REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LUCIO TAN GROUP, INC.
Petitioner,

CTA AC NO. 300

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

- versus -

J. VOLTAIRE L. ENRIQUEZ, in his capacity as City Treasurer of Taguig City,
Respondent.

Promulgated:

FEB 12 2025

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DECISION

RINGPIS-LIBAN, J.:

Before the Court is a *Petition for Review* filed by petitioner Lucio Tan Group, Inc. on July 19, 2023,[1] assailing the Orders dated April 17, 2023[2] and June 2, 2023,[3] both rendered by the Regional Trial Court (RTC) of Taguig City – Branch 153, in Civil Case No. 924, entitled *"LUCIO TAN GROUP, INC., Petitioner, versus J. VOLTAIRE L. ENRIQUEZ, in his capacity as City Treasurer of Taguig City, Defendant/s".* The dispositive portions of said Orders respectively read as follows:

Order dated April 17, 2023:

> "**WHEREFORE**, foregoing premises considered, the instant Petition for Review filed by petitioner Lucio Tan Group, Inc. is **DISMISSED**.
>
> **SO ORDERED.**"

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[1] Docket, pp. 5 to 23.
[2] Exhibit "P-1", *Petition for Review,* Docket, pp. 25 to 27; RTC Docket (Civil Case No. 924), pp. 65 to 67.
[3] Exhibit "P-4", *Petition for Review,* Docket, pp. 55 to 57; RTC Docket (Civil Case No. 924), pp. 75 to 77.

Order dated June 2, 2023:

"**WHEREFORE**, premises considered, the instant Motion for Reconsideration filed by petitioner Lucio Tan Group, Inc. is **DENIED** for lack of merit.

SO ORDERED."

Specifically, petitioner prays that the said Orders of the Court *a quo* be set aside and cancelled; and in lieu thereof, a new one be entered remanding the case for hearing before the RTC of Taguig City – Branch 153.[4]

THE PARTIES

Petitioner Lucio Tan Group, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office located at 11th Floor Unit 3 Bench Tower, 30th Street corner Rizal Drive, Crescent Park West 5, Bonifacio Global City, Taguig City.[5]

Respondent J. Voltaire L. Enriquez is the City Treasurer of Taguig City with postal address at Office of the City Treasurer, Taguig City Hall, Gen. Antonio Luna St., Tuktukan, City of Taguig.[6]

THE FACTS

On January 14, 2023, petitioner received the "*Tax Deficiency Assessment For the year 2022*" dated January 12, 2023,[7] assessing petitioner for deficiency tax based on its dividend income as a holding company,[8] amounting to ₱9,664,415.59, inclusive of penalties and interests, broken down as follows:

Line of Business	Declared Gross Sales/Receipts	Tax Paid
Holding Companies	₱36,072,916.64	₱18,036.46
	Gross Sales/Receipts as presented in AFS / 21	Tax Due
	₱12,308,346,673.00	₱6,154,173.34
Difference		6,136,136.88
Surcharge	25%	1,534,034.22
Interest @2%/month or 13months 26%		1,994,244.86
Total		**₱9,664,415.59**

[4] Prayer, *Petition for Review*, Docket, p. 18.
[5] Par. 9 and Annex "G", *Petition for Review*, RTC Docket (Civil Case No. 924), pp. 9 and 43 to 48, respectively.
[6] Par. 10, *Petition for Review*, RTC Docket (Civil Case No. 924), p. 9.
[7] Annex "B", *Petition for Review*, RTC Docket (Civil Case No. 924), p. 27.
[8] Par. 3, *Petition for Review*, RTC Docket (Civil Case No. 924), p. 7.

Aggrieved, petitioner filed the letter dated January 17, 2023 on January 18, 2023,[9] requesting respondent to waive the assessed deficiency tax on the basis that petitioner is a holding company that derived its earnings from dividends (passive income) and interest from bank (passive income) and interest on other affiliates; that passive income are not included in gross sales or receipts; that petitioner cannot be held liable for local business tax on its dividends from investments; and that its interest income earned from affiliates should be the basis for the computation of local business tax for 2023 renewal.

In reply, respondent issued the letter dated January 31, 2023,[10] which was allegedly received by petitioner on March 3, 2023,[11] stating that respondent cannot grant petitioner's request to waive the deficiency tax as the above-mentioned assessment was pursuant to Section 17 of Ordinance No. 34, Series of 2017, which amended Section 75 of the Taguig Revenue Code, which, in turn, provides that dividend income received by holding companies from their investments in shares of stock or interests in other companies shall be taxed at the rate of five percent (5%) of one percent (1%).

On March 27, 2023, petitioner paid the amount of ₱10,014,185.04 under protest.[12] The said amount is broken down as follows:

Particulars	Tax Due	Surcharge	Interest	Total
Permit Fee	₱ 31,712.06	₱ 3,718.75	₱ 1,115.63	₱ 36,546.44
Business Tax (Holding Companies, Dividend Income)	5,934.03	370.88	111.26	6,416.17
Deficiency Tax (Holding Companies)	6,136,136.88	1,534,034.22	2,301,051.33	9,971,222.43
GRAND TOTAL	**₱6,173,782.97**	**₱1,538,123.85**	**₱2,302,278.22**	**₱10,014,185.04**

Petitioner filed the *Petition for Review* with the RTC of Taguig City on April 3, 2023,[13] praying for the Court *a quo* to: (1) declare Section 17, Ordinance 34 Series of 2017 as contrary to the Local Government Code (LGC); (2) cancel and set aside the Tax Deficiency Assessment against petitioner in the amount of ₱9,971,222.43, pertaining to the assessed deficiency tax on business tax on dividend income of petitioner as holding company; and (3) direct the respondent to refund the payment made under protest in the said amount of ₱9,971,222.43. The case was raffled to Branch 153, and was docketed as Civil Case No. 924.

[9] Annex "C", *Petition for Review*, RTC Docket (Civil Case No. 924), pp. 28 to 29.
[10] Annex "A", *Petition for Review*, RTC Docket (Civil Case No. 924), p. 26.
[11] Par. 5, *Petition for Review*, RTC Docket (Civil Case No. 924), pp. 7 to 8.
[12] Annexes "E" and "F", *Petition for Review*, RTC Docket (Civil Case No. 924), pp. 41 to 42.
[13] RTC Docket (Civil Case No. 924), pp. 6 to 25.

However, the RTC of Taguig City – Branch 153 issued the assailed Order dated April 17, 2023,[14] dismissing the *Petition* for failure to comply with the mandate of Section 6, Rule 7 of the Revised Rules of Court, as amended.[15]

On May 23, 2023, petitioner filed its *Motion for Reconsideration [of the Order promulgated on April 17, 2023]*.[16] In the assailed Order dated June 2, 2023,[17] the RTC of Taguig City – Branch 153 denied petitioner's *Motion* for lack of merit.

Petitioner then filed the present *Petition for Review* on July 19, 2023.[18]

Respondent posted his *Comment (To the Petition dated 18 July 2023)* on September 6, 2023.[19]

In the Minute Resolution dated December 5, 2023,[20], the Court, *inter alia*, ordered the parties to file their respective memorandum, and the Branch Clerk of Court or the Officer-in-Charge of the RTC of Taguig City - Branch 153, to elevate to this Court the entire original records of Civil Case No. 924.

In compliance thereto, on January 5, 2024, the Branch Clerk of Court of the Court *a quo* transmitted to this Court its entire records of Civil Case No. 924, consisting of one (1) volume with 238 pages.[21]

The *Memorandum For the Respondent* was posted on January 29, 2024;[22] while on February 8, 2024, petitioner filed the *Motion to Admit Memorandum*,[23] attaching therewith its *Memorandum*.[24] In the Minute Resolution dated February 20, 2024,[25] the Court granted petitioner's *Motion*, thereby admitting the *Memorandum*, and likewise deemed the case submitted for decision.

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[14] RTC Docket (Civil Case No. 924), pp. 65 to 67.

[15] "Rule 7

Parts and Contents of a Pleading

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Section 6. *Contents.* – Every pleading stating a party's claims or defenses shall, in addition to those mandated by Section 2, Rule 7, state the following:

(a) Names of witnesses who will be presented to prove a party's claim or defense;
(b) Summary of the witnesses' intended testimonies, provided that the **judicial affidavits of said witnesses shall be attached to the pleading and form an integral part thereof**. Only witnesses whose judicial affidavits are attached to the pleading shall be presented by the parties during trial. Except if a party presents meritorious reasons as basis for the admission of additional witnesses, no other witness or affidavit shall be heard or admitted by the court; and
(c) Documentary and object evidence in support of the allegations contained in the pleading." *(Emphasis added)*

[16] RTC Docket (Civil Case No. 924), pp. 68 to 73.

[17] RTC Docket (Civil Case No. 924), pp. 75 to 77.

[18] Docket, pp. 5 to 23.

[19] Docket, pp. 98 to 116.

[20] Docket, p. 152.

[21] *Compliance* dated January 5, 2023, Docket, pp. 187 to 189.

[22] Docket, pp. 191 to 214.

[23] Docket, pp. 218 to 220.

[24] Docket, pp. 221 to 235.

[25] Docket, p. 236.

THE ISSUES

Petitioner submits the following issues for this Court's resolution, to wit:

> "Whether or not the Honorable Regional Trial Court erred in not reconsidering its Order dismissing the case on procedural grounds.
>
> Whether or not the Respondent's assessment for Business Tax against [petitioner] LTG, being a purely holding company, on the latter's dividends and interests that are in the nature of passive income has basis in law."[26]

Petitioner's arguments:

Petitioner argues that while Batas Pambansa Blg. 129 (BP 129) confers appellate jurisdiction to the RTC the decisions of the Municipal Courts, and to the Court of Appeals from decisions of administrative agencies and quasi-judicial tribunals or their officers, Section 195 of the LGC also confers appellate jurisdiction to the RTC from decisions of the local treasurer in tax assessments; that the LGC is a latter law than BP 129; that with the LGC plainly and expressly saying that the decision of local treasurer allows the taxpayer "to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable", can only mean that the latter intent of the legislature is to confer appellate jurisdiction to the RTC; that Section 195 of the LGC, being a special provision of a special law of a latter date, only means that its significance should not be altered, but should be given its full meaning; and that the word "appeal" has a legal significance, which the legislature could have not intended that while calling the process an appeal, when in truth it is not an appeal.

Petitioner further asserts that seeing this case before the RTC as an appeal, the RTC can resolve the case brought before it on the basis of the records of the local treasurer, which in anyway were already made part of the appeal brought before it; that Section 7, Rule 40 of the Rules of Court (Appeal from Municipal Trial Courts to the RTCs) may have suppletory application; and that as decided by the Supreme Court in the case of *Spouses Dr. Claro L. Montecer And Carina P. Montecer vs. Court of Appeals*,[27] when the rules say that the RTC as an appellate court shall decide cases on the basis of the proceedings and pleadings in the inferior court, it means only that the RTC is no longer required to conduct a *trial de novo*, hence, clearly, a *trial de novo* would only be a repetition of the proceedings in the inferior court, thus, would hamper rather than expedite the resolution of the cases.

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[26] Issues, petitioner's *Memorandum*, Docket, p. 226.
[27] G.R. No. 121646, June 21, 1999.

Lastly, petitioner argues that if only the appeal on the denial of the administrative protest is given due course and heard, it would have been shown that the imposition of business tax under the 2023 Tax Deficiency Assessment of the City Treasurer of Taguig City has no basis in law and that being a purely holding company, it is not liable to pay business tax on its dividends and interests that are in the nature of passive income.

Respondent's counter-arguments:

Respondent contends that petitioner failed to strictly comply with the conditions for the grant of tax refund; that the *Petition* before the Court *a quo* was an action in the exercise of the said Court's exclusive original jurisdiction; that the *Petition* filed before the Court *a quo* violated Section 6(b), Rule 7 of the 2019 Amendments to the 1997 Rules of Civil Procedure; and that the *Petition* filed before the Court *a quo* has no basis in law.

THE COURT'S RULING

The present *Petition for Review* is denied.

Review of local treasurer's denial of protest cases by the lower courts pursuant to Section 195, Local Government Code is an exercise of original jurisdiction.

In the assailed Orders dated April 17, 2023 and June 2, 2023,[28] the RTC of Taguig City – Branch 153 dismissed the *Petition for Review* and denied petitioner's *Motion for Reconsideration*, respectively, on the ground that an appeal with the RTC from the denial of protest by the local treasurer, in accordance with Section 195 of the LGC of 1991, is an original action, citing as basis the ruling of the Supreme Court in the case of *Team Pacific Corporation vs. Daza*,[29] quoting *Yamane vs. BA Lepanto Condominium Corporation.*[30] Thus, the pleading submitted by petitioner having failed to comply with the mandate of Section 6, Rule 7 of the Revised Rules of Court, as amended, was dismissed by the Court *a quo*.

Petitioner mainly argues that the RTC exercises appellate jurisdiction when an appeal is filed before it from the denial of the administrative protest

[28] Exhibits "P-1" and "P-4", *Petition for Review*, Docket, pp. 25 to 27 and 55 to 57, respectively; RTC Docket (Civil Case No. 924), pp. 65 to 67 and 75 to 77, respectively.
[29] G.R. No. 167732, July 11, 2012.
[30] G.R. No. 154993, October 25, 2005.

on the local business tax by the local treasurer, and that the RTC is no longer required to conduct a *trial de novo*.

The pivotal issue raised in the present case is whether the RTC has original or appellate jurisdiction over the denial issued by the local treasurer of the protest to the local business tax assessment.

Section 195 of the LGC of 1991 provides 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 <u>appeal with the court of competent jurisdiction</u> otherwise the assessment becomes conclusive and unappealable.**" *(Emphases and underscoring added)*

Based on the above provision, the taxpayer has the remedy of appeal with the court of competent jurisdiction within thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) days from the filing of the protest.

To determine whether appealing the denial by the local treasurer of the protest on the local business tax assessment filed with the RTC should be an appeal or original action, reference to BP 129, otherwise known as "The Judiciary Reorganization Act of 1980", as amended, is called for. Pertinently, Section 22 of BP 129, as amended, provides:

> "SEC. 22. *Appellate jurisdiction.* — **Regional Trial Courts shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions.** Such cases shall be decided on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Courts. The decision of the Regional

Trial Courts in such cases shall be appealable by petition for review to the Intermediate Appellate Court which may give it due course only when the petition shows *prima facie* that the lower court has committed an error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed."

It is clear from the above provision that the RTC has appellate jurisdiction on all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions. However, the provision has no mention on the rulings on local business tax assessment issued by the local treasurer.

The Supreme Court, in the case of *Yamane vs. BA Lepanto Condominium Corporation*,[31] clarified that the RTC exercises its original jurisdiction on rulings of non-judicial entities, to wit:

"First, we dispose of the procedural issue, which essentially boils down to whether the RTC, in deciding an appeal taken from a denial of a protest by a local treasurer under Section 195 of the Local Government Code, exercises 'original jurisdiction' or 'appellate jurisdiction.' The question assumes a measure of importance to this petition, for the adoption of the position of the City Treasurer that the mode of review of the decision taken by the RTC is governed by Rule 41 of the Rules of Civil Procedure means that the decision of the RTC would have long become final and executory by reason of the failure of the Corporation to file a notice of appeal.

There are discernible conflicting views on the issue. The first, as expressed by the Court of Appeals, holds that the RTC, in reviewing denials of protests by local treasurers, exercises appellate jurisdiction. This position is anchored on the language of Section 195 of the Local Government Code which states that the remedy of the taxpayer whose protest is denied by the local treasurer is '**to appeal** with the court of competent jurisdiction.' Apparently though, the Local Government Code does not elaborate on how such 'appeal' should be undertaken.

The other view, as maintained by the City Treasurer, is that the jurisdiction exercised by the RTC is original in character. This is the first time that the position has been presented to the court for adjudication. Still, this argument does find jurisprudential mooring in our ruling in *Garcia v. De Jesus*, where the Court proffered the following distinction between original jurisdiction and appellate jurisdiction: 'Original jurisdiction is the power of the Court to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law. Appellate jurisdiction is the authority of a Court higher in rank to re-examine the final order or judgment of a lower Court which tried the case now elevated for judicial review.'

[31] G.R. No. 154993, October 25, 2005.

> The quoted definitions were taken from the commentaries of the esteemed Justice Florenz Regalado. With the definitions as beacon, **the review taken by the RTC over the denial of the protest by the local treasurer would fall within that court's original jurisdiction.** In short, **the review is the initial judicial cognizance of the matter.** Moreover, **<u>labeling the 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</u>.**
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> The stringent concept of original jurisdiction may seemingly be neutered by Rule 43 of the 1997 Rules of Civil Procedure, Section 1 of which lists a slew of administrative agencies and quasi-judicial tribunals or their officers whose decisions may be reviewed by the Court of Appeals in the exercise of its appellate jurisdiction. However, the basic law of jurisdiction, Batas Pambansa Blg. 129 (B.P. 129), ineluctably confers appellate jurisdiction on the Court of Appeals over final rulings of quasi-judicial agencies, instrumentalities, boards or commission, by explicitly using the phrase 'appellate jurisdiction.' The power to create or characterize jurisdiction of courts belongs to the legislature. While the traditional notion of appellate jurisdiction connotes judicial review over lower court decisions, it has to yield to statutory redefinitions that clearly expand its breadth to encompass even review of decisions of officers in the executive branches of government.
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> Yet significantly, **<u>the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer</u>.** On the other hand, **Section 22 of B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts. <u>Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities</u>.**" *(Emphases and underscoring added)*

In cases where the RTC exercises appellate jurisdiction, it necessarily follows that there must be a court capable of exercising original jurisdiction — otherwise there would be no appeal over which the RTC would exercise appellate jurisdiction. The Court cannot consider the City Treasurer as the entity that exercises original jurisdiction not only because it is not a "court" within the context of BP 129, but also because, as explained above, "B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts."[32]

Further, BP 129 does not confer appellate jurisdiction on the RTC over rulings made by non-judicial entities. The RTC exercises appellate jurisdiction

[32] *China Banking Corporation vs. City Treasurer of Manila*, G.R. No. 204117, July 1, 2015.

only from cases decided by the Metropolitan, Municipal, and Municipal Circuit Trial Courts in the proper cases. The nature of the jurisdiction exercised by these courts is **original**, considering it will be the first time that a court will take judicial cognizance of a case instituted for judicial action.[33] In other words, the RTC exercises original jurisdiction over rulings on local business tax assessments as the ruling is made by the local treasurer, a non-judicial entity.

Hence, the Court *a quo* correctly held that an appeal with the RTC from the denial of protest by the local treasurer, in accordance with Section 195 of the LGC of 1991, is an original action.

The subject "Tax Deficiency Assessment For the year 2022" issued in this case is not the "notice of assessment" contemplated under Section 195 of the LGC of 1991.

The taxpayers' remedies of protesting an assessment and refund of taxes, except for real property taxes, are stated in Section 195, as above-quoted, and Section 196 of the LGC of 1991, which is quoted hereunder:

> "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."

In *City of Manila, et al. vs. Cosmos Bottling Corporation*,[34] the Supreme Court distinguished the two (2) remedies as follows, *viz.*:

> "The first provides the procedure for contesting an assessment issued by the local treasurer; whereas, the second provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or

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[33] *Id.*

[34] G.R. No. 196681, June 27, 2018.

denomination used in describing the letter would not ordinarily put control over the content of the letter.

Obviously, **the application of Section 195 is <u>triggered by an assessment</u> made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges. Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive.** The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may *appeal* with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.

On the other hand, **Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The provision <u>requires the taxpayer to first file a written claim for refund before bringing a suit in court</u> which must be initiated within two years from the date of payment.** By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.

Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended inaction by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription.

Additionally, **Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place. This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal. Thus, under such circumstance, the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC.**

Clearly, when a taxpayer is assessed a deficiency local tax, fee or charge, he may protest it under Section 195 even without making payment of such assessed tax, fee or charge. This is because the law on local government taxation, save in the case of real property tax, does not expressly require *'payment under protest'* as a procedure prior to instituting the appropriate proceeding in court. This implies that the success of a judicial action questioning the validity or correctness of the assessment is not necessarily hinged on the previous payment of the tax under protest.

Needless to say, there is nothing to prevent the taxpayer from paying the tax under protest or simultaneous to a protest. There are compelling reasons why a taxpayer would prefer to pay while maintaining a protest against the assessment. For instance, a taxpayer who is engaged in business would be hard-pressed to secure a business permit unless he pays an assessment for business tax and/or regulatory fees. Also, a taxpayer may pay the assessment in order to avoid further penalties, or save his properties from levy and distraint proceedings.

The foregoing clearly shows that a taxpayer facing an assessment may protest it and alternatively: *(1)* appeal the assessment in court, or *(2)* pay the tax and thereafter seek a refund. Such procedure may find jurisprudential mooring in *San Juan v. Castro* wherein the Court described for the first and only time the alternative remedies for a taxpayer protesting an assessment — either appeal the assessment before the court of competent jurisdiction, or pay the tax and then seek a refund. The Court, however, did not elucidate on the relation of the second mentioned alternative option, *i.e.*, pay the tax and then seek a refund, to the remedy stated in Section 196.

As this has a direct bearing on the arguments raised in the petition, we thus clarify.

Where an assessment is to be protested or disputed, the taxpayer may proceed *(a)* without payment, or *(b)* with payment of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; otherwise, the assessment becomes conclusive and unappealable.

> *(a)* **Where no payment is made**, the taxpayer's procedural remedy is governed strictly by **Section 195**. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment.
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> *(b)* **Where payment was made**, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (Section 195, LGC) and at the same time seeking a refund of the taxes. In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the

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assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.

The same implication should ensue even if the taxpayer were to style his suit in court as an action for refund or recovery of erroneously paid or illegally collected tax as pursued under **Section 196** of the LGC. **In such a suit for refund, the taxpayer cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes without necessarily assailing the validity or correctness of the assessment he had administratively protested.**

It must be understood, however, that in such latter case, the suit for refund is conditioned on the prior filing of a written claim for refund or credit with the local treasurer. In this instance, what may be considered as the administrative claim for refund is the letter-protest submitted to the treasurer. Where the taxpayer had paid the assessment, it can be expected that in the same letter-protest, he would also pray that the taxes paid should be refunded to him. As previously mentioned, there is really no particular form or style necessary for the protest of an assessment or claim of refund of taxes. What is material is the substance of the letter submitted to the local treasurer.

Equally important is the institution of the judicial action for refund within thirty (30) days from the denial of or inaction on the letter-protest or claim, not any time later, even if within two (2) years from the date of payment (as expressly stated in Section 196). Notice that the filing of such judicial claim for refund after questioning the assessment is within the two-year prescriptive period specified in Section 196. Note too that the filing date of such judicial action necessarily falls on the beginning portion of the two-year period from the date of payment. Even though the suit is seemingly grounded on Section 196, the taxpayer could not avail of the full extent of the two-year period within which to initiate the action in court.

The reason is obvious. This is because an assessment was made, and if not appealed in court within thirty (30) days from decision or inaction on the protest, it becomes conclusive and unappealable. Even if the action in court is one of claim for refund, the taxpayer cannot escape assailing the assessment, invalidity or incorrectness, the very foundation of his theory that the taxes were paid erroneously or otherwise collected from him illegally. Perforce, the subsequent judicial action, after the local treasurer's decision or inaction, must be initiated within thirty (30) days later. It cannot be anytime thereafter because the lapse of 30 days from decision or inaction results in the assessment becoming conclusive and unappealable. In short, the scenario wherein the administrative claim for refund falls on the early stage of the two-year period but the judicial claim on the last day or late stage of such two-year period does not apply in this specific instance where an assessment is issued.

To stress, **where an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund *at any time* within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' *within 60 days from receipt of the notice of assessment*, and thereafter bring suit in court *within 30 days from either decision or inaction* by the local treasurer.**

Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One*, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two*, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax." *(Emphases and underscoring added)*

Moreover, in *International Container Terminal Services, Inc. vs. The City of Manila, et al.*,[35] the Supreme Court further clarified what differentiates Sections 195 and 196 of the LGC of 1991, and that a "notice of assessment" is required under Section 195 while the same is not a precondition under Section 196, to wit:

"**What determines the appropriate remedy is the local government's basis for the collection of the tax. It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state 'the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties.'** In *Yamane v. BA Lepanto Condominium Corp.*:

xxx xxx xxx

No such precondition is necessary for a claim for refund pursuant to Section 196.

xxx xxx xxx

The 'assessments' from the fourth quarter of 1999 onwards were Municipal License Receipts; Mayor's Permit, Business Taxes, Fees & Charges Receipts; and Official Receipts issued by the Office of the City Treasurer for local business taxes, which

[35] G.R. No. 185622, October 17, 2018.

> **must be paid as prerequisites for the renewal of petitioner's business permit in respondent City of Manila. While these receipts state the amount and nature of the tax assessed, they do not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner. They cannot be considered the 'notice of assessment' required under Section 195 of the Local Government Code.**" *(Emphases and underscoring added)*

To be sure, Section 195 only finds application in cases where a ***notice of assessment*** is issued to the taxpayer, thereby presupposing the existence of a valid tax assessment.[36] In *National Power Corporation vs. The Province of Pampanga, et al.*,[37] the Supreme Court elucidated on the significance of the taxing authority's duty to adequately inform the taxpayer of the factual and legal basis for the assessment. It held:

> "Taxpayers' obligation for deficiency taxes cannot depend on a guessing game. **To stress, the taxpayer must not only be informed of what taxes it is liable to pay <u>and under what authority the obligation to pay is based</u>.** Equally important is that it must be advised how much is the pending tax liability and the period covered. **Without these particulars, taxpayers would be deprived of adequate opportunity to prepare for an intelligent appeal as they would have no way of determining what is considered by the taxing authority in making the assessment.** xxx
>
> Tax assessments issued in violation of the due process rights of a taxpayer are null and void and of no force and effect. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law of one side and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. xxx" *(Emphases and underscoring added)*

More recently, in *Jose vs. Tigerway Facilities and Resources, Inc.,*[38] the Supreme Court also ruled as follows:

> "Pertinently, Section 195 explicitly states that the notice of assessment must indicate the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests, and penalties. In *Yamane v. BA Lepanto Condominium Corporation*, this Court clarified this requirement:
>
>> Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the

[36] *Jose vs. Tigerway Facilities and Resources, Inc.*, G.R No. 247331, February 26, 2024.
[37] G.R. No. 230648, October 6, 2021.
[38] G.R. No. 247331, February 26, 2024.

> tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. There may have been *prima facie* compliance with the requirement under Section 195. However in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax. Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the sanggunian, and not by the Local Government Code alone. What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body.

Furthermore, in *National Power Corporation v. Province of Pampanga*, **this Court elucidated on the significance of the taxing authority's duty <u>to adequately inform the taxpayer of the factual and legal basis for the assessment</u>**, thus:

> Verily, taxpayers must be informed of the nature of the deficiency tax, fee, or charge, as well as the amount of deficiency, surcharge, interest, and penalty. **Failure of the taxing authority to sufficiently inform the taxpayer of the facts and law used as bases for the assessment will render the assessment void**. In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, albeit involving national internal revenue taxes, the Court explained the importance of the notice requirement with due regard to the taxpayers' constitutional rights, to wit:
>
>> The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.
>>
>> The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. Merely notifying

> the taxpayer of his or her tax liabilities without details or particulars is not enough.
>
> *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.,* held that a final assessment notice that only contained a table of taxes with no other details was insufficient: x x x
>
> Any deficiency to the mandated content of the assessment or its process will not be tolerated. x x x
>
> xxx xxx xxx
>
> A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations 'that taxpayers should be able to present their case and adduce supporting evidence.' (Citations omitted; Emphasis in the original)" (*Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, Section 195 of the LGC of 1991 requires that that the notice of assessment state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. Furthermore, failure of the taxing authority to sufficiently inform the taxpayer of the facts and law used as bases for the assessment will render the assessment void.

In this case, a perusal of the subject "*Tax Deficiency Assessment For the year 2022*" dated January 12, 2023,[39] reproduced earlier, does not contain any information about the facts and law upon which the supposed assessment is based. Although the said "*Tax Deficiency Assessment For the year 2022*" stated the amount of "difference" or the supposed deficiency, and likewise stated the surcharge and interest, the same did not even state the nature of the tax, fee, or charge, it merely stated the line of business as "Holding Companies". Thus, the subject "*Tax Deficiency Assessment For the year 2022*" issued to petitioner is ***not*** the notice of assessment contemplated under Section 195 of the LGC of 1991.

[39] Annex "B", *Petition for Review,* RTC Docket (Civil Case No. 924), p. 27.

Applying the above jurisprudential pronouncements, and considering that there is no "notice of assessment" issued by respondent City Treasurer (rendering Section 195 of the LGC of 1991 inapplicable to this case), and that petitioner prayed that respondent be directed to refund the payment it made under protest in the amount of ₱9,971,222.43, pertaining to the alleged deficiency tax on business tax on dividend income of petitioner as holding company, **Section 196 of the LGC of 1991 then governs petitioner's claim for refund.**

To reiterate, Section 196 of the LGC of 1991 provides that 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 and no case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

In this case, it is shown that petitioner paid the alleged deficiency tax in the amount of ₱9,971,222.43 to the City Treasurer of Taguig City on March 27, 2023.[40] Counting two (2) years from the said date, petitioner has until March 27, 2025 to file its administrative and judicial claims for refund, with the administrative claim for refund initiated first before the judicial claim. However, petitioner failed to file a written claim for refund with respondent City Treasurer before bringing a suit in court. A perusal of petitioner's supposed protest letter dated January 17, 2023[41] and letter dated March 24, 2023,[42] with subject "Re: PAYMENT UNDER PROTEST OF ALLEGED TAX DEFICIENCY ASSESSMENT FOR THE YEAR 2022", both addressed to respondent City Treasurer, shows that petitioner did not categorically request or claim for a refund of the amount it paid as deficiency tax.

Having failed to file an administrative claim for refund prior to filing its *Petition for Review* before the Court *a quo* as prescribed by Section 196 of the LGC of 1991, the said *Petition* should have been dismissed, upon the ground that it was prematurely filed, for failure to exhaust administrative remedies.

Apropos, before a party is allowed to seek the intervention of the courts, it is a pre-condition that he/she avail of all administrative processes afforded him/her, such that if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his/her jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought, otherwise, the premature resort to the court is fatal to one's cause of action.[43]

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[40] Annexes "E" and "F", *Petition for Review*, RTC Docket (Civil Case No. 924), pp. 41 to 42.
[41] Annex "C", *Petition for Review*, RTC Docket (Civil Case No. 924), pp. 28 to 29.
[42] Annex "E", *Petition for Review*, RTC Docket (Civil Case No. 924), p. 41.
[43] *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division), et al.*, G.R. No. 207843, July 15, 2015.

The Supreme Court discussed the reason for requiring the exhaustion of administrative remedies in the case of *Teotico vs. Agda Sr., et al.*,[44] in the following manner:

> "Within the administrative forum the law may provide for review of decisions by higher authorities. Before a party can be allowed to invoke the jurisdiction of the courts of justice, he is expected to have exhausted all means of administrative redress afforded him. There are both legal and practical reasons for this. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts for reasons of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given opportunity to act and correct the errors committed in the administrative forum."

In sum, petitioner failed to comply with the mandatory requirement of Section 196 of the LGC of 1991. There being no written claim for refund filed by petitioner with respondent City Treasurer, the Court *a quo* correctly dismissed petitioner's *Petition for Review*, although, as shown in the foregoing disquisitions, should have been dismissed on a different ground.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Orders dated April 17, 2023 and June 2, 2023, both rendered by the RTC of Taguig City – Branch 153, in Civil Case No. 924, are **AFFIRMED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[44] G.R. No. 87437, May 29, 1991, citing Cortes, Irene R., Philippine Administrative Law, Cases and Materials, Revised Second Ed., 1984, p. 394.

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

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.

ROMAN G. DEL ROSARIO
Presiding Justice