-REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

MICHIGAN HOLDINGS, INC., *Petitioner,*	**CTA EB No. 1093** (CTA AC No. 99)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
THE CITY TREASURER OF MAKATI CITY, NELIA A. BARLIS, *Respondent.*	Promulgated: APR 13 2016 4:20 p.m.

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RESOLUTION

For resolution is respondent's "Motion for Reconsideration"[1] which was timely filed on July 23, 2015.[2] Respondent seeks reconsideration of this Court's Decision[3], promulgated on June 17, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. The assailed Resolution dated November 19, 2013 of the Second Division of this Court in CTA AC No. 99, denying herein petitioner's Motion for Reconsideration of the Decision dated September 19, 2013, is **REVERSED** and **SET ASIDE**. The assessment levying business tax on the dividend income of the Petitioner, including surcharges and penalties thereon, is **CANCELLED**.

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[1] *Rollo,* pp. 158-173.
[2] Respondent manifested that she received a copy of the Decision on July 10, 2015. Under Section 1, Rule 15 of the Revised Rules of the CTA, an aggrieved party may seek reconsideration within fifteen (15) days from the date of receipt of notice of the Decision.
[3] *Rollo,* pp. 123-157.

SO ORDERED."

Respondent, in her "Motion for Reconsideration", is asking the Court *En Banc* to reconsider its Decision on the following grounds:

1. Unless repealed by Congress, Section 187 of the Local Government Code (LGC) remains to be the proper and exclusive procedure to question the constitutionality or legality of tax ordinances and revenue measures;

2. Section 3A.02(P) of the Revised Makati Revenue Code in relation to Section 3A.02(G) and (H) remain to be valid since they were never questioned nor attacked directly under Section 187 of the LGC;

3. The Regional Trial Court (RTC) correctly ruled that it had no jurisdiction to rule on the validity or constitutionality of Section 3A.02(P) of the Revised Makati Revenue Code in relation to Section 3A.02(G) and (H). In questioning the disputed assessment, petitioner was itself questioning the validity/legality of the subject section and is therefore a collateral attack on said provisions;

4. As held by the Supreme Court in *The Solicitor General v. Metropolitan Manila Authority,*[4] it is well settled that the validity of a law can be challenged only in a direct action and not collaterally;

5. Under Section 143(H) of the LGC, the LGU is empowered to impose tax on any business which the Sanggunian concerned may deem proper to tax; and

6. Assuming arguendo, without admitting liability nor conceding defeat, that the CTA Second Division and the RTC committed reversible error, the case should have been remanded to the RTC for proper disposition.

In a Resolution[5] dated September 11, 2015, this Court ordered petitioner to file Comment which it did so on November 13, 2015, after having been granted an extension of the period for filing. Petitioner's Comment, which it entitled an "Opposition", opposed respondent's motion

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[4] G.R. No. 102782, December 11, 1991.
[5] *Rollo,* pp. 227-229.

for reconsideration for failing to raise any new arguments and failing to show compelling reasons for the Court to reconsider its Decision.

After considering the arguments of both parties, it is apparent to this Court that no new arguments have been raised by respondent in its Motion for Reconsideration. They have been comprehensively discussed and thoroughly considered in the Decision dated June 17, 2015 of the Court *En Banc.*

As regards the application of Section 187 of the Local Government Code (LGC) in relation to Section 195 of the same Code, *We* find no ground interposed by the respondent sufficient to reconsider our finding that Section 195, as a taxpayer's remedy is separate, distinct, and independent from Section 187. It therefore follows that a taxpayer's failure to avail of the remedy of Section 187 does not necessarily bar recourse to Section 195 when the same is grounded on the illegality of the tax measure complained of.

As we have elaborated on in *Our* Decision:

> "There is nothing in Section 195 that specifies and/or limits the grounds for protesting an assessment for local business tax. There is nothing that says that an assessment may not be contested for lack of legal basis, or for invalidity of its alleged legal basis. Indeed, **when the protest was filed by Michigan, it was not on the basis of the invalidity of the tax ordinance, because the Billing Assessment did not even indicate its legal basis**. Michigan protested the assessment in this wise:
>
>> 'It is our contention that dividend and interest income and gain on sale of shares are not subject to business tax as these are income generated from Michigan's passive investments. Moreover, the interest income and gain on sale of shares were already subjected to final income taxes.[6]'
>
> **It was respondent, in her reply dated February 6, 2008, who supplied the information that the assessment was based on Section 3A.02(p) of the Makati Revised**

[6] Letter dated January 28, 2008, received the same date by the Treasurer's Office of Makati City.

Revenue Code (City Ordinance 2004-A-025) in relation to Section 3A.02 (g) and (h).

On March 12, 2008, Michigan Holdings' counsel sought reconsideration of the respondent's decision. An excerpt from the letter-request reads:

> 'We respectfully file this request for reconsideration **to contest the validity and propriety of the said deficiency assessment on dividend income.** As stated in our client's protest. Dividend and interest income and gain on sale of shares are not subject to business tax as these are income generated from Michigan's passive investments. These three kinds of income, i.e., interest income, capital gain on sale of shares, and dividends are classified as passive incomes pursuant to Sec. 27 (d) (1) (2) (4), respectively, of the National Internal Revenue Code of 1997 (NIRC), and one cannot be differentiated from the other for local business tax purposes. x x x
>
> **x x x This definitely constitutes a breach of the limitation of the taxing powers of the local government under Section 133(a) of the Local Government Code which states that the exercise of the taxing powers of local government units shall not extend to the levy of income tax. x x x**
>
> It bears stating that only the National Government can impose and collect an income tax, and the prohibition to impose an income tax, still applies against local governments, except when levied on banks and other financial institutions. Since Michigan is a holding company and not a bank or financial institution, its dividends are passive income derived from passive investments and not from business operations, and are subject to income tax under SEC. 32 (7) of the NIRC. The same dividends are clearly beyond the taxing and other revenue-raising powers of the City of Makati or of the City Treasurer.'

> The respondent did not act on this request for reconsideration. Thus Michigan Holdings raised the matter to the RTC. **It is noteworthy that in the Complaint filed by it, Michigan Holdings mentioned the NIRC and the LGC, but did not directly challenge the Makati Revised Revenue Code. What the Complaint alleged was that the imposition of local business tax on dividend income constituted a breach of the limitation of the taxing powers of the local government under Section 133(a) of the LGC.** Thus, it was not the specific provision in the tax ordinance itself that Michigan Holding was questioning, but something larger: the exercise of a taxing power by the LGU beyond the limits authorized by the LGC and the NIRC. Indeed the parties agreed on a single issue to be resolved by the RTC: "whether or not the City Treasurer's Office of Makati City may levy business tax on the dividend income of the plaintiff,"[7] Michigan Holdings. Clearly, it was not the validity of the Makati Revised Revenue Code or any provision thereof that was at issue." *(Emphasis supplied)*

The Decision then cites a long line of jurisprudence, including *Luz R. Yamane, in her capacity as City Treasurer of Makati City, vs BA Lepanto Condominium Corporation*[8], *Province of Bulacan, et al. vs Court of Appeals, et al.*,[9] *Leonardo Tan, et al. vs Socorro Y. Pereña*,[10] and *Cagayan Electric Power and Light Co., Inc. vs City of Cagayan de Oro*[11] to support the finding that under certain circumstances, the failure of taxpayers to appeal a tax ordinance or revenue measure to the Secretary of Justice under Section 187 on the ground of illegality or unconstitutionality does not place the ordinance beyond the scrutiny and review of the judiciary.

While the Court agrees with respondent that Section 187 of the LGC has not been repealed by Congress, nonetheless, its existence cannot work to limit the exercise of judicial power by the Court.

As regards respondent's ground for reconsideration advocating for the continued validity of Sections 3A.02(P), in relation to Sections 3A.02(G) and (H), of the Revised Makati Revenue Code since it has only been challenged collaterally and not in a direct action, this Court has ruled that an assessment

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[7] RTC Order dated March 20, 2009, p. 2.
[8] G.R. No. 154993, October 25, 2005, 474 SCRA 258.
[9] G.R. No. 126232, November 27, 1998.
[10] G.R. No. 149743, February 18, 2005, *en banc*.
[11] G.R. No. 191761, November 14, 2012.

can be successfully challenged without attacking the ordinance on which it is based.

Similar to the cited case in the Decision, *Province of Bulacan, et al. vs Court of Appeals, et al.*[12], the legality of the subject sections in the Revised Makati Revenue Code was never questioned by the petitioner. Instead, from the onset of the case in the RTC, petitioner questioned the assessment of taxes on the basis of the subject sections. This has been clearly explained in *Our* Decision, thus:

> "In the instant case, **the litigants also agreed on a sole issue at the RTC, which the RTC approved**. The RTC eventually held that it had 'no jurisdiction to hear the legality or constitutionality of Section 3A.02 of The Revised Makati Revenue Code.' But this was not the sole issue at all. The issue agreed upon by the litigants and approved by the RTC was **'whether or not the City Treasurer's Office of Makati City may levy business tax on the dividend income of the plaintiff'** – not the legality or constitutionality of Section 3A.02 of The Revised Makati Revenue Code. There was no mention at all of The Revised Makati Revenue Code. It was the assessment of the tax on its dividend income that was questioned by Michigan Holdings, rather than the ordinance itself. It was the RTC that inferred that 'such allegation in effect is questioning the validity of Section 3A.02(p) of the Makati Revenue Code which is outside the jurisdiction of this Court.' In effect, **the RTC inexplicably changed the sole issue of the case**, in disregard of its own Order dated March 20, 2009.
>
> A review of the documents and pleadings filed by Michigan Holdings shows that ***in no instance did the firm question the legality or constitutionality of the Revised Revenue Code of Makati City so as to seek its invalidation***. We reached this conclusion after a meticulous reading of the said documents and pleadings: the protest letter dated January 28, 2008; the request for reconsideration dated March 12, 2008, addressed to the respondent; the Complaint filed with the RTC on March 24, 2008; the Pre-Trial Brief filed with the RTC on September 16, 2008; the Memorandum filed with the RTC on July 20, 2009; and the Motion for Reconsideration filed on November 17, 2011 at the RTC. In its Memorandum, Michigan's prayer was for the cancellation of the assessment, not the invalidation of Section 3A.02(p) or

[12] G.R. No. 126232, November 27, 1998.

> any other provision of the Makati City Revised Revenue Code. This is consistent with the prayer in the initiatory pleading, the Complaint." *(Boldface supplied)*

The RTC mistakenly ousted itself of jurisdiction over the case when it changed the issue of the case to rest solely on the legality and validity of the questioned sections of the Revised Revenue Code of Makati. The facts of the case, upon review on appeal, however, show otherwise. While the Court deigned to rule on the invalidity of the questioned sections *per se*, the Decision comprehensively tackles why the said sections cannot be given effect, especially as the basis of petitioner's assessment.

This goes to respondent's other ground for reconsideration that Local Government Units (LGUs) are empowered to impose tax on any business which the Sanggunian concerned may deem proper to tax under Section 143(H) of the Local Government Code (LGC). Since the imposition of taxes on Holding Companies was not expressly prohibited by the LGC, the questioned sections of the Revised Revenue Code of Makati are well within the confines of the law.

Contrary to what respondent proposes, the questioned sections of the Revised Revenue Code of Makati cannot exist in a vacuum without regard to the other sections of that particular law or, more importantly, independently of other existing laws.

Our discussion on why dividend income is not subject to a local business tax is quoted below:

> "Section 133(a) of the Local Government Code expressly provides that the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax, except when levied on banks and other financial institutions.
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> Section 131(e) of the LGC defines 'banks and other financial institutions' to include 'non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder.' This enumeration appears to be exclusive of other entities. Nowhere in the entirety of Section 131 is a holding company mentioned. However, this, by itself,

does not place holding companies beyond the reach of local taxation, except on their income.

Section 143 of the Local Government Code is the law on local business taxes. Subsection (f) thereof expressly allows local taxation on banks and other financial institutions on their income from dividends, based on gross receipts of the preceding calendar year. What Section 3A.02(h) of the Revised Makati Revenue Code did was to expand the taxpayer base to encompass 'owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, moneyshops, insurance companies, stock markets, stock brokers, dealers in securities, including pre-need companies, foreign exchange.' The Treasurer of Makati City, while invoking this Section 3A.02(h), made it applicable to holding companies, such as Michigan Holdings, by virtue of Section 3A.02(p), which provides that holding companies 'shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year.'

Section 3A.02(h) of the Revised Makati Revenue Code, which took effect on January 1, 2006, imposes a local business tax on the dividend income of certain taxable entities. Section 3A.02(p) makes holding companies liable for this business tax.

> 'Section 3A.02(p). On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h) of the gross sales and/or receipts during the preceding calendar year.'

Thus, **Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, violates the limit set by Section 133(a) of the Local Government Code.**

Indeed, if the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its Section 3A.02(h), instead of placing them all by themselves in Section 3A.02(p) and then making the tax rates in either Section 3A.02(h) or (g) applicable to them. That holding companies, exclusively, were placed in a separate section, shows that they comprise a category distinct from the class of "banks and other financial institutions" as defined by Section 131(e) of the LGC. That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by Section 133(a) that the taxing powers of LGUs shall not extend to the levy of income tax, except on banks and other financial institutions.

There is more.

Section 27(D) of the National Internal Revenue Code deals with rates of tax on certain passive incomes. Subsection (4) thereof, covering intercorporate dividends, states that "Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax" – meaning corporate income tax. Dividends are instead subject, under Section 27(D)(1), to "a final tax at the rate of twenty percent (20%)."

> 'Under Section 27(D)(4) of the Tax Code, dividends received by a domestic corporation from another corporation are not subject to the corporate income tax. Such intracorporate dividends are some of the passive incomes that are subject to the 20% final tax, just like interest on bank deposits. Intracorporate dividends, being already subject to the final tax on income, no longer form part of the bank's gross income under Section 32 of the Tax Code for purposes of the corporate income tax.[13]'

Thus, **Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, likewise violates Section 27(D)(4) of the National Internal Revenue Code.**

Section 3A.02(p) of the Revised Makati Revenue Code is thus an *ultra vires* exercise of local taxing power, and cannot be given effect without violating the principle that an

[13] *China Banking Corporation vs Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue*, G.R. No. 146749, June 10, 2003.

ordinance can neither amend nor repeal but must conform to a statute.[14]" *(Boldface supplied)*

The rule is that a statute should be so construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system.[15] The rule is expressed in the maxim, *interpretare et concordare legibus est optimus interpretandi*, or every statute must be construed and harmonized with other statutes as to form a uniform system of jurisprudence.[16] A construction of a statute which creates an inconsistency should be avoided when a reasonable interpretation can be adopted which will not do violence to the plain words of the act and will carry out the intention of Congress.

Lastly, respondent questions the Court's power to resolve all legal issues to achieve an orderly disposition of the case and posits that, instead of resolving, the case be remanded to the RTC for proper disposition.

Prior to discussing the merits of the case in *Our* Decision, *We* first laid down the basis for exercising jurisdiction of the same, thus:

> "Under Section 4(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), 'An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.' **Under Section 10 of the said Rule 43, the Court has jurisdiction over both errors of fact and law.**
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> Moreover, under the second paragraph of Section 1, Rule 14 of the RRCTA, **'In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.'**
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> The Court is satisfied that it has the jurisdiction and competence to resolve the questions of law at the core of this case. The Court notes that in a catena of cases, it had previously resolved questions of law and was upheld by the

[14] See *Solicitor General, et al. vs Metropolitan Manila Authority and Municipality of Mandaluyong* (G.R. No. 102782, December 11, 1991, en banc.

[15] *Valera v. Tuason*, 80 Phil. 823 (1948), *Corona v. Court of Appeals*, 214 SCRA 378 (1992), citing Agpalo, Statutory Construction, p. 210.

[16] *Id.*

> Supreme Court. Among these cases are *Commissioner of Internal Revenue vs Philippine Global Communication, Inc.*;[17] *National Power Corporation vs Central Board of Assessment Appeals, et al.*;[18] *J.R.A. Philippines, Inc. vs Commissioner of Internal Revenue*;[19] *Commissioner of Internal Revenue vs Petron Corporation*;[20] *Commissioner of Internal Revenue vs Bank of Commerce*;[21] *CBK Power Company, Limited vs Commissioner of Internal Revenue*;[22] *Commissioner of Internal Revenue vs Team (Philippines) Operations Corporation*;[23] and *San Roque Power Corporation vs Commissioner of Internal Revenue*.[24]"

We also agree with petitioner's observations that the case of *CIR v. Wyeth and the Court of Tax Appeals*[25], cited by respondent, is not apropos. First, the issue in the *Wyeth case* is not a local tax assessment, but rather a national tax assessment. Second, there was no law or ordinance that was being questioned by Wyeth when it protested the assessment. Third, the assessment against Wyeth on the deficiency sales tax was not cancelled as it failed to present the necessary supporting documents. Clearly, respondent's cited case is not on all fours with the case at bar.

In sum, *We* find nothing persuasive in the arguments of respondent to merit reconsideration.

WHEREFORE, respondent's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

[17] G.R. No. 167146, October 31, 2006.
[18] G.R. No. 171470, January 30, 2009.
[19] G.R. No. 177127, October 11, 2010.
[20] G.R. No. 185568, March 21, 2012.
[21] G.R. No. 180529, November 13, 2013.
[22] G.R. Nos. 198729-30, January 15, 2014.
[23] G.R. No. 179260, April 2, 2014.
[24] G.R. No. 205543, June 30, 2014.
[25] G.R. No. 76281, September 20, 1991.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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