REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PROVINCIAL GOVERNMENT OF CAGAYAN, Rep. by Honorable Governor Alvaro T. Antonio and Emilia L. Iringan, in her capacity as Provincial Treasurer, *Petitioner,*	**CTA EB No. 1137** (CTA AC No. 92)
	Present:
- versus -	Del Rosario, *PJ*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
SMART COMMUNICATIONS, INC. (SMART), *Respondent.*	Promulgated: DEC 08 2015 2:30 pm

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D E C I S I O N

COTANGCO-MANALASTAS, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner, Provincial Government of Cagayan, assailing the *Decision*[1] dated July 25, 2013 and the *Resolution*[2] dated February 4, 2014 of the Special First Division of the Court affirming the Decision dated April 30, 2012 of the Regional Trial Court, Branch 65 of Makati City in Civil Case No. 11-051 which nullified and set aside the franchise tax assessment for calendar year (CY) 2004 to 2009[3] issued by petitioner against respondent.

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[1] *Rollo*, pp. 16-39.
[2] *Rollo*, pp. 40-42.
[3] The tax assessment notice dated October 13, 2010 provided that the attached computation was for "Franchise Tax for CY 2004-2010". However, the attached franchise tax computation was only for CY 2004-2009.

The Facts

The facts, as culled from the records[4], are as follows:

Petitioner Provincial Government of Cagayan is a local government unit (LGU) with office address at Capitol Hills, Tuguegarao City. It is represented by Governor Alvaro T. Antonio and Provincial Treasurer Emilia L. Iringan.

Respondent Smart Communications, Inc. (SMART) is a domestic corporation engaged in telecommunications business, with principal office address at SMART Tower, 6799 Ayala Avenue, Makati City.

Petitioner claims that since mid of 2009, it had been asking respondent to submit a statement of its gross receipts or income in the province of Cagayan for purposes of computing its franchise tax pursuant to Section 2G.02 of the Cagayan Revenue Code of 2005, in relation to Section 137 of the Local Government Code (LGC) of 1991. Despite advisement, respondent failed to submit any, prompting petitioner to issue a "presumptive tax assessment" on October 13, 2010, assessing respondent of franchise tax liability from 2004 to 2009 in the total amount of Php86,482,092.60.

On October 26, 2010, respondent received a tax assessment notice dated October 13, 2010, which reads as follows:

> Sir:
>
> Please find attached computation of Franchise Tax for CY 2004-2010.
>
> Thank you very much.

The contents of the attachment are quoted below:

FRANCHISE TAX COMPUTATION
SMART COMMUNICATIONS, INC.
CY 2004-2009

Year	2004	2005	2006	*2007	**2008	***2009
Cagayan Population	1,090,024	1,115,625	1,145,886	1,072,571	1,083,940	1,083,940

[4] *Rollo*, pp. 16-21, citations omitted.

Estimated Load per Month	PHP300.00	PHP300.00	PHP300.00	PHP300.00	PHP300.00	PHP300.00
	12	12	12	12	12	12
Annual Presumptive Gross Receipts	PHP3,924,086,400.00	PHP4,016,347,200.00	PHP4,125,189,600.00	PHP3,861,255,600.00	PHP3,902,184,000.00	PHP3,902,184,000.00
Estimated Market Share	40%	40%	40%	40%	40%	40%
Annual Estimated Share	PHP1,569,634,560.00	PHP1,606,538,880.00	PHP1,650,075,840.00	PHP1,544,502,240.00	PHP1,560,873,600.00	PHP1,560,873,600.00
Franchise Tax (%)	.005	.005	.005	.005	.005	.005
Total Amount Due	PHP7,848,172.80	PHP8,032,694.40	PHP8,250,379.20	PHP7,722,511.20	PHP7,804,368.00	PHP7,804,368.00
Surcharge - 25%	1,962,043.20	2,008,173.60	2,062,594.80	1,930,627.80	1,951,092.00	1,951,092.00
Interest	PHP5,650,684.42	PHP5,783,539.97	PHP5,940,273.02	PHP5,096,857.39	PHP3,277,834.56	PHP1,404,786.24
GRAND TOTAL						**PHP86,482,092.60**

Interest is computed at 2% per month
*66%
**42%
***18%

In its protest letter dated November 23, 2010, respondent clarified that it has only one sales office in the Province of Cagayan and it is located in Tuguegarao City, which has its own taxing jurisdiction for purposes of franchise tax. Since local franchise tax may only be imposed on a business enjoying a franchise based on receipts realized within the territorial jurisdiction of the local government unit where a branch or sales outlet is maintained, it is not liable for local franchise tax to the Province of Cagayan pursuant to Section 137 of the LGC.

On January 24, 2011, respondent, alleging inaction on the part of petitioner, filed a Petition with the Regional Trial Court (RTC) of Makati City, impugning the assessment of October 13, 2010 issued against it by petitioner. The Petition entitled Smart Communication, Inc. vs. Province of Cagayan and Emilia L. Iringan was docketed as Civil Case No. 11-051.

In its Comment filed with the RTC on April 13, 2011, petitioner argued that respondent conducts its telecommunications business in the entire province of Cagayan evidenced by its cellular towers installed and maintained in the different municipalities of the province from which it derives or realizes income. Petitioner emphasized that respondent's business operates integrated telecommunications, computer and electronic services not only in the Province of Cagayan but in the entire country as well. According to petitioner, the true and accurate reflection of respondent's income or gross receipts in the conduct of its telecommunications business in the Province of Cagayan is not determined by the receipts issued in its sales office in Tuguegarao City alone but by the actual inventory of calls and text messages made by its subscribers within the Province.

On October 14, 2011, petitioner issued Notices of Garnishment dated September 20, 2011 against respondent's deposits in several banks, among which was Banco de Oro (BDO)-Pasay Road Branch, Makati City to enforce the collection of the assessed franchise tax liabilities for 2004-2009.

On October 18, 2011, respondent filed with the RTC an Urgent Application for Issuance of a Writ of Preliminary Injunction with Prayer for Temporary Restraining Order (TRO) to restrain petitioner from enforcing the Notices of Garnishment against respondent's deposits particularly with BDO-Pasay Road Branch, Makati City. This was followed by an Extremely Urgent Motion for the Issuance of a TRO, filed two days thereafter or on October 20, 2011.

On October 21, 2011, the RTC granted the relief prayed for, thereafter issued a TRO upon respondent's posting of the required bond in the amount of Php92,876,762.95.

On November 14, 2011, the RTC granted respondent's application for a writ of preliminary injunction enjoining petitioner from proceeding with the garnishment of respondent's bank accounts and from further garnishing, levying or attaching any of the latter's properties to enforce collection of the assessed franchise tax pending the resolution of the case.

On April 30, 2012, the RTC rendered the assailed Decision, in favor of respondent. The *fallo* reads:

> **WHEREFORE**, premises considered, the petition is hereby given due course and the assailed assessment is hereby nullified and set aside. The respondents are directed to cease and desist from imposing local franchise taxes on the petitioner's gross receipts realized within the territorial jurisdiction of the City of Tuguegarao.
>
> **SO ORDERED.**

Petitioner filed a Petition for Review before the Court in Division on June 22, 2012 assigning the following errors allegedly committed by the RTC, *to wit*:

> a. THE HONORABLE COURT A QUO GRAVELY ERRED IN RULING THAT PETITIONER CANNOT IMPOSE

AND COLLECT FRANCHISE TAX FROM RESPONDENT ON ITS TELECOMMUNICATIONS BUSINESS IN THE PROVINCE OF CAGAYAN JUST BECAUSE THE BUSINESS OFFICE OF RESPONDENT IS LOCATED ONLY IN TUGUEGARAO CITY. STATED DIFFERENTLY, THE COURT A QUO GRAVELY ERRED IN HOLDING THAT RESPONDENT DOES NOT REALIZE OR EARN GROSS RECEIPTS/INCOME WITHIN THE TERRITORIAL JURISDICTION OF THE PROVINCE OF CAGAYAN;

b. THE HONORABLE COURT A QUO GRAVELY ERRED IN APPLYING SECTION 150 OF THE LOCAL GOVERNMENT CODE OF 1991 IN DETERMINING THE SITUS OF TAX (FRANCHISE TAX) OF RESPONDENT. THE SAID PROVISION OF THE CODE BEING APPLICABLE ONLY TO DETERMINING SITUS OF BUSINESS TAX;

c. THE HONORABLE COURT A QUO GRAVELY ERRED IN ISSUING A TRO AND PRELIMINARY INJUNCTION AGAINST THE PETITIONER FROM ENFORCING THE COLLECTION OF THE FRANCHISE TAX LIABILITY OF RESPONDENT DESPITE ITS RULING IN FAVOR OF THE AUTHORITY OF PETITIONER TO LEVY FRANCHISE TAX ON BUSINESSES ENJOYING A FRANCHISE AND OF THE GIVEN FACT THAT RESPONDENT ACTUALLY CONDUCTS ITS TELECOMMUNICATIONS BUSINESS WITHIN THE TERRITORIAL JURISDICTION OF THE PROVINCE OF CAGAYAN.

The Special First Division, in its Decision[5] dated July 25, 2013, denied petitioner's petition for review for lack of merit holding that it is the City of Tuguegarao located within the Province of Cagayan which has the jurisdiction to assess franchise tax against respondent. Moreover, on petitioner's use of the presumptive tax assessment to enforce collection of the alleged franchise tax liability, the Court in Division held that the same has no legal and factual bases, hence invalid.

Petitioner's motion for reconsideration was likewise denied in the Resolution[6] dated February 4, 2014.

Aggrieved, petitioner filed the instant *Petition for Review* on March 19, 2014.

[5] *Supra*, Note 1.
[6] *Supra*, Note 2.

In compliance with the Court's Resolution[7] dated May 14, 2014, respondent filed its Comment[8] on June 27, 2014.

Considering the issues raised in the subject petition for review, this Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda[9].

Respondent filed its Memorandum[10] on October 1, 2014 while petitioner filed its Memorandum[11] on October 16, 2014 by registered mail and received by the Court on October 22, 2014.

Thus, the above-captioned case was submitted for decision on March 24, 2015.[12]

The Issues

Petitioner anchors its petition for review on the following grounds[13]:

I. The Honorable Court Special First Division erred in affirming the trial court's ruling that petitioner cannot impose and collect franchise tax from respondent on its telecommunications business in the Province of Cagayan on the ground that the business/sales office of respondent is located only in Tuguegarao City in accordance with Article 226 of the Implementing Rules and Regulations of the Local Government Code of 1991. Stated differently, the Court's Special First Division committed a reversible error in failing to rule that respondent also conduct its telecommunications business outside Tuguegarao City and within the territorial jurisdiction of the Province of Cagayan.

II. The Honorable Court erred in ruling that petitioner's presumptive tax assessment with respect to

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[7] *Rollo*, pp. 44-45.
[8] *Rollo*, pp. 52-73.
[9] *Rollo*, pp. 349-350, Resolution dated August 7, 2014.
[10] *Rollo*, pp. 351-372; inadvertently captioned as "Comment".
[11] *Rollo*, pp. 381-393.
[12] *Rollo*, pp. 409-410, Resolution dated March 24, 2015.
[13] *Rollo*, pp. 4-5

respondent's franchise tax liability is without factual and legal basis.

III. The Honorable Court erred in ruling that the estimation made by petitioner on the gross receipts or income of the respondent realized within the Province of Cagayan for the covered taxable periods is arrived at arbitrarily and capriciously.

IV. The Honorable Court Special First Division erred in not nullifying the TRO and preliminary injunction issued by the trial court a quo in spite of the clear fact that respondent conducts its telecommunications business not only within the territorial limits of Tuguegarao City but the whole of the Province of Cagayan.

For its part, respondent counter-argues that:

I. Assuming it is liable for franchise taxes, the alleged franchise taxes for the year 2004 and the first, second and third quarters of the year 2005 have already prescribed at the time petitioner issued the Assessment Letter.

II. Assuming that respondent is liable for franchise taxes, the alleged franchise taxes cannot be imposed by the petitioner because Tuguegarao City has the exclusive jurisdiction to impose franchise taxes on respondent.

III. Assuming that respondent is liable for franchise taxes, petitioner has no authority to impose and compute the way it did the alleged franchise taxes using the PILAA[14].

From the foregoing, the issues boil down to the principal issue of whether or not petitioner has jurisdiction to assess respondent for franchise tax.

[14] Presumptive income level assessment approach.

The Ruling of the Court

A perusal of the arguments raised by petitioner in the instant petition shows that they are mere reiteration of its previous arguments before the Court in Division which had been thoroughly discussed and passed upon by the Court in Division in its assailed Decision. There being no new issues raised by petitioner, this Court does not find any reason to discuss them anew.

However, the Court *En Banc* holds that while the Makati RTC, Branch 65 has jurisdiction to set aside the disputed franchise tax assessment for CY 2004 to 2009, it is bereft of jurisdiction to direct petitioner to cease and desist from imposing, in the future, local franchise tax on respondent's gross receipts that it may realize within the territorial jurisdiction of the City of Tuguegarao.

It is axiomatic that what determines the nature of an action as well as which court has jurisdiction over it, are the allegations of the complaint and the character of the relief sought.[15]

A party may, in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to certain conditions.[16]

A review of the allegations in respondent Smart's Petition dated January 24, 2011 filed before the Makati RTC and the reliefs prayed therein shows that its petition had two separate and distinct causes of actions: (1) an appeal from the inaction of the Treasurer of the Province of Cagayan on respondent's protest of the disputed franchise tax assessment for CY 2004 to 2009; and (2) action for injunction to enjoin the Provincial Government of Cagayan from assessing and collecting franchise taxes from respondent. Quoted below are the relevant portions of respondent's Petition before the Makati RTC:

> "This is an appeal pursuant to Section 195 of the Local Government Code of 1991 on the denial of the Province of Cagayan of the petitioner's protest of assessment on alleged local franchise tax liability...

[15] *Caiza vs. Court of Appeals*, G.R. No. 110427, February 24, 1997.
[16] Section 5, Rule 2 of the Rules of Court.

xxx xxx xxx

> On 13 October 2010, respondent sent a computation and assessment xxx on the franchise tax for the period 2004-2010. In reply, SMART wrote a letter protest on 23 November 2010 xxx. Hence, the 60-day period within which respondent may communicate the denial of the same should be reckoned from 24 November 2010, that is, the date of receipt of such protest letter by respondent. However, up to this date, no denial of the said protest was ever communicated by respondent to petitioner. xxx Thus, the inaction of respondent upon the lapse of the prescribed period is deemed a denial of the protest pursuant to Section 195 of the Local Government Code.

xxx xxx xxx

PRAYER

> Wherefore, premises considered, it is respectfully prayed of this Honorable Court that judgment be rendered in favor of Petitioner as follows:
>
> 1. Rule that respondents have no authority to collect the local franchise tax.
>
> 2. Rule that petitioner SMART is not liable for franchise tax to respondents.
>
> 3. **Order respondents to withdraw its demand and to cease and desist from assessing and collecting franchise tax from petitioner SMART**." (*Emphasis supplied*)

In fact, the Makati RTC, in its Decision, enjoined the Provincial Government of Cagayan from imposing local franchise taxes against Smart, *viz*:

> WHEREFORE, premises considered, the petition is hereby given due course and the assailed assessment is hereby nullified and set aside. **The respondents are directed to cease and desist from imposing local franchise taxes on the petitioner's gross receipts realized within the territorial jurisdiction of the City of Tuguegarao.** (*Emphasis supplied*)

Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action.[17]

The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the *status quo* until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction.[18]

However, Section 21(1) of Batas Pambansa Blg. (BP) 129 or "The Judiciary Reorganization Act of 1980" provides:

> Sec. 21. *Original jurisdiction in other cases.* - Regional Trial Courts shall exercise original jurisdiction:
>
> (1) In the issuance of **writs of** *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and **injunction, which may be enforced in any part of their respective regions**; x x x (Emphasis supplied)

Hence, the jurisdiction of Regional Trial Courts to issue injunctive writs is limited to acts committed or about to be committed within their judicial region.[19]

To be sure, the Makati RTC has jurisdiction over respondent's appeal from the inaction of the Treasurer of the Province of Cagayan on its protest on the disputed franchise tax assessment.

However, pursuant to Section 21(1) of BP 129, the Makati RTC has no jurisdiction to issue an injunctive writ to enjoin acts being performed or about to be performed outside its territorial boundaries. Clearly, the Makati RTC had no authority to issue a writ of injunction against petitioner, who

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[17] *Garayblas v. Atienza, Jr.*, G.R. No. 149493, June 22, 2006.
[18] *Ibid.*
[19] *Bangus Fry Fisherfolk vs. Lanzanas*, G.R. No. 131442, July 10, 2003.

is in the Province of Cagayan, an area outside its judicial jurisdiction.

In *Lilia B. Ada., et al., vs. Florante Baylon*[20], the Supreme Court held that if the court trying the case has no jurisdiction over a misjoined cause of action, then such misjoined cause of action has to be severed from the other causes of action, and if not so severed, any adjudication rendered by the court with respect to the same would be a nullity.

Considering that there was a misjoinder of the two (2) causes of action in Civil Case No. 11-051, the Makati RTC should have severed the action for injunction for lack of jurisdiction. Having failed to do so, the adjudication rendered by the Makati RTC with respect to the same is a nullity.

In sum, since the injunction issued by the Makati RTC purports to restrain acts outside the National Capital Judicial Region, it is null and void, for want of jurisdiction.[21]

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assailed *Decision* dated July 25, 2013 and *Resolution* dated February 4, 2014 of the Special First Division of the Court is **AFFIRMED** with **MODIFICATION**. The directive to cease and desist from imposing local franchise taxes on Smart Communications, Inc.'s gross receipts realized within the territorial jurisdiction of the City of Tuguegarao in the Decision dated April 30, 2012 of the Regional Trial Court, Branch 65 of Makati City in Civil Case No. 11-051 is **NULLIFIED** for want of jurisdiction.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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[20] G.R. No. 182435, August 13, 2012.
[21] *Cudiamat vs. Torres*, G.R. No. L-24225, February 22, 1968.

Juanito C. Castañeda, Jr.
(with Concurring and Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(with Concurring Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PROVINCIAL GOVERNMENT OF CAGAYAN, Rep. by Honorable Governor Alvaro T. Antonio and Emilia L. Iringan, in her capacity as Provincial Treasurer,
Petitioners,

-versus-

SMART COMMUNICATIONS, INC. (SMART),
Respondent.

CTA EB NO. 1137
(CTA AC NO. 92)

Present:

DEL ROSARIO, *P.J.*,
CASTANEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

DEC 08 2015 2:20 pm

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CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia albeit* I deem it necessary to address the opinion raised by Senior Associate Justice Juanito C. Castañeda, Jr., wherein he made the following conclusions, *viz*:

1. Makati RTC, Branch 65 has no jurisdiction over the appeal from the inaction of the Provincial Treasurer of Cagayan on respondent's protest of the franchise tax assessment; and,

2. There is only one cause of action involved in Smart's petition before the Makati RTC.

As regards the purported lack of jurisdiction of the Makati RTC to take cognizance of Smart's appeal on the inaction on its protest of the franchise tax assessment, reliance is made on the ruling of the CTA *En Banc* in *Philippine Long Distance Telephone Company, Inc. v. City of Balanga and Amado P. Jimenez, in his capacity as OIC-City Treasurer of the City of Balanga,*[1] which in turn cited *Roman R. Santos v. Hon. Florencio Moreno as Secretary of Public Works and Communications and Julian C. Cargullo*[2] *(Santos case).*

With due respect, reliance on the *Santos case* is misplaced. In the said case, the Secretary of Public Works appealed to the Supreme Court the decision of the Court of First Instance of **Manila** declaring certain creeks situated in barrio San Esteban, Macabebe, **Pampanga** as privately owned. Among the issues tried therein is whether venue was properly laid considering that what was involved are certain creeks situated in barrio San Esteban, Macabebe, Pampanga. The issue on jurisdiction was never raised therein. Pertinent parts of the *Santos case* are quoted below:

> 2. It is contended that if this case were considered as an **ordinary civil action**, venue was improperly laid when the same was instituted in the Court of First Instance of Manila for the reason that the case affects the title of a real property. In fine, the proposition is that since the controversy dwells on the ownership of or title to the streams located in Hacienda San Esteban, the case is **real action** which, pursuant to Sec. 3 of Rule 5 of the Rules of Court should have been filed in the Court of First Instance of Pampanga.
>
> The mere fact that the resolution of the controversy in this case would wholly rest on the ownership of the streams involved herein would not necessarily classify it as a real action. The purpose of this suit is to review the decision of the Secretary of Public Works and Communications to enjoin him from enforcing them and to prevent him from making and issuing similar decisions concerning the stream in Hacienda San Esteban. The acts of the Secretary of Public Works and Communications are the object of the litigation, that is, petitioner Roman Santos seeks to control them, hence, the suit ought to be filed in the Court of First Instance whose territorial jurisdiction encompasses the place where the respondent Secretary is found or is holding office. For the rule is that outside its territorial limits, the court has no power to enforce its order.
>
> Section 3 of Rule 5 of the Rules of Court does not apply to determine **venue of this action**. Applicable is Sec. 1 the same rule, which states:
>
>> Sec. 1. *General rule.* — Civil actions in Courts of First Instance may be commenced and tried where the defendant any of the defendants residents or may be found or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff.

[1] CTA EB No. 413, June 3, 2009.
[2] G.R. No. L-15829, December 4, 1967.

> Accordingly, the Petition for injunction was correctly filed in the Court of First Instance of Manila. Respondents Secretary of Public Works and Communications and Julian Cargullo are found and hold office in the City of Manila. (*Citations omitted*)

The Rule on venue for civil cases is, as in the present case, provided in Section 2, Rule 4 of the Rules of Court which reads:

> **Section 2.** *Venue of personal actions.* — All other actions may be commenced and tried **where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides,** or in the case of a non-resident defendant where he may be found, **at the election of the plaintiff.**

In this case, Smart chose to file its appeal --- essentially a civil case --- in the court of competent jurisdiction where its principal place of business is located, *i.e.* Makati City. Clearly, the venue of its case is not improperly laid.

The jurisdiction of Regional Trial Courts to act on appeals from the decision or inaction of the local treasurer on protests of assessment has been confirmed by the Supreme Court in *Luz R. Yamane, in her capacity as the City Treasurer of Makati City v. BA Lepanto Condominium Corporation.*[3]

To be sure, venue and jurisdiction are not synonymous. In *Armand Nocum and the Philippine Daily Inquirer, Inc. v. Lucio Tan,*[4] the difference between venue and jurisdiction was delineated, *viz*:

> (a) Jurisdiction is the authority to hear and determine a case; venue is the place where the case is to be heard or tried; (b) Jurisdiction is a matter of substantive law; venue, of procedural law; (c) Jurisdiction establishes a relation between the court and the subject matter; venue, a relation between plaintiff and defendant, or petitioner and respondent; and, (d) Jurisdiction is fixed by law and cannot be conferred by the parties; venue may be conferred by the act or agreement of the parties.

Based on the foregoing and considering that petitioners did not allege that the venue of the action in the Makati RTC is improperly laid, the same is deemed waived. To be sure, petitioners did not even assail in the present appeal the propriety of the venue of the action filed before the Makati RTC.

On the proposition that Smart has only one cause of action, again I disagree.

[3] G.R. No. 154993, October 25, 2005.
[4] G.R. No. 145022, September 23, 2005.

It is axiomatic that what determines the nature of an action and hence, the jurisdiction of the court, are the allegations of the pleading and the character of the relief sought.

Guided by the above precept, it is evident that Smart's Appeal (docketed as Civil Case No. 11-051) filed before the Makati RTC involved two separate, distinct and independent actions. *First*, a civil action to appeal the inaction of the Treasurer of the Province of Cagayan on Smart's protest of the disputed franchise tax assessment for calendar years 2004 to 2009 and, *second*, a special civil action for injunction to enjoin the Provincial Government of Cagayan from assessing Smart of franchise taxes.

Generally, a party may, in one pleading, assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party subject to certain conditions. Among such conditions are: that the joinder shall not include special civil actions governed by special rules and that the court trying the case has jurisdiction over all causes of action, as clarified by the Supreme Court in *Lilia B. Ada, et al., v. Florante Baylon*[5]:

> [W]hile parties to an action may assert in one pleading, in the alternative or otherwise, as many causes of action as they may have against an opposing party, such joinder of causes of action is subject to the condition, *inter alia*, **that the joinder shall not include special civil actions governed by special rules.**
>
> xxx xxx xxx
>
> Nevertheless a misjoinder of causes of action is not a ground for dismissal. Indeed, the courts have the power, acting upon the motion of a party to the case or *sua sponte*, to order the severance of the misjoined cause of action to be proceeded with separately. However, if there is no objection to the improper joinder or the court did not *motu proprio* direct a severance, then there exists no bar in the simultaneous adjudication of all the erroneously joined causes of action.
>
> xxx xxx xxx
>
> It should be emphasized that the foregoing rule only applies if **the court trying the case has jurisdiction over all of the causes of action** therein notwithstanding the misjoinder of the same. **If the court trying the case has no jurisdiction over a misjoined cause of action, then such misjoined cause of action has to be severed from the other causes of action, and if not so severed, any adjudication rendered by the court with respect to the same would be a nullity.** (Emphasis supplied)

Considering that Smart's Appeal (which involves an ordinary civil action appealing the inaction of the Treasurer of the Province of Cagayan on

[5] G.R. No. 182435, August 13, 2012.

Smart's protest of the disputed franchise tax assessment for calendar years 2004 to 2009) incorporated or joined therein an action for injunction seeking to enjoin the Province of Cagayan from assessing and collecting franchise tax from Smart, I am of the opinion that there was indeed a misjoinder of the two (2) causes of action in the said case.

I am not unaware of the doctrine laid down in *City of Bacolod v. San Miguel Brewery, Inc. (City of Bacolod case),*[6] particularly the pronouncement therein that a plaintiff may, for a single cause of action or violation of a right, be entitled to several reliefs and that filing of separate complaints for such several reliefs constitutes splitting up of the cause of action.

But reliance on the *City of Bacolod case* is misplaced. In the cited case, it is patent that the controversy involves a single cause of action. Parenthetically, when San Miguel Brewery, Inc. failed and refused to pay the difference in bottling charges from July 1, 1959, such act in violation of the right of City of Bacolod to be paid said charges in full under Ordinance No. 66, series of 1949, as amended by Ordinance No. 150, series of 1959, **was one single cause of action, but under the said Ordinance it was entitled to two reliefs**, namely, (1) the recovery of the balance of the basic charges; and, (2) the payment of the corresponding surcharges, the latter being merely a consequence of the failure to pay the former. Elsewise stated, the obligation of San Miguel Brewery, Inc. to pay the surcharges arose from its violation of the **same right** of the City of Bacolod from which the obligation to pay the basic charges also arose.

In the case at bar, the petition filed with the RTC is in essence an appeal from an assessment made by the Province of Cagayan finding petitioner liable for franchise tax in the **total amount of P86,482,092.60 covering the period 2004 to 2009.** The appeal was mas made pursuant to Section 195 of the Local Government Code (LGC). The petition itself cannot be any clearer:

> "**This is an appeal pursuant to Section 195 of the Local Government Code of 1991** on the denial by the Province of Cagayan of the petitioner's protest of assessment on alleged local franchise tax liability in the amount of Eighty Five Million Eighty Two Thousand Two Hundred Seventeen Pesos and seventy-seven centavos (P85,082,217.77). xxx"[7]

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[6] G.R. No. L-25134 October 30, 1969.
[7] Petition, Docket, p. 110.

Relevantly, Section 195 of the LGC provides:

> Section 195. Protest of Assessment. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating that 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 be 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 the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**

As earlier discussed, the appeal is confined to a review of the validity of the assessment for the specific period of 2004-2009. Any relief directly related to a review of the mentioned assessment cannot indeed be the subject of a separate petition. Interestingly, the petition pleaded for an injunctive relief to <u>absolutely</u> restrain the Province of Cagayan from assessing franchise tax against petitioner not only for the years 2004-2009 (the period subject of appeal) but for all other years. This plea for injunctive relief against <u>any assessment for periods not covered by the appeal</u> cannot reasonably be construed as "arising from the same cause of action" as that of the appeal. An assessment for years outside those covered by the 2004-2009 assessment must be the subject of a separate action to be litigated when such controversy arise.

While Makati RTC has jurisdiction over the ordinary civil action which is an appeal from the inaction of the Treasurer of the Province of Cagayan on Smart's protest, Makati RTC has no jurisdiction to issue a writ of injunction to absolutely enjoin any and all actions which petitioners would commit in the Province of Cagayan. This principle is simply consistent with the doctrine laid down in *Ada*. Accordingly, the judgment of Makati RTC in the misjoined cause of action (which is the action for injunction) must be considered a nullity.

Section 21 of *Batas Pambansa Bilang* 129 (B.P. 129), as amended, or otherwise known as the "Judiciary Reorganization Act of 1980," confers jurisdiction to the Regional Trial Court to issue a writ of injunction which is only enforceable in any part of its respective region:

> "**Section 21.** *Original jurisdiction in other cases.* – Regional Trial Courts shall exercise original jurisdiction:
>
> (1) In the issuance of writs of *certiorari*, prohibition, mandamus, *quo warranto, habeas corpus* and **injunction which may be enforced in any part of their respective regions**; and xxx"

In *Embassy Farms, Inc. v. Court of Appeals*,[8] it was ruled that generally, an injunction under the afore-quoted Section 21 of B.P. 129 is enforceable within the region. The reason is that the trial court has no jurisdiction to issue a writ of preliminary injunction to enjoin acts being performed or about to be performed outside its territorial boundaries.

As oft-repeated, the Makati RTC falls within the National Capital Judicial Region, while the Province of Cagayan is considered as part of the Second Judicial Region. The writ of injunction issued by the Makati RTC is enforceable only within the National Capital Region. Hence, the Makati RTC has no jurisdiction to enjoin or restrain the acts of the Provincial Treasurer of Cagayan as the Province of Cagayan is part of the Second Judicial Region.

In a long line of cases, it has been held that the power to administer justice conferred upon judges of the Regional Trial Courts can only be exercised within the limits of their respective districts, outside of which they have no jurisdiction whatsoever.

Undoubtedly, applying the foregoing discussion to the case at bar, the injunction issued by the Makati RTC in order to restrain acts beyond the bounds of the territorial limits of its jurisdiction (*i.e.*, in the Province of Cagayan) is null and void. As held in *Municipality of Antipolo v. Aquilina Zapanta, et al.*[9]:

> "**[T]he want of jurisdiction by a court over the subject-matter renders the judgment void and a mere nullity**, and considering that a void judgment is in legal effect no judgment, by which no rights are divested, from which no rights can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out of are void, and considering, further, that the decision, for want of jurisdiction of the court, is not a decision in contemplation of law, and hence, can never become executory, it follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata.*"

All told, I **VOTE** to **PARTLY GRANT** the Petition for Review filed by the Provincial Government of Cagayan as represented by Honorable Governor Alvaro T. Antonio and Emilia L. Iringan, in her capacity as

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[8] G.R. No. 80682, August 13, 1990.
[9] G.R. No. L-65334 December 26, 1984, citing *Arevalo v. Benedicto* 58 SCRA 186 (1974).

Provincial Treasurer docketed as CTA EB No. 1137 and grant the reliefs as stated in the majority opinion of this case.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PROVINCIAL GOVERNMENT OF CAGAYAN, Rep. by Honorable Governor Alvaro T. Antonio and Emilia L. Iringan, in her capacity as Provincial Treasurer,
Petitioner,

- *versus* –

SMART COMMUNICATIONS, INC. (SMART),
Respondent.

CTA EB No. 1137
(CTA AC No. 92)

Present:

Del Rosario, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

Promulgated:

DEC 08 2015 2:30 pm

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CONCURRING AND DISSENTING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my esteemed colleague, Associate Justice Amelia R. Cotangco-Manalastas insofar as it ruled that the Regional Trial Court of Makati City, Branch 65 (RTC Makati) is bereft of jurisdiction to direct petitioner Provincial Government of Cagayan to cease and desist from imposing, in the future, local franchise tax on respondent Smart Telecommunications, Inc.'s (Smart) gross receipts that it may realize within the territorial jurisdiction of the City of Tugegarao.

With due respect, however, I dissent on the *ponencia* insofar as it upheld the jurisdiction of RTC Makati to set aside the disputed local franchise tax assessment for CY 2004 to 2009, for the following reasons:

1. There is only one (1) cause of action involved in Smart's Petition before the RTC Makati; and

2. RTC Makati is not the court of competent jurisdiction relative to the appeal from the inaction of the Provincial Treasurer of Cagayan on Smart's protest of the franchise tax assessment.

DISCUSSION

There is only one (1) cause of action involved in Smart's Petition before the RTC Makati.

In her *ponencia*, Associate Justice Cotangco-Manalastas stated that Smart's petition before the RTC Makati involves two (2) separate and distinct causes of action, to wit: (1) an appeal from the inaction of the Provincial Treasurer of Cagayan on respondent's protest of the disputed franchise tax assessment for CY 2004 to 2009; and (2) action for injunction to enjoin the Provincial Government of Cagayan from assessing and collecting franchise taxes from Smart. The majority then upheld the jurisdiction of RTC Makati over the appeal of the franchise tax protest while, on the other hand, it ruled that the said court has no jurisdiction to enjoin the petitioner from imposing, in the future, franchise tax against Smart on the ground that the acts sought to be enjoined or restrained are outside of its territorial jurisdiction.

Section 2, Rule 2 of the Rules of Court defines a cause of action as "the act or omission by which a party violates a right of another." Based on the foregoing definition, the essential elements of a cause of action are:

1) right in favor of the plaintiff by whatever means and under whatever law it arises or created;

2) an obligation on the part of the named defendant to respect or not to violate such right; and

3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of

defendant to plaintiff for which the latter may maintain an action for recovery of damages.[1]

Consistent thereto, it is my view that there is only one (1) cause of action involved in Smart's petition before RTC Makati. In its petition, Smart anchored its right not to be subjected to payment of local franchise tax on its alleged exemption under Section 9 of its legislative franchise[2] and Section 23 of R.A.7925[3] and/or the alleged want of taxing authority of the petitioner, and which right the petitioner is bound to respect. The issuance of the disputed franchise tax assessment by the Provincial Treasurer of Cagayan is also alleged to be violative of such right.

The prayer for the issuance of an injunction against petitioner does not constitute a separate and distinct cause of action from that of the appeal of the inaction of the Provincial Treasurer of Cagayan on Smart's local tax protest under Section 195 of the Local Government Code (LGC) considering that both involved the same parties, facts and issue. Stated differently, both the prayer for injunction and the appeal are based on the same alleged right and the same act or omission alleged to be violative of the aforementioned right. As a matter of fact, such injunction is but a necessary complement to the other reliefs prayed for by Smart in its petition.

If we were to follow the line of reasoning of the majority that there are two (2) separate and distinct causes of action in Smart's petition, then, an action for injunction could be maintained before the proper Regional Trial Court of Cagayan (RTC Cagayan) against petitioner since the acts sought to be enjoined are committed within the judicial region where said court

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[1] *Vinzons-Chato v. Fortune Tobacco Corp.*, G.R. No. 141309, December 23, 2008; Gubat, THE 1997 RULES OF CIVIL PROCEDURE ANNOTATED, 1st Edition (2000), p. 37.

[2] Section 9, Republic Act (RA) No. 7294, reads as follows:

> "SEC. 9. *Tax Provisions*. – The grantee, is successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof: *Provided*, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto. xxx"

[3] Section 23, RA No. 7925 (Public Telecommunications Policy Act) provides:

> "Section 23. *Equality of Treatment in the Telecommunications Industry*. - Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise."

belongs, separate from the appeal of the inaction of Provincial Treasurer of Cagayan over Smart's franchise tax protest filed before RTC Makati.

This is tantamount to splitting of a cause of action. Moreover, this inevitably invites "forum shopping" resulting to multiplicity of suits.

Splitting a cause of action is the act of dividing a single cause of action, claim or demand into two or more parts, and bringing suit for one of such parts only, intending to reserve the rest for another separate action.[4] A single cause of action or entire claim or demand cannot be split up or divided in order to be made the subject of two or more different actions.[5] The purpose of the rule is to avoid harassment and vexation to the defendant and avoid multiplicity of suits.[6] The Supreme Court, in *City of Bacolod v. San Miguel Brewery, Inc.("City of Bacolod"),*[7] elucidated on the application of the concept of splitting of a cause of action as follows:

> "In the last analysis, a cause of action is basically an act or an omission or several acts or omissions. A single act or omission can be violative of various rights at the same time, as when the act constitutes juridically a violation of several separate and distinct legal obligations. This happens, for example, when a passenger of a common carrier, such as a taxi, is injured in a collision thereof with another vehicle due to the negligence of the respective drivers of both vehicles. In such a case, several rights of the passenger are violated, *inter alia,* (1) the right to be safe from the negligent acts of either or both the drivers under the law on culpa-acquiliana or quasi-delict; (2) the right to be safe from criminal negligence of the said drivers under the penal laws; and (3) the right to be safely conducted to his destination under the contract of carriage and the law covering the same, not counting anymore the provisions of Article 33 of the Civil Code. The violation of each of these rights is a cause of action in itself. Hence, such a passenger has at least three causes of action arising from the same act. On the other hand, it can happen also that several acts or omissions may violate only one right, in which case, there would be only one cause of action. **Again the violation of a single right may give rise to more than one relief. In other words, for a single cause of action or violation of a right, the plaintiff may be entitled to several reliefs. It is the filing of separate complaints for these several reliefs that constitutes splitting**

[4] *Isidro Perez and Narciso A. Ragua v. Hon. Court of Appeals et. al.*, G.R. No. 157616, July 22, 2005, 464 SCRA 89 citing *Nabus v. Court of Appeals*, G.R. No. 91670, February 7, 1991, 193 SCRA 732.
[5] *Catalina B. Chu, et. al., v. Sps. Fernando C. Cunanan et. al.*, G.R. No. 156185, September 12, 2011.
[6] *Geronimo Q. Quadra v. The Court of Appeals and the Philippine Charity Sweepstakes Office*, G.R. No. 147593, July 31, 2006.
[7] G.R. No. L-25134 October 30, 1969, 29 SCRA 826,827.

up of the cause of action. This is what is prohibited by the rule." *(Emphasis supplied)*

By the same logic as *City of Bacolod*, Smart's petition before the RTC Makati is based on a single cause of action only, although the grant thereof may entitle Smart to several reliefs which include, among others, the declaration of nullity and setting aside of the franchise tax assessment and an injunction against petitioner from assessing and collecting local franchise tax from Smart.

Section 4, Rule 2 of the Rules of Court provides that if two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others. In other words, the violation of the rule against splitting up of a cause of action warrants the dismissal of a suit on the ground of either *litis pendentia*[8] or *res judicata*,[9] as the case may be.

Indeed, the position taken by the majority would allow two (2) co-equal and coordinate courts to adjudicate on cases involving same parties, same subject-matter, and same cause of action albeit, praying for different reliefs. Such a situation would create the possibility of having conflicting decisions of two (2) co-equal and coordinate courts in the event that RTC Cagayan issues an injunction against the Provincial Treasurer of Cagayan while, on the other hand, the RTC Makati upholds the local franchise tax assessment made against Smart. At any rate, whatever decision that RTC Makati might render in the appeal from the inaction of the Provincial Treasurer of Cagayan on Smart's tax protest would constitute *res judicata* on the purported injunction suit since both cases involve an inquiry into the existence of the right claimed by Smart and the validity of the tax assessment issued by petitioner.

RTC Makati is not a court of competent jurisdiction relative

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[8] *Litis pendentia*, as a ground for the dismissal of a civil action, refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. For the bar of *litis pendentia* to be invoked, the following requisites must concur: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other. (*Norlinda S. Marilag v. Marcelino B. Martinez*, G.R. No. 201892, July 22, 2015.)

[9] *Res judicata* literally means a matter adjudged, judicially acted upon or decided, or settled by judgment. It provides that a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies; and constitutes an absolute bar to subsequent actions involving the same claim, demand or cause of action. The following are the requisites of *res judicata*: (1) the former judgment must be final; (2) the court that rendered it had jurisdiction over the subject matter and the parties; (3) it is a judgment on the merits; and (4) there is — between the first and the second actions — an identity of parties, subject matter and cause of action. (*Devorah E. Bardillon v. Barangay Masili of Calamba, Laguna*, G.R. No. 146886, April 30, 2003.)

to the appeal from the inaction of the Provincial Treasurer of Cagayan on Smart's protest of the franchise tax assessment.

RTC Makati is not a court of competent jurisdiction relative to Smart's appeal of the inaction of the Provincial Treasurer of Cagayan on its protest of the franchise tax assessment. Accordingly, such appeal should have been lodged with RTC Cagayan.

There is no question that Regional Trial Courts (RTC) in general have jurisdiction to take cognizance of appeals from the decision or inaction of the local treasurer on local tax protests. Section 7(a)(3) of RA No. 9282, as amended, prescribes that the Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, decisions, orders or resolutions of RTCs in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction.[10] Moreover, Section 19 (8) of *Batas Pambansa (BP) Blg.* 129, as amended, confers to RTCs exclusive original jurisdiction in civil cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds ₱300,000 for cases outside of Metro Manila, or ₱400,000 for cases within Metro Manila.

However, while RTCs in general have jurisdiction over local tax cases, its exercise must be confined within the respective judicial regions in which these courts are assigned. It must be borne in mind that under Section 17 of BP Blg. 129, as amended, the exercise of jurisdiction of the RTCs and their judges is basically regional in scope.[11] As the Supreme Court has declared in *Elizalde Malaloan and Marlon Luarez v. Court of Appeals et. al.,* [12] to wit:

> "Jurisdiction is conferred by substantive law, in this case Batas Pambansa Blg. 129, not by a procedural law and, much less, by an administrative order or circular. **<u>The jurisdiction conferred by said Act on regional trial courts and their judges is basically regional in scope.</u> Thus, Section 17 thereof provides that '(e)very Regional Trial Judge shall be appointed to a region which shall be his permanent station,' and he 'may be assigned by the Supreme Court to any branch or city or municipality within the same region as public interest may require, and such assignment shall not**

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[10] *Luz R. Yamane, in her capacity as the City Treasurer of Makati City v. BA Lepanto Condominium Corporation*, G.R. No. 154993, October 25, 2005.

[11] *Office of the Court Administrator v. Judge Jesus V. Matas, RTC, Branch 2, Tagum, Davao Del Norte (acting Presiding Judge, RTC Branch 18, Digos, Davao Del Sur) and Eduardo C. Torres, Jr., OIC, Clerk of Court, RTC, Tagum, Davao Del Norte*, A.M. No. RTJ-92-836, August 2, 1995.

[12] G.R. No. 104879, May 6, 1994.

> **be deemed an assignment to another station . . .' which, otherwise, would necessitate a new appointment for the judge.**" *(Emphasis and underscoring supplied)*

The relevance of the foregoing consideration is more apparent in cases where the factual circumstances which gave rise to the appeal of the local tax protest arose in a place outside of the territorial jurisdiction of the RTC where the appeal was filed, such as the present case.

In the case at bar, most, if not all, of the crucial facts which gave rise thereto have occurred outside of the territorial jurisdiction of the RTC Makati. The *situs* of the income on which the local franchise tax being imposed is located in Cagayan. More importantly, the public officials whose official acts (or inaction) are sought to be reviewed and enjoined by Smart likewise hold office in the Province of Cagayan. Also, in the event that a decision is rendered in favor of Smart, *i.e.*, cancelling the assessment and enjoining petitioner from enforcing the same, such decision would have to be enforced outside the territorial jurisdiction of RTC Makati. In view thereof, it is only proper that the present case should be taken cognizance by the RTC whose territorial jurisdiction encompasses the place where the facts thereof have originated.

Additionally, RTC Makati's power to resolve the entire controversy is limited since it has no authority to grant one of the reliefs prayed for by Smart in its petition. It must be noted that the said petition includes a prayer for an order against petitioner to withdraw its demand for payment of franchise tax and to cease and desist from assessing and collecting the said tax from Smart.[13] And in Section 21 (1) of BP Blg. 129, as amended, injunctive writs issued by an RTC are enforceable only within the judicial region where such court belongs. On the contrary, it is within the competence of RTC Cagayan to fully settle the entire controversy between the parties and to grant all the reliefs prayed for, including the prayer for injunction since the acts sought to be enjoined have originated within its territorial jurisdiction.

It may not be amiss to point out that this Court already previously dealt with the issue of which RTC has competent jurisdiction to take cognizance of an appeal from the denial of a tax protest made by a local treasurer.

In *Philippine Long Distance Telephone Company, Inc. v. City of Balanga and Amado P. Jimenez in his capacity as, OIC-City Treasurer of*

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[13] Court *En Banc*'s Docket, p. 133.

the City of Balanga, ("PLDT"),[14] the Court *En Banc* ruled that the RTC of Balanga City, not RTC Makati, which is the court of competent jurisdiction over the appeal from the denial of local tax protest by the city treasurer of Balanga City. Citing the Supreme Court case of *Santos v. Moreno,*[15] it held that where the acts of the public officials are the object of the litigation, the suit must be filed in the RTC whose territorial jurisdiction encompasses the place where the respondent public official is found or holding office.[16]

The pertinent portion of the *PLDT* case reads:

> "In the case of *Santos vs. Moreno, 21 SCRA 1141*, the Supreme Court held:
>
> > 'The mere fact that the resolution of the controversy in this case would wholly rest on the ownership of the streams involved herein would not necessarily classify it as a real action. **The purpose of this suit is to review the decisions of the Secretary of Public Works and Communications, to enjoin him from enforcing them and to prevent him from making and issuing similar decisions concerning the streams in question. The acts of the Secretary are the object of the litigation, that is, petitioner-appellee seeks to control them. Hence, the suit ought to be filed in the CFI whose territorial jurisdiction encompasses the place where the respondent Secretary is found or is holding office. For the rule is that outside its territorial limits, the court has no power to enforce its order.'**
>
> Pursuant to the foregoing, **where the acts of the public official are the object of the litigation, meaning, petitioner seeks to control them, then the suit must be filed in the RTC whose territorial jurisdiction encompasses the place where the respondent public official is found or holding office. For the rule is, outside its territorial limits, the court has no power to enforce its order.**

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[14] CTA EB No. 413, June 3, 2009 penned by Associate Justice OlgaPalanca-Enriquez, with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, concurring.

[15] G.R. No. L-15829, December 4, 1967, 21 SCRA 1141.

[16] *Philippine Long Distance Telephone Company, Inc. v. City of Balanga and Amado P. Jimenez in his capacity as, OIC-City Treasurer of the City of Balanga*, supra, p. 18.

> In the instant case, PLDT was not only seeking for a review of the denial by the City Treasurer of Balanga City of the tax protest of PLDT, but petitioner was also asking the court to order respondents to perform specific acts, such as, to order respondents to cancel the assessment, to amend official receipts issued to petitioner, and to enjoin respondents from imposing franchise and business taxes against PLDT; in other words, petitioner PLDT seeks to control the acts of the City Treasurer of Balanga City. Hence, the suit ought to be filed in the RTC of Balanga City which has territorial jurisdiction over the City Treasurer of Balanga City. For it is the RTC of Balanga City that has power to enforce its orders over the City Treasurer of Balanga City.
>
> Thus, the RTC of Balanga City, and not the RTC of Makati, therefore, is the court of competent jurisdiction over the appeal from the denial by the local City Treasurer of Balanga City of the tax protest of PLDT. xxx"[17]

In the case at bar, just like in *PLDT*, Smart seeks to control the acts of the Provincial Treasurer of Cagayan by appealing the latter's inaction on its tax protest before RTC Makati. In fact, Smart was not only seeking for a review of the inaction of the Provincial Treasurer of Cagayan on its protest but was also asking the court to order petitioner to withdraw its demand and to cease and desist from assessing and collecting franchise tax from Smart.[18]

There is no compelling much less prudent reason to deviate from our holding in *PLDT*.

In light of the foregoing, it is submitted that RTC Makati is not the court of competent jurisdiction to take cognizance of Smart's appeal, within the contemplation of Section 195 of LGC.

I vote to GRANT the instant Petition for Review.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[17] *Ibid*, pp. 17-18 (Emphasis supplied).
[18] *Supra*, Note 13.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

PROVINCIAL GOVERNMENT OF CAGAYAN, represented by Honorable Governor Alvaro T. Antonio and Emilia L. Iringan, in her capacity as Provincial Treasurer,
Petitioner,

-versus-

SMART COMMUNICATIONS, INC. (SMART),
Respondent.

CTA EB No. 1137
(CTA AC No. 92)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
and
Ringpis-Liban, JJ.

Promulgated:

DEC 08 2015 2:30pm

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SEPARATE CONCURRING OPINION

BAUTISTA, J.:

While I am in harmony with the *ponencia* in partially granting the present Petition for Review filed by petitioner, I am compelled to include the following discussion on venue and jurisdiction in relation to the Regional Trial Court of Makati City ("RTC Makati").

According to *Section 195 of the 1991 Local Government Code* ("1991 LGC"), in local tax cases, should the taxpayer's protest be denied by the local treasurer, it has thirty (30) days from receipt of such notice; or, in case of inaction, from the lapse of sixty (60) days; to appeal the assessment with the court of competent jurisdiction.[1]

[1] SECTION 195. Protest of Assessment. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the

On the outset, jurisdiction should not be confused with venue. This Court has previously ruled, citing Supreme Court cases that venue and jurisdiction are different concepts, *viz.*:[2]

> Respondent should not have confused jurisdiction with venue because they are totally different from each other. Jurisdiction is the authority to hear and determine a cause or the right to act in a case (Union Bank of the Philippines vs. Securities and Exchange Commission, 499 SCRA 263). Whereas, venue is the place where the case is to be heard or tried (Eusebio vs. Eusebio, 268 SCRA 270).
>
> Questions or issues relating to venue of actions are basically governed by Rule 4 of the 1997 Rules of Civil Procedure, as amended. The laying of venue is procedural rather than substantive, relating as it does to jurisdiction of the court over the person rather than the subject matter. Venue relates to trial and not to jurisdiction. It is a procedural, not a jurisdictional matter. It relates to the place of trial or geographical location in which an action or proceeding should be brought and not to the jurisdiction of the court. It is meant to provide convenience to the parties rather than restrict their access to the court as it relates to the place of trial (Nocum vs. Tan, 470 SCRA 648).
>
> Jurisdiction, on the other hand, is more substantive than procedural. It refers to the authority of the court to hear and decide a case, and, it is one that is dictated by law, and the matter ordinarily can be raised at any stage of the trial, even upon appeal (Gumabon, et al. vs. Larin, 370 SCRA 644). In addition to being conferred by the Constitution and the law, the rule is settled that a court's jurisdiction over the subject matter is determined by the relevant allegations in the complaint, the law in effect when the action is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims asserted (Home Guaranty Corporation vs. R-II Builders, Inc., 645 SCRA 230-231). Once jurisdiction is acquired, it continues until the case is

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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 (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

[2] *National Transmission Corporation v. The Municipality of Magallanes, Agusan del Norte, represented by its Municipal Treasurer, Edessa W. Delicano*, CTA AC No. 68, January 5, 2012.

finally terminated (Philippine National Bank vs. Tejano, Jr., 604 SCRA 159).

In the instant case, said Civil Case No. Q-09-64637 involves the review taken by the RTC over the denial of the protest by the local treasurer, thus, pursuant to the Yamane Case, the RTC has jurisdiction over said case. The pertinent question is: where is the venue of the action?

Since the subject matter of Civil Case No. Q-09-64637 is an assessment for business taxes and other regulatory fees, which is civil in nature and basically a personal action; then, the provision of Section 2, Rule 4 of the 1997 Rules of Civil Procedure, as amended, applies.

Section 2, Rule 4 of the Rules of Civil Procedure, as amended, provides:

> "SEC. 2. Venue of personal actions. — All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff."

In the instant case, the plaintiff is petitioner Transco, a juridical entity created under RA 9136, with principal office at the Power Center, EDSA corner Quezon Avenue, Diliman, Quezon City. Established in our jurisprudence is the rule that the residence of a corporation is the place where its principal office is located (Hyatt Elevators and Escalators Corporation vs. Goldstar Elevators, Phils., Inc., 473 SCRA 713). This ruling is important in determining the venue of an action by or against a corporation, as in the present case (supra). Since petitioner Transco is a juridical entity, then for purposes of instituting personal actions in court, the place where its principal office is located may also be considered as the proper venue. Therefore, venue in this case was properly laid in the RTC of Quezon City, the court having territorial jurisdiction over petitioner Transco. [Emphases supplied]

From the foregoing, it can be gathered that an assessment for business tax is civil in nature and a personal action, which may be tried where the plaintiff resides; and that when it comes to corporations, residence is the place where the principal office is located.

As to the basis of jurisdiction, the Supreme Court held in the case of *Raymundo v. CA, et. al., G.R. No. 97805, September 2, 1992, 213 SCRA 457,* citing *Singsong v. Isabela Sawmill, G.R. L-27343, February 28, 1979, 88 SCRA 623,* that in determining whether an action's subject matter is incapable of pecuniary estimation, the nature of the principal action or remedy sought must first be ascertained.[3] If it is primarily for the recovery of a sum of money, it is considered capable of pecuniary estimation, and jurisdiction would depend on the amount of the claim.[4] If, on the other hand, the basic issue is other than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of, the principal relief sought, the subject matter is incapable of pecuniary estimation.[5]

Applying the foregoing provisions and doctrines to the case at bar, petitioner-respondent filed its Petition[6] with RTC Makati on January 24, 2011, with a prayer that judgment be rendered in favor of petitioner-respondent, as follows:[7]

> 1. Rule that [respondents-petitioners] have no authority to collect the local franchise tax[;]
>
> 2. Rule that [petitioner-respondent] is not liable for franchise tax to [respondents-petitioners; and]
>
> 3. Order [respondents-petitioners] to withdraw [their] demand and to cease and desist from assessing and collecting franchise tax from [petitioner-respondent].

The above Petition was followed by an Urgent Application for the Issuance of a Writ of Preliminary Injunction with Prayer for the Immediate Issuance of a Temporary Restraining Order ("TRO")[8] on October 18, 2011, which asks RTC Makati to:[9]

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[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Rollo, CTA EB No. 1137,* pp. 110-134.
[7] *Id.,* pp. 132-133.
[8] *Id.,* pp. 203-217.
[9] *Id.,* pp. 209-210.

1. [I]mmediately upon filing of this application, issue a [TRO] *ex-parte*, enjoining [respondents-petitioners] from proceeding with the garnishment of [petitioner-respondent]'s accounts, and from further garnishing, levying, or attaching any of [petitioner-respondent]'s properties; enjoin [respondents-petitioners] from pursuing any other act to collect the questioned franchise taxes; and

2. [A]fter due proceedings, issue a writ of preliminary injunction during the pendency of the present case enjoining [respondents-petitioners] from proceeding with the garnishment of [petitioner-respondent]'s accounts, and from further garnishing, levying, or attaching any of [petitioner-respondent]'s properties; enjoin [respondents-petitioners] from pursuing any other act to collect the questioned franchise taxes.

It can be gathered from the foregoing that petitioner-respondent, in filing its appeal with RTC Makati, did not claim any amount in relation thereto. It merely asked the court to rule that respondents-petitioners do not have authority to collect franchise tax, hence, petitioner-respondent is not liable to pay the said tax and that respondents-petitioners should be enjoined from collecting the assessed amount. Hence, the subject matter of petitioner-respondent's action is incapable of pecuniary estimation.

The assessment relates to franchise tax, which is also a business tax under the *1991 LGC*[10], hence, civil in nature and is a personal action. Also, it is undisputed that petitioner-respondent's principal office is at SMART Tower, 6799 Ayala Avenue, Makati City[11]. Therefore, the RTC of Makati City is the chosen and right venue to file the appeal and, likewise, has jurisdiction to try the case until terminated. The basis of the RTC's jurisdiction was not *Section 19(8) of Batas Pambansa Bld. 129*[12], as amended by *Republic Act No. 7691*, but

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[10] SECTION 137. Franchise Tax. – Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. xxx

[11] *Rollo*, p. 17.

[12] Section 19. Jurisdiction in civil cases. - Regional Trial Courts shall exercise exclusive original jurisdiction:

xxx xxx xxx

(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds One hundred thousand pesos (100,000.00) [now Php300,000.00] or, in such other abovementioned items exceeds Two hundred thousand pesos (200,000.00) [now Php400,000.00].

Section 19(1)[13] of the same law, in which the subject of the litigation is incapable of pecuniary estimation.

Having emphasized the foregoing, I vote to partially grant the present Petition for Review.

LOVELL R. BAUTISTA
Associate Justice

[13] Sec. 19. Jurisdiction in civil cases. - Regional Trial Courts shall exercise exclusive original jurisdiction.
xxx xxx xxx
(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation; xxx