REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CITY OF MANILA and RIZAL DEL ROSARIO in his capacity as OIC-City Treasurer of Manila,
Petitioners,

- versus -

SMART COMMUNICATIONS, INC.,
Respondent.

CTA AC No. 171

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

DEC 18 2017
4:10 p.m.

x- x

DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review,[1] petitioners City of Manila and Rizal Del Rosario, in his capacity as Officer-in-Charge (OIC) – City Treasurer of Manila, assail the Decision[2] dated March 9, 2016 and the Order[3] dated May 23, 2016, both rendered by the Regional Trial Court (RTC) Branch 47 of Manila in Civil Case No. 15-134374, entitled *Smart Communications Inc. vs. City of Manila and Rizal Y. Del Rosario, in his capacity as Officer-In-Charge (OIC) – City Treasurer*.

Petitioner City of Manila is a local government unit with the legal capacity to sue and be sued, while its co-petitioner, Rizal Del Rosario, is the Officer-In-Charge (OIC) of the Office of the City Treasurer of the City of Manila, primarily

---

[1] Docket, pp. 8-15.
[2] Docket, pp. 16-32.
[3] Docket, pp. 33-34.

responsible for the imposition and collection of taxes within the territorial jurisdiction of the City of Manila. They were the respondents in Civil Case No. 15-134374 filed by Smart Communications, Inc. with the RTC of Manila, Branch 47.

Respondent Smart Communications, Inc., is a domestic corporation engaged in the business of providing telecommunications services to the general public. Its principal office is located at the SMART Tower, 6799 Ayala Avenue, Makati City, Philippines.[4] It was the petitioner in Civil Case No. 15-134374.

On March 27, 1992, respondent was granted a legislative franchise under Republic Act No. 7294 to "establish, install, maintain, lease and operate integrated telecommunications/computer/ electronic services, and fixed mobile stations throughout the Philippines for public domestic and international telecommunications and to install corresponding transmitting and receiving stations at such places in the Philippines as it may consider necessary and convenient". Further, it was authorized by the National Telecommunications Commission (NTC) to construct, install, operate, and maintain a nationwide Cellular Mobile Telephone Service (CMTS) system.

Pursuant to its legislative franchise, respondent operates a network of cell sites throughout the Philippines giving its subscribers sufficient connectivity and cellular phone coverage. It also offers telecommunications services such as sale of mobile phones, and subscriber identity modules [SIM] cards, broadband wireless internet access, postpaid lines and prepaid cellular load in its business centers and authorized distributors nationwide, including the City of Manila.

On April 29, 2015, and upon the request of the Oversight Committee of the City Council of Manila, respondent submitted to the Office of petitioner City Treasurer of the City of Manila five (5) Certifications

---

[4] The Parties, Respondent's Memorandum, docket, p. 69.

indicating its gross sales for the years 2010 to 2014 to Mega Cellular Network, Inc. (Mega), its exclusive distributor in the City of Manila, as follows:

Year	Sales	Output VAT	Total
2010	2,766,176,131.94	331,941,135.83	3,098,117,267.77
2011	2,945,706,737.22	353,484,808.47	3,299,191,545.69
2012	3,030,226,870.21	363,627,224.43	3,393,854,094.64
2013	2,978,995,852.99	357,479,502.36	3,336,475,355.35
2014	2,837,526,757.86	340,503,210.94	3,178,029,968.80

On the basis of these Certifications, petitioner City of Manila through Assistant City Treasurer Ma. Jazmin M. Talegon, issued against respondent Smart a Letter of Assessment dated 18 May 2015 for local business tax deficiencies, surcharges, and interest/penalties in the amount of ₱59,826,155.08, covering the years 2011 up to 2015.

Subsequently, a second Letter of Assessment dated June 16, 2015 was issued by petitioner Del Rosario reiterating the earlier assessment for local business tax, with additional assessment for regulatory fees and charges amounting to ₱42,009,851.00, allegedly covering around 208 cell sites of respondent in Manila.

On June 19, 2015, respondent filed separate protests against the two Letters of Assessment.

On June 25, 2015, respondent received from petitioner Del Rosario two (2) letters both dated June 22, 2015 denying its protests.

On July 27, 2015, respondent filed an appeal with the RTC of Manila, Branch 47 challenging the denial of its protests against the assessments issued by petitioners, to wit:

a. Regulatory fees and charges for its cell sites in the amount of ₱42,009,851.00; and

b. Local Business Tax as a wholesaler on its gross receipts derived from franchise operations in the amount of ₱59,826,155.08.

On August 14, 2015, respondent paid the assessed amounts under protest to prevent any disruption in its operations within the City of Manila. On this account, respondent filed with the RTC an Amended Petition dated August 25, 2015, to reflect the payment it made under protest.

During the pre-trial in the RTC, the parties agreed to expedite the proceedings by just filing their respective memoranda given that the facts of the case remained undisputed.

On March 9, 2016, the RTC promulgated the assailed Decision, the dispositive portion of which reads:

> ***WHEREFORE***, premises considered, the appeal of SMART Communications, Inc., is hereby **GRANTED**. The Assessments dated 18 May 2015 and 16 June 2015 issued by [Petitioners] City of Manila and Office of the City Treasurer against SMART for local business tax and regulatory fees are hereby DECLARED INVALID and VOID.
>
> [Petitioners] are further ***ORDERED*** to ***REFUND*** the amounts collected and paid as alleged local business tax as a wholesaler on [respondent's] gross receipts derived from franchise operations in the amount of Fifty Nine Million Eight Hundred Twenty Six Thousand One Hundred Fifty-Five Pesos and 08/100 (Php59,826,155.08), considering that [respondent] is NOT liable to the City of Manila for local business taxes on its gross receipts derived from franchise operations and realized with the City of Manila's territorial jurisdiction;

> [Petitioners] are likewise ***ORDERED*** to ***REFUND*** the amount of Forty-Two Million Nine Thousand Eight Hundred Fifty-One Pesos (PhP42,009.851.00). This is without prejudice to any revised assessment which may be issued to reflect the correct and proper regulatory fees and charges of [Respondent], the correct number of cell sites based on the appropriate tax rates and bases, and at a maximum period of five (5) years there being no proof of fraud committed and including the year of the assessment.
>
> SO ORDERED.

In finding for respondent, the RTC ratiocinated that being a holder of a franchise from Congress, respondent is thereby subject only to taxes as expressly stated therein, to the exclusion of all other forms of charges and fees, including local business tax. The RTC also held that even assuming that respondent may be liable to pay local business taxes despite its legislative franchise, still the assessment is erroneous for categorizing the nature of its business as a wholesaler. The RTC agreed with respondent that it is not selling an article of commerce but providing public services, as provided under its legislative franchise.

Further, after a review of petitioner City of Manila's current Revenue Code, Ordinance No. 8331, which took effect during the taxable year 2014, and its 1993 Revenue Code known as Ordinance No. 7794, the RTC found that the assessment issued by petitioners were based on a different tax rate and tax base. This, according to the RTC, confirmed that such assessments suffer from legal and factual infirmities rendering them without legal effect.

In view of the adverse ruling, petitioners filed a *Motion for Reconsideration* dated April 6, 2016.

On the other hand, respondent filed a *Motion to Expunge [Petitioners'] Motion for Reconsideration dated 06 April 2016 and Motion to Declare the Decision dated 09 March 2016 as Final and Executory* dated April 22, 2016, on the ground that petitioners' *Motion for Reconsideration* dated April 6, 2016, lacked the required notice of hearing mandated in Sections 4 and 5 of Rule 15 of the 1997 Rules of Civil Procedure.

On May 23, 2016, the RTC promulgated the equally assailed Order, the dispositive portion of which reads:

> "***WHEREFORE***, premises considered, the court rules as follows:
>
> a. [Petitioners] Motion for Reconsideration dated April 6, 2016 is considered ***EXPUNGED*** from the records; and
>
> b. The Decision of March 9, 2016 is hereby declared as final and executory. Let it be entered into the Book of entries of Judgment.
>
> SO ORDERED."

Hence, the instant *Petition for Review* filed by petitioners on June 23, 2016, praying for the Court (1) to SET ASIDE and ANNUL the assailed Decision and Order rendered by the RTC; and (2) to DISMISS the *Appeal* of respondent from the denial of its protests by petitioners.

Petitioners aver that their *Petition for Review* is a call for the exercise of the Court's prerogative to suspend or relax procedural rules even of the most mandatory character in order to serve the higher interests of substantial justice. They agree that the three (3)-day notice requirement in a motion is mandatory but the underlying rationale for this rule is simply to avoid surprises to the adverse party and give him time to study and meet the arguments of the motion. Petitioners assert that with the timely service of a copy of the Motion for Reconsideration upon respondent, it had every opportunity to study and meet the arguments raised in the motion.

Moreover, both the assailed Decision and Order are contrary to law and jurisprudence. They argue that it is a complete and reversible error on the part of the court *a quo* to eradicate respondent's taxability. Further, the assailed Order expunging the *Motion for Reconsideration* is too harsh and extreme. According to the petitioners, while the *Motion for Reconsideration* had inadvertently lacked a Notice of Hearing, it cannot be said that respondent, having been duly furnished with the same, was seriously prejudiced.

Respondent, on the other hand, argues that the instant Petition must be dismissed, as the assailed Decision and Order issued by the court *a quo* have already attained finality. Likewise, the instant *Petition for Review* should be dismissed considering that petitioners did not furnish the court *a quo* a copy of the *Petition for Review* as required under Section 1 [5], Rule 42 of the Rules of Court. Nevertheless, respondent contends that the court *a quo* correctly ruled that:

1. Respondent is only liable for taxes, charges and fees enumerated in its legislative franchise;

2. Respondent's gross sales in the City of Manila were derived pursuant to its lawful and legitimate franchise operations and is therefore not subject to local business taxes;

---

[5] Sec. 1. *How appeal taken; time for filing.* — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and **furnishing the Regional Trial Court and the adverse party with a copy of the petition**. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen days. (*Emphasis supplied*)

3. Respondent is not liable for local business tax based on the express provisions of the Local Government Code;

4. The imposition of local business tax upon respondent by petitioners is tantamount to direct double taxation;

5. Respondent is exempt from the payment of local franchise tax in the City of Manila pursuant to Ordinance No. 8229;

6. That the assessment for local business tax suffer from legal and factual infirmities, as it was based on an improper tax base and rate;

7. That the assessment issued to respondent for regulatory fees and charges are void for being without factual and legal bases; and

8. That respondent is entitled to a refund of its payment for alleged local business tax and regulatory fee liabilities.

With the submission of their respective Memorandum, the instant petition was deemed submitted for decision on December 20, 2016.[6]

THE ISSUES

As culled from the *Petition for Review* and the parties' Memoranda, the following are the issues submitted for the Court's resolution:

1. Whether or not the Court has jurisdiction over the instant Petition for Review;

2. Whether or not respondent SMART is liable to pay local business taxes as a wholesaler on its

[6] Resolution, Docket, p. 105.

gross receipts derived from franchise operations in the amount of ₱59,826,155.08;

3. Whether or not respondent SMART is liable to pay regulatory fees and charges in the amount of ₱42,009.851.00; and

4. Whether or not respondent SMART is entitled to a refund or tax credit of the local business tax and regulatory fees and charges improperly assessed by and paid to the City of Manila.

THE COURT'S RULING

The instant *Petition for Review* should be denied on jurisdictional ground.

The Court of Tax Appeals (CTA) is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. [7] Pertinently, Section 7(a)(3) of Republic Act No. 1125, as amended by R.A. Nos. 9282 and 9503 provides that the CTA has jurisdiction to review the decisions, orders or resolutions of the Regional Trial Court in local tax cases decided in their original or appellate jurisdiction, thus:

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

---

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

> them in the exercise of their original or appellate jurisdiction;"

Similarly, Section 3(a)(3) of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> xxx xxx xxx
>
> (3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;

On the other hand, the manner by which an adverse party may elevate its case to the CTA is provided in Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals, to wit:

> "(a) **A party adversely affected by** a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by **a decision or ruling of** the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or **a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments, xxx" (*Emphasis supplied*)

Finally, Section 4 of the same Rule, in relation to Section 1 of Rule 42 of the Rules of Court, lays down the modality by which an appeal may be lodged in the CTA, thus:

> SEC. 1. *How appeal taken; time for filing.* – **A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review** with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. **The petition shall be filed and served within** fifteen (15) days **from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment.** xxx" *(Emphasis supplied)*

The provisions clearly provide that the *Petition for Review* must be filed with this Court within thirty (30) days from notice of the decision sought to be reviewed or the denial of a motion for reconsideration filed in due time after the decision subject of the appeal was issued.

In this case, the motion for reconsideration filed by petitioners assailing the RTC Decision dated March 9, 2016 was found defective for lack of the required notice in violation of Sections 4 and 5 of Rule 15 of the Rules of Court, thus expunged from the record by the RTC in the assailed Order of May 23, 2016.

Considering that petitioners' *Motion for Reconsideration* was expunged from the record of the case, the RTC rightfully declared the assailed Decision of March 9, 2016 to have gained finality. Moreover, since there was no motion for reconsideration to resolve, the 30-day period to file the appeal should be reckoned from the date of receipt of the decision sought to be overturned.

Counting thirty (30) days from March 22, 2016[8], the day petitioners received a copy of the assailed Decision, they had until April 21, 2016 to appeal with the CTA. Thus, the filing of the instant *Petition for Review* on June 23, 2016 was way beyond the 30-day period within which to seek review by this Court. Consequently, the Court has no jurisdiction to entertain the present case.

It cannot be overemphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[9]

Even assuming that the Court has jurisdiction to entertain the instant *Petition for Review*, the same must still be dismissed.

Section 11 of R.A. No. 1125, as amended by R.A. No. 9282 and R.A. No. 9503, provides that:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling or inaction of** the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the

---

[8] Annex "A", Compliance, docket, p. 42.
[9] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

> Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or **the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: *Provided, however*, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*." *(Emphasis supplied)*

Further, Section 4(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended, specifies where to appeal and mode of appeal, to wit:

> "SEC. 4. *Where to appeal; mode of appeal. –*
>
> (a) **An appeal from** a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, **the decision or ruling of** the

> Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and **the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court.** The Court in Division shall act on the appeal." *(Emphasis supplied)*

Therefore, appeals filed with this Court assailing a Decision rendered by the RTC in the exercise of its original jurisdiction shall be brought before the Court in Division by way of a *Petition for Review* under a procedure analogous to that provided under Rule 42 of the 1997 Rules of Civil Procedure. In fine, the party appealing must comply with the legal and procedural requirements set forth in the provision, lest the appeal will not prosper.

Section 1 of Rule 42 of the 1997 Rules of Civil Procedure, as amended, cited earlier provides that aside from the adverse party, the petitioner or the appellant must furnish the Regional Trial Court with a copy of the Petition for Review.

Record reveals that petitioners failed to furnish the RTC which rendered the assailed Decision and Order, with a copy of the instant *Petition for Review*. Such omission renders the instant petition dismissible under Section 3 of Rule 42 of the 1997 Rules of Civil Procedure, as amended, which reads:

> "SEC. 3. *Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof."

It is well to emphasized that the right to appeal is not a natural right and is not part of due process, but merely a statutory privilege to be exercised only in accordance with the law. Being the party who sought to appeal, he must comply with the requirements of the relevant rules; otherwise, he would lose the statutory right to appeal. It cannot be overemphasized, indeed, that the procedures regulating appeals as laid down in the Rules of Court must be followed because strict compliance with them is indispensable for the orderly and speedy disposition of justice.[10]

WHEREFORE, premises considered, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

---

[10] *Juanito Magsino vs. Elena De Ocampo and Ramon Guico*, G.R. No. 166944, August 18, 2014.

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 Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice