REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

DAVAO AGRICULTURAL VENTURES CORPORATION (DAVCO), represented by OSCAR V. GRAPA, CHIEF FINANCE OFFICER, Petitioner,	CTA AC NO. 135
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS-LIBAN, JJ.
THE CITY OF DAVAO, RODRIGO S. RIOLA in his capacity as THE TREASURER OF DAVAO CITY, AND THE CITY COUNCIL OF DAVAO, Respondents.	Promulgated: FEB 2 0 2017 3:00 p.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review[1] filed under Rule 42 of the Rules of Court, petitioner Davao Agricultural Ventures Corporation, Inc., prays that a judgment be rendered declaring as null and void Davao City Ordinance No. 0310-07, particularly Section 17 thereof, and its Implementing Rules and Regulations. Petitioner further prays that respondents City of Davao, Rodrigo S. Riola, in his capacity as Treasurer of Davao City, and the City Council of Davao be ordered to refund or issue tax credit in its favor in the amount of Php2,630,525.00 which it paid under protest, on the ground that City Ordinance No. 0310-07 upon which the

[1] Docket, pp. 8-16.

assessment against it was based is flawed, hence, null and void.

Petitioner Davao Agricultural Ventures Corporation, Inc. (DAVCO), represented by its Chief Finance Officer Oscar V. Grapa[2], avers that it is a domestic stock corporation with principal office at Damosa Complex, Lanang, Davao City. It grows and exports fresh pineapple produce from its plantations in Davao City and Bukidnon.

On the other hand, respondent Davao City is a local government unit created by law while respondent City Council is its law-making body with the authority to impose tax, fee or charge or to generate revenue, among others. Respondent Rodrigo S. Riola is its incumbent City Treasurer.

According to petitioner, the *Sangguniang Panlungsod* of respondent Davao City enacted Ordinance No. 0310-07, otherwise known as Watershed Code of Davao City, on January 27, 2007, which the City Mayor approved a month later.

Section 17 of the said Ordinance No. 0310-07 and Section 42 of its Implementing Rules and Regulations (IRR), provide that an annual Environmental Tax shall be imposed upon all agricultural and other economic undertakings, including corporate entities and persons covered by growership contracts and other agreement in the Agro-Forestry/Non-Tilage Areas and Prime Agricultural Areas of not less than 50 hectares at the rate of Twenty-Five Centavos (Php0.25) per square meter.

Notwithstanding the effectivity of the said Ordinance and its IRR in early 2008, no collection or even attempt to collect the said Environmental Tax was made by respondents until October 16, 2014, when petitioner received a Tax Order of Payment in the amount of Php2,630,525.00 to respondent City Treasurer.

Subsequently, petitioner received from respondent City

[2] Annex "A" of the Petition for Review, docket, pp. 18-19.

Treasurer a letter dated October 20, 2014[3] informing it that the City Treasurer's office was in the process of collecting Environmental Tax.

This propelled petitioner to pay under protest the assessed Environmental Tax of Php2,630,525.00 on January 19, 2015[4], lest its business permit would not be renewed.

On February 18, 2015, petitioner filed a formal Protest against such imposition before respondent City Treasurer[5].

On March 10, 2015, petitioner received a letter from respondent City Treasurer denying its Protest[6].

On April 10, 2015, petitioner filed, through registered mail, the instant Petition for Review with this Court, invoking the provisions of the Davao City Tax Code and the Local Government Code (LGC), which both provide for a thirty (30)-day period from the receipt of denial of protest or from the lapse of the sixty (60)-day period prescribed therein to appeal with the court of competent jurisdiction.

Petitioner advances the following grounds in support of its Petition, to wit:

I. The Environmental Tax under Section 17 of City Ordinance 0310-07 and 42 section (*sic)* of the Implementing Rules is (*sic*) not sanctioned by the Local Government Code, thus the Sangguniang Panlungsod concerned exceeded its authority in enacting and imposing the same;

II. Section 17 of the Environmental Tax and Section 42 of its Implementing Rules clearly violates the rule on uniformity of taxation in scope and application;

III. The rate of Php 0.25 for every square meter or Php. 2,500.00/hectare as basis for the computation of tax is excessive, confiscatory, bias and without basis;

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[3] Annex "F" to the Petition for Review, docket, p. 32.
[4] Annex "B" to the Petition for Review, docket, p.31.
[5] Annex "C" to the Petition for Review, docket, pp. 21-28.
[6] Annex "D" to the Petition for Review, docket, pp. 29-30.

IV. The imposition of Environmental Tax was made without consultation with the entities and persons directly affected in violation of the constitutional guarantee of due process.

On June 11, 2015, respondents filed through registered mail a Motion to Admit Belated Comment with the attached Comment[7]. In their pleading, respondents raise the following arguments, to wit:

I

THE LEVY AND IMPOSITION OF ENVIRONMENTAL TAX UNDER SECTION 17 OF ORDINANCE NO. 0310-07, SERIES OF 2007, OTHERWISE KNOWN AS "THE WATERSHED PROTECTION, CONSERVATION AND MANAGEMENT ORDINANCE" IS SANCTIONED BY NO LESS THAN THE CONSTITUTION AND THE ENABLING LAW, R.A. 7160, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991".

II

THE IMPOSITION OF ENVIRONMENTAL TAX UNDER SECTION 17 OF THE SAID ORDINANCE DOES NOT VIOLATE THE RULE ON UNIFORMITY OF TAXATION, INASMUCH AS IT IS WELL WITHIN THE AUTHORITY OF THE RESPONDENT, AS TAXING AUTHORITY, TO IMPOSE REASONABLE CLASSIFICATION AMONG THE SUBJECTS OR OBJECTS OF TAXATION.

III.

THE IMPOSITION OF ENVIRONMENTAL TAX AT THE RATE OF P 0.25 FOR EVERY SQUARE METER OR P2,500.00 PER HECTARE IS REASONABLE, FAIR, JUST AND WELL WITHIN THE CAPABILITY OF THE PETITIONER TO PAY.

IV.

ORDINANCE NO. 0310-07, SERIES OF 2007, WAS DULY PASSED BY THE SANGGUNIANG PANLUNGSOD OF DAVAO AFTER A SERIES OF HEARING HAD BEEN CONDUCTED WITH SOME OF THE STAKEHOLDERS IN ATTENDANCE DURING THE COMMITTEE LEVEL AND AT THE PLENARY SESSION APPROVING ON THIRD READING THE SAID ORDINANCE.

V.

THE COLLECTION OF ENVIRONMENTAL TAX AS IMPOSED UNDER THE ABOVE CITED ORDINANCE IS NOT

[7] Docket, pp. 47-63.

PREMATURE, AS THE SAME IS DUE TO BE IMPOSED AND COLLECTED UPON THE PASSAGE AND EFFECTIVITY OF THE ORDINANCE.

VI.

THE HONORABLE COURT OF TAX APPEALS HAS NO JURISDICTION TO RULE ON ANY QUESTIONS CONCERNING ON THE VALIDITY OR CONSTITUTIONALITY OF THE ABOVE ORDINANCE AS THE SAME IS EXPRESSLY VESTED BY LAW IN ANOTHER VENUE OR JURISIDICTION.

In the Resolution dated July 8, 2015, the Court admitted the belatedly filed Comment, then gave due course to the Petition for Review directing the parties to submit their respective memoranda, within thirty (30) days from notice.[8]

On October 6, 2015[9], the case was submitted for decision with respondents' Memorandum posted on August 28, 2015[10] and that of petitioner, posted on September 11, 2015[11].

On December 10, 2015, petitioner filed a Verified Application for Preliminary Injunction and/or Temporary Restraining Order of sixty (60) days against respondent City Treasurer to enjoin it from collecting Environmental Taxes for taxable years 2015 and 2016 and for a Writ of Preliminary Injunction during the pendency of the case on or before the expiration of the TRO.

In view of the foregoing incident, the Court, on April 13, 2016[12], deemed its earlier Resolution dated October 6, 2015 withdrawn and set for presentation of evidence petitioner's Application for Preliminary Injunction and/or Temporary Restraining Order (TRO) on May 31, 2016, at 9:00 a.m.

On the scheduled hearing on the incident, nobody appeared, despite notice. For this reason, petitioner's

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[8] Docket, pp. 75-76.
[9] *Id.,* p. 107.
[10] *Id.,* pp. 77-90.
[11] *Id.,* pp. 94-103.
[12] *Id.,* pp. 131-132.

Application for Preliminary Injunction and/or Temporary Restraining Order, which the Court deemed a motion to suspend collection of taxes, was denied for lack of interest on the part of petitioner to pursue the incident.[13]

On May 27, 2016[14], petitioner's new counsel filed a Formal Entry of Appearance with Motion to Transfer Hearing Date of the incident.

On June 27, 2016, petitioner filed a Manifestation pertaining to its service of a copy of the Manifestation with Notice of Withdrawal of its previous counsel.

On July 12, 2016, the Court deemed petitioner's Motion to Transfer Hearing Date as a motion for reconsideration of its Resolution of June 9, 2016 and set anew petitioner's presentation of evidence in support of its Application for Preliminary Injunction and/or Temporary Restraining Order on August 9, 2016.

On August 9, 2016, petitioner's new counsel manifested that she had no witness to present in connection with petitioner's Application for Preliminary Injunction and/or Temporary Restraining Order. As prayed for, the parties were granted a period of twenty (20) days to file their respective memoranda.[15]

On October 12, 2016, both parties filed their respective memoranda in compliance with the Court's directive.

RULING OF THE COURT

The Petition for Review should be denied.

Petitioner invokes that the Local Government Code (LGC) as well as the Davao City Code both provide for a

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[13] Minutes of the Hearing, docket, p.133; Resolution dated June 9, 2016, docket, p. 140.
[14] Docket, pp. 141-144.
[15] Minutes of the Hearing, docket, p.156; Order dated August 9, 2016, docket, p. 157.

thirty (30)-day period from the receipt of the denial of protest by the local treasurer or from the lapse of the sixty (60)-day period given to the local treasurer to decide on the protest from the time of its filing, within which to appeal with the court of competent jurisdiction.

Sections 195 of the LGC dictates the prescriptive period to file protest against an assessment involving a local tax, to wit:

> "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 canceling 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**." (boldfacing supplied)

With respect to this Court's jurisdiction over local tax cases, Section 7(a)(3) of R.A. 1125, as amended by R.A. 9282, relevantly provides that the Court shall have exclusive appellate jurisdiction to review by appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.

Clearly, the Court only has appellate jurisdiction to review by appeal the decisions, orders or resolutions of the RTCs involving local tax cases rendered in the exercise of their original jurisdiction.

Further, in the case of *Yamane v. BA Lepanto Condominium Corporation*[16], it can be inferred that it is the RTC in the exercise of its original jurisdiction that has jurisdiction over appeals involving denial of a tax protest by a local treasurer. Thus, the Supreme Court ruled:

> "Yet significantly, the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer. On the other hand, Section 22 of B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts. Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities."

Evidently, an appeal from the denial of the protest by the local treasurer falls within the RTC's original jurisdiction.

To repeat, the taxpayer has thirty (30) days from the receipt of the denial of its protest by the local treasurer or from the lapse of the sixty (60)-day period granted to the

[16] G.R. No. 154993, October 25, 2005.

local treasurer to decide on the protest, within which to appeal with the court of competent jurisdiction – the RTC that is - in the exercise of its original jurisdiction over local tax cases, i.e. denial by the local treasurer of the taxpayer's protest.

Unarguably, petitioner availed of the wrong remedy thereby precluding this Court from entertaining the instant Petition for Review.

Anent, petitioner's prayer for a judgment declaring as null and void Davao City Ordinance No. 0310-07, particularly Section 17 thereof, and its Implementing Rules and Regulations, the legal remedy is found in Section 187 of the Local Government Code of 1991, which provides, thus:

> "SEC. 187. Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.- The procedure for the approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That **any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice** who shall render a decision with sixty (60) days from the receipt of appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and accrual and payment of the tax, fee or charged levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction." (boldfacing supplied)

Based on the above-cited provision, it is clear that any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within 30 days from the effectivity thereof to the Secretary of Justice, who has 60 days from date of receipt of appeal to act on it.

The ruling of the Supreme Court in Reyes, *et al.* vs. Court of Appeals, *et al.*[17] is as well instructive, to wit:

> "**Clearly, the law requires that the dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file his appeal to the Secretary of Justice, within 30 days from effectivity thereof**. In case the Secretary decides the appeal, a period also of 30 days is allowed for an aggrieved party to go to court. But if the Secretary does not act thereon, after the lapse of 60 days, a party could already proceed to seek relief in court. **These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court**. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. **For this reason the courts construe these provisions of statutes as mandatory**. A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that protests over tax ordinances are required to be done within certain time frames. In the instant case, it is our view that the failure of petitioners to appeal to the Secretary of Justice within 30 days as required by Sec. 187 of R.A. 7160 is fatal to their cause."

[17] G.R. No. 118233, December 10, 1999.

The ruling was echoed in *Hagonoy Market Vendor Association v. Municipality of Hagonoy, Bulacan*[18], when the Supreme Court held:

> "**The aforecited law requires that an appeal of a tax ordinance or revenue measure should be made to the Secretary of Justice within thirty (30) days from effectivity of the ordinance** and even during its pendency, the effectivity of the assailed ordinance shall not be suspended. xxx At this point, it is apropos to state that **the timeframe fixed by law for parties to avail of their legal remedies before competent courts is not a 'mere technicality' that can be easily brushed aside**. The periods stated in Section 187 of the Local Government Code are mandatory. xxx Being its lifeblood, collection of revenues by the government is of paramount importance. The funds for the operation of its agencies and provision of basic services to its inhabitants are largely derived from its revenues and collections. Thus, it is essential that the validity of revenue measures is not left uncertain for a considerable length of time. Hence, the law provided a time limit for an aggrieved party to assail the legality of revenue measures and tax ordinances." (boldfacing supplied)

In the present case, there is no indication that petitioner resorted to the remedy provided under Section 187 of the Local Government Code of 1991 to assail the constitutionality or validity of the subject tax ordinance.

As a rule, the remedy within the administrative machinery must be resorted to first and pursued to its appropriate conclusion before the court's judicial power can be sought.[19] Hence, petitioner's failure to appeal to the Secretary of Justice within the mandatory period of 30 days from the effectivity of the ordinance is fatal to its cause.

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[18] G.R. No. 137621, February 6, 2002.
[19] Banco De Oro, et al. v. Republic of the Philippines, et al., G.R. No. 198756, January 13, 2015.

Again, for pursuing the wrong remedy, petitioner effectively deprived the Court of competence to hear and determine its case.

It bears stressing that this Court, being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction[20] specifically defined under Section 7 of R.A. No. 1125, as amended by R.A. No. 9282.

WHEREFORE, the Petition for Review posted by Davao Agricultural Ventures Corporation on April 10, 2015, is hereby **DISMISSED** on jurisdictional ground. Consequently, its prayer for a temporary restraining order and/or preliminary injunction, a mere ancillary remedy, must necessarily be **DENIED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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[20] Allied Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010.

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution and the Division 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