REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ASC INVESTORS, INC., Petitioner,	**CTA AC NO. 134** **(Civil Case No. 35,671-14)**
- versus -	Members: **CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **COTANGCO-MANALASTAS**, ***JJ.***
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City, Respondents.	Promulgated: JUL 14 2016 3:15 p.m.

x---x

DECISION

CASTAÑEDA, JR., ***J.***:

THE CASE

This is an appeal by way of a Petition for Review pursuant to Section 7(a)(3) of Republic Act (RA) No. 1125, as amended by RA No. 9282, filed by ASC Investors, Inc. on February 6, 2015, seeking to reverse and set aside the Orders dated October 15, 2014 and December 17, 2014, both issued by the Regional Trial Court (RTC) Branch 16 of Davao City in Civil Case No. 35,671-14 entitled "ASC Investors, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City".

THE FACTS

The facts, as found in the records of this case, are as follows:

Petitioner ASC Investors, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.[1] As per Articles of Incorporation, petitioner's primary purpose is as follows:

> "To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination 'holding corporation', and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation."[2]

On the other hand, respondent City of Davao is a local government unit (LGU) duly created by law; while respondent Rodrigo S. Riola is the incumbent City Treasurer of Davao City, being sued in his official capacity. Both respondents hold office at City Hall Building, San Pedro Street, Davao City.[3] Je

---

[1] Par. 10, The Parties, Petition for Review, docket, p. 7; Annex "P-9", docket, p. 109.

[2] Annexes "P-8" and "P-9", Petition for Review, docket, pp. 91-102 and pp. 103-114; Annexes "F" and "F-1", RTC Records, pp. 45-56 and pp. 57-68.

[3] Par. 11, The Parties, Petition for Review, docket, p. 7.

On January 20, 2014, respondent City of Davao, through respondent City Treasurer Riola, issued a Business Tax Order of Payment, assessing petitioner for alleged 0.55% local business tax on the dividends derived from its shares of stocks and interest on its money market placements for the third and fourth quarters of taxable year 2011 in the amount of ₱4,943,223.40.[4]

Consequently, on March 21, 2014, petitioner filed with respondent City Treasurer Riola its written administrative protest on the alleged erroneously and illegally assessed local business tax.[5]

On April 4, 2014, respondent City Treasurer Riola required petitioner to show proof of its payment of the local business taxes before the protest may be resolved. He informed petitioner that no protest shall be entertained unless the latter pays first the imposed tax pursuant to Section 423 of the 2005 Revenue Code of the City of Davao.[6]

Petitioner then sent a letter-reply[7] to respondent City Treasurer Riola on April 24, 2014, arguing that the requirement of payment under protest is invalid and unconstitutional for being inconsistent with Section 252 in relation to Section 195 of RA No. 7160; which provides that payment under protest is required only for protests on real property tax assessments and not on other local taxes.

In a letter[8] dated May 5, 2014, respondent City Treasurer Riola claimed that Section 423 of the 2005 Revenue Code of the City of Davao does not distinguish between real property and business taxes. He further contended that the Ordinance is a valid law. Hence, the Office of the City Treasurer is required to abide by it.

Due to the inaction of respondents on petitioner's protest, petitioner filed a Petition for Review[9] before the RTC of Davao City on June 9, 2014.

Subsequently, the RTC denied the Petition for Review in the Order[10] dated October 15, 2014, a copy of which was received by petitioner on October 17, 2014.[11] The Order pertinently states:

---

[4] Annex "P-3", Petition for Review, docket, pp. 43-46; Annex "A", RTC Records, pp. 22-25.
[5] Annex "P-4", Petition for Review, docket, pp. 47-54; Annex "B", RTC Records, pp. 26-33.
[6] Annex "P-10", Petition for Review, docket, p. 115; Annex "C", RTC Records, p. 34.
[7] Annex "P- 11", Petition for Review, docket, pp. 116-121; Annex "D", RTC Records, pp. 35-40.
[8] Annex "P-12", Petition for Review, docket, p. 122; Annex "D-1", RTC Records, p. 41.
[9] Annex "P-5", Petition for Review, docket, pp. 55-73; RTC Records, pp. 3-21.

"As such, being categorized as a **Financial Intermediary**, petitioner's principal income falls under the coverage of **paragraph (f), Section 143 of RA No. 7160 of the Local Government Code of 1991**, to wit:

> *'SECTION 143. Tax on Business. – **The municipality may impose taxes on the following businesses**:*
>
> *xxx*
>
> *(f) On banks and other **financial institutions**, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, **dividends**, rentals on property and profit from exchange for sale of property, insurance premium.'*

FOR REASONS STATED, the instant 'Petition for Review' filed by the Petitioner under Section 195 of Republic Act No. 7160 is hereby **DENIED** and/or **DISMISSED.**

SO ORDERED."

On November 20, 2015, petitioner filed a Motion for Reconsideration,[12] arguing that the RTC erroneously held that petitioner is a non-bank financial intermediary. This was denied by the RTC in its Order[13] dated December 17, 2014, which petitioner received on the same date.[14] The dispositive portion of the December 17, 2014 Order states:

"As such, the ***'Motion for Reconsideration'*** filed by petitioner through counsel is hereby **DENIED.**

[10] Annex "P-1", Petition for Review, docket, pp. 29-41; RTC Records, pp. 123-135.
[11] RTC Records, p. 135.
[12] Annex "P-6", Petition for Review, docket, pp. 74-85; RTC Records, pp. 136-147.
[13] Annex "P-2", Petition for Review, docket, p. 42; RTC Records, p. 160.
[14] RTC Records, p. 160.

SO ORDERED."

on February 6, 2015,[15] petitioner filed the instant Petition for Review.[16]

However, the Court dismissed the Petition in the Resolution[17] promulgated on February 24, 2015, for failure of petitioner to furnish respondents a copy of the Petition for Review, pursuant to Sections 1 and 3, Rule 42 of the Rules of Court.

Consequently, petitioner filed a Motion for Reconsideration (Of the Resolution dated 24 February 2015) on March 3, 2015, which was granted in the Resolution[18] dated June 23, 2015.

The Court received the entire original records of Civil Case No. 35,671-14 from the RTC on July 30, 2015[19].

Thereafter, petitioner filed its Memorandum[20] on July 29, 2015 through registered mail, which was received by the Court on August 10, 2015. On the other hand, respondents failed to file a Memorandum as per Records Verification[21] issued by this Court's Judicial Records Division on August 14, 2015.

In the Resolution[22] dated August 20, 2015, the instant Petition for Review was declared submitted for decision. Hence, this Decision.

THE ISSUES

Petitioner presented the following issues[23] to be resolved by this Court:

1. Whether or not the City of Davao may require ASCI to pay 0.55% local business tax for the third and fourth quarters of 2011 on the dividends on its SMC

---

[15] Docket, p. 5.
[16] Docket, pp. 5-26.
[17] Docket, p. 169.
[18] Docket, pp. 241-243.
[19] Docket, p. 248.
[20] Docket, pp. 249-279.
[21] Docket, p. 283.
[22] Docket, p. 284.
[23] Docket, p. 256.

shares of stock and interest income on its money market placements for the year 2010; and

2. Whether or not Davao City's requirement that petitioner should pay under protest the alleged deficiency local business tax before acting on its protest is valid.

THE RULING

Before resolving the case on the merits, the Court shall first determine whether it has jurisdiction over the present case, inasmuch as it is the duty of the courts to consider the question of jurisdiction before they look into other matters involved in the case, even if such question is not raised by any of the parties. After all, courts are bound to take notice of the limits of their authority and, even if such question is neither raised by the pleadings nor suggested by counsel, they may recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[24]

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[25] Section 7(a)(3) of RA No. 1125, as amended by RA No. 9282, provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (3) Decisions, order or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

---

[24] *Bureau of Customs vs. Devanadera, et al.,* G.R. No. 193253, September 8, 2015.

[25] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.),* G.R. No. 169778, March 12, 2014.

In relation thereto, Section 3(a)(3) of Rule 4 and Section 3(a) of Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, state:

"RULE 4
Jurisdiction of the Court

xxx xxx xxx

SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

xxx xxx xxx

(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;"

"RULE 8
Procedure in Civil Cases

xxx xxx xxx

SEC. 3. *Who may appeal; period to file petition.* –

(a) **A party adversely affected** by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or **by a decision or ruling of** the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or **a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by <u>petition for review filed within thirty days after receipt of a copy of such decision or ruling</u>**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes." *(Emphasis supplied)*

Based on the foregoing, it is clear that an appeal from the resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction may be done by filing a Petition for Review before the Court of Tax Appeals within thirty (30) days from notice of the decision or ruling.

A perusal of the records indicates that petitioner's counsel received the Order denying the Motion for Reconsideration on December 17, 2014.[26] Thus, petitioner had thirty days therefrom or until January 16, 2015 within which to file its Petition for Review.

However, petitioner filed the instant Petition for Review only on February 6, 2015,[27] fifty-one (51) days after its counsel received the trial court's Order denying its Motion for Reconsideration. Clearly, this Court has no jurisdiction to entertain the instant petition.

Time and again, it has been held that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost.[28] Petitioner failed to comply with the requirements of the rules governing appeals; thus, petitioner lost its right to appeal.

WHEREFORE, in view thereof, the instant Petition for Review is **DISMISSED**, for lack of jurisdiction.

---

[26] RTC records, p. 160.
[27] Docket, p. 5.
[28] *Manila Mining Corporation vs. Lowito Amor, et al.,* G.R. No. 182800, April 20, 2015.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(On Wellness Leave)
CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice