CTA Form No. 8 (For DCC)

22-000306-0056

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA AC NO. 266

THE MUNICIPALITY OF VILLANUEVA, MISAMIS ORIENTAL, represented by its MUNICIPAL MAYOR and MUNICIPAL TREASURER,
Petitioner,

- versus -

NOTICE OF RESOLUTION

FDC MISAMIS POWER CORPORATION and PHIVIDEC INDUSTRIAL AUTHORITY,
Respondents.

To:

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ATTY. LEZL J. SUICO-GUSAY
PHIVIDEC Industrial Authority
Administration Building
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Tagoloan, Misamis Oriental 9001

PRESIDING JUDGE
Regional Trial Court - Branch 38
Cagayan de Oro Hall of Justice
Cagayan de Oro City

GREETINGS:

You are hereby notified by these presents that on **February 12, 2025,** Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 13, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

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THE MUNICIPALITY OF VILLANUEVA, MISAMIS ORIENTAL, represented by its MUNICIPAL MAYOR and MUNICIPAL TREASURER,
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-versus-

FDC MISAMIS POWER CORPORATION and PHIVIDEC INDUSTRIAL AUTHORITY,
Respondents.

CTA AC NO. 266

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

FEB 12 2025 9:40AM

x- -x

RESOLUTION

For resolution before the Court is respondent FDC Misamis Power Corporation's (**FDCMPC**) ***Motion for Partial Reconsideration (Re: Decision dated August 22, 2024)***, filed via registered mail on September 18, 2024, and via email on September 19, 2024, with petitioner's *Comment on Respondent FDCMPC's Partial Motion for Reconsideration,* filed via registered mail on October 16, 2024, and via email on October 17, 2024.

Respondent FDCMPC's *Motion for Partial Reconsideration* assails the *Decision* (assailed *Decision*) of the Court dated August 22, 2024, which partially granted petitioner's *Appeal by Way of Petition for Review*. The dispositive portion of the assailed *Decision* reads:

> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, the *Decision* of the Regional Trial Court Branch 38 of Cagayan de Oro City dated January 14, 2022, is **MODIFIED** as follows:

x---x

1. Respondent FDCMPC is **DECLARED** exempt from local taxes for a period of six (6) years from August 30, 2013, to August 29, 2019. Therefore, the Municipality of Villanueva, Province of Misamis Oriental, cannot require respondent FDCMPC to pay local business taxes amounting to Sixty Million Six Hundred Sixty-Eight Thousand Five Hundred Sixty-One and 24/100 Pesos (₱60,668,561.24) for calendar years 2017 and 2018; and,

2. Petitioner Municipality of Villanueva, Misamis Oriental is **ENJOINED** from proceeding with the collection of local business taxes against respondent FDCMPC for the period August 30, 2013 to August 29, 2019.

SO ORDERED.

Respondent FDCMPC reiterates its argument that this Court erred in acquiring jurisdiction over petitioner's *Petition for Review*. It contends that the *Petition* was filed out of time and argues that petitioner's counsel, a private law firm, lacked the requisite authority to represent a local government unit, citing possible misappropriation of public funds.

Respondent FDCMPC maintains that the Local Government Code (**LGC**) did not repeal the tax exemption provided under Presidential Decree (**PD**) No. 538.[1] It states that the repealing clause of the LGC, specifically Section 534, does not explicitly mention PD No. 538, and that a repeal by implication is frowned upon. Respondent states that the assailed *Decision* failed to demonstrate why PD No. 538 and the LGC are "irreconcilably repugnant" to each other. Respondent also observes that the assailed *Decision* mentions that the amendatory clause of the CREATE Law[2] merely amended Sections 4 and 6 of PD No. 538, and did not repeal it. Thus, respondent suggests that such is "concrete evidence that establishes that the legislature did not intend to repeal PD [No.] 538." Respondent further states that "had the Congress intended to repeal the tax incentives granted to [PHIVIDEC Industrial Authority (**PIA**)] locators under Sections 8 and 9 of

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1 CREATING AND ESTABLISHING THE PHIVIDEC INDUSTRIAL AUTHORITY AND MAKING IT A SUBSIDIARY AGENCY OF THE PHILIPPINE VETERANS INVESTMENT DEVELOPMENT CORPORATION DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, AND FOR OTHER PURPOSES.

2 AN ACT REFORMING THE CORPORATE INCOME TAX AND INCENTIVES SYSTEM, AMENDING FOR THE PURPOSE SECTIONS 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 AND 290 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND CREATING THEREIN NEW TITLE XIII, AND FOR OTHER, Republic Act No. 11534.

PD [No.] 538 by enacting the LGC, the Congress would not have gone to great lengths in transferring the powers of PIA to grant tax incentives to the Fiscal Incentives Review Board under the CREATE Law, considering that there is nothing more to transfer."

Petitioner counters that respondent's arguments on jurisdiction have already been considered by this Court and the Supreme Court. Petitioner argues that respondent's arguments anent its exemption have already been thoroughly deliberated upon and resolved by the Court in the assailed *Decision.*

We resolve.

As aptly pointed out by petitioner, the Court has already addressed the issue of the timeliness of the *Petition for Review,* particularly the issue of non-payment of the full docket fees, in a *Resolution* dated December 1, 2022, as cited in the assailed *Decision, viz.*:

> The grant of any extension for filing a Petition for Review under Rule 42 is **discretionary** and subject to the condition that the total amount of the docket and lawful fees are paid before the expiration of the reglementary period. It is likewise a well-settled rule that non-payment of docket fees is a ground to dismiss the appeal. The full payment of docket fees within the prescribed period is mandatory and necessary to perfect the appeal.
>
> The exception to the above rule was laid down by the Supreme Court in *Spouses Buenaflor vs. Court of Appeals,* to wit:
>
>> The established rule is that the payment in full of the docket fees within the prescribed period is mandatory. Nevertheless, this rule must be qualified, to wit: **<u>First, the failure to pay appellate court docket fee within the reglementary period allows only discretionary dismissal, not automatic dismissal, of the appeal. Second, such power should be used in the exercise of the Court's sound discretion "in accordance with the tenets of justice and fair play and with great deal of circumspection considering all attendant circumstances."</u>**
>>
>> Admittedly, this Court has allowed the filing of an appeal in some cases where a stringent

> application of the rules would have denied it, only when to do so would serve the demands of justice and in the exercise of the Court's equity jurisdiction. This is based on the rule of liberality in the interpretation of the Rules to achieve substantial justice. It may be recalled that the general rule is that the Rules of Court are rules of procedure and whenever called for they should be so construed as to give effect rather than defeat their essence.[3]

Further fortifying the above pronouncement is the ruling in *Gaw, Jr. vs. Commissioner of Internal Revenue*, citing *Camaso vs. TSM Shipping (Phils), Inc.*, where the Supreme Court ruled:

> Basic is the rule that the payment of docket and other legal fees is both mandatory and jurisdictional. The court acquires jurisdiction over the case only upon the payment of the prescribed fees.
>
> However, the mere failure to pay the docket fees at the time of the filing of the complaint, or in this case the Petition for Review Ad Cautelam, does not necessarily cause the dismissal of the case. As this Court held in *Camaso v. TSM Shipping (Phils.), Inc.*, while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, **its nonpayment at the time of filing of the initiatory pleading does not automatically cause its dismissal so long as the docket fees are paid within a reasonable period; and that the party had no intention to defraud the government**.

From the above pronouncements, we find that the instant case warrants the liberal application of the rules on docket fees. To this Court's mind, petitioner made earnest efforts to ascertain the amount of docket fees to be paid to the Court when it filed its *Motion for Extension*, and true enough, the amount of docket and other lawful fees may not be finalized if the petition for review is still wanting, as the amount of fees depends on the nature of the petition and the prayers contained therein.

Further, **we find that petitioner paid the docket fees when it filed its *Petition for Review* as a clear demonstration of its lack of intention to defraud the government**.

[3] Emphasis and underscoring supplied; citations omitted.

> It should be borne in mind that technical rules of procedure must sometimes give way to resolve the case on the merits and prevent a miscarriage of justice. Rules of procedures are intended to promote, not to defeat, substantial justice, and, therefore, they should not be applied in a very rigid and technical sense. [*Emphasis on the original, citations omitted*]

Similarly, the issue regarding the authority of petitioner's counsel was raised in respondent's *Petition for Certiorari (with Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)* filed before the Supreme Court. It is noted that the Supreme Court dismissed the petition in a *Resolution* dated November 13, 2023, although this is currently the subject of respondent FDCMPC's *Motion for Reconsideration* dated April 8, 2024.

Further and more importantly, petitioner's choice of counsel, the propriety of such choice, and respondent FDCMPC's allegation of misuse of public funds **do not involve tax issues** over which the Court has jurisdiction. As a court of special and limited jurisdiction, the Court refrains from ruling on these matters.

Now, in relation to the issue of respondent FDCMPC's exemption from local taxes, the Court maintains its ruling that respondent FDCMPC is exempt from local taxes for a period of six (6) years, from August 30, 2013, to August 29, 2019, due to its registration with the Board of Investments (**BOI**), and not because of PD No. 538.

To reiterate, Sections 8 and 9 of PD No. 538 provide:

> SECTION 8. Tax Treatment of Merchandise in the Areas. — **Raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description**, except those prohibited by law, brought in the Areas and utilized in the production, storing, packing and shipment of goods meant for foreign markets, <u>**shall not be subject to**</u> customs duties and internal revenue taxes, and laws and regulations relating thereto, nor to <u>**local tax ordinances**</u>, the provisions of law to the contrary notwithstanding.
>
> Determination of those commodities, or the portion thereof, to be accorded these privileges shall be vested in the Authority subject to the approval of the Secretary of Finance. For this purpose, the Secretary of Finance is hereby

empowered to rule on the provision of tax exemption of merchandise imported into the Areas by enterprises operating therein.

SECTION 9. Tax Exemption of Enterprises Operating in the Areas. — **Aside from the tax privileges accorded those of the enterprises operating in the Areas who are likewise registered with the <u>Board of Investments</u>, all industries or firms operating in the Areas shall be exempt from the payment of <u>local taxes</u>** to the barrio, municipality, city or province, as the case may be, where their respective Areas are located. However, as stipulated in Section 4 (h), a real property tax shall be collected by the Authority from each of the enterprises operating within the Areas, one fourth of which shall be turned over to the local governments concerned. [*Emphasis and underscoring supplied*]

In 1992, the enactment of RA No. 7160, or the Local Government Code of 1991, resulted in a ***blanket withdrawal of local tax exemptions***. Sections 8 and 9 of PD No. 538, which granted local tax exemptions, were effectively repealed by Section 193 of the LGC, which provides:

SECTION 193. Withdrawal of Tax Exemption Privileges. — Unless otherwise provided in this Code, **<u>tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical</u>**, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, **are hereby withdrawn upon the effectivity of this Code**. [*Emphasis and underscoring supplied.*]

Moreover, Section 534 of the LGC provides the repealing clause, to wit:

SECTION 534. Repealing Clause. — (a) Batas Pambansa Blg. 337, otherwise known as the Local Government Code, Executive Order No. 112 (1987), and Executive Order No. 319 (1988) are hereby repealed.

(b) Presidential Decree Nos. 684, 1191, 1508 and such other decrees, orders, instructions, memoranda and issuances related to or concerning the barangay are hereby repealed.

(c) The provisions of Sections 2, 3, and 4 of Republic Act No. 1939 regarding hospital fund; Section 3, a (3) and b (2) of Republic Act No. 5447 regarding the Special Education Fund; Presidential Decree No. 144 as amended by Presidential

Decree Nos. 559 and 1741; Presidential Decree No. 231 as amended; Presidential Decree No. 436 as amended by Presidential Decree No. 558; and Presidential Decree Nos. 381, 436, 464, 477, 526, 632, 752, and 1136 are hereby repealed and rendered of no force and effect.

(d) Presidential Decree No. 1594 is hereby repealed insofar as it governs locally-funded projects.

(e) The following provisions are hereby repealed or amended insofar as they are inconsistent with the provisions of this Code: Sections 2, 16 and 29 of Presidential Decree No. 704; Section 12 of Presidential Decree No. 87, as amended; Section 52, 53, 66, 67, 68, 69, 70, 71, 72, 73, and 74 of Presidential Decree No. 463, as amended; and Section 16 of Presidential Decree No. 972, as amended, and

(f) **All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly**. [*Emphasis and underscoring supplied.*]

The Court previously noted in the assailed *Decision* that "[t]he blanket withdrawal is in accordance with the constitutional mandate that each local government unit exercise its authority to generate its sources of revenue and levy taxes, fees, and charges, consistent with the basic policy of local autonomy."[4]

In the instant *Motion*, respondent FDCMPC states that the LGC's repealing clause, Section 534, does not explicitly mention PD No. 538, and that repeal by implication is frowned upon. Respondent states that the assailed *Decision* failed to provide why PD No. 538 and the LGC are "irreconcilably repugnant" to each other.

Respondent failed to recognize that the blanket withdrawal under Section 193 of the LGC is **patently irreconcilable** with the local tax exemptions under Sections 8 and 9 of PD No. 538. The proviso that Section 193 withdrew "*tax exemptions or incentives granted to, or presently **enjoyed by all persons**, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit*

[4] Article X, Section 5 of the 1987 Constitution; Section 129, LGC of 1991.

hospitals and educational institutions", in its plain language, indicates a withdrawal of the local tax exemption under PD No. 538, among many other laws. Section 193 of the LGC even enumerated those whose local tax exemptions are not affected by this blanket withdrawal, and it is clear that Congress did not include PIA-registered entities in the enumeration of entities that remain exempt from taxes. Simply stated, **the blanket withdrawal of tax exemptions under the LGC is irreconcilable and inconsistent with maintaining and upholding the tax exemption under PD 538.**

Respondent FDCMPC asserts its local tax exemption by invoking the amendatory provisions of the CREATE Law, which amended Sections 4 and 6 of PD No. 538 without repealing it. Respondent argues that this serves as "concrete evidence" of legislative intent not to repeal PD No. 538. Further, respondent contends that if Congress had intended to abolish the tax incentives granted to PIA locators under Sections 8 and 9 of PD No. 538 through the enactment of the LGC, it would not have transferred the PIA's authority to grant tax incentives to the Fiscal Incentives Review Board under the CREATE Law, as there would be "nothing more to transfer."

However, respondent FDCMPC's position fails to impress.

First, the assailed *Decision* did not state that PD No. 538 was entirely repealed or that the PIA has ceased to exist or otherwise become ineffectual. Rather, the Court only concluded that the local tax exemptions provided under specific provisions of the law, *i.e.*, Sections 8 and 9 of PD No. 538, were repealed by Section 193 of the LGC.

Second, respondent FDCMPC's reliance on the CREATE Law is misplaced. The CREATE Law, being an amendatory law to the National Internal Revenue Code (**NIRC**), primarily addresses national tax matters. While it amended Sections 4 and 6 of PD No. 538, which concern the powers of the PIA, it does not affect the taxability of PIA-registered entities in the context of local taxation.

The above distinctions are crucial and negate respondent FDCMPC's reliance on an imagined legislative intent to preserve its local tax exemptions.

To reiterate, with the repeal of Sections 8 and 9 of PD No. 538 by Section 193 of the LGC, the only remaining basis for respondent FDCMPC's local tax exemption is Section 133(g) of the LGC, which expressly prohibits local government units from imposing taxes on BOI-registered business enterprises certified as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively, <u>from the date of registration</u> to wit:

> SECTION 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: ...
>
> (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 <u>date of registration;</u> [*Emphasis and underscoring supplied.*]

Given the foregoing, the Court finds no cogent reason to reverse or modify its ruling in the assailed *Decision.*

WHEREFORE, in light of the foregoing, respondent FDCMPC's *Motion for Partial Reconsideration (Re: Decision dated August 22, 2024)* is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice