REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

MICHIGAN HOLDINGS, INC.,

Petitioner,

-versus-

THE CITY TREASURER OF MAKATI CITY, NELIA A. BARLIS,

Respondent.

CTA EB No. 1093
(CTA AC No. 99)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUN 17 2015
x - 1:16 p.m. x

DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed on December 20, 2013, assailing the Resolution dated November 19, 2013 of the Second Division of this Court in CTA AC No. 99, denying herein petitioner's Motion for Reconsideration of the Decision dated September 19, 2013. The said Decision, as upheld by the Resolution, dismissed for lack of merit the petitioner's appeal against the Decision dated September 21, 2011 and Order dated October 4, 2012 of the Regional Trial Court (RTC), Branch 134, Makati City in Civil Case No. 08-225.

THE PARTIES

Petitioner Michigan Holdings, Inc. ("Michigan Holdings") is a domestic corporation organized and existing under the laws of the Philippines, with principal place of business at the 33rd Floor, Tower One Building, Ayala Triangle, Ayala Avenue, Makati City. It may be served with legal processes through its counsel Nolledo Hermosura & Uriarte-Tan at the 3rd Floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.

The respondent is the duly-appointed City Treasurer of the City of Makati, with the power to impose and collect local business tax (LBT) under the Revised Makati Revenue Code. Respondent may be served with legal processes at the Office of the City Treasurer, Makati City Hall, Makati City, or thru statutory counsel Attys. Pio Kenneth I. Dasal and Anthony T. Zamora, Office of the City Attorney, 18th Floor, New Makati City Hall, Makati City.

JURISDICTIONAL FACTS

The petitioner received the assailed Resolution dated November 19, 2013 on November 22, 2013. On December 6, 2013, petitioner filed a Motion for Extension of Time to File Petition for Review, seeking an extension of fifteen (15) days from December 7, 2013, or until December 21, 2013, within which to file its Petition for Review. On December 10, 2013, this Court resolved to grant the motion.

The instant Petition for Review was filed on December 20, 2013, and was therefore timely filed.

The Decision and Resolution of the Second Division of this Court in CTA AC No. 99 appealed from involves a local tax case decided by the RTC of Makati City in the exercise of its original jurisdiction, and is therefore within the exclusive appellate jurisdiction of the Court *En Banc* to review by appeal, under Section 2(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals.[1]

FACTUAL ANTECEDENTS

On January 24, 2008, Michigan Holdings received a Billing Assessment from the respondent, assessing it for Mayor's Permit Fee, City License Fee, and Local Business Tax (LBT) for CY 2006, in the total amount of ₱1,277,418.53. The LBT accounted for ₱660,521.40, inclusive of surcharge and interest.

On January 29, 2008, Michigan Holdings filed a protest letter contesting the deficiency LBT assessment, pointing out that the revenues being subjected to LBT were generated from passive investments/income, consisting of the following:

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[1] A.M. No. 05-11-07-CTA.

Dividend Income	₱ 171,677,633.00
Gain on sale of shares sold thru the stock exchange	9,798,817.00
Interest income from money market placements	4,823,854.00
Collection of utilities from lessor	1,458,295.00
TOTAL	₱ 187,758,629.00

On February 6, 2008, respondent, by letter, partially granted the protest by excluding revenues from the gain on sale of shares sold thru the stock exchange and interest income from money market placements, which were already subjected to final income taxes. The protest on dividend income was denied by the respondent, who invoked Section 3A.02(p) of the Revised Makati Revenue Code.

On March 14, 2008, Michigan Holdings moved for reconsideration of the remaining denial of its protest. This request, however, was not acted upon by the respondent. Thus, before the expiration of the sixty (60)-day period from its receipt of the Billing Assessment, Michigan Holdings filed a complaint before the RTC of Makati City for the cancellation and withdrawal of the remaining LBT assessment on dividend income. The complaint was raffled to RTC Branch 134 and docketed as Civil Case No. 08-225. Thereat, the litigants agreed on a sole issue: whether or not the City Treasurer of Makati City may levy LBT on dividend income. Michigan Holdings posited that under Section 133(a) of the Local Government Code of 1991, dividend income is subject to income tax, which the local government unit is prohibited from imposing except on banks and other financial institutions.

On September 21, 2011, the RTC dismissed Michigan Holdings' appeal on the ground that it was directed not at the tax assessment but rather at the validity of Section 3A.02(p) of the Revised Makati Revenue Code. The RTC held that it had no jurisdiction to rule on the validity of the said provision.

On October 4, 2012, the RTC denied Michigan Holdings' motion for reconsideration. It pointed out that the proper remedy would be to question the validity of the provision under Section 187 of the Local Government Code.

On November 19, 2012, Michigan Holdings filed its petition for review, which was docketed as CTA AC No. 99 and heard by this Court's Third Division. Subsequently, in the ensuing reorganization of this Court, the case was transferred to the Second Division.[2]

[2] CTA Third Division Order dated April 4, 2013.

On January 28, 2013, respondent filed her Comment, to which Michigan Holdings filed its Reply on February 15, 2013.

On April 19, 2013, the parties were given thirty (30) days from notice within which to file their memoranda.

On June 14, 2013, Michigan Holdings filed a Manifestation that it would no longer submit a Memorandum but would simply be adopting all the allegations and arguments stated in its Petition for Review and Reply.

On July 4, 2013, respondent submitted her Memorandum.

On July 10, 2013, the case was deemed submitted for decision.[3]

On September 19, 2013, the Second Division promulgated its Decision, dismissing Michigan Holdings' petition for lack of merit. The Decision stated that the authority to decide the legality of Section 3A.02(p) of the Revised Makati Revenue Code is lodged with the Secretary of Justice, pursuant to R.A. No. 7160 and its IRR.

On October 4, 2013, Michigan Holdings moved for reconsideration of the Second Division's Decision. On October 30, 2013, the respondent filed her Comment on Michigan's motion, to which Michigan filed its Reply on November 14, 2013. Subsequently, the motion for reconsideration was denied on November 19, 2013, again for lack of merit.

On December 6, 2013, Michigan Holdings filed a Motion for Extension of Time to File Petition for Review. This was granted by the Court *En Banc* on December 10, 2013; Michigan was given until December 21, 2013 for the filing of the said Petition.

On December 20, 2013, Michigan Holdings filed the instant Petition for Review.

On February 3, 2014, respondent was given ten (10) days from notice within which to file her Comment. Respondent filed her Comment on March 12, 2014.

[3] CTA Second Division Resolution dated July 10, 2013.

On April 11, 2014, the parties were granted thirty (30) days for the filing of their memoranda. Respondent filed her Memorandum on June 10, 2014.

On June 13, 2014, petitioner filed a Motion for Additional Time to File Memorandum. This was granted by this Court on June 18, 2014, giving the petitioner until July 3, 2014 for the filing of its Memorandum.

On June 19, 2014, Michigan Holdings filed a Motion for Additional Time to File Memorandum. It sought an extension of twenty (20) days, or until July 3, 2014, for the purpose. On July 3, 2014, however, Michigan filed a second similar motion; this was granted and Michigan was given until July 17, 2013. The Memorandum was eventually filed on July 9, 2014.

On August 28, 2014, the Court deemed the case submitted for decision.

ISSUES

The two (2) issues raised by the petitioner are whether or not this Court's Second Division erred --

> IN FINDING THAT THE REGIONAL TRIAL COURT, BRANCH 134, MAKATI CITY HAD NO JURISDICTION TO RULE ON THE CONSTITUTIONALITY AND LEGALITY OF SECTION 3A.02(p) OF THE REVISED MAKATI REVENUE CODE;
>
> and
>
> IN NOT REMANDING THE CASE TO THE REGIONAL TRIAL COURT, BRANCH 134, MAKATI CITY, FOR THE PURPOSE OF DECIDING THE CASE ON THE MERITS.

It is apparent, however, that the second issue would arise only if the Second Division did in fact err in the first.

For comparison, the sole issue that the petitioner submitted to the Second Division was as follows:

> THE RTC ACTED NOT IN ACCORD WITH OR CONTRARY TO THE CONSTITUTION AND JURISPRUDENCE WHEN IT DISMISSED THE COMPLAINT FOR CANCELLATION OF LOCAL TAX ASSESSMENT ON THE GROUND THAT IT HAS NO JURISDICTION TO RULE ON THE CONSTITUTIONALITY AND LEGALITY OF SECTION 3A.02(p) OF THE REVISED MAKATI REVENUE CODE.

And in the trial court, the sole issue agreed upon between the litigants and approved by the court was:

> WHETHER OR NOT THE CITY TREASURER OF MAKATI CITY MAY LEVY LOCAL BUSINESS TAX ON DIVIDEND INCOME.

From the foregoing, it may be seen that the issue seemingly morphed from the time it was brought before the trial court, to the time the case was elevated to this Court *En Banc*. However, it has been held that "issues not included in the pre-trial order may be considered ... if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication."[4] An appellant "may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties."[5]

Moreover, the defense consistently raised by the respondent is that the petitioner failed to question the legality or constitutionality of the Revised Makati Revenue Code within the period prescribed therefor by Section 187 of the Local Government Code, and thus petitioner may no longer assail the tax ordinance before the courts. The respondent is thus not disadvantaged by petitioner's apparent change of theory at this level. There is no surprise sprung in this present appeal, which surprise "is the *raison d' etre* of the prohibition against such a change of theory."[6] Only "points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage."[7]

As the Court shall discuss below, if any party was prejudiced by a change in the theory of the case, it was the petitioner, before the trial court.

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[4] See *Licomcen, Inc. vs Engr. Salvador Abainza*, G.R. No. 199781, February 18, 2013.
[5] Section 15, Rule 44, Rules of Court.
[6] See *Mercedes T. Rivera, et al. vs Court of Appeals, et al.*, G.R. No. L-44111, August 10, 1989.
[7] *Carolina Vda de Figuracion, et al. vs Emilia Figuracion-Gerilla*, G.R. No. 151334, February 13, 2013.

APPLICABLE LAWS

Applicable in resolving the instant case are pertinent provisions of the Local Government Code of 1991 (R.A. No. 7160) and the National Internal Revenue Code of 1997 (R.A. No. 8424), as amended by R.A. No. 9337. These are set forth below.

Provisions of the Local Government Code

The provisions of the Local Government Code ("LGC") relevant to the case are the following:

(1) Section 133(a), a limitation on the taxing powers of local government units;[8]

(2) Section 143(h), in relation to Section 151, on local taxing authority;

(3) Section 187, on how and when to question the constitutionality or legality of a tax ordinance or revenue measure;

(4) Section 195, on protest of assessment;

(5) Section 5(b), on how a tax ordinance shall be construed in case of doubt;[9]

(6) Section 130(b)(4), requiring that the exercise of taxing powers shall not be contrary to law;[10] and

(7) Section 131(e), defining "banks and other financial institutions."[11]

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[8] **Section 133.** *Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following: (a) Income tax, except when levied on banks and other financial institutions; xxx.

[9] **Section 5.** *Rules of Interpretation.* - In the interpretation of the provisions of this Code, the following rules shall apply: xxx (b) In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer. Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it.

[10] **Section 130.** *Fundamental Principles.* - The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units: xxx (b) Taxes, fees, charges and other impositions shall: xxx (4) not be contrary to law, public policy, national economic policy, or in the restraint of trade; xxx.

Section 143(h) of the LGC provides for the taxing and other revenue-raising powers of the municipality, as follows:

> "**Section 143.** *Tax on Business.* - The municipality may impose taxes on the following businesses: x x x (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."

Section 143 of the LGC has been held to be "the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed ... must conform."[12]

Section 151 extends to cities the same taxing and revenue-raising powers given to municipalities, thusly:

> "**Section 151.** *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes."

Section 187 outlines the course of administrative relief that a taxpayer may take to challenge a tax ordinance or revenue measure of an LGU, and the timelines therefor:

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[11] **Section 131.** *Definition of Terms.* - When used in this Title, the term: xxx (e) "Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder; xxx.

[12] *Nursery Care Corporation, et al. vs Anthony Acevedo, in his capacity as the Treasurer of Manila, and the City of Manila*, G.R. No. 180651, July 30, 2014.

> "**Section 187.** *Procedure for Approval and Effectivity of Tax, Ordinances and Revenue Measures; Mandatory Public Hearings.* – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: 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: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction."

Section 195 of the LGC supplies the rule for protesting a local tax assessment. The rule for this taxpayer's remedy is as follows:

> "**Section 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 (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

<u>National Internal Revenue Code of 1997</u>

Under the National Internal Revenue Code of 1997, also known as the Tax Reform Act (R.A. No. 8424), income tax is deemed to be a national internal revenue tax.[13] Section 27(D) prescribes the tax rates for certain passive incomes.

Under Section 27(D)(4), on intercorporate dividends, "Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax."

In 2005, R.A. No. 9337 amended Section 27 of R.A. No. 8424. However, Section 27(D)(4) was retained exactly as it was, without any change.

DISCUSSION

An appeal throws the entire case open to review, and the appellate court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.[14] Guided by this precept, the Court reviewed not just the assailed Decision and Resolution of the Second Division, but likewise, and primarily, that of the RTC, which the Second Division merely affirmed.

Reduced to the ultimate facts, this case appears simple: can a local tax ordinance prevail over a national law? Yet, it became complicated, because the Local Government Code, in its Section 187, *seemingly* suggests an affirmative answer, in the event that the ordinance is not held illegal or unconstitutional thereunder -- incongruously with Section 130(b)(4), which requires that the exercise of taxing powers shall not be contrary to law, and Section 133, which bars the extension of the exercise of local taxing powers to income tax except when levied on banks and other financial institutions.

But first, the Court shall briefly discuss whether or not, in the instant case, it has jurisdiction to resolve a question of law involving a tax ordinance.

As stated earlier, this involves a local tax case decided by the RTC of Makati City in the exercise of its original jurisdiction that was appealed to the Second Division of this Court. From the Decision and Resolution of the Second Division it was appealed to the Court *En Banc*, and is therefore within the exclusive appellate jurisdiction of this Court to review by appeal, under Section 2(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals.

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[13] Section 21(a).

[14] See *Edilberto L. Barcelona vs Dan Joel Lim and Richard Tan*, G.R. No. 189171, June 3, 2014, en banc, citing *Sociedad Europa de Financiacion, S.A. vs Court of Appeals*, 271 Phil. 101, 110-111 (1991).

Under Section 4(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), "An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal." Under Section 10 of the said Rule 43, the Court has jurisdiction over both errors of fact and law.

Moreover, under the second paragraph of Section 1, Rule 14 of the RRCTA, "In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

The Court is satisfied that it has the jurisdiction and competence to resolve the questions of law at the core of this case. The Court notes that in a catena of cases, it had previously resolved questions of law and was upheld by the Supreme Court. Among these cases are *Commissioner of Internal Revenue vs Philippine Global Communication, Inc.*;[15] *National Power Corporation vs Central Board of Assessment Appeals, et al.*;[16] *J.R.A. Philippines, Inc. vs Commissioner of Internal Revenue*;[17] *Commissioner of Internal Revenue vs Petron Corporation*;[18] *Commissioner of Internal Revenue vs Bank of Commerce*;[19] *CBK Power Company, Limited vs Commissioner of Internal Revenue*;[20] *Commissioner of Internal Revenue vs Team (Philippines) Operations Corporation*;[21] and *San Roque Power Corporation vs Commissioner of Internal Revenue.*[22]

The Trial Court Strayed from Petitioner's Cause of Action

The jurisdiction of the court is determined by the nature of the action pleaded as appearing from the allegations in the complaint.[23] The averments of the complaint and the character of the relief sought are to be examined.[24]

[15] G.R. No. 167146, October 31, 2006.
[16] G.R. No. 171470, January 30, 2009.
[17] G.R. No. 177127, October 11, 2010.
[18] G.R. No. 185568, March 21, 2012.
[19] G.R. No. 180529, November 13, 2013.
[20] G.R. Nos. 198729-30, January 15, 2014.
[21] G.R. No. 179260, April 2, 2014.
[22] G.R. No. 205543, June 30, 2014.
[23] *Araceli J. Cabrera, et al. vs Angela G. Francisco, et al.*, G.R. No. 172293, August 28, 2013, citing *Editha Padlan vs Elenita Dinglasan*, G.R. No. 180321, March 20, 2013.
[24] *Lilia B. Peralta-Labrador vs Silverio Bugarin*, G.R. No. 165177, August 25, 2005, citing *Sps. Tirona vs Hon. Alejo*, 419 Phil. 285, 297 (2001).

As mentioned earlier, the Court shall discuss how the petitioner was prejudiced by a change in the theory of the case, before the trial court. The theory of the case simply refers to the facts on which the cause of action is based. The facts are those alleged in the *complaint* and satisfactorily proven at the trial.[25] As it were, the trial court changed not just the petitioner's theory of the case, but the latter's very cause of action.

In its Complaint for Cancellation and Setting Aside of the Deficiency Tax Assessment for 2006, all that Michigan Holdings sought was the nullification of the assessment of local business tax on its dividend income, not the nullification or declaration of nullity of any tax ordinance or provision thereof. That was Michigan's cause of action, which alleged that the holding company had a right in law not to be assessed local business tax on its income, which right was violated by the City of Makati thru its treasurer.

"A cause of action is an act or omission of one party the defendant in violation of the legal right of the other."[26] The elements of a cause of action are:

> (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created;
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> (2) an obligation on the part of the named defendant to respect or not to violate such right; and
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> (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[27]

In the Complaint it filed with the RTC, Michigan Holdings stated, among others:

> "8. The imposition of local business tax by the Defendant on the dividend income of the Plaintiff constitutes a breach of the limitation of the taxing powers of the local government under Section 133(a) of the Local Government Code and will cause

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[25] *Mercedes Rivera vs Court of Appeals, supra*. Italics added, for emphasis.
[26] *Far East Bank and Trust Company vs Court of Appeals*, 341 SCRA 486, 490 [2000]; *Centeno vs Centeno*, 343 SCRA 153, 160 [2000], reiterated in *Imelda Relucio vs Angelina Mejia Lopez*, G.R. No. 138497, January 16, 2002.
[27] *Centeno vs Centeno, supra*.

grave and irreparable injury and damage to Plaintiff, if its enforcement is not enjoined by this Honorable Court.[28]"

The Complaint was evidently filed in accordance with Section 195 of the Local Government Code:

> "**Section 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 (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

In the RTC, the parties agreed on a sole issue, which the trial court approved. The issue was:

> WHETHER OR NOT THE CITY TREASURER OF MAKATI CITY MAY LEVY LOCAL BUSINESS TAX ON DIVIDEND INCOME.

The RTC could have tried the case on the merits on this issue. Instead, the trial court gave decisive weight to respondent's prayer that the complaint be dismissed because the proferred legal basis of the assessment – Section 3A.02(p) of the Revised Makati Revenue Code (City Ordinance 2004-A-025), in relation to Section 3A.02 (g) and (h) of the same tax ordinance – had not been declared illegal or unconstitutional by the Secretary of Justice by virtue of Section 187 of the Local Government Code, and is thus presumed valid. Otherwise said, Section 187 of the LGC was invoked as a defense to bar recourse to Section 195, also of the LGC.

[28] Complaint, p. 3.

By declaring itself to be without jurisdiction, the RTC no longer considered whether Section 3A.02(p) of the Revised Makati Revenue Code, in relation to Section 3A.02 (g) and (h) of the same tax ordinance, are, as alleged by Michigan Holdings, *ultra vires* in view of Section 133(a) of the Local Government Code. Remarkably, the respondent's Answer to the Complaint – as well as her Pre-Trial Brief and Memorandum – likewise completely ignored the conflict of these sections of the tax ordinance with Section 133(a) of the LGC. The Answer simply invoked the mantra that "all presumptions are in favor of the correctness of tax assessments."[29]

In its four-page Decision dismissing the Complaint for lack of merit, the RTC ratiocinated:

> "According to the plaintiff, to allow the defendants to impose taxes on passive incomes will violate the spirit and letter of the National Internal Revenue Code and run afoul of Sections 130(b)(4) and 133(a) of the Local Government Code. Such allegation in effect is questioning the validity of Sec. 3A.02(p) of the Makati Revenue Code which is outside the jurisdiction of this Court. It is axiomatic that laws are presumed to be valid unless and until the courts declare the contrary in clear and unequivocal terms (*Valley Trading Co., Inc. vs Court of First Instance of Isabela, et al.*, G.R. No. L-49529, March 31, 1989). Thus, the mere fact that a statute is alleged to be unconstitutional or invalid is not a sufficient ground for this Court to cancel or set aside any assessment made in accordance therewith."

It is at once apparent that the RTC missed the point that it was not a statute, but an ordinance violative of statutes, that Michigan Holdings was assailing.

The RTC also appeared to hold -- erroneously -- that a taxpayer's failure to avail of Section 187 of the LGC necessarily bars recourse to Section 195 grounded on the illegality of a local tax or revenue measure.

Section 195 of the LGC Does Not Limit the Grounds for Contesting an Assessment

[29] Answer, p. 3, citing *Delta Motors Corporation vs Commissioner of Internal Revenue*, CTA Case No. 3782, May 21, 1986.

A careful reading of Section 195 of the Local Government Code does not disclose any limitation or exclusion as to the grounds for contesting an assessment. There can be no inference therefrom that the assessment shall be contested solely on the ground of inaccuracy of the amount. Nor can it be deduced therefrom that a taxpayer is prohibited from assailing the assessment for lack or infirmity of legal basis.

As worded, Section 195 does not bar an aggrieved taxpayer from challenging the validity of a tax ordinance or a provision thereof upon which the assessment was based. And there is nothing in Section 195 that requires the taxpayer who relies on this ground to first assail the validity of the ordinance before the Secretary of Justice. Section 195 as a taxpayer's remedy is separate, distinct and independent from Section 187.

There is nothing in Section 195 that specifies and/or limits the grounds for protesting an assessment for local business tax. There is nothing that says that an assessment may not be contested for lack of legal basis, or for invalidity of its alleged legal basis. Indeed, when the protest was filed by Michigan, it was not on the basis of the invalidity of the tax ordinance, because the Billing Assessment did not even indicate its legal basis. Michigan protested the assessment in this wise:

> "It is our contention that dividend and interest income and gain on sale of shares are not subject to business tax as these are income generated from Michigan's passive investments. Moreover, the interest income and gain on sale of shares were already subjected to final income taxes.[30]"

It was respondent, in her reply dated February 6, 2008, who supplied the information that the assessment was based on Section 3A.02(p) of the Makati Revised Revenue Code (City Ordinance 2004-A-025) in relation to Section 3A.02 (g) and (h).

On March 12, 2008, Michigan Holdings' counsel sought reconsideration of the respondent's decision. An excerpt from the letter-request reads:

> "We respectfully file this request for reconsideration to contest the validity and propriety of the said deficiency assessment on dividend income. As stated in our client's protest. Dividend and interest income and gain on sale of shares are not subject to business tax as these are income generated from Michigan's

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[30] Letter dated January 28, 2008, received the same date by the Treasurer's Office of Makati City.

> passive investments. These three kinds of income, i.e., interest income, capital gain on sale of shares, and dividends are classified as passive incomes pursuant to Sec. 27 (d) (1) (2) (4), respectively, of the National Internal Revenue Code of 1997 (NIRC), and one cannot be differentiated from the other for local business tax purposes. x x x
>
> x x x This definitely constitutes a breach of the limitation of the taxing powers of the local government under Section 133(a) of the Local Government Code which states that the exercise of the taxing powers of local government units shall not extend to the levy of income tax. x x x
>
> It bears stating that only the National Government can impose and collect an income tax, and the prohibition to impose an income tax, still applies against local governments, except when levied on banks and other financial institutions. Since Michigan is a holding company and not a bank or financial institution, its dividends are passive income derived from passive investments and not from business operations, and are subject to income tax under SEC. 32 (7) of the NIRC. The same dividends are clearly beyond the taxing and other revenue-raising powers of the City of Makati or of the City Treasurer."

The respondent did not act on this request for reconsideration. Thus Michigan Holdings raised the matter to the RTC. It is noteworthy that in the Complaint filed by it, Michigan Holdings mentioned the NIRC and the LGC, but did not directly challenge the Makati Revised Revenue Code. What the Complaint alleged was that the imposition of local business tax on dividend income constituted a breach of the limitation of the taxing powers of the local government under Section 133(a) of the LGC. Thus, it was not the specific provision in the tax ordinance itself that Michigan Holding was questioning, but something larger: the exercise of a taxing power by the LGU beyond the limits authorized by the LGC and the NIRC. Indeed the parties agreed on a single issue to be resolved by the RTC: "whether or not the City Treasurer's Office of Makati City may levy business tax on the dividend income of the plaintiff,"[31] Michigan Holdings. Clearly, it was not the validity of the Makati Revised Revenue Code or any provision thereof that was at issue.

The Court finds the instant case analogous to *Luz R. Yamane, in her capacity as City Treasurer of Makati City, vs BA Lepanto Condominium Corporation.*[32]

[31] RTC Order dated March 20, 2009, p. 2.
[32] G.R. No. 154993, October 25, 2005, 474 SCRA 258.

In *Yamane*, taxpayer BLCC anchored its protest of the assessment under Section 195 of the LGC on the contention that a condominium corporation is not liable for business taxes under the law. The protest was denied by the Makati City treasurer, and BLCC's appeal therefrom was dismissed by the RTC for lack of merit. The Court of Appeals, however, found BLCC not liable for the business tax assessed, and was upheld by the Supreme Court.

In *Yamane*, as in the instant case, no recourse to Section 187 of the LGC was made by the taxpayer. BLCC instead availed of Section 195; instead of assailing the Makati Revenue Code, BLCC argued that the Local Government Code does not sanction the imposition of business taxes against it, and the Court of Appeals agreed. The Supreme Court concluded, after holding that condominium corporations are generally exempt from local business taxation under the Local Government Code: "the insistence of the city in its collection of the void tax constitutes an attempt at deprivation of property without due process of law."

In several other cases where no recourse was taken by taxpayers to the Secretary of Justice under Section 187, the Supreme Court nonetheless declared void the subject tax ordinances or revenue measures. These cases include *Province of Bulacan, et al. vs Court of Appeals, et al.*,[33] *Leonardo Tan, et al. vs Socorro Y. Pereña*,[34] and *Cagayan Electric Power and Light Co., Inc. vs City of Cagayan de Oro.*[35] This goes to show that under certain circumstances, the failure of taxpayers to appeal a tax ordinance or revenue measure to the Secretary of Justice under Section 187 on the ground of illegality or unconstitutionality does not place the ordinance beyond the scrutiny and review of the judiciary.

Thus, the RTC should not have let a taxpayer's non-exhaustion of Section 187 bar recourse to Section 195 of the Local Government Code. Yet, its fixation on Section 187 is apparent from its Order denying Michigan Holding's motion for reconsideration:

> "The Court is now faced with the issue of how it can rule on the impropriety of the imposition of taxes on dividends when the law on which it was based was never questioned and presumed to be correct. Granting, the imposition on the dividends earned by the plaintiff was inconsistent with National Internal Revenue Code and of [sic] the Local Government Code the remedy of the plaintiff is to question its validity under Section 187 of the Local Government Code, and evident from the latter

[33] G.R. No. 126232, November 27, 1998.
[34] G.R. No. 149743, February 18, 2005, *en banc*.
[35] G.R. No. 191761, November 14, 2012.

law is the fact that this Court has no jurisdiction to hear the legality or constitutionality of Section 3A.02 of The Revised Makati Revenue Code.[36]"

Significantly, unlike in Section 195, there is no proviso for finality in Section 187. In Section 195, the taxpayer's failure to appeal to the courts the denial of his protest within thirty (30) days from notice, or from the lapse of the reglementary 60-day period, renders the assessment "conclusive and unappealable."

In Section 187, the aggrieved party may file appropriate proceedings with the courts within thirty (30) days from receipt of the decision of the Secretary of Justice or the lapse of the 60-day period within which the Secretary Justice should have decided the appeal against the tax ordinance or revenue measure. Section 187, however, is silent on the consequence of failure to go to court within the prescribed period. It thus appears that the assailed tax ordinance or revenue measure shall remain presumptively valid, but still subject to challenge -- otherwise, the Congress would have expressly declared it unappealable.

The RTC had Jurisdiction to Determine the Legality of the Basis of the Assessment

The RTC, in its Order denying Michigan's motion for reconsideration, conceded that "the lower courts have jurisdiction to try and hear issues on constitutionality or legality of laws." It ventured further, however, to posit that this remedy for the taxpayer, when in the form of an action for declaratory relief, "is available only before the breach or violation of the said law ... i.e. before an assessment is issued on, and before payment is made by the taxpayer."[37]

The RTC said, in effect, that the issuance of an assessment bars an action for declaratory relief, and renders the lower courts without jurisdiction to resolve the legality or constitutionality of laws or, as in the instant case, the legal basis of a tax assessment.

This Court disagrees with the trial court on this score.

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[36] RTC Order dated October 4, 2012, p. 2.
[37] *Ibid.*, p. 3, citing Tax Law and Jurisprudence, Justice Jose C. Vitug and Ernesto D. Acosta, 2nd. Ed., p. 457.

Squarely pertinent to the instant case is a reminder of the Supreme Court in *Lupo L. Lupangco, et al. vs Court of Appeals, et al.*:[38]

> "In *San Miguel Corporation vs. Avelino* (89 SCRA 69),[39] We ruled that a judge of the Court of First Instance has the authority to decide on the validity of a city tax ordinance even after its validity had been contested before the Secretary of Justice and an opinion thereon had been rendered."

In *Alejandro B. Ty vs Hon. Aurelio C. Trampe*,[40] the issues were not merely of amounts of increase in the tax but on the very validity of any increase; thus, Ty raised "a legal question properly cognizable by the trial court; no issues of fact were involved."[41]

Also pertinent is the holding of the Supreme Court *en banc* in *C.N. Hodges vs Municipal Board of the City of Iloilo, et al.*,[42] that the question of whether the tax ordinance was beyond the corporate powers of the city to enact was a "purely legal question." *Hodges* further held that "the rule requiring exhaustion of administrative remedies applies only "when there is an express legal provision requiring exhaustion of administrative step as a condition precedent to taking action in court"."[43] More, such a requirement must appear to be exclusive; otherwise, "it is discretionary upon the court to permit an aggrieved party to institute a court action without first resorting to an administrative remedy for the purpose."[44] Thus it was ruled that "the recourse to the courts was in no way premature" because there was "no room for the application of the doctrine of exhaustion of administrative remedies."

In *Cagayan Electric Power and Light Co., Inc. vs City of Cagayan de Oro*,[45] the RTC upheld the validity of Cagayan de Oro City's Ordinance No. 9503-2005, even as the RTC found that the power firm's action for declaratory relief was barred by non-exhaustion of administrative remedies and by prescription for failure to appeal to the Secretary of Justice within the thirty-day period prescribed by Section 187 of the Local Government Code. The RTC, instead of merely upholding the presumptive validity of the tax ordinance because of the taxpayer's non-availment of Section 187 of the LGC, ruled on the merits of

[38] G.R. No. 77372, April 29, 1988.
[39] G.R. No. L-39699, March 14, 1979.
[40] G.R. No. 117577, December 1, 1995, en banc, 321 Phil. 81.
[41] See *National Power Corporation vs Province of Quezon and Municipality of Pagbilao*, G.R. No. 171586, January 25, 2010.
[42] G.R. No. L-18276, January 12, 1967.
[43] Citing *Azuelo vs Arnaldo, et al.*, 58 O.G., No. 26, pp. 4738, 4740.
[44] Citing *Hoskyns vs National City Bank of New York, et al.*, 85 Phil. 201.
[45] G.R. No. 191761, November 14, 2012.

the issue, and determined that the tax imposed was levied not on the firm's income but on the privilege to engage in business.

In the instant case, the trial court should have proceeded as the RTC in *Cagayan Electric* did, instead of dismissing the action on the basis of a technicality. After all, it has been held that --

> "The courts have the power to relax or suspend technical or procedural rules or to except a case from their operation when compelling reasons so warrant or when the purpose of justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts.[46]"

Dividend Income Not Subject to Local Business Tax

Section 133(a) of the Local Government Code expressly provides that the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax, except when levied on banks and other financial institutions.

Section 131(e) of the LGC defines "banks and other financial institutions" to include "non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder." This enumeration appears to be exclusive of other entities. Nowhere in the entirety of Section 131 is a holding company mentioned. However, this, by itself, does not place holding companies beyond the reach of local taxation, except on their income.

Section 143 of the Local Government Code is the law on local business taxes. Subsection (f) thereof expressly allows local taxation on banks and other financial institutions on their income from dividends, based on gross receipts of the preceding calendar year. What Section 3A.02(h) of the Revised Makati Revenue Code did was to expand the taxpayer base to encompass "owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, moneyshops, insurance companies, stock markets, stock brokers, dealers in securities, including pre-

[46] *Commissioner of Internal Revenue vs Mirant Pagbilao Corporation*, G.R. No. 159593, October 12, 2006, citing *Republic vs Imperial Jr.*, 362 Phil. 466, 477 (1999).

need companies, foreign exchange." The Treasurer of Makati City, while invoking this Section 3A.02(h), made it applicable to holding companies, such as Michigan Holdings, by virtue of Section 3A.02(p), which provides that holding companies "shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year."

Section 3A.02(h) of the Revised Makati Revenue Code, which took effect on January 1, 2006, imposes a local business tax on the dividend income of certain taxable entities. Section 3A.02(p) makes holding companies liable for this business tax.

> "Section 3A.02(p). On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h) of the gross sales and/or receipts during the preceding calendar year."

Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, violates the limit set by Section 133(a) of the Local Government Code.

Indeed, if the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its Section 3A.02(h), instead of placing them all by themselves in Section 3A.02(p) and then making the tax rates in either Section 3A.02(h) or (g) applicable to them. That holding companies, exclusively, were placed in a separate section, shows that they comprise a category distinct from the class of "banks and other financial institutions" as defined by Section 131(e) of the LGC. That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by Section 133(a) that the taxing powers of LGUs shall not extend to the levy of income tax, except on banks and other financial institutions.

There is more.

Section 27(D) of the National Internal Revenue Code deals with rates of tax on certain passive incomes. Subsection (4) thereof, covering intercorporate dividends, states that "Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax" – meaning corporate income tax. Dividends are instead subject, under Section 27(D)(1), to "a final tax at the rate of twenty percent (20%)."

"Under Section 27(D)(4) of the Tax Code, dividends received by a domestic corporation from another corporation are not subject to the corporate income tax. Such intracorporate dividends are some of the passive incomes that are subject to the 20% final tax, just like interest on bank deposits. Intracorporate dividends, being already subject to the final tax on income, no longer form part of the bank's gross income under Section 32 of the Tax Code for purposes of the corporate income tax.[47]"

Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, likewise violates Section 27(D)(4) of the National Internal Revenue Code.

Section 3A.02(p) of the Revised Makati Revenue Code is thus an *ultra vires* exercise of local taxing power, and cannot be given effect without violating the principle that an ordinance can neither amend nor repeal but must conform to a statute.[48]

Section 187 Cannot Cure a Violation of the Local Government Code and Other Statutes; Presumptive Validity of an Ordinance Remains Disputable.

A local government unit cannot validly enact a tax ordinance or revenue measure that is *ultra vires*, and then invoke non-exhaustion of Section 187 of the Local Government Code as a shield against the judicial declaration of its illegality or unconstitutionality. While such an ordinance may remain presumptively valid until invalidated, that presumption likewise remains disputable.

Was Michigan Holdings effectively estopped from challenging the legality of the ordinance, for failure to appeal to the Secretary of Justice within the reglementary period prescribed by Section 189 of the LGC? The Court finds the answer to be in the negative. The provision in the ordinance subjecting holding companies to local business tax on dividend income is *ultra vires* for being against prohibitive provisions of the LGC and the NIRC.

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[47] *China Banking Corporation vs Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue*, G.R. No. 146749, June 10, 2003.

[48] See *Solicitor General, et al. vs Metropolitan Manila Authority and Municipality of Mandaluyong* (G.R. No. 102782, December 11, 1991, en banc.

It has been held: "*Ultra vires* acts or acts which are clearly beyond the scope of one's authority are null and void and cannot be given any effect. The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires*."[49]

In *British American Tobacco vs Camacho*,[50] the Supreme Court likewise held:

> "The mere fact that a law has been relied upon in the past and all that time has not been attacked as unconstitutional is not a ground for considering petitioner estopped from assailing its validity. For courts will pass upon a constitutional question only when presented before it in *bona fide* cases for determination, and the fact that the question has not been raised before is not a valid reason for refusing to allow it to be raised later."

Reliance on disputable presumptions as basis for dismissing cases was frowned upon by the Supreme Court in *Philippine Agila Satellite, Inc. vs Josefina Trinidad-Lichauco, Undersecretary for Communications*.[51]

In *Allied Banking Corporation vs Quezon City Government, et al.*,[52] the Supreme Court *en banc* found that a section of the ordinance violated the Local Government Code and its IRR. The Supreme Court concluded: "In fine, public respondent Quezon City Government exceeded its statutory authority when it enacted the proviso in question. The provision is thus null and void *ab initio* for being *ultra vires* and for contravening the provisions of the Local Government Code, its implementing regulations and the Local Assessment Regulations No. 1-92. As such, it acquired no legal effect and conferred no rights from its inception."

A municipal ordinance enacted in excess of the authority conferred by the law on municipal councils, is null and unlawful.[53] An ordinance creating a tax beyond the power of a municipal board to impose must be declared illegal on that ground.[54] An ordinance approved by a municipal council without

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[49] *Acebedo Optical Company, Inc. v. Court of Appeals*, G.R. No. 100152, March 31, 2000, *en banc*, 385 Phil. 956, 978.
[50] G.R. No. 163583, 20 August 2008, 562 SCRA 511, 537.
[51] G.R. No. 142362, May 3, 2006.
[52] G.R. No. 154126, October 11, 2005, *en banc*.
[53] *Batangas Transportation Co. vs Provincial Treasurer of Batangas, et al.*, No. 28863, October 11, 1928, *en banc*.
[54] *Philippine Transit Corporation vs The Treasurer of the City of Manila and The Municipal Board of the City of Manila*, No. L-1274, May 27, 1949, *en banc*.

authority, and which is incompatible with law, is illegal and void.[55] An ordinance that is a patent nullity is rendered nullified and without force and effect.[56]

Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred upon them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.[57]

Non-exhaustion of Section 187 Not Fatal in the Instant Case which Poses a Pure Question of Law

As a general rule, failure to appeal the legality or constitutionality of a tax ordinance to the Secretary of Justice is fatal to the action of an aggrieved taxpayer before the courts. However, this general rule is not without exceptions. The rule can be relaxed in view of "more substantive matters," as in *Cagayan Electric Power and Light Co., Inc. vs City of Cagayan de Oro*, *supra*, where the Supreme Court voided the tax ordinance for imposing a tax rate in excess of the limit fixed by law, particularly Section 143(h) of the LGC.

In *Allied Banking Corporation vs Quezon City Government, et al.*,[58] the Supreme Court *en banc* in 2005 reversed an RTC decision dismissing the taxpayer's petition for prohibition and declaratory relief for failure to exhaust administrative remedies against a tax ordinance. The Supreme Court stated: "Although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is a well-settled exception in cases where the controversy does not involve questions of fact but only of law."[59]

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[55] See *Donato C. Guzman and Minoro Tamashiro, et al. vs Municipality of Taytay, Palawan*, G.R. No. L-43626, March 7, 1938, *en banc*.
[56] See *In the Matter of the Petition for Declaratory Judgment Regarding the Validity of Ordinance No. 386 of the City of Baguio, Baguio Citizens' Action, Inc. and Junior Chamber of Baguio, Inc. vs The City Council and City Mayor of the City of Baguio*, G.R. No. L-27247, April 20, 1983, *en banc*.
[57] *Mayor Pablo P. Magtajas and The City of Cagayan de Oro vs Pryce Properties Corporation*, G.R. No. 111097, July 20, 1994, *en banc*, 234 SCRA 255, 272-273, cited in *Hon. Jose D. Lina Jr., et al. vs Hon. Francisco Dizon Paño and Tony Calvento*, G.R. No. 129093, August 30, 2001.
[58] G.R. No. 154126, October 11, 2005.
[59] Citing *Ty vs Trampe*, 250 SCRA 500, 518 (1995).

This principle was reiterated in 2009 in *Evelyn Ongsuco and Antonia Salaya vs Hon. Mariano M. Malones,*[60] where the Supreme Court held that it was not necessary to exhaust administrative remedies under Section 187 of the LGC, when "the parties are not disputing any factual matter on which they still need to present evidence," and the issue is "undoubtedly a pure question of law." The Supreme Court reiterated that a case where the issue raised is a purely legal question, well within the competence and the jurisdiction of the court and not the administrative agency, constitutes an exception to the rule on exhaustion of administrative remedies.[61] In *Ongsuco*, the Supreme Court recalled:

> "In *J.M. Tuason and Co., Inc. v. Court of Appeals,*[62] *Ynot v. Intermediate Appellate Court,*[63] and *Commissioner of Internal Revenue v. Santos,*[64] the Court has affirmed the jurisdiction of the RTC to resolve questions of constitutionality and validity of laws (deemed to include local ordinances) in the first instance, without deciding questions which pertain to legislative policy."

The RTC did note in its Decision that Michigan Holdings was not questioning the assessment itself, but the provisions of the ordinance on which it was based. Following *Ongsuco*, that should have alerted the RTC to the non-necessity of exhaustion of administrative remedies. The decision in *Ongsuco* was promulgated on October 27, 2009, while the RTC rendered its decision on September 21, 2011. The RTC dismissed Michigan Holdings' appeal on the ground that it was not directed at the tax assessment but rather at the validity of Section 3A.02(p) of the Revised Makati Revenue Code, and thus should have been first addressed not to the RTC but to the Secretary of Justice.

Yet this Court could not fully fault the RTC for not applying *Ongsuco* to the case. Firstly, *Ongsuco* did not invalidate Section 187 of the Local Government Code; thus, the administrative authority to resolve questions on the validity and constitutionality of tax ordinances remains vested in the Secretary of Justice; should the Secretary's decision be adverse, the aggrieved party may then appeal to the courts.

Secondly, by not invalidating Section 187, *Ongsuco* gave rise to dilemma: inasmuch as Sec. 187 of the LGC is specifically for the purpose of questioning the validity or constitutionality of a tax ordinance or revenue measure, and thus addresses a question of law (or fact, or both) to the Secretary of Justice, can

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[60] G.R. No. 182065, October 27, 2009, 604 SCRA 499.

[61] Citing *Valdez vs National Electrification Administration*, G.R. No. 148938, July 12, 2007, 527 SCRA 427, 437; *Arimao vs Taher*, G.R. No. 152651, August 7, 2006, 498 SCRA 74, 87.

[62] 113 Phil. 673, 681 [1961].

[63] 232 Phil. 615, 621 [1987].

[64] 343 Phil. 411, 427 [1997].

that same question of law excuse the taxpayer from the need to go to the Secretary of Justice and allow the taxpayer to go directly to the courts? *Ongsuco* appears to suggest that Section 187 is not inflexibly mandatory after all, but may be optional -- that the taxpayer with a pure question of law has the option to repair directly to the courts.

In *Samar II Electric Cooperative, Inc., et al. vs Ananias D. Seludo, Jr.,*[65] *Ongsuco* was cited in support of the position that "It is settled that one of the requisites for a writ of prohibition to issue is that there is no plain, speedy and adequate remedy in the ordinary course of law."

In *Special Audit Team, Commission on Audit, vs Court of Appeals and Government Service Insurance System,*[66] four sentences of a paragraph from *Ongsuco* were cited, starting with "[I]f resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter which comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought." The significance of this sentence is far-reaching. It suggests that if resort to administrative remedy *can no longer be made*, then an aggrieved party can take recourse to judicial action.

The RTC, as well as the litigants, already agreed that the sole issue in the case was a question of law. In its Decision dated September 21, 2011, the RTC noted:

> "During the Pre-Trial on March 20, 2009 the parties agreed that the sole legal issue for determination is whether or not the City Treasurer's Office of Makati City may levy business tax on the dividend income of the plaintiff. Likewise they both agreed that since the issue is purely legal they would no longer present testimonial evidence and they would merely submit their respective Memorandum.[67] "

Perforce, the RTC should have proceeded from the knowledge that a question of law is a ground for the non-application of the rule on exhaustion of administrative remedies. Instead, the RTC incorrectly surmised that it was "evident" from Section 187 of the Local Government Code that the RTC "has no jurisdiction to hear the legality or constitutionality of Section 3A.02 of The Revised Makati Revenue Code." Although Section 187 vests the Secretary of

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[65] G.R. No. 173840, April 25, 2012.
[66] G.R. No. 174788, April 11, 2013, en banc, per Chief Justice Maria Lourdes P.A. Sereno. Underscoring added, for emphasis.
[67] RTC Decision dated September 21, 2011, p. 2.

Justice with the authority to resolve challenges to the validity or constitutionality of tax ordinances and revenue measures, it is plain that Section 187 does not declare this authority to be so exclusive as to oust the courts from having concurrent original jurisdiction, and not just appellate jurisdiction. Had the Congress wanted this authority of the Justice Secretary to be exclusive, and its exercise a condition precedent for recourse to the courts, Congress would have written Section 187 differently, in the tenor of Section 196 of the LGC:

> "**Section 196.** *Claim for Refund of Tax Credit.* - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit. "

The Trial Court Engaged in a Double Presumption

It has been held: "The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption."[68]

This excerpt from *Collector of Internal Revenue vs Alberto D. Benipayo*, reiterated in *CIR vs Island Garment Manufacturing Corporation and CTA*,[69] was actually a quote from the CTA decision dated January 23, 1948 subject of the appeal.

The RTC presumed the assessment to be correct, based on the presumption that its legal basis is legally valid.

Yet the RTC presumed the subject ordinance to be valid -- despite noting its glaring inconsistencies with prohibitory provisions of the Local Government Code and the National Internal Revenue Code -- merely because it was not administratively challenged.

However, even if the ordinance was administratively assailed and was upheld as valid, such administrative ruling is not necessarily binding on the

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[68] *Collector of Internal Revenue vs. Alberto D. Benipayo*, L-13656, January 31, 1962, *en banc*, 4 SCRA 182.
[69] G.R. No. L-46644, September 11, 1987.

courts. Thus, in *Francisco P. Tesorero, et al. vs Ponciano G.A. Mathay, et al.*[70] it was reiterated: "while administrative determination on questions of law is persuasive on courts and carries with it a strong presumption of correctness, nonetheless, the interpretation and application of laws is the court's prerogative."

Assessment Can be Cancelled Without Invalidating Its Purported Legal Basis

Can Michigan's prayer for the cancellation of the assessment be granted without necessarily invalidating Section 3A.02(p) of the Makati Revised Revenue Code? Theoretically, yes. The enforceability of an ordinance is a matter different from its validity.[71]

What the RTC cannot do is more, *i.e.*, invalidate the said provision, because that is a relief not prayed for -- unless it can be deemed necessarily included. Which brings us to the question: can a local tax ordinance be collaterally attacked? A municipal ordinance is not subject to collateral attack; public policy forbids collateral impeachment of legislative acts.[72] However, an assessment can be successfully challenged without attacking the ordinance on which it is based.

Squarely applicable to the instant case is the ruling of the Supreme Court in 1998 in *Province of Bulacan, et al. vs Court of Appeals, et al.*[73] In *Province of Bulacan*, Republic Cement Corporation was assessed a tax in November 1993 on quarry resources extracted in the third quarter of 1992 from private lands, based on the Revenue Code of Bulacan Province (Provincial Ordinance No. 3) which took effect on July 1, 1992. Republic Cement protested the assessment before the provincial treasurer, but the protest was denied. The firm petitioned the RTC for declaratory relief, but the petition was dismissed. Republic Cement filed a petition for certiorari with the Supreme Court, which referred it to the Court of Appeals. The litigants agreed, with the approval of the Court of Appeals, to limit the issue to whether or not the provincial government could impose taxes on quarry resources extracted from private lands by virtue of Section 21 of Provincial Ordinance No. 3. After trial, the Court of Appeals rendered its decision declaring the Province of Bulacan to be without legal authority to impose and assess the said tax; the assessment was declared void.

[70] G.R. No. 69592, May 8, 1990, citing *Cadwallader et al. vs Abedela*, 98 SCRA 123 [1980]; *Philex Mining Corp. vs Zaldiva* 43 SCRA 479 [1972].
[71] See *Teodoro Berdin, et al. vs Hon. Eufracio A, Mascarinas, et al.*, G.R. No. 135928, July 6, 2007.
[72] *San Miguel Brewery vs Francisco Magno*, G.R. No. L-21879, September 29, 1967, *en banc*.
[73] G.R. No. 126232, November 27, 1998.

The Province appealed the decision to the Supreme Court. In its appeal, the Province claimed that the Court of Appeals overstepped its jurisdiction when it declared the assessment null and void. The Supreme Court held that the Province was barred by the doctrine of estoppel from repudiating the agreement on the sole issue to be decided by the Court of Appeals. Additionally, the Supreme Court pointed out that under Section 158 of the LGC, the province may levy tax only on quarry resources extracted from public lands and public waters within its territorial jurisdiction; thus, the province is prohibited from taxing such resources extracted from private lands, which are already subject to excise tax by the national government under Section 133(h) of the NIRC in relation to Section 151(A)(2). Thus, the assessment of the tax by the Province was *ultra vires* because it traversed the limitations set by the LGC.

The Province also deplored that the nullification of the assessment was a collateral attack on the tax ordinance, which attack was prohibited by public policy. The Supreme Court retorted: "Contrary to petitioners' claim, the legality of the ordinance was never questioned by the Court of Appeals. Rather, what the appellate court questioned was petitioner's assessment of taxes on the basis of Ordinance No. 3, not the ordinance itself." The Supreme Court concluded, in affirming the decision of the Court of Appeals *in toto*:

> "Furthermore, Section 21 of Provincial Ordinance No. 3 is practically only a reproduction of Section 138 of the Local Government Code. A cursory reading of both would show that both refer to ordinary sand, stone, gravel, earth and other quarry resources extracted from *public lands*. Even if we disregard the limitation set by Section 133 of the Local Government Code, petitioners may not, impose taxes on sand, stone, gravel, earth and other quarry resources extracted from private lands on the basis of Section 21 of Provincial Ordinance No. 3 as the latter clearly applies only to quarry resources extracted from public lands. Petitioners may not invoke the Regalian doctrine to extend the coverage of their ordinance to quarry resources extracted from private lands, for taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares, tax statutes being construed *strictissimi juris* against the government.[74]"

In the instant case, the litigants also agreed on a sole issue at the RTC, which the RTC approved. The RTC eventually held that it had "no jurisdiction to hear the legality or constitutionality of Section 3A.02 of The Revised Makati

[74] Citing Republic vs IAC, 196 SCRA 335 (1991).

Revenue Code." But this was not the sole issue at all. The issue agreed upon by the litigants and approved by the RTC was "whether or not the City Treasurer's Office of Makati City may levy business tax on the dividend income of the plaintiff" – not the legality or constitutionality of Section 3A.02 of The Revised Makati Revenue Code. There was no mention at all of The Revised Makati Revenue Code. It was the assessment of the tax on its dividend income that was questioned by Michigan Holdings, rather than the ordinance itself. It was the RTC that inferred that "such allegation in effect is questioning the validity of Section 3A.02(p) of the Makati Revenue Code which is outside the jurisdiction of this Court." In effect, the RTC inexplicably changed the sole issue of the case, in disregard of its own Order dated March 20, 2009.

A review of the documents and pleadings filed by Michigan Holdings shows that *in no instance did the firm question the legality or constitutionality of the Revised Revenue Code of Makati City so as to seek its invalidation.* We reached this conclusion after a meticulous reading of the said documents and pleadings: the protest letter dated January 28, 2008; the request for reconsideration dated March 12, 2008, addressed to the respondent; the Complaint filed with the RTC on March 24, 2008; the Pre-Trial Brief filed with the RTC on September 16, 2008; the Memorandum filed with the RTC on July 20, 2009; and the Motion for Reconsideration filed on November 17, 2011 at the RTC. In its Memorandum, Michigan's prayer was for the cancellation of the assessment, not the invalidation of Section 3A.02(p) or any other provision of the Makati City Revised Revenue Code. This is consistent with the prayer in the initiatory pleading, the Complaint.

Clearly, the RTC had no basis to jump to the conclusion that Michigan Holdings was "in effect" questioning the validity of Section 3A.02(p) of the Makati Revenue Code. Indeed, even the respondent, in her Memorandum filed with the RTC on July 16, 2009, was more cautious, and simply stated:

> "***If*** the intention of the plaintiff is to question the legality or constitutionality thereof [Revised Makati Revenue Code], the remedy of the plaintiff in filing the instant case before this Court is ERRONEOUS since the proper venue should have been before the Secretary of Justice in accordance with the provisions of Section 187 of the [Local Government] Code.[75]"

The RTC clearly had jurisdiction to resolve the sole issue agreed upon by the parties and approved by it. Instead, it addressed an issue not submitted to it, and ruled that it had no jurisdiction over the same.

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[75] Respondent's Memorandum dated July 15, 2009, p. 4. Boldface, italics and underscoring added, for emphasis.

The Complaint Was Not a Collateral Attack on a Tax Ordinance; Even if It Were, the Majesty of the Law Must Prevail.

In *Solicitor General, et al. vs Metropolitan Manila Authority and Municipality of Mandaluyong*,[76] the Supreme Court *en banc* affirmed the settled principle that the validity of a law can be challenged only in a direct action and not collaterally, but at the same time allowed that this "rule is not inflexible and may be relaxed by the Court under exceptional circumstances."

In that case, certain ordinances passed by the Metro Manila Authority and the Municipality of Mandaluyong, although conflicting with the law, were not formally challenged, yet the Supreme Court felt that "it must address the problem squarely presented to it and decide it as categorically rather than dismiss the complaints on the basis of the technical objection raised and thus, through its inaction, allow them to fester." The Supreme Court reiterated that "In proper cases, procedural rules may be relaxed or suspended in the interest of substantial justice, which otherwise may be miscarried because of a rigid and formalistic adherence to such rules."

In justifying the relaxation of the rules in that case, the Supreme Court also noted "the failure of the proper parties to file the appropriate proceeding against the acts complained of, and the necessity of resolving, in the interest of the public, the important substantive issues raised."

In the instant case, no holding company appears to have questioned the legality and constitutionality of Section 3A.02(p) of the Revised Makati Revenue Code before the Secretary of Justice, within the period allowed by Section 187 of the LGC. Nonetheless, the petitioner raised a substantive issue by alleging that this provision of the ordinance conflicts with two national laws, namely the LGC and the NIRC. Were this Court to ignore this, it would in effect sanction a violation of national laws by a local ordinance, allowing an anomalous situation to fester, or even to replicate itself *ad nauseam*. This the Court cannot countenance.

***Valley Trading* not applicable to the instant case**

[76] G.R. No. 102782, December 11, 1991.

It is noteworthy that the jurisprudence relied upon by the RTC in its Decision, *i.e.*, *Valley Trading Co., Inc. vs Court of First Instance of Isabela*,[77] antedates both the Local Government Code of 1991 and the Tax Reform Act of 1997. Moreover, the factual setting in *Valley Trading* renders it inapplicable to the instant case.

In *Valley Trading*, the action was a special civil action with prayer for a writ of preliminary injunction to enjoin the collection of a local tax. The trial court, pending trial on the merits, denied the prayer for the writ. The issue that arose was whether it was proper for the trial court to deny the prayer for the writ, sans a hearing on the merits. The Supreme Court reiterated that "courts should avoid issuing a writ of preliminary injunction which, in effect, would dispose of the main case without trial," with the reminder that "laws are presumed to be valid unless and until the courts declare the contrary in clear and unequivocal terms."

Indeed, heeding *Valley Trading*, what the RTC should have done was to resolve Michigan Holdings' petition on the merits.

CONCLUSION

In conclusion, the Court finds that the RTC committed an error in judgment in the exercise of its discretion, which is correctable by an appeal or petition for review.[78] Errors of judgment not relating to jurisdiction are, as a rule, correctable only by appeal.[79]

The rule governing the taxing power of provinces, cities, muncipalities and barangays is summarized in *Joseph E. Icard vs City Council of Baguio*,[80] reiterated in *Pelizloy Realty Corporation vs Province of Benguet*:[81]

> "It is settled that a municipal corporation unlike a sovereign state is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality, cannot assume it. And the power when granted is to be construed *in strictissimi juris*. Any doubt or ambiguity arising out

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[77] G.R. No. L-49529, March 31, 1989.

[78] See *Isabel N. Guzman vs Aniano N. Guzman and Primitiva G. Montealto*, G.R. No. 172588, March 13, 2013, citing *Pilipino Telephone Corporation vs Radiomarine Network, Inc.*, G.R. No. 152092, August 4, 2010, 626 SCRA 702, at 732.

[79] *Priscilla T. Rigor, et al. vs Tenth Division of the Court of Appeals and Milagros Rodriguez*, G.R. No. 167400, June 30, 2006, citing *Reyes vs Camilon*, G.R. No. 46198, December 21, 1990, 192 SCRA 445.

[80] No. L-1281, May 31, 1949, *en banc*, 83 Phil 870, 873.

[81] G.R. No. 183137, April 10, 2013.

> of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions -- all these -- have no place in the interpretation of the taxing power of a municipal corporation."

Apropos to the instant case is Section 5(b) of the Local Government Code: "In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer."

The Court, however, after the foregoing extensive discussion, sees no more need to remand the case to the RTC for the trial court to resolve on the merits.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. The assailed Resolution dated November 19, 2013 of the Second Division of this Court in CTA AC No. 99, denying herein petitioner's Motion for Reconsideration of the Decision dated September 19, 2013, is **REVERSED** and **SET ASIDE**. The assessment levying business tax on the dividend income of the Petitioner, including surcharges and penalties thereon, is **CANCELLED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice