REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

FAR EASTERN UNIVERSITY,
Petitioner,

- versus -

CITY OF MANILA, CITY MAYOR and CITY TREASURER,
Respondents.

CTA AC NO. 223

Members:

CASTAÑEDA, JR., *Chairperson,*
CATHERINE T. MANAHAN,
JEAN MARIE BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated: OCT 14 2020

1:50 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

Before this Court is a Petition for Review[1] filed by Far Eastern University, seeking to reverse the Decision dated January 15, 2019[2] and Resolution dated April 29, 2019,[3] respectively, of the Regional Trial Court of Manila, Branch 47 in Civil Case No. 15-134692.[4]

THE FACTS

Petitioner is an educational institution and a domestic corporation duly organized and existing under and by virtue of the laws

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[1] Filed on July 5, 2019, Division Docket, pp. 28-94.
[2] RTC Records, pp. 168-177.
[3] *Id.*, pp. 300-302.
[4] Entitled "*Far Eastern University v. City of Manila, City Mayor and City Treasurer*".

of the Republic of the Philippines with principal address at Nicanor Reyes St., Sampaloc, Manila City, Metro Manila.[5]

Respondent City, represented by respondent City Mayor Francisco M. Domagoso, is a highly urbanized chartered city created under RA No. 409, as amended, with official address at the Office of the Mayor, City Hall, Manila, while Respondent City Treasurer of Manila is represented by OIC-City Treasurer Jazmin Talegon, with business address at the Office of the City Treasurer, City Hall, Manila.[6]

On August 14, 2013, petitioner received a copy of Letter of Authority (LOA) No. 2013-CTO-0005 dated 02 August 2013[7] issued by Liberty M. Toledo, the former City Treasurer of Manila. The LOA informed petitioner of the conduct of an examination and requested the submission of petitioner's business records and documents for taxable years 2009-2013.

The following day, Arnualdo B. Macapagal (Macapagal) wrote a Letter[8] to the City Treasurer informing her of the receipt of the LOA and requesting an extension until the end of that month to submit the pertinent business documents requested. Petitioner received a Letter dated August 16, 2013[9] from respondent City Treasurer granting the request for extension.

Petitioner then submitted on August 30, 2013 the requested business records and/or documents, as evidenced by a Transmittal Letter[10] signed by Macapagal and stamped received by respondent City Treasurer.

On September 8, 2014, respondent City Treasurer wrote a Letter[11] of the same date, requesting petitioner to submit the breakdown (Schedule of Sales/Income) of revenues and other income per branch for the period from taxable years ending December 2008-2012.

In compliance with the aforementioned request, petitioner submitted the requested documents on October 24, 2014 to the office

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[5] Petition for Review, Division Docket, p. 30.
[6] Memorandum for the Respondents, Division Docket, p. 199.
[7] Annex "A" of Complaint, RTC Records, pp. 34-35
[8] Annex "B" of Complaint, *id.*, p. 36.
[9] Annex "C" of Complaint, *id.*, p. 37.
[10] Annex "D" of Complaint, *id.*, p. 38.
[11] Annex "E" of Complaint, *id.*, p. 39.

of respondent City Treasurer as evidenced by the Transmittal Letter dated October 20, 2014.[12]

On June 19, 2015, petitioner received a Notice of Collection dated June 18, 2015[13] with attached computation[14] from respondent City Treasurer ordering it to pay within seven (7) days from receipt, or until June 26, 2015, the amount of One Hundred Ninety-Three Million Six Hundred Ninety-Six Thousand Four Hundred Forty-Six Pesos and Twenty Centavos (₱193,696,446.20), inclusive of interest and penalty charges representing deficiency business tax and mayor's permit fees covering the taxable period 2009 to 2013.

In response, petitioner wrote a Letter[15] on June 25, 2015 to respondent City Treasurer requesting for an additional thirty (30) days to study the Notice of Collection.

Respondent City Treasurer then sent a Letter[16] to petitioner, which the latter received on July 13, 2015, granting petitioner's request for an extension, giving it ten (10) days from the date of the receipt of the letter (or until July 23, 2015) to act on the Notice of Collection.

On July 22, 2015, petitioner filed its administrative protest[17] against the Notice of Collection with respondent City Treasurer within such extended period.

On August 13, 2015, petitioner received a Letter dated August 12, 2015[18] with attached computation[19] from respondents addressing the issues raised by petitioner in its protest. Said letter effectively denied petitioner's protest and attached a revised computation of the alleged deficiency taxes due from petitioner, lowering it to One Hundred Eighty-Seven Million Six Hundred Twenty-Nine Thousand Four Hundred Forty-Three Pesos and Sixty-Eight Centavos (₱187,629,443.68).

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[12] Annex "F" of Complaint, *id.*, p. 40.
[13] Annex "G" of Complaint, *id.*, p. 41.
[14] Annex "G-1" of Complaint, *id.*, pp. 42-44.
[15] Annex "H" of Complaint, *id.*, p. 45.
[16] Annex "H-1" of Complaint, *id.*, p. 46.
[17] Annex "I" of Complaint, *id.*, pp. 47-59.
[18] Annex "J" of Complaint, *id.*, pp. 60-61.
[19] Annex "J-1" of Complaint, *id.*, p. 62.

On September 11, 2015, petitioner filed a Complaint[20] with the RTC, in accordance with Section 195 of the LGC of 1991 and it was initially raffled to Branch 45. After both the Court-Annexed Mediation and Judicial Dispute Resolution failed, the case was re-raffled to Branch 47 of the same court.

On June 21, 2017, pre-trial conference was conducted where, by their agreement, the parties were simply given a period of sixty (60) days to file their respective memoranda.[21]

On January 15, 2019, the RTC rendered the assailed Decision[22] dismissing petitioner's Complaint for lack of merit.

On February 28, 2019, petitioner filed its Motion for Reconsideration,[23] while respondents filed their Comment and/or Opposition to the Motion for Reconsideration[24] on March 7, 2019. In the said Comment, respondent alleged that the case has already become moot and academic because petitioner already settled the assessment by paying under protest the amount of ₱189,945,947.86, as evidenced by Official Receipt No. MLA 8249459 dated March 4, 2019.

On April 29, 2019, the RTC rendered a Resolution[25] denying petitioner's MR.

On July 5, 2019, petitioner filed the present Petition for Review.[26]

On July 19, 2019, respondents filed their Comment.[27] Per Records Verification,[28] petitioner failed to file a reply to the said Comment.

Subsequently, the entire records of Civil Case No. 15-134692 were transmitted to this Court on September 13, 2019.[29]

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[20] *Id.*, pp. 1-32.
[21] Pre-Trial Order dated June 21, 2017, *id.*, p. 166.
[22] Supra at note 5.
[23] *Id.*, pp. 237-262.
[24] *Id.*, pp. 291-294.
[25] *Supra* at note 6.
[26] Division Docket, pp. 28-94.
[27] *Id.*, pp. 116-134.
[28] *Id.*, p. 187.
[29] *Id.*, pp. 190-195.

In compliance with the Court's Resolution dated August 22, 2019,[30] petitioner's Memorandum was filed on September 27, 2019[31] while Memorandum for Respondents was filed on October 1, 2019.[32]

Thus, on October 14, 2019, the Court issued a Resolution[33] submitting this case for decision. Hence, this Decision.

THE ISSUES

The following are the issues to be resolved by the Court:

I.

Whether respondents are authorized to impose business tax upon petitioner on its tuition and educational fees;

II.

Whether respondents violated petitioner's right to due process for lack of prior notice of assessment and for failure to cite the specific ordinance as basis for the assessment;

III.

Whether the assessment for taxable years 2009 and 2010 had already prescribed; and

IV.

Whether petitioner is entitled to its claim for refund.

THE RULING

Respondent City is authorized to impose

[30] *Id.*, p. 189.
[31] *Id.*, pp. 224-284.
[32] *Id.*, pp. 198-223.
[33] *Id.*, p. 286.

business taxes on tuition and educational fees collected by petitioner

The local government units' (LGU) power to levy taxes is directly conferred by Section 5, Article X of the 1987 Constitution which provides as follows:

> "SEC. 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments."

In implementing the said constitutional provision, the Congress passed RA 7160 or the LGC of 1991, setting forth the necessary guidelines and limitations on the LGUs' power create its own sources of revenues and to levy taxes. In the LGC of 1991, LGUs were authorized to impose certain kinds of taxes, depending on type of the LGU.

For cities including respondent, it is authorized to levy taxes, fees, and charges which the province or municipality may impose.[34] Additionally, LGUs may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated or taxed under the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, or other applicable laws.[35]

Said power of the LGUs to levy such taxes is subject only to the limitations set forth in the law, particularly, Section 133 of the LGC of 1991 which provides:

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[34] Section 151. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

[35] Section 186. *Power To Levy Other Taxes, Fees or Charges.* - Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided,* That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further,* That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

"**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;

(b) Documentary stamp tax;

(c) Taxes on estates, inheritance, gifts, legacies and other acquisitions mortis causa, except as otherwise provided herein;

(d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;

(e) Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;

(f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;

(g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;

(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

(i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services except as otherwise provided herein;

(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;

(k) Taxes on premiums paid by way of reinsurance or retrocession;

(l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;

(m) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;

(n) Taxes, fees, or charges, on Countryside and Barangay Business Enterprises and cooperatives duly registered under R.A. No. 6810 and Republic Act Numbered Sixty-Nine Hundred Thirty-Eight (R.A. No. 6938) otherwise known as the "Cooperative Code of the Philippines" respectively; and

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units."

In accordance with the foregoing provisions, respondent City passed Ordinance No. 7794 or the Manila Revenue Code, which was later amended by Ordinance No. 7807.

Pertinent to this case is Section 29 of the Manila Revenue Code which reads as follows:

"Sec. 29. Tax on All Other Business — All other businesses not specifically taxable in the preceding sections of this Ordinance shall pay a tax of ONE PERCENT (1%) of their gross sales or receipts for the preceding calendar year."

Presently, the same imposition is reflected in Section 116 of Manila City Ordinance No. 8331 otherwise known as 2013 Omnibus Revenue Code of the City of Manila, to wit:

"SEC. 116. Tax on All Other Businesses. — All other business not specifically taxable in the preceding sections of this Ordinance shall be imposed a tax of One and one-tenth percent (1.1%) of their gross sales or receipts for the preceding calendar year."

In relation to the above discussion, Section 143(h) of the LGC of 1991, as implemented by Article 232(h) of Administrative Order (AO) No. 270,[36] provides that any business which is not specifically

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[36] Article 232. *Tax on Business.* — The municipality (city) may impose taxes on the following businesses:

xxx xxx xxx

(h) On any business, not otherwise specified in the preceding paragraphs which the *sanggunian* concerned may deem proper to tax provided that on any business subject to excise tax, VAT, or percentage tax under the NIRC, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year and provided further, that in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline, and other petroleum products shall not be subject to any local tax imposed in this mentioned in the enumeration shall be subject to local business tax (LBT). The said provision in the LGC of 1991 was converted by respondent City into a local tax ordinance as provided in Section 29 of the Manila Revenue Code, imposing a 1% LBT on other businesses not specifically mentioned in the MRC.

In this regard, in *The Collector of Internal Revenue v. The Club Filipino, Inc. de Cebu*,[37] the Supreme Court provided that the term *"business"* is restricted to activities or affairs where profit is the purpose or livelihood is the motive, and when used without qualification, it should be construed in its plain and ordinary meaning, restricted to activities for profit or livelihood. As a corollary, the term *"business"* is defined by Section 131(d) of the LGC of 1991 as a "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit."

Moreover, Section 3 of B.P. 68 also known as *"The Corporation Code of the Philippines"*, defines stock corporation as "corporations which have capital stock divided into share and are authorized to distribute to the holders of such shares dividends or allotment of the surplus profit on the basis of the shares held."

Applying the above discussion in the instant case, records show that petitioner is a **stock and proprietary educational institution** as provided in its Articles of Incorporation.[38] With regard to the subject tuition fees as petitioner's source of income, the same is not included in the prohibited subjects of an LBT. Likewise, it is not included in the common limitations as provided under Section 133 of the LGC. Thus, the same squarely falls under Section 143(h) of the LGC of 1991, *i.e.*, any business which is not specifically mentioned in the enumeration shall be subject to LBT.

Considering the foregoing, respondent may impose LBT on the subject tuition and educational fees. This conclusion is further supported by the fact that no exemption exists in favor of petitioner, as will be discussed below.

There is no tax exemption that exists in favor of petitioner

Article. The *sanggunian* concerned may prescribe a schedule of tax rates but in no case to exceed the rates prescribed in this Article.
[37] G.R. No. L-12719, May 31, 1962.
[38] Annex "K" of Complaint, RTC Records, pp. 63-66.

Under the 1987 Constitution, educational institutions, in general, are granted only tax exemptions as provided under Section 28(3), Article VI and Section 4(3), Article XIV of the 1987 Constitution, *to wit*:

"ART. VI – THE LEGISLATIVE DEPARTMENT

xxx xxx xxx

Sec. 28. xxx

(3) Charitable institutions, churches and parsonages or convents appertained thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

...

ART. XIV – EDUCATION, SCIENCE AND TECHNOLOGY, ARTS, CULTURE, AND SPORTS EDUCATION

xxx xxx xxx

Sec. 4. xxx

(3) **All revenues and assets of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties.** xxx

Proprietary educational institutions, involving those cooperatively owned, may likewise be entitled to such exemptions subject to the limitations provided by law including restrictions on dividends and provisions for reinvestment."*(Emphasis supplied)*

The foregoing provisions expressly grant two (2) exemptions – *first,* exemption from property taxes of any educational institution of all its properties that are actually, directly, and exclusively used for educational purposes;[39] and *second,* exemption from all other taxes (aside from property taxes) and duties of non-profit and non-stock educational institutions.[40] Proprietary educational institution, such as petitioner, may be granted exemptions as may be **provided by law**. This is in recognition of the fact that there are educational institutions which are operated for profit or for business purposes.

[39] *Lladoc v. Commissioner of Internal Revenue, et al.*, G.R. No. L-19201, June 16, 1965, Supreme Court *En Banc*.

[40] *Commissioner of Internal Revenue v. Court of Appeals, et al.*, G.R. No. 124043, October 14, 1998.

During the deliberations of the 1986 Constitutional Commission, Commissioner Serafin V.C. Guingona further clarified the above-mentioned exemptions, thus:[41]

> "MR. NOLLEDO: My last set of questions, Madam President, is with respect to page 4, lines 28 to 32. I direct my questions specifically to Commissioner Guingona who is a lawyer. Under the Article on the Legislative, all lands, buildings and improvements, et cetera, directly used by educational institutions shall be exempt from taxes, and the exemption, as already ruled by the Supreme Court, shall refer **only to realty tax**. There is **no qualification on whether the institution is stock or nonstock**. Am I right, Madam President?
>
> MR. GUINGONA: **Yes**, the Commissioner is right.
>
> MR. NOLLEDO: In the committee report, it is stated that nonstock, nonprofit educational institutions shall be exempt from taxes and duties. **Am I right if I say that the 'taxes and duties' here are <u>not limited only to</u> <u>realty taxes</u>?**
>
> MR. GUINGONA: **Yes**, the Commissioner is right.
>
> MR. NOLLEDO: It is also stated in the report that **proprietary educational institutions shall likewise be entitled to these exemptions provided they limit stockholders' dividends as may be <u>provided by law</u>**. Therefore, the exemption of proprietary educational institutions **shall be dependent upon the existence of law**. Am I right, Madam President?
>
> MR. GUINGONA: **Yes**, the Commissioner is right.
>
> MR. NOLLEDO: And that the exemption that may be granted to proprietary educational institutions shall not also be limited only to realty taxes?
>
> MR. GUINGONA: Yes, subject to the qualification of limitation of stockholders' dividends.
>
> MR. NOLLEDO: And that these provisions will not alter the first statement that all lands, buildings, et cetera directly used for educational purposes shall be exempt from realty taxes.
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> MR. GUINGONA: Yes, Madam President.
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> MR. NOLLEDO: Thank you very much.
>
> MR. GUINGONA: Thank you, Madam President."*(Emphasis and underscoring supplied)* ϒc

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[41] Record of the Constitutional Commission, Volume IV, pp. 35-36.

Moreover, for a better view of the rationale behind the above exemptions, reference is made to the following commentaries and comments of Fr. Joaquin Bernas:[42]

> "To come under the exemption, **the educational institution must be 'non- stock non-profit'**. This is a safeguard against abuse. The two go together and there is no comma separating them. Commissioner Suarez explained this thus:
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> Mr. SUAREZ: **The moment we organize a stock corporation, then we as stockholders will surely have interest in the assets and are now entitled to dividends**. In other words, although it may be essentially non-profit in character, the fact remains that when we put up a **stock corporation, we are thinking in terms of stockholders who have interest in the corporation in the event of dissolution or liquidation**.
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> xxx xxx xxx
>
> Fr. BERNAS: **The word 'non-stock' is placed mainly as a safeguard because the moment we form a stock corporation the implication is that it is for profit**. So just to make sure that there will be no getting around the non-profit idea, **we require that the corporation be also non-stock**. That is already a banner saying that this is non-profit. **The word 'non-profit' means that no income accrues to the benefit of any member of the corporation**." *(Emphasis and underscoring supplied)*

Thus, stock or proprietary educational institutions, like petitioner, may be exempt from all taxes, save for real property taxes and duties, provided there is a law granting the same.

Taxation is the rule and exemption is the exception.[43] The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[44]

All said, this Court finds no reason to depart from the factual findings and the ruling of the RTC that petitioner failed to prove and

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[42] *The 1987 Constitution of the Philippines: A Commentary*, 1996 Edition, pp. 1106-1107.
[43] *Cyanamid Philippines, Inc. v. Court of Appeals*, G.R. No. 108067, January 20, 2000, citing *Commissioner of Internal Revenue v. Mitsubishi Metal Corporation, et al.*, G.R. Nos. L-54908 and G.R. No. 80041, January 22, 1990.
[44] *Commissioner of Internal Revenue v. P. J. Kiener Co., Ltd., et al.*, G.R. No. L-24754, July 18, 1975, citing *Reagan v. Commissioner of Internal Revenue*, G.R. No. L-26379, December 27, 1969.

present the basis of its exemption from LBT under Section 143(h) of the LGC of 1991 and Section 29 of the Manila Revenue Code.

The notice of collection complies with the requirements of the law

Petitioner claims that the Notice of Collection is invalid because there was no Notice of Assessment issued, in violation of its right to due process. Petitioner also contends that the Notice of Collection cannot be deemed as the Notice of Assessment contemplated under Section 195 of the LGC of 1991. Likewise, it was not given the opportunity to contest the findings of respondent City Treasurer within sixty (60) days from the receipt thereof as provided in the same provision of LGC of 1991.

On the other hand, respondents claim that the petitioner's right to due process was not violated when respondent City Treasurer issued the Notice of Collection dated June 18, 2015,[45] because its tenor reveals that it was in reality a notice of assessment. Respondents also maintain that the heading "Notice of Collection" is not the controlling factor but the contents of the letter.

The court *a quo*, in resolving the same, upheld respondents' position, to wit: [46]

> "First of all, this Court disagrees with the contention of the plaintiff [petitioner] that the questioned Notice of Collection suffers from the procedural infirmities as the same was issued without a preceding notice of assessment. Plaintiff [petitioner] also argued that the Notice of Collection failed to mention the factual and legal bases for the deficiency tax assessment, thus violating its right to due process.
>
> The Notice of Collection dated 18 June 2015 with attached computation of deficiency tax issued by the defendants [respondents] is the same notice of assessment contemplated under the above-quoted Section 195 of the LGC. It bears to stress that prior to the issuance of said Notice of Collection, a Letter of Authority No. 2013-CTO-0005 was initially issued by defendants [respondents] to plaintiff [petitioner] wherein the latter asked for clarification and conference with a certain Mr. dela Cruz and thereafter requested for an extension to submit the necessary and pertinent documents

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[45] *Supra* at Notes 13 and 14; See also Division Docket, pp. 154-157.
[46] Division Docket, pp. 102-103.

required under the said Letter of Authority. The said request for extension was granted by the defendants [respondents] in the Letter dated 16 August 2013. Defendant City Treasurer likewise required the plaintiff [petitioner] for the breakdown (Schedule of Sales/Income) of revenues which the plaintiff [petitioner] also complied. Then, from the documents and breakdown of revenues submitted by the plaintiff [petitioner], a Notice of Collection was issued by defendant [respondent] City Treasurer informing the plaintiff [petitioner] of its tax deficiencies in the amount of Php193,696,446.20. Thereafter, the plaintiff [petitioner] asked and was allowed to examine and study the Notice of Collection that led to the filing of a protest against said Notice of Collection which was partially granted by the defendants [respondents] in its letter dated 12 August 2015.

Considering the foregoing exchange of correspondence and documents between the parties, the plaintiff [petitioner] was fully informed in writing of the factual and legal bases of the deficiency tax assessment, as in fact it was able to file an effective protest against the Notice of Collection, which was granted albeit partial. Thus, plaintiff's [petitioner's] right to due process was not violated."

The Court agrees with the court *a quo.*

Section 195 of the LGC of 1991 provides:

"**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." *(Emphasis supplied)*

In *Yamane v. BA Lepanto Condominium Corporation* (*Yamane*),[47] the Supreme Court held that:

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

> "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 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."*(Emphasis supplied)*

Based on the foregoing provision, what is imperative is that the notice of assessment states the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests, and penalties.

The pertinent portion of the Notice of Collection dated June 18, 2015[48] reads as follows:

> "We have examined and reviewed the pertinent business records submitted to this Office pursuant to Letter of Authority No. 2013-0005 dated August 2, 2013. This have resulted to a tax assessment in the total amount of One Hundred Ninety Three Million Six Hundred Ninety Six Thousand Four Hundred Forty Six Pesos and Twenty Centavos (Php 193,696,446.20 **computation of which is hereto attached**), representing your Company's tax deficiency for the taxable years 2009 to 2013.
>
> **In view hereof, DEMAND is hereby given you and to your Company to pay/settle the above amount within seven (7) days upon receipt hereof to avoid further accumulation of interests.**"[49]

A careful scrutiny of the Notice of Collection and its attachments, and the exchange of correspondence between petitioner and respondent City Treasurer, reveals that the subject notice, sufficiently comply with the afore-quoted provision of the LGC of 1991, as interpreted in *Yamane*.

First, the attachments to the Notice of Collection sufficiently presented the nature of the tax being assessed (tax deficiency on the

[48] *Supra* at note 13.
[49] Emphasis supplied.

business activities of petitioner as an "Educational Institution") and the amount of deficiency business taxes, surcharges, interests and penalties, as required by the Section 195 of the LGC of 1991.[50]

Relevant thereto is the case of *Samar-I Electric Cooperative, Inc. v. Commissioner of Internal Revenue*,[51] where the Supreme Court allowed substantial compliance vis-à-vis the requirements of Final Assessment Notice (FAN) under Section 228 of the NIRC of 1997, as amended. In the said case, petitioner therein asserted that the FAN was silent as to the nature and basis of the assessments. Thus, the same must be declared void. In ruling against petitioner, the Supreme Court said:

> "Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner *in writing* of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in *Enron*. Petitioner's right to due process was thus not violated."

As explained earlier, petitioner was informed of the nature of the tax being assessed. Thus, consistent with the *Samar-I* case, there was substantial compliance on respondent's part.

Second, while the caption of the subject notice is "Notice of Collection," petitioner nonetheless treated the same as an assessment notice in its reply to respondent City Treasurer. It pertinently reads:[52]

> "This has reference to your letter dated June 18, 2015, receipt of which was made in the afternoon of June 19, 2015, regarding the alleged company's tax deficiency for taxable years 2009 to 2013 amounting to P193,696,446.20.

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[50] *Supra* at note 14; Division Docket, p. 157.
[51] G.R. No. 193100, December 10, 2014.
[52] RTC Records, p. 45.

> **In this regard, may we request your good office to give us thirty (30) days to study the tax assessment.**" *(Emphasis supplied)*

Lastly, the subject notice was signed and issued by the OIC–City Treasurer, who is duly authorized to issue assessment notices under Section 195 of the LGC of 1991.

The Court also observes that the subject Notice of Collection provided for a shorter period of time for petitioner to act on the same, *i.e.*, seven (7) days upon receipt, as compared to what is provided under Section 195 of the LGC of 1991, *i.e.*, sixty (60) days. However, petitioner itself requested for a shorter period of thirty (30) days, as stated in its letter dated June 25, 2015. Ultimately, petitioner was given thirty-four (34) days to file its protest.

In other words, by requesting for a shorter period and for failing to assert its right to full sixty (60)-day period under the law, petitioner effectively waived its right. Under Article 6 of the Civil Code, "[R]ights may be waived unless the waiver is contrary to law, public order, public policy, morals or good customs".

In *F.F. Cruz & Co., Inc. v. HR Construction Corporation,*[53] citing *People of the Philippines v. Donato,*[54] the Supreme Court explained the doctrine of waiver in this wise:

> "Waiver is defined as 'a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it.'
>
> As to what rights and privileges may be waived, the authority is settled:
>
>> x x x **the doctrine of waiver extends to rights and privileges of any character, and, since the word 'waiver' covers every conceivable right, it is the general rule that a person may waive any matter which affects his property,**

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[53] G.R. No. 187521, March 14, 2012.
[54] G.R. No. 79269, June 5, 1991.

> **and any alienable right or privilege of which he is the owner or which belongs to him or to which he is legally entitled, whether secured by contract, conferred with statute**, or *guaranteed by constitution*, provided such rights and privileges rest in the individual, are intended for his sole benefit, do not infringe on the rights of others, and further provided the waiver of the right or privilege is not forbidden by law, and does not contravene public policy; **and the principle is recognized that everyone has a right to waive, and agree to waive, the advantage of a law or rule** made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right, and without detriment to the community at large. xxx"

Here, petitioner voluntarily waived its known right to the sixty (60)-day period provided under law by requesting only for an additional period of thirty (30) days to study the assessment and by submitting its administrative protest within the extended period.

Considering the foregoing, the Court finds no compelling reason to reverse the assailed Decision.

Respondents' right to assess petitioner for the years 2009 and 2010 has prescribed

Petitioner argues that respondent City Treasurer issued the assessment on June 18, 2015 and was received by petitioner on June 19, 2015, which was beyond the five (5)-year assessment period of local taxes for the years 2009 and 2010.

Respondents counter that the assessment of business taxes for the years 2009 and 2010 has not prescribed. They added that while the right to collect taxes terminates after five (5) years from the date they become due; the law, however, further provides that in case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of fraud or intent to evade payment.

The assailed Decision ruled against petitioner in this wise:[55]

"In the present case, the defendants found that plaintiff did not declare its true and correct gross income or receipts for the years 2008 to 2012. As a consequence thereof, a Letter of Authority for possible tax deficiency was issued against it. Based on the 2012 and 2011 revised computation of the tax deficiency due the plaintiff [petitioner], it shows that the latter made a substantial amount of underdeclared income, as it paid only Php1,320.00 for 2012 and 2011. Thus, the prescriptive period of ten (10) years from the discovery of such underdeclared amount is applicable as provided for under Section 194 of the LGC."

The Court disagrees.

Section 194 of the LGC of 1991 pertinently provides:

"**Sec. 194**. *Periods of Assessment and Collection.* — (a) local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period.

xxx xxx xxx

(b) In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.

(c) Local taxes, fees, or charges may be collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period: xxx"

Thus, the period of local tax assessments is five (5) years from the due date unless there be **fraud** or **intent to evade the payment of taxes**. In which case, the period to assess is ten (10) years from discovery thereof. Consequently, the collection period is within five (5) years from the date of assessment.

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[55] Division Docket, pp. 106.

Business taxes accrue on the first (1^{st}) day of January of each year and are payable within the first twenty (20) days of January or of each subsequent quarter under Articles 254 and 255 of AO No. 270 as follows:

> "Art. 254. *Accrual of Tax.* — Unless otherwise provided herein, **local taxes, fees, and charges shall accrue on the first (1^{st}) day of January of each year** as regards tax subjects then liable therefor, but an entirely new tax, fee or charge, or charges in the rates of existing taxes, fees, or charges, shall accrue on the first day of the quarter next following the effectivity of the ordinance imposing such new levies or rates."
>
> "Article 255. *Time of Payment.* — Unless otherwise specifically provided in this Rule, all local taxes, fees, and charges due and accruing to the LGUs shall be **paid within the first twenty (20) days of January or of each subsequent quarter, as the case may be**. The *sanggunian* concerned may, for a justifiable reason or cause, extend the time for payment of such taxes, fees, or charges without surcharges or penalties, but only for a period not exceeding six (6) months."*(Emphasis supplied)*

Further, the same is provided under Sections 39 and 40 of the Manila Revenue Code *to wit:*

> "Section 39. *Accrual of Tax* — **Unless otherwise provided in this Ordinance, 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."*(Emphasis supplied)*
>
> "Section 40. *Time of Payment; Discount for Full Payment* —
>
> A) Unless otherwise provided in this Ordinance, all local taxes, fees, and charges **shall be paid within the first twenty (20) days of January or each of the subsequent quarter, as the case may be.** The sanggunian may, for a justifiable reason or cause, extend the time for payment of such taxes, fees, or charges without surcharges or penalties, but only for a period not exceeding six (6) months.
>
> xxx xxx xxx" *(Emphasis supplied)*

Here, respondents failed to show the existence of fraud or intention to evade payment against petitioner, to justify the application of the ten (10)-year period of assessment. *Je*

In this regard, the case of *Commissioner of Internal Revenue v. Asalus Corporation*[56] is inapplicable. In the said case, the **falsity** of the return was the ground used to extend the prescriptive period to assess national taxes under the Tax Code of 1997, as amended, thus:

> "Under Section 248 (B) of the NIRC, there is a prima facie evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% what is declared in the returns constitute substantial underdeclaration. A prima facie evidence is one which that will establish a fact or sustain a judgment unless contradictory evidence is produced.
>
> In other words, when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption against it.
>
> Applied in this case, the audit investigation revealed that there were undeclared VATable sales more than 30% of that declared in Asalus' VAT returns. Moreover, Asalus' lone witness testified that not all membership fees, particularly those pertaining to medical practitioners and hospitals, were reported in Asalus' VAT returns. The testimony of its witness, in trying to justify why not all of its sales were included in the gross receipts reflected in the VAT returns, supported the presumption that the return filed was indeed false precisely because not all the sales of Asalus were included in the VAT returns.
>
> Hence, the CIR need not present further evidence as the **presumption of falsity of the returns was not overcome**. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC. To require the CIR to present additional evidence in spite of the presumption provided in Section 248 (B) of the NIRC would render the said provision inutile." *(Emphasis supplied)*

In *Aznar v. Court of Tax Appeals*,[57] the Supreme Court distinguished a false return from a fraudulent return in this wise:

> "xxx We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1)

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[56] G.R. No. 221590, February 22, 2017.
[57] G.R. No. L-20569, August 23, 1974.

> false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission.' That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due."

Fraud is the deliberate or intentional evasion of the normal fulfillment of an obligation. Fraud is never presumed. It must be alleged and proven and established by clear and convincing evidence.[58]

Thus, falsity in tax returns is different from fraudulent returns, and only the latter is a ground for applying the ten (10)-year prescriptive period in case of local tax assessments as provided under Section 194 of the LGC of 1991.

Here, Section 194(b) of the LGC of 1991 does not include falsity as a ground to apply the ten (10)-year prescriptive period, which is otherwise applicable under the NIRC of 1997, as amended. On the other hand, respondents failed to allege with particularity, much less establish by clear and convincing evidence, any circumstance of fraud or intent to evade payment to extend the prescriptive period.

There being no fraud or intention to evade payment, and considering that the assessment of business taxes issued on 18 June 2015 was disputed on 22 July 2015, only the assessment for the years 2011, 2012, and 2013 would remain, as shown below:

Period Covered	**Business Tax Due Date**	**Last Day to Assess**
2009	January 20, 2009	January 20, 2014
2010	January 20, 2010	January 20, 2015
2011	January 20, 2011	January 20, 2016
2012	January 20, 2012	January 20, 2017
2013	January 20, 2013	January 20, 2018

[58] *Yutivo Sons Hardware Company v. Court of Tax Appeals and Collector of Internal Revenue*, G.R. No. L-13203, January 28, 1961, Supreme Court *En Banc*.

Petitioner is not entitled to the refund of taxes paid pertaining to the prescribed periods of 2009 and 2010

Petitioner paid the deficiency LBT in the total amount of ₱189,945,947.86 on March 4, 2019 as evidenced by the Official Receipt No. MLA8249459.[59]

Petitioner claims that this Court may already order the refund of the incorrect payment *sans* filing a claim for refund with the City Treasurer, as required under Section 196 of the LGC of 1991, due to the pendency of the case at bar.

Section 196 of the LGC of 1991 provides:

> **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."*(Emphasis supplied)*

In *Metro Manila Shopping Mecca Corp. et al. v. Ms. Liberty Toledo, in her capacity as the City Treasurer of Manila and the City of Manila,*[60] the Supreme Court held that:

> "A perusal of Section 196 of the LGC reveals that in order to be entitled to a refund/credit of local taxes, the following procedural requirements must concur: first, the taxpayer concerned must file a written claim for refund/credit with the local treasurer; and second, 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.
>
> xxx xxx xxx
>
> Indeed, it is hornbook principle that a claim for a tax refund/credit is in the nature of a claim for an exemption and the law is construed in *strictissimi juris* against the one claiming it and in favor of the taxing authority. Consequently, as petitioners have failed

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[59] Annex "F" of Petition for Review, Division Docket, p. 114.
[60] G.R. No. 190818, June 5, 2013.

> to prove that they have complied with the procedural requisites stated under Section 196 of the LGC, their claim for local tax refund/credit must be denied."

In the instant case, records show that petitioner failed to file its written claim for refund. Thus, consistent with the ruling of the Supreme Court in the above-quoted *Mecca Corp.* case, petitioner's claim must likewise fail for non-compliance with the procedural requirement under Section 196 of the LGC of 1991. In other words, while the above-discussed assessments had already prescribed, it is still incumbent for petitioner to comply with the requisites provided by law.

Considering the foregoing, petitioner failed to raise meritorious arguments to justify the reversal of the assailed Decision and Resolution. Hence, the denial of the instant Petition for Review is in order.

WHEREFORE, the instant Petition for Review filed by Far Eastern University is **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice
Special Member

(*Inhibited*)
JEAN MARIE BACORRO-VILLENA
Associate Justice

(*with Concurring and Dissenting Opinion*)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Special Member

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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

FAR EASTERN UNIVERSITY, *Petitioner,*	**CTA AC NO. 223**
	Members:
-*versus*-	**CASTAÑEDA, JR.,** *Chairperson,* **MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
CITY OF MANILA, CITY MAYOR AND CITY TREASURER, *Respondent.*	Promulgated: OCT 1 4 2020

x -- x

1:50 p.m.

CONCURRING AND DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the Decision penned by my esteemed colleague, honorable Associate Justice *Juanito C. Castaneda, Jr.,* when it provided: a) that respondent is authorized to impose local business taxes on tuition and educational fees collected by petitioner; b) that no LBT exemption exists in favor of petitioner with respect to the tuition and educational fees it collects from its students; c) that the notice of collection issued by respondent complies with the requirements of the law, and as such, it qualifies as a notice of assessment; and d) that respondent's right to assess petitioner for taxable years ("TY") 2009 and 2010 has already prescribed.

However, I disagree with my colleague's position that petitioner is not entitled to the refund of taxes paid pertaining to the prescribed periods of TY 2009 and 2010 considering that ***Section 196 of the Local Government Code of 1991 ("LGC")*** requires that a written claim for refund or credit should first be filed before the local treasurer before a case or proceeding for the recovery of any tax, fee, or charge erroneously or illegally collected can be maintained in any court.

It is my position that this Court may order the refund of the prescribed portion of the assessment (*i.e.*, TY 2009 and 2010) due to the following reasons:

Section 196 of the LGC is not applicable to the present case.

Section 196 of the LGC provides, as follows:

> 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.
>
> (Emphasis and underscoring, Ours)

The above cited provision applies to claims for refund or credit of erroneously or illegally collected taxes, fees or charges paid prior to the institution of a judicial claim. In such cases, a prior written claim should be filed before the local treasurer before the claim for refund or credit can be elevated before the trial courts. Otherwise, the said claim for refund or credit cannot be maintained before the courts.

However, it does not apply to cases such as the present Petition for Review ("Petition") where the taxpayer initially protested a local tax assessment before the local treasurer, subsequently elevated the denial thereof before the courts, and then paid the disputed assessment under protest while the case was pending before the courts (*i.e.*, in the present Petition, payment was made while case was pending before Regional Trial Court-Manila ("RTC-Manila")).

In such instances, the need for a prior written claim before the local treasurer is unnecessary as the courts already obtained jurisdiction over the present matter (*i.e.*, disputed local tax assessment) before payment of the erroneously or illegally collected taxes, fees or charges was made. Jurisdiction in this case was acquired through ***Section 195 of the LGC***, which provides:

> 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.**

(Emphasis and underscoring, Ours)

Elementary is the rule that "[j]urisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated."[1] And the best way to terminate these types of cases is to afford the parties a full disposition of the rights they are found to be entitled to. As such, the courts, such as RTC-Manila and the Court of Tax Appeals ("CTA") in the case at bar, have nothing left to do but to exhaustively dispose of the matter before it which includes ruling that a refund is due to a taxpayer who paid a disputed tax assessment that was subsequently found to be erroneous or illegally made.

To require the taxpayer who obtained a favorable ruling (to the effect that the local tax assessment which he paid is void) to comply first with ***Section 196 of the LGC*** before the amount which he erroneously or illegally paid to the local government unit ("LGU") can be recovered is a heedless exercise to the detriment of the taxpayer.

In this case, the law promotes unjust enrichment in the LGU's favor as the latter is given the free use of the amount due the taxpayer while the claim for refund or credit of the same is pending before the local treasurer or the courts although the invalidity of the local tax assessment paid by the taxpayer has already been ruled upon.

The Mecca Case is not in all fours with the present Petition.

In support of his position that petitioner is not entitled to a refund of the taxes paid pertaining to the prescribed periods of TY 2009 and 2010, the ponente cited the case of ***Metro Manila Shopping Mecca Corp., et al. v. Ms.***

[1] Deltaventures Resources, Inc. v. Cabato, et al., G.R. No. 118216, 9 March 2000.

Liberty Toledo, in her capacity as the City Treasurer of Manila, and the City of Manila ("Mecca Case").[2] In the ***Mecca Case,*** the Supreme Court ruled as follows:

> "A perusal of **Section 196 of the LGC** reveals that in order to be entitled to a refund/credit of local taxes, the following procedural requirements must concur: ***first***, the taxpayer concerned must file a written claim for refund/credit with the local treasurer; and ***second***, 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.
>
> xxx xxx xxx
>
> Indeed, it is hornbook principle that a claim for a tax refund/credit is in the nature of a claim for an exemption and the law is construed in *strictissimi juris* against the one claiming it and in favor of the taxing authority. Consequently, as petitioners have failed to prove that they have complied with the procedural requisites stated under Section 196 of the LGC, their claim for local tax refund/credit must be denied."

A perusal of the ***Mecca Case,*** however, shows that it is not in all fours with the present Petition. In the ***Mecca Case***, payment of the disputed local tax assessment occurred before a judicial claim before the Courts was made. Consequently, in the ***Mecca Case,*** the courts never acquired jurisdiction over the claim for refund due to failure by the taxpayer therein to comply with ***Section 196 of the LGC***.

On the other hand, in the present Petition, payment under protest occurred after the courts already obtained jurisdiction over the disputed local tax assessment (via ***Section 195 of the LGC***).

As the courts in the present Petition already obtained jurisdiction over the issue on the disputed local tax assessment, it can grant a refund in favor of the taxpayer when it finds that the disputed local tax assessment (which was paid under protest) is void or has no basis in fact or law.

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[2] G.R. No. 190818, 5 June 2013.

Case law provides that a prior administrative claim is unnecessary before a court may grant refund after nullifying a disputed tax assessment.

A perusal of ***Section 196 of the LGC*** would show that it is similar to ***Section 229 of the Tax Code***[3] in the sense that the latter provision also mandates that 1) a prior administrative claim for refund or credit must be made before a judicial claim for refund can be filed, and 2) both administrative claim and judicial claim must be made within two (2) years from the payment of taxes.

Due to the similarity of both provisions, the ruling by the Supreme Court in ***Dr. Felisa L. Vda. De San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin v. Commissioner of Internal Revenue***[4] (which pertains to erroneously or illegally paid national taxes) is equally applicable to refunds of erroneously or illegally paid local taxes.

In said case, citing ***Roman Catholic Archbishop of Cebu v. Collector of Internal Revenue***,[5] the Supreme Court allowed the refund of overpaid surcharge, interests and compromise penalty despite the fact that no administrative claim for refund was filed, as required under then ***Section 306*** (now, ***Section 229) of the Tax Code*** before filing an appeal before the CTA. The High Court found no cogent reason to require the taxpayer to undergo the procedure for claiming refunds as it would be a useless formality that can serve the interest of neither the government nor the taxpayer, *viz:*

> "The case has a striking resemblance to the controversy in Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue.

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

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[4] G.R. No. 138485, 10 September 2001.

[5] G.R. No. L-16683, 31 January 1962.

The petitioner in that case paid under protest the sum of P5,201.52 by way of income tax, surcharge and interest and, forthwith, filed a petition for review before the Court of Tax Appeals. Then respondent Collector (now Commissioner) of Internal Revenue set up several defenses, one of which was that petitioner had failed to first file a written claim for refund, pursuant to Section 306 of the Tax Code, of the amounts paid. Convinced that the lack of a written claim for refund was fatal to petitioner's recourse to it, the Court of Tax Appeals dismissed the petition for lack of jurisdiction. On appeal to this Court, the tax court's ruling was reversed; the Court held:

> 'We agree with petitioner that Section 7 of Republic Act No.1125, creating the Court of Tax Appeals, in providing for appeals from –
>
> '(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue -
>
> allows an appeal from a decision of the Collector in cases involving 'disputed assessments' as distinguished from cases involving 'refunds of internal revenue taxes, fees or other charges, x x'; that the present action involves a disputed assessment'; because from the time petitioner received assessments Nos. 17-EC-00301-55 and 17-AC-600107-56 disallowing certain deductions claimed by him in his income tax returns for the years 1955 and 1956, he already protested and refused to pay the same, questioning the correctness and legality of such assessments; and that the petitioner paid the disputed assessments under protest before filing his petition for review with the Court a quo, only to forestall the sale of his properties that had been placed under distraint by the respondent Collector since December 4, 1957. **To hold that the taxpayer has now lost the right to appeal from the ruling on, the disputed assessment but must prosecute his appeal under section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment. The law, should not be interpreted as to result in absurdities.'**

The Court sees no cogent reason to abandon the above dictum and to require a useless formality that can serve the interest of neither the government nor the taxpayer. The tax court has aptly acted in taking cognizance of the taxpayer's appeal to it."

Substantial justice, equity and fair play should always be placed in a higher pedestal than technicalities and legalisms. The government should not be allowed to take advantage of its citizens by keeping money free of charge when it has no right to do so. It cannot enrich itself at the expense of law-abiding citizens or entities who will comply with the requirements of the law in order to forward the claim for refund.[6]

Premises considered, I therefore vote to grant petitioner, Far Eastern University, of the taxes paid pertaining to the prescribed periods of TY 2009 and 2010.

Respectfully submitted.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[6] Winebrenner & Inigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue, G.R. No. 206526, 28 January 2015.