Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

CITY OF MANILA and LIBERTY M. TOLEDO, (City Treasurer of the City of Manila), Petitioners,	**C.T.A. AC No. 122** (RTC 47 CIVIL CASE NO. 07-116880)
-versus-	**Members:** CASTAÑEDA, JR., *Chairperson* CASANOVA, *and* COTANGCO-MANALASTAS, *J.J.*
PHILIPPINE BEVERAGE PARTNERS, INC., substituted by COCA-COLA BOTTLERS PHILIPPINES, INC., and the Hon. PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 173[1], MANILA, Respondents.	**Promulgated:** MAY 08 2015 2:15 p.m.

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DECISION

CASANOVA, *J.*:

Before Us is an appeal, by way of Petition for Review,[2] filed by petitioners-City of Manila and Liberty M. Toledo, City Treasurer of the City of Manila, from the Decision[3] dated November 18, 2013 (the "Assailed Decision") and Order dated July 4, 2014 (the "Assailed Order"), both rendered by the Regional Trial Court of Manila, Branch 47 ("RTC of Manila, Branch 47") in Civil Case No. 07-116880 entitled Philippine Beverage Partners, Inc., vs. City of Manila and Liberty M. Toledo (City Treasurer of the City of Manila).

Petitioner City of Manila is a municipal corporation created and organized under its own charter-Republic Act ("R.A.") No. 409, as amended. It is represented herein by Hon. Joseph Ejercito Estrada in his official capacity as City Mayor of Manila, with office address at Mayor's Office, 2nd Floor, Manila City Hall, A. Villegas Street (formerly Arroceros Street), Ermita, Manila.[4]

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[1] Should be 47.
[2] Docket, pp. 11-23.
[3] Annex "A" to the Petition for Review, Ibid, pp. 24-34.
[4] Par. 1, The Parties, Petition for Review, Id., p. 11.

Co-petitioner Liberty M. Toledo ("petitioner Toledo" for brevity) is the duly appointed City Treasurer of the City of Manila, of legal age, Filipino, with office address at City Treasurer's Office, City Hall, Manila.[5]

Respondent Philippine Beverage Partners, Inc., ("private respondent") substituted herein by Coca-Cola Bottlers Philippines, Inc.,[6] is a corporation organized and operating under existing Philippine laws, with principal office at 822 Bagumbayan Street, Bacood, Manila.[7]

On the other hand, respondent Hon. Presiding Judge of the Regional Trial Court, Branch 47, Manila ("public respondent"), is being impleaded as Nominal Party, with office address at 5th Floor, City Hall Building, Arroceros Street, Manila.[8]

The facts of the case, as found by the court a quo, are as follows:

> On January 17, 2007, defendant Liberty M. Toledo (herein petitioner) issued a Statement of Account[9] under Bill No. 012007-33025 (Annex 'A') showing the local business tax and regulatory fees which plaintiff Philippine Beverage Partners, Inc. (herein private respondent) has to pay to defendant City of Manila (herein petitioner) for the first quarter of 2007, in the total amount of Php2,930,239.82, to wit:

YEAR	PERIOD	PARTICULARS	DUE
2007	Q-1	TAX ON MFTR BEVERAGE	713,975.38
2007	Q-1	GARBAGE SVCS CHARGES	3,000.00
2007	Q-1	SEC. 21	2,188,491.94
2007	Q-1	BUSINESS PERMIT FEE (0131)	5,215.00
2007	F-Y	SANITARY INSPECTION FEE	1,600.00
2007	F-Y	OCCUPATIONAL TAX	6,000.00
2007	F-Y	OCC/PC/HC	11,750.00
2007	F-Y	PLUMBING INSP FEE	7.50
2007	F-Y	ELECTRICAL INSP FEE	50.00
2007	F-Y	BLDG INSP. FEE	50.00
2007	F-Y	SIGNBOARD INSP FEE	40.00
2007	F-Y	BUSINESS REGISTRATION STICKER	60.00
TOTAL			2,930,239.82

[5] Par. 2, The Parties, Petition for Review, Id.
[6] Per PBPI's Motion for Substitution of Plaintiff, filed on January 20, 2014, RTC Docket, pp. 223-225.
[7] Par. 3, The Parties, Petition for Review, Docket, p. 12.
[8] Par. 4, The Parties, Petition for Review, Ibid.
[9] Annex "A" to the Complaint filed by Philippine Beverage Partners, Inc., before Manila RTC, Branch 47, RTC Docket, p. 12.

Upon review of the above-mentioned Statement of Account (SOA), plaintiff Philippine Beverage Partners, Inc. discovered certain errors, to wit: a) There are two (2) local business taxes reflected in said statement, those imposed under Section 14 and Section 21 of the Revenue Code of Manila ('RCM' for brevity); and b) The rates of the tax (under Section 14) and of the regulatory fees are those provided in the invalidated Manila Tax Ordinance Nos. 7988 and 8011.

The imposition of two (2) taxes on a registered business is prohibited under Section 143 (h) of the Local Government Code ('LGC' for brevity), which provides:

'SEC. 143. Tax on Business- The Municipality may impose taxes on the following businesses:

a) On manufacturers, assemblers, repackers xxx.
b) On wholesalers, distributors, or dealers xxx.
c) On exporters, and on manufacturers, millers xxx.
d) On retailers, xxx.
e) On contractors and other independent contractors xxx.
f) On banks and other financial institutions xxx.
g) On peddlers xxx.
h) <u>On any business not otherwise specified in the preceding paragraphs, which the sangguniang concerned may deem proper to tax.</u> xxx xxx xxx'

And under the last paragraph of Section 21 of the RCM which, in contrast, provides:

'Section 21. - Tax on Business subject to the Excise, Value-Added or Percentage Taxes under the NIRC - On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code, hereinafter referred to as NIRC, as amended, a tax of FIFTY PERCENT (50%) OF ONE PERCENT (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:

A) On persons who sells goods and services in the course of trade or businesses; xxx

xxx xxx xxx

PROVIDED, that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof.' (underscoring supplied)

Manila Tax Ordinance Nos. 7988 and 8011 had already been declared null and void by the Secretary of Justice as evidenced by Resolutions dated August 17, 2000 and July 5, 2001 (Annexes 'B' and 'C'), hence, the rates provided therein are no longer applicable. Consequently, the rates provided in the RCM should have been applied by defendant Liberty M. Toledo in computing the tax and regulatory fees as reflected in the issued Statement of Account.

Consequently, the correct total amount of the local business tax and regulatory fees payable by plaintiff Philippine Beverage Partners, Inc. to defendant City of Manila (herein petitioner) for the 1st quarter of 2007 is only Php506,080.89, to wit:

YEAR	PERIOD	PARTICULARS	DUE
2007	Q-1	TAX ON MFTR BEVERAGE (Sec. 14)	482,448.39
2007	Q-1	GARBAGE SVCS CHARGES	1,875.00
2007	Q-1	SEC. 21	
2007	Q-1	BUSINESS PERMIT FEE (0131)	3,000.00
2007	F-Y	SANITARY INSPECTION FEE	800.00
2007	F-Y	OCCUPATIONAL TAX	11,750.00
2007	F-Y	OCC/PC/HC	6,000.00
2007	F-Y	PLUMBING INSP FEE	7.50
2007	F-Y	ELECTRICAL INSP FEE	50.00
2007	F-Y	BLDG INSP. FEE	50.00
2007	F-Y	SIGNBOARD INSP FEE	40.00
2007	F-Y	BUSINESS REGISTRATION STICKER	60.00
TOTAL			506,080.89

On January 19, 2007 plaintiff Philippine Beverages Partners Inc. sent a letter-protest (Annex 'D') to defendant Liberty M. Toledo requesting that the Statement of Account (Annex 'A') be withdrawn and revised.

On January 22, 2007, plaintiff made a formal tender of payment to the City of Manila for the correct amount of its tax/regulatory fee liabilities for the 1st quarter of 2007, in the sum of Php506,080.89 (UCPB Check No. 0005703029 dated January 22, 2007). Nonetheless, defendant City of Manila refused to accept the aforesaid check.

On February 6, 2007, plaintiff received a letter dated February 2, 2007, from defendant Liberty M. Toledo denying the request of plaintiff for the withdrawal and revision of the latter's Statement of Account. Thus, in order to meet the deadline for the payment of tax and regulatory fees, plaintiff was constrained to pay the amount stated in the Statement of Account under Bill No. 012007-33028 in the total amount of Php2,930,239.22, as evidenced by Official Receipt No. BAI-008505 issued by the City of Manila.

On March 2, 2007, plaintiff, pursuant to Section 196 of the Local Government Code, filed a written claim for refund of erroneously/illegally collected tax with the defendant city treasurer in the amount of Php2,424,158.93, computed herein below:

Amount Paid as per O.R. No. BAI-008505	Php 2,930,239.82
Correct Amount	506,080.89
	Php 2,424,158.93

The defendant City Treasurer has not responded to the written claim for refund. Therefore, the petitioner filed the present Complaint for the Revision of Statement of Account (Preliminary Assessment) and for Refund or Credit of Local Business Tax erroneously/illegally collected.

The defendant filed its Answer and refuted the allegations in the Complaint.

Upon agreement and motion of both counsels, the parties opted to dispense with the pre-trial and manifested that they would just file their respective memoranda. The plaintiff filed its Memorandum. The defendant did not file its Memorandum."[10]

On November 18, 2013, the RTC of Manila, Branch 47, promulgated its Decision ordering petitioners City of Manila and Liberty M. Toledo to refund the taxes paid by private respondent, thus:

"WHEREFORE, premises considered, judgment is hereby rendered ordering defendants City of Manila and

[10] Pages 1 to 5 of the RTC's Decision promulgated on November 18, 2013, Annex "A" to the Petition for Review, Docket, pp. 24-34.

> Liberty M. Toledo to refund to the plaintiff the taxes paid hereunder in the amount of P2,424,158.93 and to pay the cost of suit.
>
> SO ORDERED."

Undaunted, petitioners filed a Motion for Reconsideration[11] on January 27, 2014, with private respondent's Opposition to the Defendant's Motion for Reconsideration[12] filed on February 11, 2014. The court a quo, however, denied petitioners' Motion for Reconsideration in its Order[13] dated July 4, 2014.

Thus, on August 14, 2014, petitioners City of Manila and Liberty M. Toledo filed their Petition for Review[14] before the Court of Tax Appeals.

Without necessarily giving due course to the Petition for Review, respondents were ordered[15] by the Court to file their comment, not a motion to dismiss, within ten (10) days from notice thereof. Private respondent filed its Comment[16] on September 5, 2014, sans petitioners' Reply per Records Verification[17] dated September 17, 2014.

Thereafter, in a Resolution[18] dated September 22, 2014, the Court gave the parties a period of thirty (30) days from notice thereof to submit their simultaneous memoranda. Upon receipt of the same, the instant petition shall be considered submitted for decision.

In compliance with the said Resolution, private respondent filed a Manifestation[19] on October 15, 2014, stating therein that it adopts all the arguments stated in its Comment filed on September 5, 2014 as its Memorandum. On the part of petitioners, they also adopted all the legal and factual bases, issues and arguments in their verified Petition as their Memorandum.[20].

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[11] RTC Docket, pp. 242-245.
[12] Id., pp. 249-251.
[13] Id., pp. 277-279.
[14] See footnote no. 1.
[15] Resolution dated August 22, 2014, Docket, p. 110.
[16] Ibid, pp. 111-118.
[17] Id., p. 119.
[18] Id., p. 121.
[19] Id., pp. 122-123.
[20] Petitioner's Manifestation, filed on October 24, 2014, Id., pp. 124-125.

After taking into consideration both parties' Manifestations, the Court submitted the instant case for Decision.[21]

Hence, this Decision.

Petitioners raised the following issues for the resolution of this Court:

1. Whether or not the computation made by private respondent of the local taxes, fees and charges should prevail over the statement of account issued by petitioner City Treasurer of Manila;

2. Whether or not the RTC of Manila, Branch 47, erred in ordering the refund/tax credit based solely on the computation of private respondent;

3. Whether or not private respondent should have appealed the denial of its protest pursuant to Section 195 of the LGC instead of claiming for refund or tax credit under Section 196 of the LGC; and,

4. Whether or not the tax refund/credit should be reconsidered in view of the finding of the petitioners that private respondent had tax deficiency for the years 2007 and 2008 based on the audited financial statement it submitted to the trial court.

We shall first discuss the third issue.

Petitioners insist that private respondent should have appealed the denial of its protest pursuant to Section 195 of the LGC, instead of filing a claim for refund under Section 196 of the same Code.

We do not agree.

Section 195 of the LGC states:

> "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**

[21] Resolution dated November 14, 2014, Id., p. 130.

> **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 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)

It can be gleaned from the afore-quoted provision that Section 195 of the LGC refers to protests on the assessment issued by the local treasurer against a taxpayer who has been found not to have paid its correct taxes, fees and charges. In which case, the taxpayer shall file a written protest and follow the procedure laid down by the said provision.

The case at bench, however, involves a claim for refund and not a case of disputed assessment as being referred to in Section 195 of the LGC. Thus, the applicable provision is Section 196 of the LGC, which 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."

Thus, the following must be done to successfully claim in Court a refund of any local taxes, fees or charges:

1. The taxpayer concerned must file a written claim for refund or credit with the local treasurer; and,

2. The case or proceeding must be filed within two years from the date of payment of the tax, fee or charge or from the date the taxpayer is entitled to a refund or credit.[22]

Perusal of the records reveals that private respondent complied with both requirements. It paid the local business tax and regulatory fees in the amount of P2,930,239.82 as evidenced by Official Receipt No. BAI-008505[23] on February 13, 2007. Then, on March 2, 2007, private respondent submitted a written claim for refund or tax credit in the amount of P2,424,158.93[24]. Counting two (2) years from the date of payment, it had until February 13, 2009 to file a claim for refund before a competent court. Thus, private respondent timely filed its Complaint for the revision of statement of account (Preliminary Assessment) and for refund or credit of local business tax erroneously/illegally collected before the RTC of Manila, Branch 47, on March 8, 2007.

By such reasons, the claim that private respondent should have appealed the denial of its protest pursuant to Section 195 of the LGC, instead of claiming for refund or tax credit under Section 196 of the LGC, has no leg to stand on.

Since the remaining issues are intertwined, the Court shall discuss them jointly.

Petitioners contend that it is highly erroneous for the court a quo to grant private respondent's claim for refund or issuance of tax credit certificate based solely on the latter's computation of the local taxes, fees, and charges in the amount of P506,080.89 since it is only the City Treasurer who is empowered to compute the correct local taxes, fees and charges under Section 170[25] of the LGC. Hence, the Statement of

[22] China Banking Corporation vs. City Treasurer of Manila, CTA EB No. 182, July 27, 2006.
[23] Annex "G" to the Complaint filed by Philippine Beverage Partners, Inc., before Manila RTC, Branch 47, RTC Docket, p. 34.
[24] Computed as follows:

Amount Paid as per O.R. No. BAI-008505	P2,930,239.82
Correct Amount (as stated in Par. 9of the Complaint)	506,080.89
Overpaid amount	P2,424,158.93

[25] **Section 170.** *Collection of Local Revenue by Treasurer.* - All local taxes, fees, and charges shall be collected by the provincial, city, municipal, or barangay treasurer, or their duly authorized deputies. The provincial, city or municipal treasurer may designate the barangay treasurer as his deputy to collect local taxes, fees, or charges. In case a bond is required for the purpose, the provincial, city or municipal

Account issued by the City Treasurer of Manila should prevail over the computation made by private respondent. Lastly, petitioners posit that since private respondent's claim for refund or tax credit amounting to P2,424,158.93 was "based on its own computation, the same should be negated by its tax deficiency for the years 2006 and 2007 amounting to P9,071,298.78 due to its failure to present its audited financial statement upon applying for renewal of its business permits and licenses in 2007".[26] Thus, the amount of refund that is being claimed by private respondent "should be offset and/or deducted from its tax deficiency thereby making private respondent still liable to the petitioners in the amount of P6,647,139.85."[27]

The foregoing contentions are untenable.

It should be noted that the aforementioned arguments were not advanced or submitted by petitioners in their Answer filed before the trial court on April 17, 2007, to wit:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 4. Plaintiff (here private respondent) has no cause of action. Defendants (herein petitioners) are assessing and collecting local taxes, fees and charges as mandated by their official duties and responsibilities as well as the provisions of R.A. 7160 and the Revenue Code of Manila (City Ordinance No. 7794) as amended by Ordinances 7807, 7988 and 8011;
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> 5. Plaintiffs however concede to the fact that Ordinance 8011 was already struck down by the Supreme Court in the case captioned as 'Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, et al., G.R. No. 156252;
>
> 6. However, a scrutiny of the ruling in the said case would reveal that what was nullified was Ordinance 8011 which is an ordinance amending the tax rates specified in Ordinance 7988 and not the latter Ordinance per se, thus the rates in Ordinance 7988 shall normally be used instead;
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> 7. It is the firm position of the Defendants that the decision of the Department of Justice nullifying Ordinance

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government shall pay the premiums thereon in addition to the premiums of bond that may be required under this Code.

[26] Par. 2 of page 10, Petition for Review, Docket, p. 20.

[27] Par. 3, Ibid.

7988 has been vacated by the Regional Trial Court of Manila, Branch 21 in its decision dated November 28, 2001 wherein the herein Defendants filed its Motion for Reconsideration on February 5, 2002, and the decision for which is yet to be rendered;

8. Therefore, a cursory reading in the pronouncement of Coca-Cola case, would lead us to conclude that the same has no doctrinal effect insofar as Ordinance 7988 is concerned, since the question of whether or not the publication requirement of Ordinance 7988 is yet to be determined by the Regional Trial Court, Branch 21, Manila, considering further that a motion for reconsideration dated is (sic) still pending;

9.) Considering that Ordinance 7988 including the questioned rates in Section 21 has not yet been declared illegal by any court of competent jurisdiction, answering defendants were guided by and adhered to the audit advisory opinion of the City Auditor, Commission on Audit, contained is (sic) his 1st Indorsement dated July 15, 1998 which stated, among others, that:

> *'Section 21.— of the same Code speaks of taxes on business subject to the excise value-added or percentage taxes under the National Internal Revenue Code.*
>
> *Post audit conducted by this office disclosed that the taxpayers who were already taxed under the different Sections of the Code were no longer assessed and collected the tax imposed under Sec. 21 hence, the issuance of the Notice of Charge.*
>
> *It is well-settled rule that laws or statutes are presumed valid unless its legality or constitutionality is challenged in proper court. Local ordinance as in this case, Ordinance No. 7794, enjoys the same presumption of legality.*
>
> *If in this particular instance, the various taxpayers claimed that they should not be taxed anymore under Sec. 21 because it constitute double taxation, then their allegation should be brought before the proper court.*

> *In the meantime, the City Treasurer's Office should continue to perform its mandated function of as regards (sic) collection of taxes.'*

which advisory opinion was used in continuing the collection of Sec. 21 from the taxpayers by the previous City Treasurer of Manila. Said action created a precedent which the present City Treasurer and defendant herein had just followed so as not to be administratively charged or suspended by the City Auditor;

10.) In sum, the Supreme Court Decision nullifying Ordinance 8011 has yet no equivocal pronouncement and doctrinal effect on Ordinance 7988 that is indeed void and cannot be implemented;

11.) Finally, it is enlightening to know that the appeal provided in Sec. 187 of the Local Government Code does not have the effect of suspending the effectivity of the tax ordinance and the accrual and payment of the tax, fee, or charge levied therein. Consequently, the assessment is final and unappealable."

Further, petitioners passed upon the opportunity of raising other factual and legal issues when they agreed to dispense with the pre-trial and to just submit the case for decision upon filing of the parties' respective memorandum.[28] They, again, missed another chance to present other arguments or defenses when they opted not to file a Memorandum. Petitioners, instead, waited until the court *a quo* already rendered its Decision dated November 18, 2013, which granted the claim for refund or tax credit certificate of private respondent, before asserting in their Motion for Reconsideration the following issues which are closely similar to the above-cited remaining issues:

"1.1 Plaintiff (herein private respondent) was the one who computed the local taxes, fees and charges amounting P506,080.89 without any legal and factual bases;

1.2 The computation of correct local taxes, fees and charges lies with and the sole duty and responsibility of the City Treasurer of Manila after submission of the 2006 audited financial statements of the plaintiff;

[28] Minutes of the Hearing dated January 12, 2011 of Manila RTC, Branch 47, RTC Docket, p. 208.

1.3 Plaintiff's self-computation for manufacturer's tax, garbage fees, and business permit fees was for the 1st Quarter of 2007 only and the 2nd to 4th Quarters of 2007 were not included. Hence, plaintiff's liability was grossly understated;

1.4 Collection and computation of correct local taxes, fees, and charges having been vested with the defendant City Treasurer (herein petitioner), taxes, fees and charges of plaintiff for 2007 (sic) must be recomputed by respondent City Treasurer based on the 2006 audited financial statements of the former pursuant to Sections 143(a), 147, 150, 166, 167, 170 and 171 of the R.A. 7160, as amended;

1.5 No Taxpayer is allowed by law to just say this is the total amount of taxes, fees and charges due me and this is only what will be paid by me. This was what plaintiff did when it asserted that only P506,080.89 was the total amount due and payable by it. This is patently illegal."[29]

It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.[30]

In relation thereto, petitioners deemed to have waived the aforementioned remaining issues or defenses when they failed to invoke the same at the earliest possible time pursuant to Section 1, Rule 9 of the Rules of Court, which provides:

Sec. 1. Defenses and objections not pleaded. — **Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.** However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

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[29] Pages 2 to 3 of petitioner's Motion for Reconsideration filed before the Regional Trail Court, Annex "E" to the Petition for Review, Docket, pp. 84-85.

[30] Toshiba Information Equipment (Phils.), Inc. vs. CIR, G.R. No. 157594, March 9, 2010, citing Director of Lands v. Court of Appeals, 363 Phil. 117, 128 (1999).

That being the case, the RTC of Manila, Branch 47, cannot be faulted in deciding the instant case based only on the legal issues submitted by the parties in the following pleadings: private respondent's Complaint, petitioners' Answer and private respondent's Memorandum.

Consequently, this Court finds no cogent reason to set aside the following findings and conclusions of the court *a quo,* to which *We* fully agree:

> "The Court emphasizes the fact that it has not committed an error in rendering the decision sought to be reconsidered. The tax refund, which the Court awards to plaintiff is based on fact and law. Thus, the Court cannot simply reconsidered and set-aside its decision merely on defendants' belated claim and assertions that plaintiff has tax deficiencies amounting to P9,071,298.78.
>
> Moreover, had defendants alleged these claims of tax deficiency as affirmative defense or as permissive counterclaim in their Answer, the same could have been validly considered for trial and made bases in rendering the questioned decision. But defendants did not do so.
>
> At any rate, and unless it has so prescribed, defendants may still resort to its separate and subsequent plan of issuing Notice of Assessment to plaintiff for the alleged tax deficiency, instead of having the decision hereof reversed."[31]

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED** for lack of merit. The Assailed Decision dated November 18, 2013 and Order dated July 4, 2014 of the Regional Trial Court of Manila, Branch 47, are both ***AFFIRMED.***

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[31] Page 2, Order of the Manila RTC, Branch 47, Annex "B" to the Petition for Review, Docket, p. 36.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice