REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE CITY OF MAKATI AND THE CITY TREASURER OF MAKATI CITY,
Petitioners,

-versus-

CITYLAND, INC.,
Respondent.

CTA EB No. 1428
(CTA AC No. 125)

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CITYLAND, INC.,
Petitioner,

-versus-

THE CITY OF MAKATI AND THE CITY TREASURER OF MAKATI CITY,
Respondents.

CTA EB No. 1439
(CTA AC No. 125)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
JUN 28 2017 3:57 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision of this Court *En Banc* are consolidated[1] Petitions for Review separately filed by the City of Makati and the City Treasurer of Makati City, petitioners

[1] Minute Resolution dated September 5, 2016 consolidating cases CTA EB No. 1428 and CTA EB No. 1439.

in CTA EB No. 1428 (*The City of Makati, and The City Treasurer of Makati City vs. Cityland, Inc.)*, and Cityland, Inc., petitioners in CTA EB No. 1439. *(Cityland, Inc. vs. City of Makati and the City Treasurer of Makati City).*

Petitioners seek the reversal of the Decision dated July 2, 2015[2] and the Resolution dated January 26, 2016[3] rendered by the Third Division of this Court in the case entitled *'Cityland, Inc. vs. City of Makati, represented by Nelia A. Barlis, in her capacity as City Treasurer of Makati City'*, docketed as CTA AC Case No. 125, the dispositive portions of which, respectively, read as follows:

Decision dated July 2, 2015:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. The assailed Decision dated July 7, 2014 and Resolution dated October 1, 2014 of the Regional Trial Court of Makati City, Branch 146, in Civil Case No. 11-662 are hereby **REVERSED and SET ASIDE**. The assessment levying deficiency business tax on Petitioner, including surcharges and interests thereon, is **CANCELLED**.
>
> **SO ORDERED."**

Resolution dated January 26, 2016:

> "**WHEREFORE**, petitioner's "Respectful Motion for Reconsideration" and respondent's "Motion for Reconsideration (of the Decision dated 01, 2015)" are both **DENIED** for lack of merit.
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> **SO ORDERED."**

The following facts of the case, as recited by the Court in Division in its Decision, read as follows:

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[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino, CTA EB No. 1428 Docket, pp. 19-35.
[3] Id., pp.36-42.

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"The respondent, (The City of Makati and the City Treasurer of Makati City) by Notice of Assessment[4] dated February 7, 2011 assessed Cityland deficiency business taxes in the amount of P947,738.69 for taxable years 2006, 2007 and 2008. This notice was received on February 14, 2011. The total consisted of (a) P504,010.20 deficiency business tax, as real estate developer; (b) P126,002.55 as 25% surcharge on the deficiency; and P317,725.94 in interest.

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Neither the Notice of Assessment nor the assessment worksheet attached to it indicated the legal basis for the business tax deficiency assessed.

Cityland protested the assessment by filing a written protest dated April 15, 2011 by registered mail, which the respondent received on April 20, 2011. The City Treasurer did not act on the protest within the 60-day period prescribed by Section 195 of the Local Government Code, and was thus deemed by Cityland to have denied the protest as of June 14, 2011. On July 14, 2011, Cityland then appealed the denial of the protest before the RTC thru a petition for cancellation of tax assessment.

On August 1, 2011, Cityland filed an Amended Petition for Cancellation of Tax Assessment. In this pleading, Cityland assailed the assessment for making it appear that the firm supposedly incorrectly paid business taxes as a real estate dealer, when it should have done so as at the higher rate prescribed for a real estate developer.

Under Section 3A.02(b) of the Revised Makati Revenue Code, the business tax on a real estate dealer with domestic gross sales or receipts for the preceding calendar year of P2,000,000.00 or more

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[4] En Banc Docket, pp.20.

is P12,000.00 plus 60% of one percent (1%) over P2,000,000.00.

In contrast, under Section 3A.02(g) in relation to Section 3A.02(m) of the Revised Makati Revenue Code, the business tax on a real estate developer with domestic gross sales or receipt for the preceding calendar year of P2,000,000.00 or more is P15,000.00 plus 75% of one percent (1%) over P2,000,000.00.

On August 22, 2011, Branch 62 of the Regional Trial Court (RTC) of Makati City issued an Order giving the City of Makati five (5) days from receipt of the Order to file its comment or opposition to the petitioner's Amended Petition.

On September 20, 2011, respondent manifested through counsel that she was going to file a responsive pleading rather than a comment/ opposition, within fifteen (15) days from her receipt of the Order dated August 22, 2011 on September 13, 2011.

On September 22, 2011, the RTC noted respondent's manifestation.

On September 28, 2011, respondent filed a Motion for Extension of Time, which the RTC granted on October 3, 2011. Respondent was given until October 13, 2011 to file her responsive pleading.

On October 10, 2013, respondent filed another Motion for Extension of Time, which the RTC again accommodated on October 17, 2011. Respondent was given a non-extendible period, or until October 28, 2011, for the filing of her responsive pleading.

On October 28, 2011, however, respondent filed a third Motion for Extension of Time. The RTC on November 8, 2011 granted her until November 12 for the filing of her responsive pleading.

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> On November 9, 2011, respondent finally filed her Answer.
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> On November 28, 2011, Cityland filed its Reply to the respondent's Answer. In this Reply, Cityland pointed out that the respondent City Treasurer is without authority to amend Section 3A.02(m) of the Revised Makati Revenue Code to make the business tax imposable on a real property developer rather than on the owners and operators of the business.
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> xxx xxx xxx"

After trial on the merits, the Court in Division gave both parties a period of thirty (30) days from notice within which to submit their respective memorandum.

On July 7, 2014, the RTC rendered its Decision, dismissing Cityland's Petition for lack of merit.

In a Resolution dated October 1, 2014, the RTC denied Cityland's Motion for Reconsideration and Motion for Status Quo.

Subsequently, on November 12, 2014, Cityland filed its Petition for Review before the Court in Division.

The Court in Division thereafter rendered the assailed Decision dated July 2, 2015, which cancelled the assessment of deficiency business taxes against Cityland.

The City of Makati and the City Treasurer of Makati City filed their Motion for Reconsideration on August 5, 2015 seeking for the reversal of the assailed Decision. Meanwhile, Cityland filed its Motion for Reconsideration on December 21, 2015, arguing that the Court in Division's assailed Decision was already final and executory due to a fatally defective Motion for Reconsideration filed by the City of Makati and the City Treasurer of Makati City. Both Motions for Reconsideration were denied thru the assailed Resolution dated January 26, 2016.

Hence, this Petition for Review was filed.

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In CTA EB No. 1428, the petitioners insist that Cityland, may be reclassified from "real estate dealer" to real estate "developer", thus, may be subjected to local business tax. Meanwhile, in CTA EB No. 1439, petitioner Cityland contends that the Court in Division's assailed Decision has already become final and executory due to respondents' failure to file a timely and compliant Motion for Reconsideration.

Clearly, the petitions for review present two different issues: one substantive, the other procedural, yet both of obvious significance.

We RULE to DENY both Petitions for Review.

The Court *En Banc* finds it necessary to dispose of the procedural issue first, which essentially boils down to whether the Court in Division's assailed Decision has already become final and executory for failure to strictly comply with Section 6(3), Rule 15 of the Revised Rules of the Court of Tax Appeals, as amended, to wit:

RULE 15

MOTION FOR RECONSIDERATION OR NEW TRIAL

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> ***Section. 3.*** *Hearing of the Motion.* - The motion for reconsideration or new trial, as well as the opposition thereto, shall embody all supporting arguments and the **movant shall set the same for hearing on the next available motion day**. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which case the Court shall issue the proper order. (RCTA, Rule 13, Sec. 3a).

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Accordingly, Section 4 of the Revised Rules of Court applies suppletorily, to wit:

> **RULE 15**
> **Motions**
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> ***Section 4. Hearing of motion.*** —
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> xxx xxx xxx
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> Every written motion required to be heard and the notice of the hearing thereof shall be **served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing**, unless the court for good cause sets the hearing on shorter notice.
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Based on the foregoing, mandatory is the notice requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading. Further, jurisprudence dictates that the three-day notice required by the Rules of Court is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution by the court.

From this point of view, it is evident that the stance of Cityland is correct as a matter of law, and that the Motion for Reconsideration should be considered as a mere scrap of paper.

While we agree with this contention, the Court in Division has nonetheless found a sufficient justification to overlook the procedural error, and ultimately uphold the adjudication of the issues presented.

Notably, the principles of natural justice demand that the right of a party should not be affected without giving it

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an opportunity to be heard. ***The test is the presence of the opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based***[5].

In *Preysler, Jr. v. Manila Southcoast Development Corporation*[6], the Supreme Court held that a liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority.

In sum, the general aim of procedural law is to facilitate the application of justice to the rival claims of contending parties, bearing in mind that procedural rules are created not to hinder or delay but to facilitate and promote the administration of justice. This Court maintains that substantial justice, equity and fair play take precedence over technicalities and legalisms.

Applying the foregoing in the case at bar, the Court in Division has meticulously reviewed the circumstances of the present case, and this Court believes as well that the requirements of procedural due process were substantially complied with, and that the compliance justified a departure from a literal application of the rule on notice of hearing.

Thus, the fact that Cityland has actually had the opportunity to be heard, and has indeed been heard through the filing of its Comment to the Motion for Reconsideration, the purpose behind the rule is deemed duly served.

We now proceed to the substantive issue, on whether the City of Makati may collect local business taxes on Cityland.

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[5] City Of Dagupan, represented by the City Mayor Benjamin S. Lim vs. Ester F. Maramba, represented by her Attorney-In-Fact, Johnny Ferrer, G.R. No. 174411, July 02, 2014, citing the case of Jehan Shipping Corporation v. National Food Authority, G.R. No. 159750, December 14, 2005.

[6] Preysler, Jr. v. Manila Southcoast Development Corporation, G.R. No. 171872, June 28, 2010.

In a line of cases already decided by this Court, the power of local government units to levy taxes, fees and charges emanates from Sec. 5, Article X of the 1987 Constitution, subject to the guidelines and limitations as Congress may provide. Sec. 5, Article X of the 1987 Constitution reads, thus:

> "**Section 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."

Notably, Section 129 of the Local Government Code (LGC) of 1991 vests local government units, such as the petitioner in this case, with the authority to create their own sources of revenue, to wit:

> "**Section 129**. Power to Create Sources of Revenue. - Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units."

While the LGC of 1991 empowered local government units to levy taxes, fees and charges, it nonetheless, expressly subjected such power to some common limitations, such as those enumerated under Section 133(a) of the LGC of 1991. But such has no application in this case.

As already discussed by the Court in Division, it is Section 143 of the Local Government Code which specifically enumerates several types of business which municipalities and cities may impose taxes on. These include manufacturers, wholesalers, distributors, dealers of any article of commerce of whatever nature; those engaged in the export or commerce of essential commodities; contractors and other independent contractors; banks and financial institutions; and peddlers engaged in the sale of any merchandise or article of commerce.

The coverage of business taxation particular to the City of Makati is found in the Makati Revenue Code (Revenue Code), enacted through Municipal Ordinance No. 92-072.

A perusal of the Makati Revenue Code would reveal that it is quite specific as to the particular businesses which are covered by business taxes, Citing Section 3A.02(g):

> "(g) On contractors and other independent contractors defined in Sec. 3A.01(t) of Chapter III of this Code, and on owners or operators of business establishments rendering or offering services such as: advertising agencies; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking officers for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; business management services; collecting agencies; escort services; feasibility studies; consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placement or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professional tax; medical and dental laboratories; mercantile agencies; messsengerial services; operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic, white/blue printing, Xerox, typing, and mimeographing services; rental of bicycles and/or tricycles, furniture, shoes, watches, household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for

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shearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing schools/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education, Culture and Sports, (DECS), day care centers; etc."

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Relevantly, should the comprehensive listing above-mentioned do not prove encompassing enough, a catch-all provision similar to that under the Local Government Code was incorporated. Section 3A.02(m) of the Revenue Code, provides as follows:

" (m) On **owners or operators of real estate developer** shall be taxed at the rate prescribed under sub-section (g) of the gross sales/receipts during the preceding calendar year.

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A careful reading of the afore-quoted provision shows that Section 3A.02(m) of the Revised Makati Revenue Code is inapplicable to Cityland. By its very language, the imposition of the local business taxes is limited in application ***only* to the owners and operators of real estate developer.** (Emphasis supplied)

The phraseology adopted by the Sangguniang Panlungsod of Makati City is clear enough, giving the Court in Division and the Court *En Banc* no ground to engage in further interpretation.

As the elementary rule in statutory construction goes, when the words and phrases of a statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says.[7] This is known as the plain-meaning or

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[7] Eduardo S. Baranda And Alfonso Hitalia vs. Honorable Judge Tito Gustilo, Acting Register Of Deeds Avito Saclauso, Honorable Court Of Appeals, And Atty. Hector P. Teodosio, G.R. No. 81163, September 26, 1988.

verba legis rule, expressed in the Latin maxim "*verba legis non est recedendum*" or "from the words of a statute, there should be no departure."[8] Since the afore-quoted provision, as couched, is clear and free from ambiguity, its literal meaning must be applied without attempted interpretation.

Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local Government Code alone.[9] What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body.

Moreover, Section 3A.02(m) is violative of Section 146 of the Local Government Code. Section 146 of the LGC states that "the tax on a business must be paid by the person conducting the same." This is a statutory limitation on the taxing authority of a local government unit, such as a city. This mirrors Section 178 of the old National Internal Revenue Code (Commonwealth Act No. 466), as amended by R.A. No. 1612 (August 24, 1956), that "the tax on a business must be paid by the person, firm, or company conducting the same. Thus, we reiterate the ruling of the Court in Division[10];

> "Basic is the rule that a corporation has a separate and distinct personality apart from its directors, officers, or owners. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.
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> The LGC does not define "owner." "Operator," however, is defined in Section 131(s) as including "the owner, manager, administrator, or any other person who operates or is responsible for the operation of a business establishment or undertaking." But again, the scant testimony of the

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[8] Cynthia S. Bolos vs. Danilo T. Bolos, G.R. No. 186400, October 20, 2010.
[9] Luz R. Yamane, Capacity As The City Treasurer Of Makati City vs. BA Lepanto Condominum Corporation, G.R. No. 154993, October 25, 2005
[10] Supra Note 1, pp. 31-32.

respondent's sole witness, and the respondent's sparse documentary evidence, failed to establish that Cityland, Inc. is, in the language of Section 3A.02(m) of the Revised Makati Revenue Code, an "operator of real estate developer."

According to the primary purpose set forth in Cityland's Articles of Incorporation (both in the 1979 original and in the 2010 Amended Articles), the corporation was formed—

> 'To acquire by purchase or lease or otherwise, lands and interest in lands, and to own, hold, trade, improve, subdivide, develop and manage any real estate so acquired and to erect or cause to be erected on any land owned, held or occupied by the corporation, houses, buildings, housing projects, condominium, industrial plants, or other structures with their appurtenances, and to rebuild, enlarge, alter or improve any buildings or other structures now or hereafter erected on any land so owned, held or occupied, and to mortgage, sell, barter, lease or otherwise dispose of any agricultural, industrial, commercial and residential lands or interest in lands and buildings or other structures at any time owned or held by the corporation.'

In the above-cited primary purpose, Cityland could indeed be deemed as a real estate developer. But there is nothing in the said purpose that indicates the intent to become an operator of any other real estate developer, as might make Section 3A.02(m) of the Revised Makati Revenue Code applicable to Cityland, if in fact it acted as another real estate developer's operator. There is no allegation in the records that Cityland in fact acted as such an operator.

It results, therefore, that if the respondent was correct in classifying Cityland as a real estate

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developer, then the Notice of Assessment should have been addressed to the "owners and operators", rather than to Cityland, because of their separate and distinct personalities. Section 3A.02(m) of the Revised Makati Revenue Code clearly imposes the liability for the business tax on the "owners and operators of real estate developer," rather than on the developer itself."

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On another note, and as observed by the Court in Division, the Court *En Banc* does not disregard the fact that the "owners and operators" clause should be deleted in order to make Section 3A.02(m) of the Revised Makati Revenue Code compliant with Section 146 of the LGC. Regrettably, such power does not belong to the Court, but to the Sangguniang Panlungsod of Makati City.

Apropos to the instant case is Section 5(b) of the Local Government Code: "In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer." In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness[11].

In view of the foregoing, the assailed tax assessment has no basis under the Local Government Code or the Makati Revenue Code, and the insistence of the City and the City Treasurer in its collection of the void tax constitutes an attempt at deprivation of property without due process of law.

Section 3A.02(m) of the Revised Makati Revenue Code is an ultra vires exercise of local taxing power, being in violation of Section 146 of the Local Government Code, and therefore null and void and cannot be given any effect.

We find no cogent reason to deviate from the rulings of the Court in Division.

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[11] Filinvest Development Corporation v. Commissioner of Internal Revenue, G.R. No. 146941, August 9, 2007.

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WHEREFORE, premises considered, the Petitions for Review are **DENIED**. The Decision of the Third Division of this Court in CTA AC Case. No. 125 dated July 2, 2015 and its Resolution dated January 26, 2016, are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice