REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

METRO PACIFIC TOLLWAYS DEVELOPMENT CORPORATION, *Petitioner,*	**CTA EB NO. 2115** (CTA AC No. 191)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
MAKATI CITY AND NELIA A. BARLIS IN HER CAPACITY AS INCUMBENT CITY TREASURER OF MAKATI CITY, *Respondents.*	Promulgated: SEP 30 2020 4:10 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Assailing the actions of the Special First Division in CTA AC No. 191, entitled "*Metro Pacific Tollways Development Corporation v. Makati City and Nelia A. Barlis in her capacity as Incumbent City Treasurer of Makati City*", petitioner Metro Pacific Tollways Development Corporation (**petitioner/MPTDC**) filed the present

Petition for Review[1] pursuant to Section 11 of Republic Act (**RA**) No. 1125[2], as amended by Section 18[3] of RA 9282.

Prior to this appeal, on 23 January 2014, respondent Nelia A. Barlis (**respondent Barlis**), in her capacity as City Treasurer of respondent Makati City (**respondent City**), assessed petitioner MPTDC of local business tax (**LBT**) on dividend income when it applied for the renewal of its business permit with the Makati Business Permits Office. Petitioner was thus issued with Billing Assessment Form Nos. 08874[4] and 08876[5] in the amount of ₱49,316.48 and ₱4,060,654.76, respectively, or in the total amount of ₱4,109,971.24. Said deficiency LBT was computed based on petitioner's dividend income of ₱19,776,032.38 and ₱1,344,587,668.00, respectively, as reported in petitioner's financial statements for 2012, ending in December 31.

On 08 January 2016, petitioner filed an administrative claim for refund[6] before respondent Barlis, which was later on amended and filed on 18 January 2016.[7] Following the latter's inaction, it brought the case (Complaint for Refund [of erroneously paid LBT])[8] before the Regional Trial Court (**RTC**) of Makati City, Branch 133, where respondents filed a Motion to Dismiss arguing that the deficiency tax assessment had become final and executory. Despite RTC's denial of respondents' Motion to Dismiss (and proceeded to hear the case), it nevertheless later dismissed the case on 13 July 2017.[9] It noted, among others, that petitioner's failure to file a protest against the deficiency assessment within the reglementary period of sixty (60) days rendered

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1 Filed 06 August 2019, *Rollo*, pp. 1-18.

2 AN ACT CREATING THE COURT OF APPEALS.

3 **Section 11.** Section 18 of the same Act is hereby amended as follows:
SEC. 18. Appeal to the Court of Tax Appeals *En Banc*. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*.
SEC. 19. Review by Certiorari. - A party adversely affected by a decision or ruling of the CTA en banc may file with the Supreme Court a verified petition for review on certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

4 Exhibit "P-5", RTC Records, Volume II, p. 353; Annex "D" of Petition for Review dated 06 October 2017, Division Docket, p. 69.

5 Exhibit "P-6", id., p. 354; Annex "E" of Petition for Review dated 06 October 2017, id., p. 71.

6 Annex "G" of Complaint, RTC Records, Volume I, pp. 46-59.

7 Annex "H" of Petition for Review, Division Docket, pp. 74-87.

8 Annex "I" of Petition for Review, id., pp. 104-131.

9 RTC Records, Volume II, pp. 439-451.

the assessment final, executory, conclusive and unappealable. The RTC also denied petitioner's Motion for Reconsideration (**MR**).[10]

On 27 October 2017, petitioner appealed the RTC's 13 July 2017 Decision to this Court, through a prior Petition for Review.[11] After the parties submitted their memoranda[12], the Court, through the Special First Division, denied the appeal on 29 January 2019[13], stating:

> ...
>
> The present case sprung from Billing Assessment Form Nos. 8874 and 8876, both dated January 23, 2014, issued by respondents. Specifically, Billing Assessment Form No. 8874 assessed petitioner, *inter alia*, for being a holdings company in the amount of ₱37,080.06, with interest in the amount of ₱12,236.42, or the aggregate amount of ₱43,316.48; while Billing Assessment Form No. 8876 assessed petitioner for "*Deficit for 2013/1 ... Actual Gross per F.S.*" in the amount of ₱2,689,175.34, with interest in the amount of ₱1,371,479.42, or in the total amount of ₱4,109,971.24. The said amounts were paid by petitioner on January 29, 2014, per Official Receipt No. MKTCF2209189 issued by the Office of the Treasurer of the City of Makati.
>
> There being two (2) notices of assessment issued by respondents, and since petitioner opted to pay the amounts assessed, petitioner should have observed the provisions of Section 195 of the LGC of 1991, pursuant to the [afore-quoted] ruling in the *ICTS, Inc.* case.
>
> Counting sixty (60) days from January 23, 2014, petitioner had until March 24, 2014, within which to file a written protest with the Makati City Treasurer. However, in view of its failure to do so, the subject tax assessments have become final and unappealable, in accordance with Section 195 of the LGC of 1991.
>
> Parenthetically, the filing of an administrative claim on January 8, 2016, and an amended administrative claim on January 18, 2016, by petitioner, is of no moment. This is simply because on the said dates, the subject tax assessments have long become final and unappealable.

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10 See Order dated 20 September 2017, Division Docket, pp. 47-48.
11 Id., pp. 8-46.
12 Memorandum for Petitioner, id., pp. 265-287; Memorandum for Respondents, id., pp. 292-300.
13 Id., pp. 306-320.

> To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. Since the subject tax assessments have already become final, petitioner is precluded from questioning the same. Thus, it becomes unnecessary to determine whether petitioner is liable to pay the subject tax assessments.
>
> Time and again, it has been held that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. Correspondingly, in view of petitioner's failure to timely file its protest to respondents' tax assessments, the Court *a quo* is clearly without jurisdiction to entertain petitioner's *Complaint* in Civil Case No. 16-101.
>
> Such being the case, We see no cogent reason to deviate from the ruling of the Court a quo [RTC] in dismissing Civil Case No. 16-101 for lack of jurisdiction.
>
> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated July 13, 2017 and the Order dated September 20, 2017, both rendered by the RTC – Branch 133 in Civil Case No. 16-101, dismissing the same, are hereby **AFFIRMED**.
>
> **SO ORDERED.**
>
> ...

In its bid to have the above Decision set aside, petitioner filed an MR.[14] However, the Court remained unswayed and denied its MR on 10 July 2019.[15] Hence, this present Petition for Review.[16]

Petitioner now assigns the following errors to the Special First Division's actions:

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14 Id., pp. 324-336.
15 Id., pp. 356-363.
16 Supra at note 1.

I.

THIS CASE INVOLVES A CLAIM FOR REFUND OF LOCAL BUSINESS TAX GOVERNED BY SECTION 196 AND NOT SECTION 195 OF THE LOCAL GOVERNMENT CODE.

II.

THE ASSESSMENTS DID NOT ATTAIN FINALITY AS PETITIONER PAID THE ASSESSMENTS WITHIN SIXTY (60) DAYS FROM NOTICE.

III.

THE RULING IN THE CASES OF *CITY OF MANILA, ET AL. V. COSMOS BOTTLING CORPORATION (COSMOS)* AND *INTERNATIONAL CONTAINER TERMINAL SERVICES, INC. V. THE CITY OF MANILA, ET AL. (ICTSI)* CANNOT BE APPLIED SQUARELY TO THIS CASE.

In support of the above, petitioner maintains that the Special First Division erred in applying Section 195[17] of the Local Government Code of 1991 (**LGC**) since its claim against respondents is one of refund under Section 196[18] of the same law, not a protest to an erroneous assessment. It distinguishes that the remedy available to a protest against assessment under Section 195 is the filing of a written notice of protest within sixty (60) days from receipt and if the same is found to be unmeritorious, appeal with the court of competent jurisdiction within thirty (30) days; while Section 196 on refund or issuance of tax credit is the filing of administrative claim with the local treasurer and the judicial claim with the court, both within two (2) years from the date of payment or from the date the taxpayer is entitled to refund or credit. According to it, the action in Section 195 is not a pre-requisite to an action in Section 196. Section 195 was put in issue in the RTC only to argue the final and executory character of the subject assessment for the refund. Notwithstanding petitioner's clear choice of action (refund), the Special First Division treated its case as protest to an assessment.

Petitioner adds that the assessment did not attain finality because it timely exercised its option under the LGC. It also argues that, when a taxpayer contests the assessment or pays the tax, fee or charge before the lapse of sixty (60) days from receipt of assessment, it

17 Protest of Assessment.
18 Claim for Refund of Tax Credit.

would prevent the assessment from becoming final and executory; thereby allowing the taxpayer to avail of remedies. Thus, it insists that there is no basis for the denial of the claim on the ground that the assessment had become final, executory, conclusive and not appealable.

Petitioner likewise assails the Special First Division's application of the cases of *City of Manila, et al. v. Cosmos Bottling Corporation*[19] (**Cosmos**) and *International Container Terminal Services, Inc. v. The City of Manila, et al.*[20] (**ICTSI**). According to it, the Supreme Court's declaration that a previous protest to a notice of assessment should have been made prior to initiating a claim for refund is a mere *obiter dictum* and could not serve as a binding precedent. Both cases also involved the initial filing of protest, followed by a claim for refund. In its case, petitioner claims that it paid the deficiency LBT without protest, then filed a claim for refund. Additionally, when the notices of assessments were issued against it, the supposed jurisprudential guidelines laid down in *Cosmos* and *ICTSI* were not yet in place.

In their Comment/Opposition[21], respondents maintain that the assessment against petitioner had attained finality. According to them, Section 195 of the LGC is clear in requiring protest even if the taxpayer were to pay the assessed tax deficiency. Since petitioner did not follow the procedure, the Special First Division did not err in dismissing petitioner's appeal against the RTC Decision.

The Court's ruling follows below.

At the crux of the present legal controversy are the two provisions of the LGC, Sections 195 and 196, respectively.

Section 195 of the LGC provides for the following remedies, to quote:

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19 G.R. No. 196681, 27 June 2018.
20 G.R. No. 185622, 17 October 2018.
21 *Rollo*, pp. 47-54.

> ...
>
> **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.
>
> ...

The above-quoted provision states that the taxpayer has sixty (60) days from receipt of the notice of assessment to file a written protest; while the local treasurer has sixty (60) days from the date of filing of the protest within which to decide the same. The provision further provides that the taxpayer has thirty (30) days, either from the receipt of the denial of the protest or from the lapse of the 60-day period prescribed for the local treasurer to decide on the protest, within which to appeal with the court of competent jurisdiction.

In the instant case, petitioner was issued the subject Billing Assessment Form Nos. 08874 and 08876 (both dated 23 January 2014) and paid the same on 29 January 2014. Thereafter, petitioner waited for almost two (2) years or until 08 January 2016 to file its administrative claim (which was later amended and filed on 18 January 2016) and 28 January 2016 for its judicial claims for refund, respectively, believing that it may avail of the remedy laid down in Section 196 of the LGC. Section 196 reads:

> ...
>
> **Sec. 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.
>
> ...

Petitioner is mistaken.

It is undisputed that petitioner was issued notices of assessment as contemplated in Section 195 of the LGC. The notices stated the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties, to wit:

	KIND OF FEE/TAX	TAX BASE	TAX AMOUNT	% INT	SUR./INT.	TOTAL
Billing Assessment Form No. 08874	HOLDINGS CO. - SERV	19,776,032.38	37,080.60	33	12,236.42	49,316.48
Billing Assessment Form No. 08876	Tax Deficit for 2013/1					
	Actual Gross per F.S.	1,344,587,668	2,689,175.34			
	Declared Gross	0.00	0.00			
			2,689,175.34	51	1,371,479.42	4,060,654.76

Therefore, since petitioner was issued notices of assessment, it should have filed a written protest with the local treasurer (contesting the assessment based on the provisions of Section 195 of the LGC) within sixty (60) days from the receipt thereof. Because it failed to do so on the wrong premise that it is Section 196 that applies to it, the assessment consequently became final, executory and demandable.

Moreover, the legal issue being raised by petitioner has already been laid to rest in *Cosmos* where the Supreme Court ruled that once an assessment is made or issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two (2) years from the date of payment as Section 196 may suggest. The reason being that the taxpayer must administratively question the validity or correctness of the assessment within sixty (60) days from receipt of the notice of assessment. In the same case, the Supreme Court lengthily discussed the correct procedure whenever a notice of assessment is issued to the taxpayer, *viz:*

...

Obviously, the application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges...

...

Where an assessment is to be protested or disputed, the taxpayer may proceed (*a*) without payment, or (*b*) with payment of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; **otherwise, the assessment becomes conclusive and unappealable.**

(*a*) Where no payment is made, the taxpayer's procedural remedy is governed strictly by **Section 195**. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment.

(*b*) Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (**Section 195**, LGC) and at the same time seeking a refund of the taxes. In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.

The same implication should ensue even if the taxpayer were to style his suit in court as an action for refund or recovery of erroneously paid or illegally collected tax as pursued under **Section 196** of the LGC. In such a suit for refund, the taxpayer cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes without necessarily **assailing the validity or correctness of the assessment** he had administratively protested.

It must be understood, however, that in such latter case, the suit for refund is conditioned on the prior filing of a written claim for refund or credit with the local treasurer. In this instance, what may be considered as the administrative claim for refund is the letter-protest submitted to the treasurer. Where the taxpayer had paid the assessment, it can be expected that in the same letter-protest, he would also pray that the taxes paid should be refunded to him. As previously mentioned, there is really no particular form or style necessary for the protest of an assessment or claim of refund of taxes. What is material is the substance of the letter submitted to the local treasurer.

Equally important is the institution of the judicial action for refund **within thirty (30) days from the denial of or inaction on the letter-protest or claim**, not any time later, even if within two (2) years from the date of payment (as expressly stated in Section 196). Notice that the filing of such judicial claim for refund after questioning the assessment is within the two-year prescriptive period specified in Section 196. Note too that the filing date of such judicial action necessarily falls on the beginning portion of the two-year period from the date of payment. Even though the suit is seemingly grounded on Section 196, **the taxpayer could not avail of the full extent of the two-year period within which to initiate the action in court.**

The reason is obvious. This is because an assessment was made, and if not appealed in court within thirty (30) days from decision or inaction on the protest, it becomes conclusive and unappealable. Even if the action in court is one of claim for refund, the taxpayer cannot escape assailing the assessment, invalidity or incorrectness, the very foundation of his theory that the taxes were paid erroneously or otherwise collected from him illegally. Perforce, the subsequent judicial action, after the local treasurer's decision or inaction, must be initiated within thirty (30) days later. It cannot be anytime thereafter because the lapse of 30 days from decision or inaction results in the assessment becoming conclusive and unappealable. In short, the scenario wherein the administrative claim for refund falls on the early stage of the two-year period but the judicial claim on the last day or late stage of such two-year period does not apply in this specific instance where an assessment is issued.

To stress, where an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund *at any time* within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' *within 60 days from receipt of the notice of assessment*, and thereafter bring suit in court *within 30 days from either decision* or *inaction* by the local treasurer.

> **Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One*, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two*, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax.**[22]
>
> ...

In *ICTSI*, the Supreme Court reiterated the taxpayer's remedy depending, first, on whether a notice of assessment was issued; and second, if the same taxpayer will opt to pay the assessed tax or not. It stated further:

> ...
>
> **If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195** of the Local Government Code. Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal.
>
> **If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period**, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. "Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer."
>
> **On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.**[23]
>
> ...

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[22] Emphasis in the original and citations omitted.
[23] Emphasis in the original and citations omitted.

Based on the guidelines enunciated above, since a notice of assessment was issued to petitioner, it should have followed Section 195 of the LGC and not Section 196. As earlier stated, petitioner failed to file a timely protest to the notices of assessment within sixty (60) days from receipt thereof and waited until the two-year period was about to lapse before it filed its administrative and judicial claims for refund, the assessment against it had thus become final, executory and demandable.

Furthermore, it is likewise clear from both *Cosmos* and *ICTSI* that Section 195 of the LGC (requiring the filing of a protest) would still apply even if the taxpayer opts to pay the amount assessed within the same period of sixty (60) days and subsequently claims for refund under Section 196 of the same law. As petitioner evidently failed to comply with the provisions of Section 195 requiring a filing of a timely protest, petitioner may no longer contest the said assessment. Neither may this Court review the same.

Verily, Section 196 would apply without requiring compliance with Section 195 if no notice of assessment was issued to the taxpayer. Unfortunately for petitioner, given that it was issued with the notice of assessment, it could not follow Section 196 without complying with the requirements under Section 195.

With the Supreme Court's declarations in *Cosmos* and *ICTSI*, this Court *En Banc* has no other recourse but to apply the legal rules enunciated in both. As held in *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*[24]:

> ...
>
> The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.
>
> ...

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[24] G.R. No. 150947, 15 July 2003; Citation omitted.

Incidentally, in arguing that the rulings in *Cosmos* and *ICTSI* are not applicable to its case, petitioner states that the declaration therein (that a previous protest to a notice of assessment should have been made prior to initiating a claim for refund) is a mere *obiter dictum*. Petitioner is again mistaken.

In *Francisco N. Villanueva, Jr. v. The Hon. Court of Appeals, et al.*[25] (**Villanueva**), the Supreme Court discussed the nature of an *obiter dictum*, as follows:

> ...
>
> **An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding as precedent.**
>
> Based on the foregoing, the pronouncement of the appellate court in CA-G.R. SP No. 46103 **is not an *obiter dictum* as it touched upon a matter clearly raised by respondent Villadores in his petition** assailing the admission of the Amended Informations. Among the issues upon which the petition for *certiorari* in CA-G.R. SP No. 46103 was anchored, was "whether Francisco N. Villanueva, Jr. is the offended party. Argument on whether petitioner Villanueva, Jr. was the offended party was, thus, clearly raised by respondent Villadores. The body of the decision contains discussion on that point and it clearly mentioned certain principles of law.
>
> **It has been held that an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*, <u>and this rule applies to all pertinent questions, although only incidentally involved</u>, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, <u>and to any statement as to matter on which the decision is predicated. Accordingly, a point expressly decided does not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground, or even though, by reason of other points in the case, the result reached might have been</u>**

[25] G.R. No. 142947, 19 March 2002; Citations omitted, emphasis and underscoring supplied.

> **the same if the court had held, on the particular point, otherwise than it did. A decision which the case could have turned on is not regarded as *obiter dictum* merely because, owing to the disposal of the contention, it was necessary to consider another question, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as *dicta*.** So, also, where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a *dictum*, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered, **nor does a decision on one proposition make statements of the court regarding other propositions *dicta*.**
>
> ...

Thus, the Supreme Court's discussion in *Cosmos* and *ICTSI* relative to the interpretation of Sections 195 and 196 of the LGC *and* the proper procedure that must be followed (by the taxpayer depending on whether a notice of assessment is issued and whether the taxpayer will opt to pay the assessment) could not be regarded as mere *obiter dictum*; both being "**pertinent questions, although only incidentally involved, which are presented and decided in the regular course of the consideration of the case**".[26]

Moreover, as clearly held in *Villanueva*, a decision is not regarded as *obiter dictum* merely because, owing to the disposal of the contention, it was necessary to consider another question. As such, the discussion on the guidelines stated above cannot be considered as *obiter dictum* even if the Supreme Court could have dispensed with the same. Said discussions are necessary in the resolution of legal questions that are pertinently involved in it.

Interestingly, the Supreme Court in *Cosmos*, before lengthily discussing the proper procedure to be taken by the taxpayer, even stated that "[a]s this has a direct bearing on the arguments raised in the petition, we thus clarify ...". Certainly, with this declaration, it regarded the same as a pertinent point of law and not a mere *obiter dictum*.

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26 Id.

With respect to petitioner's contention that the jurisprudential guidelines in *Cosmos* and *ICTSI* were not yet in place when the subject notices of assessment were issued, the same is likewise bereft of merit.

It has been held that "[t]he interpretation upon a law by [the Supreme Court] constitutes, in a way, a part of the law **as of the date that law was originally passed, since [the Supreme] Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate**".[27]

Additionally, while a decision enunciating a new doctrine which overruled a previous one is considered as an exception to the said rule, the said exception cannot be made to apply in this instant case simply because there was no previous doctrine (that was overturned) to speak of in the first place. Considering that what applies is the general rule that the interpretation of the Supreme Court constitutes as part of the law as of the date that law was originally passed, petitioner's plea to be exempted from the application of the foregoing jurisprudential guidelines cannot be sustained.

All told, the Court *En Banc* fails to find any cogent reason to disturb the assailed Decision dated 29 January 2019 and Resolution dated 10 July 2019, respectively.

WHEREFORE, with the foregoing, petitioner Metro Pacific Tollways Development Corporation's Petition for Review filed on 06 August 2019 is **DENIED** for lack of merit. Accordingly, the Decision dated 29 January 2019 and Resolution dated 10 July 2019, respectively, of the Special First Division in CTA AC No. 191, entitled *Metro Pacific Tollways Development Corporation v. Makati City and Nelia A. Barlis in her capacity as Incumbent City Treasurer of Makati City,* are **AFFIRMED.**

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27 *Co v. Court of Appeals, et al.*, G.R. No. 100776, 28 October 1993, citing *The People of the Philippines v. Jose Jabinal y Carmen*, G.R. No. L-30061, 27 February 1974; Emphasis supplied.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Ma. Belen
(With due respect, please see Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
(With due respect, I join J. MRL's D.O.)
CATHERINE T. MANAHAN
Associate Justice

(I join the D.O. of J. Liban)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

METRO PACIFIC TOLLWAYS DEVELOPMENT CORPORATION, Petitioner,	**CTA EB NO. 2115** (CTA AC No. 191)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
MAKATI CITY AND NELIA A. BARLIS IN HER CAPACITY AS INCUMBENT CITY TREASURER OF MAKATI CITY, Respondent.	Promulgated: SEP 30 2020 4:10 p.m.

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DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect, I dissent from the majority ruling that the present local business tax ("LBT") claim amounting to a total of Php4,109,971.24 cannot be refunded for the assessment had already become final and unappealable due to the failure by Petitioner to file a written protest with Respondent Treasurer of Makati City.

In taking the above legal position, the majority cited the cases of *City of Manila, et. al. v. Cosmos Bottling Corporation*[1] ("*Cosmos Bottling*") and *International Container Terminal Services, Inc. v. The City of Manila*[2] ("*ICTSI, Inc.*"), and outlined the following rules regarding the remedies of a taxpayer for taxes collected by local government units:

[1] G.R. No. 196681, June 27, 2018.
[2] G.R. No. 185622, October 17, 2018.

1) In case there is a notice of assessment issued by the local treasurer, whether or not the taxpayer opts to pay the assessed tax, such taxpayer should file a written protest to the local treasurer within the 60-day period, and then bring the case to court within thirty (30) days from either the decision or inaction of the local treasurer following Section 195 of the LGC of 1991. In such instance, the taxpayer may question the validity or correctness of the assessment and at the same time refund the taxes it paid.

2) If there is no notice of assessment issued by the local treasurer, and the taxpayer claims payment of illegally or erroneously collected taxes and intends the refund thereof, Section 196 of the LGC of 1991 applies.

Contrary to the position espoused by the *ponencia*, I find the present case falling under the subject of refund under Section 196, and not under Section 195.

Section 195 is clear. Its application is triggered by a notice of assessment made by the local treasurer or his duly authorized representative:

> "SEC. 195. *Protest of Assessment.* - **When <u>the local treasurer or his duly authorized representative</u> finds that correct taxes, fees, or charges have not been paid, he <u>shall issue a notice of assessment</u>** 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."[3]

There is no dispute that this case sprung from Billing Assessment Forms No. 8874[4] and 8876[5], both dated January 23, 2014, and that the same were issued

[3] *Emphasis and underscoring supplied.*
[4] Docket (CTA AC No. 191), p. 69.
[5] *Id.*, p. 71.

pursuant to Petitioner's application for renewal of business permit in 2014. However, a careful perusal of the records show that the said Billing Assessment Forms were issued by the Makati City Business Permits Office, as signed by the City Administrator/OIC Head Business Permits Office and by the City Mayor. Consequently, Billing Assessment Form Nos. 8874 and 8876 cannot be considered as the notice of assessment required under Section 195, for they were not issued by the Office of the City Treasurer nor were they signed by Respondent Treasurer of Makati City.

The assessment of business tax is an inherent function of local treasurers, pursuant to the LGC of 1991 and its Implementing Rules and Regulations (IRR). Unless there are express and explicit provisions of the law to the contrary, specifically stating that the assessment of business taxes shall be conducted by the Business Permit and Licensing Office of a city, such function shall remain to be exercised by the Office of the City Treasurer.[6]

Since it is only the local treasurer who is empowered under the law to issue an assessment, and the Billing Assessment Forms in the instant case were not issued by the Respondent Treasurer of Makati City, there was no assessment to speak of that became final and unappealable. Petitioner need not file a protest to Respondent Treasurer of Makati City for its remedy is not governed by Section 195. **The full payment made by Petitioner amounting to Php 4,109,971.24 is the proper subject of a claim for refund for erroneously or illegally collected tax, fee, or charge in accordance with Section 196.**

Verily, Petitioner was able to prove that it was entitled to a refund or tax credit for the Php4,109,971.24.

First, Petitioner complied with the procedural requisites[7] for the entitlement to a refund or credit of local taxes as it filed: (a) a written claim for refund with Respondent Treasurer of Makati City on January 08, 2016[8] (the amended administrative claim for refund was filed on January 18, 2016[9]); and (b) the judicial claim on January 28, 2016[10], which is well within two (2) years from the payment thereof on January 29, 2014[11].

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[6] Bureau of Local Government Finance Opinion dated March 15, 2017; Bureau of Local Government Finance Opinion No. 033-2016 dated September 19, 2016.

[7] Metro Manila Shopping Mecca Corp. v. Toledo (G.R. No. 190818, June 05, 2013) enumerated the procedural requisites for the entitlement to a refund or credit of local taxes as follows:

1) The taxpayer concerned must file a written claim for refund/credit with the local treasurer; and

2) The case or proceeding for refund has to be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.

[8] Docket (CTA AC No. 191), Petition for Review, Statement of Material Dates and Facts, Paragraph 7, p. 10.

[9] *Id.*, p. 74-87.

[10] *Id.*, pp. 104-130.

[11] *Id.*, Official Receipt No. MKTCF 2209189, p. 72.

And second, the imposition by Respondents of LBT on the dividends earned by Respondent in 2012 pursuant to Section 3A.02(h)[12] of the RMRC is void, for nowhere in the evidence presented even remotely suggests that Petitioner can be considered as a "bank or other financial institution". Note that this Court has consistently ruled that dividend income is excluded from gross receipts for purposes of imposition of LBT.[13]

Nevertheless, assuming *arguendo* that the Billing Assessment Forms are the notice of assessment pertained to under Section 195, it is my humble view that Petitioner cannot be faulted for availing the remedy under Section 196.

In *Philippine Bank of Communications v. Hon. Court of Appeals*[14], the Supreme Court pronounced that the broader interest of justice prevails over a wrong mode of appeal. The Court recognized that under exceptional circumstances, as when stringent application of the rules will result in manifest injustice, it may set aside technicalities and proceed with the appeal.

The Supreme Court in *La Sallian Educational Innovators Foundation, Inc.* v. *Commissioner of Internal Revenue*[15] reiterated the same doctrine and decided to set aside the denial by the Court of Tax Appeals *En Banc* of the petition solely based on technicalities, *viz*:

> **"This Court has ruled in the past that if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice and depending on the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction.**

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[12] SECTION 3A.02. Imposition of Tax. — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

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(h) **On owners or operators of banks and other financial institutions** which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l)1, as provided in this code.

[13] *See* Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis, CTA EB Case No. 1093 (CTA AC No. 99), June 17, 2015.

[14] G.R. No. 218901, February 15, 2017.

[15] G.R. No. 202792, February 27, 2019.

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> Otherwise stated, procedural rules are important tools designed to facilitate the dispensation of justice, but legal technicalities may be excused when strict adherence thereto will impede the achievement of justice it seeks to serve.
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> It is worthy to note that this kind of lenient application of the rules of procedure for exceptionally persuasive and meritorious reasons is not novel. **In fact, in the case of *Tanenglian v. Lorenzo, et al.*, this Court <u>gave due course to the appeal which was not only made through a wrong mode but was even filed beyond the reglementary period</u>. This Court recognized the broader interest of justice**..."[16]

To reiterate, Petitioner availed of the remedy under Section 196 of the LGC of 1991 and as such, did not file a written protest with the Respondent Treasurer of Makati City. To foreclose Petitioner's claim for refund due to the wrong mode of remedy, when in fact this Court palpably ruled that the imposition of LBT by Respondents is utterly without basis in fact and in law, is injustice of the highest order.

We as an appellate court have the authority to strike down such an imposition for being invalid. In addition, Respondents should return the payment it has no right to collect in the first place.

Lastly, I am not unaware of the cases *Cosmos Bottling* and *ICTSI, Inc.* which were cited by the *ponente.* These decisions declare that whenever there is an assessment, the remedy is to file a protest with the local treasurer under Section 195 whether there was payment or none. Yet, these cases were only promulgated in 2018.

Previously, the prevailing doctrine is that the taxpayer is free to choose which remedy (*i.e.*, Section 195 or Section 196) to enforce. As such, in *City Treasurer of City of Caloocan v. Tigerway Facilities and Resources, Inc.*[17], this Court *En Banc* held:

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[16] *Emphasis and underscoring supplied.*

[17] C.T.A. EB Case No. 1605, C.T.A. AC No. 127, July 25, 2018. Penned by Associate Justice Caesar A. Casanova, concurred in by Presiding Justice Roman G. del Rosario, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Cielito N. Mindaro-Grulla, Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Catherine T. Manahan.

> "**A taxpayer assessed by the local treasurer for deficiency taxes, fees or charges has generally two (2) remedies to question the local treasurer's assessment, protest such assessment under Section 195 of the LGC or pay the tax under protest and, thereafter, file a claim for refund under Section 196 of the LGC.**
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> In the case of City of Manila and City Treasurer of the City of Manila vs. Rizal Commercial Banking Corporation, the First Division of this Court categorically stated that the taxpayer is free to choose which remedy to enforce."[18]

The subject taxes were paid in 2014. Petitioner's resort to the remedy under Section 196, in good faith, during that time should not therefore be taken against it.

Indeed, the interpretation or construction of a law by courts constitutes a part of the law as of the date the statute is enacted. Notwithstanding this, when a prior ruling is overruled and a different view is adopted, the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith in doing so.[19]

From all the foregoing, I vote to **REVERSE** the Decision dated July 13, 2017 and Order dated September 20, 2017 rendered by Branch 133 of Regional Trial Court of Makati in Civil Case No. 16-101. The instant Petition for Review should be **GRANTED**. Accordingly, Respondents should be **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the aggregate amount of Php4,109,971.24, for having been erroneously or illegally collected.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[18] *Emphasis supplied.*

[19] Visayas Geothermal Power Company v. Commissioner of Internal Revenue, G.R. No. 197525, June 04, 2014; Jocelyn M. Suazo v. Angelito Suazo and Republic of The Philippines, G.R. No. 164493, March 10, 2010; Benjamin G. Ting v. Carmen M. Velez-Ting, G.R. No. 166562, March 31, 2009; Rosa Yap Paras v. Justo J. Paras, G.R. No. 147824, August 02, 2007; Lorna Guillen Pesca v. Zosimo A. Pesca, G.R. No. 136921, April 17, 2001.