Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

ZARCON DEVELOPMENT CORPORATION,
Petitioner,

-versus-

THE CITY TREASURER OF THE CITY OF MANILA,
Respondent.

CTA A.C. No 24
(RTC Branch 15, Manila)
(Civil Case No. 01-101663)

Members:
ACOSTA, P.J.
BAUTISTA, and
CASANOVA, JJ.

Promulgated:
MAY 16 2007, 9:00 AM

x- x

DECISION

Casanova, J.

This is an appeal by way of a verified Petition for Review, under Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, of the Decision[1] dated December 20, 2005 (the assailed Decision) and the Order[2] dated April 17, 2006, both issued by the Regional Trial Court (RTC) of Manila, Branch 15, in Civil Case No 01-101663 entitled: "*Zarcon Development Corp. vs. The City Treasurer of the City of Manila.*" In the assailed Decision, the court *a quo* dismissed petitioner's Complaint and, thereafter, denied petitioner's Motion for Reconsideration in its Order[3] dated April 17, 2006.

The facts of the case as culled from the records are as follows:

> "xxx xxx Zarcon Development Corporation (Petitioner) is a domestic corporation engaged in business as a real estate lessor. As such

---

[1] CTA Rollo., pp. 34-40.
[2] CTA Rollo., pp. 41.
[3] Ibid.

plaintiff is subject to local business tax under Sec. 24 of the Revenue Code of the City of Manila. For the year 1998 plaintiff paid local business tax in the amount of PhP107,699.70 pursuant to Sec. 24 of Ordinance No. 7794 as amended.

On October 11, 1999, Zarcon received a letter from the Office of the City Treasurer dated August 6, 1999 advising the former of its outstanding liability in the amount of PhP71,799.79 representing tax due under Section 21 of Manila City Ordinance 7794.

On 25 October 1999, Zarcon, through counsel, protested the assessment pursuant to Section 195 of the Local Government Code and requested that the assessment be withdrawn and cancelled.

On 8 November 1999, Zarcon received a letter dated October 28, 1999 from the City Treasurer acknowledging receipt of the former's protest letter. In the letter the City Treasurer stated that it has no discretion to legally suspend its implementation, and therefore cannot withdraw or cancel the subject assessment.

Zarcon replied on November 17, 1999 requesting for reconsideration. No action has been taken by defendant."[4]

In accordance with Section 195 of the LGC, Petitioner filed a Complaint[5] with the Metropolitan Trial Court (MTC) of Manila on December 7, 1999 for the cancellation and withdrawal of the subject assessment. Petitioner's complaint was assigned to Branch 24 of MTC Manila and docketed as Civil Case No. 165738. Petitioner contended that since it has already paid taxes as a real estate lessor under Section 24 of Ordinance No. 7794, as amended, it should no longer be liable under Section 21 of the same ordinance based on the same receipts.

In its Motion to Dismiss[6] dated 2 February 2000, respondent argued that the MTC of Manila had no jurisdiction over the subject matter of the complaint since the withdrawal of the subject assessment was incapable of pecuniary estimation as it involved a question of legality of taxes.

---

[4] CTA Rollo., pp. 35-36
[5] CTA Rollo., pp. 42-56
[6] CTA Rollo., pp. 57-59

On 29 February 2000, petitioner filed its Opposition[7] stating that the complaint merely seeks to determine the propriety of the subject assessment and does not seek to challenge the constitutionality or legality of the ordinance itself. The MTC agreed with Petitioner and denied the motion to dismiss in an Order[8] dated November 9, 2000.

Respondent thereafter filed its Motion for Reconsideration[9] dated December 11, 2000, reiterating therein that in order to decide upon the cancellation of the subject assessment, the court must necessarily adjudicate on the legality of the assessment and, in effect, the constitutionality of the ordinance.

The MTC issued an Order[10] dated May 2, 2001 granting the Motion for Reconsideration and dismissing the case for lack of jurisdiction. As a consequence of the foregoing Order, petitioner filed a Notice of Appeal[11] on July 18, 2001.

Thereafter, the case was elevated to the Regional Trial Court (RTC)-Branch 15. In accordance with Section 7, Rule 40 of the 1997 Rules of Civil procedure, petitioner filed its Memorandum[12] dated September 27, 2001. Subsequently, respondent filed its own Memorandum[13] dated October 15, 2001.

In its Order[14] dated May 10, 2002, the RTC of Manila, Branch 15 affirmed the lack of jurisdiction of the MTC and further ruled that-

> "With the affirmance of the lower Court's decision, this Court can proceed to try this case on the merits pursuant to Section 8, Rule 40 of the 1997 Rules of Civil Procedure. In finally disposing the issue raised by the complaint (sic), this Court has to pass upon the validity of the

---

[7] CTA Rollo., pp. 60-63
[8] CTA Rollo., pp. 64
[9] CTA Rollo., pp. 65-67.
[10] CTA Rollo., pp. 68-69.
[11] CTA Rollo., pp. 70-72.
[12] CTA Rollo., pp. 73-78.
[13] CTA Rollo., pp. 79-84.
[14] CTA Rollo., pp. 85-86.

assessment, this case therefore is a tax case which should be heard by the branches of this Court designated to hear tax cases.

WHEREFORE, let the record of this case be forwarded to the office of the Executive Judge for reraffle to the branches designated to hear tax cases.

SO ORDERED."

The court *a quo* subsequently issued an Order[15] dated December 19, 2002 modifying its previous Order by taking cognizance of this case instead of raffling it to the branches designated to hear tax cases.

The court *a quo* then proceeded to conduct the pre-trial of this case. Upon the termination of the pre-trial, the court *a quo* issued an Order[16] dated January 27, 2004 stating the facts admitted by the parties, the issues to be resolved, the exhibits marked by the plaintiff, and the number of witnesses. An Amended Pre-Trial Order[17] was later on issued by the court *a quo* on July 29, 2004. The original Pre-Trial Order dated January 27, 2004 was again amended in an Order[18] dated January 18, 2005.

On December 20, 2005, Presiding Judge Mercedes Posada-Lacap issued the assailed Decision, the dispositive portion of which is hereby quoted hereunder, to wit:

"WHEREFORE, premises considered, this case is hereby DISMISSED.
SO ORDERED."

Petitioner filed a Motion for Reconsideration[19] on March 10, 2006 praying that the court *a quo* reconsider its Decision dated December 20, 2005, reverse and set aside the same, and thereafter judgment be rendered against the City of

[15] CTA Rollo., pp. 87-88.
[16] CTA Rollo., pp. 89-91.
[17] CTA Rollo., pp. 93-96.
[18] CTA Rollo., p. 98.
[19] CTA Rollo., pp. 139-153.

Treasurer of the City of Manila and in favor of petitioner, and that the subject assessment be withdrawn and cancelled. Respondent filed its Comment/Opposition[20] dated April 3, 2006 which was received by the petitioner on April 6, 2006. On April 21, 2006, petitioner filed an Urgent Motion for Additional Time to File Reply[21] stating therein that:

> "1. During the hearing on 17 March 2006, Plaintiff was granted a period of fifteen (15) days from receipt of Defendant's Comment/Opposition within which to file its Reply.
>
> 2. Plaintiff received a copy of Defendant's Comment/Opposition on 6 April 2006. Hence, Plaintiff has until 21 April 2006 to file its Reply.
>
> 3. In its Comment/Opposition, Defendant put forth certain arguments which Plaintiff wishes to refute in order to provide a comprehensive discussion of the issues involved in the instant case.
>
> 4. However, due to the complex issues involved herein as well as an unusually heavy caseload and almost daily court appearances, Plaintiff respectfully submits that it will be unable to submit its Reply within the period given by this Honorable Court and is constrained to request for an additional period of ten (10) days in order to allow its counsel to study the applicable laws and jurisprudence, draft the Reply and finalize the same for filing with this Honorable Court.
>
> 5. xxx xxx xxx."

On May 2, 2006, petitioner filed its Reply[22]. However, prior to this date or on April 25, 2006 to be precise, the court *a quo* issued an Order[23] stating that petitioner's "Urgent Motion for Additional Time to File Reply" was rendered moot and academic considering that the Motion for Reconsideration had already been resolved on April 17, 2006. In the said April 17, 2006 Order[24], the court *a quo* denied petitioner's Motion for Reconsideration. Hence, this appeal by way of Petition for Review filed by the petitioner on June 8, 2006.

---

[20] CTA Rollo., pp. 154-163.
[21] CTA Rollo., pp. 197-200.
[22] CTA Rollo., pp. 201-210.
[23] CTA Rollo., pp. 211.
[24] Ibid.

On July 14, 2006, respondent filed a "Comment to the Petition for Review"[25]. In a Resolution[26] dated August 4, 2006, the CTA First Division gave due course to the instant Petition and required both parties to file their respective Memoranda. Respondent filed a Memorandum[27] on September 11, 2006 in compliance with the said Resolution. On September 14, 2006 petitioner filed a Manifestation[28] stating therein that it filed a Memorandum[29] dated September 13, 2006 through registered mail and further prayed that the said Manifestation be noted and that the attached Memorandum[30] therewith be admitted. The Court, in a Resolution[31] dated September 19, 2006, noted petitioner's manifestation and accordingly, the attached Memorandum was admitted as part of the records of this case. Hence, the case was submitted for decision.

The issues, as raised by the petitioner and respondent in the instant Petition for Review and Comment and their respective Memoranda, can be summed up as follows:

(1)

Whether or not the instant Petition for Review was filed out of time.

(2)

Whether or not Petitioner was able to establish its legal capacity to sue.

---

[25] CTA Rollo., pp. 215-238.
[26] CTA Rollo., p. 240.
[27] CTA Rollo., pp. 241-269.
[28] CTA Rollo., pp. 330-332.
[29] CTA Rollo., pp. 270-328.
[30] CTA Rollo., pp. 333-391.
[31] CTA Rollo., pp. 393

(3)

Whether or not this case falls within the functions of the Office of the Solicitor General.

(4)

Whether or not the doctrine of exhaustion of administrative remedies is applicable in the present case.

(5)

Whether or not Petitioner was denied due process when the lower court denied the Motion for Reconsideration prior to the filing of Petitioner's Reply.

(6)

Whether the fact that Section 21 of Ordinance No. 7794, as amended, is an indirect tax (assuming the same to be true) has any bearing on the existence of double taxation.

(7)

Whether or not the collection of tax under Section 24 and Section 21 of Ordinance No. 7794 as amended, against petitioner constitutes direct double taxation.

(8)

In general, whether the assessment against Petitioner for alleged deficiency local business tax of P71,799.79 under Section 21 of Ordinance No. 7794, as amended, is valid.

The Court's Ruling

For clarity, the Court deemed it necessary to resolve the *fifth* issue first. Petitioner argues that it was denied due process when the court *a quo* denied its Motion for Reconsideration prior to the filing of its Reply.

We do not agree.

In a Supreme Court Decision, it was ruled that, "*Due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.*"[32]

In the case at bench, petitioner was given all the opportunity to litigate its action through the Motion for Reconsideration it filed assailing the court *a quo's* Decision dated December 20, 2005. In the said motion, petitioner had the opportunity to state all its contentions/arguments in asking for a reconsideration of the questioned Decision. However, the court *a quo,* in its Order dated April 17, 2006, denied the said motion. A portion of the April 17, 2006 Order is hereby reproduced as follows:

> "After going over the Motion for Reconsideration filed by the Plaintiff (Petitioner), this Court finds no cogent reason to disturb its decision.
>
> Wherefore, the Motion for Reconsideration is hereby DENIED.
>
> SO ORDERED."

Thus, petitioner cannot be said to have been denied due process because the court *a quo* found out that its Motion for Reconsideration is a mere reiteration of the issues, allegations and arguments which have been extensively discussed in the assailed Decision.

Notwithstanding this pronouncement, the Court finds the contentions of the petitioner, with respect to the other issues, meritorious.

With regard to the *first* issue, respondent contends that this Court did not acquire jurisdiction over the present case because the instant Petition for Review was filed out of time. Records would show that this case was originally filed with the Metropolitan Trial Court of Manila, Branch 24 (MTC). After the case was

---

[32] Roxas vs. Vasquez, 358 SCRA 636.

dismissed for lack of jurisdiction, petitioner elevated it to the Regional Trial Court Branch 15 (RTC), by way of a Notice of Appeal. Thus, even when the RTC affirmed the dismissal of the case by the MTC and proceeded to hear the case on the ground that it has original jurisdiction over the subject matter, the RTC had appellate jurisdiction over the parties to the case. Given this factual backdrop, respondent posits that the instant petition was filed out of time pursuant to Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, in relation to Section 4, Rule 40 of the 1997 Rules of Court, to wit:

> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: <u>Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc</u>.
>
> Xxx xxx xxx."
>
> "Sec. 4. Period of Appeal. <u>The appeal shall be taken within fifteen days from notice of the award, judgment, final order, or resolution, or from the date of the last publication, if publication is required by law for its effectivity, or of the denial of the petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo</u>."
>
> (Underlining supplied)

However, the Court does not agree with the respondent's contentions.

Pertinent to the resolution of the first issue is Section 3 (c), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), a portion of which is reproduced, to wit:

> "Sec. 3. *Who may appeal; period to file petition.*-
>
> (a) xxx xxx xxx
>
> (b) xxx xxx xxx
>
> (c) <u>A party adversely affected by a decision or ruling of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of their appellate jurisdiction may appeal to the Court by filing before it a petition for review within thirty days from receipt of a copy of the questioned decision or ruling</u>."
> (Underlining supplied.)

In the present case, petitioner received the Order of the court *a quo* denying their Motion for Reconsideration on May 9, 2006. Thus, petitioner has thirty (30) days from May 9, 2006, or until June 8, 2006 within which to file its petition for review. As per CTA records, the instant Petition for Review was filed on June 8, 2006, thus, the same was filed within the prescribed period.

As to the *second* issue, respondent argued that petitioner-corporation filed the case through its Vice-President, Mr. Carlos Z. Ortoll the authority of the said officer to file the present action was not proven, in view of the omission on the part of the petitioner to incorporate in the Complaint the Board Resolution authorizing the said officer.

We do not agree.

Records show that attached to the instant Petition for Review is a Secretary's Certificate signed by the petitioner's Corporate Secretary, Miguel O. Visey, a portion of which is hereunder reproduced, to wit:

> "RESOLVED, that Mr. Carlos Z. Ortoll be, as they are hereby authorized and empowered to act, negotiate, sign, conclude and deliver

> for and in the name of the Corporation for the filing of a Petition for Review with the Court of Tax Appeals in connection with the appeal of the Decision dated 20 December 2005 and the Order dated 17 April 2006 of Branch 15 of the Regional Trial Court of Manila in Civil Case No. 01-101663 entitled "Zarcon Development Corporation vs. the City of Manila;
>
> xxx xxx xxx."[33]

Thus, through the above-quoted Secretary's Certificate, Mr. Carlos Z. Ortoll was able to show this Court that he has the legal capacity, in behalf of the petitioner, to institute the instant action.

With regard to the *third* issue, respondent contends that the Complaint suffered serious procedural flaw and must necessary fail. Respondent further stated that the subject matter of the instant petition is the legality of the imposition of Sec. 21 of the Manila Revenue Code, as amended. Hence, the constitutionality of the law is in question.

The Court rules in favor of the petitioner.

As can be gleaned over the records of the case, the Petition for Review would show that petitioner was not questioning the validity of Ordinance No. 7794 of the City of Manila, otherwise known as the "Revenue Code of Manila". Rather, petitioner is questioning whether or not it should be made to pay a business tax under Section 21 of Ordinance No. 7794, since it is already subject to a business tax as a real estate lessor under Section 24 of the same Ordinance. Therefore, notice to the Solicitor General is not necessary in the present case considering that the instant Petition for Review does not impugn the validity of Section 21 of Ordinance No. 7794.

Resolving the *fourth* issue, the Court finds the respondent's contention not meritorious. Respondent avers that petitioner committed a procedural flaw by

---

[33] CTA Rollo., p. 31.

not complying with Section 187 of the LGC, hereunder reproduced for reference, to wit:

> "Sec. 187. Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearing.- xxx xxx: Provided further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: xxx: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty (60) day period without the Secretary of Justice, acting upon the appeal, the aggrieved party may file the appropriate proceedings with a court of competent jurisdiction."

Respondent's argument is misplaced. Petitioner categorically admitted that Section 21 of the Manila Revenue Code is not itself invalid. It appealed to the court of competent jurisdiction questioning its tax liability under both Sections 21 and 24 of the above-mentioned revenue code. Petitioner is only asking for the withdrawal and cancellation of the subject assessment, not the constitutionality or legality of the tax ordinance. Therefore, appeal to the Secretary of Justice is not necessary in the present case.

With regard to the *sixth*, *seventh* and *eight* issues raised in the instant case, the Court deemed it necessary to discuss them jointly for being interrelated.

Respondent argued that the tax imposed upon the petitioner under Section 21 of the Manila Revenue Code, as amended, is in the nature of indirect taxes upon end-users of goods and services of the business, not the business itself. The tax under Section 21 represents additional amount added by the petitioner to the basic prices of goods or services. Petitioner is under obligation to remit the tax collected to the City of Manila. Thus, being an indirect tax, no double taxation exists in the case at bar.

Furthermore, respondent posits that there exists no direct duplicate taxation because the taxes imposed under Sections 21 & 24 rest on different tax bases. As stated above, Section 24 is imposed on the business itself while the end-users is the subject of Section 21.

We rule against the contentions of the respondent.

At the outset, petitioner, was assessed by the City Treasurer of Manila of its outstanding business tax liability in the amount of P71,799.79 representing tax due under Section 21 of Ordinance No. 7794, as amended. While the assessment indicates that petitioner is liable under Section 21 of Ordinance No. 7794, petitioner infer from the computation of the tax and tax rate applied that the assessment was based on Ordinance No. 7794, as amended by Ordinance 7807 (which took effect on September 30, 1993).

For ready reference, Section 1 (G) of Ordinance No. 7807, which amended Sections 21 and 24 of Ordinance 7794, states as follows:

> "Section 1. Certain Sections of Ordinance No. 7794 (Tax Ordinance No. 93-001), otherwise known as the Revenue Code of the City of Manila, are hereby amended to wit:
>
> G) Sections 21, 21-A,B and C, 21-D and 21-E shall read as follows:
>
> 'Sec. 21. Tax on Businesses Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of FIFTY PERCENT (50%) OF ONE PERCENT (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:
>
> A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said Code.
>
> B) On the gross receipts of keepers of garages, cars for rent or hire driven by the lessee, transportation contractors, persons who transport passenger or freight for hire, and common carriers by land, air or water, except owners of bancas and owners of animal-drawn two-wheel vehicle.

C) On the amount paid on every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services, except amounts paid by the government, its political subdivisions or instrumentalities; diplomatic services; public international organizations or any of their agencies based in the Philippines; and news services.

The tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter.

D) xxx xxx xxx."

"J) Section 24 shall read as follows:

'Sec. 24. Tax on Real Estate Developers, Dealers and Lessors — On real estate developers, dealers, lessors or sub-lessors of real estate including accessorias, apartels, pension inns, apartments, condominia, houses for lease, rooms and spaces for rent, a tax of SEVENTY FIVE PERCENT (75%) OF ONE PERCENT (1%) per annum on the gross receipts for the preceding calendar year is hereby imposed.

For newly started business, the initial tax shall be one-half (1/2) of one percent (1%) of the capital investment."

The above quoted provisions were enacted by the City Council of Manila pursuant to its tax making powers as provided under Section 151 and 143 of the Local Government Code (LGC), to wit:

"Sec. 151. Scope of Taxing Powers.- Except as otherwise provided in this Code, the City may levy taxes, fees, and charges which the province or municipality may impose: xxx"

"Sec. 143. Tax on Business.- The municipality may impose taxes on the following businesses:

(a) xxx xxx xxx

xxx xxx xxx

(h) **On any business, not otherwise specified in the preceding paragraphs**, which the sanggunian concerned may deem proper to tax:

> Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.
>
> The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein."
>
> (Underscoring and emphasis supplied)

Evidently, from the foregoing, both Sections 21 and 24 of Ordinance No. 7794, as amended, took their root in only one provision of the LGC, that is, Section 143. It is noteworthy to stress that under the said section, particularly paragraph (h) thereof, the business tax which may be imposed on "any business" comes with the proviso "not otherwise specified in the preceding paragraphs", which could only mean that the municipality, or the city for that matter, shall only impose the tax in either one of the paragraphs but definitely not both. When the City of Manila imposed through Sections 21 and 24 of their Revenue Code both taxes, such was clearly contrary to the express mandate of Section 143 (h) of the LGC. It is a well-established rule that rules and regulations implementing the provisions of the law cannot go beyond what the law is.

Moreover, a close scrutiny of these Sections reveals that Section 24 is a tax on real estate developers, dealers and lessors, while Section 21 is a business tax on persons who sell goods and services in their trade and business, and those who import goods whether for business or otherwise. Thus, there is no merit in the argument of the respondent that Section 24 is a tax on business while the tax under Section 21 is a tax on end-users or on the persons paying on the services and not on the business itself. Otherwise, if it is the person paying for the service who will be taxed, then the activity that is being taxed is the purchase of the goods. Section 21, however, is definitely a tax on the business subject to excise, value-added or percentage tax and not on the "purchasing power of the buyer", which is not a business activity. Section 21 of the Manila

Revenue Code reads, "*on any of the following businesses and articles of commerce subject to excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of xxx is hereby impose: On persons who sell goods and services in the course of trade and business; and those who import goods whether for business or otherwise xxx*". Thus, to reiterate, it is evident from the foregoing that Section 21 does not impose indirect taxes on business but imposes tax on business and articles of commerce which is subject to excise, VAT or percentage tax under the NIRC. Assessing business tax against petitioner under Section 21 and 24 clearly constitutes double taxation.

In a Supreme Court decision, the Highest Tribunal held that, "*Double taxation means taxing the same property twice when it should be taxed only once; that is xxx taxing of the same person twice by the same jurisdiction for the same thing.*"[34] It may be that double taxation is not prohibited, however, it becomes "obnoxious" where the taxpayer is made to pay twice for the same tax for the benefit of the same government entity or by the same jurisdiction for the same purpose.[35]

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **GRANTED**. Accordingly, the December 20, 2005 Decision and April 17, 2006 Order, both issued by the Hon. Mercedes Posada-Lacap of RTC Br. 15, City of Manila, are hereby **SET ASIDE**.

Accordingly, the August 6, 1999 assessment, in the amount of PhP71,799.79 representing tax due pursuant to Section 21 of Manila City Ordinance 7794, issued by the respondent City Treasurer of the City of Manila is hereby **WITHDRAWN** and **CANCELLED.**

---

[34] Commissioner of Internal Revenue vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003.
[35] Pepsi-Cola Bottling Company of the Philippines, Inc. vs. Municipality of Tanauan, Leyte, et al. L-31156, February 27, 1976, 69 SCRA 460.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice