REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

CITY TREASURER OF MANILA, *Petitioner,*	**CTA AC No. 231** (Civil Case No. 16-136011)
	Members:
-versus-	**DEL ROSARIO, *P.J.*,** *Chairperson,* *and* **MANAHAN**, *J.*
	Promulgated:
NEW COAST HOTEL, INC., *Respondent.*	JAN 13 2021 2:06 pm

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DECISION

MANAHAN, *J.*:

This case involves the *Petition for Review*[1] filed by petitioner City Treasurer of Manila on October 11, 2019 seeking the reversal of the *Decision* dated June 28, 2019[2] (Assailed Decision) and the *Order* dated September 23, 2019[3] (Assailed Order) of the Regional Trial Court (RTC)-Branch 34, City of Manila, and praying that respondent New Coast Hotel, Inc. (NCHI) be ordered to pay its deficiency local business taxes (LBTs) amounting to Php3,358,216.91 for calendar years (CYs) 2014 and 2015.

The dispositive portions of the assailed Decision and Order of RTC-Branch 34, Manila, read as follows:

Decision dated June 28, 2019:[4]

> "**WHEREFORE**, premises considered, judgment is hereby rendered **CANCELLING** the Notice of Assessment dated November 16, 2015 issued by the City Treasurer's

[1] Docket, CTA AC No. 231, pp. 5-32.
[2] *Id.*, Annex A, pp. 34-62.
[3] *Id.*, Annex B, pp. 63-64.
[4] *Supra*, Note 2.

Office of Manila ***EXCEPT*** on the assessment pertaining to the "Rental and Other Income".

The plaintiff is hereby directed to pay the amount due on its revenues for Rental and Other Income as follows:

1. The amount of P151,683.61 representing the tax due for 2014;

2. The amount of P149,527.17 representing the tax due for 2015.

within fifteen (15) days from receipt hereof, otherwise, the applicable rates on surcharges and interest shall be applied thereafter.

As to defendant's counterclaim, the same is hereby **DISMISSED** for lack of merit and legal basis.

SO ORDERED."

Order dated September 23, 2019:[5]

"Accordingly, the defendant's Motion for Reconsideration is hereby ***DENIED*** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner City Treasurer of Manila, represented by Ma. Jazmin M. Talegon is the duly appointed Officer-in-Charge (OIC)-City Treasurer of the City of Manila with office address at City Treasurer's Office, City Hall Manila.[6]

On the other hand, respondent NCHI, doing business under the name "New World Manila Bay Hotel", is a domestic corporation existing under and by virtue of the laws of the Philippines, with principal office located at the 5/F New World Manila Bay Hotel, 1588 M.H. Del Pilar, Malate, Manila.[7]

THE FACTS

On January 25, 2016, respondent NCHI received from the petitioner a copy of an Assessment Notice dated November 16, 2015 wherein the latter demanded the former to pay the

[5] *Supra*, Note 3.
[6] Docket, Petition for Review, p. 6.
[7] *Id.*, Decision dated June 28, 2019, p. 34.

deficiency LBTs amounting to Php550,444.79, inclusive of surcharges and interest for CYs 2014 and 2015.[8] The alleged deficiency LBTs arose from: (1) the re-alignment or re-allocation of declared revenues for Sing Along (Alcoholic Beverages) into "Alcoholic Beverages" and "Food and Refreshment" without stating in the assessment notice the basis for such re-allocation and the tax rate applied on said re-allocation, and (2) deficiency LBT assessment on the declared revenue for "Rental and Other Income".[9]

On March 22, 2016, respondent filed a protest against said assessment notice. Pursuant to Section 195 of the Local Government Code (LGC), petitioner should act on said protest within sixty (60) days from said filing or until May 21, 2016. However, petitioner failed to act on said protest.[10]

Thus, respondent filed a Complaint for Cancellation of Assessment of Local Business Taxes against petitioner in RTC-Branch 34, Manila.[11]

After trial, the lower court cancelled the assessment for the alleged deficiency LBTs on "Alcoholic Beverages" and "Food and Refreshment" as well as petitioner's counter-claim for Php3,358,216.91 pertaining to the recomputed assessment of respondent's alleged deficiency LBT on the alleged misdeclaration of revenues for CYs 2013 and 2014.[12]

The lower court ruled that petitioner violated respondent's right to due process because of the former's failure to provide the legal basis for such re-allocation and the lack of valid service of notice of assessment to the latter.[13]

Thus, petitioner filed the instant Petition for Review on October 11, 2019.

On October 24, 2019, respondent was ordered[14] by this Court to submit its comment[15] on the said petition which it

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[8] Docket, Decision dated June 28, 2019, pp. 34-35.
[9] *Id.*, p. 35.
[10] *Id.*
[11] *Id.*, p. 34.
[12] *Id.*, pp. 55-62.
[13] *Id.*
[14] Docket, Resolution dated October 24, 2019
[15] Docket, pp. 211-228.

submitted on December 23 2019 after this Court granted[16] its motions[17] for extension of time to file said pleading. Hence, On January 28, 2020, the case was submitted for decision[18].

ISSUES

These were the issues raised by petitioner in the instant Petition for Review, to wit:

1. Whether or not the trial court erred in cancelling petitioner's Notice of Assessment dated November 16, 2015;

2. Whether or not the trial court erred in directing respondent to pay the assessment pertaining to respondent's Rental and Other Income amounting to Php151,683.61 and Php149,527.17 for CYs 2014 and 2015, respectively, exclusive of surcharges and interest;

3. Whether or not the trial court erred in holding that petitioner's recomputed assessment of respondent's alleged corrected deficiency LBTs for CY 2014 and 2015 which was set up as compulsory counterclaim violated respondent's right to due process;

4. Whether or not the trial court erred in dismissing petitioner's counterclaim which was allegedly the updated assessment of respondent's alleged undeclared gross income for the years 2013 and 2014 in applying for the renewal of the latter's business permit for the years 2014 and 2015, respectively; and

5. Whether or not respondent is liable to pay the updated/recomputed assessment of its alleged deficiency LBTs amounting to Php3,358,216.91 as of January 26, 2018.

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[16] *Id.*, Resolutions dated December 5, 2019, pp. 206-208, & January 28, 2020, p. 230.
[17] *Id.*, pp. 200-202 and 206-208.
[18] *Id.*, Resolution dated January 28, 2020, p. 230.

Petitioner's Arguments[19]

Petitioner argues that respondent deliberately and grossly understated its declaration of its gross income when it renewed its business permit and license for CY 2014 and 2015, hence, it evaded the payment of the correct LBT.

Petitioner insists that the payment of the deficiency LBTs for the Rental and Other Income should include the surcharges and interest under Sections 168 and 180 of the LGC.

Petitioner also argues that the updated and recomputed assessment of respondent's alleged deficiency assessment which was set up as a counterclaim should have been granted by the trial court because it has legal bases in law, facts and jurisprudence.

Petitioner further insists that since respondent understated its declaration of gross income, it deceived the former in paying the correct LBTs, hence, it should be held liable for the updated and recomputed assessment.

Respondents' Counter-Arguments[20]

Respondent, on the other hand, argues that petitioner has no clear legal basis in her assessment against the former for alleged underdeclared gross revenues when it applied for the renewal of its business permits and licenses for CYs 2014 and 2015.

Respondent insists that the trial court did not err in holding said assessment null and void for having been issued in violation of its right to due process.

Respondent further argues that it should not be held liable for surcharges and interest on the assessment for Rental and Other Income since the corresponding gross revenue therefrom was rightfully reported in its Application for Renewal of Business Permit for CYs 2014 and 2015 and it was petitioner's representative who failed to assess the supposed LBT for such income items. It merely relied in good faith on

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[19] *Supra.*, Note 1.
[20] *Supra.*, Note 21.

the accuracy and correctness of petitioner's issued Statements of Account (SOAs) and based its LBT payments on these SOAs.

RULING OF THE COURT

The Court has jurisdiction over the Petition for Review

This Court shall determine first if the petition filed by petitioner is within its jurisdiction.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[21] The jurisdiction of the CTA regarding local tax cases is provided under Section 7(a)(3) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (3) **Decisions, orders or resolutions of the Regional Trial Courts in local tax cases** originally decided or resolved by them in the **exercise of their original** or appellate **jurisdiction**;" (*Emphasis supplied*)

Similarly, Section 3(a)(3) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> xxx xxx xxx
>
> (3) **Decisions, resolutions or orders of the Regional Trial Courts in local tax cases** decided or resolved by them **in the exercise of their original jurisdiction**;" (*Emphasis supplied*)

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[21] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014. an

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[22]

The records of the instant case reveal that the instant petition is an appeal on the decision rendered by RTC-Branch 34, City of Manila against petitioner's assessment on the former's alleged deficiency LBT for CYs 2014 and 2015. Thus, the subject matter of the case falls under Section 7(a)(3) of RA No. 1125, as amended, and Section 3(a)(3) of Rule 4 of the RRCTA.

The records also reveal that the RTC-Branch 34 Assailed Decision and Order were received by the petitioner on July 11, 2019 and September 27, 2019, respectively.

Section 3(a), Rule 8 of the RRCTA also provides:

> SEC. 3. *Who may appeal; period to file petition.* - (a) **A party adversely affected by a decision, ruling** or the inaction **of** the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or **a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review with in the two-year period prescribed by law from payment or collection of the taxes. (*Emphasis supplied*)

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[22] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.

Thus, petitioner had thirty (30) days from September 27, 2019 or until October 27, 2019 to file its petition with the Court, hence, the filing of the instant Petition for Review on October 11, 2019 was on time. Hence, the Court has jurisdiction on the instant case.

Going now to the merits of the petition, the five-fold issues can be consolidated into two, namely: (1) whether the cancellation of the Notice of Assessment dated November 16, 2015, with the exception of the "Rental and Other Income" had legal basis; and (2) whether the compulsory counterclaim is a valid mode for collection of deficiency LBTs.

In the Assailed Decision, the lower court found that the cause of the alleged deficiency LBTs was the unilateral reallocation of the gross revenues declared for Sing Along (Alcoholic Beverages) into revenues for "Alcoholic Beverages" and "Food and Refreshment". No legal basis or explanation was indicated in the Assessment Notice and even petitioner's witness who prepared such notice failed to explain the basis for the reallocation as well as the rate used for such computation.[23] Thus, the lower court rendered the assessment void for lack of due process.

However, as regards the assessment for deficiency LBT on the "Rental and Other Income" of respondent, the Assailed Decision upheld it but without the imposition of surcharges and interests. The Court took note that these assessments were not originally included in the SOAs that petitioner sent to respondent despite the inclusion of the "Rental and Other Income items by the latter in the Calculation of Local Business Tax for 2014 and 2015 which it submitted in connection with the renewal of its business permits for the said years. Thus, the imposition of surcharges and interests cannot apply because there was no late payment on the part of the respondent.[24]

The lower court found that the re-computation of the assessed amount was not made through a Notice of Assessment which should have been subject to a protest under Section 195 of the LGC but was presented only to respondent during the trial of the case in the lower court.[25]

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[23] Docket, Decision dated June 28, 2019, pp. 58-59.
[24] *Id.*, p. 54.
[25] *Id.*, pp. 59-62. *am*

Thus, such assessment was dismissed by the lower court for violating respondent's right to due process.

Section 195 of the LGC provides:

> **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*)

The abovementioned provision is akin to Section 228 of the 1997 National Internal Revenue Code, as amended, which requires that, in order for an assessment to be valid, "taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

Petitioner must be aware that the essence of due process in administrative proceedings is not only for the respondent to have the opportunity to be heard but also to properly prepare and answer the charges against it as held in *Alberta De Joya Iglesias v. The Office of the Ombudsman, et al.*[26], to wit:

> Administrative due process demands that the party being charged is given an opportunity to be heard. Due process is complied with "if the party who is properly notified of allegations against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions."

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[26] G.R. No. 180745, August 30, 2017.

In *F/O Ledesma v. Court of Appeals*:

> Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an o£portunity (sic) to seek a reconsideration of the action or ruling complained of.

> An important component of due process is the right of the accused to be informed of the nature of the charges against him or her. **A proper appraisal of the accusations would give the accused an opportunity to adequately prepare for his or her defense. Otherwise, substantial justice would be undermined.** (*Emphasis supplied*)

In *Commissioner of Internal Revenue v. Azucena T. Reyes*[27], the Supreme Court ruled that such observance of due process is not merely a formal but also a substantive requirement of law, to wit:

> "*Fourth*, petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. A void assessment bears no valid fruit.
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> The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence."

Based on the factual milieu of this case, it will be difficult for the respondent to prepare an adequate defense against such assessment if it is left in limbo guessing what was the basis for such reallocation of its gross revenues for Sing Along (Alcoholic Beverages) into revenues for "Alcoholic Beverages" and "Food and Refreshment". Petitioner did not even bother to act on respondent's protest and to apprise it of her action. Thus, this Court finds legal basis in the cancellation of the notice of assessment.

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[27] G.R. Nos. 159694 and 163581, January 27, 2006. *an*

In the exercise of the State, as well as Local Government Units (LGUs), of the power to tax, the law should be construed strictly against it and in favor of taxpayer as held in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[28], to wit:

> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. Hence in *Commissioner of Internal Revenue v. Algue, Inc.*, it was said -
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>> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>>
>> xxx xxx xxx
>>
>> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
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>> **But even as we concede the inevitability and indispensability of taxation, it is a**

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[28] G.R. No. 185371, December 08, 2010.

> **requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.** If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate x x x that the law has not been observed. (Emphasis supplied).

Finally, as to the claim of petitioner that its compulsory counterclaim in the total amount of Php3,358,216.91 which includes the initial tax assessment, revised tax assessments and surcharges and interests, is a valid mode to collect deficiency LBTs, the same is bereft of legal basis. As the lower court has aptly ruled and we quote:[29]

> "The said counterclaim cannot, however, be granted, it being violative of plaintiff's right to due process. Under Section 195 of the Local Government Code, it specifically provided for the procedure for the issuance of deficiency assessment by the local treasurer. As above quoted, Section 195 has prescribed the mandatory procedure as follows:
>
> 1. 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;
>
> 2. The taxpayer may file a written protest with the local treasurer contesting the assessment within sixty (60) days from the receipt of the notice of assessment.
>
> 3. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If he finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially meritorious (*sic*); Otherwise, he shall deny the protest wholly or partly with notice to the taxpayer.
>
> 4. The taxpayer shall have thirty (30) days from receipt of the denial of the protest or from the lapse of the sixty (60) days period prescribed herein within which to appeal with the court of competent jurisdiction; otherwise, the

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[29] Docket, Decision dated June 28, 2019, p. 60.

> assessment become conclusive and unappealable."

In other words, no notice of assessment was sent to respondent except for a Data and Assessment Form[30] which was only presented in the Court for the first time, thus, depriving respondent of its right to due process. Without any valid assessment, there can be no valid collection of taxes.

The observance of taxpayer's constitutional rights is mandated upon the public officers performing the collection of taxes for the government as held in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[31]:

> "Taxes are the lifeblood of government and should be collected without hindrance. However, the collection of taxes should be exercised "reasonably and in accordance with the prescribed procedure."
>
> The essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, **taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights**." (*Emphasis supplied*)

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed RTC–Branch 34, City of Manila *Decision* dated June 28, 2019[32] and *Order* dated September 23, 2019[33] are hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[30] Docket, Decision dated June 28, 2019, p. 60.
[31] G.R. No. 215957, November 09, 2016.
[32] *Supra.*, Note 2.
[33] *Supra.*, Note 3.

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CERTIFICATION

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