REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE LONG DISTANCE TELEPHONE CO., INC. Petitioner,	CTA EB No. 1237 (CTA AC No. 103)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., BAUTISTA, UY,
CITY OF TUGUEGARAO, Buenaventura F. Lagundi, in his capacity as City Treasurer of Tuguegarao, and Florentina S. Balisi, in her capacity as Asst. City Treasurer of the City of Tuguegarao, Respondents.	CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS and RINGPIS-LIBAN, *JJ.*
	Promulgated: JUN 17 2016 2:25p.m.

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DECISION

FABON-VICTORINO, J.:

In this appeal, petitioner Philippine Long Distance Telephone Company, Inc. assails the adverse Decision and Resolution dated July 11, 2014 and September 30, 2014, respectively, rendered by the Court in Division in its Petition for Review which impugned the Resolution issued by the Regional Trial Court of Makati City, Branch 132 in *Civil Case No. 11-635.* The dispositive portions of the assailed Decision of July 11, 2014 and the Resolution of September 30, 2014 read as follows:

> "**WHEREFORE**, in light of the foregoing, the instant Petition for Review is hereby **DISMISSED**.
>
> Accordingly, finding no reversible error in the assailed Resolution dated October 22, 2012 issued by the Regional Trial Court of Makati City, Branch 132 in *Civil Case No. 11-635*, the same is hereby **AFFIRMED**.
>
> **SO ORDERED**."

> "**WHEREFORE**, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE PARTIES

Petitioner Philippine Long Distance Telephone Co., Inc. is a domestic corporation with principal office at Ramon Cojuangco Building, Makati Avenue, Makati City.

Respondent City of Tuguegarao is a public corporation created under Republic Act (RA) No. 8755 dated November 4, 1999. On the other hand, respondents Buenaventura F. Lagundi and Florentina S. Balisi, are impleaded in their official capacities as the City Treasurer and Assistant City Treasurer, respectively, of the City of Tuguegarao, with office address at the Tuguegarao City Hall, Tuguegarao City.

THE FACTS AND THE PROCEEDINGS

On March 28, 2011, petitioner received a Letter dated March 21, 2011[1] from respondent Buenaventura F. Lagundi, informing that it is subject to franchise tax pursuant to

[1] Annex "A" to the Petition for Review, docket, p. 53.

Ordinance No. 13-2003 dated November 27, 2003 of Respondent City of Tuguegarao and that it had unpaid local franchise tax for calendar years (CY) 2006 to 2010 in the aggregate amount of Two Million Four Hundred Fifty Five Thousand Two Hundred Eighty Seven Pesos & 76/100 (P2,455,287.76), as shown in the attached document denominated as Statement of Franchise Tax Due from PLDT[2].

On May 26, 2011, petitioner protested[3] the said letter of March 21, 2011 saying that it is subject to franchise tax imposed by cities and provinces and payment thereof had already been remitted to the respondent City of Tuguegarao. However, petitioner questioned the assessment for local tax for taxable year 2006 citing the Local Government Code of 1991 (Republic Act No. 7160) as its authority. It added that the same Code provided that a local government unit could only impose business tax on businesses specifically enumerated therein. In any event, respondent's right to assess petitioner of any local tax for the year 2006 had already lapsed.

On June 9, 2011, petitioner received the denial of its protest by respondent Lagundi'[4]. She ruled that petitioner's branch office at Tuguegarao was liable not only for franchise tax but also for business tax. Respondent also updated the Statement of Franchise Tax Due from PLDT[5].

On July 8, 2011, petitioner, pursuant to Section 195 of the LGC, elevated the matter to the Regional Trial Court (RTC)-Makati, Branch 141 via Civil Case No. 11-635 entitled Philippine Long Distance Telephone Company v. City of Tuguegarao, Buenaventura F. Lagundi, in his capacity as City Treasurer of Tuguegarao, and Florentina S. Balisi, in her capacity as Asst. City Treasurer of the City of Tuguegarao[6].

During the trial, petitioner claimed that it already paid the franchise tax due it and it was not liable for local business tax invoking the prohibition against double

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[2] Annex "A-1" to the Petition for Review, docket, p. 54.
[3] Annex "B" to the Petition for Review, docket, pp. 55-63.
[4] Annex "C" to the Petition for Review, docket, p. 64.
[5] Annex "C-1" to the Petition for Review, docket, p. 65.
[6] Annex "D" to the Petition for Review, docket, pp. 66-86.

taxation. Petitioner further invoked the provisions of the Local Government Code, specifically, Sections 131 (h)[7] and 186[8]. Petitioner also assailed the validity of the notice of

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[7] Section 131 (h) "Contractor" includes persons, natural or juridical, not subject to professional tax under Section 139 of this Code, whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.

As used in this Section, the term "contractor" shall include general engineering, general building and specialty contractors as defined under applicable laws; filling, demolition and salvage works contractors; proprietors or operators of mine drilling apparatus; proprietors or operators of dockyards; persons engaged in the installation of water system, and gas or electric light, heat, or power; proprietors or operators of smelting plants; engraving, plating, and plastic lamination establishments, proprietors or operators of establishments for repairing, repainting, upholstering, washing or greasing of vehicles, heavy equipment, vulcanizing, recapping and battery charging; proprietors or operators of furniture shops and establishments for planing or surfacing and recutting of lumber, and sawmills under contract to saw or cut logs belonging to others; proprietors or operators of drycleaning or dyeing establishments, steam laundries, and laundries using washing machines; proprietors or owners of shops for the repair of any kind or mechanical and electrical devices, instruments, apparatus , or furniture and shoe repairing by machine or any mechanical contrivance; proprietors or operators of establishments or lots for parking purposes; proprietors or operators of tailor shops, dress shops, milliners and hatters, beauty parlors, barbershops, massage clinics, sauna, Turkish and Swedish baths, slenderizing and building salons and similar establishments; photographic studios; funeral parlors; proprietors or operators of hotels, motels and lodging houses; proprietors or operators of arrastre and stevedoring, warehousing, or forwarding establishments, master plumbers; smiths, and house or sign painters; printers, bookbinders, lithographers; publishers except those engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of advertisements; business agents, private detective or watchman agencies, commercial and immigration brokers, and cinematographic film owners, lessors and distributors.

[8] Section 186. *Power To Levy Other Taxes, Fees or Charges.* – Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy:

Provided, further, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

assessment and respondent's right to assess it of local tax for 2006 which allegedly had prescribed.

In their Answer with Counterclaim[9], respondents questioned the jurisdiction of the RTC-Makati over the case which it claimed vested in the proper courts of Tuguegarao City, Cagayan as it was an appeal from the denial of petitioner's administrative protest.

On February 29, 2012, the case was referred to the Philippine Mediation Center (PMC) for possible settlement which however failed[10]. On May 31, 2012, the case was re-raffled to Branch 132 of the same Court.

In the Resolution dated October 22, 2012[11], the RTC-Makati, Branch 132 dismissed the appeal on jurisdictional ground. Petitioner moved for reconsideration[12] but the same was denied on January 18, 2013[13].

On March 8, 2013, petitioner filed a Petition for Review before the Court in Division[14] docketed as CTA AC No. 103.

On March 13, 2013, respondent was directed to file comment but failed.

On July 15, 2013, the Court admitted petitioner's belatedly filed Memorandum.[15]

On October 17, 2013, the Court in Division, with the original record on hand[16], deemed the case submitted for decision *sans* the required memorandum from respondents.

On July 11, 2014, the Court in Division dismissed the Petition for Review[17], finding no reversible error in the

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[9] Annex "G" to the Petition for Review, docket, pp.96-104.
[10] Annex "P" to the Petition for Review, docket, p.148.
[11] Annex "S" to the Petition for Review, docket, pp.160-161.
[12] Annex "T" to the Petition for Review, docket, pp.162-171.
[13] Annex "V" to the Petition for Review, docket, p.177.
[14] Annex "X" to the Petition for Review, docket, pp. 179-206.
[15] Annexes "Z" and "AA" to the Petition for Review, docket, pp. 220-267.
[16] Annex "Y" to the Petition for Review, docket, p. 219.
[17] Annex "BB" to the Petition for Review, docket, p. 269-281.

assailed Resolution dated October 22, 2012 issued by the RTC-Makati, Branch 132.

On July 28, 2014, petitioner filed its Motion for Reconsideration[18] which the Court in Division denied for lack of merit on September 30, 2014[19].

Hence, the instant appeal by petitioner filed on November 3, 2014, or within the extended period granted[20].

THE ISSUES

(a) WHETHER OR NOT THE ACTION UNDERTAKEN BY PETITIONER UNDER SECTION 195 OF THE LGC IS AN ACTION FOR INJUNCTION.

(b) WHETHER OR NOT THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 132, HAS JURISDICTION OVER THE CASE FILED BY PETITIONER PURSUANT TO THE PROVISIONS OF THE LGC OF 1991.

(c) WHETHER OR NOT PETITIONER IS LIABLE TO PAY BOTH LOCAL BUSINESS TAX AND FRANCHISE TAX TO RESPONDENT CITY BASED ON THE SAME GROSS RECEIPTS EARNED WITHIN THE TERRITORIAL JURISDICTION OF RESPONDENT CITY WITHIN THE SAME TAXABLE YEAR PURSUANT TO THE PROVISIONS OF THE LGC.

(d) WHETHER OR NOT RESPONDENT SHOULD AMEND THE OFFICIAL RECEIPTS ISSUED TO PETITIONER TO

[18] Annex "CC" to the Petition for Review, docket, pp. 282-291.
[19] Annex "DD" to the Petition for Review, docket, pp. 295-298.
[20] Docket, pp. 7-48.

REFLECT THE PAYMENT OF FRANCHISE TAX INSTEAD OF BUSINESS TAX.

(e) WHETHER OR NOT THE ASSESSMENT FOR TAXABLE YEAR 2006 HAS ALREADY PRESCRIBED.

In support of the instant Petition for Review, petitioner contends that the appeal it filed before the RTC-Makati docketed as Civil Case No. 11-635 was not a principal action for injunction but one that involved purely legal issues on respondents' imposition of business tax on top of franchise tax. The injunction was merely an off-shoot or a necessary consequence of the main relief prayed for. In fact, petitioner's appeal before the RTC-Makati filed under Section 195 of the LGC did not even pray for issuance of a Writ of Injunction.

Petitioner insists that the RTC-Makati, Branch 132 had jurisdiction over its appeal assailing the denial of its protest against local tax assessment pursuant to Section 195 of the LGC. Citing the case of *Yamane v. BA Lepanto Condominium Corporation*[21], petitioner insists RTC-Makati had jurisdiction over its appeal since its principal office is located in Makati.

Besides, Rule 4 of the Rules of Court provides that the venue for personal civil action shall be the residence of any of the parties at the election of the plaintiff. Thus, petitioner as the plaintiff properly instituted its appeal, which was a personal civil action, with the RTC-Makati.

As to the franchise tax assessment, petitioner concedes liability for such assessment but claims that it already paid the same for the years 2006 to 2011 to respondent City of Tuguegarao. With such payment, it is no longer liable to pay the local business tax imposed by respondents computed based from the same gross receipts.

Even assuming that it is subject to local business tax, its gross receipts are not derived from businesses specified

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[21] G.R. No. 154993, October 25, 2005.

in the LGC as subject to business tax. Petitioner claims that it is into telecommunications services with a franchise and not a "contractor" as defined in Section 131(h) of the LGC. It further claims that even the Department of Justice (DOJ) opined that franchise holders are not subject to business tax imposed under Section 143 of the LGC.

Further, petitioner questions the validity of the notice of assessment as there was no indication upon which it was based in violation of its right to due process. Allegedly, respondent failed to specify the provision in its local tax code providing that a franchise holder is subject to local business tax.

Finally, petitioner claims that respondents' right to assess local business tax for 2006 has prescribed in accordance with Sections 194 and 196 of the LGC.

Despite the opportunity granted, respondents did not register any objection to the instant Petition for Review.

In compliance with the Court's directive dated February 12, 2015[22], petitioner filed its Memorandum on April 17, 2015[23].

On June 22, 2015, the instant Petition for Review was submitted for decision[24].

RULING OF THE COURT *EN BANC*

The most critical issue in the present petition is whether the RTC-Makati, Branch 132 has jurisdiction over petitioner's appeal challenging respondents' denial of its protest.

Petitioner asserts that it correctly and properly lodged its appeal with the RTC-Makati to impugn the denial by respondents of its protest.

[22] Docket, pp. 365-366.
[23] Docket, pp. 367-414.
[24] Docket, pp. 763-764.

Undeniably, the remedy of a taxpayer against local assessment is found in Section 195[25] of the LGC which provides that a taxpayer who disagrees with a tax assessment issued by a local treasurer, or his duly authorized representative, may file a written protest thereto to contest the assessment. If the protest is denied, in whole or in part, or in case of inaction on the part of the local treasurer after the lapse of the 60-day prescriptive period, the taxpayer has thirty (30) days, within which to file an **appeal with the court of competent jurisdiction**, otherwise the assessment becomes conclusive and unappealable.

In relation to the foregoing, the Supreme Court, in the case of *Yamane v. Lepanto Condominium Corporation*[26], clarified that the "appeal" referred to in Section 195 of the LGC contemplates an action in which the court of competent jurisdiction takes initial judicial cognizance of a case assailing the assessment issued by the local treasurer. In other words, the review by the court of competent jurisdiction is actually an exercise of its original jurisdiction, and not of its appellate authority given that the denial of the protest is not a judgment or order of a lower court, but of a local government official acting in his or her official capacity.

In general, the RTCs have jurisdiction to take cognizance of actions assailing the decision or inaction of the local treasurer on local tax protests as provided under

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[25] SEC. 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, interest 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 (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

[26] *Supra* Note 20.

Section 195 of the LGC and as pronounced in the Yamane Case. Further, Section 19(8) of Batas Pambansa (BP) Blg. 129, as amended, confers upon the RTCs exclusive original jurisdiction over 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 P300,000 for cases outside of Metro Manila, or P400,000 for cases within Metro Manila.

Corollarily, Section 7(a)(3) of Republic Act (RA) No. 9282, as amended, vests upon the Court of Tax Appeals (CTA) 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.

However it must be noted that venue and jurisdiction are not synonymous or similar in meaning. The case of *Armand Nocum and the Philippine Daily Inquirer, Inc. v. Lucio Tan*[27], highlighted the difference between venue and jurisdiction in the following fashion:

> "Petitioners are confusing jurisdiction with venue. A former colleague, the Hon. Florenz D. Regalado, differentiated jurisdiction and venue as follows: (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."

Admittedly, petitioner Philippine Long Distance Telephone Company, Inc., is a domestic corporation with principal office located at Ramon Cojuangco Building, Makati

[27] G.R. No. 145022, September 23, 2005.

Avenue, Makati City, while respondents City Treasurer Buenaventura F. Lagundi and Assistant City Treasurer Florentina S. Balisi hold office in Tuguegarao City Hall, Tuguegarao City.

It has been followed in this jurisdiction that the residence of a corporation is the place where its principal office is located.[28]

While it is true that petitioner's principal place of business is at Ramon Cojuangco Building, Makati Avenue, Makati City, it has branches in other parts of the Philippines, where it provides telecommunication services to its clients. Hence, applying the rule on the venue of principal actions and the rule on the residence of a corporation, for purposes of instituting personal actions in court, the place where a corporation has its principal office may also be considered as the proper venue. Following the foregoing principle, venue in this case was properly laid in the RTC-Makati, specifically Branch 132, the court having territorial jurisdiction over petitioner PLDT's main office in Makati.

However, even if RTC-Makati, Branch 132 is the proper venue and the court of competent jurisdiction over petitioner's appeal from the denial of its protest against respondents local franchise and local business tax assessments for 2006 to 2011, it is bereft of any authority or jurisdiction to direct respondent to cease and desist from imposing, now and in the future, local franchise tax or business tax on respondent's gross receipts realized within the territorial jurisdiction of the City of Tuguegarao.

The power of RTC-Makati, Branch 132 to resolve the entire controversy will not translate to an authority to grant one of the relief prayed for by petitioner in its petition, i.e., to order respondents to cease and desist from assessing and collecting from it business tax in addition to the franchise tax based on the same gross receipts it derived from services it rendered to its clients as a telecommunication enterprise.

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[28] Hyatt Elevators and Escalators Corporation v. Goldstar Elevators, Phils., Inc., 473 SCRA 713.

Section 21 (1) of Batas Pambansa (BP) Blg. 129, as amended, provides that injunctive writs issued by an RTC are enforceable only within the judicial region where such court belongs. Hence, in the event that a decision is rendered in favor of petitioner, i.e., cancelling the local franchise tax assessments for the years 2006 to 2011 and enjoining respondents from enforcing the same, such decision would have to be enforced outside the territorial jurisdiction of RTC Makati. Thus, it is only proper that the present case should be brought and taken cognizance by the RTC whose territorial jurisdiction encompasses the place where the facts thereof have originated and which has jurisdiction over the parties sought to be enjoined, which is the RTC of Tuguegarao City.

In a similar case of 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[29], the Court ruled, thus:

> "In the case of Santos vs. Moreno, 21 SCRA 1141, the Supreme Court held:
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> > '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

[29] CTA EB No. 413, June 3, 2009.

> 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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> 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.
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> 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. . ."

WHEREFORE, the Petition for Review filed by petitioner Philippine Long Distance Telephone Company, Inc. on November 3, 2014, is hereby **DISMISSED,** without prejudice. The assailed Decision of July 11, 2014 and the Resolution of September 30, 2014, are hereby **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

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

Juanito C. Castañeda, Jr.
(With Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I join J. Castaneda's stand)
CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
(I join J. Castañeda)
CIELITO N. MINDARO-GRULLA
Associate Justice

ON LEAVE
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
(I join the dissenting opinion of PJ Del Rosario)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE LONG DISTANCE TELEPHONE CO., INC., *Petitioner,*	**CTA EB No. 1237** (CTA AC No. 103)
-versus-	Present:
CITY OF TUGUEGARAO, Buenaventura F. Lagundi, in his capacity as City Treasurer of the City of Tuguegarao, and Florentina S. Balisi, in her capacity as Asst. City Treasurer of the City of Tuguegarao, *Respondents.*	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
	Promulgated: JUN 17 2016 2:25 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect to my esteemed colleagues, I cannot assent to affirm the assailed Decision and Resolution of the Second Division Court (Court in Division) finding no error on the part of the Regional Trial Court of Makati City, Branch 132 (Makati RTC) in dismissing *Civil Case No. 11-635 entitled Philippine Long Distance Telephone Company vs. City of Tuguegarao, Buenaventura F. Lagundi, in his capacity as City Treasurer of the City of Tuguegarao, and Florentina S. Balisi, in her capacity as Asst. City Treasurer of the City of Tuguegarao* on the cited ground of lack of jurisdiction over an action for injunction as the acts sought to be enjoined are outside of its territorial region.

Perusal of the case records discloses that petitioner filed its Petition[1] with the Makati RTC from the denial of its protest on the assessment by the City Treasurer of the City of Tuguegarao pursuant to Section 195 of the Local Government Code (LGC). Petitioner specifically sought the following reliefs from Makati RTC:

1. A declaration that it is not subject to business tax in addition to franchise tax based on its gross receipts derived from its franchised business;

2. A declaration that the payments it made for the period of 2006 to 2011 in the total amount of P1,545,071.20 to be payments for franchise tax, and that respondents be ordered to indicate in their records that the same was payment for franchise tax;

3. Cancellation of demand letter and Statement of Account dated June 9, 2011 issued by respondents for alleged deficiency franchise tax in the total amount of P2,315,534.84 for the period covering years 2006 to 2011 for lack of legal basis; and

4. **To order respondents to cease and desist from assessing and collecting from petitioner business tax**, in addition to franchise tax, based on the gross receipt it derived from its franchise business.[2]

Essentially, two separate, distinct and independent causes of actions are present in the Petition before the Makati RTC, *namely:* (1) an **ordinary civil action** questioning the denial of petitioner's protest on the assessment issued by respondents for years 2006 to 2011; and (2) a **special civil action for injunction** to enjoin the respondents from assessing and collecting from petitioner business tax.

At the core of the controversy is whether Makati RTC has jurisdiction over the Petition filed by petitioner.

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[1] CTA AC 103 Docket, p. 60.
[2] CTA AC 103 Docket, pp. 79-80

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This very same issue was passed upon by this Court in *Provincial Government of Cagayan, Rep. by Honorable Governor Alvaro T. Antonio and Emilia L. Iringan, in her capacity as Provincial Treasurer vs. Smart Communications, Inc. (Smart case),*[3] where it was categorically held that the **Makati RTC has jurisdiction over an appeal from the inaction of the Treasurer of the Province of Cagayan on a protest on a disputed franchise tax assessment, but said court has no jurisdiction to issue an injunctive writ to enjoin acts being performed or about to be performed outside its territorial boundaries.**

In this regard, I quote below the pertinent portion of my Concurring Opinion in the *Smart case,*[4] *viz:*

> 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,*[5] *which in turn cited Roman R. Santos v. Hon. Florencio Moreno as Secretary of Public Works and Communications and Julian C. Cargullo*[6] *(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,

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[3] CTA EB No. 1137 (CTA AC No. 92), December 8, 2015; penned by Associate Justice Amelia R. Cotangco-Manalastas; concurred by Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Cielito N. Mindaro-Grulla, Associate Justice Ma. Belen M. Ringpis-Liban; Presiding Justice Roman G. Del Rosario registered a Concurring Opinion; Associate Justice Juanito C. Castañeda, Jr. issued a Concurring and Dissenting Opinion; and Associate Justice Lovell R. Baustista issued a Separate Concurring Opinion.
[4] *Id.*
[5] CTA EB No. 413, June 3, 2009.
[6] G.R. No. L-15829, December 4, 1967.

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.
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> 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:
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>> 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.
>>
>> 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.*[7]

To be sure, venue and jurisdiction are not synonymous. In *Armand Nocum and the Philippine Daily Inquirer, Inc. v. Lucio Tan,*[8] 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.
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> xxx xxx xxx

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[7] G.R. No. 154993, October 25, 2005.
[8] G.R. No. 145022, September 23, 2005.

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

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*:[9]

> [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.

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

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 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)*,[10] particularly the pronouncement therein that a plaintiff may, for a single cause of action or violation of a right, be entitled to several reliefs <u>and</u> 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.

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[10] G.R. No. L-25134, October 30, 1969.

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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" *(Reference omitted)*

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 absolutely 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 any assessment for periods not covered by the appeal 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*,[11] 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

[11] G.R. No. 80682, August 13, 1990.

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.*:[12]

> "**[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*."

Guided with the foregoing discussion, it is apparent that there is a misjoinder of causes of action in the present case as the action for injunction was incorporated in petitioner's appeal pertaining to the ordinary civil action. Petitioner's choice of elevating the denial of its protest to Makati RTC, a ***court of competent jurisdiction*** contemplated under Section 195 of the LGC in relation to Sec. 19 of BP 129, was properly laid as petitioner's principal place of business is located in Makati City, in line with Section 2, Rule 4 of the Rules of Court which gives petitioner an option where to lodge its action. **On the other hand, the dismissal of the misjoined action for**

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[12] G.R. No. L-65334, December 26, 1984, citing Arevalo v. Benedicto 58 SCRA 186 (1974).

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injunction is indubitable as the Makati RTC has no jurisdiction to issue a writ of injunction to absolutely enjoin actions to be committed outside its territorial boundaries and for taxable years not covered by the assessment subject of appeal.

All told, I vote to **PARTLY GRANT** the Petition for Review insofar as the ordinary civil action is concerned, and to **REMAND** the case to Makati RTC to determine the propriety of the denial of petitioner's protest on the assessed deficiency franchise tax covering the years 2006 to 2011.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
Petitioner,

- *versus* –

CITY OF TUGUEGARAO, Buenaventura F. Lagundi, in his capacity as City Treasurer of Tuguegarao, and Florentina S. Balisi, in her capacity as Asst. City Treasurer of the City of Tuguegarao,
Respondents.

CTA EB No. 1237
(CTA AC No. 103)

Present:

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

Promulgated:

JUN 17 2016 2:25 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.*:

For review are the Decision dated July 11, 2014 and Resolution dated September 30, 2014, both promulgated by the Second Division of this Court (Court in Division) in CTA AC No. 103. The Court in Division affirmed the Resolution issued by the Regional Trial Court of Makati City, Branch 132, (RTC Makati) which, in turn, dismissed Philippine Long Distance

Telephone Company, Inc.'s (PLDT) appeal filed pursuant to Section 195 of the Local Government Code (LGC).

I respectfully register my separate concurring opinion affirming the denial of the present Petition for Review but on the ground that RTC Makati is not a court of competent jurisdiction relative to PLDT's appeal of the denial of its protest against the assessment for local franchise and business taxes issued by respondent Tuguegarao City Treasurer.

At the outset, it bears stressing that PLDT's Petition before RTC Makati is based on a single cause of action only. In the said Petition, PLDT anchored its right not to be subjected to payment of local franchise and business taxes for the years 2006 to 2011 on the alleged payment of the said franchise tax and/or the alleged want of authority of the respondents to impose business tax, and which right the respondents are bound to respect. The issuance of the disputed assessment for local franchise and business taxes by respondent Tuguegarao City Treasurer is alleged to be violative of such right.

The prayer for the issuance of an injunction against respondents does not constitute a separate and distinct cause of action from that of appeal of the denial of PLDT's protest under Section 195 of the LGC because both are based on the same alleged right and the same act or omission alleged to be violative of the aforementioned right. Truth be told, such injunction is but a necessary complement to the other reliefs prayed for by PLDT in its Petition.

If we were to construe that there are two (2) separate and distinct causes of action in PLDT's Petition, then, an action for injunction could be maintained before the proper RTC in Tuguegarao City against respondents since the acts sought to be enjoined are committed within the judicial region where said court belongs separate from the appeal of the denial of PLDT's 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.[1] 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.[2] The purpose of the rule is to avoid harassment and vexation to the defendant

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[1] *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.
[2] *Catalina B. Chu, et. al., v. Sps. Fernando C. Cunanan et. al.*, G.R. No. 156185, September 12, 2011.

and avoid multiplicity of suits.[3] The Supreme Court, in *City of Bacolod v. San Miguel Brewery, Inc.("City of Bacolod"),*[4] 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 up of the cause of action. This is what is prohibited by the rule.**" *(Emphasis supplied)*

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

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

[3] *Geronimo Q. Quadra v. The Court of Appeals and the Philippine Charity Sweepstakes Office*, G.R. No. 147593, July 31, 2006.
[4] G.R. No. L-25134 October 30, 1969, 29 SCRA 826,827.

splitting up of a cause of action warrants the dismissal of a suit on the ground of either *litis pendentia*[5] or *res judicata*,[6] as the case may be.

Furthermore, the view that there are two (2) separate and distinct causes of action in PLDT's Petition would cause 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 in Tuguegarao City issues an injunction against respondents while, on the other hand, RTC Makati upholds the assessment for local franchise and business taxes against PLDT. At any rate, whatever decision that RTC Makati might render in the appeal of the denial of PLDT's protest would constitute *res judicata* on the purported injunction suit since both cases involve an inquiry into the existence of the right claimed by PLDT and the validity of the tax assessment issued by respondents.

To reiterate, there is only a single cause of action involved in PLDT's Petition before RTC Makati. Such petition, however, must be filed with and resolved by the **court of competent jurisdiction** as contemplated under Section 195 of the LGC.

There is no question that Regional Trial Courts (RTCs) 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.[7] 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, *jc*

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[5] *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.)

[6] *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.)

[7] *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.

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, the exercise thereof 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.[8] As the Supreme Court has declared in *Elizalde Malaloan and Marlon Luarez v. Court of Appeals et. al.,*[9] 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. **The jurisdiction conferred by said Act on regional trial courts and their judges is basically regional in scope. 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 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 an appeal of 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 present case, most, if not all, of the crucial facts which gave rise thereto have occurred outside of the territorial jurisdiction of RTC Makati. The *situs* of the income on which the local franchise and business taxes is being imposed is located in Tuguegarao City. More importantly, the public officials whose official acts are sought to be reviewed and enjoined by PLDT likewise hold office in the same city. Also, in the event that a decision is rendered in favor of PLDT, *i.e.*, cancellation of the assessment and injunction against respondents from enforcing the same, such decision would have to be enforced outside the territorial jurisdiction of RTC Makati. Accordingly, it is only proper that the present case should be taken cognizance by the particular RTC whose territorial jurisdiction encompasses the place where the facts thereof have originated.

[8] *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.
[9] G.R. No. 104879, May 6, 1994.

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 PLDT in its Petition. It must be noted that the said Petition includes a prayer for an order against respondents to cease and desist from assessing and collecting from PLDT, business tax in addition to franchise tax based on the same gross receipts derived by PLDT from its franchised business.[10] Under 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. In contrast, it is within the competence of RTC in Tuguegarao City to fully settle the entire controversy between the parties herein and to grant all the reliefs prayed for, including the prayer for injunction since the acts sought to be enjoined have occurred within its territorial jurisdiction.

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

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, ("City of Balanga")*[11] the Court *En Banc* ruled that the RTC of Balanga City, not RTC Makati, which is the court of competent jurisdiction vis-à-vis the appeal of the denial by the City Treasurer of Balanga City of local tax protest. Citing the Supreme Court case of *Santos v. Moreno*,[12] the Court *En Banc* 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.[13]

The pertinent portion of the *City of Balanga* case reads as follows:

> "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** ℊ

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[10] Court *En Banc*'s Docket, Vol. I, p. 86.

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

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

[13] *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*, CTA EB No. 413, June 3, 2009, p. 18.

> **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.**

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"[14]

In the present case, just like in the afore-cited *City of Balanga* case, PLDT seeks to control the acts of the respondent officials of City of

[14] *Ibid,* pp. 17-18 (Emphasis supplied).

Tuguegarao by appealing the latter's denial of its tax protest before RTC Makati. In fact, PLDT was not only seeking for a review of the denial of its protest but was also specifically asking the trial court to order respondents to cease and desist from assessing and collecting from PLDT, business tax in addition to franchise tax based on the same gross receipts derived by PLDT from its franchised business.[15]

There is no compelling much less prudent reason to deviate from this Court's holding in the *City of Balanga* case.

In light of the foregoing, it is submitted that RTC Makati is not the court of competent jurisdiction to take cognizance of PLDT's appeal, as contemplated under Section 195 of LGC.

I vote to **DENY** the instant Petition for Review.

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

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[15] *Supra*, Note 10.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILIPPINE LONG DISTANCE TELEPHONE CO., INC.,
Petitioner,

-versus-

CITY OF TUGUEGARAO, BUENAVENTURA F. LAGUNDI, in hus Capacity as City Treasurer of Tuguegarao & FLORENTINA S. BALISI, in her capacity as Asst. City Treasurer of the City of Tuguegarao,
Respondent.

CTA *EB* No. 1237
(CTA AC No. 103)

Present:

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

Promulgated:

JUN 17 2016 2:25p.m.

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DISSENTING OPINION

BAUTISTA, J.:

With all due respect, I disagree with the *ponencia* when it dismissed the case in *toto* on the ground of lack of jurisdiction on the part of 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

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. <u>Venue relates to trial and not to jurisdiction</u>. 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. <u>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</u> (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 <u>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</u> (Home

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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 (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.

Guaranty Corporation vs. R-II Builders, Inc., 645 SCRA 230-231). Once jurisdiction is acquired, it continues until the case is 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., September 2, 1992, G.R. No. 97805, 213 SCRA 457,* citing *Singsong v. Isabela Sawmill, February 28, 1979, G.R. L-27343, 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 filed its Petition[6] with RTC Makati on June 8, 2011, with a prayer that judgment be rendered in favor of petitioner, as follows:[7]

> a. Declaring [p]etitioner to be not subject to business tax in addition to franchise tax based on its gross receipts derived from its franchised business;
>
> b. Declaring payments made to [p]etitioner for the period of 2006 to 2011 in the total amount of [Php]1,545,071.20 to be payments for franchise tax and ordering [r]espondents to so indicate in their records that the same was payment for franchise tax;
>
> c. Cancelling the demand letter and Statement of Account dated June 9, 2011 issued by [r]espondents for alleged franchise tax in the total amount **of Two Million Three Hundred Fifteen Thousand Five Hundred Thirty Four and Eighty Four Centavos (₱2,315,534.84)** for the

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[3] *Raymundo v. CA, et. al.,* September 2, 1992, G.R. No. 97805, 213 SCRA 457, citing *Singsong v. Isabela Sawmill,* February 28, 1979, G.R. L-27343, 88 SCRA 623.
[4] *Id.*
[5] *Id.*
[6] *Records, CTA AC No. 103,* pp. 5-84.
[7] *Id.,* p. 80.

period covering years 2006, 2007, 2008, 2009, 2010 and 2011 for lack of basis; and

d. Ordering [r]espondents to henceforth, cease and desist from assessing and collecting from [p]etitioner, business tax in addition to franchise tax based on the same gross receipts derived by [p]etitioner in this franchised business.

It can be gathered from the first three prayers that petitioner, in filing its appeal with RTC Makati, did not claim any amount in relation thereto. It merely asked the Court to rule that it is not subject to business tax; that its payments for 2006 to 2011 relates to franchise tax; and that the demand letter and Statement of Account be cancelled. Hence, the subject matter of petitioner-respondent's action is incapable of pecuniary estimation.

The assessment relates business tax under the *1991 LGC*[8], hence, civil in nature and is a personal action. Also, it is undisputed that petitioner's principal office is at Ramon Cojuangco Building, Makati Avenue, Makati City[9]. Therefore, RTC Makati is the chosen and right venue to file the appeal and, likewise, has jurisdiction to try the case until terminated. The basis of RTC Makati's jurisdiction is not *Section 19(8) of Batas Pambansa Blg. 129*[10], as amended by *Republic Act No. 7691*, but *Section 19(1)*[11] of the same law, in which the subject of the litigation is incapable of pecuniary estimation.

As to the fourth prayer of petitioner to order respondents to cease and desist from assessing and collecting business tax, this

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[8] 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

[9] *Records, CTA AC No. 103*, p. 61.

[10] 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].

[11] 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

appears to be a special civil action for Prohibition[12], which is also a personal action because it does not affect the title to, or possession of real property, or interest therein; and it 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, at the election of the plaintiff.[13] Since plaintiff is a resident of Makati, the petition could properly be filed in RTC Makati.

However, looking into *Rule 2 of the Revised Rules of Court*, it can be gathered that an ordinary civil action cannot be joined with a special civil action, for reference:[14]

CIVIL ACTIONS
Ordinary Civil Actions

RULE 2
Cause of Action

xxx xxxx xxx

SECTION 5. Joinder of causes of action. — <u>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 the following conditions</u>:

(a) xxx;
(b) <u>The joinder shall not include special civil actions</u> or actions governed by special rules;
(c) xxx

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[12] Rule 65, SECTION 2. Petition for prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require. The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (2a)

[13] *Board of Trustees of the Government Service Insurance System v. Velasco*, February 2, 2011, G.R. No. 170463, 641 SCRA 372.

[14] Underscoring ours.

Considering that the first three prayers pertain to an ordinary civil action, these cannot be joined together with the last prayer, which is a special civil action.

ACCORDINGLY, I vote to **GRANT** the Petition for Review only with respect to the ordinary civil action.

LOVELL R. BAUTISTA
Associate Justice