

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

SMART COMMUNICATIONS, CTA AC NO. 176
INC., (Special Civil Action No. 24-2014-05)

Petitioner,

Members:

-versus-

THE MUNICIPALITY OF JONES, FABON-VICTORINO, *Chairperson*
ISABELA, Rep. by the Hon. FABON-VICTORINO, *and*
Municipal Mayor Leticia T. RINGPIS-LIBAN, *II.*
Sebastian and Municipal Promulgated:
Treasurer Abelardo Salvador,

Respondent.

MAY 25 2017

10:59 a.m.

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RESOLUTION

For resolution are:

1. Petitioner's Motion for Reconsideration (Re: Resolution dated February 21, 2017) ("Motion for Reconsideration") filed by registered mail on March 27, 2017; with respondent's Comment/Opposition (To The Motion for Reconsideration) ("Comment") filed by registered mail on April 5, 2017;

2. Respondent's Motion to Withdraw filed by registered mail on May 8, 2017; and

3. Respondent's Compliance filed by registered mail on May 5, 2017.

On February 21, 2017, the Court dismissed the present Petition for Review for lack of jurisdiction. By way of background, the Court explained that the Petition for Review arose from the passage and implementation of *Municipal Ordinance No. 2009-003 ("Ordinance")* which imposed an annual tower fee for the operation of towers. This

resulted to petitioner's filing of a Petition - Special Civil Action for *Certiorari* and Prohibition ("Special Civil Action") with Regional Trial Court, Branch 24 - Echague, Isabela ("RTC"), raising the following issues: (1) whether the Ordinance is a valid piece of local legislation; (2) whether the RTC has jurisdiction to resolve the Special Civil Action; (3) whether the imposition of Php200,000.00 tower fee is revenue or regulatory; and (4) whether the Ordinance is in the form of taxation or regulation. The RTC dismissed the Special Civil Action for not being the proper action and for having no legal and factual basis. Petitioner's Motion for Reconsideration was likewise denied. Petitioner, then, filed the instant Petition for Review questioning the Decision and the Order of the RTC, raising the following issues: (1) whether the RTC gravely and seriously erred in ruling that its Special Civil Action for *Certiorari* is not the proper action; (2) whether the RTC gravely and seriously erred in ruling that the Ordinance did not violate the prohibition against double taxation, and that the imposed tower fee was not unjust, excessive, oppressive, confiscatory, and contrary to declared policy; and (3) whether the RTC gravely and seriously failed to rule on the vagueness of the Ordinance. Relying on *Section 7(a)(3) of Republic Act ("RA") No. 1125* and *Section 3 of the Revised Rules of the CTA*, the Court declared that the present case does not deal with a local tax case, in view of the fact that the assessment against petitioner is not the one in issue but the validity of the Ordinance. Hence, there is no actual local tax case decided by the RTC to be elevated by appeal to the Court, over which the latter can exercise jurisdiction.

In its Motion for Reconsideration filed by registered mail on March 27, 2017, petitioner avers that the case filed with the RTC, elevated to the Court, is a tax case; that the subject of the Special Civil Action is the tower fee imposed by respondent; and that the tower fee is a tax.

On April 5, 2017, respondent filed by registered mail its Comment wherein it counters that petitioner's allegations are mere reiterations of those previously presented, and were already disposed of by the Court; that the Court has no jurisdiction to entertain the present Petition for Review; that *certiorari* and prohibition will not lie against respondent; that the Petition for Review is premature for failure of petitioner to avail of the remedy of administrative review; that the ordinance is a valid piece of local legislation; and that there was no double taxation.

On April 21, 2017, the Court issued a Minute Resolution ordering counsel for respondent to file an additional copy of the Comment within five (5) days from notice. Otherwise, the same shall be deemed as not filed.

On May 5, 2017, the respondent filed *via* registered mail its Compliance, with attached additional two (2) copies of the Comment.

On May 8, 2017, respondent's counsel, Atty. Leif John L. Robino, filed by registered mail his Motion to Withdraw, with attached appointment letter. He states that due to his recent appointment as Clerk of Court of Regional Trial Court, Branch 22, Cabagan, Isabela, he requests to withdraw his personal appearance as counsel for respondent; and prays for future notices or processes of the Court, and pleadings, motions, or correspondences be sent directly to Atty. Francis James E. Meer.

Acting on counsel for respondent's Motion to Withdraw, the same is hereby **NOTED**. Henceforth, let a copy of all pleadings, orders, and processes be served and furnished to Francis James E. Meer, the Provincial Legal Office, Province of Isabela, 2nd Floor, Capitol Building, Alibagu, Ilagan City, Isabela.

As to respondent's Compliance, the same is hereby **NOTED** and **DEEMED COMPLIANT** with the order of the Court *per* April 21, 2017 Minute Resolution.

Lastly, the Court finds no merit in petitioner's Motion for Reconsideration for the arguments raised therein have been threshed out in the assailed Resolution. Nonetheless, the Court would like to emphasize that jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.¹ In order for a court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter, which is the power to hear and determine the general class to which the proceedings in question belong, and is conferred by law and not by the consent or acquiescence of any or all of the parties or by an erroneous belief of the court that it exists.² The Supreme Court has declared that jurisdiction over the subject matter is conferred by law and is

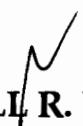
¹ *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

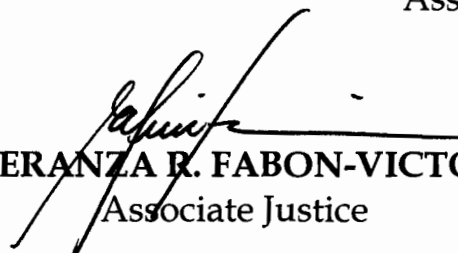
² *Id.*

determined by the allegations in the complaint and the character of the relief sought.³ Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.⁴

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Resolution dated February 21, 2017) is hereby **DENIED** for lack of merit.

SO ORDERED.


LOVELL R. BAUTISTA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

³ *Katon v. Palanca, Jr., et. al.*, G.R. No. 151149, September 7, 2004, 437 SCRA 565.
⁴ *Supra* note 1.