REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

CITY TREASURER OF MANILA,
Petitioner,

-versus-

CHINA BANKING CORPORATION and the Hon. Presiding Judge, Regional Trial Court, Branch 173, Manila,
Respondents.

C.T.A. AC NO. 66
(RTC Civil Case No. 07-117075)

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

OCT 01 2010
chil 3:17 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Settled is the rule that courts are bound to take notice of the limits of their authority and they may, by their own motion, even though the question is not raised by the pleadings, or not even suggested by counsel, 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 *(Ace Publications, Inc., vs. Commissioner of Customs and the Collector of Customs, 11 SCRA 153)*.

THE CASE

This is an appeal by way of a Petition for Review under *Section 7(a)(3) of RA 9282* filed by the City Treasurer of Manila (hereafter "petitioner") of the Decision dated August 28, 2008, rendered by the Regional Trial Court ("RTC") of Manila, Branch 173, in Civil Case No. 07-117075, entitled "China Banking Corporation vs. Hon. Liberty M. Toledo, in her capacity as City Treasurer of Manila", the dispositive portion of which reads, as follows:

> "WHEREFORE, premises considered, the petition is GRANTED. The respondent is hereby ordered to refund the amount of One Hundred Fifty Four Thousand Three Hundred Ninety Eight and 50/xx (P154,398.50) representing assessment paid by the plaintiff under Section 21 of Ordinance No. 7988, as amended by Tax Ordinance No. 8011.
>
> SO ORDERED."

and the Order dated March 29, 2010, denying respondent's "Motion For Reconsideration", the dispositive portion of which reads, as follows:

> "WHEREFORE, based on all the foregoing, the Motion For Reconsideration dated October 27, 2008 filed by the defendant is hereby DENIED for lack of merit.
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> SO ORDERED."

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THE PARTIES

Petitioner Vicky R. Valientes is of legal age, Filipino and currently the In-Charge of Office – City Treasurer, Manila with Office address at City Treasurer's Office, City Hall, Manila.

Respondent China Banking Corporation (hereafter "respondent CBC") is a universal banking corporation organized and operating under existing Philippine laws, with principal office address at No. 8745 Paseo de Roxas, corner Villar Street, Makati City.

Respondent Hon. Presiding Judge of the RTC, Branch 173, Manila (hereafter "public respondent") is being impleaded as a nominal party, with office address at 5th Floor, City Hall Building, Arroceros Street, Manila.

THE FACTS

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

On January 2007, on the basis of the reported income of respondent CBC's Sto. Cristo Branch, Binondo, Manila, amounting to P34,310,777.34 for the year ending December 31, 2006, respondent CBC was assessed the amount of P267,128.70 by petitioner City Treasurer of

Manila, consisting of local business tax, business permits, and other fees for taxable year 2007, broken down as follows:

Particulars	Amount of Tax and Fees	Discount	Amount Due
Tax on Coml Bank	P102,932.33	P10,293.23	P92,639.10
Tax on Rentals of Equipt	54.00	5.40	48.60
Business Permit Fee (0801)	3,215.00	-	3,215.00
Business Permit Fee (079926)	1,200.00	-	1,200.00
Business Permit Fee (0802)	3,000.00	-	3,000.00
Sanitary Inspection Fee	400.00	-	400.00
Garbage Svcs Charges	3,500.00	-	3,500.00
Occupational Tax	2,880.00	-	2,880.00
OCC/PC/HC	5,640.00	-	5,640.00
Plumbing Insp Fee	7.50	-	7.50
Electrical Insp Fee	50.00	-	50.00
Bldg Insp Fee	50.00	-	50.00
Signboard Insp Fee	40.00	-	40.00
SEC 21	171,553.89	17,155.39	154,398.50
Business Registration Stick	60.00	-	60.00
TOTAL	P294,582.72	P27,454.02	P267,128.70

On January 15, 2007, respondent CBC paid the amount of P267,128.70 and protested, thru a Letter dated January 12, 2007, the imposition of business tax under *Section 21 of the Manila Revenue Code* in the amount of P154,398.50, on the ground that it is not liable of said additional business tax and the same constitutes double taxation.

On February 8, 2007, petitioner acknowledged receipt of respondent CBC's payment under protest of the assessed amount and further informed respondent that she will await for respondent's formal protest.

On March 27, 2007, respondent CBC wrote a letter-reply to petitioner's Letter dated February 8, 2007, reiterating that respondent already protested the additional assessment under *Section 21 of the Manila Revenue Code* in its Letter dated January 12, 2007. In the same Letter, respondent averred that pursuant to *Section 195 of the Local Government Code ("LGC")*, petitioner had until March 16, 2007 within which to decide the protest, and considering that respondent received the Letter dated February 8, 2007, four days after the deadline to decide and petitioner did not even resolve the protest, respondent formally demanded the refund of the amount of P154,398.50, representing the business tax collected under *Section 21 of the Manila Revenue Code.*

On April 17, 2007, respondent CBC filed a Petition for Review with the RTC of Manila, Branch 173, entitled "China Banking Corporation vs. Hon. Liberty M. Toledo in her capacity as City Treasurer of Manila", docketed as Civil Case No. 07-117075, raising the sole issue

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of whether or not respondent is subject to the local business tax imposed under *Section 21 of the Manila Revenue Code.*

On October 14, 2008, respondent CBC received the Decision dated August 28, 2008 rendered by the RTC of Manila in the terms earlier set forth.

On October 28, 2008, respondent CBC filed a "Motion for Reconsideration", which was denied in an Order dated March 29, 2010.

Hence, this appeal.

On May 17, 2010 respondent CBC filed its "Comment" alleging the following: on January 15, 2007, respondent filed a written protest of the assessment when it paid under protest the amount assessed; in a Letter-Reply dated March 27, 2007, respondent reiterated that it already protested the local business tax assessment in a Letter dated January 15, 2007 and even expounded its arguments in support of the protest; it was only after petitioner failed to decide respondent's protest within the period mandated by law that respondent instituted an appeal before the RTC; respondent filed a written claim for refund, as required by *Section 196 of the LGC* in the Letter dated March 27, 2007; the action before the

RTC is primarily an appeal pursuant to *Section 195 of the LGC*, the prayer for refund is merely incidental in the event that the assessment under *Section 21 of the Manila Revenue Code* is invalidated; and the RTC has jurisdiction to decide the case since respondent's petition was filed pursuant to *Section 195 of the LGC*.

On June 18, 2010, we ordered the parties to file their simultaneous memoranda, within thirty days from notice; afterwhich, the case shall be deemed submitted for decision.

Both parties having filed their respective memorandum, the case was deemed submitted for decision on August 3, 2010.

Petitioner CIR raises the following:

<u>ISSUES</u>

I

WHETHER OR NOT THE TRIAL COURT ERRED IN GRANTING THE PETITION FOR REFUND OF RESPONDENT CHINA BANKING CORPORATION WITHOUT A WRITTEN CLAIM FOR REFUND.

II

WHETHER OR NOT RESPONDENT HAS EXHAUSTED AVAILABLE ADMINISTRATIVE REMEDIES.

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III

WHETHER OR NOT THE TRIAL COURT HAS JURISDICTION OVER THE CASE CONSIDERING THAT THE AMOUNT BEING CLAIMED FOR REFUND IS ONLY P154,398.50.

THE COURT'S RULING

Issue on Jurisdiction

Before resolving the other issues raised by petitioner, we will first address the issue on jurisdiction: whether or not the trial court has jurisdiction over the case.

Petitioner contends that the RTC has no jurisdiction over the instant case as the amount being claimed is only P154,398.50, which amount is within the expanded jurisdiction of the Metropolitan Trial Court under the *Revised Rules on Summary Procedure*, as provided in *A.M. No. 02-11-09-SC*, as well as under *B.P. 129, as amended by RA 7691.*

Respondent CBC counters that the initiatory pleading before the court *a quo* was in the form of a petition for review, pursuant to *Section 195 of the LGC*, hence the *Revised Rules on Summary Procedure* and *B.P. 129* have no application in the present case.

After a careful examination of the evidence on record, we find that the RTC has no jurisdiction over the Petition for Review filed in Civil Case No. 07-117075 for the following reasons:

1) *Section 195 of the LGC* provides:

> "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, 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 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-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

Pursuant to the above provision, the taxpayer may file a written protest with the local treasurer, within 60 days from receipt of the notice of assessment; otherwise the assessment shall become final and executory. Within 60 days from the filing of the protest, the local treasurer shall decide the protest. If the local treasurer denies the protest, the taxpayer shall have a period of 30 days from receipt of the denial, or if the local treasurer did not act on the protest, the taxpayer shall have a period of 30 days from the lapse of the 60-day period, within which to appeal the denial or the inaction with the court of competent jurisdiction. Otherwise, the assessment becomes conclusive and unappealable.

2) In this case, records show that on January 11, 2007, respondent CBC was assessed of deficiency local business tax, business permits, and other fees for taxable year 2007 in the amount of P267,128.70. Included in said assessment is the deficiency business tax assessment under *Section 21 of the Manila Revenue Code* in the amount of P154,398.50, which respondent paid under protest on January 15, 2007 *(Annex "D", Petition for Review, Civil Case No. 07-117075)*. Pursuant to the afore-quoted provision, the local treasurer, petitioner herein, has 60 days from January 15, 2007 or until March 16, 2007, within which to decide the protest.

On February 8, 2007, petitioner wrote a Letter to respondent CBC acknowledging receipt of respondent's payment under protest of the business tax assessment in the amount of P154,398.50. Petitioner, however, did not rule on respondent's protest; instead, petitioner informed respondent that it will await for respondent's formal letter of protest.

On March 27, 2007, respondent CBC wrote a letter to petitioner, reiterating that it already protested the assessment for business tax under *Section 21 of the Manila Revenue Code* in the Letter dated January 15, 2007. In the same Letter dated March 27, 2007, respondent CBC averred that pursuant to *Section 195 of the Local Government Code*, petitioner had until March 16, 2007, within which to decide the protest, and considering that respondent received the Letter dated February 8, 2007, allegedly four days after the deadline to decide and petitioner did not even resolve the protest, respondent formally demanded the refund of the amount of P154,398.50, representing the business tax collected under *Section 21 of the Manila Revenue Code*.

Since petitioner did not resolve respondent CBC's protest filed on February 15, 2007, as admitted by no less than respondent itself, wherein the deadline to resolve the same was on March 16, 2007, respondent has 30 days from March 16, 2007, or until April 16, 2007 (April 15, 2007 having fall on a Sunday), within which to appeal with the court of competent jurisdiction the inaction of petitioner, pursuant to *Section 195 of the LGC*.

In the case of *Yamane vs. Lepanto Condominium Corporation, 474 SCRA 267 ("Yamane case"),* the Supreme Court ruled that the court of competent jurisdiction, referred to in *Section 195 of the LGC, is the Regional Trial Court*.

While Civil Case No. 07-117075 was filed before the RTC of Manila, Branch 173, a court of competent jurisdiction, pursuant to the *Yamane case*, records show, however, that respondent CBC filed the Petition for Review only on April 17, 2007, one day way beyond the 30-day period prescribed under *Section 195 of the LGC*. The assessment dated January 11, 2007, had, therefore, become conclusive and unappealable, pursuant to same *Section 195*. When an assessment had become conclusive and unappealable, the taxpayer, respondent herein, is precluded from interposing the defense of legality or validity of the assessment *(Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 522 SCRA, 151)*. Moreover, the taxpayer is already barred from disputing the correctness of the assessment or invoking any defense that would reopen the question of its tax liability on the merits (*Commissioner of Internal Revenue vs. Concepcion, 22 SCRA 1061-1062).*

Considering that respondent CBC filed the Petition for Review in Civil Case No. 07-117075 raising the sole issue of whether or not respondent is subject to the local business tax imposed under *Section 21 of Manila Revenue Ordinance*, a question involving the legality of the said assessment; respondent is, therefore, precluded from questioning said assessment, pursuant to the above-cited law and jurisprudence.

Accordingly, the RTC of Manila, Branch 173, has no more authority to rule on the validity of the assessment dated January 11, 2007.

3) In the case of *Ker and Company, Ltd. vs. Court of Tax Appeals, 4 SCRA 163*, the Supreme Court ruled that while the right to appeal a decision of the Commissioner to the CTA is merely a statutory remedy, nevertheless, the requirement that it must be brought within 30 days is jurisdictional. Settled is the rule that if a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time. Such requisite is jurisdictional and failure to

comply therewith may be raised in a motion to dismiss *(Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 491 SCRA 221)*. Furthermore, it bears stressing that perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional as well and failure to perfect an appeal has the effect of rendering the judgment or resolution final and executory *(Insular Savings and Trust Company vs. Spouses Runes, Jr., et. al., 436 SCRA 326)*. In fact, failure to perfect an appeal as required by the rule has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction on the case *(Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 19, 2010)*.

In the same manner, the period to appeal with the court of competent jurisdiction (RTC), the denial or the inaction of the local treasurer within 30 days from the receipt of the denial or the lapse of the period to decide, under *Section 195 of the LGC,* is also mandatory and jurisdictional. Hence, respondent's filing of the Petition for Review in Civil Case No. 07-117075 beyond the 30-day period to file the petition made the assessment final and executory and non-appealable.

Indeed, the general rule remains that a court's lack of jurisdiction may be raised at any stage of the proceedings, even on appeal *(Francel Realty Corporation vs. Sycip, 469 SCRA 431)*. Moreover, where prescription, lack of jurisdiction or failure to state a cause of action clearly appear from the complaint filed with the trial court, the action may be dismissed *motu proprio* by the appellate court, even if the case has been elevated for review on different grounds *(Katon vs. Palanca, Jr., 437 SCRA 567)*. Verily, the dismissal of such cases appropriately ends useless litigations *(Katon vs. Palanca, Jr., et. al., supra)*.

The Petition For Review filed with the RTC of Manila, Branch 173, having been filed late, said court has no jurisdiction to entertain the Petition for Review.

Other Issues

Having reached the above conclusion, the discussion of the other issues becomes superfluous. There being want of jurisdiction, the resolution of the issues of whether or not the RTC erred in granting the claim for refund without a written claim for refund and whether or not respondent has exhausted available administrative remedies has been rendered moot and academic.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. The Decision dated August 28, 2008 and Order dated March 29, 2010, rendered by the RTC of Manila, Branch 173, are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Petition For Review filed in RTC Civil Case No. 07-117075 is hereby **DISMISSED** for being filed late.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

A T T E S T A T I O N

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice