REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

THE CITY GOVERNMENT OF TAYABAS, Represented by HON. ERNIDA A. REYNOSO, City Mayor, BRENDA SUMALABE, City Assessor, RENATO CALUPIG, City Treasurer, MARK JAY SUMILANG, Business Permit and Licensing Officer,
Petitioner,

-versus-

ST. JUDE MULTI-PURPOSE COOPERATIVE, Represented by its Manager, MELANIE FONTARUM,
Respondent.

CTA AC No. 254

Members:

BACORRO-VILLENA, *Acting Chairpersоn, and*
CUI-DAVID, *JJ.*

Promulgated:

MAY 2 9 2024

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RESOLUTION

CUI-DAVID, J.:

For resolution of the Court is petitioner's *Motion for Reconsideration* (*Motion*) filed on September 28, 2023, without respondent's comment per Records Verification dated February 16, 2024.

Petitioner's *Motion* assails the *Decision* promulgated on September 6, 2023, with the following dispositive portion:

> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **PARTIALLY GRANTED**.
>
> Accordingly, the ruling of Branch 167 of the Regional Trial Court of Lucena City, Quezon Province in Special Civil Action Case No. 2020-03 entitled *ST. JUDE MULTI-PURPOSE COOPERATIVE, Represented by its Manager, MELANIE FONTARUM v. THE CITY GOVERNMENT OF TAYABAS, represented by HON. ERNIDA A. REYNOSO City Mayor, BRENDA SUMALABE, City Assessor, RENATO CALUPIG, City Treasurer, MARK JAY SUMILANG, Business Permit and Licensing Officer* is **MODIFIED** as follows:
>
> 1. Respondent is **DECLARED** exempt from local business taxes pursuant to Section 61(3) of RA No. 9520 and Section 133(n) of the LGC.
>
> 2. Respondent's real properties are **DECLARED** exempt from real property taxes pursuant to Section 61(3) of RA No. 9520 and Section 234 of the LGC.
>
> 3. Petitioner is perpetually **ENJOINED** and **PROHIBITED** from further assessing and collecting business taxes and real property taxes from respondent pursuant to Section 61(3) of RA No. 9520 and Sections 133(n) and 234 of the LGC.
>
> 4. The ruling of Branch 167 of the Regional Trial Court of Lucena City, Quezon Province ordering petitioner to refund respondent the total amount of One Million, Five Hundred Twenty-One Thousand Eight Hundred Fifty-Six Pesos and Forty-Three Centavos (₱1,521,856.43) plus six percent (6%) per annum legal interest is **REVERSED** and **SET ASIDE**.
>
> Further, considering respondent's filing of a separate appeal before the Court of Appeals, let a copy of this *Decision* be **FURNISHED** to the Clerk of Court of the Court of Appeals for its information.
>
> **SO ORDERED**.

At the outset, the Court notes that the instant *Motion for Reconsideration* was filed out of time.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), as amended, provides:

> "SECTION 1. Who may and when to file motion. — **Any aggrieved party may seek a reconsideration** or new trial of any decision, resolution, or order of the Court **by filing a motion for reconsideration** or new trial **<u>within fifteen days</u>**

from the date of receipt of notice of the decision, resolution or order of the Court in question." [*Emphasis supplied*]

The rule is and has been that the period for filing a motion for reconsideration is *non-extendible.* [1] If no motion for reconsideration is filed on time, the judgment or final order of the court becomes final and executory.[2]

Records reveal that the Court sent the *Notice of Decision via* LBC, an accredited private courier, on September 11, 2023.[3] Said *Notice* was received by petitioner on September 12, 2023.[4]

Counting fifteen (15) days from September 12, 2023, petitioner had **until September 27, 2023**, to file a motion for reconsideration. Records reveal that it filed the instant *Motion for Reconsideration* on **September 28, 2023**, or one (1)-day late. [5] Hence, the Court rules that petitioner's *Motion for Reconsideration,* being time-barred, should be dismissed outright.

Even if the *Motion for Reconsideration* were filed on time, it would be denied for lack of merit.

Petitioner maintains in its *Motion for Reconsideration* that every local government unit (**LGU**) is vested with the power to impose and collect taxes under the Local Government Code (**LGC**); that respondent failed to show that its accumulated reserves and undivided net savings do not exceed ₱10,000,000.00 and that being subject to percentage tax necessarily means that respondent is likewise subject to local business tax, citing Section 143(h) of the LGC.

Petitioner also forwards the *Opinion* of the Cooperative Development Authority (**CDA**) dated February 20, 2022 ("***CDA Opinion***"), stating that a cooperative "that provide services like hotelier and events place and are transacting businesses with the general public" and "with accumulated reserves and undivided net savings of more than ... ₱10,000,000.00 ... shall pay the taxes at the full rate on the transactions with non-members." It prays for the reversal of the Court's ruling that respondent is exempt from real property taxes (**RPT**) considering that its properties were not actually, directly, and

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[1] *Apex Mining Co., Inc. v. Commissioner of Internal Revenue and Court of Appeals*, G.R. No. 122472, October 20, 2005.
[2] *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006.
[3] Docket, unpaged.
[4] Accessed at https://www.lbcexpress.com/track/MTM5NzU2NDU5MjU0aGFzaGxiY2V4cHJlc3M=
[5] Records Verification dated October 4, 2023, Docket, unpaged.

exclusively used for their "intended stated purpose," citing constitutional provisions, it contends that a cooperative is not among the taxpayers listed to be exempt from RPT.

Petitioner utterly fails to convince.

First, We have already established in the assailed decision that the applicable provision in the instant case is Section 61(3) of RA No. 9520.[6] We quote:

> ART. 61. Tax and Other Exemptions. — Cooperatives transacting business with both members and non-members **shall not be subject to tax on their transactions with members**. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, **such cooperatives dealing with nonmembers shall enjoy the following tax exemptions**:
>
> "(1) ... ...
>
> "(2) ... ...
>
> "(3) **All cooperatives, regardless of the amount of accumulated reserves and undivided net savings shall be exempt from payment of local taxes and taxes on transactions with banks and insurance companies**: Provided, **That all sales or services rendered for non-members shall be subject to the applicable percentage taxes except sales made by producers, marketing or service cooperatives**: Provided, further, That nothing in this article shall preclude the examination of the books of accounts or other accounting records of the cooperative by duly authorized internal revenue officers for internal revenue tax purposes only, after previous authorization by the Authority. [*Emphasis and underscoring supplied.*]

The import of this provision was sufficiently discussed, *viz.*:

> From the structure of the quoted provision, sales of a cooperative to its members are exempted from taxes. However, cooperatives dealing with non-members may still enjoy specific tax exemptions. Considering that respondent failed to show that its accumulated reserves and undivided net savings are below ₱10,000,000, the exemption found under Section 61(3) above is applicable.

[6] AN ACT AMENDING THE COOPERATIVE CODE OF THE PHILIPPINES TO BE KNOWN AS THE "PHILIPPINE COOPERATIVE CODE OF 2008.

> Accordingly, respondent is **exempt from local taxes**. The proviso in Section 61(3) of RA No. 9520 that "all sales or services rendered for non-members shall be **subject to the applicable percentage taxes** except sales made by producers, marketing or service cooperatives" does not pertain to local business tax, but pertains to percentage tax under the NIRC. Nowhere in the LGC did the law pertain to local business taxes as "percentage taxes." Hence, We cannot construe the proviso allowing the imposition of percentage tax as granting petitioner the power to impose local business taxes on a cooperative selling to non-members such as respondent herein. [*Emphasis on original.*]

It is settled that the exemption from local taxes does not exclude local business taxes. The fact that Section 61(3) of RA No. 9520 provides that sales or services rendered to non-members shall be subject to "applicable percentage taxes" cannot be interpreted to mean any of the taxes under the LGC.

Accordingly, We need not belabor anew on discussing such a matter.

Second, reliance on the *CDA Opinion* is misplaced. Aside from not being formally offered in evidence, the *CDA Opinion* does not explicitly tackle petitioner's power to impose local taxes or specifically name respondent. The CDA itself recognizes the limitation of said *Opinion*. The last paragraph provides:

> The opinion given may vary if there are changes or additional information on the query that will be given/cited.

With this, We find BLGF Opinion No. 026-2016 CO-LFPS-PPPSD entitled *Tax Exemption Privileges of St. Jude Multi-Purpose Cooperative of Lucena City*, issued on September 16, 2016, more compelling as it is issued specifically for respondent. The *Opinion* provides:

> Premises considered, it is our view that, **irrespective of the amount of accumulated reserves and undivided net savings, the SJMPC enjoys the tax exemption privileges afforded to it by law**.
>
> However, it is reiterated that said cooperative and all cooperatives registered with the Cooperative Development Authority are required to secure Mayor's permit and Community Tax Certificate, and pay the corresponding fees provided under BLGF MC No. 31-2009, which was reinstated under BLGF MC No. 58-2012 dated 20 August 2012, thus:

> ... ...
>
> Further, it is respectfully informed that this Bureau, through a letter of even date addressed to the City Treasurer of Tayabas City, instructed to verify the actual transactions of SJMPC. The instruction was given to determine the veracity of SJMPC's representation that it is doing business exclusively with its members. Once the examination is concluded, a report together with the supporting documents must be submitted the soonest possible time to this Bureau.
>
> Thus, this opinion is rendered without prejudice to the outcome of the examination to be conducted by the Office of the City Treasurer of Tayabas City. If the exclusivity of the transactions of the cooperative is proven to the contrary, then the appropriate tax treatment would be applied accordingly. [*Emphasis and underscoring supplied.*]

Further, We are not bound by opinions issued by administrative agencies. It is admitted that the Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction, or grave abuse of discretion conflicting with the letter and spirit of the law.[7] However, when an administrative or executive agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law. The administrative interpretation of the law is, at best, advisory, for the courts finally determine what the law means.[8]

Third, invoking Article VI, Section 28(3) of the 1987 Constitution is unnecessary. The said provision is quoted below:

> SECTION 28. ...
>
> (3) Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

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[7] *Eastern Telecommunications Philippines, Inc. v. International Communication Corp.*, G.R. No. 135992, January 31, 2006.

[8] *Peralta v. Civil Service Commission*, G.R. No. 95832, August 10, 1992, citing *Victorias Milling Co., Inc. v. Social Security Commission*, G.R. No. L-16704, March 17, 1962.

While petitioner is correct in stating that cooperatives are not included in the enumeration of constitutional RPT exemptions, We emphasize that respondent's basis for exemption on RPT is not on the above provision. Rather, it is based on Section 234(d) of the LGC. We quote:

> Section 234. Exemptions from Real Property Tax. - The following are exempted from payment of the real property tax:
>
> ...
>
> (d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938;

Relatedly, petitioner's contention that the property is not actually, directly, and exclusively used for their "intended stated purpose" removes the said properties from the ambit of RPT exemption is unmeritorious. Section 234(d) of the LGC was interpreted and discussed in the assailed *Decision*, to wit:

> Anent respondent's exemption from real property taxes, it has already been settled by the Supreme Court in *Provincial Assessor of Agusan Del Sur v. Filipinas Palm Oil Plantation, Inc.*[9] that "all real property owned by cooperatives" are exempt "without distinction." The Supreme Court continues that "nothing in the law suggests that the real property tax exemption only applies when the property is used by the cooperative itself. Similarly, the instance that the real property is leased to either an individual or corporation is not a ground for withdrawal of tax exemption."

Fourth, equally unnecessary is the invocation of Sections 15[10] and 19[11] of Article XII of the 1987 Constitution, as these provisions are not relevant to the resolution of the issues in the instant case.

All told, We find no cogent reason to depart from the assailed *Decision*.

WHEREFORE, in light of the foregoing, petitioner's *Motion for Reconsideration* is **DENIED** for being filed out of time and for lack of merit. Accordingly, the assailed Decision dated September 6, 2023, is declared **FINAL** and **EXECUTORY**.

[9] G.R. No. 183416, October 5, 2016.
[10] SECTION 15. The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.
[11] SECTION 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

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Considering the assailed Decision's finality, let an **ENTRY OF JUDGMENT** be made in the above-captioned case.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice