22-000306-0049

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA AC NO. 266

THE MUNICIPALITY OF VILLANUEVA, MISAMIS ORIENTAL represented by its MUNICIPAL MAYOR and MUNICIPAL TREASURER,
Petitioner,

- versus -

FDC MISAMIS POWER CORPORATION and PHIVIDEC INDUSTRIAL AUTHORITY,
Respondents.

NOTICE OF DECISION

To:

ATTY. JUNE G. TENTATIVA
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Mindanao International Container Terminal
Tagoloan, Misamis Oriental 9001

PRESIDING JUDGE
Regional Trial Court - Branch 38
Cagayan de Oro Hall of Justice
Cagayan de Oro City

GREETINGS:

You are hereby notified by these presents that on **August 22, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 27, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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THE MUNICIPALITY OF VILLANUEVA, MISAMIS ORIENTAL, represented by its MUNICIPAL MAYOR and MUNICIPAL TREASURER, *Petitioner,*	**CTA AC NO. 266**
-versus-	*Members*: **DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
FDC MISAMIS POWER CORPORATION and PHIVIDEC INDUSTRIAL AUTHORITY, *Respondents.*	Promulgated: AUG 22 2024; 1:15PM

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DECISION

CUI-DAVID, J.:

Before this Court is an *Appeal by Way of Petition for Review* (***Petition***),[1] filed on June 6, 2022, by petitioner Municipality of Villanueva, Misamis Oriental, represented by its Municipal Mayor and Municipal Treasurer (**Petitioner**), against respondents FDC Misamis Power Corporation (**FDCMPC**) and PHIVIDEC Industrial Authority (**PIA**). The *Petition* seeks to nullify and/or modify the *Decision* dated January 14, 2022, of the Regional Trial Court (**RTC**) of Misamis Oriental, Branch 38 (**assailed *Decision***)[2] and the *Order* of the same court dated April 13, 2022 (**assailed *Order***)[3] permanently enjoining petitioner from imposing and collecting taxes against respondent FDCMPC.

[1] Docket – Vol. I, pp. 13-34, with annexes.
[2] Docket – Vol. I, pp. 37-52.
[3] Docket – Vol. I, pp. 53-54.

THE PARTIES

Petitioner is a public corporation created and existing under Philippine laws with office address at Poblacion, Villanueva, Misamis Oriental.

Respondent FDCMPC is a corporation duly organized and existing under Philippine laws with principal office address at PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental.

Respondent PIA is a government-owned and controlled corporation created by Presidential Decree (**PD**) No. 538[4] with the principal office address at the PHIVIDEC Industrial Authority Mindanao Container Terminal, Tagoloan, Misamis Oriental.

THE FACTS

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

> The complaint states that [respondent FDCMPC] in 2012 entered into a Registration Agreement with [respondent PIA] whereby FDCMPC was granted by PIA the authority to conduct and operate its business inside the PIEMO-SEZ. FDCMPC operates and maintains the 3x135 Megawatt Coal-Fired Power Plants inside the PIEMO-SEZ servicing the entire Mindanao Island with 16 electric cooperatives and various industrial and commercial enterprises for the supply of electricity. PIA issued to FDCMPC a Certificate of Registration entitling the latter to avail of the tax incentives under [PD No.] 538 as amended by [RA No.] 7916. On February 17, 2013, PIA sent a letter to the Department of Finance requesting an opinion on the following: 1. the exemption of the registered enterprises within the PIEMO-SEZ from local taxes; and 2. the exclusive authority of PIA to issue business permits to registered enterprises located within PIEMO-SEZ. In response, the Department of Finance referred PIA's letter to the DILG which issued DILG Legal Opinion No. 22 Series of 2013, confirming the exemption of payment of local taxes by the registered enterprises within PIEMO-SEZ by virtue of Section 24 of [RA No.] 7916. The DILG opinion likewise affirmed the non-authority of the local governments of Tagoloan and Villanueva, Misamis Oriental to issue business permits to registered enterprises within PIEMO-SEZ, affirming

[4] CREATING AND ESTABLISHING THE PHIVIDEC INDUSTRIAL AUTHORITY AND MAKING IT A SUBSIDIARY AGENCY OF THE PHILIPPINE VETERANS INVESTMENT DEVELOPMENT CORPORATION DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, AND FOR OTHER PURPOSES, August 13, 1974.

in effect, the sole and exclusive authority of PIA to issue business permits to the registered business establishments inside PIEMO-SEZ. On August 30, 2013, the Board of Investments issued to [respondent] FDCMPC a Certificate or Registration No. 2013-177 certifying its status as a "pioneer" business enterprise. Under Section 133 of R.A. No. 7160, business enterprise certified as "pioneers" are exempted from local taxes for the period of 6 years from the date of registration. On January 18, 2017, [petitioner] Municipality of Villanueva through the Office of its Municipal Treasurer, issued an assessment for local business taxes in relation to the 2017 business permit renewal of FDCMPC, despite the provisions of the law and DILG Opinion. On January 25, 2017, FDCMPC informed PIA in a letter of the assessment for business taxes and other regulatory fees and charges made by [petitioner] Municipality of Villanueva. FDCMPC sent a follow-up letter on February 16, 2017 and requested for a certification attesting the exemption from local taxes of the registered enterprises inside the PIEMO-SEZ. On April 17, 2017, FDCMPC received another letter from [petitioner] Municipality of Villanueva, calling its attention to the unpaid business taxes. On May 17, 2017, PIA issued the Certification attesting the following: a) FDCMPC is a duly registered enterprise located within PIEMO-SEZ; b) FDCPMC is compliant with the terms and conditions of its registration; c) FDCMPC being a holder of a Certificate of Registration, is permitted to conduct business within [PIEMO-SEZ]; d) [PD No.] 538 provides for tax exemption of enterprises operating within the Industrial Areas; and e) the DILG Opinion states that the Municipality of Villanueva and Tagoloan in Misamis Oriental have no authority to impose local taxes on enterprises operating within PIEMO-SEZ. On September 28, 2017, the Municipality of Villanueva in a letter, demanded immediate payment of the business taxes. On February 28, 2018, the Municipality of Villanueva, in another letter, ordered FDCMPC to secure business license from it with a threat to impose 25% penalty in case of failure. FDCMPC replied that it already registered its business from PIA which has the sole and exclusive authority to issue the same. On February 13, 2019, the Municipality of Villanueva sent a final notice of demand for the payment of business taxes for the calendar years of 2017 and 2018 in the amount of ₱60,668,561.24. On February 15, 2019, FDCMPC requested PIA to defend and uphold its rights as a PIEMO-SEZ locator. On February 21, 2019, the Municipality or Villanueva, finally threatened FDCMPC to close its plants should it failed to pay the taxes on or before February 28, 2019. ...

PROCEEDINGS BEFORE THE REGIONAL TRIAL COURT

Records reveal that respondent FDCMPC filed its Complaint before the court *a quo* on February 26, 2019.[5] The case, entitled *FDC Misamis Power Corporation vs. The Municipality of Villanueva, Misamis Oriental & Its Honorable Municipal Mayor & Honorable Treasurer, and The PHIVIDEC Industrial Authority*, was docketed as Civil Case No. R-CDO-19-00696-CV.

We quote the assailed *Decision*:[6]

> On February 27, 2019, the Office of the Executive Judge, granted the issuance of the 72-hour Temporary Restraining Order.
>
> Upon hearing on the TRO on March 1, 2019, the court issued the Status Quo order and set the case for status hearing on March 14, 2019.
>
> On March 14, 2019 status hearing, both parties agreed to extend the status quo up to April 29, 2019.
>
> [Petitioner] Municipality of Villanueva in its *Answer* denied [respondent's] claim and averred that [respondent] FDCMPC's causes of action are based on PD No. 538; DILG Opinion; Proclamation No. 2106; and BOI Certificate of Registration. The provision of PD No. 538 should be considered unconstitutional in view of the provisions of [Section] 5, Article 10 of the 1987 Constitution, expressly vesting all local government units with the power to create its own sources of revenue and to levy taxes, fees and charges consistent with the basic policy of local autonomy. The law should also be deemed repealed by the Local Government Code of 1991, consistent with the basic policy of local autonomy. Moreover, under the police power of the local government unit, as delegated by the Local Government Code of 1991, the local government has the power to regulate trade or business established and operated within its territorial jurisdiction. Property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government in the exercise of police power. RA No. 7160 already repealed [PD No.] 538. If there is an irreconcilable conflict between the two statutes, the older one is deemed repealed or modified accordingly. The DILG Opinion No. 22, is a mere opinion which is not controlling for being not a law or statute. Moreover, the DILG was never apprised of the failure

[5] RTC Records – Vol. I, pp. 5-35.
[6] *Supra* at note 2.

of [respondent] PIA to secure any endorsement from the Sangguniang Bayan of Villanueva when it applied for the development of the PHIVIDEC Industrial Estate into a Special Economic Zone. The DILG rendered the legal opinion without getting any comment from the affected municipalities of Villanueva and Tagoloan, thereby depriving the two municipalities of due process. Ergo, the opinion has no binding force and effect and should not be used as source of power or exemption. In addition, the Department of Justice in its Order dated May 12, 2016, upon motion of the Municipality of Villanueva, deleted the portion of its Resolution in MTO-OSJ Case No. 01-2016 dated February 18, 2016, citing the DILG Opinion stating that: "*local government units of Tagoloan and Villanueva have no authority to impose taxes on business establishments in PHIVIDEC Industrial Estate Misamis Oriental Special Economic Zone because of the clear and specific exemption granted to it, being an ECOZONE, by Section 24 of [RA No.] 7916.*" The Department of Finance, through the BLGF, previously ruled that Municipalities should still collect business or license permit fees from establishments operating within the ECOZONES and that exemptions from local business taxes enjoyed by enterprises operating within the industrial area created under [PD No.] 538 are deemed withdrawn by the Local Government Code of 1991, as amended. The same is confirmed in the letter of the BLGF dated January 28, 2019, to the Vice-Governor of the Province of Misamis Oriental. The taxing power of [petitioner] Municipality is pursuant to Municipal Ordinance No. 579, Series of 2017, which has been recently upheld in the DOJ Resolution dated February 22, 2019. [Petitioner] Municipality maintains that the Special Economic Zone status of co-defendant PIA is illegal for being designated under midnight proclamation. Under the provisions of Section 5 and 6 of RA No. 7916, otherwise known as the Special Economic Zone Act of 1995, as amended by R.A. 8748, one of the requirements for the application of the development of an area into a Special Economic Zone is an Endorsement of the Sangguniang Bayan of the proposed special economic zone. PIA never secured such endorsement, thus, the grant thereof in the absence of an important sine qua non is tainted with illegality, [Respondent FDCMPC's] claim of exemption therefore, has no basis. [Respondent FDCMPC's] production of electricity is not for export purposes and does not qualify for tax incentives and/or exemptions under PEZA. It should be under the jurisdiction of the LGU and not under the PIA. Business taxes are paid for the privilege of carrying on a business. It is deemed a pre-requisite to the conduct of the business. [Respondent] FDCMPC never paid any business tax to [petitioner] Municipality since it operated in 2016. It was not issued a business permit by [petitioner] Municipality and it has therefore, no right to continue doing business and consequently, no legal right to the provisional and permanent

remedies applied for in this instance. Hence, [petitioner] Municipality's prayer for the dismissal of the case.

[Respondent] PIA in its Answer averred that the preliminary mandatory injunction sought by the [respondent FDCMPC] should be granted on the following grounds: a) the Municipality of Villanueva has no authority and power to collect business tax from FDCMPC; b) [respondent] FDCMPC is bound by [PD No.] 538 and [RA No.] 7916; c) FDCMPC and PIA are bounded by the Contract of Lease; d) the existence of FDCMPC Registration Agreement with PIA; e) Energy Regulatory Commission's (ERC) regulation of electric power during election year; f) the existence of the DILG Opinion No. 22, Series of 2013, dated June 7, 2013; and g) the Board of Investment Certificate of Registration as "pioneer" business enterprise. [Respondent FDCMPC] argued that though FDCMPC's business is located in the Municipality of Villanueva it is within the jurisdiction of PHIVIDEC Industrial Estate Misamis Oriental Special Economic Zone (PIEMO-SEZ). The threat of the Municipal Mayor and Treasurer is an obstruction to economic growth not just in Mindanao but the country as well. FDCMPC, being a registered business enterprise of PIA within the PIEMO-SEZ enjoys tax exemption under Section 9 of [PD No.] 538, as amended. The DILG Legal Opinion No, 22, upheld the sole and exclusive authority of PIA to issue business permits to registered business enterprises inside the PIEMO-SEZ. Section 4 of [PD No.] 538, expressly grants PIA the authority to operate, administer and manage the PHIVIDEC Industrial Areas and other areas which shall thereafter be proclaimed, designated and specified. RA No. 7916, or the Special Economic Zone Act of 1995, provides for the legal framework and mechanisms for the creation, operation, administration and coordination of Special Economic Zones in the Philippines, to which PIA was given the privilege to be created and designated as PIEMO-SEZ or the Special Economic Zone pursuant to Proclamation No. 2106, Series of 2010. Presidential Proclamation No. 2016 is valid and remains uncontroverted and uncontested to date. FDCMPC entered into a Contract Lease with [respondent] PIA on November 19, 2012, for the area of 844,921 square meters located in the Municipalities of Tagoloan and Villanueva, Misamis Oriental for the period of 25 years from August 18. 2016 to August 17, 2041. PIA issued a Certificate of Registration in favor of FDCMPC, which entitled the latter to enjoy and avail of tax incentives under [PD No.] 538, as amended and under RA No. 7916. In 2016, the Department of Energy (DOE) included in its report, the FDC 2x135 MW Misamis Coal Power Plant which increases the supply of electricity in Mindanao and in turn lower the cost of electricity amid the rising increase of power consumption. The DOE has committed to pursue national development by attaining energy independence and implementing power market

reforms which affirmed the Philippine Energy Plan. The DOE, in particular, has always been on the look-out for long term solutions to ensure the region's energy supply. FDCMPC power supply should not be curtailed so as not to defeat the energy challenges in Mindanao. The DILG Legal Opinion No. 22, affirmed that registered enterprises within the PIEMO-SEZ are exempt from paying local taxes in accordance with Section 24 of RA No. 7916. The same, further, affirms that the LGU of Tagoloan and Villanueva, Misamis Oriental have no authority to require and issue business permits to registered enterprises within the PIEMO-SEZ. Finally, on August 30, 2013, [respondent] FDCMPC was issued by the Board of Investment (BOI) a Certificate of Registration No. 2013-177, as a pioneer business enterprise. The said certificate of registration provided an incentive of a 6 years Income Tax Holiday. Thus, the imposition of business tax by the Municipality of Villanueva is in violation of the law. PIA therefore, prays for the grant of the injunction sought by FDCMPC.

The hearing on the application for extension of the TRO and initial pre-trial were postponed several times upon agreement of the parties to extend the status quo.

On June 14, 2019, [respondent] FDCMPC filed its reply to the answer of [petitioner] Municipality.

During the initial pre-trial on July 2, 2019, the court referred the parties to the PMC.

After several extensions for the parties to settle their case before the PMC, the Mediators Report conveyed successful settlement but only on the observance of the status quo reflected in the attached Status Quo Agreement signed by the parties.

The court in its Order dated January 17, 2020, approved the Status Quo Agreement.

JDR followed but parties failed to reach a compromise on the remaining issues. As the parties desired to have the case tried in [the court *a quo*], the court directed the parties to submit a joint motion.

On June 24, 2020, parties submitted a joint motion for the court to conduct trial on the merits, despite the undersigned having conducted JDR. The court granted the same.

During pre-trial on January 12, 2021, the court granted both parties 30 days to submit their amended complaint and answer in compliance with the 2019 Amendments to the 1997 Rules of Civil Procedure.

On January 29, 2021, [respondent] FDCMPC submitted to the court, copy of the Irrevocable Standby Letter of Credit issued by the East West Banking Corporation in favor of [petitioner] Municipality.

On March 29, 2021, [respondent] FDCMPC submitted its Amended Complaint in compliance to the order of the court.

On April 14, 2021, [respondent] PIA likewise filed its Amended Answer.

During the pre-trial on June 29, 2021, parties admitted the absence of factual issues and agreed to dispense with trial. Parties thereafter stipulated as follows:

> 1. The validity of Presidential Proclamation No. 1485, Series of 2008 and Presidential Proclamation No. 2106, Series of 2010.
>
> 2. The existence, genuineness and due execution of the Board of Investment's letter dated July 4, 2017 sent to FDCMPC informing the latter that its Income Tax Holiday entitlement shall be effective from June 26, 2017 to June 25, 2023.
>
> 3. The existence and validity of PEZA Memorandum Circular No. 2004-024.
>
> 4. FDCMPC is servicing the entire grid of Mindanao Island with sixteen (16) electric cooperatives. as well as various industrial and commercial enterprises that are dependent on FDCMPC's supply of electricity.
>
> 5. The closure and/or cessation of the operations of FDCMPC's power plants will be detrimental to the economy of Mindanao in general, and to the member-consumers of the sixteen electric cooperatives relying on FDCMPC's supply of electricity, in particular.
>
> 6. The existence, genuineness, and due execution of DILG Legal Opinion No. 22, Series of 2013, declaring that the Municipalities of Tagoloan and Villanueva in Misamis Oriental have no authority to impose taxes or require and issue business permits to business establishments inside PIEMO-SEZ such as FDCMPC.

> 7. The existence, genuineness, and due execution of the Certification dated May 17, 2017 issued by PIA which stated therein that:
>
> a. FDCMPC is a duly-registered enterprise located within PIEMO-SEZ;
>
> b. FDCMPC is compliant with the terms and conditions of its registration with PIA;
>
> c. FDCMPC, being a holder of a Certificate of Registration issued by PIA and as a recognized locator of PIEMO-SEZ, is permitted to conduct business with the PIEMO-SEZ;
>
> d. P.D. 538 provides for tax exemption of enterprises operating within the Industrial Areas defined therein, such as PIEMO-SEZ; and
>
> e. The DILG Opinion states that the Municipalities of Villanueva and Tagoloan in Misamis Oriental have no authority to impose local taxes on enterprises operating within PIEMO-SEZ.
>
> 8. The existence, genuineness, and due execution of the Contract of Lease dated November 19, 2012 entered into by and between FDCMPC and PIA.
>
> The issue being purely one of law, [petitioner] Municipality was thereafter relieved of the requirement to file an amended answer and by agreement of the parties, the case was to be deemed submitted for resolution after submission of their respective memorandum. Said memorandum will serve the same purposes as trial.
>
> On October 11, 2021, [respondent] PIA submitted its memorandum. On the same date, [respondent] PIA filed its memorandum. [*sic*] On October 15, 2021, [petitioner] LGU of Villanueva and it[s] officers filed their memorandum. [*Citations omitted, brackets ours.*]

On January 14, 2022, the court a quo promulgated the assailed *Decision*[7] with the following dispositive portion:

> IN VIEW OF THE FOREGOING, [petitioner] Municipality of Villanueva is hereby permanently enjoined from collecting local tax from [respondent] FDC Misamis Power Corporation,

[7] *Supra* at note 2.

including the availment of tax enforcement remedies such as distraint of personal property and levy on real property.

SO ORDERED.

On February 23, 2022, petitioner filed a *Motion for Reconsideration*,[8] which was denied in the assailed *Order* dated April 13, 2022.[9] The assailed *Order* reads:

IN VIEW OF THE FOREGOING, the motion for reconsideration is DENIED for lack of merit.

SO ORDERED.

PROCEEDINGS BEFORE THIS COURT

On May 20, 2022, petitioner filed via registered mail a *Motion for Extension of Time to File Appeal by Way of Petition for Review,* which the Court received on June 28, 2022.[10]

On June 6, 2022, petitioner filed via registered mail an *Appeal by Way of Petition for Review (With Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)* which the Court likewise received on June 28, 2022.[11]

On June 16, 2022, respondent FDCMPC filed via registered mail a *Motion to Dismiss* which the Court received also on June 28, 2022.[12]

Petitioner was then ordered to comment on respondent FDCMPC's *Motion to Dismiss* in the Court's *Resolution* dated July 19, 2022. In the same *Resolution*, the Court ordered respondents to comment on petitioner's *Appeal by Way of Petition for Review (With Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction).*[13]

On August 11, 2022, respondent FDCMPC filed its *Comment.*[14]

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[8] RTC Records – Vol. V, pp. 1-13.
[9] Docket – Vol. I, pp. 53-54.
[10] Docket – Vol. I, pp. 7-10.
[11] Docket – Vol. I, pp. 13-34.
[12] Docket – Vol. II, pp. 706-710.
[13] Docket – Vol. II, pp. 723-724.
[14] Docket – Vol. II, pp. 729-757.

On the other hand, on October 7, 2022, petitioner filed its *Comment on Respondent FDC's Motion to Dismiss.*[15] Responding to petitioner's *Comment*, respondent FDCMPC filed a *Rejoinder* on November 7, 2022, which was received by the Court on November 11, 2022.[16]

On December 1, 2022, the Court promulgated a *Resolution* denying respondent FDCMPC's *Motion to Dismiss.*[17] In the same *Resolution*, the Branch Clerk of Court or the Officer in Charge of the RTC, Branch 38, Cagayan De Oro City, was ordered to elevate the entire original records of Civil Case No. R-CDO-19-00696-CV and the hearing on petitioners' prayer for the issuance of a Temporary Restraining Order (**TRO**) and Writ of Preliminary Injunction was set on January 18, 2023. Another *Resolution* was promulgated on January 12, 2023 noting without action respondent FDCMPC's *Rejoinder* and *Compliance.*[18]

On January 16, 2023, the Court received respondent FDCMPC's *Motion for Reconsideration (Re: Resolution dated December 1, 2022) with Motion to Suspend Proceedings.*[19]

On January 18, 2023, the Court noted the filing of the respondent FDCMPC's *Motion for Reconsideration with Motion to Suspend Proceedings* and gave petitioner ten (10) days from receipt of the *Order* to file a comment on the motion. With respect to the *Prayer for the Issuance of a TRO and Writ of Preliminary Injunction*, respondents were given fifteen (15) days to file their comment.[20]

On January 31, 2023, respondent FDCMPC filed via registered mail and accredited courier its *Comment/Opposition Ad Cautelam (Re: Petitioner Municipality of Villanueva's Application for Temporary Restraining Order and Writ of Preliminary Injunction dated June 6, 2022).*[21]

On February 9, 2023, the Court received the *Transmittal Letter* of Ms. Maricris P. Chaves, Acting Branch Clerk of Court, Regional Trial Court of Misamis Oriental, 10th Judicial Region,

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[15] Docket – Vol. II, pp. 804-810.
[16] Docket – Vol. II, pp. 814-819.
[17] Docket – Vol. II, pp. 857-861.
[18] Docket – Vol. II, pp. 864-865.
[19] Docket – Vol. II, pp. 866-880.
[20] Docket – Vol. II, pp. 883-884.
[21] Docket – Vol. II, pp. 886-917.

Branch 38, Cagayan de Oro City, elevating the entire original records of Civil Case No. R-CDO-19-00696-CV, consisting of five (5) volumes.[22] This was noted in a *Resolution* dated February 16, 2023.[23]

On February 16, 2023, the Court received respondent FDCMPC's *Opposition to Petitioner's Prayer for the Issuance of Temporary Restraining Order and or Writ of Preliminary Injunction,*[24] and respondent PIA's *Comment (On the Appeal by Way of Petition for Review with Prayer for the Issuance of a Temporary Restraining Order and or Writ of Preliminary Injunction),*[25] which were both filed via registered mail on February 2, 2023.

On March 7, 2023, petitioner filed a *Comment on Respondent FDC's Motion for Reconsideration.*[26]

On April 13, 2023, a *Reply (To Petitioner's Municipality of Villanueva's Comment on Respondent FDC's Motion for Reconsideration)* was filed by respondent FDCMPC.[27]

On June 30, 2023, the Court promulgated a *Resolution* denying respondent FDCMPC's *Motion for Reconsideration (Re: Resolution dated December 1, 2022) with Motion to Suspend Proceedings* and petitioner's *Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction* incorporated in its *Appeal by Way of Petition for Review* for lack of merit.[28]

On July 26, 2023, the Court submitted petitioner's *Appeal by Way of Petition for Review* for decision.[29]

In the interim, on September 22, 2023, the Court received a copy of petitioner's *Petition for Certiorari (with Urgent Application for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)* filed with the Supreme Court.[30] Petitioner questioned the ruling of the Court denying its *Prayer for the Issuance of TRO and Writ of Preliminary*

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[22] Docket – Vol. II, p. 960.
[23] Docket – Vol. II, p. 976.
[24] Docket – Vol. II, pp. 986-989.
[25] Docket – Vol. II, pp. 977-983.
[26] Docket – Vol. II, pp. 1035-1040.
[27] Docket – Vol. II, pp. 1042-1063.
[28] Docket – Vol. II, pp. 1073-1081.
[29] Docket – Vol. II, p. 1082.
[30] Docket – Vol. III, pp. 1087-1130.

Injunction incorporated in its *Appeal by Way of Petition for Review*, alleging that grave abuse of discretion was committed by this Court. The case was docketed as G.R. No. 268880.

Petitioner likewise filed a *Manifestation with Motion* on November 23, 2023, moving that the Court takes judicial notice of the Decision of the Supreme Court in G.R. No. 192694[31] dated February 22, 2023. Respondent FDCMPC filed a *Counter-Manifestation (Re: Petitioner Municipality of Villanueva's Manifestation with Motion dated March 7, 2023)* on January 29, 2024.[32] These were noted in the Court's *Resolution* dated February 27, 2024.[33]

On March 27, 2024, the Court received a copy of Supreme Court Resolution dated November 11, 2023 dismissing petitioner's *Petition for Certiorari*.[34] According to the Supreme Court, petitioner failed to "sufficiently show that any grave abuse of discretion was committed by the [Court] in rendering the challenged resolution which, on the contrary, appear to be in accord with the facts and the applicable law and jurisprudence."

Undaunted, petitioner filed a *Motion for Reconsideration* before the Supreme Court. A copy of which was received by this Court on April 23, 2024.[35]

THE ISSUE

Petitioner assigned the following errors allegedly committed by the trial court, *viz.*:[36]

> THE TRIAL COURT ERRED IN FAILING TO FIND AND RULE THAT RESPONDENT PIA IS NO LONGER THE AUTHORITY ENVISIONED IN ITS CHARTER (PD 538);
>
> THE TRIAL COURT ERRED IN FAILING TO FIND AND RULE THAT RESPONDENT FDCMPC IS NOW SUBJECT TO LOCAL BUSINESS TAXES AND OTHER FEES.

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[31] Docket – Vol. III, pp. 1685-1686.
[32] Docket – Vol. III, pp. 1688-1695.
[33] Docket – Vol. III, pp. 1713-1714.
[34] Docket – Vol. III, unpaged.
[35] Docket – Vol. III, unpaged.
[36] Appeal by Way of Petition for Review, p. 8, *supra* at note 1.

THE TRIAL COURT ERRED IN FAILING TO FIND AND RULE THAT P.D. NO. 538 IS UNCONSTITUTIONAL AND/OR REPEALED BY THE PEZA LAW (RA 7916) AND THE LOCAL GOVERNMENT CODE.

PETITIONER'S ARGUMENTS

Petitioner states that PIA, after its creation under PD No. 538 in 1974,[37] was declared in 2010 as a Special Economic Zone under Proclamation No. 2106.[38] According to petitioner, as a result of such declaration, PIA is "no longer the authority envisioned in its charter but has since become a mere developer of the Phividec Industrial Estate Misamis Oriental **(PIEMO)** registered with the Philippine Economic Zone Authority (PEZA) and may now be subject to real property taxes for its properties found inside the industrial estate." Petitioner adds that PIA can no longer impose real property taxes and the PIEMO is now governed by Republic Act (RA) No. 7916.[39]

Petitioner adds that FDCMPC is now subject to local business taxes and other fees as recognized by Section 25 of RA No. 7916. Petitioner also states that the passage and effectivity of the Local Government Code (**LGC**) of 1991 removes any local tax exemption granted by PD No. 538.[40]

In relation to FDCMPC's claim of exemption as a Board of Investments (BOI)-registered pioneer enterprise, petitioner states that the proclamation of PIEMO as a special economic zone does not allow FDCMPC from cumulatively claiming tax incentives under Executive Order (**EO**) No. 226 or the PEZA Law. Appending a table taken from the website of the BOI and citing Section 23 of the PEZA Law, petitioner posits that the claiming of benefits under the BOI Law or the PEZA Law is alternative.[41]

Petitioner also points out that FDCMPC is not a PEZA-registered enterprise despite being inside a special economic zone, and therefore, it can likewise not avail of the exemption from local taxes as well as regulatory fees under PEZA

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[37] *Supra* at note 4.
[38] AMENDING PROCLAMATION NO. 1485 DATED 11 APRIL 2008, CREATING AND DESIGNATING THE ENTIRE PHIVIDEC INDUSTRIAL ESTATE LOCATED AT THE MUNICIPALITIES OF VILLANUEVA AND TAGOLOAN, PROVINCE OF MISAMIS ORIENTAL AS SPECIAL ECONOMIC ZONE PURSUANT TO REPUBLIC ACT NO. 7916 AS AMENDED BY REPUBLIC ACT NO. 8748, June 29, 2010.
[39] Appeal by Way of Petition for Review, p. 9, *supra* at note 1.
[40] Appeal by Way of Petition for Review, p. 10, *supra* at note 1.
[41] Appeal by Way of Petition for Review, pp. 11-12, *supra* at note 1.

Memorandum Circular No. 2004-024. Petitioner also states that the Certificate of Registration with the BOI had already expired on August 30, 2019.[42]

Petitioner alleges that FDCMPC failed to disclose when it started to enjoy the benefits under the PEZA or BOI Law.[43]

Anent the issue of constitutionality, petitioner attacks the ratiocination of the trial court that the exemption of PIA is based on the constitutional policy of encouraging private investment and it "has a multiplier effect when it attracts industries." It argues that the opposite is true as PIA "has not even filled up 50% of its more than 3,000 hectares industrial estate" "in the nearly fifty (50) years of its existence and operation."[44]

Petitioner also states that the application of *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*[45] is not proper as it deals with the national internal revenue taxes. Petitioner suggests that the applicable case is *Batangas Power Corp. v. Batangas City*[46] as it "deals with the withdrawal of exemptions from taxes and regulatory fees imposed by local government units."[47]

Petitioner argues that the finding of the trial court that the tax assessment is not regulatory but is meant to raise revenues "indicated by the amount sought to be collected, which would be excessive if it is only meant to cover the cost of regulation" is "un-called for and reckless as the reasonableness of the assessment was not an issue in the case before the trial court."[48]

In closing, petitioner states that the assailed *Decision* "will forever deprive petitioner of its lifeblood" and is contrary to the Constitution which granted revenue-raising powers to the local government unit (LGU).[49]

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[42] Appeal by Way of Petition for Review, p. 11, *supra* at note 1.
[43] Appeal by Way of Petition for Review, pp. 13-14, *supra* at note 1.
[44] Appeal by Way of Petition for Review, p. 15, *supra* at note 1.
[45] G.R. No. 153866, February 11, 2005.
[46] G.R. No. 152675, April 28, 2004.
[47] Appeal by Way of Petition for Review, p. 17, *supra* at note 1.
[48] Appeal by Way of Petition for Review, p. 18, *supra* at note 1.
[49] Appeal by Way of Petition for Review, p. 19, *supra* at note 1.

RESPONDENT FDCMPC'S ARGUMENTS

In its *Comment*, FDCMPC argues that PD No. 538[50] remains a good law and was not repealed by Presidential Proclamation No. 2106.[51]

First, FDCMPC argues that this issue should not be entertained as PIA's supposed liability for real property taxes is not an issue.[52]

Second, FDCMPC also states that a mere presidential proclamation cannot repeal PD No. 538. It further alleges that nowhere in Presidential Proclamation No. 2106[53] is a statement that it repeals PD No. 538 or abolishes PIA as one of the government's investment promotion agencies. FDCMPC echoes the principle that repeals by implication are not favored.[54] According to FDCMPC, this argument is re-confirmed and strengthened by the amendment introduced by RA No. 11534 to the National Internal Revenue Code (**NIRC**) of 1997, which includes PIA as one of the investment promotion agencies.[55] The said law further provides that PIA "shall maintain its functions and powers as provided under the special laws governing it except to the extent modified by the provisions of the NIRC of 1997, as amended."[56] Quoting the amendatory clause of RA No. 11534, FDCMPC argues that only Sections 4(a) and (q), 6, and 8 of P.D. No. 538 were amended.[57]

Thus, FDCMPC posits that the effect of the issuance of Presidential Proclamation No. 2106 is "merely to make [PIEMO] more attractive and appealing to prospective investors ... by giving them an additional option for availing incentives," *i.e.*, the incentives under the PEZA Law.[58] Accordingly, FDCMPC suggests that Section 9 of PD No. 538, on the purpose and specific powers of the PIA, is still valid, contrary to petitioner's argument that PIA has "become a mere developer of the PIEMO."[59] As Section 9 of the said law is not repealed, FDCMPC

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[50] *Supra* at note 4.
[51] *Supra* at note 38.
[52] Comment, pars. 17-18, *supra* at note 14.
[53] *Supra* at note 38.
[54] Comment, par. 20, *supra* at note 14.
[55] Comment, pars. 23-24, *supra* at note 14.
[56] Comment, par. 25, *supra* at note 14.
[57] Comment, par. 28, *supra* at note 14.
[58] Comment, par. 27, *supra* at note 14.
[59] Comment, pars. 29-30, *supra* at note 14.

states that it can avail of local tax exemptions provided therein for being duly registered with the PIA and the BOI.[60]

FDCMPC maintains that petitioner has judicially admitted the BOI Certificate of Registration No. 2013-177 dated August 30, 2013, PIA Certificate of Registration, and the fact that BOI has granted FDCMPC an income tax holiday until June 25, 2023.[61] Citing Section 133(g) of the LGC, Section 8D05 of the Municipality of Villanueva Revenue Code, and *Batangas Power Corp. v. Batangas City,*[62] FDCMPC avers that it is exempt from local taxes.[63]

FDCMPC also argues that neither the LGC nor the PEZA Law repealed PD No. 538, considering that PD No. 538 is not mentioned in the repealing clause of both laws.[64]

FDCMPC further states that Section 25 of the PEZA Law is not applicable in the instant case, considering that it pertains to "persons and establishments which render services inside a special economic zone such as security agencies, manpower agencies, trucking, and forwarding services," among others. Accordingly, this has been clarified in Section 2(p) of the Implementing Rules and Regulations of the PEZA Law.[65]

FDCMPC likewise assails petitioner's invocation of a certain Bureau of Local Government Finance (BLGF) ruling, stating that the said BLGF Opinion is not offered in evidence, that the cited Peter D. Baluyan was not proven to be an employee or an officer of BLGF, and that the cited "Local Business Taxation: The BLGF-DOF Perspective" was not proven to be an official document of the BLGF. Further, FDCMPC states that a BLGF Ruling is not binding to the courts as BLGF does not exercise any quasi-judicial function.[66] Instead, FDCMPC suggests that the Department of the Interior and Local Government (DILG) Opinion, providing for the exemption of Phividec Industrial Estate Misamis Oriental-Special Economic Zone (PIEMO-SEZ) registered enterprises from local taxes, is binding.[67]

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[60] Comment, pars. 32-34, *supra* at note 14.
[61] Comment, par. 35, *supra* at note 14.
[62] *Supra* at note 46.
[63] Comment, par. 36, *supra* at note 14.
[64] Comment, pars. 38-40, *supra* at note 14.
[65] Comment, pars. 43-49, *supra* at note 14.
[66] Comment, pars. 50-55, *supra* at note 14.
[67] Comment, pars. 56-58, *supra* at note 14.

Anent the argument that the passage of the LGC has withdrawn the tax exemption of PIA, FDCMPC states that investment promotions agencies, such as PIA and BOI, are differently situated from government-owned and controlled corporations and instrumentalities such as National Power Corporation (**NPC**). According to FDCMPC, the tax exemption of NPC under its charter is a privilege, while that of PIA and BOI are pursuant to "the government purpose and objective of promoting investment opportunities in the provinces which would have multiplier effects on the surrounding communities."[68]

RESPONDENT PIA'S ARGUMENTS

Respondent PIA states that Presidential Proclamation No. 1485, series of 2008, has converted PIEMO-SEZ to a special economic zone.[69] It points to the Memorandum of Agreement dated January 5, 2000, and Supplemental Memorandum of Agreement dated November 3, 2010, where it is stated that "the registrant, as developer/operator of PHIVIDEC Industrial Estate – Economic Zone under [RA No.] 7916, as amended, shall be entitled to PEZA incentives."[70]

Respondent PIA also recognizes the exemptions of enterprises registered with the BOI.[71]It asserts that petitioner does not have the authority and power to collect business taxes from FDCMPC; that PD No. 538 and RA No. 7916 established its power and authority over the business enterprises located within the PIEMO-SEZ;[72] and that the DILG Legal Opinion No. 22 series of 2013 upholds its sole and exclusive authority to issue business permits to registered enterprises inside PIEMO-SEZ.[73]

Respondent PIA further states that the LGC of 1991 excludes entities certified by the BOI from its taxing powers.[74] It suggests that a general law cannot be construed to have repealed a special law by mere implications unless the intent to repeal or alter is manifested and must be convincingly

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[68] Comment, pars. 59-64, *supra* at note 14.
[69] Comment, par. 9, *supra* at note 25.
[70] Comment, pars. 11-12, *supra* at note 25.
[71] Comment, par. 13, *supra* at note 25.
[72] Comment, pars. 16-17, *supra* at note 25.
[73] Comment, pars. 18-19, *supra* at note 25.
[74] Comment, par. 20, *supra* at note 25.

demonstrated. Thus, it concludes that the LGC of 1991 did not repeal PD No. 538.[75]

Respondent PIA claims that petitioner's threat to close FDCMPC's business for non-payment of business taxes "cannot be taken lightly because it is paramount to grave injustice and injury to the commercial, industrial, and households dependent upon FDCMPC electric power supply. [sic]" It states that "the closure of FDCMPC will leave various commercial, industrial and households without electric power supply. Hence, rotating brownout within Mindanao Island is expected to occur. [sic]"[76] Additionally, it claims that petitioner's threat is "tantamount to the obstruction of bringing big investments inside the economic zone, hence, detrimental to economic growth in the Mindanao Island."[77]

THE COURT'S RULING

The instant *Petition for Review* is partly meritorious.

The Petition was timely filed; petitioner's belated payment of the full docket fees is excused.

Before delving into the merits of the case, the Court shall first resolve whether it has jurisdiction to take cognizance of this case.

Section 7(a)(3) of RA No. 9282,[78] amending RA No. 1125,[79] reads:

> Section 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ... ...

[75] Comment, par. 21, *supra* at note 25.
[76] Comment, par. 22, 24-25, *supra* at note 25.
[77] Comment, par. 23, *supra* at note 25.
[78] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, 30 March 2004.
[79] An Act Creating the Court of Tax Appeals, June 16, 1954.

> **(3) <u>Decisions, orders or resolutions of the Regional Trial Courts in local tax cases</u>** originally decided or resolved by them in the exercise of their original or appellate jurisdiction. [*Emphasis and underscoring supplied*]

Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) implementing the above provision states:[80]

> Section 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> ... ...
>
> (3) **<u>Decisions, resolutions or orders of the Regional Trial Courts in local tax cases</u>** decided or resolved by them in the exercise of their original jurisdiction. [*Emphasis and underscoring supplied*]

Records show that petitioner received the assailed Order on April 22, 2022. Under Section 3(a), Rule 8[81] of the RRCTA, petitioner had thirty (30) days from receipt of the denial of its *Motion for Reconsideration* on April 22, 2022, or until May 22, 2022, to file a *Petition for Review* before the CTA.

On May 20, 2022, within the reglementary period, petitioner filed a Motion for Extension of Time to File Appeal by Way of Petition for Review *via* registered mail.[82] With the said *Motion* having been deemed granted with the denial of respondent FDCMPC's *Motion to Dismiss*,[83] petitioner had fifteen (15) days from May 22, 2022, or until June 6, 2022 to file a Petition for Review. Accordingly, on June 6, 2022, petitioner *timely* filed via registered mail its *Appeal by Way of Petition for Review (With Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction).*[84]

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[80] A.M. No. 05-11-07-CTA, .November 22, 2005.
[81] Section 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. ...
[82] Docket – Vol. I, pp. 7-10.
[83] *Supra* at note 17.
[84] Docket – Vol. I, pp. 13-34.

Regarding the late payment of docket fees, it has already been resolved in the Court's *Resolution* dated December 1, 2022. We quote:

> The grant of any extension for filing a Petition for Review under Rule 42 is **discretionary** and subject to the condition that the total amount of the docket and lawful fees are paid before the expiration of the reglementary period. It is likewise a well-settled rule that non-payment of docket fees is a ground to dismiss the appeal. The full payment of docket fees within the prescribed period is mandatory and necessary to perfect the appeal.
>
> The exception to the above rule was laid down by the Supreme Court in *Spouses Buenaflor vs. Court of Appeals*, to wit:
>
>> The established rule is that the payment in full of the docket fees within the prescribed period is mandatory. Nevertheless, this rule must be qualified, to wit: **First, the failure to pay appellate court docket fee within the reglementary period allows only discretionary dismissal, not automatic dismissal, of the appeal. Second, such power should be used in the exercise of the Court's sound discretion "in accordance with the tenets of justice and fair play and with great deal of circumspection considering all attendant circumstances."**
>>
>> Admittedly, this Court has allowed the filing of an appeal in some cases where a stringent application of the rules would have denied it, only when to do so would serve the demands of justice and in the exercise of the Court's equity jurisdiction. This is based on the rule of liberality in the interpretation of the Rules to achieve substantial justice. It may be recalled that the general rule is that the Rules of Court are rules of procedure and whenever called for they should be so construed as to give effect rather than defeat their essence.[85]
>
> Further fortifying the above pronouncement is the ruling in *Gaw, Jr. vs. Commissioner of Internal Revenue*, citing *Camaso vs. TSM Shipping (Phils), Inc.*, where the Supreme Court ruled:

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[85] Emphasis and underscoring supplied; citations omitted.

> Basic is the rule that the payment of docket and other legal fees is both mandatory and jurisdictional. The court acquires jurisdiction over the case only upon the payment of the prescribed fees.
>
> However, the mere failure to pay the docket fees at the time of the filing of the complaint, or in this case the Petition for Review Ad Cautelam, does not necessarily cause the dismissal of the case. As this Court held in *Camaso v. TSM Shipping (Phils.), Inc.,* while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, **its nonpayment at the time of filing of the initiatory pleading does not automatically cause its dismissal so long as the docket fees are paid within a reasonable period; and that the party had no intention to defraud the government**.

From the above pronouncements, we find that the instant case warrants the liberal application of the rules on docket fees. To this Court's mind, petitioner made earnest efforts to ascertain the amount of docket fees to be paid to the Court when it filed its *Motion for Extension,* and true enough, the amount of docket and other lawful fees may not be finalized if the petition for review is still wanting, as the amount of fees depends on the nature of the petition and the prayers contained therein.

Further, **we find that petitioner paid the docket fees when it filed its *Petition for Review* as a clear demonstration of its lack of intention to defraud the government**.

It should be borne in mind that technical rules of procedure must sometimes give way to resolve the case on the merits and prevent a miscarriage of justice. Rules of procedures are intended to promote, not to defeat, substantial justice, and, therefore, they should not be applied in a very rigid and technical sense. [*Emphasis on the original, citations omitted.*]

We now proceed to the merits of the case.

The crux of the controversy is determining whether FDCMPC is subject to local business taxes.

To determine the proper tax treatment of FDCMPC as an entity registered with the PIA, the Court finds it necessary to discuss the relevant laws, including subsequent amendments and legislative enactments. The Court's discussion is limited to local business taxes, as real property taxes are not at issue.

In **1974**, the PHIVIDEC Industrial Authority was created by PD No. 538,[86] Section 2 of which provides:

> SECTION 2. Creation of the PHIVIDEC Industrial Authority. — To carry out the above policy, a body corporate to be known as the PHIVIDEC Industrial Authority is hereby created. The Authority as hereinafter referred to shall be a subsidiary of the PHILIPPINE VETERANS INVESTMENT DEVELOPMENT CORPORATION created under PD 243, as amended by PD 353. The functions of the Authority are hereby declared governmental and proprietary.

The PIA was established in relation to "the policy of the Government to encourage, promote and sustain the economic and social growth of the country and that the establishment of professionalized management of well-planned industrial areas shall further this objective."[87]

One of the specific powers of the PIA is to operate, administer, and manage the PHIVIDEC Industrial Areas[88] as established by the law. [89] The first area designated for development by PIA is located in the Municipalities of Tagoloan and Villanueva in the Province of Misamis Oriental, consisting of 3,000 hectares, more or less.[90]

In line with the governmental purpose behind the creation of the PIA, PD No. 538[91] provides *special tax treatment* for entities and transactions within the PHIVIDEC Industrial Areas. Sections 8 and 9 of PD No. 538 provide:

> SECTION 8. Tax Treatment of Merchandise in the Areas. — **Raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description**, except those prohibited by law, brought in the Areas and utilized in the production, storing, packing and shipment of goods meant for foreign markets, **shall not be subject to**

[86] *Supra* at note 4.
[87] Section 1, PD No. 538.
[88] Section 4(a), PD No. 538.
[89] Section 3, PD No. 538.
[90] *Ibid.*
[91] *Supra* at note 4.

> customs duties and internal revenue taxes, and laws and regulations relating thereto, nor to **local tax ordinances**, the provisions of law to the contrary notwithstanding.
>
> Determination of those commodities, or the portion thereof, to be accorded these privileges shall be vested in the Authority subject to the approval of the Secretary of Finance. For this purpose, the Secretary of Finance is hereby empowered to rule on the provision of tax exemption of merchandise imported into the Areas by enterprises operating therein.
>
> SECTION 9. Tax Exemption of Enterprises Operating in the Areas. — **Aside from the tax privileges accorded those of the enterprises operating in the Areas who are likewise registered with the Board of Investments, all industries or firms operating in the Areas shall be exempt from the payment of local taxes** to the barrio, municipality, city or province, as the case may be, where their respective Areas are located. However, as stipulated in Section 4 (h), a real property tax shall be collected by the Authority from each of the enterprises operating within the Areas, one fourth of which shall be turned over to the local governments concerned. [*Emphasis and underscoring supplied*]

In **1978**, PD No. 1491[92] amended Section 8 of PD No. 538, which now reads:

> SECTION 8. Tax Treatment of Merchandise in the Areas. — Any provision of law to the contrary notwithstanding, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought in the Areas and utilized in the production, storing, packing and shipment of goods meant for foreign markets **shall be exempt from customs duties, internal revenue taxes, local tax ordinances**, and wharfage dues on those brought after January 1, 1977 through piers or wharves constructed by the importer with his or its private funds. [*Emphasis supplied*]

On the other hand, in **1985**, EO No. 1045[93] reiterated and reaffirmed the exemption from local taxes of BOI-registered enterprises located in the Phividec Industrial Estate as provided under Section 9 of PD No. 538.[94] Section 5 of EO No. 1045 states:

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[92] AMENDING SECTION 8 OF PRESIDENTIAL DECREE NUMBERED FIVE HUNDRED THIRTY-EIGHT, June 11, 1978.
[93] Modifying Fiscal Incentives to BOI-Registered Enterprises, August 7, 1985.
[94] *Supra* at note 4.

> SECTION 5. **BOI-registered enterprises**, whether domestic or export producers, **located in the Phividec Industrial Estate shall not be subject to local taxes** as provided in Section 9 of Presidential Decree No. 538. [*Emphasis supplied*]

In **1986**, following a change in administration, President Corazon C. Aquino issued EO No. 93,[95] which implemented a *blanket withdrawal of all tax and duty incentives* granted to government and private entities. However, EO No. 93 retained certain exemptions, as detailed in Section 1, to wit:

> SECTION 1. The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn, except:
>
> a) those covered by the non-impairment clause of the Constitution;
>
> b) those conferred by effective international agreements to which the Government of the Republic of the Philippines is a signatory;
>
> c) those enjoyed by enterprises registered with:
>
> (i) **the Board of Investments** pursuant to Presidential Decree No. 1789, as amended;
>
> (ii) **the Export Processing Zone Authority**, pursuant to Presidential Decree No. 66, as amended;
>
> (iii) the Philippine Veterans Investment Development Corporation Industrial Authority pursuant to **Presidential Decree No. 538,** as amended;
>
> d) those enjoyed by the copper mining industry pursuant to the provisions of Letter of Instruction No. 1416;
>
> e) those conferred under the four basic codes namely:
>
> (i) the Tariff and Customs Code, as amended;
>
> (ii) the National Internal Revenue Code, as amended;

[95] Withdrawing All Tax and Duty Incentives Subject to Certain Exceptions, Expanding the Powers of the Fiscal Incentives Review Board and For Other Purposes, December 17, 1986.

(iii) the Local Tax Code, as amended;

(iv) the Real Property Tax Code, as amended;

f) those approved by the President upon the recommendation of the Fiscal Incentives Review Board. [*Emphasis and underscoring supplied.*]

In **1992**, the enactment of RA No. 7160, or the Local Government Code of 1991, resulted in another *blanket withdrawal of local tax exemptions.* Section 193 of the LGC provides:

> *SECTION 193. Withdrawal of Tax Exemption Privileges.* — Unless otherwise provided in this Code, **tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical**, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, **are hereby withdrawn upon the effectivity of this Code**. [*Emphasis and underscoring supplied.*]

Moreover, Section 534 of the LGC provides the repealing clause, to wit:

> *SECTION 534. Repealing Clause.* — (a) Batas Pambansa Blg. 337, otherwise known as the Local Government Code, Executive Order No. 112 (1987), and Executive Order No. 319 (1988) are hereby repealed.
>
> (b) Presidential Decree Nos. 684, 1191, 1508 and such other decrees, orders, instructions, memoranda and issuances related to or concerning the barangay are hereby repealed.
>
> (c) The provisions of Sections 2, 3, and 4 of Republic Act No. 1939 regarding hospital fund; Section 3, a (3) and b (2) of Republic Act No. 5447 regarding the Special Education Fund; Presidential Decree No. 144 as amended by Presidential Decree Nos. 559 and 1741; Presidential Decree No. 231 as amended; Presidential Decree No. 436 as amended by Presidential Decree No. 558; and Presidential Decree Nos. 381, 436, 464, 477, 526, 632, 752, and 1136 are hereby repealed and rendered of no force and effect.
>
> (d) Presidential Decree No. 1594 is hereby repealed insofar as it governs locally-funded projects.

> (e) The following provisions are hereby repealed or amended insofar as they are inconsistent with the provisions of this Code: Sections 2, 16 and 29 of Presidential Decree No. 704; Section 12 of Presidential Decree No. 87, as amended; Section 52, 53, 66, 67, 68, 69, 70, 71, 72, 73, and 74 of Presidential Decree No. 463, as amended; and Section 16 of Presidential Decree No. 972, as amended, and
>
> (f) **All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly**. [*Emphasis and underscoring supplied.*]

The blanket withdrawal is in accordance with the constitutional mandate that each local government unit exercise its authority to generate its sources of revenue and levy taxes, fees, and charges, consistent with the basic policy of local autonomy.[96]

However, Section 133 of the LGC provides an exception to the blanket withdrawal of local tax exemptions and prescribes the common limitations on the taxing powers of local government units. Specifically, Section 133(g) prohibits provinces, cities, municipalities, and barangays from imposing taxes on BOI-registered business enterprises certified as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively, from the date of registration to wit:

> SECTION 133. Common Limitations on the Taxing Powers of Local Government Units. — Unless otherwise provided herein, **the exercise of the taxing powers** of provinces, cities, municipalities, and barangays shall **not extend** to the levy of the following: ...
>
> (g) Taxes on **business enterprises certified to by the Board of Investments as pioneer or non-pioneer** for a period of six (6) and four (4) years, respectively from the date of registration; [*Emphasis and underscoring supplied.*]

In **1995**, RA No. 7916, or the Special Economic Zone Act of 1995, was enacted. Among others, the Act resulted in

[96] Article X, Section 5 of the 1987 Constitution; Section 129, LGC of 1991.

the creation of the PEZA,[97] and provided for tax exemptions to special economic zones. Section 24 states:

> SECTION 24. Exemption from Taxes under the National Internal Revenue Code. — Any provision of existing laws, rules and regulations to the contrary notwithstanding, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE**. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. This five percent (5%) shall be shared and distributed as follows:
>
> (a) Three percent (3%) to the national government;
>
> (b) One percent (1%) to the local government units affected by the declaration of the ECOZONE in proportion to their population, land area, and equal sharing factors; and
>
> (c) One percent (1%) for the establishment of a development fund to be utilized for the development of municipalities outside and contiguous to each ECOZONE: Provided, however, That the respective share of the affected local government units shall be determined on the basis of the following formula:
>
> (1) Population — fifty percent (50%);
> (2) Land area — twenty-five percent (25%); and
> (3) Equal sharing — twenty-five percent (25%).
>
> [*Emphasis and underscoring supplied.*]

In **1999**, Congress enacted RA No. 8748,[98] which amended RA No. 7916. Section 24 now reads:

> "SEC. 24. *Exemption from National and Local Taxes.* — Except for real property taxes on land owned by developers, **no taxes, local and national**, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> "(a) Three percent (3%) to the National Government;

[97] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES, February 24, 1995.
[98] AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995", June 1, 1999.

> "(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located." [*Emphasis and underscoring supplied.*]

However, the *exemption from taxes*, local and national, of business enterprises operating within a designated ECOZONE is not automatic. Such business enterprises must still register with the PEZA to avail of all incentives and benefits under RA No. 7916. Section 35 thereof states:

> SECTION 35. *Registration of Business Enterprises.* — Business enterprises within a designated ECOZONE shall register with the PEZA to avail of all incentives and benefits provided for in this Act.

In **2010**, President Gloria Macapagal-Arroyo issued Proclamation No. 2106,[99] designating the PHIVIDEC Industrial Areas as special economic zone, *viz.*:

> Pursuant to the powers vested in me under Republic Act No. 7916, otherwise known as the Special Economic Zone Act of 1995 as amended and upon the recommendation of the Board of Directors of the Philippine Economic Zone Authority, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, do hereby create and designate, subject to the provisions of Republic Act No. 7916, as amended, its Implementing Rules and Regulations, and Resolution No. 08-047 dated 22 January 2008 as amended by Resolution No. 08-151 dated 13 March 2008 and Resolution No. 10-161 dated 19 April 2010 of the Board of Directors of the Philippine Economic Zone Authority, **the Phividec Industrial Estate located at the Municipalities of Villanueva and Tagoloan, Province of Misamis Oriental, as a Special Economic Zone**, consisting of Three Thousand (3,000) Hectares, more or less, as contained in the following technical description: ...[*Emphasis and underscoring supplied.*]

In the *Appeal by Way of Petition for Review* filed in the instant case, petitioner claims that in **2012,** FDCMPC entered into a Registration Agreement with respondent PIA whereby it was granted the authority to conduct and operate its business inside the PIEMO-SEZ; in **2013**, the BOI issued to FDCMPC Certificate of Registration No. 2013-177 dated August 30, 2013 certifying its status as a "pioneer" business enterprise; and starting **2017,** petitioner LGU issued an assessment for local business taxes and sent various letters demanding payment of

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[99] *Supra* at note 38.

business taxes for calendar years 2017 and 2018 amounting to ₱60,668,561.24, [100] *viz.*:

> "a. On January 18, 2017, the Petitioner LGU, through the Office of the Municipal Treasurer, issued an **assessment for local business taxes** in relation to the 2017 business permit renewal of Respondent FDCMPC.
>
> b. On April 17, 2017, the Petitioner LGU sent another letter to Respondent FDCMPC reminding the latter of its supposed failure to pay the business taxes allegedly owed by it.
>
> c. On September 28, 2017, the Petitioner LGU sent another letter signed by the Petitioner Municipal Treasurer to Respondent FDCMPC demanding for the immediate payment of the business taxes.
>
> d. On February 28, 2018, the Petitioner LGU sent another letter demanding that Respondent FDCMPC secure a business license from the Municipality of Villanueva. The letter also threatened to impose a 25% penalty after February 20, 2018.
>
> e. On February 13, 2019, the Petitioner LGU sent another letter demanding from Respondent FDCMPC to pay business taxes **for calendar years 2017 and 2018** amounting to Sixty Million Six Hundred Sixty-Eight Thousand Five Hundred Sixty-One and 24/100 Pesos **(₱60,668,561.24)**.
>
> f. Finally, on February 21, 2019, the Petitioner LGU, through its Legal Consultant, sent a Letter to Respondent FDCMPC threatening to close down its power plants should the latter fail to pay taxes to the Municipality of Villanueva on or before February 28, 2019." [*Emphasis and underscoring supplied.*]

Petitioner claims and submits that:[101]

> "a. **PD 538 is now repealed or deemed superseded by the provisions of the PEZA law** when the PIEMO was converted into a special economic zone by virtue of a Presidential Proclamation in June 30, 2010 and under the PEZA law, exemption from local taxation is also provided only for a limited period.
>
> b. This is contrary to the conclusion of the Trial Court that "Section 9 of PD 538 should still apply as RA 7916 only applies to PEZA registered enterprises and neither modifies nor conflicts with the Section 9 PD 538 when it comes to non

[100] Appeal by Way of Petition for Review, pp. 6 to 8, *supra* at note 1.
[101] Appeal by Way of Petition for Review, pp. 16 and 17, *supra* at note 1.

PEZA-registered enterprises." When the laws provide for the same tax exemptions, the later one should be deemed to supersede the older law.

c. Under existing laws (PEZA – {RA 7916} or the Omnibus Investment Code of 1987 – {EO 226}), enterprises in special economic zones are mandated to enjoy the benefits only under one law but not both.

d. Since the Respondent **FDCMPC is not a PEZA registered enterprise**, it cannot enjoy the exemptions under PEZA law and hence, limited only to BOI incentives which has already expired as of August 30, 2019.

e. **As Respondent FDCMPC had already enjoyed the fiscal incentives under the BOI registration up to August 30, 2019 then Petitioner LGU can now impose[d] local business taxes pursuant to its Revenue Code of 2010**, as amended, which was already upheld valid by the Department of Justice and another branch of this Regional Trial Court of Misamis Oriental." [*Emphasis and underscoring supplied.*]

It further states that:[102]

"It may be observed from the position of the Respondent **FDCMPC that it is claiming exemptions from taxation under *PD 538, the PEZA law and the BOI incentives*** *resulting from its status as a pioneer enterprise.*

It is submitted, however, that any tax exemption under PD 538 is no longer available in view of the Respondent PIA's proclamation as a special economic zone under PEZA.

The Trial Court has ruled that since Respondent FDCMPC is not a PEZA registered enterprise despite being inside a special economic zone, then it cannot enjoy the exemption from local taxes as well as regulatory fees under the PEZA Memorandum Circular No. 2004-024.

Hence, the only remaining exemption or incentives that the Respondent FDCMPC can enjoy is that provided under its registration with the BOI but which had already expired in August 30, 2019. As the Trial Court ruled –

"Consequently, as Certificate of Registration with the BOI offered by plaintiff reflects August 30, 2013, as the date of registration, ***defendant Municipality of Villanueva can subject plaintiff to local tax as of August 31, 2019."*** [*Emphasis and underscoring supplied.*]

[102] Docket – Vol. I, p. 23.

On the other hand, respondent FDCMPC counters that:[103]

I. The assailed RTC Decision and Order dated [*sic*] have already attained finality because petitioner failed to pay the docket and other lawful fees within the original reglementary period for filing the petition.

II. P.D. No. 538 remains to be a good law and was not repealed by Presidential Proclamation No. 2106, Series of 2010. Thus, FDCMPC enjoys exemptions from the local taxes mandated by P.D. No. 538.

III. **PD 538 was not repealed by the passage of either RA 7160 or RA 7916, as amended**.

IV. Section 25 of RA 7916 is not applicable to duly registered business enterprises inside a special economic zone.

V. The supposed Bureau of Local Government Finance's opinion relied upon by the petitioner was never presented in evidence by it. Thus, the existence, due execution, genuineness and authenticity of the same are dubious.

VI. Investment Promotion Agencies such as the PIA are differently situated from Government Owner-Corporation and Instrumentalities like the National Power Corporation. [*Emphasis and underscoring supplied.*]

Given the foregoing, the question to be resolved, therefore, is whether respondent FDCMPC can claim exemption from the payment of local business taxes under PD No. 538 (*the PIA Law*), RA No. 7916 (*the PEZA Act*), and EO No. 226 (*the BOI incentives resulting from its status as a pioneer enterprise*).

A. The LGC of 1991 removed the local tax exemption of PIA-registered entities under PD No. 538.

Based on the above review of relevant laws and issuances, this Court finds that under PD No. 538, PIA-registered business entities were previously exempt from paying local taxes. However, this exemption was withdrawn by Section 193 of the LGC, which took effect on *January 1, 1992*. Section 193 is again quoted, *viz.*:

[103] Docket – Vol. II, p. 731.

> *SECTION 193. Withdrawal of Tax Exemption Privileges.* — Unless otherwise provided in this Code, **tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations**, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code. [*Emphasis and underscoring supplied.*]

Although PD No. 538 is not explicitly mentioned as repealed by the LGC, Section 534(f) of the LGC operates as a general repealing clause, which does not explicitly identify the acts or provisions to be repealed by number or title.[104] Section 534 (f) states:

> *SECTION 534. Repealing Clause.* — (a) Batas Pambansa Blg. 337, otherwise known as the Local Government Code, Executive Order No. 112 (1987), and Executive Order No. 319 (1988) are hereby repealed.
>
> ... ...
>
> (f) **All general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of this Code are hereby repealed or modified accordingly**. [*Emphasis and underscoring supplied.*]

With that repealing clause in the LGC,[105] it is safe to infer and state that the local tax exemption provided for in Sections 8 and 9 of PD No. 538, creating respondent PIA, had been expressly repealed by the provisions of the LGC.

Consequently, when FDCMPC was registered with PIA in 2012 and was granted the authority to conduct and operate its business inside the PIEMO-SEZ, the local tax exemption under Sections 8 and 9 of PD No. 538 had already been withdrawn by the LGC. Hence, FDCMPC could no longer invoke or benefit from the local tax exemption granted under PD No. 538.

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[104] Philippine Ports Authority v. City of Iloilo, G.R. No. 143214, November 11, 2004.
[105] Section 534 of the New Local Government Code of 1991.

B. PD No. 538 is still a good law

Petitioner argues that PIA was declared in 2010 as a Special Economic Zone under Proclamation No. 2106. [106] According to petitioner, as a result of such declaration, PIA is "no longer the authority envisioned in its charter but has since become a mere developer of the PIEMO registered with the PEZA and may now be subject to real property taxes for the properties found inside the industrial estate."

On the other hand, FDCMPC argues that this issue should not be entertained as PIA's supposed liability for real property taxes is not an issue. [107] FDCMPC also states that a mere presidential proclamation cannot repeal PD No. 538 and that *nowhere in Presidential Proclamation No. 2106 is a statement that it repeals PD No. 538 or that it is abolishing PIA as one of the government's investment promotion agencies.* FDCMPC echoes the principle that repeals by implication are not favored. [108]

In this issue, the Court partly rules in favor of respondents.

Indeed, as FDCMPC correctly argued, Presidential Proclamation No. 2106 contains no statement indicating that PIA has been stripped of its authority under PD No. 538. FDCMPC aptly observed that the legislative intent was to preserve PIA's functions, aside from the tax exemptions removed or withdrawn by the LGC. In fact, the status and powers of PIA as an Investment Promotion Agency have been expressly re-confirmed under a recently passed law, RA No. 11534, or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, which took effect in April 2021.

The CREATE Act introduced new provisions on tax incentives in the NIRC of 1997 and included PIA in the list of investment promotion agencies. [109]

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[106] *Supra* at note 38.
[107] Comment, pars. 17-18, *supra* at note 14.
[108] Comment, par. 20, *supra* at note 14.
[109] "SEC. 293. Definitions. — When used in this Title: ...
"(H) **Investment Promotion Agencies** refer to government entities created by law, executive order, decree or other issuance. **in charge of promoting investments, granting and administering tax and non-tax incentives, and overseeing the operations of the different economic zones and freeports in accordance with their respective special laws.** These include the Board of Investments (BOI), Regional Board of Investments-Autonomous Region in Muslim Mindanao (RBOI-ARMM), Philippine Economic Zone Authority (PEZA), Bases Conversion and Development

Section 291 of the NIRC of 1997, as amended by the CREATE Act,[110] provides:

> *SEC. 291. Scope and Coverage. - ...*
>
> **The Investment Promotion Agencies shall maintain their functions and powers as provided under the special laws governing them except to the extent modified by the provisions of this Code**: Notwithstanding the provisions of this Section, the Department of Finance, the Bureau of Internal Revenue, and the Bureau of Customs shall retain their respective mandates, powers and functions as provided for under this Act and related laws. [*Emphasis and underscoring supplied.*]

Moreover, the Amendatory Clause of the CREATE Act[111] amended (not repealed) Sections 4(a) and (q), 6, and 8 of P.D. No. 538.[112]

Clearly, while PD No. 538 is still a good law, the exemption from local taxes provided under Sections 8 and 9 thereof has been withdrawn by the LGC.

C. FDCMPC is not a PEZA-registered entity; hence, it cannot avail of the local tax exemption under the PEZA Act, as amended.

The designation of the PHIVIDEC Industrial Estate as a special economic zone did not automatically entitle the PIA-registered enterprises to avail of the local tax exemption and other incentives under the PEZA Act, even if they are located within the zone.

As quoted above, Section 24 of RA No. 7916,[113] as amended by RA No. 8748,[114] provides:

Authority (BCDA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), ..., **PHIVIDEC Industrial Authority (PIA)**, ..., and all other similar existing authorities or that may be created by law unless otherwise specifically exempted from the coverage of this Code; ..."[Emphasis and underscoring supplied.]

[110] Corporate Recovery and Tax Incentives for Enterprises Act or CREATE, Republic Act No. 11534, March 26, 2021.

[111] Section 18 of the CREATE Act.

[112] Comment, par. 28.

[113] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES, February 24, 1995.

[114] AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995", June 1, 1999.

> "SEC. 24. *Exemption from National and Local Taxes.* — Except for real property taxes on land owned by developers, **no taxes, local and national**, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> "(a) Three percent (3%) to the National Government;
>
> "(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located." [*Emphasis and underscoring supplied.*]

Section 24 of the PEZA Act must be read in conjunction with Section 35 of the same Act, which states:

> SECTION 35. *Registration of Business Enterprises.* — Business enterprises within a designated ECOZONE shall register with the PEZA to avail of all incentives and benefits provided for in this Act.

Therefore, a PIA-registered entity located within the special economic zone must likewise be registered with PEZA- paying the 5% gross income tax to avail of the local tax exemptions provided under Section 24 of the PEZA Act.[115]

In *Bases Conversion and Development Authority v. City Government of Baguio City*, [116] the Supreme Court, in denying the petition, states:

> **ACCORDINGLY**, the Petition is **DENIED** for lack of merit. ... **Only business enterprises** within the John Hay Special Economic Zone **that are registered with the Philippine Economic Zone Authority shall enjoy the tax and duty exemption privileges** under Republic Act No. 7916 and Republic Act No. 9400. All unregistered business enterprises within the John Hay Special Economic Zone shall pay all relevant national and local taxes, duties, and fees as may be imposable under national and local laws. [*Emphasis and underscoring supplied.*]

FDCMPC admitted that it is not a PEZA-registered entity;[117] hence, it cannot avail of the local tax exemption under RA No. 7916, the PEZA Act, as amended.

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[115] *Supra* at note 113.
[116] G.R. No. 192694, February 22, 2023.
[117] Par. 34, Comment, *supra* at note 14.

D. Respondent FDCMPC is a BOI-registered entity; hence, it can avail of the local tax exemption under Section 133(g) of the LGC of 1991.

Section 5, Article X of the 1987 Constitution grants to local government units the power to create its own 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. By virtue thereof, Section 129 of the LGC empowers local government unit to create its own source of revenue, *viz.*:

> "SEC. 129. Power to Create Source of Revenue.— **Each local government unit shall exercise its power to create its own source of revenue and to levy taxes, fees, and charges <u>subject to provisions herein</u>,** consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units." [*Emphasis and underscoring supplied*]

However, Section 133 of the LGC prescribes the common limitations on the taxing powers of local government units. Section 133(g) explicitly prohibits provinces, cities, municipalities, and barangays from imposing taxes on BOI-registered business enterprises certified as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively, <u>from the date of registration</u> to wit:

> SECTION 133. Common Limitations on the Taxing Powers of Local Government Units. — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following: ...
>
> (g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively **from the date of registration**; [*Emphasis and underscoring supplied*]

In *Petron Corp. v. Tiangco,* [118] the Supreme Court recognized that Section 133 is a limitation on the local government units' power to tax, *viz.*:

[118] G.R. No. 158881, April 16, 2008.

> Congress has the constitutional authority to impose limitations on the power to tax of local government units, and Section 133 of the LGC is one such limitation. Indeed, the provision is the explicit statutory impediment to the enjoyment of absolute taxing power by local government units, not to mention the reality that such power is a delegated power. To cite one example, under Section 133 (g), local government units are disallowed from levying business taxes on "business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and (4) four years, respectively from the date of registration.

Based on the foregoing, it is clear that local government units, such as the Municipality of Villanueva, Misamis Oriental, may not impose taxes on business enterprises certified by the BOI for six (6) years for pioneer or of four (4) years, for non-pioneer, <u>from the date of registration.</u> Conversely, after the applicable period, the said local government units may already exercise their power to tax and impose business taxes on the said enterprises.

In this case, petitioner states in its *Appeal by Way of Petition for Review* that:

> The Board of Investment issued Certificate of Registration No. 2013-17724 dated August 30, 2013, in favor of Respondent FDCMPC, certifying its status as a "pioneer" business enterprise.

It further states that:

> ..., since the Respondent FDCMPC is not a PEZA registered enterprise, it can only enjoy the BOI incentives for pioneer enterprises during the 6-year validity of its registration with the BOI which has already expired as of August 30, 2019.

While FDCMPC states in its Comment that:[119]

> In this case, **while FDCMPC is <u>not registered</u> with the PEZA, it is duly registered with both the PIA and the BOI.** Thus, FDCMPC is entitled to the fiscal and non-fiscal incentives being granted and administered by PIA and BOI, including exemption from local taxes. [*Emphasis and underscoring supplied.*]

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[119] *Supra* at note 116.

Indeed, it is undeniable that FDCMPC is a BOI-registered enterprise. Based on its BOI Certificate of Registration dated *August 30, 2013,* it was granted a "pioneer" status. Thus, it had six (6) years from the date of its registration on *August 30, 2013,* or until *August 29, 2019*, to enjoy local tax exemption.

After the said period, however, the Municipality of Villanueva, Misamis Oriental, may already impose business taxes against FDCMPC. Such being the case, and since the subject local business taxes pertain to calendar years 2017 and 2018, amounting to ₱60,668,561.24, the same taxes may not be legally imposed by the Municipality of Villanueva against FDCMPC.

Finally, as aptly observed by FDCMPC, Section 133(g) of the LGC is echoed in Section 8D05 of Ordinance No. 496 series of 2010, otherwise known as the Revenue Code of the Municipality of Villanueva, Province of Misamis Oriental, as promulgated by the *Sangguniang Bayan* of petitioner.[120] We quote:

> Section 8D05. *Withdrawal of Tax Exemption Privileges.* — Unless otherwise provided in this Revenue Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical. including government-owned or controlled corporations, except local water districts, cooperatives duly registered under RA 6938, non-stock and non-profit hospitals and educational institutions, **business enterprises certified by the Board of Investment (BOI) as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively, from the date of registration**, business entity, association, or cooperatives registered under RA 6810, and printer and/or publisher of books or other reading materials prescribed by DECS as school texts or references, insofar as receipts from the printing and/or publishing thereof are concerned, are hereby withdrawn. [*Emphasis and underscoring supplied.*]

FDCMPC has sufficiently established its exemption from local taxes as a BOI-registered enterprise, but this exemption extends only until August 29, 2019. To maintain this status beyond that date, FDCMPC must either qualify for exemption under another law or present another valid basis for exemption.

[120] See RTC Records – Vol. I, p. 164.

All told, it is improper for the court *a quo* to have ***permanently*** enjoined petitioner from imposing and collecting local taxes from FDCMPC.

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, the *Decision* of the Regional Trial Court Branch 38 of Cagayan de Oro City dated January 14, 2022, is **MODIFIED** as follows:

1. Respondent FDCMPC is **DECLARED** exempt from local taxes for a period of six (6) years from August 30, 2013, to August 29, 2019. Therefore, the Municipality of Villanueva, Province of Misamis Oriental, cannot require respondent FDCMPC to pay local business taxes amounting to Sixty Million Six Hundred Sixty-Eight Thousand Five Hundred Sixty-One and 24/100 Pesos (₱60,668,561.24) for calendar years 2017 and 2018; and,

2. Petitioner Municipality of Villanueva , Misamis Oriental is **ENJOINED** from proceeding with the collection of local business taxes against respondent FDCMPC for the period August 30, 2013 to August 29, 2019.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Official Business)
JEAN MARIE A. BACORRO-VILLENA
Associate 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice