REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

METRO MANILA SHOPPING MECCA CORP., SHOEMART, INC., SM PRIME HOLDINGS, INC., STAR APPLIANCES CENTER, INC., SUPERVALUE, INC., ACE HARDWARE PHILIPPINES, INC., HEALTH AND BEAUTY, INC., JOLLIMART PHILIPPINES CORP., AND SURPLUS MARKETING CORP.,
Petitioners,

C.T.A. EB No. 480
(C.T.A. AC No. 35)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

MS. LIBERTY TOLEDO, in her capacity as the City Treasurer of Manila and the CITY OF MANILA,
Respondents.

Promulgated:
SEP 08 2009

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed on April 17, 2009, assailing the Decision[2] dated October 31, 2008 of the Second Division of the

[1] *Rollo,* C.T.A. EB No. 480 (C.T.A. AC No. 35), pp. 8 - 148 with Annexes.
[2] Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez.

Court ("Court in Division") in C.T.A. AC No. 35, reversing and setting aside the Decision[3] of the Regional Trial Court ("RTC") of Manila, Branch 47, which granted petitioners' claim for refund for illegal exactions under Section 21 of the Revenue Code of Manila ("RCM"), in the total amount of P5,104,281.26; and the Resolution dated March 16, 2009, denying the "Motion for Reconsideration" of herein petitioners.

Antecedent Facts

The antecedent facts, as narrated by the Court in Division in its Decision, are as follows:

> Petitioner[4] Liberty M. Toledo is the duly appointed City Treasurer of the City of Manila, empowered to perform the duties of said office including, among others, the collection of all local taxes, fees, and charges, and the power to decide, approve or grant refunds or tax credits of erroneously or excessively paid taxes; while petitioner[5] City of Manila is a local government unit.
>
> Respondents[6] are domestic corporations organized and existing under and by virtue of the laws of the Republic of the Philippines, and doing business in the City of Manila.
>
> During the taxable period ending October 2001, the Business Permits and Licenses Division of petitioner City of Manila assessed respondents for their alleged fourth (4th) quarter local business taxes pursuant to Section 21 (Tax on Business Subject to the Excise Tax, Value-Added Tax or Percentage Taxes under the National Internal Revenue Code) of City Ordinance No. 7794, as amended by City Ordinance Nos. 7807, 7988 and 8011, otherwise known as the Revenue Code of the City of Manila (Revenue Code of Manila), as follows:

1.	Metro Manila Shopping Mecca Corp.	P1,203,361.44
2.	Shoemart, Inc.	2,902,041.70
3.	SM Prime Holdings, Inc.	310,398.44

[3] Penned by Presiding Judge Augusto T. Gutierrez, Civil Case No. 03-108175.
[4] Herein Respondent.
[5] Herein Respondent.
[6] Herein Petitioners.

4. Star Appliances Center		397,282.22
5. Supervalue, Inc.		153,428.69
6. Ace Hardware Philippines, Inc.		53,800.85
7. Health and Beauty, Inc.		23,256.39
8. Jollimart Phils. Corp.		25,574.05
9. Surplus Marketing Corp.		P 35,137.48
	TOTAL	**P5,104,281.26**

Respondents accordingly paid the above-mentioned assessments on October 20, 2001. However, independently of the amounts collected under Section 21 (Tax on Business subject to the Excise, Value-Added or Percentage Taxes under the NIRC) of the Revenue Code of Manila, petitioner City Treasurer assessed respondents of local taxes imposed upon retailers, wholesalers, exporters and importers pursuant to Section 15 (Tax on Wholesalers, Distributors, or Dealers), Section 17 (Tax on Retailers) and such other applicable provisions of the Revenue Code of Manila.

On October 20, 2003, respondents filed a judicial action denominated as 'Petition' praying for the issuance of a writ of temporary restraining order against the petitioners; the declaration of Section 21 of the Revenue Code of Manila as unconstitutional; and the refund of the amount of P5,104,281.26. The case was docketed as Civil Case No. 03-108175, entitled *'Metro Manila Shopping Mecca Corp., Shoemart, Inc., SM Prime Holdings, Inc., Star Appliances Center, Supervalue, Inc., Ace Hardware Philippines, Inc., Health and Beauty, Inc., Jollimart Phils. Corp., and Surplus Marketing Corporation vs. Ms. Liberty Toledo, in her official capacity as the City Treasurer of Manila and the City of Manila.'*

On November 14, 2003, respondents as plaintiffs filed an *Amended Complaint* seeking the issuance of the writs of temporary restraining order and preliminary injunction for the petitioners as defendants to cease and desist from collecting local business taxes based on Section 21 of the Revenue Code of Manila; and the refund of P5,104,281.26, plus interest.

On December 16, 2003, petitioners filed their *Answer* refuting the material allegations of the Amended Complaint.

During the pre-trial conference, the parties stipulated the following issues:

1. Whether or not the assessment upon plaintiffs under Section 21 of the Revenue Code of Manila as

amended is illegal and unconstitutional and consequently

2. Whether or not the plaintiffs are entitled to a tax credit/tax refund in the amount of Five Million One Hundred Four Thousand Two Hundred Eighty One and 26/100 Pesos (P5,104,281.26).

On December 7, 2006, the Regional Trial Court ('RTC') Branch 47 of Manila rendered the assailed Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is rendered:
>
> (1) Declaring the assessments made upon the plaintiffs for the 4th Quarter local business taxes pursuant to Section 21 of the Revenue Code of the City of Manila in the total amount of P5,104,281.26 null and void;
>
> (2) Ordering the defendants to refund to the plaintiffs as follows:

a) Metro Manila Shopping Mecca Corp.	P1,203,361.44
b) Shoemart, Inc.	2,902,041.70
c) SM Prime Holdings, Inc.	310,398.44
d) Star Appliances Center	397,282.22
e) Supervalue, Inc.	153,428.69
f) Ace Hardware Philippines, Inc.	53,800.85
g) Health and Beauty, Inc.	23,256.39
h) Jollimart Phils. Corp.	25,574.05
i) Surplus Marketing Corp.	35,137.48
TOTAL	P5,104,281.26

> OR ALTERNATIVELY, to issue tax credits to the said plaintiffs for the said amount.
>
> SO ORDERED.

On January 17, 2007, petitioners filed a *Motion for Reconsideration* which was eventually denied by the RTC through its Order dated April 17, 2007, the pertinent portions of which state:

> After a careful study of the defendants' motion for reconsideration and the Comment/Opposition filed by the plaintiffs thereto, the court finds that the motion does not raise substantial matters or cogent

> reasons which would warrant a reversal of the court's decision dated December 7, 2006.
>
> WHEREFORE, premises considered, the Motion for Reconsideration filed by the defendants is DENIED for lack of merit.
>
> SO ORDERED.

Petitioners received a copy of the Order on April 27, 2007 and had thirty (30) days within which to appeal to this Court. On May 5, 2007 and June 9, 2007, petitioners twice moved to extend the filing of a *petition for review*. They likewise filed a *Manifestation* on June 28, 2007, alleging the filing of their *Petition for Review* by registered mail on June 26, 2007. In a Resolution dated July 6, 2007, this Court granted the *Motions,* noted the *Manifestation,* and admitted the *Petition for Review*.

Respondents filed their *Comment* on September 10, 2007. Thereafter, petitioners filed their *Reply* on September 26, 2007; and respondents their *Rejoinder* on November 8, 2007.

In compliance with Resolution dated October 19, 2007, petitioners and respondents filed their respective Memorandum on January 23, 2008 and January 7, 2008, respectively.[7] *(Citations omitted)*

The Ruling of the Court in Division

After considering all the pleadings filed by both parties, the Court in Division summarized the issues as follows:

1. Whether or not compliance with Section 187 of Republic Act (R.A.) No. 7160 is necessary before seeking judicial recourse.
2. Whether or not there was a misjoinder of causes of action.
3. Whether or not the RTC erred when it failed to dismiss the case despite the fact that respondents'[8] claim was allegedly barred by the statute of limitations.

[7] *Rollo*, pp. 85 - 89.
[8] Herein Petitioners.

4. Whether or not the RTC erred when it failed to dismiss the case despite the alleged failure of the respondents to comply with Section 4, Rule 8 of the 1997 Rules of Civil Procedure.

5. Whether or not the Supreme Court's ruling in the case of *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, et al.*, is applicable to the present case.[9]

It then proceeded to resolve the third issue inasmuch as it deals with a jurisdictional question.

Applying Section 195 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 ("LGC"), the Court in Division declared that the assessments of local business taxes against petitioners, for the 4th quarter of taxable period ending October 2001, are conclusive and unappealable. It pointed out petitioners' failure to question the denial by the respondent City Treasurer of their protest before a court of competent jurisdiction, within thirty (30) days from receipt of the denial of their protest. It said:

> Records indicate that although respondents[10] filed a protest on the assessments on October 19, 2001, the *Petition* filed before the RTC was filed beyond the reglementary period. Section 195 of R.A. No. 7160 categorically states that '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.' The denial of the protest was received by respondents on November 22, 2001; however, they failed to contest the same before a court of competent jurisdiction within the allowable period, *viz.*, thirty (30) days from receipt of the denial of the protest. In fact, respondents only filed their *Petition* and the *Amended Complaint* on October 20, 2003 and November 14, 2003, respectively. It took them almost two (2) years from the date of receipt of the denial of the protest on November 22, 2001 to seek judicial recourse; way more than the legally prescribed thirty (30) day period.

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[9] *Rollo*, p. 92.
[10] Herein Petitioners.

> Accordingly, the subject assessments became conclusive and unappealable when respondents failed to question the same before a competent court within thirty (30) days from receipt of the denial of their protest.

As to petitioners' claim for refund, the Court in Division ruled that the same cannot prosper. It explained that the amount of P5,104,281.26, representing the alleged amount of erroneously paid local business taxes plus interest, covering the 4th quarter of the taxable period ending October 2001, cannot be refunded because petitioners failed to file a written claim for refund or credit with the respondent City Treasurer as required in Section 196 of the LGC. It went on to say that petitioners' letter of protest dated October 19, 2001 cannot be treated as a written claim for refund, as it only disputes the assessments of local business taxes for the 4th quarter of taxable period ending October 2001. In fact, no categorical request for refund of the amount was mentioned in the said letter.

The Court in Division also noted that while Exhibits "C" to "K" show that petitioners paid local business taxes under Section 21 of the RCM, no evidence was presented by petitioners to prove that they actually paid local taxes under Sections 15 and 17 of the same Code.

Thus, on October 31, 2008, the Court in Division disposed of the case in this wise:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** The assailed Decision dated December 7, 2006 and the Order dated April 17, 2007 rendered by the Regional Trial Court, Branch 47, Manila in Civil Case No. 03-108175, are **REVERSED** and **SET ASIDE.**
>
> **SO ORDERED.**[11]

[11] *Rollo*, p. 99.

On November 19, 2008, petitioners moved for a reconsideration,[12] interposing the following grounds:

A. Petitioners[13] failed to timely appeal the Decision and Order of the RTC of Manila-Branch 47;

B. The Decision failed to consider that the issues raised by Petitioners have been thoroughly passed upon by the trial court and addressed by existing jurisprudence;

B1. The judicial claim for refund was filed within the prescribed period under Section 196, LGC;

B2. The factual findings of the trial court that Respondents are entitled to the refund or issuance of tax credit of business taxes paid under Section 21, RMC, as amended deserve to be respected; and

B3. Respondents proved that they paid business taxes under Sections 15 and 17, RMC.[14]

On March 16, 2008, the Court in Division denied the reconsideration of the Decision dated October 31, 2008 for lack of merit.[15] It maintained that the Petition for Review was filed within the period allowed by the rules. It likewise disregarded the contention of petitioners that a motion for extension without any notice of hearing is fatally defective. According to the Court in Division, while as a general rule, a motion should specify the date and time of hearing, such requirement may be dispensed with in a motion for extension, as declared by the Supreme Court in the case of *Gliceria Sarmiento v. Emerita Zaratan.*[16]

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[12] *Rollo*, pp. 109 - 147.
[13] Herein Respondents.
[14] *Rollo*, p. 103.
[15] *Id.*, at pp. 102 - 108.
[16] G.R. No. 167471, February 5, 2007, 514 SCRA 246.

The Issues

Hence, the instant Petition for Review where petitioners raise the following errors:

A

> The CTA-Division should have automatically dismissed Respondents' Petition for Review since it was filed beyond the thirty-day period mandated under the Revised Rules of the Court of Tax Appeals.

B

> The October 31, 2008 Decision and the March 16, 2009 Resolution failed to consider that the factual and legal issues of the case have been considered and disposed of by the trial court and have been addressed by relevant jurisprudence.

C

> Granting a refund or tax credit for overpaid taxes is founded on the well-entrenched civil law principle of quasi-contract, particularly, *solutio indebiti*. Respondents have no right whatsoever to receive any taxes from Petitioners under a void ordinance, thus the obligation to return arises.[17]

In turn, respondents filed their Comment[18] arguing that the case of ***"Coca-Cola Bottlers Philippines, Inc. v. City of Manila, et. al."***[19] cannot be given retroactive application. They point out that when the act subject of this case happened, the decision on the *Coca-Cola case* was not yet promulgated. Thus, at the time of the assessment and collection of the tax subject of this case, City Ordinance Nos. 7988 and 8011 were still valid and effective.

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[17] *Rollo*, p. 23.
[18] *Id.*, at pp. 154 - 157.
[19] G.R. No. 156252, 493 SCRA 279, June 27, 2006.

To counter this argument, petitioners filed a Reply[20] stating that under the principle of *stare decisis,* lower courts should adhere to the decisions of the Supreme Court. Petitioners contend that a void ordinance has no legal effect and is inoperative. For this reason, petitioners are not required to pay the taxes and should therefore be refunded.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

Before discussing the merits of the case, the Court *En Banc* shall first dispose of the procedural issue on the timeliness of the filing of respondents' Petition for Review on June 26, 2007.

The Petition for Review was timely filed with the Court in Division

Petitioners are of the view that the period of thirty (30) days within which respondents may appeal the RTC Order dated April 17, 2007 with the Court in Division, provided for in Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA"), is non-extendible. According to them, although the rules do not specifically provide that the period of thirty (30) days is non-extendible, the period provided, which is longer than the usual period of fifteen (15) days allowed in the Revised Rules of Court of 1997 ("ROC"), manifests an intention to prohibit extensions. Therefore, it is beyond the power of the Courts to extend the period to appeal.

[20] *Rollo,* pp. 165 – 186.

To bolster their position, petitioners cite the cases of *Filipinas Investment & Finance Corporation v. Commissioner of Internal Revenue*[21] and *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,*[22] where the Supreme Court expressed that the period to appeal is mandatory and that it is beyond the power of the Courts to extend the same. Relying on these jurisprudence, petitioners claim that respondents had a non-extendible period of thirty (30) days from receipt of the RTC Order on April 27, 2007, or until May 27, 2007, within which to file their Petition for Review with the Court in Division. Accordingly, the "Motion for Extension of Time to File Petition for Review" filed on May 5, 2007 by registered mail, and the "Motion for Additional Time to File Petition for Review" filed on June 9, 2007 also by registered mail, should not have been granted by the Court in Division. Instead, the Court in Division should have automatically dismissed the Petition for Review for having been filed by the respondents beyond the period provided by law.

The Court *En Banc* does not agree.

Petitioners' reliance on *Filipinas Investment & Finance Corporation v. Commissioner of Internal Revenue*[23] and *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[24] is misplaced. These cases are inapplicable, as the facts in these cases are not on all fours with the facts in the present case. In the cases relied upon by petitioners, the Petitions for Review were dismissed by the Court because they were filed beyond the period allowed by the rules, sans any motion for extension of time being granted by the Court. However, in this

[21] G.R. No. L-23501, May 16, 1967, 20 SCRA 50.
[22] G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[23] *Supra,* at note 21.
[24] *Supra,* at note 22.

case, respondents timely filed two motions for extension of time, which were granted by the Court in Division. Consequently, the filing of the Petition for Review on June 26, 2007 is still within the period allowed by the rules.

It is well to note that being suppletory to Republic Act 9282,[25] Section 1, Rule 42 of the ROC allows an additional period of fifteen (15) days for the movant to file a Petition for Review, upon motion, and payment of the full amount of the docket fees; a further extension of fifteen (15) days may be granted on compelling reasons in accordance with the same provision.[26]

Thus, the Court *En Banc* quotes with approval the ruling of the Court in Division in its Resolution dated March 16, 2009, scilicet:

> A judgment or ruling of the Regional Trial Court acting in its original jurisdiction on tax cases may be appealed to the Court in Division within a period of thirty (30) days from receipt thereof, pursuant to Section 9 of Republic Act ('R.A.') No. 9282, stating:
>
>> SEC. 9. Section 11 of the same Act is hereby amended to read as follows:
>>
>> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or **the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
>>
>> **Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of**

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[25] 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.
[26] The City of Manila, et. al. v. Coca-Cola Bottlers, Inc., C.T.A. EB Case No. 307 (C.T.A. AC No. 31), January 18, 2008.

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> **Civil Procedure with the CTA within thirty (30) days from receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal** xxx

Implementing Section 9 of R.A. No. 9282 is Section 4, Rule 8 of the Revised Rules of the Court of Tax Appeals which provides:

Rule 8

xxx

SEC. 4. *Where to appeal; mode of appeal.* –

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

In reference to Section 9 of R.A. No. 9282, matters governing extension to file Petition for Review to this Court from decisions or final orders of the Regional Trial Court acting in its original jurisdiction are laid in Rule 42 of the 1997 Rules of Civil Procedure, reading:

Rule 42

xxx

> SECTION 1. *How appeal taken; time for filing.* - xxx Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most

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> compelling reason and in no case to exceed fifteen (15) days.

The trial court in the exercise of its original jurisdiction promulgated a Decision dated December 7, 2006 and declared that the assessments of business taxes of P5,104,281.26 for the fourth quarter of year 2001 under Section 21 of the Manila Revenue Code are null and void, and ordered petitioners to refund the same amount in favor of respondents. In the Resolution dated April 17, 2007, the trial court denied petitioners' Motion for Reconsideration affirming its Decision dated December 7, 2006.

Records show that the Order dated April 17, 2007 sought to be appealed was received by petitioners on April 27, 2007. Thus, counting from April 27, 2007, petitioners had until May 28, 2007 within which to appeal with the Court in Division. Before the lapse of the period to appeal, petitioners filed on May 25, 2007 a 'Motion for Extension of Time to File Petition for Review' praying for additional period from May 27, 2007, or until June 11, 2007. On June 9, 2007 or before the expiration of the period prayed for in the first Motion for Extension, petitioners filed a second 'Motion for Additional Time To File Petition for Review.' Petitioners' second Motion for Extension sought another fifteen (15) days from June 11, 2007, or until June 26, 2007 within which to file Petition for Review. On June 26, 2007, petitioners filed by way of registered mail the instant Petition for Review.

In fact, the Court in Division issued a Resolution dated July 6, 2007 granting the Motions for Extension of Time to File Petition for Review, and admitted the Petition for Review filed by way of registered mail on June 26, 2007:

> RESOLUTION
>
> In the broader interest of justice, **petitioners' Motions for Extension of Time to File Petition for Review filed on May 25, 2007 and June 9, 2007 praying for a total of thirty (30) days' extension of time to file petition for review from May 27, 2007 or until June 26, 2007 are GRANTED. Moreover, petitioners' 'Manifestation' filed on June 28, 2007 alleging the filing of its petition for review by registered mail on June 26, 2007 is NOTED, and petitioners' 'Petition for Review' attached to the Manifestation and received by this Court on June 28, 2007 by personal service is hereby ADMITTED.** xxx

> This Court issued another Resolution dated August 1, 2007 declaring respondents' Motion Ad Cautelam (Re: Motion for Extension of Time to File Petition for Review dated May 25, 2007 and Motion for Additional Time to File Petition for Review dated June 9, 2007) moot and academic, due to the Resolution dated July 6, 2007.
>
> The power to dismiss an appeal is discretionary and not mandatory.[27]

In addition, the contention of petitioners that the Motions filed by respondents are mere scraps of paper as these failed to comply with Section 4, Rule 15 of the ROC, requiring motions to contain a notice of hearing, holds no water.

Section 4, Rule 15 of the ROC, provides that:

> SEC. 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Section 4 lays the general rule that all written motions shall be set for hearing by the movant, except the non-litigated motions or those which may be acted upon by the court without prejudicing the rights of the adverse party. These *ex parte* motions include a motion for extension of time to file pleadings,

[27] *Rollo*, pp. 103 – 107.

motion for extension of time to file an answer, and a motion for extension of time to file a record on appeal.[28]

Moreover, in the case of *Gliceria Sarmiento v. Emerita Zaratan,*[29] cited by the Court in Division in its Resolution dated March 16, 2009, the Supreme Court enunciated that:

> There are, indeed, reasons which would warrant the suspension of the Rules: (a) the existence of special or compelling circumstances, b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby. Elements or circumstances (c), (d) and (e) exist in the present case.
>
> The suspension of the Rules is warranted in this case. The motion in question does not affect the substantive rights of petitioner as it merely seeks to extend the period to file Memorandum. The required extension was due to respondent's counsel's illness, lack of staff to do the work due to storm and flood, compounded by the grounding of the computers. There is no claim likewise that said motion was interposed to delay the appeal. As it appears, respondent sought extension prior to the expiration of the time to do so and the memorandum was subsequently filed within the requested extended period. Under the circumstances, substantial justice requires that we go into the merits of the case to resolve the issue of who is entitled to the possession of the land in question.
>
> Further, it has been held that a 'motion for extension of time xxx is not a litigated motion where notice to the adverse party is necessary to afford the latter an opportunity to resist the application, but an ex parte motion made to the court in behalf of one or the other of the parties to the action, in the absence and usually without the knowledge of the other party or parties.' As a general rule, notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand that his rights be not affected without an opportunity to be heard. It has been said that 'ex parte motions are

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[28] Rustia v. Rivera, G.R. No. 156903, November 24, 2006, 508 SCRA 39, *citing Moya v. Barton, 76 Phil. 831 (1946); Ballecer v. Bernardo, L-21766, September 30, 1966, 18 SCRA 291; Amante v. Suñga, L-40491, May 28, 1975, 64 SCRA 192; and Commercial Union Assurance Co., Ltd. v. Lepanto Consolidated Mining Co., L-43342.*
[29] *Supra,* at note 16.

> frequently permissible in procedural matters, and also in situations and under circumstances of emergency; and an exception to a rule requiring notice is sometimes made where notice or the resulting delay might tend to defeat the objective of the motion.'
>
> It is well to remember that this Court, in not a few cases, has consistently held that cases shall be determined on the merits, after full opportunity to all parties for ventilation of their causes and defense, rather than on technicality or some procedural imperfections. In so doing, the ends of justice would be better served. Furthermore, this Court emphasized its policy that technical rules should accede to the demands of substantial justice because there is no vested right in technicalities. Litigations, should, as much as possible, be decided on their merits and not on technicality. Dismissal of appeals purely on technical grounds is frowned upon, and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very aims. As has been the constant rulings of this Court, every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, free from constraints of technicalities. Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided.
>
> The visible emerging trend is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from constraints and technicalities.

Thus, the Court *En Banc* finds no error on the part of the Court in Division in ruling that while as a general rule, a motion should specify the date and time of hearing, such requirement may be dispensed with in a motion for extension of time.

Likewise, without merit is the allegation of petitioners that the copy of the Petition for Review mailed to them did not contain the necessary attachments, in violation of Section 2, Rule 42 of the ROC, as there is no evidence to substantiate their claim.

Having resolved the procedural issue in favor of the respondents, the Court *En Banc* shall now look into the merits of the case.

Under the LGC, there are two available remedies after assessment:

(1) Protest of the assessment; or

(2) An action for refund.[30]

Regrettably, under both remedies, petitioners' claim cannot prosper.

The Assessments against petitioners have become conclusive and unappealable under Section 195 of the LGC

Section 195 of the LGC provides:

> Sec. 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that the 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 cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day (60) period prescribed herein within which to appeal with the court of competent jurisdiction, otherwise the assessment becomes conclusive and unappealable.

In this case, petitioners were assessed by the Business Permits and Licenses Division of the City of Manila for the 4th quarter of the taxable period

[30] Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, pp. 480 - 481 (2006).

ending October 2001 in the amount of P5,104,281.69, pursuant to Section 21 of the RCM.

On October 20, 2001, petitioners paid the assessments under protest and filed a protest letter dated October 19, 2001.

On November 22, 2001, petitioners received respondent City Treasurer's letter dated October 25, 2001 denying their protest.

Under Section 195 of the LGC, petitioners had thirty (30) days from November 22, 2001, within which to appeal the denial with a court of competent jurisdiction, otherwise, the assessment would become conclusive and unappealable. Considering that no appeal from the denial of the protest was filed within the prescribed period, the assessments against petitioners became conclusive and unappealable.

Petitioners' claim for refund failed to comply with the requirements set forth in Section 196 of the LGC

Section 196 of the LGC states that:

> Sec. 196. *Claim for Refund of Tax Credit.* No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

Pursuant to the aforequoted provision, to successfully sue in court for a refund of any local tax, fee, or charge, two things must be done, to wit:

1) the taxpayer concerned must file a written claim for refund or tax credit with the local treasurer; and

2) the case or proceeding for refund has to be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.[31]

In the instant case, there is no question that petitioners satisfied the second requirement. On October 20, 2001, petitioners paid the assessments covering the 4th quarter of the taxable period ending October 2001. Within two (2) years from the date of payment, or on October 20, 2003, petitioners filed their "Petition" for refund.

However, as to the first requirement, records show that petitioners never filed a written claim for refund or tax credit with the respondent City Treasurer. What petitioners filed with the respondent City Treasurer was a protest letter.

To show compliance, petitioners now submit that their letter dated October 19, 2001 cannot simply be treated as a protest letter. They insist that their protest letter dated October 19, 2001 should be treated as a letter of refund, since there is no deficiency business tax involved, which would require the filing of a protest letter.

Petitioners' line of reasoning has already been rejected in the case of *China Banking Corporation v. City Treasurer of Manila*,[32] which was cited by the Court in Division in its Decision. In that case, the Court *En Banc* did not consider the

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[31] China Banking Corporation v. City Treasurer of Manila, C.T.A. EB No. 182 (RTC Civil Case No. 04-108990), July 27, 2006.
[32] *Supra*, at note 31.

protest letter filed by a taxpayer as a written claim for refund because the letter merely notified the local treasurer that the taxpayer was paying under protest and that the taxpayer was instituting the appropriate legal actions to effect refund of any erroneous/excessive payment made. With more reason in this case, where petitioners' letter of protest dated October 19, 2001 merely requested that their protest "be properly noted in all copies of the official receipts," without any mention of a request for a refund.

Grasping at straws, petitioners even assert that the absence of a written claim for refund is not fatal to a judicial claim. They contend that Section 196 of the LGC should not be interpreted as to result in absurdity, such that petitioners would still be required to actually state that they are requesting reimbursement of the taxes paid, when the October 19, 2001 letter clearly stated that petitioners were questioning the tax payments they made. In this connection, petitioners argue that under the principle of *solutio indebiti*, respondents have no choice but to return in good faith what they collected under a void ordinance.

Petitioners' assertions merit no further discussion.

Section 196 of the LGC, which provides for the procedure for claiming a refund or tax credit of local taxes, clearly states that: "No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge **erroneously or illegally collected** until a **written claim for refund or credit** has been filed with the local treasurer."

WHEREFORE, the instant Petition for Review is hereby **DISMISSED**. Accordingly, the Decision of the Second Division dated October 31, 2008 and its Resolution dated March 16, 2009 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice