REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

NATIONAL TRANSMISSION CORPORATION, *Petitioner,*	**C.T.A. AC NO. 68** **(RTC Civil Case No. Q-09-64637)**
	Members:
-versus-	BAUTISTA, Chairperson, PALANCA-ENRIQUEZ, and COTANGCO-MANALASTAS, JJ.
THE MUNICIPALITY OF MAGALLANES, AGUSAN DEL NORTE, represented by its MUNICIPAL TREASURER, EDESSA W. DELICANO, *Respondent.*	**Promulgated:** JAN 5 2012 ABFerrand 10:46 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

The review taken by the RTC over the denial of the protest by the local treasurer would fall within the court's original jurisdiction. Labeling said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment or order of a lower court, but of a local government official *(Yamane vs. Lepanto Condominium Corporation, 474 SCRA 268).*

THE CASE

This is an appeal by way of a Petition for Review under *Section 7(a)(3) of RA 9282* filed by the National Transmission Corporation (hereafter "petitioner Transco") from the Order dated December 18, 2009, rendered by the Regional Trial Court ("RTC") of Quezon City, Branch 220, in Civil Case No. Q-09-64637, entitled "National Transmission Corporation vs. the Municipality of Magallanes, et al.", which reads, as follows:

> "Considering that the instant case is not an original action but an appeal from the Municipal Treasurer of Magallanes, Agusan del Norte after it denied the appellant's Protest of the statement of account on business taxes due to said municipality and considering further, that the subject of the statement of account on appeal refers to the business engaged in by TRANSCO in the Municipality of Magallanes, Agusan, del Norte, the 'court of competent jurisdiction' being referred to in Section 175 of R.A. 7160 is the Regional Trial Court of Agusan del Norte which has territorial jurisdiction over the Region where the Municipality of Magallanes is located.
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> WHEREFORE, in view of the foregoing, the instant appeal is hereby DISMISSED.
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> SO ORDERED."

and the Order dated August 2, 2010, denying petitioner's "Motion For Reconsideration", the dispositive portion of which reads, as follows:

> "WHEREFORE, the Motion for Reconsideration is hereby DENIED for lack of Merit.
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> SO ORDERED."

THE PARTIES

Petitioner Transco is an entity created pursuant to RA 9136, otherwise known as the "Electric Power Industry Reform Act of 2011", with principal office address at Power Center, EDSA corner Quezon Avenue, Diliman, Quezon City.

On the other hand, respondent Municipality of Magallanes, Agusan del Norte (hereafter "respondent Municipality of Magallanes") is a local government unit duly created and organized under the laws of the Philippines, represented by the Municipal Treasurer, Edessa W. Delicano, with office address at the Municipal Hall, Magallanes, Agusan del Norte.

THE FACTS

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

On November 13, 2008, petitioner Transco received a letter from the Office of the Municipal Treasurer, Municipality of Magallanes, Agusan del Norte, assessing petitioner of business taxes and other regulatory fees in the total amount of P701,841.21 for taxable years 2006 and 2007, pursuant to *Local Finance Circular No. 1-07* dated June 28, 2007, broken down as follows:

YEAR	GROSS RECEIPTS		BUSINESS TAX		FEES & CHARGES		PENALTIES		TOTAL AMOUNT
	Base Year	Amount	Tax Rate	Amount	Permit Fees	Regulatory Fees	Surcharges	Interest	
2006	2005	25,725,102.93	55% of 1%	141,488.07	2,000.00	517.00	36,001.27	129,604.56	309,610.90
2007	2006	38,090,796.68	55% of 1%	209,499.38	2,000.00	517.00	53,004.10	127,209.83	392,230.31
TOTAL				350,987.45	4,000.00	1,034.00	89,005.37	256,814.39	701,841.21

On January 12, 2009, petitioner Transco protested the Statement of Account issued by the Municipal Treasurer of Magallanes and requested that said Statement of Account be set aside on the following grounds: (1) the local government units cannot impose taxes, fees or charges of any kind on the agencies and instrumentalities of the government; (2) a municipality has no power to impose business tax on businesses enjoying a franchise; and (3) *Local Finance Circular No. 1-07* cannot give the Municipality of Magallanes the power to impose taxes, which the law does not provide.

On March 13, 2009, petitioner Transco received a letter from the Municipal Treasurer denying its Protest Letter, dated January 12, 2009.

On April 8, 2009, petitioner Transco elevated the denial of its protest to the RTC of Quezon City, Branch 220, docketed as Appealed Case No. Q-09-64637, entitled "National Transmission Corporation vs. Municipality of Magallanes, Agusan del Norte, represented by its Municipal Treasurer, Ms. Edessa W. Delicano".

On December 18, 2010, the RTC of Quezon City, Branch 220, dismissed the appeal, in the terms earlier set forth.

On March 18, 2010, petitioner Transco filed a "Motion for Reconsideration", which was denied in an Order dated August 2, 2010.

Hence, this appeal.

On October 27, 2010, we issued a Resolution requiring respondent to file its comment, which respondent failed to comply.

On May 4, 2011, we ordered the parties to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the case shall be deemed submitted for decision.

On May 20, 2011, petitioner filed its "Memorandum", while respondent filed its "Memorandum" on June 30, 2011.

In a Resolution dated September 13, 2011, this case was deemed submitted for decision.

ISSUE

WHETHER OR NOT THE RTC ERRED IN DISMISSING TRANSCO'S APPEAL BECAUSE: (a) THE ACTION IS NOT AN ORIGINAL ONE BUT AN APPEAL FROM THE MUNICIPAL TREASURER OF MAGALLANES, AGUSAN DEL NORTE, AND (b) THE COURT OF COMPETENT JURISDICTION IS THE RTC OF AGUSAN DEL NORTE.

THE COURT'S RULING

The petition has merit.

Petitioner Transco contends that the RTC of Quezon City erred in dismissing petitioner's appeal since the case filed in the RTC is an original action, and not an appeal from the Municipal Treasurer of Magallanes, Agusan del Norte, and the court of competent jurisdiction is the RTC of Quezon City and not the RTC of Agusan del Norte.

On the other hand, respondent counters that the Municipality of Magallanes has the authority to impose business tax and other regulatory fees under the Local Government Code ("LGC"); the assessment against petitioner is against a holder of a nationwide franchise exercised within the territorial jurisdiction of the Municipality of Magallanes, Agusan del Norte; hence it was erroneous for petitioner to appeal the assessment to the RTC of Quezon City and not to the RTC of Agusan del Norte, where petitioner is conducting its business, the *situs* of the tax. While the Supreme Court has already categorized the same as an original action, but since it is an appeal pursuant to *Section 195 of the LGC*, its venue is jurisdictional and thus it should be filed in the place where the tax is being imposed and not some faraway land under the guise that it is where the principal office of the petitioner is located. Moreover, the Municipality of Magallanes is a fourth class municipality, and in the interest of justice and equity to minimize the financial drain from the municipal coffers, it is best that this case be heard in the RTC of Agusan del Norte and Butuan City.

We find merit in petitioner's contentions.

Section 195 of the LGC provides:

> "SEC. 195. Protest of Assessment. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the

> notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

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

In the case of *Yamane vs. Lepanto Condominium Corporation, 474 SCRA 268 ("Yamane case"),* the Supreme Court ruled that the review taken by the RTC over the denial of the protest by the local treasurer would fall within the court's original jurisdiction. In short, the review is the initial judicial cognizance of the matter. Moreover, labeling said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment or order of a lower court, but of a local government official.

Hence, the RTC of Quezon City erred in dismissing Civil Case No. Q-09-64637 on the ground that it is not an original action, but an appeal from the Municipal Treasurer of Magallanes, Agusan del Norte, after she denied petitioner Tranco's Protest of the Statement of Account and business taxes.

Respondent's contention that the venue under *Section 195 of the LGC* is jurisdictional and thus the case should be filed in the place where the tax is being imposed is devoid of merit.

Respondent should not have confused jurisdiction with venue because they are totally different from each other. Jurisdiction is the

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authority to hear and determine a cause or the right to act in a case *(Union Bank of the Philippines vs. Securities and Exchange Commission, 499 SCRA 263)*. Whereas, venue is the place where the case is to be heard or tried *(Eusebio vs. Eusebio, 268 SCRA 270)*.

Questions or issues relating to venue of actions are basically governed by *Rule 4 of the 1997 Rules of Civil Procedure, as amended.* The laying of venue is procedural rather than substantive, relating as it does to jurisdiction of the court over the person rather than the subject matter. Venue relates to trial and not to jurisdiction. It is a procedural, not a jurisdictional matter. It relates to the place of trial or geographical location in which an action or proceeding should be brought and not to the jurisdiction of the court. It is meant to provide convenience to the parties rather than restrict their access to the court as it relates to the place of trial *(Nocum vs. Tan, 470 SCRA 648)*.

Jurisdiction, on the other hand, is more substantive than procedural. It refers to the authority of the court to hear and decide a case, and, it is one that is dictated by law, and the matter ordinarily can be raised at any stage of the trial, even upon appeal *(Gumabon, et al. vs. Larin,*

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370 SCRA 644). In addition to being conferred by the Constitution and the law, the rule is settled that a court's jurisdiction over the subject matter is determined by the relevant allegations in the complaint, the law in effect when the action is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims asserted *(Home Guaranty Corporation vs. R-II Builders Inc., 645 SCRA 230-231).* Once jurisdiction is acquired, it continues until the case is finally terminated *(Philippine National Bank vs. Tejano, Jr., 604 SCRA 159).*

In the instant case, said Civil Case No. Q-09-64637 involves the review taken by the RTC over the denial of the protest by the local treasurer, thus, pursuant to the Yamane Case, the RTC has jurisdiction over said case. The pertinent question is: where is the venue of the action?

Since the subject matter of Civil Case No. Q-09-64637 is an assessment for business taxes and other regulatory fees, which is civil in nature and basically a personal action; then, the provision of *Section 2, Rule 4 of the 1997 Rules of Civil Procedure, as amended,* applies.

Section 2, Rule 4 of the Rules of Civil Procedure, as amended, provides:

> "SEC. 2. Venue of personal actions. – All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff."

In the instant case, the plaintiff is petitioner Transco, a juridical entity created under *RA 9136*, with principal office at the Power Center, EDSA corner Quezon Avenue, Diliman, Quezon City. Established in our jurisprudence is the rule that the *residence* of a corporation is the place where its principal office is located *(Hyatt Elevators and Escalators Corporation vs. Goldstar Elevators, Phils., Inc., 473 SCRA 713)*. This ruling is important in determining the venue of an action by or against a corporation, as in the present case (*supra*). Since petitioner Transco is a juridical entity, then for purposes of instituting personal actions in court, the place where its principal office is located may also be considered as the proper venue. Therefore, venue in this case was properly laid in the RTC of Quezon City, the court having territorial jurisdiction over petitioner Transco.

The RTC of Quezon City Erred in Dismissing Civil Case No. Q-09-64637

Considering that it is the RTC that has jurisdiction over the instant case and venue was properly laid in the RTC of Quezon City; then, the RTC of Quezon City erred in dismissing Civil Case No. Q-09-64637 on the ground that the court of competent jurisdiction being referred to in *Section 175 (should be 195) of the LGC* is the RTC of Agusan del Norte which has territorial jurisdiction over the region where the Municipality of Magallanes is located.

In the case of *Dacoycoy vs. Intermediate Appellate Court, 195 SCRA 645*, the Supreme Court ruled that to dismiss the complaint on the ground of improper venue is certainly not the appropriate course of action, particularly as venue in the inferior court, as well in the RTC may be waived expressly or impliedly. Thus, unless and until the defendant objects to the venue in a motion to dismiss, the venue cannot be truly said to have been improperly laid, as for all practical intents and purposes, the venue, though technically wrong, may be acceptable to the parties for whose convenience the rules on venue had been devised. The trial court

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cannot pre-empt the defendant's prerogative to object to the improper laying of the venue by *motu proprio* dismissing the case.

In the instant case, records show that after petitioner filed Appealed Case No. Q-09-64637, the RTC of Quezon City, without necessarily giving due course to the "appeal", ordered the parties to submit their position papers as to the jurisdiction of the court to take cognizance of the case. Thereafter, the RTC of Quezon City issued the assailed Order dated December 18, 2009, dismissing said case. Clearly, the issue of improper venue was not raised by respondent Municipality of Magallanes, but the same was pre-empted by the RTC of Quezon City. In fact, Civil Case No. Q-09-64637 was motu propio dismissed by the RTC of Quezon City, even before respondent has the opportunity to file her answer.

In the case of *Gumabon vs. Larin,* *<u>supra</u>,* *644-645*, the Supreme Court ruled that wrong venue, being merely a procedural infirmity, not a jurisdictional impediment, does not, without timely exception, disallow the RTC of Quezon City to take cognizance of, and to proceed with the case. Thus, the RTC of Quezon City erred in dismissing *motu propio* the complaint on the ground of improper venue.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. The assailed Orders dated December 18, 2009 and August 2, 2010, issued by the RTC of Quezon, Branch 220, are hereby **REVERSED** and **SET ASIDE**. Civil Case No. Q-09-64637 is hereby reinstated. Let this case be remanded to the RTC of Quezon City, Branch 220, for further proceedings.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

C E R T I F I C A T I O N

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

ERNESTO D. ACOSTA
Presiding Justice