REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ACESITE (PHILIPPINES) HOTEL CORPORATION,
Petitioner,

- versus -

LIBERTY TOLEDO, in her capacity as CITY TREASURER OF MANILA and THE CITY OF MANILA,
Respondents.

C.T.A. AC NO. 73

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

MAY 24 2012 ; 8:00 a.m.

x - x

DECISION

Fabon-Victorino, J.:

This is an appeal by way of a Petition for Review filed by petitioner Acesite (Philippines) Hotel Corporation praying for the reversal and setting aside of the Decision dated December 07, 2010 and the Order dated February 28, 2011, both rendered by the Regional Trial Court (RTC), Branch 17 of Manila in Civil Case No. 07-118174 entitled "Acesite (Philippines) Hotel Corporation vs. Liberty Toledo, in her capacity as City Treasurer of Manila and the City of Manila."

The facts as established before the court *a quo* remain undisputed.

Petitioner Acesite is a duly organized domestic corporation with office address at the Manila Pavilion Hotel, United Nations Avenue, Ermita, Manila. It is into hostelry business and is the owner-operator of the Manila Pavilion Hotel. It leases to the Philippine Amusement and Gaming Corporation (PAGCOR) 7,017.43 square meters of its hotel premises for the conduct of the latter's business operations. In addition, it caters to the lodging, billeting, food and beverage requirements, among others, of PAGCOR's clients and employees. Out of the said contractual relation, it derives substantial revenues from PAGCOR.

On the other hand, respondent Liberty Toledo is the City Treasurer of the other respondent City of Manila, is a municipal corporation constituting a political subdivision of the Republic of the Philippines vested with and exercising governmental functions. Both may be served notice at the City Hall Building, Manila.

On July 13, 2007, petitioner received a Demand Letter of even date with Notice of Assessment from respondent Toledo, demanding payment of accumulated business tax deficiency for its revenues derived from PAGCOR amounting to P45,575,011.72, covering the period from year 2004 to June 30, 2007.[1]

On September 7, 2007,[2] petitioner filed a Protest which respondent Toledo denied in a letter dated September 10, 2007, explaining the action taken in this wise:

> "Relative thereto, this Office, much to our regret, has already held, in our letter dated April 14, 2004, "that Acesite (Philippines) Hotel Corporation is not exempt from paying local taxes, fees and charges is not clearly granted by law and is derived only from the alleged exemption of the Philippine Amusement and Gaming Corporation, a government-owned and controlled corporation whose tax exemption has been effectively withdrawn by Section 193 of R.A. 7160, otherwise known as the Local Government Code of 1991.

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[1] Annex "D", Petition for Review, docket, pp. 36-39.
[2] Annex "E", Petition for Review, docket, pp. 40-41.

> Our position has been sustained by the Regional Trial Court, Branch 15, Manila, in Civil Case No. 04-109796, entitled Acesite (Philippines) Hotel Corporation vs. Liberty Toledo, et al., wherein it was held in its Decision dated September 1, 2006 that "Thus, by express provision of the law, PAGCOR as an instrumentality of the National Government, is beyond the reach of the local taxing power. However, the petitioner Acesite does not share this privilege. Concededly under PD 1869, the income of entities derived from transactions with PAGCOR were also exempted from the payment of taxes, x x x
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> With the passage of the Local Government Code, however, privileges of entities not exempted has been withdrawn."

The cited letter of denial was received by petitioner on September 12, 2010.[3]

On October 26, 2007, petitioner assailed the denial of its Protest with the RTC, Branch 17 of Manila. The case entitled Acesite (Philippines) Hotel Corporation v. Liberty Toledo, in her capacity as City Treasurer of Manila and City of Manila was docketed as Civil Case No. 07-118174.

[3] Annex "F", Petition for Review, docket, pp. 42-43.

On December 7, 2010, the trial court rendered the impugned Decision,[4] the dispositive portion of which reads as follows:

> "WHEREFORE, the *Appeal* filed by petitioner Acesite (Philippines) Hotel Corporation is **DISMISSED** for lack of merit.
>
> SO ORDERED."

On February 28, 2011,[5] petitioner's Motion for Reconsideration was denied by the RTC, for lack of merit.

Hence, this Petition for Review filed under Rule 8 of the Revised Rules of the Court of Tax Appeals on April 8, 2011, arguing that:[6]

> "A.
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> PAGCOR IS STILL EXEMPT FROM PAYMENT OF LOCAL TAXES; REPUBLIC ACT 7160 DID NOT AMEND P.D. 1869; THERE IS A CLEAR LEGISLATIVE INTENT TO KEEP THE PROVISIONS OF THE PAGCOR CHARTER INTACT AND EFFECTIVE.
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> B.
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> PAGCOR IS EXEMPT AND INSULATED FROM DIRECT AND INDIRECT TAXES;

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[4] Annex "B", Petition for Review, docket, pp. 28-33; RTC Records, pp. 160-165.
[5] Annex "C", Petition for Review, docket, p. 34; RTC Records, p. 186.
[6] Docket, pp. 5-6.

C.
PETITIONER'S REVENUES DERIVED FROM ITS CONTRACTUAL RELATIONSHIP WITH PAGCOR IS EXEMPT FROM LOCAL TAXES; THE POSSIBLE BURDEN OF INDIRECT TAXATION CANNOT BE SHIFTED TO PAGCOR"

In her Comment dated May 12, 2011 filed the following day, May 13, 2011, respondent moves to dismiss the case for lack of factual and legal bases.[7]

On August 10, 2011, the case was submitted for decision[8] after petitioner filed its Memorandum[9] on July 04, 2011, and respondent, on July 07, 2011. [10]

Petitioner claims that per its very Charter,[11] specifically Section 13(2)(a) thereof, PAGCOR is exempt from payment of local taxes thus:

> "SECTION 13. *Exemptions*. -
>
> xxx xxx xxx
>
> (2) *Income and Other Taxes*. – (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees,

[7] Docket, pp. 53-64.
[8] Resolution dated August 10, 2011, docket, p. 113.
[9] Docket, pp. 71-91.
[10] Docket, pp. 95-107.
[11] Presidential Decree No. 1869 .

> charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.
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> (b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator."

As expressly stated in the foregoing provision, PAGCOR's tax-exempt status inures to the benefit of and extends to petitioner by virtue of its contractual relation with the former. In other words all revenues earned by petitioner arising from the lease of its premises to PAGCOR in connection with the latter's casino operations, are likewise exempt from all kinds of taxes.

On the same vein, Section 133, paragraph O of R.A. 7160, otherwise known as the Local Government Code (LGC) prohibits local government units such as respondent City of Manila, from levying taxes on instrumentalities of the government such as PAGCOR. Hence, respondent City of Manila has no power to tax PAGCOR. The said prohibition is extended in favor of petitioner by reason of the lease of its premises to PAGCOR for use in the latter's casino operation.

Further, on July 14, 2007, Republic Act 9487 entitled "An Act further Amending Presidential Decree No. 1869, otherwise known as PAGCOR Charter" took effect. It did not only extend PAGCOR's franchise but also introduced minor amendments thereby reaffirming the entire PAGCOR Charter indicating the legislative intent to keep it intact and effective, including the provisions on exemption from taxes. Being the latest expression of legislative intent, R.A. No. 9487 should prevail over R.A. No. 7160, which was of 1991 vintage. Thus, Section 193 of R.A. No. 7160 withdrawing the tax exemption privileges enjoyed by all entities, except water districts, cooperatives, non-stock and non-profit hospitals and educational institutions, is not applicable to PAGCOR.

Petitioner also believes that PAGCOR is exempt and insulated from direct and indirect taxes, except for the 5% franchise tax required under its Charter. This exemption extends to all entities dealing with PAGCOR like petitioner, for otherwise, such will constitute an indirect tax, the burden of payment of which can be shifted to PAGCOR, which is proscribed under P.D. No. 1869.[12] For this reason, the demand for payment of business tax by respondent on petitioner's revenues derived from PAGCOR should be nullified and declared void for being contrary to law.

In moving for the dismissal of the case, respondents contend that the RTC did not err in ruling that the withdrawal of all tax exemption privileges of government owned and controlled corporations anchored on Sections 193 of R.A. No. 7160 or the Local Government Code has long been settled. The provision explicitly withdrew all tax exemptions "enjoyed by all persons,

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[12] The CIR v. Acesite (Philippines) Hotel Corporation, G.R. No. 147295, February 16, 2007 and the CIR v. John Gotamco and Sons, Inc., et al, G.R. No. L-31092, February 27, 1987.

whether natural or juridical, including government-owned or controlled corporations."

Moreover, Section 534 of the same Code expressly repealed or modified "(a)ll general and special laws, acts, city charters, decrees, executive orders, proclamations and administrative regulations, or part or parts thereof which are inconsistent with any of the provisions of the Code." Since PAGCOR is a government owned and controlled corporation albeit performing proprietary functions, it is covered by Section 193 of R.A. No. 7160 as ruled in the case of *Basco vs. Philippine Amusement and Gaming* Corporation.[13]

Moreover, the exemption provided under PAGCOR's Charter pertains only to taxes under the National Internal Revenue Code and not to local taxes, as held in the case of *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation.*[14]

Respondents are also not in one with petitioner's conclusion that the minor amendments made by R.A. No. 9487 in

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[13] G.R. No. 91649, May 14, 1991.
[14] G.R. No. 147295, February 16, 2007.

the PAGCOR Charter indicate the legislative intent to maintain its provisions intact including the tax exemption provided therein for none was expressly provided in the amendatory law.

Finally, petitioner has no cause of action against respondents for its failure to appeal within thirty (30) days from receipt of the denial of the protest on September 12, 2007 prescribed under Section 195 of the LGC. Pursuant to the provision, petitioner had until October 12, 2007, within which to file an appeal. However, the record shows that petitioner sought refuge with the RTC of Manila only on October 26, 2007 or beyond the 30-day prescriptive period.

From the exchange of arguments, the issues raised by the parties can be summarized as follows:

> 1. Whether the court *a quo* erred when it dismissed the Petition filed before it and holding that petitioner is liable to pay local tax deficiency of P45,575,011.72 for the period of 2004 to June 30, 2007; and
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> 2. Whether the court *a quo* erred when it ruled that petitioner's appeal was timely filed as provided under Section 195 of the Local Government Code of 1991.

DISCUSSION/RULING

The Court finds the timeliness of filing of the appeal with the RTC a very crucial issue that must be addressed first. And Section 195 of the Local Government Code of 1991 (R.A. No. 7160) is categorical on the matter, thus:

> "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**." *(Emphasis supplied)*

Evident from the foregoing provision that an aggrieved taxpayer has thirty (30) days from receipt of the denial of his protest, or from the lapse of the sixty-day period for local treasurer to act on the protest, within which to appeal to the court of competent jurisdiction; failure to do so shall render the impugned assessment conclusive and unappealable. The provision is clear and unambiguous. It has been held that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application.[15]

There is no denying that petitioner received the adverse decision on its protest on September 12, 2007. Counting from the said date, petitioner had 30 days or until October 12, 2007, within which to file its appeal with the RTC. Petitioner explains that October 12, 2007 - the last day for filing the appeal with the RTC - fell on a Friday declared a national holiday in celebration of the Feast of Ramadan or Eid'l Fitr pursuant to Proclamation No. 1397 issued by then President Gloria Macapagal-Arroyo. So petitioner filed its appeal with the RTC through registered mail on the next working day October 15, 2007, a Monday. But mere

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[15] *Cebu Portland Cement Co. vs. Municipality of Naga, Cebu, et al.*, G.R. Nos. 24116-17, August 22, 1968.

allegation is not proof.[16] The docket of the case, including those from the RTC reveals that there is no evidence to substantiate this contention. Note that timeliness of an appeal is a factual issue that requires a review or evaluation of evidence on when the case was actually mailed or filed[17] and received by the appellate court.[18]

Plain from the impugned RTC Decision of December 7, 2010 and from the record that the appeal was received by the court *a quo* on October 26, 2007 or way beyond the 30-day reglementary period for appeal. There is nothing on the record that shows that it was filed either personally or through mail on October 15, 2007 as claimed by petitioner. In the meantime, the subject assessment became final and unappealable depriving the RTC of competence to entertain it. In other words, the RTC no longer had jurisdiction to determine and decide petitioner's appeal.

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[16] Ernesto Canada, Doing Business Under The Name And Style Of Hi-Ball Freight Services vs. All Commodities Marketing Corporation, G.R. No. 146141, October 17, 2008.
[17] Eureka Personnel & Management Services, Inc. vs. Eduardo Valencia, G.R. No. 159358, July 15, 2009.
[18] Mangahas vs. Court of Appeals, G.R. No. 173375, September 25, 2008.

While on the last page of the Petition across the name of the Office of the Clerk of Court appears "RR# 1310 -10-15-07"[19] which could possibly be the Registry Receipt Number and the date of mailing, the same is dubious and self-serving as it was a handwritten note of an unidentified person. On the other hand, the stamp of the Office of the Clerk of Court of RTC, Branch 17 on the first page of the Petition clearly shows the date of its receipt as October 26, 2007.

More importantly, the Legal Fees Form bearing Control No. 00019063[20] with the computation of the filing fees for the appeal to the RTC indicates that the required filing fees were paid only on October 26, 2007. Hence, it was only on October 26, 2007 that petitioner was able to comply with the requirements to perfect an appeal.

Basic is the rule that appellate court docket and other lawful fees must be paid within the period for taking an appeal,[21] and that where the filing of the initiatory pleading is not accompanied by payment of the docket fees, the court may allow

[19] RTC docket page 17.
[20] RTC docket page 29.
[21] Ilusorio vs. Ilusorio-Yap, G.R. No. 171656, March 17, 2009.

payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.[22]

The filing of the appeal and the payment of the required docket and other lawful fees on time must concur as they are twin requirements for the court to acquire competence to determine and rule on the case. The payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. This is so because a court acquires jurisdiction over the subject matter of the action only upon the payment of the correct amount of docket fees regardless of the actual date of filing of the case in court.[23]

In the case of *La Salette College v. Victor C. Pilotin,*[24] the Supreme Court ruled that payment of docket fees is not a trivial matter. These fees are necessary to defray court expenses in the handling of cases. For this reason, and to secure a just and speedy disposition of every action and proceeding, the Rule of Civil Procedure mandates the payment of docket fees and other lawful fees within the prescribed period. Otherwise, the jurisdiction of the proper court to handle a case is adversely

[22] Mercado vs. Court of Appeals, G.R. No. 150241, November 04, 2004.
[23] Villena vs. Rupisan, G.R. NO. 167620, April 03, 2007.
[24] G.R. No. 149227, December 11, 2003.

affected.[25] Perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional.[26] Otherwise, the appellate court will not be able to act on the subject matter of the action, and the decision or final order sought to be appealed from will become final and executory as what actually occurred in the case at bar.

The effects of failure to perfect an appeal were explained by the Highest Tribunal in the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*[27] in the following manner:

> "It has been ruled that **perfection of an appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.
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> Public policy and sound practice demand that judgments of courts should

[25] Sun Insurance Office, Ltd. (SIOL) v. Asuncion, 170 SCRA 274.
[26] Sehwani, Incorporated vs. In-N-Out Burger, Inc., G.R. No. 171053, October 15, 2007.
[27] G.R. No. 167606, August 11, 2010.

> become final and irrevocable at some definite time fixed by law. Such rules are necessary incidents to the proper, efficient and orderly discharge of judicial functions. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the fruits of his victory. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. xxx"

To repeat, the failure of petitioner to file and perfect its appeal with the RTC within the prescribed period of 30 days from receipt of the denial of its protest as mandated under Section 195 of the Local Government Code, deprived the RTC of jurisdiction to entertain and determine the correctness issued by respondents.

Relevantly, in the case of *George Katon vs. Manuel Palanca, Jr., et al.*[28] the Supreme Court ruled that where prescription, lack of jurisdiction or failure to state a cause of action clearly appear from the complaint filed with the trial court, the action may be dismissed *motu proprio* by the appellate court, even if the case has been elevated for review on different grounds.

[28] G.R. No. 151149, September 7, 2004.

It is evident that the RTC never acquired jurisdiction over petitioner's appeal impugning the denial of its protest over the subject assessment. Being a question of jurisdiction, such issue may be raised at any time, even on appeal before this Court, and even for the first time before the Supreme Court.

The fact that the RTC took cognizance of the Petition filed before it, is of no moment as it will not preclude the Court from ruling on the timeliness of the said Petition. The legality of the appeal may be raised at any stage of the proceedings even in the appellate court, and the latter is not precluded from dismissing the petition on the ground of its being filed out of time. A recognition of the merit of the petition does not necessarily carry with it any assumption or conclusion that it has been timely filed.[29]

Further, a decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before the Supreme Court.[30] If the court has no jurisdiction over

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[29] Manila Memorial Park Cemetery, Inc. vs. Court Of Appeals, G.R. No. 137122, November 15, 2000.
[30] Bungcayao, Sr. vs. Fort Ilocandia Property Holdings, G.R. No. 170483, April 19, 2010.

the nature of an action, it may dismiss the same *ex mero motu* or *motu proprio.*[31]

Having become final and executory, the impugned assessment issued by respondents is now beyond the province of the RTC as well as of this Court to review. That being the case, a discussion on the other issue is now moot and academic.

WHEREFORE, the Petition for Review dated April 7, 2011 filed by Acesite (Philippines) Hotel Corporation, is hereby **DISMISSED,** on jurisdictional ground.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

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[31] Danao, et al. vs. Tappa, et al., G.R. NO. 181303, September 17, 2009.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ERNESTO D. ACOSTA
Presiding Justice