Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

THE CITY GOVERNMENT OF MAKATI, THE CITY TREASURER OF MAKATI CITY, and the OFFICER-IN-CHARGE OF THE OFFICE OF THE CITY ADMINISTRATOR AND HEAD OF BUSINESS PERMITS OFFICE, Petitioners,	**CTA EB NO. 1465** (CTA AC No. 147) Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
-versus-	
HONORABLE REGIONAL TRIAL COURT, MAKATI CITY, BRANCH 59 and MACTEL CORPORATION, Respondents.	Promulgated: OCT 09 2018 3:15 p.m.

x---x

AMENDED DECISION

MINDARO-GRULLA, J.:

This resolves petitioner's "Motion for Reconsideration" of the Decision dated February 14, 2018 of this Court *En Banc*, without respondent's comment as per Records Verification dated July 3, 2018, the pertinent portion of which states:

> *"xxx [T]he petition filed by respondent taxpayer before the Regional Trial Court of Makati City, Branch 59 is neither a local tax case nor an appeal pursuant to Sections 195 and 196 of the Local Government Code, therefore, the ruling in the case of the City of Manila, et al. vs. Hon. Carida H. Grecia-Cuerdo, et al. is not squarely applicable in the case at bar.*
>
> *xxx*
>
> *"**WHEREFORE**, the Petition for Review is DENIED, for lack of merit. Accordingly, the Decision dated February*

9, 2016, rendered by the Second Division of this Court in CTA AC No. 147, and its Resolution dated May 18, 2016 are ***AFFIRMED.*** *No pronouncement as to costs.*

SO ORDERED."

In assailing this Court's Decision, petitioner reiterates its previous argument that the present case involves not only one local tax issue but rather two local tax issues, that the case of the City of Manila, et al. vs. Hon. Carida H. Grecia-Cuerdo, et al. is applicable in the case at bar, and that the petition filed by respondent Mactel before the RTC-Makati City is an offshoot of an assailed deficiency local business tax assessment.

We resolve.

In the case of City of Manila, et al. vs. Hon. Carida H. Grecia-Cuerdo, et al.[1], the Supreme Court affirmatively ruled that the Court of Tax Appeals (CTA) has jurisdiction over a special civil action for *certiorari* assailing an interlocutory order issued by the Regional Trial Court (RTC) in a local tax case. To wit:

> *"xxx,[W]e now turn to the central issue in this case. The basic question posed before this Court is whether or not the CTA has jurisdiction over a special civil action for certiorari assailing an interlocutory order issued by the RTC in a local tax case.*
>
> *This Court rules in the affirmative.*
>
> *xxx xxx xxx.*
>
> *xxx. Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and* ***to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.***

---

[1] G.R. No. 175723, February 4, 2014.

On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases.

Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.

xxx xxx xxx.

xxx. The supervisory power or jurisdiction of the CTA to issue a writ of certiorari in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter.

A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

c

Clearly, the power of this Court to issue a writ of *certiorari* in aid of its appellate jurisdiction co-exists and complements its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter. The facts surrounding in the City of Manila, et al. vs. Hon. Carida H. Grecia-Cuerdo, et al. are summarized as follows:

> *"The antecedents of the case, as summarized by the CA, are as follows:*
>
> > *'The record shows that petitioner City of Manila, through its treasurer, petitioner Liberty Toledo, assessed taxes for the taxable period from January to December 2002 against private respondents SM Mart, Inc., SM Prime Holdings, Inc., Star Appliances Center, Supervalue, Inc., Ace Hardware Philippines, Inc., Watsons Personal Care Stores Phils., Inc., Jollimart Philippines Corp., Surplus Marketing Corp. and Signature Lines. In addition to the taxes purportedly due from private respondents pursuant to Section 14, 15, 16, 17 of the Revised Revenue Code of Manila (RRCM), said assessment covered the local business taxes petitioners were authorized to collect under Section 21 of the same Code. Because payment of the taxes assessed was a precondition for the issuance of their business permits, private respondents were constrained to pay the ₱19,316,458.77 assessment under protest.*
> >
> > *On January 24, 2004, private respondents filed [with the Regional Trial Court of Pasay City] the complaint denominated as one for "Refund or Recovery of Illegally and/or Erroneously-Collected Local Business Tax, Prohibition with Prayer to Issue TRO and Writ of Preliminary Injunction" which was docketed as Civil Case No. 04-0019-CFM before public respondent's sala [at Branch 112]. In the amended complaint they filed on February 16, 2004, private respondents alleged that, in relation to Section 21 thereof, Sections 14, 15, 16, 17, 18, 19 and 20 of the RRCM were violative of the limitations and guidelines under Section 143 (h) of Republic Act. No. 7160 [Local Government Code] on double taxation. They further averred that petitioner city's Ordinance No. 8011 which amended pertinent portions of the RRCM had already been declared to*

L

be illegal and unconstitutional by the Department of Justice.'

In its Order dated July 9, 2004, the RTC granted private respondents' application for a writ of preliminary injunction.

Petitioners filed a Motion for Reconsideration but the RTC denied it in its Order dated October 15, 2004."[2]

From the foregoing, it is evident that after an assessment by the local treasurer, protest and claim for refund were made pursuant to the procedures laid down under under Section 195[3] and Section 196[4] of the Local Government Code, instead of filing a special civil action for certiorari under Rule 65 of the Rules of Court with the CTA, it was erroneously filed with Court of Appeals.

In the case at hand, the following facts are undisputed.

1.) On August 1, 2005, petitioner City Treasurer issued a Notice of Assessment against private respondent for its alleged deficiency taxes, fees and charges in the total amount of P30,799,127.21 covering the periods of 2001-2004.

2) On October 13, 2005, private respondent filed a protest with petitioner City Treasurer. The protest was denied, thus, prompting private respondent to elevate the

---

[2] Ibid.

[3] Section 195. Protest of Assessment. - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

[4] Section 196. Claim for Refund of Tax Credit. - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

L

matter to the Regional Trial Court of Makati via a judicial appeal.

3) On November 21, 2005, private respondent filed a Petition for Review entitled "Mactelecom Corp., represented by its President Emmanuel P. Te vs. The City of Makati and The City Treasurer of Makati". The case was raffled to the RTC-Branch 148, Makati City and was docketed as Civil Case No. 05-1040.

4) On November 13, 2007, the RTC-Branch 148, Makati City rendered a Decision in Civil Case No. 05- 1040 which found the assessment unjust, excessive and confiscatory.

5) Thereafter, City Treasurer issued a Notice of Assessment dated January 14, 2015, under Letter of Authority No. 2014-0345, again assessing private respondent for deficiency taxes, fees and charges covering the taxable period 2010-2013 in the amount of P157,200,855.92.

6) Private respondent tried to apply for the renewal of its business permit via Business Permit Application Form (Form 101-A) of Makati City, but the latter refused to issue the same due to an alleged business tax deficiency for taxable year 2014 in the total amount of P24,693,707.82, including surcharges and deficiency. Thereafter, petitioner City Administrator issued a Billing Statement dated January 22, 2015.

7) On February 6, 2015, private respondent filed its protest to the Notice of Assessment dated January 14, 2015. Also, in its Letter dated February 10, 2015, private respondent tried to protest the Billing Statement but petitioner City Administrator allegedly refused to receive said letter.

8) On March 4, 2015, private respondent filed a Petition (With Application for Temporary Restraining Order and/or Preliminary Injunction) with the Regional Trial Court of Makati City. The Petition is for Declaratory Relief with Application for Temporary Restraining Order (TRO) and/or

L

Preliminary Injunction for petitioners alleged unlawful withholding of the issuance of private respondent's business permit and/ or denial of its application for renewal thereof.

9) On April 28, 2015, the court a quo issued the first interlocutory Order assailed by petitioners the fallo of which reads as follows:

> "*WHEREFORE, premises considered, let Writs of Preliminary Injunction and Mandatory Injunction be issued upon the filing of a bond of P500,000.00 ordering [respondents], their successors, agents, assignees and any and all persons or entities acting on their behalf, under their authority or in coordination to DESIST and REFRAIN from further proceeding with the assessment of local taxes of [petitioner] until the resolution of this case. Furthermore, [respondents] are hereby ordered to issue a temporary business permit in favor of [petitioner].*
>
> *SO ORDERED.*"

Accordingly, after posting of the required bond, the court a quo issued a Writ of Preliminary Injunction on May 11, 2015, enjoining petitioners to refrain from assessing and collecting excessive taxes and to issue a temporary business permit until the issue on deficiency taxes has been resolved by petitioner City Treasurer.

10) On May 13, 2015, petitioners filed a Motion for Reconsideration (of the Order dated 28 April 2015), while private respondent filed its Comment (Re: Motion for Reconsideration dated 14 May 2015) on June 19, 2015.

11) On August 6, 2015, the court a quo issued the second interlocutory Order assailed by petitioners, which denied the latter's Motion for Reconsideration for utter lack of merit and, further, proceeded to set the main case for pre-trial conference. Aggrieved, petitioners elevated the matter with the Court of Tax Appeals (CTA) via the instant Petition for Certiorari on August 27, 2015.

What is clear from the facts is that it involves local taxes. In fact, this Court in our Decision dated February 14, 2018 recognizes that the controversy at hand involves local taxes. Specifically, the Billing Assessment dated 22 January 2015 for the 2014 deficiency business tax and the Notice of

L

Assessment dated 14 January 2015 for the 2010-2013 deficiency business tax. In the case of National Power Corporation vs. Municipal Government of Navotas,[5] as well as in City of Lapu-Lapu vs. Philippine Economic Zone Authority[6], the Supreme Court held that local tax cases include Real Property Tax (RPT).

The Supreme Court ruled in the case of National Power Corporation vs. Municipal Government of Navotas, [7] as follows:

> *"Indeed, the CTA, sitting as Division, has jurisdiction to review by appeal the decisions, rulings and resolutions of the RTC over local tax cases, which includes real property taxes. This is evident from a perusal of the Local Government Code (LGC) which includes the matter of Real Property Taxation under one of its main chapters. Indubitably, the power to impose real property tax is in line with the power vested in the local governments to create their own revenue sources, within the limitations set forth by law. As such, the collection of real property taxes is conferred with the local treasurer rather than the Bureau of Internal Revenue.*
>
> *xxx. Rather, the term "local taxes" in the aforementioned provision should be considered in its general and comprehensive sense, which embraces real property tax assessments, in line with the precept Generalia verba sunt generaliter inteligencia—what is generally spoken shall be generally understood. Between the restricted sense and the general meaning of a word, the general must prevail unless it was clearly intended that the restricted sense was to be used. In the words of the Court in Marcos v. Chief of Staff: Where words are used which have both, a restricted and a general meaning, the general must prevail over the restricted unless the nature of the subject matter of the context clearly indicates that the limited sense is intended.*
>
> *Here, the context in which the word "local taxes" is employed does not clearly indicate that the limited or restricted view was intended by the legislature. In addition, the specification of real property tax assessment under Paragraph (a)(5) of Section 7 of R.A. 9282, in relation to the decisions of the CBAA, is only proper given*

---

[5] G.R. No. 192300, November24, 2014.
[6] G.R. No. 184203, November 26, 2014
[7] G.R. No. 192300, November24, 2014.

L

> *that the CBAA has no jurisdiction, either original or appellate, over cases involving local taxes other than real property taxes.*
>
> *Based on the foregoing, the general meaning of "local taxes" should be adopted in relation to Paragraph (a)(3) of Section 7 of R.A. 9282, which necessarily includes real property taxes"*
>
> *xxx xxx xxx.*
>
> *In fine, if a taxpayer is not satisfied with the decision of the CBAA or the RTC, as the case may be, the taxpayer may file, within thirty (30) days from receipt of the assailed decision, a petition for review with the CTA pursuant to Section 7(a) of R.A. 9282. In cases where the question involves the amount of the tax or the correctness thereof, the appeal will be pursuant to Section 7(a)(5) of R.A. 9282. When the appeal comes from a judicial remedy which questions the authority of the local government to impose the tax, Section 7(a)(3) of R.A. 9282 applies. Thereafter, such decision, ruling or resolution may be further reviewed by the CTA En Banc pursuant to Section 2, Rule 4 of the Revised Rules of the CTA, to wit:*
>
> > *Section 2. Cases Within the Jurisdiction of the Court En Banc. -The Court En Banc shall exercise exclusive appellate jurisdiction to review by appeal the following:*
> >
> > *(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:*
> >
> > *x x x x*
> >
> > *(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction;*
> >
> > *x x x".*

Similarly, assessment of local business tax is a local tax case. The CTA, sitting as Division, has jurisdiction to review by appeal the decisions, rulings and resolutions of the RTC over local tax cases, which includes business taxes. The power to impose business tax is in line with the power vested in the local governments to create their own revenue sources, within the limitations set forth by law. As such, the

L

collection of business taxes is not conferred with the Bureau of Internal Revenue.

Furthermore, in the case of CE Casecnan Water and Energy Company, Inc. vs. The Province of Nueva Ecija, et al. (CE Casecnan)[8], the Supreme Court held that it is the CTA which has the power to rule on a Petition for Certiorari assailing an interlocutory order of the RTC relating to a local tax case, and an injunction case, with prayer to restrain collection of real property tax which in effect is also challenging the validity of the RPT assessment, is a local tax case, to *wit:*

> *"The RTC injunction case is a local tax case.*
>
> *In maintaining that it is the CA that has jurisdiction over petitioner's certiorari petition, the latter argues that the injunction case it filed with the RTC is not a local tax case but an ordinary civil action. It insists that it is not protesting the assessment of RPT against it but only prays that respondents be enjoined from collecting the same.*
>
> *The Court finds, however, that in praying to restrain the collection of RPT, petitioner also implicitly questions the propriety of the assessment of such RPT. This is because in ruling as to whether to restrain the collection, the RTC must first necessarily rule on the propriety of the assessment. In other words, in filing an action for injunction to restrain collection, petitioner was in effect also challenging the validity of the RPT assessment. As aptly discussed by the CA:*
>
> > *'x x x [T]he original action filed with the RTC is one for Injunction, with an application for Temporary Restraining Order and a Writ of Preliminary Injunction to enjoin the province of Nueva Ecija from further collecting the alleged real property tax liability assessed against it. Simply because the action is an application for injunctive relief does not necessarily mean that it may no longer be considered as a local tax case. The subject matter and the issues, not the name or designation of the remedy, should control. While an ancillary action for injunction may not be a main case, the court [still has] to determine, even in a preliminary matter, the applicable tax laws, rules and jurisprudence. x x x'*

---

[8] G.R. No. 196278, June 17, 2015.

L

A re-examination of the case at hand of the Order dated April 28, 2015[9], rendered by the RTC-Branch 59 of Makati City, reveals that the injunctive relief issued was a local tax case. Indeed, the injunctive relief was issued against the whole on-going assessment process and not merely on the assessments per se, thus:

> *"WHEREFORE, premises considered, let Writs of Preliminary Injunction and Mandatory Injunction be issued upon the filing of a bond of P500,000.00 ordering respondents, their successors, agents, assignees and any and all persons or entities acting on their behalf, under their authority or in coordination to* ***DESIST and REFRAIN from further proceeding with the assessment of local taxes of petitioner*** *until the resolution of this case. Furthermore, respondents are hereby ordered to issue a temporary business permit in favor of petitioner.*
>
> *SO ORDERED." (Emphasis Supplied.)*

The injunctive writ enjoining petitioners from further proceeding with the assessment of local taxes bolsters the fact that the controversy is a local tax case. In praying to restrain the collection of business tax, respondent also implicitly questions the propriety of the assessment of such business tax. This is because in ruling as to whether to restrain the collection, the RTC must first necessarily rule on the propriety of the assessment. In other words, in filing an action for injunction to restrain collection, respondent was in effect also challenging the validity of the business tax assessment.

A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act

---

[9] RTC Records, pp. 190-193

L

which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.[10]

Pursuant to Section 7 of Republic Act (RA) No. 1125[11], as amended by RA No. 9282[12], and Rule 4, Section 3(a)(3) of the 2005 Revised Rules of the Court of Tax Appeals[13] (RRCTA), as amended, the Court in Division has jurisdiction over decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.

Consequently, this Court's Division erred when it dismissed petitioner's petition in the Division for lack of jurisdiction.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **GRANTED.** The Decision promulgated on February 14, 2018 by this Court is **REVERSED and SET ASIDE.**

Accordingly, the Petition for Review is **GRANTED,** Consequently, the Decision dated February 9, 2016, rendered by the Second Division of this Court in CTA AC No. 147, and its Resolution dated May 18, 2016 are **REVERSED and SET ASIDE**. The instant case is **REMANDED** to the

---

[10] In the case of City of Manila, et al. vs. Hon. Carida H. Grecia-Cuerdo, et al., G.R. No. 175723, February 4, 2014.
[11] An act Creating the Court of Tax Appeals.
[12] An Act Expanding the Jurisdiction of the Court of Tax (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes..
[13] Rule 4
JURISDICTION OF THE COURT

Sec. 3. Cases within the jurisdiction of the Court in Division.- The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
xxxxxx.

(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;

xxxxxx.

L

Second Division of this Court for the determination of the merits of the case.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice
See Concurring Opinion

Juanito C. Castañeda, Jr.
With Concurring and Dissenting Opinion
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. R.-L.
I join Justice Juanito C. Castañeda's Concurring and Dissenting Opinion
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
I join Justice Juanito C. Castañeda's Concurring and Dissenting Opinion
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 Amended Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

THE CITY GOVERNMENT OF MAKATI, THE CITY TREASURER OF MAKATI CITY, and the OFFICER-IN-CHARGE OF THE OFFICE OF THE CITY ADMINISTRATOR AND HEAD OF BUSINESS PERMITS OFFICE, Petitioners,	**CTA EB NO. 1465** (CTA AC No. 147)
	Present:
- versus -	**DEL ROSARIO**, P.J., **CASTAÑEDA, JR.**, **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, JJ.
HONORABLE REGIONAL TRIAL COURT, MAKATI CITY, BRANCH 59 and MACTEL CORPORATION Respondents.	Promulgated: OCT 09 2018 3:15 p.m.

x---x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, which grants the Petition for Review and remands the case to the Court in Division for the determination thereof on the merits.

I wish to clarify, however, that the remand of the case to the Court in Division shall be for the purpose of **determining the merits of the Petition for Certiorari filed by petitioners in CTA AC No. CTA AC No. 147**, and not for the purpose of resolving the main controversy in Civil Case No. 15-177 which is still pending before the Regional Trial Court (RTC), Branch 148, Makati City.

To recall, in the Court in Division's assailed Decision and Resolution, the Petition for Certiorari filed by petitioners was not resolved on the merits but it was dismissed on the ground of lack of jurisdiction. Considering the majority opinion that the Court in Division has jurisdiction over the interlocutory orders issued by the RTC, **it is procedurally proper to remand the case to the Court in Division which shall proceed to resolve the merits of the Petition for Certiorari filed by petitioners, specifically the issue of whether or not the RTC committed grave abuse of discretion in issuing its assailed interlocutory orders.**

All told, I CONCUR with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE CITY GOVERNMENT OF MAKATI, THE CITY TREASURER OF MAKATI CITY, and the OFFICER-IN-CHARGE OF THE OFFICE OF THE CITY ADMINISTRATOR AND HEAD OF BUSINESS PERMITS OFFICE,
Petitioners,

CTA EB No. 1465
(CTA AC No. 147)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan JJ.

- versus -

HONORABLE REGIONAL TRIAL COURT, MAKATI CITY, BRANCH 59 and MACTEL CORPORATION,
Respondents.

Promulgated:

OCT 09 2018
3:15 p.m.

x---x

CONCURRING AND DISSENTING OPINION

CASTAÑEDA, JR., J.:

I partially agree with the conclusion reached by the *ponencia* that the instant Petition for Review should be granted on the ground that the Court of Tax Appeals (CTA) has jurisdiction over the instant case, considering that one of the issues involved is a local tax case and as guided by the ruling of the Supreme Court in *City of Manila, et al. v. Hon. Caridad H. Grecia-Cuerdo, et al.*.[1]

[1] G.R. No. 175723, February 4, 2014.

In this case, petitioners primarily raised the issue on the propriety of the two (2) interlocutory orders issued by the lower court, *to wit*: (1) Prohibitory Injunction issued against Makati City to refrain from making assessments until resolution of the case; and (2) Mandatory Injunction to issue temporary business permit. In this regard, I agree that the CTA has jurisdiction to rule over the said first issue, *i.e.*, Prohibitory Injunction against petitioners to make an assessment.

With due respect, however, I disagree with the all-encompassing conclusion reached by the Decision, which included the adjudication of the second (2^{nd}) issue, *i.e.*, Mandatory Injunction to issue temporary business permit.

In *Abraham Rimando v. Naguilian Emission Testing Center, Inc., represented by its President, Rosemarie Llarenas and Hon. Court of Appeals*,[2] the Supreme Court categorically stated that the issuance of business permits is a delegated police power. Considering that the issuance of business permits involves the exercise of police powers and that the CTA has jurisdiction only with respect to tax cases, it necessarily follows that the CTA has no jurisdiction to rule on the said issue.

Apparently, this is a classic case of misjoined causes of action. Considering that the CTA has no jurisdiction to rule on the (2^{nd}) issue, the proper recourse is to separate the said misjoined cause of action, as held by the Supreme Court in *Lilia B. Ada, et al., v. Florante Baylon*.[3] Thus:

> "xxx If the court trying the case has no jurisdiction over a misjoined cause of action, then such misjoined cause of action has to be severed from the other causes of action, and if not so severed, any adjudication rendered by the court with respect to the same would be a nullity."

Finally, I respectfully disagree with the action of the Court to remand the case to the CTA 2^{nd} Division for the determination of the merits of the case. It must be stressed that the action filed over which this Court has jurisdiction only pertains to the propriety of the issuance of the Prohibitory Injunction against petitioners. Considering that the Court had already ruled upon its propriety, no further action is needed for the complete determination of the case. In fact, as per court records, the present controversy merely involves the subject interlocutory orders of the lower court. Meanwhile, the main controversy pending before it has yet to be decided. This is evident from the April 28, 2015 resolution of the lower court, *to wit:*

---

[2] G.R. No. 198860, July 23, 2012.
[3] G.R. No. 182435, August 13, 2012.

> "*WHEREFORE, premises considered, let Writs of Preliminary Injunction and Mandatory Injunction be issued upon the filing of a bond of P500,000.00 ordering respondents, their successors, agents, assignees and any and all persons or entities acting on their behalf, under their authority or in coordination to DESIST and REFRAIN from further proceeding with the assessment of local taxes of petitioner* ***until the resolution of this case***. xxx"*(Emphasis supplied)*

Thus, considering that the lower court has yet to decide on the main issue raised by the parties, the CTA cannot infringe upon the jurisdiction of the lower court and proceed with its own determination of the merits of the case.

Considering the foregoing, I **VOTE** to **PARTIALLY GRANT** the subject Petition for Review.

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