REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CTF HOTEL AND ENTERTAINMENT, INC.,
Petitioner,

- versus -

THE CITY OF MANILA AND HON. RIZAL Y. DEL ROSARIO IN HIS CAPACITY AS OIC-CITY TREASURER,
Respondents.

CTA AC NO. 276

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated: FEB 0 9 2024

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DECISION

BACORRO-VILLENA, J.:

The exercise of taxing powers by local government units (**LGUs**), being a delegated power, necessitates a strict adherence to the specific parameters and limitations laid down in Republic Act (**RA**) No. 7160 or the Local Government Code (**LGC**) of 1991.[1]

At bar is a Petition for Review[2] filed by petitioner CTF Hotel and Entertainment, Inc. (**petitioner/CHEI**) pursuant to Section 3(a)(3)[3],

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[1] See *Jose J. Ferrer, Jr. v. City Mayor Herbert Bautista, et al.*, G.R. No. 210551, 30 June 2015.

[2] Filed on 28 October 2022, Division Docket, pp. 5-47, with annexes.

[3] **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:

...

(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[.]

Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the reversal and setting aside of the Decision dated 29 June 2019[4] (**assailed Decision**) and Order dated 07 September 2022[5] (**assailed Order**), both rendered by the Regional Trial Court (**RTC**) of the City of Manila, Branch 17 (**court *a quo***), in Civil Case No. 15-135085, entitled *CTF Hotel and Entertainment, Inc. v. The City of Manila and Hon. Rizal Y. Del Rosario in his capacity as OIC-City Treasurer.*

The assailed Decision[6] dismissed petitioner's judicial protest against respondents' deficiency local business tax (**LBT**) assessments for the calendar years (**CYs**) 2011 and 2013 in the aggregate amount of ₱410,896.85, inclusive of 25% surcharge and interest. On the other hand, the assailed Order[7] denied the Motion for Reconsideration[8] (**MR**) thereto filed by petitioner.

PARTIES OF THE CASE

Petitioner is a domestic corporation existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at 1588 M.H. del Pilar cor. Pedro Gil Streets, Malate, Manila.[9]

As stated in its Amended Articles of Incorporation[10] (**AOI**), petitioner's primary purpose is to own, operate, lease or manage one or more hotels, inns or resorts, all adjuncts and accessories thereto, and any and all other businesses as may be necessary and desirable in connection therewith. It holds 100% of the issued and outstanding capital stock of New Coast Hotel, Inc. (**NCHI**), which owns "New Coast Hotel Manila" (formerly, "New World Manila Bay Hotel"). Allegedly, it is not engaged in any other business apart from holding the shares of stock of NCHI.[11]

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4 Penned by Presiding Judge Felicitas O. Laron-Cacanindin, RTC Records, pp. 377-385.
5 Penned by Acting Presiding Judge Rainelda H. Estacio-Montesa, id., pp. 434-435.
6 Supra at note 4.
7 Supra at note 5.
8 RTC Records, pp. 386-399.
9 Paragraph a, I. Stipulation of Facts, Order dated 04 October 2016, id., p. 144.
10 Exhibit "A", id., pp. 163-176.
11 Pars. a and b, I. Stipulation of Facts, Order dated 04 October 2016, supra at note 9.

Respondent City of Manila is a local government unit (**LGU**) created by law and vested with authority to impose taxes and fees within its jurisdiction in accordance with the LGC of 1991. It may be served summons, notices, orders and other processes of this Court through the Office of the City Mayor, City of Manila.[12]

Respondent Hon. Rizal Y. Del Rosario (**Del Rosario**), on the other hand, was at that time the duly appointed Officer-in-Charge (**OIC**)-City Treasurer of Manila, empowered to perform the duties of said office, which included, among other responsibilities, the collection of all local taxes, fees and charges. He may be served summons, notices, orders and other processes of this Court through the Office of the City Treasurer, City of Manila.[13]

FACTS OF THE CASE

On 09 July 2015, petitioner received respondent OIC-City Treasurer of Manila's Letter of Assessment dated 22 June 2015[14] (**Assessment Notice**), demanding payment of deficiency LBT for CYs 2011 and 2013 in the total amount of ₱410,896.85, broken down in the Data and Assessment Form[15] as follows:

	CY 2011	CY 2013
Net Income (*per* prior year's Audited Financial Statements [**AFS**])	₱14,709,004.00	₱17,204,335.00
Declared	2,400,000.00	2,400,000.00
Business Tax as Holding Co.		
Tax Due	₱112,567.53	₱131,282.51
Less: Payment	20,250.00	20,250.00
Deficiency	₱92,317.53	₱111,032.51
Add: Surcharge/Interest	106,199.65	101,317.16
Total Deficiency	**₱198,517.18**	**₱212,349.67**

12 Par. 1, id., p. 145.
13 Par. 2, id.
14 Exhibit "F"/Exhibit "1", id., p. 207.
15 Exhibit "F-1"/Exhibit "1-A", id., p. 210.

The deficiency LBT assessments for CYs 2011 and 2013 were based on petitioner's unrealized foreign exchange (**forex**) gain and interest income, as reflected in the Data and Assessment Form, and its net income, as reflected in petitioner's financial statements for CYs 2010 and 2012.[16] Petitioner likewise noted that, apart from stating that the assessments were for "Business Tax as Holding Co.", the Assessment Notice did not specify the particular rate or provision of Manila City Ordinance No. 8331[17], or the 2013 Omnibus Revenue Code of the City of Manila (**Manila Revenue Code**), on which the deficiency LBT assessments were based.[18]

On 07 September 2015, petitioner filed with the office of respondent OIC-City Treasurer of Manila a written Protest[19] against the Assessment Notice[20], praying for the cancellation and withdrawal of the deficiency LBT assessments for CYs 2011 and 2013 allegedly on the following grounds:

(1) The deficiency LBT assessments for CYs 2011 and 2013 are null and void because they were issued in violation of petitioner's right to due process;

(2) The assessments for deficiency "Business Tax as Holding Co." are null and void as the Assessment Notice failed to cite the specific provision of the Manila Revenue Code[21] on which the assessments were based;

(3) Respondents do not have the power to levy LBT on passive income where the taxpayer is neither a bank nor a financial institution, in view of the limitation provided in Section 133(a)[22] of RA 7160, or the LGC of 1991]; and,

(4) The assessments are void whether petitioner is being assessed LBT either as a holding company or as a contractor.

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16 Par. d, I. Stipulation of Facts, Order dated 04 October 2016, supra at note 9, p. 145.
17 AN ORDINANCE ENACTING THE 2013 OMNIBUS REVENUE CODE OF THE CITY OF MANILA.
18 Par. e, I. Stipulation of Facts, Order dated 04 October 2016, supra at note 9, p. 145.
19 Exhibit "G"/Exhibit "2", RTC Records, pp. 211-236, with annexes.
20 Exhibit "F"/Exhibit "1", supra at note 14.
21 Supra at note 17.
22 **SEC. 133.** *Common Limitations on the Taxing Powers of Local Government Units.* — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
(a) Income tax, except when levied on banks and other financial institutions[.]

Respondents failed to decide on petitioner's Protest[23] against the subject deficiency LBT assessments for CYs 2011 and 2013 within sixty (60) days from the date of filing of the said Protest, or until 06 November 2015.

On 04 December 2015, petitioner filed a Complaint[24] with the court *a quo* pursuant to Section 195[25] of the LGC of 1991.

During the preliminary conference hearing on 25 October 2016, the parties agreed to file their respective Memoranda with thirty (30) days thereafter. Following this, the case will be deemed submitted for decision.[26]

On 15 November 2016, petitioner filed its "Formal Offer of Evidence (with Motion to Defer Submission of Memorandum)"[27] (**FOE with Motion to Defer**), asking the court *a quo* to: (1) admit Exhibits "A" to "M", inclusive of sub-markings; (2) defer the submission of the parties' respective Memoranda until the resolution of its FOE; and, (3) grant the parties a period of 30 days from the receipt of such FOE resolution within which to file their respective Memoranda.

In the Order dated 26 January 2017[28], the court *a quo* directed respondents to file a comment on petitioner's FOE with Motion to Defer within ten (10) days from notice.

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23 Exhibit "G"/Exhibit "2", supra at note 19.

24 RTC Records, pp. 2-45, with annexes.

25 **SEC. 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.

26 See Order dated 25 October 2016, RTC Records, p. 153.

27 Id., pp. 154-162.

28 Id., pp. 317-318.

In the Order dated 21 December 2017[29], the court *a quo* once again directed respondents to file a comment on petitioner's FOE with Motion to Defer within ten (10) days from notice; otherwise, they will be deemed to have waived their right to file such comment. In the same Order, the court *a quo* set the initial presentation of respondents' evidence on 13 March 2018 and 03 April 2018. The said initial presentation was later reset to 17 April 2018 and 15 May 2018 in the Order dated 03 April 2018.[30]

On 10 April 2018, respondents filed their "Comment on [Petitioner]'s Formal Offer of Exhibits"[31], which the court *a quo* noted during the 17 April 2018 hearing.[32] In that same hearing, the court *a quo* also resolved to admit all of petitioner's exhibits. Considering the manifestation of petitioner's counsel that respondents' counsel will not present any evidence, the court *a quo* then gave the parties a period of 30 days to submit their respective Memoranda and deemed the case submitted for decision once the completed Transcripts of Stenographic Notes (**TSNs**) are attached to the case records.

After the court *a quo* granted petitioner an extension of time to file its memorandum[33], petitioner filed its Memorandum[34] on 04 July 2018. On the other hand, after two (2) extensions of time allowed for respondents to file their memorandum[35], they eventually filed theirs on 08 February 2019.[36] Accordingly, on even date, the court *a quo* considered the case submitted for decision.[37]

On 29 June 2019, the court *a quo* promulgated the assailed Decision[38], dismissing petitioner's Complaint. The court *a quo* found that the subject deficiency LBT assessments for CYs 2011 and 2013 were not issued in violation of petitioner's right to due process. It also upheld respondents' authority to impose LBT on petitioner, finding the

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29 Id., p. 319.
30 Id., pp. 323-324.
31 Id., pp. 325-328.
32 See Order dated 17 April 2018, id., pp. 330-332.
33 See Order dated 22 June 2018, p. 337.
34 Id., pp. 338-357.
35 See Orders dated 04 July 2018 and 27 December 2018, pp. 358 and 359, respectively.
36 Id., pp. 360-367.
37 See Order dated 08 February 2019, id., p. 376.
38 Supra at note 4.

latter as an 'investment company' directly engaged in holding and investing securities (and which is classified as a 'financial institution' under Section 131(e)[39] of the LGC of 1991). Further, the court *a quo* ruled that, as NCHI's holding company, petitioner is a contractor as defined under Section 131(h)[40] of the LGC of 1991. According to it, petitioner provides and handles the management and operation of "New Coast Hotel Manila."

Aggrieved, on 06 November 2019, petitioner filed a "Motion for Reconsideration (Re: Decision dated June 29, 2019)"[41] (**MR**) of the assailed Decision. However, the court *a quo* denied the same in its similarly assailed Order dated 07 September 2022.[42]

PROCEEDINGS BEFORE THIS COURT

On 28 October 2022, petitioner filed the present Petition for Review[43] before the Second Division[44], docketed as CTA AC No. 276. In its petition, petitioner asks this Court to: (1) reverse and set aside the court *a quo*'s assailed Decision[45] and Order[46] in Civil Case No. 15-135085, arguing that the subject deficiency LBT assessments for CYs 2011 and 2013 in the total amount of ₱410,896.85, inclusive of surcharge and interest, were legal and valid; (2) render judgment declaring the Assessment Notice[47] null and void; and, (3) order respondents to

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39 **SEC. 131.** *Definition of Terms.* — When used in this Title, the term:

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(e) **"Banks and other financial institutions" include** non-bank financial intermediaries, lending investors, finance and **investment companies**, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder[.] (Emphasis supplied)

40 **SEC. 131.** *Definition of Terms.* — When used in this Title, the term:

...

(h) **"Contractor"** includes persons, natural or juridical, not subject to professional tax under Section 139 of this Code, whose activity consists essentially of the sale of **all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees**[.] (Emphasis supplied)

41 Supra at note 8.

42 Supra at note 5.

43 Supra at note 2.

44 The Second Division is composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

45 Supra at note 4.

46 Supra at note 5.

47 Exhibit "F"/Exhibit "1", supra at note 14.

cancel and withdraw the subject deficiency LBT assessments for CYs 2011 and 2013.

In a Resolution dated 22 November 2022[48], the Second Division ordered respondents to file a comment to the instant petition and the court *a quo*'s Branch Clerk of Court to elevate the entire original records of Civil Case No. 15-135085, both within ten (10) days from notice.

In compliance with the Court's directive, the court *a quo*'s Branch Clerk of Court forwarded the entire records of Civil Case No. 15-135085 on 07 December 2022. This submission included one (1) folder and loose copies of the assailed Decision and Order, a Certification of Completeness and Accuracy, a Table of Contents, an Index of Exhibits, RTC Records (pages 1-483) and unsigned Minutes of Hearings.[49] The Second Division noted the same in the Resolution dated 12 January 2023.[50]

On 09 December 2022, respondents filed their "Comment to the Petition for Review"[51] (**Comment**). Subsequently, in the Resolution dated 27 December 2022[52], the Second Division gave the parties a period of 30 days to file their respective memoranda.

On 27 January 2023, respondents filed their Memorandum[53], while petitioner filed its Memorandum[54] on 03 February 2023. Finally, in a Resolution dated 09 February 2023[55], the Second Division submitted herein case for decision.

48 Division Docket, pp. 50-51.
49 See Atty. Lorrielaine A. Maglaque (Branch Clerk of Court)'s Transmittal Letter dated 06 December 2022, id., p. 52.
50 Id., p. 97.
51 Id., pp. 83-93.
52 Id., p. 95.
53 Id., pp. 98-113.
54 Id., pp. 114-144.
55 Id., p. 146.

ISSUE

The sole issue submitted for this Court's determination is —

WHETHER THE COURT *A QUO* ERRED IN RULING THAT THE DEFICIENCY LOCAL BUSINESS TAX (LBT) ASSESSMENTS AGAINST PETITIONER CTF HOTEL AND ENTERTAINMENT, INC. FOR THE CALENDAR YEARS (CYs) 2011 AND 2013 IN THE TOTAL AMOUNT OF ₱410,896.85, AS EMBODIED IN RESPONDENTS THE CITY OF MANILA AND HON. RIZAL Y. DEL ROSARIO IN HIS CAPACITY AS OIC-CITY TREASURER'S ASSESSMENT NOTICE DATED 22 JUNE 2015, ARE VALID.

ARGUMENTS

Firstly, petitioner argues that since the subject deficiency LBT assessments for CYs 2011 and 2013 resulted from an examination of petitioner's books of accounts in CY 2015, the same have been issued in violation of its right to due process under Section 171[56] of the LGC of 1991, in relation to Article 259[57] of the Implementing Rules and Regulations (**IRR**) of the LGC of 1991.[58]

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[56] **SEC. 171.** *Examination of Books of Accounts and Pertinent Records of Businessmen by Local Treasurer.* — The provincial, **city**, municipal or barangay **treasurer may**, by himself or through any of his deputies duly authorized in writing, **examine the books, accounts, and other pertinent records of any** person, partnership, **corporation**, or association subject to local taxes, fees and charges in order to ascertain, assess, and collect the correct amount of the tax, fee, or charge. **Such examination shall be made during regular business hours, <u>only once for every tax period</u>, and shall be certified to by the examining official.** Such certificate shall be made of record in the books of accounts of the taxpayer examined. (Emphasis and underscoring supplied)

[57] **ART. 259.** *Examination of Books of Accounts and Pertinent Records of Businessmen.* — (a) For purposes of implementing this Article, **<u>only the treasurer of the LGU</u> imposing the tax, fee, or charge, <u>may examine</u> the books of accounts and pertinent records of businessmen** in order to ascertain, assess, and collect the correct amount of taxes, fees, and charges.

(b) The provincial, **city**, municipal, or barangay **treasurer may**, by himself or through any of his deputies duly authorized in writing, **examine the books, accounts, and other pertinent records of any** person, partnership, **corporation**, or association subject to local taxes, fees, and charges.

(c) **The examination shall be made during regular business hours <u>not oftener than once a year for every tax period, which shall be the year immediately preceding the examination</u>, and shall be certified by the examining official.** Such certification shall be made of record in the books of accounts of the taxpayer examined. (Emphasis and underscoring supplied)

[58] Administrative Order No. 270, 21 February 1992.

Secondly, petitioner argues that the assessments for deficiency "Business Tax as Holding Co." are null and void as the Assessment Notice[59] failed to cite the specific provision of the Manila Revenue Code[60] on which the assessments were based.

Thirdly, petitioner claims that respondents do not have the power to levy LBT on passive income where the taxpayer is neither a bank nor a financial institution, in view of the limitation provided in Section 133(a)[61] of the LGC of 1991.

Lastly, petitioner insists that it may not be considered a 'contractor' within the purview of Section 131(h)[62] of the LGC of 1991 because, contrary to the court *a quo*'s conclusion, it does not handle the management and operation of "New Coast Hotel Manila", nor does it provide any service to third parties. Thus, according to petitioner, its passive income cannot be subjected to the "Tax on Contractors" under Section 105[63] of the Manila Revenue Code.[64]

Respondents, on the other hand, maintain that the issuance of the subject deficiency LBT assessments for CYs 2011 and 2013 as a result of the examination of petitioner's books of accounts in CY 2015 is proper. There is no violation of petitioner's right to due process in connection therewith as Section 171[65] of the LGC of 1991 does not impose a limitation on the preceding years to examine the books of accounts of a corporation doing business in the City of Manila.

Respondents also counter-argue that the assessments for deficiency "Business Tax as Holding Co." are valid as petitioner's nature of business is an 'investment company', which is classified as a 'financial institution' liable to pay LBT.

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59 Exhibit "F"/Exhibit "1", supra at note 14.
60 Supra at note 17.
61 Supra at note 22.
62 Supra at note 40.
63 **SEC. 105.** *Tax on Contractors.* — A **percentage tax** is hereby imposed on **contractors** and other independent contractors[.]

...

Over ₱2,000,000.00	**-₱18,975.00 Plus 82.5% of 1% in excess of ₱2,000,000.00**

(Emphasis supplied)

64 Supra at note 17.
65 Supra at note 56.

As to the power to levy LBT on passive income of entities classified as a 'financial institution' under Section 133(a)[66] of the LGC of 1991, respondents insist that they have such power under the pertinent provisions of the Manila Revenue Code.

Finally, respondents contend that petitioner should be considered a 'contractor' pursuant to Section 131(h) of the LGC of 1991 and Section 105 of the Manila Revenue Code, particularly in relation to "New Coast Hotel Manila". According to respondents, petitioner provides all the officers and employees of "New Coast Hotel Manila."

RULING OF THE COURT

Before the Court proceeds to resolve the merits of the case, the Court finds it propitious to first discuss whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS (CTA) HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

The Court of Tax Appeals (**CTA**), being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction.[67] The jurisdiction of the CTA regarding local tax cases is provided under Section 7(a)(3) of RA 1125[68], as amended by RA 9282[69] and RA 9503[70], which provides:

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66 Supra at note 22.

67 *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, 12 March 2014.

68 AN ACT CREATING THE COURT OF TAX APPEALS.

69 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

70 AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> ...
> **SEC. 7.** *Jurisdiction.* — The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> ...
>
> (3) **Decisions, orders or resolutions of the Regional Trial Courts in local tax cases** originally decided or resolved by them **in the exercise of their original** or appellate **jurisdiction**[.][71]
>
> ...

Similarly, Section 3(a)(3) of Rule 4 of the RRCTA states:

> ...
> **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:
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> ...
>
> (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**[.][72]
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> ...

As to the reckoning point for filing an appeal before this Court in local tax cases decided by RTCs, Section 11, in relation to the afore-cited Section 7(a)(3) of RA 1125[73], as amended by RA 9282[74] and RA 9503[75], pertinently states:

> ...
> **SEC. 11.** *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of** the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the

[71] Emphasis supplied and italics in the original text.
[72] Emphasis supplied and italics in the original text.
[73] Supra at note 68.
[74] Supra at note 69.
[75] Supra at note 70.

> Secretary of Agriculture or the Central Board of Assessment Appeals or **the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: *Provided, however,* That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.[76]
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> ...

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[77]

It is undisputed that petitioner received a copy of the court *a quo*'s assailed Order[78] (denying its MR[79] on the assailed Decision[80]) on 28 September 2022. Petitioner thus had 30 days therefrom, or until **28 October 2022**, to file an appeal before this Court.

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[76] Emphasis supplied and italics in the original text.
[77] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, 04 February 2015.
[78] Supra at note 5.
[79] Supra at note 8.
[80] Supra at note 4.

Given that the present Petition for Review[81] was timely filed on 28 October 2022, this Court has jurisdiction over the case.

Now, We proceed with a discussion of the merits of the case.

After an assiduous review of the case records and the parties' arguments, this Court finds the present petition meritorious.

Petitioner contends that the subject deficiency LBT assessments for CYs 2011 and 2013 are null and void because the Assessment Notice[82] failed to cite the specific provision of the Manila Revenue Code[83] on which the assessments were based.

Respondents, however, counters that the assessments are valid as petitioner's nature of business is an 'investment company', which is classified as a 'financial institution' liable to pay LBT. In addition, respondent argues that petitioner is considered also as a 'contractor' within the provisions of Section 131(h)[84] of the LGC of 1991 and Section 105[85] of the Manila Revenue Code. This was affirmed by the court *a quo* in the assailed Decision.

We find the assessments void.

Section 195 of the LGC of 1991 provides that in assessing the correct taxes, the local treasurer shall issue an assessment notice, which contains the nature of tax, fee, or charge and the amount of deficiency including the surcharges, interests, and penalties, *viz*:

> ...
> **SEC. 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**

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81 Supra at note 2.
82 Exhibit "F"/Exhibit "1", supra at note 14.
83 Supra at note 17.
84 Supra at note 40.
85 Supra at note 63.

> **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.[86]
>
> ...

The afore-quoted provision is akin to Section 228 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which requires that, in order for an assessment to be valid, "taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void." Similarly, for the local treasurer's assessment notice to be valid, it must state the **nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties.**

In *Luz R. Yamane, in her capacity as the City Treasurer of Makati City v. BA Lepanto Condominium Corporation*[87] (**Yamane**), a case also involving an LBT assessment, the Supreme Court emphasized the importance of the assessment notice being sufficiently informative to ensure that it properly apprises the taxpayer of the basis of the tax assessment:

> ...
>
> Ostensibly, the **notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. Section 195 of the**

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[86] Emphasis supplied and italics in the original text.

[87] G.R. No. 154993, 25 October 2005; Citations omitted, emphasis supplied and italics in the original text.

> **Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties.** In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. There may have been *prima facie* compliance with the requirement under Section 195. However, in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax. **Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local Government Code alone.** What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body.
>
> ...

Based on the foregoing pronouncement and considering the parties' contrasting arguments, the Assessment Notice may still be deemed valid, even without the mention of the specific provision of the Manila Revenue Code[88], provided the following details are indicated therein: (1) nature of the tax, fee, or charge; and, (2) amount of deficiency, the surcharges, interests, and penalties.

A careful scrutiny of the subject Assessment Notice[89] (and the worksheet attached to it) reveals that it did not comply with the requirements under the law and established jurisprudence. The Assessment Notice lacks sufficient information to ascertain that the assessment was for LBT. Additionally, it fails to indicate the amount of deficiency, the surcharges, interests, and penalties.

As held in *Yamane*, there may have been *prima facie* compliance with the requirement under Section 195[90] of the LGC of 1991. However, the Revenue Code of the City of Manila[91] provides multiple provisions

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[88] Supra at note 17.
[89] Exhibit "F"/Exhibit "1", supra at note 14.
[90] Supra at pp. 14-15.
[91] The Revenue Code in effect during the calendar years (**CYs**) 2011 and 2013 was Manila Ordinance No. 7794 (dated 01 July 1993). The subsequent ordinances amending the same,

on business taxes, and at varying rates. Hence, petitioner's confusion, as expressed in its Protest[92] regarding the exact legal basis for the tax assessments, is understandable. Notably, despite the notation "Business Tax as Holding Co." in the Data and Assessment Form[93], the Manila Revenue Code[94] does not specifically mention a 'holding company' as a business that is subject to LBT. The Assessment Notice[95] failed to provide details sufficient to inform petitioner of the exact legal basis for the assessments. As it is, petitioner could not reasonably ascertain such legal basis based solely on the notice. This lack of information, therefore, made it impossible for petitioner to properly challenge the assessments.

True enough, when petitioner filed a Protest[96] against the subject deficiency LBT assessments, it was clueless as to how respondents arrived at the amount of deficiency LBT, as is discernible from its statements below:

> ...
>
> [Petitioner] is **not aware of the particular provision of the Manila Revenue Code on which the City of Manila based its assessment for deficiency "Business Tax as Holding Co."** [Petitioner] was unable to find any provision in the Manila Revenue Code which specifically imposes LBT on holding companies such as CTF Hotel. In view of the foregoing, [petitioner] is at a loss on how the deficiency LBT was computed. Furthermore, **[petitioner] could not ascertain whether there is statutory basis for the City of Manila's deficiency LBT assessments for CYs 2011 and 2013.**[97]
>
> ...

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namely, Manila Ordinance Nos. 7988 (dated 25 February 2000) and 8011 (dated 05 May 2000) were declared null and void by the Supreme Court in *Coca-Cola Bottlers Philippines, Inc. v. City of Manila, et al.* (G.R. No. 156252, 27 June 2006), *The City of Manila, et al. v. Coca-Cola Bottlers, Inc.* (G.R. No. 181845, 04 August 2009) and *City of Manila, et al. v. Coca-Cola Bottlers Philippines, Inc.* (G.R. No. 167283 [Resolution], 10 February 2010) for failure to comply with the required publication for three (3) consecutive days and thus, cannot be the basis for the collection of business taxes.

92 Exhibit "G"/Exhibit "2", supra at note 19.

93 Exhibit "F-1"/Exhibit "1-A", supra at note 15.

94 Supra at note 17.

95 Exhibit "F"/Exhibit "1", supra at note 14.

96 Exhibit "G"/Exhibit "2", supra at note 19.

97 Id., pp. 214-215; Emphasis supplied.

Indeed, this inadequacy on the part of respondents in informing petitioner of the basis for the assessments made it difficult for petitioner to prepare an intelligent or 'effective' protest or appeal.

In the case of *National Power Corporation v. The Province of Pampanga and Pia Magdalena D. Quibal*[98], the Supreme Court elucidated on the requirement of sufficiently informing the taxpayer of the facts and law used as bases for the assessment, *viz*:

> ...
>
> Verily, taxpayers must be informed of the nature of the deficiency tax, fee, or charge, as well as the amount of deficiency, surcharge, interest, and penalty. Failure of the taxing authority to sufficiently inform the taxpayer of the facts and law used as bases for the assessment will render the assessment void. In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, albeit involving national internal revenue taxes, the Court explained the importance of the notice requirement with due regard to the taxpayers' constitutional rights, to wit:
>
> > **The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law**. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.
> >
> > **The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. Merely notifying the taxpayer of his or her tax liabilities without details or particulars is not enough**.
> >
> > *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.* held that **a final assessment notice that only contained a table of taxes with no other details was insufficient**: ...
> >
> > Any deficiency to the mandated content of the assessment or its process will not be tolerated. ...
> >
> > ...

[98] G.R. No. 230648, 06 October 2021; Citations omitted, emphasis and italics in the original text and underscoring supplied.

> A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, **due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest**. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations "that taxpayers should be able to present their case and adduce supporting evidence."

> Without doubt, the mandate of providing the taxpayer with notice of the facts and laws used as bases for the assessment is not to be mechanically applied. The purpose of this requirement is to adequately inform the taxpayer of the basis of the assessment to enable him to prepare for an intelligent or "effective" protest or appeal of the assessment or decision. Thus, substantial compliance with the law is allowed if the taxpayer is later fully apprised of the basis of the deficiency taxes assessment, which enabled him to file an effective protest.
>
> ...

In this case, respondent OIC-City Treasurer of Manila could have clarified the nature of the assessments and provided petitioner with the details on how the subject deficiency LBT assessments for CYs 2011 and 2013 were computed, along with the exact legal basis therefor, by responding to petitioner's Protest.[99] Unfortunately, however, respondent OIC-City Treasurer of Manila idly sat on the protest and allowed the 60-day period prescribed under Section 195[100] of the LGC of 1991 to lapse without taking any action, thereby prompting petitioner to file an appeal before the court *a quo*. Clearly, respondent OIC-City Treasurer of Manila could have rectified the defective assessment but chose to ignore petitioner's request for clarification.

Even if We consider respondents' belated citation of the legal bases in their Comment[101] on the instant petition, this only reinforces Our conclusion that at the time the Assessment Notice[102] was issued,

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99 Exhibit "G"/Exhibit "2", supra at note 19.
100 Supra at pp. 14-15.
101 Supra at note 51.
102 Exhibit "F"/Exhibit "1", supra at note 14.

respondents were uncertain about the legal foundation for the assessments, to wit:

> ...
> **B. The assessments for deficiency Business Tax as "Holding Co." are valid as the petitioner's nature of business is an *investment company*, which is classified as a financial institution liable to pay local business taxes[.]**
>
> ...
>
> Since petitioner is classified as *financial institution*, the respondent may impose local business tax on the petitioner...
>
> ...
>
> Section 106 of the 2013 Omnibus Revenue Code of the City of Manila allows the assessment and collection of tax on Banks and other Financial Institutions...
>
> **D. The petitioner is considered a *contractor*...**
>
> ... The respondent considered the petitioner as a *contractor*...
>
> ...
>
> Section 105 of the 2013 Omnibus Revenue Code of the City of Manila allows the imposition of tax against contractors.[103]
>
> ...

As can be gleaned from the foregoing, even respondent City of Manila is uncertain about whether the assessments were based on petitioner's business activities as a 'financial institution' or as a 'contractor'. It should be noted that petitioner cannot be subjected to local taxes under both Sections 105[104] and 106[105] of the Manila Revenue

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[103] Supra at note 51, pp. 89-92; Emphasis in the original text and italics supplied.

[104] Supra at note 63.

[105] **SEC. 106.** *Tax on Banks and Other Financial Institutions.* — A percentage tax is hereby imposed on banks and other financial institutions, at the rate of **Twenty Two percent (22%) of One percent (1%)** on the gross receipts of the preceding calendar year derived from interests, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale or property; PROVIDED, that the percentage

Code[106], as a 'contractor' and 'financial institution', respectively, since that would amount to double taxation. Specifically, double taxation would set in if petitioner is subjected to local taxes under both provisions since these are being imposed: (1) on the same subject matter — the privilege of doing business in the City of Manila; (2) for the same purpose — to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority — respondent City of Manila; (4) within the same taxing jurisdiction — within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods — *per* calendar year; and, (6) of the same kind or character — an LBT imposed on gross sales or receipts of the business.[107]

Moreover, the Manila Revenue Code[108] (or Ordinance No. 8331) may not be used as basis for the subject deficiency LBT assessments for CYs 2011 and 2013 since such ordinance only took effect on 09 December 2013 and implemented by respondent City of Manila on 02 January 2014.[109] Section 166 of the LGC of 1991 provides:

> ...
>
> **SEC. 166.** *Accrual of Tax.* - Unless otherwise provided in this Code, all local taxes, fees, and charges shall accrue on the first (1st) day of January of each year. However, new taxes, fees or charges, or changes in the rates thereof, **shall accrue on the first (1st) day of the quarter next following the effectivity of the ordinance imposing such new levies or rates.**[110]
>
> ...

Apropos, Section 178 of the Manila Revenue Code (or Ordinance No. 8331) states:

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tax on Gross Premiums of insurances shall be Twelve and One-tenth percent of one percent (12.1% of 1%).

106 Supra at note 17.

107 *City of Manila and Office of the City Treasurer of Manila v. Cosmos Bottling Corp.*, G.R. No. 196681, 27 June 2018.

108 Supra at note 17.

109 See *Honorable Leila M. De Lima, in her capacity as Secretary of Justice v. City of Manila represented by Mayor Joseph Ejercito Estrada*, G.R. No. 222886, 17 October 2018.

110 Emphasis supplied.

> ...
>
> **SEC. 178.** *Accrual of Tax.* — Unless otherwise provided in this Ordinance, all local taxes, fees and charges shall accrue on the first day of January of each year. However, new taxes, fees or charges, or changes in the rates thereof, **shall accrue on the first day of the quarter next following the effectivity of the ordinance imposing such new levies or rates.**[111]
>
> ...

Lastly, it is noteworthy that even this Court is unable to recompute how respondent OIC-City Treasurer of Manila determined the "Tax Due" *per* Assessment Notice[112] under the Manila Revenue Code (or Ordinance No. 8331), as shown below:

	CY 2011	**CY 2013**
Gross Receipts *per* Assessment Notice	₱14,709,004.00	₱17,204,335.00
Tax Due *per* Assessment Notice	112,567.53	131,282.51
Tax Due under Section 105[113] of the Manila Revenue Code as a 'contractor'	₱123,824.28	₱144,410.76
Tax Due under Section 106[114] of the Manila Revenue Code as a 'financial institution'	32,359.81	37,849.54

The foregoing highlights a fatal flaw in the Assessment Notice[115], as it clearly failed to fully apprise petitioner of the legal basis for the assessments as required under Section 195[116] of the LGC of 1991. This omission constitutes a violation of petitioner's right to due process, thereby rendering the subject deficiency LBT assessments for CYs 2011 and 2013 void.[117]

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111 Emphasis supplied.
112 Exhibit "F"/Exhibit "1", supra at note 14.
113 Supra at note 63.
114 Supra at note 105.
115 Exhibit "F"/Exhibit "1", supra at note 14.
116 Supra at pp. 14-15.
117 See *National Power Corporation v. The Province of Pampanga and Pia Magdalena D. Quibal*, supra at note 98; See *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, 03 May 2021.

On a final note, although collection of local taxes is integral to an LGUs' fiscal autonomy and warrants little to no interference by the other branches of government, the same must be conducted in accordance with law as any arbitrariness will negate the very reason for government itself.[118]

WHEREFORE, the foregoing premises considered, the present Petition for Review filed by petitioner CTF Hotel and Entertainment, Inc. on 28 October 2022 is hereby **GRANTED**. Accordingly, the assailed Decision dated 29 June 2019 and Order dated 07 September 2022, both rendered by the Regional Trial Court of the City of Manila, Branch 17, are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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118 See *Commissioner of Internal Revenue v. Azucena T. Reyes,* G.R. No. 159694, 27 January 2006.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice