Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

THE CITY TREASURER OF THE CITY OF MANILA,	**CTA AC NO. 111 (Civil Case No. 07-117472)**
Petitioner,	
-versus-	Members: **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **COTANGCO-MANALASTAS, *JJ.***
CITY FINANCIAL CORPORATION, Respondent.	Promulgated: MAY 28 2014 11:50 a.m.

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DECISION

CASANOVA, *J.*:

The instant Petition for Review[1] seeks the reversal of the Decision[2] dated May 22, 2013, granting herein respondent's petition for refund in the amount of P277,565.86, representing the unlawfully collected business taxes under Section 21 of the Revenue Code of Manila; and, the Order[3] dated July 12, 2013, denying herein petitioner's Motion for Reconsideration of the said Decision, both rendered by Branch 18 of the Regional Trial Court of Manila (RTC) in Civil Case No. 07-117472 entitled *"Citifinancial Corporation vs. Treasurer of the City of Manila, In the person of Liberty M. Toledo".*

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

[1] AC Docket, pp. 27-41.
[2] Annex "A" to the Petition for Review, AC Docket, pp. 42-52.
[3] Annex "B" to the Petition for Review, AC Docket, pp. 53-54.

Petitioner-City Treasurer of Manila is a public official tasked with the collection of all local taxes, fees, and charges, and the performance of other duties and functions under the Local Government Code. The duly appointed City Treasurer of Manila is Ms. Liberty M. Toledo, whose office is at the Ground Floor, Manila City Hall Building, Villegas St., Manila.[4]

Respondent-City Financial Corporation (City Financial) is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at 16th Floor, Citibank Tower, 8741, Paseo De Roxas, Makati City. It may be served with summons at its counsel's address at 18th, 19th, and 17th Liberty Center, 104 H.V. De La Costa St., Salcedo Village, Makati City.[5]

Sometime in January 2007, herein respondent sought for the renewal of the business permits of its two branches located in Taft Avenue, Ermita, Manila (Taft Avenue Branch) and Yet Building, San Fernando Street, Plaza del Condo, Brgy. 282, Zone 026, San Nicolas, Manila (Binondo Branch). In connection with the said renewal, herein petitioner issued a statement of account[6] dated January 22, 2007 for the said branches, assessing respondent of business tax under Section 21 of the Revenue Code of Manila (RCM) in the respective amount of P380,189.95 and P174,941.77 for the 1st Quarter of 2007. Respondent protested[7] the said assessments through a letter dated January 26, 2007, explaining the inapplicability of the said Section to its business and requesting the exclusion of the said assessments against the two branches.[8] However, the same was denied by petitioner in a letter[9] dated February 6, 2007, in this wise:

> "In this connection, please be informed that this Office, much to our regret, cannot act favorably on your request considering that Citifinancial Corporation is paying and covered by Percentage Tax under the National Internal Revenue Code. Hence, it is liable and subject to Section 21 (A) of the Revenue Code of Manila x x x."

On February 15, 2007, respondent paid under protest the following amounts: P161,523.48 for the Taft Avenue Branch and

[4] Par. 1, The Parties, Petition for Review, AC Docket, p. 27.
[5] Par. 2, The Parties, Petition for Review, Ibid.
[6] Exhibits "A" and "B", RTC Docket (Vol. I), p. 205 and p.206.
[7] Exhibit "C", RTC Docket (Vol. I), pp. 207-209.
[8] Pars. 4 and 5, Decision of the Regional Trial Court, Annex "A" to the Petition for Review, AC Docket, p. 43.
[9] Exhibit "D", RTC Docket (Vol. I), pp. 210-211.

P75,609.20 for the Binondo Branch as shown in its 1st Quarter Protest Letter[10] filed on March 16, 2007. The said amounts included the tax allegedly payable by the two (2) branches under Section 21 (A) of the RCM: P95,047.49 for Taft Avenue Branch and P43,735.44 for Binondo Branch.[11]

During the pendency of respondent's 1st Quarter Protest, petitioner made an assessment against respondent for the second quarter of 2007 in the amounts of P95,047.49[12] for Taft Avenue Branch and P43,735.44[13] for Binondo Branch. The amounts were paid[14] under protest on April 20, 2007. On May 18, 2007, respondent filed its 2nd Quarter Letter of Protest[15] reiterating its arguments in the 1st quarter protest.[16]

When petitioner failed to act upon respondent's 1st Quarter Protest within the sixty (60) day prescriptive period, respondent filed a Petition[17] with the Regional Trial Court of Manila. Meanwhile, on June 22, 2007, respondent received petitioner's letter denying its 1st and 2nd quarters protest letters. Consequently, respondent filed an Amended and Supplemental Petition[18] before the said Court.[19] Petitioner filed her Answer[20] on September 7, 2007.

After trial, the Branch 18 of the RTC of Manila rendered a Decision on May 22, 2013, in favor of respondent, the dispositive portion of which is quoted below:

> "**WHEREFORE,** premises considered, the instant Petition for Refund of Citifinancial Corporation is hereby **GRANTED** and the Treasurer of the City Manila is ordered to refund to the Petitioner the amount of P277,565.86, representing the unlawfully collected business taxes under Section 21 of the Revenue Code of Manila.
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> **SO ORDERED.**"

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[10] Annex "A" to the Petition, RTC Docket (Vol. I), pp. 18-21.
[11] Pars. 6 and 7, Decision of the Regional Trial Court, Annex "A" to the Petition for Review, AC Docket, p. 43.
[12] Exhibit "K", RTC Docket (Vol. I), p. 224.
[13] Exhibit "L", RTC Docket (Vol. I), p. 225.
[14] Exhibits "N" and "O", RTC Docket (Vol. I), pp. 227-228.
[15] Exhibit "P", RTC Docket (Vol. I), pp. 229-232.
[16] Pars. 8 and 9, Decision of the Regional Trial Court, Annex "A" to the Petition for Review, AC Docket, pp. 43-44.
[17] RTC Docket (Vol. I), pp. 1-17.
[18] RTC Docket (Vol. I), pp. 47-66.
[19] Par. 10, Decision of the Regional Trial Court, Annex "A" to the Petition for Review, AC Docket, p. 44.
[20] Par. 12, Decision of the Regional Trial Court, Annex "A" to the Petition for Review, Ibid.

Not satisfied with the court a quo's Decision, petitioner filed her Motion for Reconsideration[21] which was denied through an Order[22] promulgated on July 12, 2013.

Hence, this Petition for Review.

In her Petition, petitioner raised the following assignment of errors[23] for consideration of the Court:

1. The court a quo committed grave but reversible error when it ruled that this case is not an action capable of pecuniary estimation.

2. The court a quo gravely erred when it did not dismiss the case despite having acquired no jurisdiction thereof.

3. The court a quo gravely erred when it ruled that petitioner(sic) is not liable to pay taxes under Section 21 of the Manila Revenue Code.

4. The court a quo gravely erred when it did not dismiss respondent's prayer for refund of the tax paid for the 2nd quarter of 2007 despite its failure to pay appropriate docket fee.

Anent the 1st and 2nd assignment of errors, petitioner argues, among others, that since the principal claim for refund is merely P277,565.86 (the amount paid under protest) the case should have been filed with the Metropolitan Trial Court of Manila and not with the Regional Trial Court pursuant to Section 5 of Republic Act No. 7691.

Petitioner's claim is misplaced.

In determining whether or not the subject matter of an action is capable of pecuniary estimation, the Court, in the case of *Robert G. de Galicia vs. Merly Mercado*,[24] citing the earlier case of *Manuel G. Singsong, et al., v. Isabella Sawmill, et al.*,[25], laid down the following criterion:

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[21] RTC Docket (Vol. II), pp. 338-344.
[22] Annex "B" to the Petition for Review, AC Docket, pp. 53-54.
[23] Assignment of Errors, Petition for Review, AC Docket, pp. 30-31.
[24] G.R. No. 146744, March 6, 2006.
[25] No. L-27343, 28 February 1979.

> xxx this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. **If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance (now RTC) would depend on the amount involved. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable by the courts of first instance (RTC).**"

Applying the foregoing doctrine in the instant case, a perusal of respondent's Amended and Supplemental Petition before the Regional Trial Court readily reveals that the money claim herein is merely incidental to the central issue of whether or not respondent is subject to the tax imposed under Section 21 of the Revenue Code of Manila. And, such fact is clearly shown in the reliefs primarily prayed for by respondent in the said Petition:

> **a. To recall for being inapplicable the tax assessments on Citifinancial's Taft Avenue and Binondo Branches under Section 21 of the Revenue Code of Manila for the 1st and 2nd Quarters of 2007;**
>
> **b. To re-compute the proper tax assessment of Citifinancial's Taft Avenue and Binondo Branches, less the assessment under Section 21 (A) of the Revenue Code of Manila;**
>
> c. **To perpetually desist from assessing Citifinancial under Section 21 of the Revenue Code of Manila;**
>
> d. To refund to respondent all its payments under Section 21 of the Revenue Code of Manila which to date amounts to P277,565.86. (Emphasis Supplied)

It can, thus, be inferred that the refund of respondent's payments under Section 21 of the RCM will only take place once the Court has ruled that the provision of the said Revenue Code is inapplicable to City Financial. Consequently, the amounts sought for refund do not actually represent the value of the subject of litigation. Hence, the main issue is, without a doubt, incapable of pecuniary estimation and thus, cognizable by the Regional Trial Court. Well-entrenched is the rule that jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations in the complaint and the character of the relief sought, irrespective of whether the party is entitled to all or some of the claims asserted.[26]

Therefore, the Court a quo did not err in ruling that the legal issues, the reliefs prayed for and the subject of the litigation are clearly incapable of pecuniary estimation which is well within the jurisdiction of the RTC pursuant to Section 19 of B.P. 129.[27]

With regard to the third assignment of error, herein petitioner is of the view that Section 21 of the RCM imposes a tax not only on the sale of goods but also on the sale of services. Petitioner claims that respondent's business is in the category of those selling services to its customers and, thus, subject to percentage tax under the NIRC. Petitioner further contends that the transaction of respondent in its business may be considered as one that is "deemed sale" and, therefore, liable to pay value-added taxes. With such reasons, petitioner now insists that respondent should be held liable to pay the taxes under Section 21 of the RCM.

We cannot subscribe to the foregoing arguments of petitioner since only those businesses subject to value-added tax should be made liable to Section 21 (A) of the RCM. *We* quote pertinent portions of the Assailed Decision of the RTC, to which *We* fully agree, to wit:

> "x x x Section 21 (A) of RCM reads as follows:
>
> (A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, as provided for in Secitions (sic) 100 to 103 [28] of the NIRC as administered and determined by the Bureau of

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[26] Heirs of Juanita Padilla vs. Dominador Magdua, G.R. No. 176858, September 15, 2010, citing the case of Radio Communications of the Philippines Inc., vs. Court of Appeals, et al., G.R. No. 136109, August 1, 2002.

[27] Order of the Branch 18 of the RTC of Manila, Annex "B" to the Petition for Review, AC Docket, pp. 53-54.

[28] Now Sections 106 to 109 of the NIRC.

Internal Revenue pursuant to the pertinent provisions of the said Code.

Xxxxxxxxxxxxxxxxxx

In contemplation of Section 21 (A) of RCM, this court revisits the types of transactions which shall be deemed as sale under Section 106 (B) of the NIRC, which are as follows:

(1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;

(2) Distribution or transfer to:

(a) Shareholders or investors as share in the profits of the VAT-registered persons; or

(b) Creditors in payment of debt;

(3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and

(4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

Based on the aforestated transactions, Citifinancial Corporation is not an entity engaged in sales transactions subject of VAT as per definition in Sections 105 and 106 of the NIRC.

By virtue of R.A. No. 9238, which amended Section 106 of the NIRC, petitioner is no longer liable for VAT but it is subject to percentage tax on gross receipts from 0% to 5%, as the case may be. Section 121 (formerly Section 119) of the Tax Code provides that a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries shall be computed in accordance with the schedules provided by the code.

RA 9238 is explicit when it amended Section 109 of the tax code by rewording paragraph (l) and inserting additional paragraphs after (z) which shall now read as follows:

'SEC. 109. Exempt Transactions.

The following shall be exempt from the value-added tax:

Xxxxx

Xxxxx

(aa) Services of banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries;

Xxxxxx

Based on the foregoing, it is clear that Section 21 (A) of the Revenue Code of Manila is not applicable to banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries like Citifinancial Corporation. Only those businesses subject to value added taxes shall be liable under the Section 21 (A) of RCM and the said provision needs no further interpretation in conjunction with Section 109 of the NIRC, as amended.

In fact, if the Revenue Code of Manila shall be considered in its entirety, Section 19 thereof already imposes a tax of thirty percent (30%) of 1 % on the gross receipts of banks and other financial institutions, derived from interest, commission and discounts from lending activities as well as other income/receipts. Hence, the act of assessing petitioner pursuant to Section 19 as a financial institution and a business entity under Section 21 thereof shall amount to double taxation."[29]

Lastly, there is no truth in petitioner's stance that respondent failed to pay the appropriate docket fee. In fact, the Clerk of Court finds sufficient the additional docket fee paid by respondent in the amount of P2,000.00 as shown in the Postal Money Order No. 0258107 appended to the Manifestation filed on 23 July 2007.[30] This Court will not interfere with matters addressed to the sound discretion of the RTC in

[29] Decision of the Branch 18 of the Regional Trial Court of Manila, Annex "A" to the Petition for Review, AC Docket, pp. 49-51.
[30] Order dated July 12, 2013, Annex "B" to the Petition for Review, AC Docket, pp. 53-54.

the absence of proof that the exercise of such discretion was tainted with bias or prejudice.

WHEREFORE, the instant Petition for Review filed by petitioner is hereby **DISMISSED** for lack of merit. The Decision dated May 22, 2013 and the Order dated July 12, 2013, both rendered by the Regional Trial Court of Manila, Branch 18 in Civil Case No. 07-117472 entitled *"Citifinancial Corporation vs. Treasurer of the City of Manila, In the person of Liberty M. Toledo"* are hereby **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice