REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CORAL BAY NICKEL CORPORATION, Petitioner,	CTA CASE NO. 8905 Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 19 2017 3:45 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

On June 2, 2017, the Court rendered a Decision, dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED TO REFUND** in favor of petitioner Coral Bay Nickel Corporation the reduced amount of ₱122,250.00, representing its unutilized input value-added tax related to its zero-rated sales for the 1st quarter of 2013.
>
> **SO ORDERED**."

Both unconvinced, petitioner and respondent filed their own Motions for Partial Reconsideration on June 27, 2017 and June 28, 2017 respectively.

Respondent's Motion for Partial Reconsideration

Respondent asserts that the Court erred in granting petitioner's claim for refund, albeit partially, in the amount of ₱122,250.00, ruling that the said amount is entirely attributable to it zero-rated sales. Respondent asserts that to be entitled to the subject input VAT claim, petitioner must prove, among others, that the input VAT are directly attributable to zero-rated or effectively zero-rated sales. Unfortunately, petitioner failed to satisfy such requirement, says respondent.

Respondent points out that while he agrees that petitioner incurred input VAT on its purchase of goods for the construction of its Laborers Row House, Bus Terminal, JTA Dormitory and Foreman's Duplex, he however believes that the cited structures were not directly essential for the manufacture of its export products per its PEZA-sanctioned activity. On account thereof, the claim refund must be disallowed.

In rejecting respondent's stance, petitioner points out that since it was ascertained that its sales for the 1st Quarter of 2013 are entirely zero-rated, the burden of proving otherwise rests upon respondent. Given that respondent failed to substantiate his assertion, the partial grant of refund must be upheld.

In addition, the fact that its Articles of Incorporation (AOI) shows that petitioner's activities are purely subject to zero-rating only proves that it incurred input taxes that were wholly attributable to such sales.

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner seeks for an additional input tax refund in the total amount of P793,524.07, explaining its justifications as follows:

As for the input tax of P60,311.90, the amount allegedly corresponds to its purchase of goods/services that were consumed or rendered in its Office at 24/F Pacific Star Building, Gil Puyat Avenue, Makati City, thus:[1]

Supplier	Petitioner's explanation	Exhibit	Input VAT
Adways Philippines	Refers to rental of personal computer for petitioner's Makati office.	P-101-22	₱ 5,772.34
		P-101-150	5,772.34
		P-101-253	5,772.34
FFMiravite, Inc.	Refers to professional actuarial service in connection with petitioner's Employee Benefits Plan in Makati office.	P-101-157	3,480.00
Fuji Xerox Philippines, Inc.	Refers to payments for full service maintenance or lease rental of printers located in Makati office of CBNC.	P-101-29	6,323.74
		P-101-30	1,934.25
		P-101-31	3,297.86
		P-101-158	1,934.25
		P-101-267	5,064.38
GA Printing	Refers to payments for the printing of desk calendars and letterheads of petitioner for Makati office.	P-101-32	12,144.64
		P-101-159	642.21
Lengeric Manpower and General Services, Inc.	Refers to payments for messengerial services working and assigned in petitioner's Makati office.	P-101-39	4,386.42
		P-101-278	3,669.27
True Colors Photo Express	Refers to payments for photo finishing conducted in Makati City.	P-101-149	37.50
		P-101-252	80.36
Total			**₱ 60,311.90**

Further, that it paid hotel accommodations,[2] travel agency services,[3] demurrage and storage services[4] and rental fees, association dues and expenses on its leased properties,[5] all expended or done outside the ECOZONE, hence, resulted in a total input tax of P407,916.95, to wit:

Supplier	Exhibit	Input VAT
Hotel Accommodations in Metro Manila		
New World Makati City Manila Hotel	P-101-61	₱ 1,830.35
New World Makati City Manila Hotel	P-101-62	1,830.35
New World Makati City Manila Hotel	P-101-63	499.19
B Hotel	P-101-148	924.00
Dusit Thani Manila	P-101-155	9,983.76
Dusit Thani Manila	P-101-156	3,278.97
Jupiter Arms Properties, Incorporated	P-101-160	2,142.45

[1] Exhibits P-101-22, P-101-150, P-101-253, P-101-57, P-101-29, P-101-30, P-101-31, P-1011-58, P-101-267, P-101-32, P-101-159, P-101-39, P-101-278, P-101-149 and P-101-252.
[2] Exhibits P-101-61, P-101-62, P-101-63, P-101-148, P-101-155, P-101-156, P-101-160, P-101-164, P-101-165, P-101-264, P-101-265, P-101-266, P-101-272, P-101-273 and P-101-274.
[3] Exhibits P-101-25, P-101-26, P-101-27, P-101-154, P-101-262 and P-101-263.
[4] Exhibit P-101-153.
[5] Exhibits P-101-23, P-101-24, P-101-151, P-101-152, P-101-174, P-101-175, P-101-258, P-101-259, P-101-260, P-101-261, P-101-281 and P-101-282.

Mandarin Oriental Manila	P-101-164	1,080.00
Mandarin Oriental Manila	P-101-165	690.00
Dusit Thani Manila	P-101-264	2,153.36
Dusit Thani Manila	P-101-265	499.19
Dusit Thani Manila	P-101-266	1,996.76
Jupiter Arms Properties, Incorporated	P-101-272	979.20
Jupiter Arms Properties, Incorporated	P-101-273	691.20
Jupiter Arms Properties, Incorporated	P-101-274	1,657.81
Travel Agency Services rendered within the premises of the travel agency situated in Makati City		
Discovery Tour, Inc.	P-101-25	6,897.00
Discovery Tour, Inc.	P-101-26	8,115.24
Discovery Tour, Inc.	P-101-27	4,011.60
Discovery Tour, Inc.	P-101-154	3,890.52
Discovery Tour, Inc.	P-101-262	6,960.60
Discovery Tour, Inc.	P-101-263	14,131.92
Demurrage and Storage services rendered in Manila Port		
Cosco Container Lines	P-101-153	23,626.50
Rental Fees, Association Dues and related expenses on the leased properties situated in Metro Manila		
Century Properties Management, Inc.	P-101-23	78,551.35
Century Properties Management, Inc.	P-101-24	769.20
Century Properties Management, Inc.	P-101-151	78,551.35
Century Properties Management, Inc.	P-101-152	6,480.00
Pacific Star Building Condominium Corporation	P-101-174	20,887.57
Pacific Star Building Condominium Corporation	P-101-175	7,131.11
Century Properties Management, Inc.	P-101-258	300.00
Century Properties Management, Inc.	P-101-259	79,084.75
Century Properties Management, Inc.	P-101-260	3,600.00
Century Properties Management, Inc.	P-101-261	6,480.00
Pacific Star Building Condominium Corporation	P-101-281	20,887.52
Pacific Star Building Condominium Corporation	P-101-282	7,324.13
TOTAL		**₱ 407,916.95**

Moreover, the input tax of P243,976.44[6] was incurred for the lighting of the airport located outside the ECOZONE. To add, the amount of P81,318.78 relates to a portion of input tax on its purchases of amortized automobiles. Petitioner opines that the cited official receipts together with its explanation are sufficient to prove that it is indeed entitled to the additional refund sought.

[6] Exhibit P-101-28.

Despite notice, respondent failed to file his comment/opposition on petitioner's Motion for Partial Reconsideration.

THE RULING OF THE COURT

Respondent's Motion for Partial Reconsideration

Respondent theorizes that petitioner failed to prove that the input tax of P122,250.00 granted in the assailed Decision is directly attributable to its export sales allowed by PEZA Regulations.

Such theory is flawed.

Section 112(A) of the National Internal Revenue Code (NIRC), as amended, mandates, among others that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales, thus:

> **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 xxx. (underscoring supplied)

Contrary to his insistence, the Section 112(A) of the Tax Code does not decree that the input tax be directly attributable to petitioner's zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. *Ubi lex non distinguit nec nos distinguire debemus.* When the law does not distinguish, we must not distinguish.[7]

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[7] *Philippines Free Press, Inc. vs. Court of Appeals,* G.R. No. 132864, October 24, 2006.

To this end, the explanation of petitioner's witness Allen Roy T. Catacutan testified that the constructed facilities were necessary for the production of its export products under its PEZA registered activities, *viz*:[8]

> 35. Q. Why are you saying that the excess and unutilized input VAT was incurred from petitioner's domestic purchases of taxable goods and services and were later consumed and rendered outside the Rio Tube Export Processing Zone?
>
> A: The domestic purchases of taxable goods and services by petitioner were consumed by it outside the Rio Tube Export Processing Zone. For example, **the goods and services used to construct housing facilities that are located outside the PEZA zone provide shelter to employee of petitioner whose plant is located in a far flung area, where public transport is scarce. These constructions and facilities are necessary in the production of export products under its PEZA registered activities**.

Evidently, the structures were for the use of petitioner's manpower, which undeniably are essential in the production of its exports under its PEZA-sanctioned enterprise. In sum, petitioner was able to prove that the input tax in the amount of P122,250.00 is attributable to its zero-rated sales. Consequently, the refund granted is sustained.

Petitioner's Motion for Partial Reconsideration

Petitioner asserts that its presentation of various official receipts side by side with its rationalization that the input tax of P793,524.07 arose from the purchase of goods and services which were consumed or rendered outside the ECOZONE demonstrate its entitlement to the refund sought.

The assertion is illusory.

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[8] Exhibit "P-57".

Section 112(A) of the NIRC, as amended is unequivocal and requires no interpretation. It mandates *inter alia* that the input taxes paid or incurred by a taxpayer is attributable to its zero-rated or effectively zero-rated sales. Therefore, it is incumbent upon petitioner to establish *first,* the existence of input VAT; and *second,* the said input VAT is attributable to its zero-rated sales.

Petitioner satisfied the *first* requisite. There is no denying that the various official receipts presented by petitioner complied with the invoicing requirements under Section 113(A) of the NIRC, as amended. As such, the foregoing receipts are a valid source of input taxes. Upon thorough verification, petitioner clearly incurred input taxes on its purchase of goods and services in the aggregate amount of P793,524.07, broken down as follows:

Exhibit No.	**Official Receipt No.**	**Input Tax**
P-101-22	9179	₱ 5,772.34
P-101-23	83533	78,551.35
P-101-24	83604	769.20
P-101-25	111265	6,897.00
P-101-26	111385	8,115.24
P-101-27	111605	4,011.60
P-101-28	0030	243,976.44
P-101-29	174728	6,323.74
P-101-30	176967	1,934.25
P-101-31	177512	3,297.86
P-101-32	82959	12,144.64
P-101-39	1311	4,386.42
P-101-61	40416	1,830.35
P-101-62	40565	1,830.35
P-101-63	40566	499.19
P-101-148	5521	924.00
P-101-149	1701	37.50
P-101-150	09267	5,772.34
P-101-151	83654	78,551.35
P-101-152	83688	6,480.00
P-101-153	045003	23,626.50
P-101-154	111766	3,890.52
P-101-155	A364935	9,983.76
P-101-156	A366368	3,278.97
P-101-157	10282	3,480.00
P-101-158	177054	1,934.25
P-101-159	83446	642.21
P-101-160	30089	2,142.45
P-101-164	43158	1,080.00

P-101-165	43159	690.00
P-101-174	48121	20,887.57
P-101-175	48191	7,131.11
P-101-252	1770	80.36
P-101-253	9376	5,772.34
P-101-258	83765	300.00
P-101-259	83778	79,084.75
P-101-260	83856	3,600.00
P-101-261	83886	6,480.00
P-101-262	112102	6,960.60
P-101-263	112244	14,131.92
P-101-264	A365939	2,153.36
P-101-265	A366940	499.19
P-101-266	A367442	1,996.76
P-101-267	169650	5,064.38
P-101-272	30372	979.20
P-101-273	30426	691.20
P-101-274	30503	1,657.81
P-101-278	1401	3,669.27
P-101-281	0166	20,887.52
P-101-282	0264	7,324.13
P-101	Amortization of Capital Goods (Automobiles)	81,318.78
Total		**₱ 793,524.07**

Having settled that it has existing input taxes, the next question is - did petitioner adequately establish that the same is attributable to its zero-rated sales? The answer is in the negative.

On this point, attention is drawn to the fact that what petitioner opted to explain in detail solely delve on the source of its incurred input taxes, *i.e.*, its purchases of goods/services which were consumed or rendered outside the ECOZONE. Nowhere in the instant motion that even suggests that said input taxes bear a relation to petitioner's zero-rated activity.

Besides, even if petitioner bothered to explain that the incurred input taxes were attributable to its zero-rated sales, no sufficient proof was presented to establish such fact. Mere allegation and speculation is not evidence, and is not equivalent to proof.[9]

[9] *Navarro vs. Clerk of Court Cerezo,* 492 Phil. 19, 22 (2002).

In fine, petitioner's justification coupled with the above receipts only demonstrated the existence of subject input taxes, no more, no less. Thus, a denial of its claim for additional input taxes is in order.

To repeat, tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[10]

WHEREFORE, finding no compelling reason to modify, much more depart from the Decision of June 2, 2017, petitioner's Motion for Partial Reconsideration and respondent's Motion for Partial Reconsideration, both dated June 27, 2017 are **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[10] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands),* G.R. No. 173854, March 15, 2010.