REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

MALAYAN EDUCATION SYSTEM, INC. (FORMERLY KNOWN AS MALAYAN COLLEGES, INC. AND PRESENTLY OPERATING UNDER THE NAME OF MAPUA UNIVERSITY),
Petitioner,

-versus-

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

CTA AC No. 225
(Civil Case No. 15-592)

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

OCT 20 2021 11:13 am

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RESOLUTION

MANAHAN, J.:

This resolves the following:

1. Petitioner's **Motion for Partial Reconsideration**[1] filed on November 20, 2020 which prays to: (1) declare the respondents without authority to impose local business taxes (LBT) on it as an educational institution as well as on the tuition and school fees it collects; (2) declare the Notice of Assessment (NOA) dated March 6, 2015 null and void; and (3) order the respondents to refund the amount of Php8,160,000.00 to it.

2. Respondents' **Motion for Partial Reconsideration (Decision dated October 30, 2020)**[2] filed on December 9, 2020.

[1] Docket, CTA AC No. 225, pp. 314-328.
[2] *Id.*, pp. 329-340.

Both motions assail this Court's Decision dated October 20, 2020 (Assailed Decision), the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the assailed RTC-Branch 58, Makati City *Decision* dated March 21, 2019 and *Order* dated June 7, 2019 are hereby **REVERSED** and **SET ASIDE.** The Notice of Assessment dated March 6, 2015 is hereby **DECLARED NULL** and **VOID** and respondents are **ORDERED** to refund the amount of Php8,160,000.00 to petitioner. Anent petitioner's prayer that it be declared a tax exempt educational institution under the Philippine Constitution, the same is **DENIED** for lack of merit.
>
> **SO ORDERED**."

Petitioner, in its motion, argues that educational institutions are not subject to LBT in the absence of any provision in Republic Act (RA) No. 7160 or the 1991 Local Government Code (LGC).

Petitioner insists that the LGC never intended the educational institutions to be subjected to tax citing Section 143(h) of the LGC as public interest emphasizes the special position of said institution in comparison with other businesses.

Respondents, on the other hand, argue that this Court has no jurisdiction considering that the petition for review was filed out of time and that they have not violated petitioner's right to due process.

Respondents further argue that the prescriptive period of assessment is reckoned from the date of receipt of the Letter of Authority (LOA).

Petitioner, in its **Comment (To the Motion for Partial Reconsideration dated December 9, 2020)** filed on January 12, 2021, argues that this Court has jurisdiction on the instant case. It also argues that the respondents violated its right to due process and that majority of the assessment were already prescribed.

We deny the instant motions.

Anent petitioner's argument that educational institutions are not subject to LBT in the absence of any provision in the LGC and that the latter never intended to subject said institution to LBT, it was stated in the Assailed Decision that the exemption of educational institutions' income from taxation is not absolute but depends on the nature of such institution whether it is a "non-stock, non-profit" or proprietary educational institution under Section 4(3), Article XIV of the 1987 Philippines Constitution.

In the Assailed Decision, it was determined that petitioner is a proprietary educational institution based on its Amended Articles of Incorporation.

As stated also in the Assailed Decision, Section 186 of the LGC, subject to the required public hearing and the limitation under Section 133 of the same law, may impose taxes, fees, or charges not included in the 1997 National Internal Revenue Code, as amended. Hence, petitioner may be subjected to LBT by respondents.

What the petitioner is assailing is the inclusion of the educational institutions in the definition of a Contractor in respondents' Revenue Code. Under Section 187 of the LGC, any question on the constitutionality or legality of tax ordinances or revenue measures should be brought before the Secretary of Justice within the period provided therein. In the absence of any contravening evidence, such tax ordinance or revenue measure is presumed regular.

As to the respondents' argument on jurisdiction, they insist that the petition for review should have been filed on August 9, 2019 instead of a Motion for Extension of Time to file said pleading.

Respondents should be aware that the proceedings of cases in this Court is governed by its own rules as provided under Section 8 of RA No. 1125, as amended, to wit:

> Section 8. *Court of record; seal; proceedings.* - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by

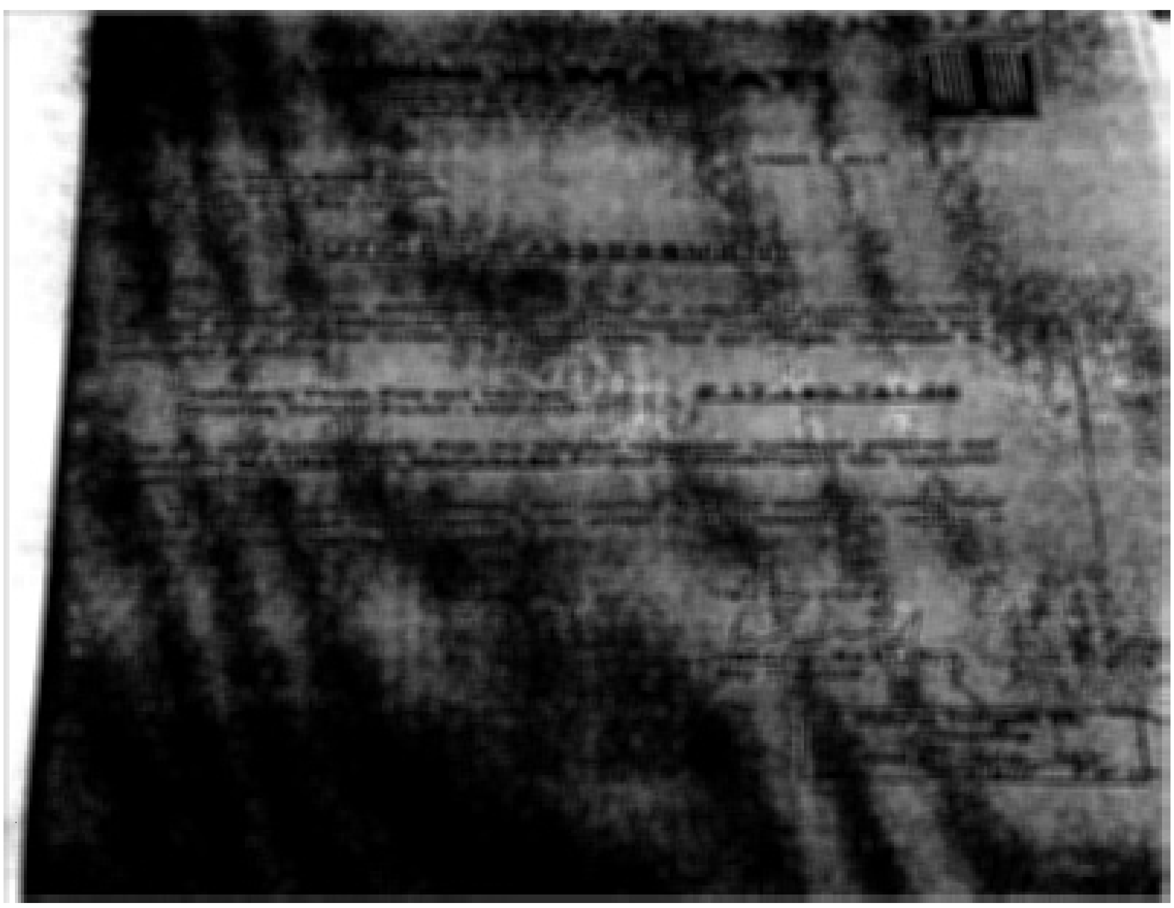
> law, but such proceedings shall not be governed strictly by technical rules of evidence.

Further, Section 3, Rule 1 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

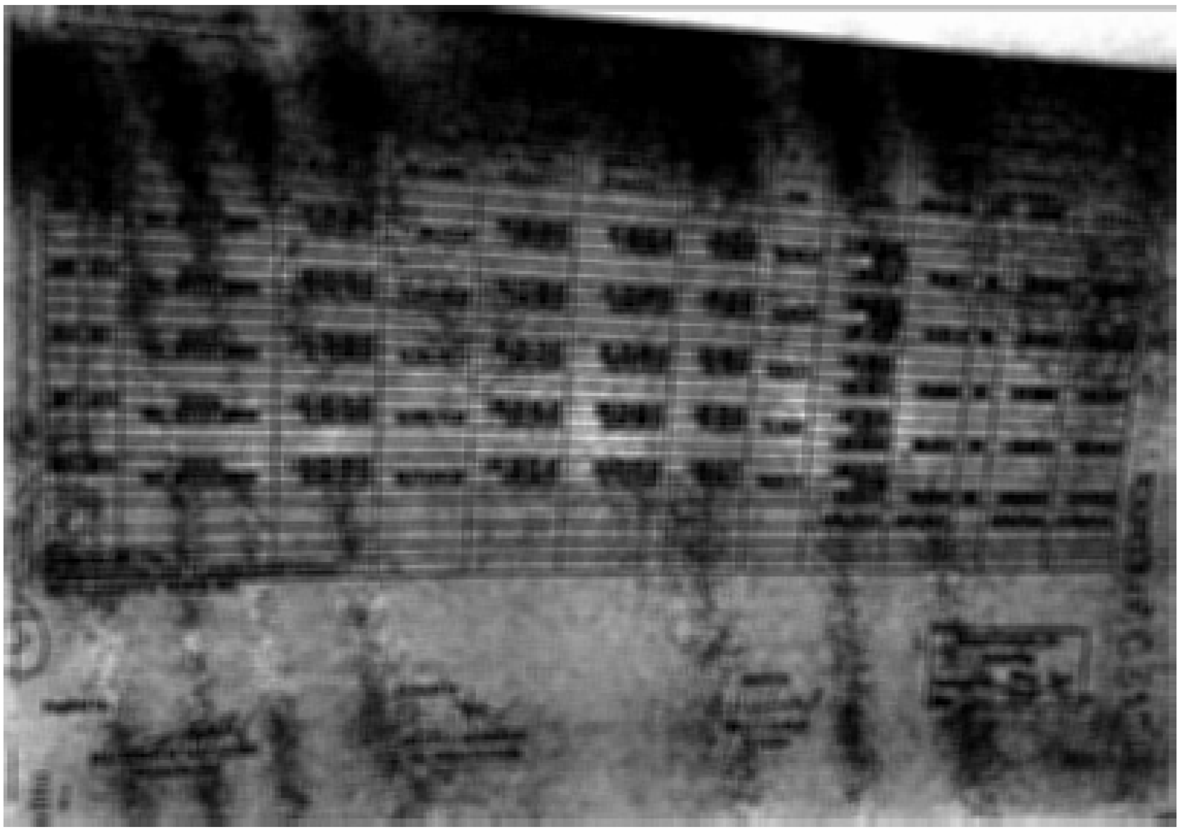
> "SEC. 3. *Applicability of the Rules of Court.* - The Rules of Court in the Philippines shall apply suppletorily to these Rules."

The granting of the motion for extension to file petitioner's petition for review is within the discretion of this Court as long as the filing is made within the prescribed period under the Rules of Court. Thus, having been granted an extension of time to file said petition on the last day of filing, August 9, 2019, the filing of the same on September 4, 2019 was on time.

Anent respondents' argument that they did not violate petitioner's right to due process, it must be recalled that this Court nullified the Notice of Assessment[3] (NOA) dated March 6, 2015 due to the absence of the required information under Section 195 of LGC as shown therein, to wit:



[3] Docket, CTA AC No. 225, pp. 169- 170.



Nowhere in the said NOA did respondents cite the legal provisions violated or for that matter, the legal basis for the imposition of said deficiency assessment against petitioner's income. Thus, it is very clear that the subject NOA did not comply with the requirement under Section 195 of LGC of which states, to wit:

> **SECTION 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 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 canceling 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 the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable. (*Additional boldfacing ours*)

Anent the argument of prescription of assessment, it was thoroughly discussed in the Assailed Decision that under Section 194 in relation to Section 167 of the LGC, the prescription of assessment is not reckoned from the date of the receipt of LOA but when LBT becomes due for a particular taxable period.

As per case records and as stated in the Assailed Decision, the subject NOA was only issued on March 6, 2015. Thus, the assessment for gross income under calendar years 2008 and 2009, which were due on January 20, 2014 and January 20, 2015, were already prescribed. However, since the Court had nullified said NOA, all remaining assessments had also become null and void.

Considering that petitioner's prayer in its motion to nullify said NOA as well as to grant the refund of the amount of Php8,160,000.00 were both granted already in the Assailed Decision, the Court no longer sees the need to act on said motion.

WHEREFORE, premises considered, both petitioner's *Motion for Partial Reconsideration* and respondents' *Motion for Partial Reconsideration (Decision dated October 30, 2020)* are hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(no part)
MARIAN IVY F. REYES-FAJARDO
Associate Justice