# REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
## QUEZON CITY

## *EN BANC*

**CHINA BANKING CORPORATION,**
Petitioner,

- versus -

**THE TREASURER OF THE CITY OF MANILA,**
Respondent.

**CTA EB NO. 525**
(CTA AC No. 50)

Present:

**ACOSTA, *P.J.*,**
**CASTAÑEDA, JR.,**
**BAUTISTA,**
**UY,**
**CASANOVA,**
**PALANCA-ENRIQUEZ,**
**FABON-VICTORINO,**
**MINDARO-GRULLA, and**
**COTANGCO-MANALASTAS, *JJ.***

**Promulgated:**
SEP 1 3 2010 1:00 p.m.

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# DECISION

**COTANGCO-MANALASTAS, *J.*:**

Before the Court *En Banc* is a Petition for Review filed by China Banking Corporation on August 26, 2009, assailing the Decision[1] promulgated on April 30, 2009 by the Former Second Division of the Court (hereinafter referred to as "Court in Division") in the case entitled "The Treasurer of the City of Manila vs. China Banking Corporation", CTA AC No. 50, that reversed

[1] Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez

and set aside the Decision of the Regional Trial Court (RTC) of Manila, Branch 47; and the Resolution dated August 6, 2009, denying the Motion for Reconsideration of the assailed Decision.

## Antecedent Facts

The antecedent facts, as narrated by the Court in Division in its Decision[2], are as follows:[3]

> "Petitioner Treasurer of the City of Manila, Liberty M. Toledo is the duly appointed treasurer of the City of Manila, empowered to perform the duties of said office including, among others, the collection of all taxes, fees and charges, and the power to decide, approve or grant refunds of erroneously or excessively paid local taxes.
>
> Respondent China Banking Corporation is a universal banking corporation organized and operating under Philippine laws, with principal office address at 8745 Paseo de Roxas St. corner Villar St., Makati City.
>
> On January 17, 2003, petitioner assessed respondent the sum of P1,922,918.10, including the amount of P1,123,522.25 for local taxes.
>
> On January 20, 2003, respondent, through Ms. Gloria T. Ong, its Assistant Vice-President of the Accounting Department, wrote the Office of the City Treasurer a letter of protest and paid the amount of P1,922,918.10.
>
> On April 22, 2003, respondent filed a Complaint (For: Refund of Sum of Money) before the RTC, praying for the refund of the additional business tax in the amount of P1,123,522.25 paid under protest.
>
> On June 19, 2003, petitioner filed her Answer with Motion to Dismiss. Petitioner sought the dismissal of the Complaint based on several grounds, namely: (1) failure of respondent to exhaust administrative remedies by filing a claim for refund under Section 196 of the Local Government Code; (2) violation

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[2] The Treasurer of the City of Manila vs. China Banking Corporation, CTA AC No. 50, April 30, 2009
[3] *Rollo*, pp. 24-29

of the rule against forum-shopping; and (3) lack of personality of Ms. Gloria Ong to file the Complaint.

In an Order dated November 30, 2004, the trial court denied the Motion to Dismiss for being unmeritorious.

On August 28, 2006, the Pre-trial was conducted and both parties agreed that the only issue to be resolved is whether respondent is entitled to a refund.

Thereafter, respondent presented its lone witness, Ms. Anna Liza Ong Camaligan, and formally offered its documentary evidence on November 24, 2006. During the hearing on January 22, 2007, counsel for petitioner manifested that he was dispensing with the presentation of witness, considering that the factual matters he will elicit from his witness can be found on the records of the case. The case was submitted for decision after the parties filed their respective Memorandum.

On July 5, 2007, the trial court rendered the two-page assailed Decision that reads:

> xxx xxx xxx
>
> 'WHEREFORE, premises considered, judgment is hereby rendered ordering the defendant[4] to refund to the plaintiff[5] the amount of P123,522.25, OR ALTERNATIVELY to issue tax credit to plaintiff for the said amount.
>
> SO ORDERED.'

Petitioner and respondent filed their respective Motion for Reconsideration on July 26, 2007 and July 31, 2007.

The trial court issued an Order on August 31, 2007 granting respondent's motion, which reads:

> 'Acting on the Motion for Reconsideration filed by the plaintiff China Banking Corporation on July 31, 2007 seeking reconsideration of the decision of this Court dated July 5, 2007 and finding it to be meritorious, the same is hereby GRANTED. The dispositive portion of the decision dated July 5, 2007

[4] Herein respondent City Treasurer of Manila
[5] Herein petitioner China Banking Corporation

is amended, modified and corrected to read as follows:

> 'WHEREFORE, premises considered judgment is hereby rendered ordering the defendant to refund to the plaintiff the amount of PESOS: One Million One Hundred Twenty Three Thousand Five Hundred Twenty Two and 25/100 (P1,123,522.25), OR ALTERNATIVELY to issue tax credit to the plaintiff for the said amount.
>
> SO ORDERED.'

On October 29, 2007, acting on petitioner's Motion for Reconsideration, the trial court issued an Order denying the same.

Petitioner filed a Motion for Extension of Time (to File Petition for Review) on December 26, 2007 and this Court granted the same in a Resolution dated January 10, 2008.

On February 8, 2008, respondent filed its Comment praying for the dismissal of the instant Petition for Review for lack of merit.

Upon receipt of respondent's Memorandum on May 12, 2008, and petitioner's Memorandum on May 19, 2008, the case was considered submitted for decision on May 23, 2008.

Petitioner raised the following issues in the instant Petition:

'WHETHER OR NOT THE HONORABLE REGIONAL TRIAL COURT GRAVELY ERRED IN HOLDING THAT CITY ORDINANCE Nos. 7088 AND 8011 ARE NULL AND VOID BY SIMPLY RELYING ON THE DECISION OF THE SUPREME COURT IN COCA-COLA BOTTLERS PHILIPPINES, INC. V. CITY OF MANILA, ET AL.

WHETHER OR NOT THE DECISION OF THE HONORABLE REGIONAL TRIAL COURT BRANCH 47, CITY OF MANILA IS NULL AND VOID FOR BEING VIOLATIVE OF ARTICLE VIII SECTION 14 OF THE CONSTITUTION"

## The Ruling of the Court in Division

On April 30, 2009, the Court in Division rendered a Decision granting the Petition for Review, and setting aside the Decision dated July 5, 2007 and the Order dated October 29, 2007 of the Regional Trial Court, Branch 47 of the City of Manila in Civil Case No. 03-106346. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the Petition for Review is hereby **GRANTED**. The assailed Decision dated July 5, 2007, and the Order dated October 29, 2007 of the Regional Trial Court, Branch 47 of the City of Manila in Civil Case No. 03-106346 are hereby **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED**."

On May 27, 2009, herein petitioner China Banking Corporation filed its Motion for Reconsideration, seeking the reconsideration of the aforesaid Decision. The same was thereafter denied for lack of merit in a Resolution dated August 6, 2009.

Hence, the instant Petition for Review filed on August 26, 2009 before the Court *En Banc*, praying that the Decision dated April 30, 2009 and the Resolution dated August 6, 2009 of the Court in Division be vacated and set aside.

On September 9, 2009, the Court *En Banc* ordered respondent Treasurer of the City of Manila to file her comment within ten (10) days from receipt of the Resolution.[6]

In a Resolution dated October 15, 2009, both parties were ordered to submit their Memoranda within a non-extendible period of thirty (30) days

[6] Resolution dated September 9, 2009, *rollo*, pp. 43-44

from receipt thereof, considering that respondent failed to file her Comment within the prescribed period.[7]

On January 4, 2010, the case was submitted for decision, considering the Memorandum[8] filed by petitioner on November 20, 2009 and respondent's failure to file her Memorandum within the period prescribed by the Court.[9]

**The Issues**

The following are the issues[10] submitted by petitioner for resolution in its Petition for Review:

"I

WHETHER THE REGIONAL TRIAL COURT ACQUIRED JURISDICTION OVER THE COMPLAINT OF THE PETITIONER

(i) WHETHER THE FAILURE TO OBSERVE THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AFFECTS THE JURISDICTION OF THE COURT;

(ii) WHETHER THE RESPONDENT WAS DEEMED TO HAVE WAIVED THE FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES AS A GROUND FOR DISMISSAL

II

WHETHER THE ACCEPTED EXCEPTIONS OF THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES APPLY IN THE INSTANT CASE

III

WHETHER THE 30 NOVEMBER 2004 ORDER OF THE REGIONAL TRIAL COURT, WHICH HAS LONG BECOME FIRM AND FINAL,

[7] Resolution dated October 15, 2009, *rollo,* pp. 47-48
[8] *Rollo,* pp. 49-77
[9] Resolution dated January 4, 2010, *rollo*, p. 79
[10] *Rollo,* pp. 9-10

MAY STILL BE THE SUBJECT OF REVIEW BY THE COURT OF TAX APPEALS

(i) WHETHER THE 30 NOVEMBER 2004 ORDER OF THE REGIONAL TRIAL COURT MAY BE REVERSED OR MODIFIED BY THE COURT IN DIVISION EVEN IF THE SAME WAS NOT RAISED AS AN ISSUE ON APPEAL"

## The Ruling of the Court *En Banc*

Perusal of the foregoing issues raised by petitioner in its petition reveals that the same were partly raised by it in its Motion for Reconsideration filed before the Court in Division, and which had already been exhaustively addressed in the assailed Decision and Resolution. However, this Court shall discuss the afore-mentioned issues for further clarification.

**First and Second Assignments of Error**

Petitioner contends that failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court, citing the Decision of the Supreme Court in the case of **Pineda vs. Court of First Instance of Davao, *et al.***[11]. Petitioner likewise asserts that the non-compliance with a condition precedent, which in this case is the non-filing of the written claim for refund, on one hand, and the lack of jurisdiction over the subject matter of the claim, on the other, are two separate and distinct grounds for the dismissal of a case and with differing legal dynamics. Moreover, petitioner alleges that there is no jurisprudence declaring the prior written claim for refund, provided in Section 196 of the Local Government

[11] G.R. No. L-12602, April 25, 1961

Code, as a jurisdictional requirement. In addition, petitioner avers that even assuming that it failed to exhaust an applicable administrative remedy, the case is an exception to the rule on exhaustion of administrative remedies due to respondent's purported consistent refusal to act on petitioner's protest.

The Court *En Banc* is not persuaded.

To reiterate the findings of the Court in Division, the trial court should not have entertained the case on the basis of the mandatory tenor of Section 196 of Republic Act (R.A.) No. 7160[12], which reads:

> "SECTION 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."

Under the rule of statutory construction, negative words and phrases are to be regarded as mandatory, while those in the affirmative are merely directory.[13] Thus, considering that Section 196 of R.A. No. 7160 starts with the negative word "No", the requirement that a written claim for refund must first be filed with the local treasurer before a judicial claim for refund may be maintained is deemed to be mandatory. Such mandatory character is further emphasized by the use of the term "shall" in the language of the statue, implying that the said requirement is imperative.

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[12] Local Government Code of 1991
[13] Fule vs. The Honorable Court of Appeals, G.R. No. 79094, June 22, 1988, citing the case of McGee vs. Republic, 94 Phil. 820 (1954)

Similarly, it may be gleaned from the afore-quoted provision that the requirement of exhaustion of administrative remedy, which in this case is the filing of a written claim for refund with the local treasurer, is not only part and parcel of the elements of a refund claim but also a jurisdictional requisite; which must be complied with first before the courts may acquire jurisdiction over such claims for refund of local taxes.

In the case of **City Treasurer of Manila vs. China Banking Corporation, *et al.***[14], this Court sitting *En Banc* made a similar pronouncement that the filing of a written claim for refund with the local treasurer is a jurisdictional requirement, which must be satisfied first before the courts may be vested with the jurisdiction to decide over such claim for refund. The pertinent portion of the said Decision states:

> "With this pronouncement, the Court *En Banc* finds that MTC 23 has no jurisdiction over 175169 CV, 175172 CV, 175177 CV, and 175178 CV for failure of respondent-CHINA BANK to file a written claim for refund with the petitioner-CITY TREASURER, pursuant to Section 196 of the LGC. **Compliance with the said provision is a condition *sine qua non*, non-compliance of which would not vest the court *a quo* jurisdiction over the subject case**. xxx" *(Emphasis supplied)*

In view of the foregoing discussions, this Court finds no compelling reason to disturb the findings of the Court in Division that the Regional Trial Court had no jurisdiction over the Complaint of petitioner for its failure to file a written claim for refund before the local treasurer.

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[14] CTA EB No. 434, August 6, 2009

**Third Assignment of Error**

Petitioner contends that contrary to Section 8 of Rule 51 of the 1997 Rules of Civil Procedure, the Court in Division resolved the case on the basis of an issue which was not raised on appeal and whose resolution thereon by the trial court has long became final. Petitioner also posits that the assailed Resolution did not explain how the doctrine enunciated in the case of **Comilang vs. Burcena**[15] would apply.

This Court does not agree.

In the assailed Resolution, the Court in Division cited the case of **Comilang vs. Burcena**[16], wherein the Supreme Court enumerated the instances when appellate courts are clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. One of the enumerated circumstances when this Court may review the ruling of the RTC even if not assigned as error on appeal, which is present in this case, is when consideration of the matters not assigned as errors on appeal is necessary in arriving at a just decision and complete resolution of the case, or to serve the interests of justice or to avoid dispensing piecemeal justice.

Significantly, in the case of **La Carlota Sugar Central and Elizalde & Co., Inc. vs. Pedro Jimenez, Auditor General of the Philippines**[17], the High Court made the following declaration:

> "In connection with what has been stated heretofore, we have to bear in mind likewise that when the issue is

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[15] G.R. No. 146853, February 13, 2006
[16] *Supra*
[17] G.R. No. L-12436, May 31, 1961

> whether or not the exemption from a tax imposed by law is applicable, the rule is that the exempting provision is to be construed liberally in favor of the taxing authority and strictly against exemption from tax liability, **the result being that statutory provisions for the refund of taxes are strictly construed in favor of the State and against the taxpayer**. xxx" *(Emphasis supplied)*

It has been held in another case that in "statutes relating to procedure ... every act which is jurisdictional or of the essence of the proceedings or is prescribed for the protection or benefit of the party affected, is mandatory."[18]

Inasmuch as Section 196 of R.A. No. 7160 provides for a specific procedure to be undertaken in filing such refund claim, the said provision should be strictly construed in favor of the State and against the taxpayer. Inevitably, the filing of the written claim for refund with the local treasurer becomes mandatory and petitioner's non-compliance with the said provision should neither be ignored nor disregarded by this Court; otherwise, the determination of the merits of the case would be incomplete.

Evidently, the Court in Division committed no reversible error when, in order to arrive at a complete and orderly disposition of the case, it took cognizance of the issue of petitioner's failure to comply with the doctrine of exhaustion of administrative remedies in connection with Section 196 of the Local Government Code.

**WHEREFORE**, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the assailed Decision of the Court in Division dated

[18] Amanda L. Vda. Dela Cruz, *et al.* vs. Hon. Court of Appeals, *et al.*, G.R. No. L-41107, February 28, 1979

April 30, 2009 and the Resolution promulgated on August 6, 2009 in CTA AC No. 50 are hereby **AFFIRMED**.

**SO ORDERED.**

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

WE CONCUR:

(Concurring and Dissenting Opinion)
**ERNESTO D. ACOSTA**
Presiding Justice

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

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

(Concurs with Concurring & Dissenting Opinion)
**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

# CERTIFICATION

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

**ERNESTO D. ACOSTA**
Presiding Justice