REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
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THE CITY GOVERNMENT OF MAKATI, THE CITY TREASURER OF MAKATI CITY, and THE OFFICER-IN-CHARGE OF THE OFFICE OF THE CITY ADMINISTRATOR AND HEAD OF BUSINESS PERMITS OFFICE, Petitioners,	**CTA AC NO. 147** (Civil Case No. 15-177)
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** ***JJ.***
HONORABLE REGIONAL TRIAL COURT, MAKATI CITY, BRANCH 59 and MACTEL CORPORATION, Respondents.	**Promulgated:** MAY 18 2016

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11:30 a.m.

RESOLUTION

CASANOVA, *J.*:

Before this Court is petitioners' **Motion for Reconsideration (Re: Decision dated 09 February 2016)** filed on February 23, 2016, with private respondent Mactel Corporation's **Comment (Re: Motion for Reconsideration dated 23 February 2016)** filed on March 18, 2016.

In their Motion, petitioners pray that the Decision dated February 9, 2016 be reconsidered and set aside and that a new one be rendered granting the relief sought in their Petition for Certiorari. The *fallo* of the said Decision reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Certiorari is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

In assailing the above Decision, petitioners primarily argue that the present case clearly involves not one, but two local tax issues, *to wit*: a) Writ of Preliminary Injunction against the Notice of Assessment dated January 14, 2015 for 2010-2013; and b) Writ of Preliminary Mandatory Injunction directed against the billing statement dated January 22, 2015. As such, petitioners reiterate that the Orders dated April 28, 2015 and August 6, 2015, respectively, rendered by the public respondent were issued in grave abuse of discretion for being inconsistent with law and jurisprudence. Petitioners also restated the same issues and arguments they raised in their Petition for Certiorari.

On the other hand, in its Comment, private respondent Mactel Corporation ("Mactel") asserts that, at the outset, petitioners failed to set their Motion for Reconsideration for hearing as required under Sections 4 and 5, Rule 15 of the Rules of Court, and as reiterated in Section 3, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended. Hence, Mactel claims that the Decision dated February 9, 2016 should already be deemed final and executory. Nonetheless, Mactel insists that the arguments in petitioners' Motion are mere rehash of their earlier arguments that have already been considered and found wanting by this Court.

After due consideration of the arguments presented, this Court finds no merit in the instant Motion for Reconsideration.

This Court shall first address the issue of petitioner's failure to set their Motion for hearing as required under Sections 4 and 5, Rule 15 of the Rules of Court.

> "**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."
>
> "**SEC. 5.** *Notice of hearing.*—The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion."

The foregoing provisions encapsulate the three-day notice rule, wherein it provides that every written motion shall be set for hearing at least three (3) days before the intended date of hearing but should not be later than ten (10) days after the filing of the motion. The rule is mandatory. In fact, no written motion shall be acted upon by the court without proof of service thereof.[1]

However, the three-day notice rule is not absolute. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority.[2]

In the case of **Jehan Shipping Corporation vs. National Food Authority**,[3] the Supreme Court held that despite the lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion, *viz*:

> "This Court has indeed held time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the notice requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading.
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> **As an integral component of the procedural due process, the three-day notice required by the Rules is**

[1] Section 6, Rule 15 of the Rules of Court
[2] Fausto R. Preysler, Jr. vs. Manila Southcoast Development Corporation, G.R. No. 171872, June 28, 2010
[3] G.R. No. 159750, December 14, 2005

> **not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution of the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.**
>
> **The test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.** *x x x*
>
> *x x x* *x x x* *x x x*
>
> The requirement of notice of time and hearing in the pleading filed by a party is necessary only to apprise the other of the actions of the former. Under the circumstances of the present case, the purpose of a notice of hearing was served." *(Emphasis Ours)*

Verily, procedural rules were conceived to aid the attainment of justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.[4] Perforce thereto, Section 6, Rule 1 of the Rules of Court, as reiterated under Section 2, Rule 1 of the RRCTA allows, in certain cases, the liberal application of the rules, *viz*:

> "**SEC. 6**. *Construction.-* The Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding."

Henceforth, in the interest of substantial justice, and in consonance that this Court shall not be governed strictly by technical rules of evidence in order to promote their objective of securing a just, speedy, and inexpensive determination of every action,[5] this Court allows and admits petitioners' Motion for Reconsideration regardless of their omission to set the same for hearing.

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[4] City of Dumaguete vs. Philippine Ports Authority, G.R. No. 168973, August 24, 2011; *citing* Mario Basco Y Salao vs. Court of Appeals, et al., G.R. No. 125290, February 29, 2000
[5] Section 2, Rule 1 of the RRCTA, as amended

That having been settled, this Court shall now proceed to discuss petitioners' main argument.

Petitioners insist that the present case involves two local tax issues, namely: Mactel's application for a Writ of Preliminary Injunction against the Notice of Assessment dated January 14, 2015 for 2010-2013, and Writ of Preliminary Mandatory Injunction for the issuance of a temporary business permit. Thus, petitioners assert that this Court should rule on the issues raised and, thereafter, grant the relief they seek.

This Court is not convinced.

Again, the case before this Court is not a local tax case. It may seem as such, may even be incidental thereto, but, the fact still remains that the case before us is civil in nature. If it will be recalled, the nature of Mactel's Petition before the Regional Trial Court (RTC)-Branch 59 of Makati City, docketed as Civil Case No. 15-177, is for Certiorari and Mandamus under Rule 65 of the Rules of Court, seeking to annul and set aside herein petitioners' unlawful withholding of business permit and to compel them to apply the doctrine of conclusiveness of judgment of a previous case[6].

However, petitioners insist that the present case involves two tax issues involving Writ of Preliminary Injunction and Writ of Preliminary Mandatory Injunction. While there is a semblance of truth in their allegation, to accept wholly the said statement is inaccurate and misleading. Perusal of the Order dated April 28, 2015[7], rendered by the RTC-Branch 59 of Makati City, reveal that the injunctive relief was issued against the whole ongoing assessment process and not merely on the assessments *per se*, thus:

> "WHEREFORE, premises considered, let Writs of Preliminary Injunction and Mandatory Injunction be issued upon the filing of a bond of P500,000.00 ordering respondents, their successors, agents, assignees and any and all persons or entities acting on their behalf, under their

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[6] Mactelecom Corporation vs. The City of Makati and the City Treasurer of Makati, Civil Case No. 05-1040, November 13, 2007
[7] RTC Records, pp. 190-193

> authority or in coordination to DESIST and REFRAIN from further proceeding with the assessment of local taxes of petitioner until the resolution of this case.
>
> Furthermore, respondents are hereby ordered to issue a temporary business permit in favor of petitioner.
>
> **SO ORDERED.**"

What petitioners failed to consider is that the proceedings in the court *a quo* did not examine the assessments themselves, specifically the Notice of Assessment dated January 14, 2015 for 2010-2013, but rather the total disregard of Mactel's rights under a final and executory judgment. As a matter of fact, the deficiency business tax assessment for taxable years 2010-2013 is still an ongoing process. That being so, this takes it out of the ambit of a tax case as the issues therein strictly pertain to due process and immutability of final judgment, and not just the correctness of an assessment. Even the Order dated August 6, 2015 rendered by the RTC-Branch 59 of Makati City has clarified that "[a]t this point, this Court understands that [*Mactel*] does not seek to protest the amount of the assessment, but based upon its Petition, it merely seeks to define its rights under the Decision dated 13 November 2007." Furthermore, as correctly pointed out by Mactel, "*x x x* this becomes more obvious if petitioners consider the possible outcome of the case before the court *a quo*. Upon resolution thereof, the court *a quo* does not come up with the proper taxes to be imposed on the private respondent. Rather, it will merely annul acts tainted with grave abuse of discretion and enforce certain rights that have been violated."

Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[8]

WHEREFORE, premises considered, the Motion for Reconsideration (Re: Decision dated 09 February 2016) is hereby **DENIED** for lack of merit.

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[8] Editha Padlan vs. Elenita Dinglasan, et al., G.R. No. 180321, March 20, 2013

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice