32

Nonetheless, before petitioner can validly claim a refund/tax credit, it must prove that the claimed input taxes were not applied against any output liability during and in the succeeding period of claim.

It is petitioner's submission that the BIR Form 2550Q for the first quarter of 2012 (July 2011 to September 2011) it presented proves that petitioner had properly deducted therein the input VAT being claimed from the allowable input tax and was classified as "VAT refund/TCC claimed". However, contrary to its contention, the Court finds no iota of evidence that the subject claim was, indeed, deducted from the total allowable input VAT, as no amount was indicated in that portion "VAT refund/TCC claimed" of the said BIR Form 2550Q for the first quarter of 2012. This creates an impression that petitioner still had the input VAT in its books of accounts and is available as a credit against its future output VAT liability.

The Court reiterates the ruling in the case of *M+W Philippines, Inc. vs. Commissioner of Internal Revenue [CTA CSE No. 8159, August 12, 2013]*, citing the case of *Sagara Metro Plastics Industrial Corp. vs. Commissioner of Internal Revenue [CTA Case Nos. 6295, 6320, and 6333, October 10, 2003]*, to wit:

"The reason for the deduction is to assure that the claimed input VAT shall not be applied against any future output VAT liability.

xxx xxx xxx

Without convincing evidence that the subject input taxes were not utilized or carried over as credit to the subsequent quarters, this Court cannot grant petitioner's prayer. To grant petitioner's claim for refund, without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government." *(Emphasis supplied)*

Petitioner went to this Court and insisted that "Annex-P-1" of the Motion for Reconsideration will prove that it is entitled to the refund sought. It shows that petitioner is aware that "Annex P-1" is not newly discovered evidence since it did not move for the reopening or new trial of the case. It merely invoked that this Court is not bound by the technical rules of evidence in order to seek the indulgence of this Court to consider the same as convincing proof that the subject input taxes were not utilized or carried over as credit to the subsequent quarters.

However, this Court finds petitioner's arguments unmeritorious.

Section 34, Rule 132 of the Rules of Court explicitly provides:

> *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

In the case of *Heirs of the Deceased Carmen Cruz-Zamora v. Multiwood International, Inc.,* the Supreme Court held that the offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight.[16]

The Court agrees with the Court in Division when it denied the petitioner's Motion for Reconsideration on the ground that Annex P-1 attached to the Motion for Reconsideration cannot be admitted to form part of the record of the case. The pertinent portions of the Assailed Resolution[17] reads:

> "Anent the document attached to the subject *Motion for Reconsideration*, the Court is not inclined to grant petitioner's prayer that Annex P-1- amended BIR Form No. 2550Q for the 1st quarter of fiscal year 2012 (July 1, 2011 to September 30, 2011)-, attached to the subject *Motion for Reconsideration*, be admitted to evidence to form part of the records of the instant case.
>
> Under Section 5, Rule 30 of the Rules of Court, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.
>
> While it is true that the Rules of Court, specifically Section 5 Rule 30, prescribe an order of trial, relaxation of the rule is permitted in the sound discretion of the court. 'The Rules of Court does not prohibit a party from requesting the court to allow it to present additional evidence even after it has rested its case. Any such opportunity, however, for the ultimate purpose of the admission of additional evidence is already addressed to the sound discretion of the court.' Jurisprudence dictate that 'the exercise of

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[16] G.R. No. 146428, January 19, 2009, 576 SCRA 137, 145.
[17] Citations omitted.

the court's discretion under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the attendant facts- i.e., on whether the evidence would qualify as a "good reason" and be in furtherance of the "interest of justice."

xxx xxx xxx

In this case, the circumstances in this case fail to persuade this Court to indulge petitioner's request for admission of additional evidence. In varying but consistent language, the Supreme Court has consistently declared that additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered. In this instance, there was no allegation that Annex P-1 was not available during trial; and petitioner neither claims any mistake/inadvertence to its omission to present the documents subject herein, nor alleges any intention to correct evidence previously offered."

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[18]

The burden in claiming tax refund rests upon the taxpayer. In this case, petitioner failed to discharge the necessary burden of proof.

There being no new matters or issues raised in the Petition for Review before this Court and there being no reversible error committed by the Court in Division, this Court finds no cogent reason to disturb the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED for lack of merit.** Accordingly, the Decision dated August 3, 2015 and Resolution dated November 11, 2015 are hereby affirmed.

SO ORDERED.

Ma. Belen M. R. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[18] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FILMINERA RESOURCES CORPORATION, *Petitioner,*	**CTA EB NO. 1394** (CTA Case No. 8666)
-versus-	Present: **DEL ROSARIO**, PJ, **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 24 2017 11:35 a.m.

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CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur in the denial of the Petition for Review.

I, however, would like to stress that Annex "P-1" is insignificant in determining the merits of petitioner's claim. Parenthetically, there is nothing on record to show the genuineness and due execution of afore-stated document, nay its nature as an original print-out of petitioner's amended BIR Form 2550Q. Even the attachments of BIR Form No. 2550Q do not indicate the name of the person who prepared or signed them. In other words, irrespective of the issue on its admissibility or non-admissibility in evidence, the fact remains that Annex "P-1" may not be given any probative value.

In fine, I VOTE to deny the Petition for Review filed by Filminera Resources Corporation for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice