REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PACIFIC PLAZA CONDOMINIUM CORPORATION, *Petitioner,*	**CTA *EB* No. 2769** (CTA Case No. 10199)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 18 2025 1:37 pm

x- -x

D E C I S I O N

MANAHAN, *J.*:

This case involves a *Petition for Review* ("***Petition***")[1] filed by Pacific Plaza Condominium Corporation ("**Pacific Plaza**" or "**petitioner**") on July 6, 2023. The *Petition* seeks that the Court *En Banc:*

1.) Reverse and set aside the Court in Division's *Decision* dated February 10, 2023 ("**assailed *Decision***")[2] and *Resolution* dated June 1, 2023 ("**assailed *Resolution***");[3] and

2.) Order the Commissioner of Internal Revenue ("**CIR**" or "**respondent**") to refund or issue a tax credit certificate

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[1] Docket, pp. 6-23.
[2] Docket, pp. 25-45.
[3] Docket, pp. 47-50.

in the amount of Php3,185,128.80 in favor of petitioner.

THE FACTS

The antecedent facts of the case, as found by the Court in Division, are as follows.

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

Pacific Plaza, a non-stock, non-profit corporation registered with the Securities and Exchange Commission under Republic Act ("**RA**") No. 4726 (otherwise known as *The Condominium Act*), complied with the RMC. For calendar year ("**CY**") 2017, it filed its 3rd quarter VAT return (BIR Form No. 2550-Q) on October 23, 2017 and its amended 4th quarter VAT return on March 1, 2018.[4]

On October 23, 2019, in view of the Supreme Court's ruling in the case of *Association of Non-Profit Clubs, Inc. (ANPC) v. Bureau of Internal Revenue*[5] ("***ANPC***") that condominium dues are not subject to VAT, Pacific Plaza filed with the BIR an administrative claim for refund/tax credit of Php3,185,128.81 allegedly representing its erroneously paid VAT for the 3rd and 4th quarters of CY 2017. On the same day, it filed a judicial claim with the Court of Tax Appeals ("**CTA**").[6]

The case underwent trial.[7] Thereafter, on February 10, 2023, the Court in Division rendered the assailed *Decision*.

In the assailed *Decision*, the CTA Special Second Division ruled that the condominium dues collected by Pacific Plaza from its members are not subject to VAT. However, the Court

[4] Docket, p. 26.
[5] G.R. No. 228539, June 26, 2019.
[6] *Id.*
[7] *See* Docket, pp. 27-30.

in Division denied Pacific Plaza's claim for refund of its alleged erroneously paid VAT on said collection in the total amount of Php3,185,128.81 on the following grounds: *first*, the input VAT credits allegedly applied against it in the amount of Php2,410,026.76 were not substantiated by VAT invoices or official receipts; and *second*, the actual payment of Php745,270.37 cannot be considered erroneously paid since Pacific Plaza has a remaining output VAT liability of Php743,936.97 after deducting said payment from its output VAT due for CY 2017.

Pacific Plaza filed a motion for reconsideration, which the Court in Division denied in the assailed *Resolution*. The Court in Division reiterated that while condominium dues are not subject to VAT, Pacific Plaza failed to prove erroneous payment of the VAT collected.

Thus, Pacific Plaza filed the present *Petition*.

The CIR filed his comment[8] to the *Petition* on August 18, 2023. On October 17, 2023, the present case was submitted for decision.[9]

THE ISSUE

The issue at bar is whether petitioner is entitled to the refund of the amount of Php3,185,128.81 allegedly representing its erroneously paid VAT on condominium association dues for the 3rd and 4th quarters of CY 2017, inclusive of penalties.

Petitioner's arguments

Petitioner submits that unlike in a claim for refund of excess input VAT attributable to zero-rated sales, a claim for refund of erroneously paid tax under Section 229 of the Tax Code does not require compliance with invoicing requirements. Having presented evidence of the VAT it erroneously paid on the condominium association dues, petitioner insists that it is

[8] *Comment/Opposition (To Petitioner's Petition for Review Dated July 5, 2023)*, Docket, pp. 59-70.
[9] Docket, p. 71.

entitled to the refund as there is nothing in the law which requires the taxpayer to prove every item in the return.

Respondent's arguments

Respondent notes that petitioner did not raise any new matter which would warrant the reversal of the assailed *Decision* and assailed *Resolution*. As to the input VAT in the amount of Php2,410,026.76 credited against the alleged erroneous payment of Php3,185,128.81, respondent argues that petitioner cannot seek its refund under Section 229 of the Tax Code because such input VAT is neither erroneously nor illegally or in any manner wrongfully collected. As to the actual remittance to the BIR of the amount of Php745,270.37, respondent argues that petitioner failed to prove that the same corresponds to the condominium association dues which are not subject to VAT. Finally, respondent maintains that the filing of the judicial claim on the same day of the filing of the administrative claim violated the doctrine of exhaustion of administrative remedies.

RULING OF THE COURT *EN BANC*

We deny the *Petition* for lack of merit.

At the outset, the ruling that condominium association dues are not subject to VAT is already well-settled and no longer disputed by the parties. Nonetheless, we reiterate the Supreme Court's pronouncement in ***ANPC***:

> It is a basic principle that before a transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of a service is required. This is true even if such sale is on a cost-reimbursement basis...
>
> As ANPC aptly pointed out, *membership fees, assessment dues, and the like are not subject to VAT because in collecting such fees, the club is not selling its service to the members*. Conversely, the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/maintenance of the facilities of the organization. As such, there could be no "sale, barter or exchange of goods or properties, or sale of a service" to speak of, which would then be subject to VAT under the 1997 NIRC.

ANPC was affirmed in *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*,[10] which pertinently held:

> 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.
>
> *Indisputably, the nature and purpose of a condominium corporation negates the carte blanche application of our value-added tax provisions on its transactions and activities.*

There being no issue as to whether petitioner is liable to pay VAT on its collection of condominium dues, what therefore remains for determination of the Court is the actual amount of VAT that petitioner erroneously paid.

Breakdown of alleged erroneous output VAT payment

In its quarterly VAT returns for the 3rd and 4th quarters of CY 2017, petitioner declared the amount of **Php26,294,142.76** as sales/receipts subject to VAT, resulting in an output VAT liability of **Php3,155,297.13**.

CY 2017	3rd Quarter	4th Quarter	Total
Vatable Sales / Receipt	P 14,750,204.42	P 11,543,938.34	P 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 purchases 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

[10] G.R. No. 215801, January 15, 2020.

Payments made			
Monthly VAT Payments – previous 2 months	259,626.81	50,645.92	310,272.73
Quarterly Payment	379,897.78	55,099.86	434,997.64
Total Payments	639,524.59	105,745.78	**745,270.37**

Said output VAT liability of Php3,155,297.13 was settled through the following:

1. Utilization of input VAT credits in the amount of **Php2,410,026.76**; and

2. Monthly/quarterly VAT payments amounting to **Php745,270.37**

On the premise that the declared VAT-able sales/receipts of Php26,294,142.76 represent its collection of condominium dues which, as already established, is not subject to VAT, petitioner seeks the refund of the entire amount of Php3,155,297.13 on the ground that it was erroneously paid.

Section 229 of the Tax Code governs the refund of erroneously paid taxes. Prior to its amendment by RA No. 11976,[11] which took effect on January 22, 2024, said provision reads:

> **SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> 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,

[11] Otherwise known as the *Ease of Paying Taxes Act.*

> 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.

Thus, for a refund claim to prosper under Section 229, the taxpayer-claimant must establish the following: 1.) the tax, penalty, or any sum was erroneously or illegally assessed, or in any manner wrongfully collected; 2.) payment was made, whether or not under protest or duress; 3.) an administrative claim for refund of the amount paid was filed with the BIR; and 4.) the judicial claim for refund was filed within 2 years from the date of payment.

Here, the Court finds as follows:

First, with respect to the amount of **Php2,410,026.76** allegedly paid through input VAT credits, petitioner failed to establish the 2nd requisite, *i.e.* that payment was validly made.

Second, with respect to the amount of **Php745,270.37** actually paid, petitioner failed to establish the 1st requisite, *i.e.* that it was erroneously or illegally collected.

The input VAT in the amount of P2,410,026.76 cannot be refunded in the absence of proof that it exists and was validly applied as "payment"

In denying the refund of input VAT which petitioner claims to have been erroneously credited against its output VAT on condominium dues, the Court in Division observed as follows:

> *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), in relation to Section 113(A)(1) and (2) 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. None can be found in the records of the case to support the input tax credits of ₱2,410,026.76.[12]

Petitioner challenges the above conclusion, banking on the CTA case of *Ericsson Telecommunications v. Commissioner of Internal Revenue*[13] ("***Ericsson***") which expressly stated that "nothing in Section 229 requires compliance with the invoicing requirements before a taxpayer could claim a refund for its erroneous payment of tax." Petitioner also cites the case of *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*,[14] ("***Chevron***") which established the rule that the CTA cannot require the taxpayer-claimant to substantiate its excess input VAT carried over from the previous quarter, as it is not a requirement for entitlement to the refund of unutilized input VAT from zero-rated sales.

The Court finds, however, that ***Ericsson*** and ***Chevron*** are inapplicable in this case.

Indeed, a distinction must be made between the tax refund system under Section 229 of the Tax Code, and the VAT refund mechanism for input tax attributable to zero-rated sales under Section 112. The case of *Manila Peninsula Hotel, Inc. v. Commissioner of Internal Revenue*[15] is instructive:

> There are two kinds of refund under the NIRC, as amended.
>
> > The first one is under Section 112 of the NIRC, as amended, which deals specifically with the refund of unutilized creditable input VAT by reason of zero-rated or effectively zero-rated transactions...
> >
> > ...
> >
> > The second type of refund is covered under Sections 204(C) and 229 of the NIRC, as amended,

[12] Docket, p. 41. *Citations omitted.*
[13] CTA Case No. 8027, August 2, 2012 [Per J. Casanova, Second Division].
[14] G.R. No. 215159, July 05, 2022 [Per J. Lopez, M., En Banc].
[15] G.R. No. 229338, April 17, 2024 [Per J. Caguioa, Third Division].

which govern the filing of claims to recover any erroneously paid or illegally collected internal revenue tax...

...

In *CIR v. San Roque Power Corporation (San Roque)*, the Court distinguished between "excess input tax" under Section 112 and "excessively collected taxes" under Section 229 of the NIRC, as amended:

> ***The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper.*** The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services... ***The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT.*** If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person—the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT—who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.
>
> ...
>
> ***Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit.*** There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.

> ...***In short, there must be a wrongful payment because what is paid, or part of it, is not legally due.***

In *Ericsson*, the VAT-registered claimant inadvertently *paid* the input VAT which should have been carried over to the succeeding taxable quarter. Considering that it is not the person legally liable for the input VAT, such payment patently constituted an erroneous payment covered by Section 229—not Section 112—of the Tax Code. It is in this context that *Ericsson* aptly held that compliance with the VAT invoicing requirements is immaterial in a refund claim under Section 229, it being sufficient that the taxpayer proves erroneous payment of the tax.

The facts of the case at bar are strikingly different from that in *Ericsson* such that the Court's pronouncement therein cannot be literally taken and applied. To emphasize, in *Ericsson*, the claimant inadvertently *paid* its excess input VAT through the electronic filing and payment system. Here, the petitioner *did not pay* its input VAT. Quite the contrary, petitioner supposedly *used* its input VAT *as payment* to erroneously settle its output VAT liability.

Hence, unlike in *Ericsson* and other refund cases where the erroneous payment of the tax may be evidenced by a confirmation of receipt or other proof of remittance to the BIR, the alleged erroneous "payment"—or *crediting*, to be accurate—of the amount of Php2,410,026.76 can only be proven by the VAT invoices/official receipts showing the actual amounts claimed to have been utilized as payment. Section 110 of the Tax Code instructs:

> **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:
>
> (a) Purchase or importation of goods:
>
> (i) For sale; or

> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
> (iii) For use as supplies in the course of business; or
> (iv) For use as materials supplied in the sale of service; or
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

Petitioner cannot pay with input VAT which it does not have. The significance therefore of requiring substantiation in this case is *not* to extend the requirement under Section 112 over Section 229; rather, it just so happened that the same substantiation requirement is necessary *to establish the fact of erroneous payment.* This is because such erroneous payment was allegedly made by crediting input VAT.

Since petitioner did not adduce evidence to prove the existence of such input VAT, the Court cannot ascertain the fact and actual amount of erroneous payment, if any. Under such circumstances, neither can the Court permit petitioner to use the refund mechanism under Section 229 to refund the alleged input VAT which it did not even pay.

The output VAT paid in the amount of Php745,270.37 cannot be refunded in the absence of proof that it was erroneously or excessively collected

Petitioner confirms the finding in the assailed *Decision* that out of the total output VAT of **Php3,155,297.13** declared per quarterly VAT returns and claimed as refund, only the amount of **Php1,666,089.79** was proven to have been collected from condominium association dues for the 3rd and 4th quarters of CY 2017, *viz:*[16]

> 25. Petitioner has sufficiently shown that it erroneously paid VAT for 3rd and 4th quarters of CY 2017, consistent with

[16] *Petition for Review,* Docket, pp. 15-16. *Citation omitted.*

this Court's confirmation that the association dues paid by Petitioner are not subject to VAT.

26. The evidence presented by Petitioner on the VAT paid on association dues was verified by the ICPA, as follows:

> Based on our verification and without prejudice to such additional VAT ORs that may presented, we believe that Petitioner's claim for refund should be granted at a reduced amount of Php1,666,589.79, which represents the VAT on association dues proven to have been collected from the unit owners for the 3rd and 4th Quarters of TY 2017 and remitted to the BIR in the same period

27. This Court also acknowledged the foregoing albeit some making a minimal adjustment, to wit:

> However, the Court finds that the aforesaid output tax of Php1,666,589.79 should be further reduced by Php500.00 representing the discrepancy between the VAT reflected per OR No. 6564 with that shown per schedule, xxx

28. Conformably with Chevron and Ericsson, the Assailed Decision in fact acknowledged that the courts would only need to ascertain that the amount of output tax actually paid as long as they pertain to association dues, membership fees and relevant charges...

Despite such finding, the assailed *Decision* ratiocinated that deducting Php1,666,089.79 from the total output VAT due of Php3,155,297.13 still leaves a balance of **Php1,489.207.34**. In view of such remaining output VAT liability, the assailed *Decision* did not order the refund of the amount of VAT actually paid, *i.e.* Php745,270.37, as it cannot be considered erroneously or excessively paid.

Petitioner now asserts that it should be allowed to refund at least the amount of VAT actually paid on the condominium dues, since there is nothing in the law which requires the taxpayer to prove every item in the return which is not relevant to the tax subject of the claim. Moreover, *Chevron* allegedly forbids the Court to deduct the taxpayer's VAT liability from the refundable amount.

The Court cannot subscribe to petitioner's position.

First, *Chevron* established the rule that the Court cannot, on its own, deduct *input VAT attributable to zero-rated sales* from the output VAT and use only the resultant amount as the basis of the allowable refund. This is because the option to refund or to credit such input VAT was recognized to belong to the taxpayer. Meanwhile, *Chevron* did not in any way prohibit the mere application of *VAT payments* made by the taxpayer against its own output VAT liability. Thus, to apply Chevron in this case is an overstretch.

Second, deducting petitioner's VAT payments from its own VAT liability is essential in determining whether there is an "erroneously or illegally assessed or collected tax," or any sum "excessively or in any manner wrongfully collected without authority" contemplated by Section 229 of the Tax Code. This is because unlike for example final withholding taxes which constitute the full and final payment of the tax due on a specific income receipt,[17] VAT is paid on a monthly (now quarterly) basis, not on a per-transaction basis. Hence, any erroneous or excessive payment of VAT can only be determined after the close of the pertinent taxable period when the VAT return is filed and the output VAT due is paid.

Notably, *Chevron* itself recognized the validity and wisdom of offsetting where a tax liability still exists:[18]

> It is true, in several cases, the Court has ruled that it will not grant a refund if the taxpayer has pending tax liability to the government because ***"[t]o award the refund despite the existence of deficiency assessment is an absurdity and a polarity in conceptual effects"*** and that ***"to grant the refund without determination of the proper assessment and the tax due would inevitably result in a multiplicity of proceedings or suits."*** We explained in *Commissioner of Internal Revenue v. Court of Appeals*, to wit:
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> > x x x If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after [the] discovery of the falsity, fraud[,] or omission in the false or fraudulent return involved. This would

[17] *See Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017 [Per J. Perlas-Bernabe, First Division].
[18] *Emphasis supplied, citations omitted.*

> necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.
>
> Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for [the] tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable.
>
> But in these cases, the taxpayer's liability for deficiency taxes is related to and intertwined with the resolution of the claim for refund.

However, to be clear, in herein applying petitioner's actual VAT payment of Php745,270.37 to its output VAT liability of Php1,489.207.34, the Court is not making a tax assessment. Distinction should be made between a "judicial assessment," which is prohibited,[19] and a judicial determination of the amount due for refund. *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*[20] is enlightening:

> Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.
>
> ...
>
> The self-assessing and voluntarily paying taxpayer, however, may later find that he or she has erroneously paid taxes. Erroneously paid taxes may come in the form of amounts that should not have been paid. Thus, a taxpayer may find that he or she has paid more than the amount that should have been paid under the law...
>
> In these instances, the taxpayer may ask for a refund. If the BIR fails to act on the request for refund, the taxpayer may bring the matter to the Court of Tax Appeals.

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[19] *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014 [Per J. Leonen, Second Division]. The Court of Tax Appeals has no power to make an assessment at the first instance. On matters such as tax collection, tax refund, and others related to the national internal revenue taxes, the Court of Tax Appeals' jurisdiction is appellate in nature.

[20] *Id.*

...

> As earlier established, the Court of Tax Appeals has no assessment powers. In stating that petitioner's transactions are subject to capital gains tax, however, the Court of Tax Appeals was not making an assessment. It was merely determining the proper category of tax that petitioner should have paid, in view of its claim that it erroneously imposed upon itself and paid the 5% final tax imposed upon PEZA-registered enterprises.
>
> The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund
>
> ***The issue of petitioner's claim for tax refund is intertwined with the issue of the proper taxes that are due from petitioner. A claim for tax refund carries the assumption that the tax returns filed were correct.*** If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund become questionable. In that case, ***the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid.***

Here, petitioner itself declared the total output VAT of Php3,155,297.13 per its quarterly VAT returns, and confirmed in the present *Petition* that only the amount of Php1,666,089.79 is verified to have been collected from condominium dues. Absent contrary proof that the balance is likewise related to VAT-exempt transactions, the outstanding output VAT liability of Php1,489.207.34 remains, negating its entitlement to refund. To stress, these figures are based on petitioner's own tax returns, thereby likewise negating the conduct of judicial assessment.

As a final note, the Court's denial of the present claim for refund is simply an inescapable consequence of its finding that under pertinent law and jurisprudence, the taxpayer-claimant fell short of proving its claim. After all, the long-standing doctrine still stands that the burden of proof rests on the taxpayer to establish its right to deductions, refunds, or exemptions.[21] In actions for tax refund, not only is the law construed strictly against the taxpayer; the pieces of evidence

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[21] *Thunderbird Pilipinas Hotels and Resorts, Inc. v. Commissioner of Internal Revenue*, G.R. No. 211327, November 11, 2020 [Per J. Leonen, Third Division].

entitling it thereto are also strictly scrutinized and must be duly proven.[22]

ACCORDINGLY, the *Petition for Review* filed on July 6, 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I join Justice Flores' Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see my Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(I join Justice Flores' Concurring and Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

[22] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008 [Per J. Velasco, Jr., Second Division].

LANEE S. CUI-DAVID
Associate Justice

(With due respect, please see my Concurring and Dissenting Opinion)
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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

PACIFIC PLAZA CONDOMINIUM CORPORATION,		**CTA EB No. 2769** (CTA Case No. 10199)
	Petitioner,	Present:
		DEL ROSARIO, *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
- versus -		
COMMISSIONER OF INTERNAL REVENUE,	Respondent.	Promulgated: MAR 18 2025

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CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur in the *ponencia's* discussion that condominium association dues are not subject to Value Added Tax (**VAT**).

However, with due respect, I register my dissent to the *ponencia*'s outright denial of petitioner Pacific Plaza Condominium Corporation's (**petitioner**'s) refund claim. It is my humble opinion that petitioner should be granted a refund claim in the amount of ₱393,524.70.

I agree with the *ponencia* that condominium association dues are not subject to VAT. In *Bureau of Internal Revenue (BIR) v. First E-Bank Tower Condominium Corp.*[1], the Supreme Court has held that:

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[1] G.R Nos. 215801 and 218924, 15 January 2020.

> ...
> 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[.]
> ...

Though petitioner declared the entire amount of ₱26,294,142.76 as sales subject to VAT allegedly representing association dues (that resulted in an output tax due in the amount of ₱3,155,297.13) the case records reveal that only the amount of ₱1,666,089.79 was actually proven to have been collected as association dues.

Under Section 229[2] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, for the recovery of erroneously paid taxes to prosper, the taxpayer must be able to prove that taxes were erroneously assessed or collected. Here, petitioner was able to prove that ₱1,666,089.79 is the amount of output tax collected from association dues hence petitioner, after deducting the input taxes attributable to such activity, should be entitled to its refund claim.

According to the *ponencia*, even if petitioner was able to prove that ₱1,666,089.79 is the output tax attributable to association dues, it is still not entitled to a refund claim since if the said amount was deducted from the total output VAT due of ₱3,155,297.13, there is still a balance of ₱1,489,207.34. Therefore, it cannot be considered as erroneously or excessively paid. The *ponencia* also stated that the case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[3] (**Chevron**), is not applicable since: (1) it does not prohibit the application of VAT payments made by the taxpayer against its own VAT liability; and (2) deducting petitioner's VAT payment from its own VAT liability is essential in determining whether there is erroneous or illegally assessed or collected taxes.

With due respect, it is my humble opinion that the pronouncement in *Chevron* may be applied in this case, insofar as there should be no judicial assessment of deficiency taxes in a claim for refund. In *Chevron*, the Supreme Court held that:

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2 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.*
3 G.R. No. 215159, 05 July 2022.

...

> Next, the substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability. In turn, **it is not for the CTA and the Court to determine and rule in a judicial claim for refund under Section 112 (A) of the Tax Code that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability.** This is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes.
>
> ...
>
> All told, **it was erroneous for the CTA to charge the validated and substantiated input taxes against Chevron Holdings' output taxes first and use the resultant amount as the basis for computing the allowable amount for refund.** The CTA also erred in requiring Chevron Holdings to substantiate its excess input tax carried over from the previous quarter as it is not a requirement for entitlement to a refund of unused or unutilized input VAT from zero-rated sales.[4]
>
> ...

Thus, with due respect, it appears erroneous and rather sweeping to conclude that since there was a balance of ₱1,489,207.34 in petitioner's output VAT liability (after deducting output taxes proven to be attributable to the sale of association dues), petitioner could no longer be entitled to its refund claim. Such a conclusion amounts to a judicial assessment as this Court presumes the following: (1) no input taxes can be credited; and (2) no VAT payments were made. This Court has no authority to create such a presumption.

I am not unaware of my concurrence in the Second Division's Decision dated 10 February 2023, which justified the denial of petitioner's refund claim on the ground that there was failure on the part of petitioner to substantiate the input tax credit of ₱2,410,026.76 with official receipts, sales invoices and other pertinent documents. However, after a re-examination of the applicable law and jurisprudence, I humbly express my opinion that there is no need for petitioner to substantiate its input taxes as the claim is not grounded on Section 112 of the NIRC of 1997, as amended.[5] Requiring petitioner to substantiate its input taxes as declared in its VAT return would amount to a judicial assessment. Verily, the only task of this court is to determine how much of the input tax should be attributable to the sale of association dues, in order to properly determine the correct amount of refund claim.

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4 Emphasis supplied.

5 **SEC. 112.** *Refunds or Tax Credits of Input Tax.*

As to the proper amount of refund claim that can be granted to petitioner based on the duly proven output taxes attributable to the sale of association dues, Section 110 of the NIRC of 1997, as amended, specifically provides that input taxes should be allocated based on petitioner's activity (subject to VAT/non-VAT). The said provision provides:

> ...
> SEC. 110. *Tax Credits.* –
> A. *Creditable Input Tax.* –
> ...
>
> (3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:
>
> **(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and**
>
> **(b) A ratable portion of any input tax which cannot be directly attributed to either activity.**
>
> The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.[6]
> ...

Revenue Regulations (**RR**) No. 14-05[7] also instructs that in case of a mixed transaction and the input tax cannot be directly attributed to either a VAT taxable or VAT-exempt transaction, the input tax shall be pro-rated and only the ratable portion for the transactions subject to VAT may be recognized for input tax credit. The relevant section of RR No. 14-05 is quoted below:

> ...
> SEC. 4.110-4. *Apportionment of Input Tax on Mixed Transactions.* — A VAT-registered person who is also engaged in transactions not subject to VAT shall be allowed to recognize input tax credit on transactions subject to VAT as follows:
>
> 1. All the input taxes that can be directly attributed to transactions subject to VAT may be recognized for input tax credit; *Provided*, that input taxes that can be directly attributable to VAT

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6 Emphasis supplied and italics in the original text.
7 Consolidated Value-Added Tax Regulations of 2005.

> taxable sales of goods and services to the Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall not be credited against output taxes arising from sales to non-Government entities; and
>
> 2. **If any input tax cannot be directly attributed to either a VAT taxable or VAT-exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT-exempt transactions and only the ratable portion pertaining to transactions subject to VAT may be recognized for input tax credit.**[8]
>
> ...

Applying by analogy, only a ratable portion of the total allowable input tax that can be attributed to the sale of association dues is the amount of input tax, which can be credited and deducted from output tax collected on association dues. This is also necessary because petitioner had already claimed the entire ₱2,410,026.76[9] as input tax credit in its VAT Return for the 3rd and 4th Quarter of Calendar Year (**CY**) 2017. Thus, the input VAT attributable to the sale of association dues should be removed in the petitioner's refund claim otherwise, petitioner would have twice benefitted.

We compute.

Firstly, determine the ratio to be used in our computation in the table below:

Output Tax collected on Association Dues	₱1,666,089.79[10]
Total Output Tax for 3rd and 4th Quarter	3,155,297.13[11]
Ratio to be used	**53%**

Secondly, using the ratio computed above, the input tax attributable to the sale of association dues is now determined as follows:

Total Allowable Input Tax	₱2,410,026.76[12]
Ratio	53%
Input Tax Attributable to Sale of Association Dues	**₱1,272,565.09**

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8 Emphasis supplied and italics in the original text.
9 *Rollo*, p. 40.
10 Id., p. 43.
11 Id., p. 40.
12 Id.

Lastly, the input tax attributable to the sale of association dues is then deducted to the output tax collected on association dues to determine the proper amount of the refund claim:

Output Tax collected on Association Dues	₱1,666,089.79
Input Tax Attributable to Sale of Association Dues	1,272,565.09
Refund Claim	**₱393,524.70**

All told, I vote to: (1) **PARTIALLY GRANT** the Petition for Review; (2) deem the assailed Decision dated 10 February 2023 and assailed Resolution dated 01 June 2023 **MODIFIED** as a result; and, thereby, (3) **ORDER** respondent to refund the amount of ₱393,524.70 representing erroneously paid value added tax for the 3rd and 4th quarters of calendar year 2017 in favor of petitioner.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PACIFIC PLAZA CONDOMINIUM CORPORATION, Petitioner,	**CTA EB NO. 2769** (CTA Case No. 10199)
- versus -	Members: **DEL ROSARIO**, *P.J.* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL, REVENUE, Respondent.	Promulgated: MAR 18 2025 1:33pm

x - x

CONCURRING AND DISSENTING OPINION

***FERRER-FLORES, J.*:**

Prefatorily, I concur with the discussion of my esteemed colleague that condominium association dues are not subject to value-added tax (VAT). Therefore, I also agree with the *ponencia* that what is left for the Court *En Banc*'s determination is the actual amount of VAT that petitioner erroneously paid.

Likewise, I agree with the *ponencia* that the input VAT in the amount of ₱2,410,026.76 cannot be refunded in the absence of proof that the payment was validly made.

To stress, petitioner's reliance in the case of *Ericsson Telecommunications vs. Commissioner of Internal Revenue*[1] is misplaced. In the said case, the erroneous payment of input VAT was explicitly shown on

[1] CTA Case No. 8027, August 2, 2012. Citations omitted.

the face of the fourth quarterly VAT Return for taxable year 2007. The supposed excess input VAT for the quarter, which should be carried over to the next succeeding taxable quarter, was inadvertently and erroneously paid through electronic [filing and] payment system (eFPS).

In this case, however, what was sought to be refunded was the payment of output VAT through the utilization of the input tax. The VAT returns for the third and fourth quarters of calendar year (CY) 2017 do not show any excess input VAT payment. Petitioner, therefore, must substantiate the input tax in order to prove that it existed and was used as payment for its output VAT. In the absence of the VAT invoices and/or official receipts, this Court cannot ascertain the amount of input tax that was utilized as payment for the output VAT.

With due respect, however, I humbly differ as to the outcome of the remaining amount of **₱745,270.37**, as will be discussed in detail below.

It is my view that petitioner is entitled to a partial refund of the actual output VAT paid for the third and fourth quarters of CY 2017 amounting to ₱745,270.37.

In the assailed Decision, the Court in Division found that petitioner was able to substantiate an output VAT payment in the sum of ₱745,270.37, composed of:

Exhibit No.	BIR Form No.	Tax Period	Payment Transaction Number	Date of Payment	Amount Paid
"P-1238"[2]	2550M	07/31/2017	179056295	08/18/2017	₱259,626.81
"P-1240"[3]	2550Q	09/30/2017	179900194	10/23/2017	379,897.78
"P-1241"[4]	2550M	10/31/2017	170340851	11/21/2017	50,645.92
"P-1244"[5]	2550Q	12/31/2017	181773559	03/01/2018	55,099.86
Total Monthly/Quarterly VAT Payments					**₱745,270.37**

The Court *a quo* also held that *"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"*. Thereafter, it declared the balance of ₱1,489,207.34 [₱3,155,297.13 less ₱1,666,089.79] as output VAT related to transactions subject to VAT and then applied the substantiated amount of ₱745,270.37 still resulting in a net output VAT of ₱743,936.97 [₱1,489,207.34 less ₱745,270.37] instead of a refund.

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[2] Docket – Vol. II, pp. 399-401.
[3] Docket – Vol. II, pp. 404-406.
[4] Docket – Vol. II, pp. 407-409.
[5] Docket – Vol. II, pp. 414-416.

Petitioner challenges the computation of the Court citing the case of *Chevron Holdings Inc. vs. Commissioner of Internal Revenue (Chevron case).*[6] Although petitioner admitted that the *Chevron case* pertains to a refund of excess input taxes attributable to zero-rated sales under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, it nevertheless asserts that the principle enunciated therein is applicable to the instant case.

The Court qualifiedly agrees with petitioner that the pronouncement in the *Chevron case* may be applied to its case insofar as there should be no judicial assessment of deficiency taxes in a claim for refund.

In the *Chevron case*, the Supreme Court ruled, in part:

> Next, the substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability. In turn, **it is not for the CTA and the Court to determine and rule in a judicial claim for refund** under Section 112 (A) of the Tax Code **that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability. This is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes**.
>
> xxx xxx xxx
>
> All told, **it was erroneous for the CTA to charge the validated and substantiated input taxes against Chevron Holdings' output taxes first and use the resultant amount as the basis for computing the allowable amount for refund.** The CTA also erred in requiring Chevron Holdings to substantiate its excess input tax carried over from the previous quarter as it is not a requirement for entitlement to a refund of unused or unutilized input VAT from zero-rated sales. (Boldfacing and underlining supplied)

Applying the above ruling to the present case, the Court *a quo* erroneously declared that the remaining unsubstantiated output VAT on condominium dues of ₱1,489,207.34 are output VAT related to transactions subject to VAT. Likewise, the validly supported output tax payment of ₱745,270.37 cannot be offset against the said unsubstantiated output VAT on condominium dues and, for the Court *a quo* to thereafter declare, that petitioner still has an output VAT liability of ₱743,936.97 instead of a refund would in effect assess petitioner a deficiency output VAT. Such authority does not belong to the Court of Tax Appeals but to the Bureau of Internal Revenue in a possible deficiency VAT assessment.

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[6] G.R. No. 215159, July 5, 2022.

The Court has consistently ruled that, once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged its burden to prove its entitlement to the refund.[7]

Prescinding from the above, it is my opinion that petitioner is entitled to the refund of the substantiated erroneously paid output VAT in the sum of ₱745,270.37.

All told, I vote to partially grant the *Petition for Review*. Accordingly, the assailed Decision dated February 10, 2023 and assailed Resolution dated June 1, 2023, are hereby reversed and set aside, and respondent is ordered to refund in favor of petitioner the amount of **₱745,270.37** representing erroneously paid value-added tax for the third and fourth quarters of CY 2017.

CORAZON G. FERRER-FLORES
Associate Justice

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[7] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 212699, March 13, 2019.