REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

O & S TRADING AND CONSTRUCTION SUPPLY, INC. as represented by JAIME S. GUERRERO, JR., *Petitioner,*	**CTA AC No. 303** Members: **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
-versus-	
OFFICE OF THE CITY TREASURER OF LAS PIÑAS CITY, *Respondent.*	Promulgated: AUG 01 2025 9:24 a.m.

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DECISION

ANGELES, *J.*:

Before the Court is a *Petition for Review*[1] filed by O & S Trading and Construction Supply, Inc. (petitioner) against the Office of the City Treasurer of Las Piñas City (respondent), praying for the reversal and setting aside of the *Decision* dated May 30, 2023[2] (assailed Decision) and the *Order* dated August 8, 2023[3] (assailed Order), both rendered by the Regional Trial Court (RTC) of Las Piñas City – Branch 254, in Civil Case No. LP-19-0094, entitled *"O & S TRADING AND CONSTRUCTION SUPPLY, INC., AS REPRESENTED BY JAIME S. GUERRERO, JR., Petitioner, -versus- OFFICE OF THE CITY TREASURER OF LAS PIÑAS CITY, Respondent."*

ANTECEDENT FACTS

Petitioner is a corporation duly organized and existing in accordance with Philippines laws, with principal place of business at Lozada Homes, Naga Road, Pulang Lupa Dos, Las Piñas City.[4] It was

[1] Docket, pp. 5 to 24.
[2] Docket, pp. 27 to 36; RTC Docket (Civil Case No. LP-19-0094), pp. 710 to 719.
[3] Docket, pp. 37 to 38; RTC Docket (Civil Case No. LP-19-0094), pp. 758 to 759.
[4] Par. 1, Stipulation of Fact, Pre-Trial Order dated February 7, 2022, RTC Docket (Civil Case No. LP-19-0094), p. 237.

incorporated with the Securities and Exchange Commission (SEC) under SEC. Reg. Number CS200615670 on December 9, 2006, with the primary purpose of engaging in the business of retailing and wholesaling of cement and construction materials.[5]

Respondent is the Office of the City Treasurer of Las Piñas City with official address at Las Piñas City Hall Compound, Alabang-Zapote Road, Las Piñas City.[6]

On June 4, 2018, petitioner received the *Letter of Authority* (LOA) dated May 31, 2018[7] wherein OIC-City Treasurer of Las Piñas City, Susan M. Bombita, authorized Danilo F. Cabangon to examine the books of accounts and other pertinent records of petitioner to verify, assess, and collect the true and correct amount of taxes, fees and charges due from petitioner for taxable years 2012 to 2017.

On July 19, 2018, petitioner received the *Non-Presentation of Documents (Second Notice)* dated July 9, 2018[8] issued by Ms. Bombita, stating that petitioner failed to present its books of accounts and other pertinent records despite service of the LOA. Thus, she gave petitioner three (3) working days from receipt thereof to present its books of accounts and other pertinent documents for examination.

On July 30, 2018, petitioner received the *Final Notice of Non-Presentation of Documents NPS* dated July 18, 2018[9] likewise issued by Ms. Bombita, giving petitioner another three (3) working days from receipt thereof to present its books of accounts and other pertinent documents for examination. The said *Notice* stated that failure of petitioner to comply would constrain the Office of the City Treasurer of Las Piñas City to resort to legal remedies provided by law, including the revocation of petitioner's business permit.

On August 1, 2018, petitioner received the letter dated July 26, 2018[10] again issued by Ms. Bombita, informing petitioner of the result of Mr. Cabangon's examination, *i.e.*, that petitioner has a tax deficiency amounting to ₱78,095,157.84, representing additional business taxes, including surcharges and penalties for taxable years 2008, 2009, 2010,

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[5] Par. 2, Stipulation of Fact, Pre-Trial Order dated February 7, 2022, RTC Docket (Civil Case No. LP-19-0094), p. 237.
[6] Par. 2, petitioner's *Appeal (Under Section 195 of the Local Government Code of 1991)*, RTC Docket (Civil Case No. LP-19-0094), p. 2.
[7] Exhibit "1", RTC Docket (Civil Case No. LP-19-0094), p. 680.
[8] Exhibit "2", RTC Docket (Civil Case No. LP-19-0094), p. 681.
[9] Exhibit "3", RTC Docket (Civil Case No. LP-19-0094), p. 682.
[10] Par. 5, Stipulation of Fact, Pre-Trial Order dated February 7, 2022, RTC Docket (Civil Case No. LP-19-0094), p. 238; Exhibit "4", RTC Docket (Civil Case No. LP-19-0094), p. 683.

2011, 2012, 2013, 2014, 2015, 2016 and 2017. Attached to said letter are the *Tax Data and Assessment Form* and a detailed computation schedule.[11]

The summary of petitioner's tax deficiency as illustrated in the *Tax Data and Assessment Form* is reproduced below:

Particulars	Actual Sales	Declared Sales	Taxable Year	Tax due (A)	Tax paid (B)	Difference (A) - (B) = (C)	Surcharge 25% (D)	Interest 2% (E)	TOTAL C + D + E
Year of sales - 2007	238,795,724.62	4,603,498.00	2008	2,391,957.25	50,034.98	2,341,922.27	585,480.57	2,107,730.04	5,035,132.87
Year of sales - 2008	262,675,297.08	4,603,498.00	2009	2,630,752.97	50,034.98	2,580,717.99	645,179.50	2,322,646.19	5,548,543.68
Year of sales - 2009	288,942,826.79	4,983,000.00	2010	2,893,428.27	53,830.00	2,839,598.27	709,899.57	2,555,638.44	6,105,136.28
Year of sales - 2010	317,837,109.47	5,300,000.00	2011	3,182,371.09	57,000.00	3,125,371.09	781,342.77	2,812,833.99	6,719,547.85
Year of sales - 2011	349,620,820.42	5,300,000.00	2012	3,500,208.20	68,400.00	3,431,808.20	857,952.05	3,088,627.38	7,378,387.64
Year of sales - 2012	384,582,902.46	6,440,000.00	2013	3,849,829.02	68,400.00	3,781,429.02	945,357.26	3,403,286.12	8,130,072.40
Year of sales - 2013	423,041,192.70	8,162,045.00	2014	4,234,411.93	85,620.45	4,148,791.48	1,037,197.87	3,733,912.33	8,919,901.68
Year of sales - 2014	465,345,311.97	12,000,000.00	2015	4,657,453.12	124,000.00	4,533,453.12	1,133,363.28	4,080,107.81	9,746,924.21
Year of sales - 2015	511,879,843.17	12,500,000.00	2016	5,122,798.43	129,000.00	4,993,798.43	1,248,449.61	3,870,193.78	10,112,441.82
Year of sales - 2016	563,067,827.49	15,027,279.00	2017	6,198,146.10	169,700.07	6,028,446.03	1,507,111.51	2,863,511.87	10,399,069.41
						37,805,335.91	**9,451,333.98**	**30,838,487.95**	**78,095,157.84**

Subsequently, Ms. Bombita issued another letter dated August 10, 2018[12] wherein she informed petitioner of its tax deficiency amounting to ₱78,095,157.84 per the letter dated July 26, 2018, and demanded the payment of the said amount within five (5) working days from receipt thereof. The said letter was received by petitioner on August 13, 2018.[13]

On September 4, 2018, Ms. Bombita issued the *Letter of Assessment (Final Notice)* which was received by petitioner on September 6, 2018.[14] The *Final Notice* stated, to wit:

> "Records show that a Notice of Assessment in the amount of **PHP 78,095,157.84** was issued by this Office, which was duly received by your company. However, in spite of these notices, no reply or attempt to settle this obligation was made by your company.
>
> P[u]rsuant to Section 195 of the Local Government Code of 1991, x x x. "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 x x x".

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[11] Exhibits "4-A" and "4-B", RTC Docket (Civil Case No. LP-19-0094), pp. 684 to 685.
[12] Exhibit "5", RTC Docket (Civil Case No. LP-19-0094), p. 686.
[13] *Id.*
[14] Par. 6, Stipulation of Fact, Pre-Trial Order dated February 7, 2022, RTC Docket (Civil Case No. LP-19-0094), p. 238; Exhibit "6", RTC Docket (Civil Case No. LP-19-0094), p. 687.

In view of the foregoing and it appearing that the sixty (60) day period which to protest the tax assessment has already prescribed, the subject assessment becomes final and executory and therefore, the immediate settlement of your tax obligation is requested, otherwise, this office will be constrained to cancel your Mayor's Permit of effect the civil remedies provided for under Section 174 of the code by enforcing the collection thru distraint and levy or by judicial action."

On December 3, 2018, petitioner filed with the Las Piñas City Treasurer's Office the letter-request dated December 3, 2018,[15] requesting for an extension of the period to settle the obligation until March 30, 2019. The said letter stated:

"We are in receipt of your Letter of Assessment (Final Notice) dated September 4, 2018 requiring us to immediately settle our company's alleged tax obligation.

However, in the interest of justice and spirit of Christmas and setting aside technicalities, we are most respectfully requesting that our company be given a period of until March 30, 2019 within which to settle the obligation based on correct accounting records which the company is currently retrieving. Obviously, the number of years that lapsed from 2018 back to the earlier years practically makes it difficult for us to collate our old records. Hence, such extension is badly needed for the mutual benefit of the city and the company.

Anticipating your favorable response upon this letter-request."

On June 4, 2019, Ms. Bombita issued the *Tax Data and Assessment Form As of June 04, 2019*,[16] showing a recomputation of petitioner's total tax deficiency, which increased from ₱78,095,157.84 to ₱80,377,205.30, due to adjustments in the interest computation. Petitioner received the same on June 6, 2019.

On July 15, 2019, petitioner filed its protest[17] contesting the subject assessment. The protest stated, in part, the following:

"With all the foregoing as constitutive of the protest, our client is praying that a new assessment be made but this time, covering the periods 2015 to 2019 only that is based on the BIR tax returns and on correct tax rates; and that with the new assessment, our client be allowed to settle the same via five (5)-year period of installment,

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[15] Par. 7, Stipulation of Fact, Pre-Trial Order dated February 7, 2022, RTC Docket (Civil Case No. LP-19-0094), p. 238; Exhibit "7", RTC Docket (Civil Case No. LP-19-0094), p. 688.
[16] Exhibit "D", RTC Docket (Civil Case No. LP-19-0094), p. 15.
[17] Exhibit "E", RTC Docket (Civil Case No. LP-19-0094), pp. 16 to 18.

starting from July 30, 2019 and every year thereafter. Such annual installment shall be through post dated checks payable to the local government or the City Treasurer'[s] Office as the case might be. **See Attached ANNEX A** on the proposed Computation and Manner of Settlement."

The Computation of Tax Due and Manner of Settlement[18] is likewise reproduced below:

TAX COMPUTATION:

Year Sales per ITR	Audited Sales	Hardware 1% of Sales	Cement Sales 0.25% of Sales	Tax due Hardware	Tax due Cement	Total	Tax Paid	Unpaid Tax
2014	362,320,190.00	18,116,009.50	344,204,180.50	181,160.10	860,510.45	1,041,670.55	124,000.00	917,670.55
2015	322,477,462.00	16,123,873.10	306,353,588.90	161,238.73	765,883.97	927,122.70	129,000.00	798,122.70
2016	369,695,005.00	18,484,750.25	351,210,254.75	184,847.50	878,025.64	1,062,873.14	169,700.07	893,173.07
2017	446,131,515.00	22,306,575.75	423,824,939.25	223,065.76	1,059,562.35	1,282,628.11	200,302.07	1,082,326.04
2018	436,069,190.00	21,803,459.50	414,265,730.50	218,034.60	1,035,664.33	1,253,698.92	64,147.00	1,189,551.92
TOTAL	1,936,693,362.00	96,834,668.10	1,839,858,693.90	968,346.68	4,599,646.73	5,567,993.42	687,149.14	4,880,844.28

PROPOSED MANNER OF PAYMENT:
PAYABLE IN 5 YEAR EQUAL INSTALLMENT (With PDC's)
AS FOLLOWS:

JULY 30, 2019	**Php 976,168.85**
JULY 30, 2020	**Php 976,168.85**
JULY 30, 2021	**Php 976,168.85**
JULY 30, 2022	**Php 976,168.85**
JULY 30, 2023	**Php 976,168.85**
TOTAL	**Php 4,880,844.28**

Respondent did not act on petitioner's protest to the subject assessment.

PROCEEDINGS BEFORE THE COURT *A QUO*

On September 13, 2019, petitioner filed its *APPEAL (Under Section 195 of the Local Government Code of 1991)*[19] with the RTC of Las Piñas City, praying that the Court *a quo* declare the unpaid business tax of petitioner as only amounting to ₱4,880,844.28, covering the periods 2014 to 2018; and that it be allowed to settle the said unpaid business tax via five (5)-year period of installment through post-dated checks payable to the local government or the City Treasurer's Office—with no interest or surcharge whatsoever.

[18] Exhibit "G", RTC Docket (Civil Case No. LP-19-0094), p. 22.
[19] RTC Docket (Civil Case No. LP-19-0094), pp. 2 to 7.

On November 25, 2019, respondent filed his *Opposition/Answer*.[20] Petitioner then filed its *Responsive Pleading* on December 6, 2019.[21]

The pre-trial stage ensued, followed by the trial proceedings.

The Court *a quo* promulgated the assailed Decision[22] denying and dismissing petitioner's appeal.

On June 22, 2023 and June 27, 2023, petitioner respectively filed a *Motion for Reconsideration*[23] and *Supplement To The Motion for Reconsideration*,[24] basically praying for the reversal and setting aside of the assailed Decision, and that a new one be issued declaring all respondent's assessments as null and void.

The Court *a quo* thereafter issued the assailed Order[25] denying the above-mentioned motions.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on September 18, 2023.[26]

In the Minute Resolution dated October 16, 2023,[27] this Court: (1) ordered respondent to file its comment, not a motion to dismiss, within ten (10) days from receipt thereof; and (2) directed the Branch Clerk of Court of the RTC of Las Piñas City – Branch 254, to elevate to this Court the entire original records of Civil Case No. LP-19-0094, within ten (10) days from notice.

On November 17, 2023, the said Branch Clerk of Court transmitted to this Court the entire original records of Civil Case No. LP-19-0094, consisting of 765 pages, with copies of transcript of stenographic notes, Certification, Index, and Index of Exhibits.[28]

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[20] RTC Docket (Civil Case No. LP-19-0094), pp. 160 to 164.
[21] RTC Docket (Civil Case No. LP-19-0094), pp. 176 to 181.
[22] Docket, pp. 27 to 36; RTC Docket (Civil Case No. LP-19-0094), pp. 710 to 719.
[23] RTC Docket (Civil Case No. LP-19-0094), pp. 730 to 736.
[24] RTC Docket (Civil Case No. LP-19-0094), pp. 746 to 751.
[25] Docket, pp. 37 to 38; RTC Docket (Civil Case No. LP-19-0094), pp. 758 to 759.
[26] Docket, pp. 5 to 24.
[27] Docket, pp. 47-A to 47-B.
[28] Docket, pp. 48 to 59.

On November 20, 2023, respondent posted its *Comment*.[29]

In the Minute Resolution dated December 11, 2023,[30] the present *Petition for Review* was submitted for decision.

On December 22, 2023, petitioner filed its *Motion For Leave To File Admit Attached Memorandum*,[31] praying for the admission of the *Memorandum* attached thereto.[32] In the Minute Resolution dated January 9, 2024,[33] the Court: (1) admitted petitioner's *Memorandum*; (2) ordered respondent to submit its memorandum, within thirty (30) days from receipt of the said Minute Resolution; and, (3) recalled the Minute Resolution dated December 11, 2023, which submitted the present *Petition for Review* for resolution.

On April 15, 2024, respondent posted its *Memorandum*.[34]

In the Minute Resolution dated May 24, 2024,[35] the present appeal was submitted anew for decision.

<u>ASSIGNMENT OF ERRORS</u>

Petitioner assigns the following errors allegedly committed by the Court *a quo*, viz.:

> "I.
> THE RTC SERIOUSLY ERRED WHEN IT RULED THAT THERE WAS NO TIMELY PROTEST ON THE ASSESSMENT THUS MAKING THE SAME FINAL AND EXECUTORY AND CAN NO LONGER BE DISTURBED.
>
> II.
> THE RTC SERIOUSLY ERRED WHEN IT DECLARED THAT THE TAX DATA AND ASSESSMENT FORM AS OF JUNE 4, 2019 CANNOT BE A BASIS FOR RECKONING THE PERIOD TO FILE THE PROTEST AS IT IS NOT THE NOTICE OF ASSESSMENT CONTEMPLATED BY LAW.

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[29] Docket, pp. 60 to 66.
[30] Docket, p. 68.
[31] Docket, pp. 69 to 71.
[32] Docket, pp. 72 to 101.
[33] Docket, pp. 102 to 103.
[34] Docket, pp. 107 to 114.
[35] Docket, p. 126.

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III.
THE RTC SERIOUSLY ERRED WHEN IT RULED THAT THE APPLICATION OF THE PRESUMPTIVE INCOME LEVEL ASSESSMENT APPROACH (PILAA) IN COMPUTING THE DEFICIENCY TAX ASSESSMENT IN [THE] PRESENT CASE AS PROPER AND FALLS WITHIN RESPONDENT'S PREROGATIVES.

IV.
THE RTC SERIOUS[LY] ERRED WHEN IT FAILED TO RULE THAT THE IMPOSITION OF SURCHARGES AND INTERESTS IN THE PRESENT CASE IS CONTRARY TO LAW.

V.
THE RTC SERIOUSLY ERRED WHEN IT APPLIED PARAGRAPH (B), SECTION 194 OF THE LOCAL GOVERNMENT CODE TO THE PRESENT CASE INSTEAD OF THE FIVE (5) YEAR PRESCRIPTIVE PERIOD AS PROVIDED UNDER PARAGRAPH (A) THEREOF."[36]

RULING OF THE COURT

After a scrupulous review of the parties' respective arguments and evidence, We find the present *Petition for Review* meritorious.

The CTA has jurisdiction over the present appeal

Before We discuss the substantive issues herein, We shall first discuss the jurisdiction of this Court over the present appeal.

Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals,[37] in relation to Section 7(a)(3) of Republic Act (RA) No. 1125, as amended by RA No. 9282 (CTA Law),[38] enumerates the cases within the jurisdiction of this Court, to wit:

> SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:

[36] Assignment of Errors, *Petition for Review*, Docket, pp. 7 to 8; Assignment of Errors, petitioner's *Memorandum*, Docket, p. 75.
[37] A.M. No. 05-11-07-CTA, November 22, 2005.
[38] Expanding the Jurisdiction of the Court of Tax Appeals, Republic Act No. 9282, March 30, 2004.

> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> xxx xxx xxx
>
> **(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction**; *(Emphasis supplied)*

Further, Section 3(a), Rule 8 of the RRCTA, in relation to Section 11 of the CTA Law, provides the period for filing an appeal of the decision of the RTC with this Court, *viz.*:

> SECTION 3. *Who May Appeal; Period to File Petition.* –
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> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a **Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. *(Emphasis supplied)*

Based on the above-cited rules, local tax cases decided or resolved by the RTC in the exercise of its original jurisdiction may be appealed to this Court within thirty (30) days from the petitioner's receipt of a copy of such decision or ruling.

To be sure, before the case can be raised on appeal to the CTA, the action before the RTC must be in the nature of a local tax case, or one which primarily involves a local tax case.[39] A local tax case pertains to a dispute between a local government unit (LGU) and a taxpayer involving the LGU's power to impose and levy taxes, fees, or charges against the property or business of the taxpayer concerned.[40]

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[39] *Mactel Corp. v. City Government of Makati*, G.R. No. 244602, July 14, 2021.
[40] *Id.*

In the present appeal, petitioner prays for the reversal and setting aside of the assailed Decision and Order promulgated by the RTC of Las Piñas City – Branch 254, involving the alleged local business tax deficiency of petitioner. The assailed Decision and Order were resolved by the said RTC in the exercise of its original jurisdiction. Considering the foregoing, the subject matter of the present appeal falls squarely within the jurisdiction of this Court.

With respect to the timeliness of the present appeal, records show that petitioner received the assailed Order on August 18, 2023.[41] Petitioner had thirty (30) days from such receipt, or until September 18 2023, to file an appeal with the CTA. As petitioner filed the present *Petition for Review* on September 18, 2023,[42] the same was timely filed. For these reasons, this Court has jurisdiction over the case.

Respondent failed to issue a valid notice of assessment

Petitioner argues that the Court *a quo* seriously erred when it ruled that petitioner failed to timely file a protest to the subject assessment, rendering the same final and executory, and that the *Tax Data and Assessment Form As of June 04, 2019* cannot be made the basis for reckoning the period to file the protest to the assessment.

Petitioner avers that the ***Tax Data and Assessment Form As of June 04, 2019*** is a notice of assessment contemplated by law. The said notice clearly indicated the nature of the tax involved, the total amount of basic deficiency tax assessed, surcharges, and interest, and the taxable years covered. It was also signed by both the City Treasurer and her Deputy.

Petitioner posits that the RTC's position that a notice of assessment must contain a demand to pay, is contrary to Section 195 of the Local Government Code of 1991[43] (LGC), the said law's Implementing Rules and Regulations (IRR), relevant Supreme Court rulings, and even Section 125 of the 2016 Revenue Code of Las Piñas City. It also avers that the only requirement provided by law for the validity of a notice of assessment is that it must state "the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties."

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[41] RTC Docket (Civil Case No. LP-19-0094), p. 759.
[42] September 17, 2023 fell on a Sunday. The next working day was on September 18, 2023.
[43] Republic Act No. 7160, October 10, 1991.

Petitioner submits that given that the *Tax Data and Assessment Form As of June 04, 2019* was chronologically the latest notice of assessment issued by respondent, it was only logical and proper that the counting of the 60-day period for filing a protest thereto was reckoned from petitioner's receipt thereof.

On the other hand, respondent contends that the official notice of assessment that it issued was the **assessment notice dated July 26, 2018 with attached *Tax Data and Assessment Form*.** The Tax Data and Assessment Form, in itself, is not an official notice of assessment within the purview of Section 195 of the LGC. It is a mere attachment to the official notice or letter of assessment.

Respondent stresses that despite petitioner's receipt of the assessment notice dated July 26, 2018, the latter did not file any protest within the 60-day period. Even when respondent issued the *Letter of Assessment (Final Notice)* dated September 4, 2018, which was duly received by petitioner, the latter still did not file any protest within the said period. Instead, petitioner sent a letter dated December 3, 2018 requesting that it be given an extension of time, or until March 30, 2019, to settle its tax liabilities.

Respondent submits that without any formal protest on the assessment, the same had become final and executory on November 5, 2018, considering that the *Letter of Assessment (Final Notice)* dated September 4, 2018 was received by petitioner on September 6, 2018.

We find the arguments of both parties not in accord with recognized legal principles and jurisprudence.

Section 195 of the LGC provides the applicable rules on the issuance of a notice of assessment involving deficiency local taxes, and the filing of a protest thereto. The provision reads:

> 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)*

As can be gleaned therefrom, the local treasurer or his duly authorized representative, upon finding that the correct taxes, fees, or charges have not been paid, has the power to issue a notice of assessment against the taxpayer concerned. The said notice must state the nature of the tax, fee, or charge, the amount of deficiency, surcharges, interests, and penalties. Upon receipt of the said notice, the taxpayer has sixty (60) days therefrom to file a written protest with the local treasurer, contesting the assessment; failing which, the assessment shall become final and executory.

In *Yamane v. BA Lepanto Condominium Corp.*,[44] the Supreme Court held that a 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 tax. While Section 195 of the LGC does not expressly require that the notice of assessment specifically cite the applicable provision of the ordinance involved, it requires that the notice of assessment state the nature of the tax, fee, or charge, the amount of deficiency, surcharges, interests and penalties.[45]

In *National Power Corp. v. Province of Pampanga*,[46] the High Court emphasized that the taxpayer must be informed of the nature of the deficiency tax, fee, or charge, as well as the amount of deficiency, surcharge, interest, and penalty. Further, the mandate of providing the taxpayer with notice of the facts and laws used as bases for the assessment is not to be mechanically applied. The purpose of these requirements is to adequately inform the taxpayer of the basis of the assessment to enable him to prepare for an intelligent protest.[47]

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[48] the Supreme Court added that the purpose behind the

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[44] G.R. No. 154993, October 25, 2005.
[45] *Id.*
[46] G.R. No. 230648, October 6, 2021.
[47] *Id.*
[48] G.R. No. 215957, November 9, 2016.

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.

Verily, whether a tax assessment involves national internal revenue taxes or local taxes, the requirements of due process in the exercise by the government of its taxing powers must be strictly observed. This is because of the fundamental legal principle that when balancing the scales between the power of the State to tax and the constitutional rights of a citizen to due process of law and the equal protection of the laws, 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.[49]

As such, failure of the taxing authority to sufficiently inform the taxpayer of the facts and the law used as bases for the assessment will render the assessment void.[50]

In this regard, based on the above-cited jurisprudence, the validity of a notice of assessment issued by the local treasurer is determined by the contents thereof. To summarize, a notice of assessment as contemplated in Section 195 of the LGC must contain the following information, to wit:

1) The nature of the assessed tax, fee, or charge;
2) The amount of deficiency, surcharges, interests and penalties; and
3) The factual and legal bases of the assessment.

Scrutiny of the evidence on record reveals that none of the letters sent by respondent to petitioner qualify as a valid notice of assessment per the standards laid down by applicable case law.

With respect to petitioner's arguments, the *Tax Data and Assessment Form As of June 04, 2019*[51] issued by Ms. Bombita to petitioner, cannot be deemed as the notice of assessment to which petitioner must file a protest. A careful reading of the said document leads to the inevitable conclusion that such document, in and by itself, did not sufficiently inform petitioner of its pending tax liability. It also

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[49] *Supra*, note 46.
[50] *Id.*
[51] Exhibit "D", RTC Docket (Civil Case No. LP-19-0094), p. 15.

did not state the factual and legal basis of the assessment. While it is true that the details required by law can be found therein (*i.e.*, nature of the tax, fee or charge, and amount of deficiency, surcharge, interests and penalties), such details were neither formally nor adequately communicated to petitioner in such a way that the latter would be able to prepare an intelligent or effective protest. Instead, such details were merely inputted as entries in what seems to be a prescribed form. Thus, as correctly held by the Court *a quo*, the *Tax Data and Assessment Form As of June 04, 2019* is but an updated computation of petitioner's tax liability.

Petitioner's argument that the said document was the latest notice of assessment issued by respondent to petitioner, hence, the logical and proper document to protest, does not convince this Court. It is worth reiterating that it is the contents of the document, not the timing of issuance thereof, that determines the sufficiency of a notice of assessment under the LGC for purposes of filing a protest.

With respect to respondent's arguments, the assessment letter dated July 26, 2018[52] issued by Ms. Bombita to petitioner, cannot also be considered as a valid notice of assessment. The said letter, even together with its two (2) attachments, did not sufficiently inform petitioner of the factual and legal basis of the assessment, so much so that petitioner would be able to prepare an intelligent or effective protest. Examination of the said letter and its attachments shows that the same merely informed petitioner of its alleged tax deficiency and presented the summary and breakdown of respondent's computation of the same. Nowhere in these documents did respondent at least mention the basis of the rates and figures used, whether it be the LGC, a city ordinance, petitioner's corporate or financial documents, or some other relevant basis, which would allow petitioner to adequately reconcile or explain or rebut respondent's findings, especially since the taxable years covered by the assessment span from 2008 to 2017, or for almost ten (10) years.

By parity of reasoning, none of two (2) letters subsequently issued by respondent to petitioner (*i.e.*, letter dated August 10, 2018[53] and *Letter of Assessment (Final Notice)* dated September 4, 2018[54]) qualified as a valid notice of assessment, as nothing therein informed petitioner of the factual and legal basis of the total assessed deficiency local taxes.

[52] Exhibit "4", RTC Docket (Civil Case No. LP-19-0094), p. 683.
[53] Exhibit "5", RTC Docket (Civil Case No. LP-19-0094), p. 686.
[54] Exhibit "6", RTC Docket (Civil Case No. LP-19-0094), p. 687.

Consequently, the subject assessment covering the taxable years 2008 to 2017 embodied in the above-stated letters are **void**, for failure of respondent to comply with the requirements of the law, as interpreted by jurisprudence, in the issuance of a valid notice of assessment. As a corollary, as no valid notice of assessment was issued in this case, no assessment against petitioner could have become final and executory under Section 195 of the LGC.

Even assuming that the assessment letter dated July 26, 2018 is accepted by this Court as a valid notice of assessment, the subject assessment is **still void**, as will be discussed below.

The right to assess taxable years 2008, 2009, 2010, 2011, 2012, and 2013 has prescribed

Petitioner argues that the Court *a quo* seriously erred when it applied the ten (10)-year prescriptive period for the assessment of local taxes in case of fraud or intent to evade payment, instead of the ordinary five (5)-year prescriptive period for the same.

Petitioner submits that the circumstances mentioned by the Court *a quo* do not sufficiently establish by clear and convincing evidence that petitioner had committed fraud or had intent to evade payment of taxes so as to warrant the application of the ten (10)-year prescriptive period. Petitioner asserts that mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.

In contrast, respondent maintains that the assessment for tax deficiency starting from the year 2008 may be assessed within ten (10) years from discovery of fraud or intent to evade payment. Here, there was clear intent to evade payment of correct taxes by reason of the substantial disparity of the sales declared by petitioner against its actual sales based on respondent's reliance on the best evidence obtainable such as petitioner's Income Statements and Audited Financial Statements filed with the SEC.

Respondent further submits that assessments are *prima facie* presumed correct and made in good faith; hence, it is the taxpayer and not the taxing authority who has the duty of proving otherwise.

Respondent's arguments fail to impress.

The prescriptive periods for the assessment and collection of local taxes are governed by Section 194 of the LGC, as quoted below:

> **SECTION 194.** *Periods of Assessment and Collection.* -
>
> (a) **Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due.** No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period: Provided, That taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.
>
> (b) **In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.**
>
> (c) Local taxes, fees, or charges may be collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period: Provided, however, That, taxes, fees or charges assessed before the effectivity of this Code may be collected within a period of three (3) years from the date of assessment.
>
> (d) The running of the periods of prescription provided in the preceding paragraphs shall be suspended for the time during which:
>
> > (1) The treasurer is legally prevented from making the assessment of collection;
> >
> > (2) The taxpayer requests for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect; and
> >
> > (3) The taxpayer is out of the country or otherwise cannot be located. *(Emphasis supplied)*

Based on the foregoing, the right to assess local taxes, fees or charges prescribes after five (5) years from the due date for payment; however, in case of fraud or intent to evade payment, the right to assess the same prescribes after ten (10) years from discovery thereof. Relatedly, business taxes are payable within the first twenty (20) days of January.[55]

To determine whether the ordinary 5-year prescriptive period or extraordinary 10-year prescriptive period applies, fraud is never presumed or imputed. Fraud must be proved by clear and convincing

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[55] Section 167 of the LGC.

evidence amounting to more than mere preponderance, and cannot be justified by mere speculation.[56]

It bears stressing that tax returns are presumed to have been prepared and filed by the taxpayer in good faith, in observance of the ordinary course of business, and in compliance with the applicable rules and regulations.[57] Thus, falsity and/or fraud with respect to any tax return cannot be presumed to the extent that these are relied upon as grounds for the extension of the assessment period to ten (10) years. Moreover, tax authorities bear the burden of establishing, with clear and convincing proof, the existence of grounds warranting the application of the 10-year period.[58]

In *Aznar v. Court of Tax Appeals*,[59] the Supreme Court, in interpreting Section 332(a) of the National Internal Revenue Code (Tax Code) of 1939[60] (now Section 222(a) of the Tax Code of 1997,[61] as amended), distinguished a false return from a fraudulent one, *viz.*:

> xxx xxx xxx We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which aggregates the situations into three different classes, namely "falsity", "fraud" and "omission". **<u>That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.</u>** *(Emphasis supplied)*

In *Commissioner of Internal Revenue v. Spouses Magaan*,[62] the High Tribunal elaborated on the element of fraud as a ground to invoke the extraordinary 10-year prescriptive period, to wit:

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[56] *Yutivo Sons Hardware Co. v. Court of Tax Appeals*, G.R. No. L-13203, January 28, 1961.
[57] *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*, G.R. No. 247737, August 8, 2023.
[58] *Id.*
[59] G.R. No. L-20569, August 23, 1974.
[60] Commonwealth Act No. 466, June 15, 1939.
[61] Republic Act No. 8424, December 11, 1997.
[62] G.R. No. 232663, May 3, 2021.

> Generally, fraud is "anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another."
>
> In the context of Section 222(a), **there is fraud in the filing of a false and deceitful entry with intent to evade the taxes due. The act of filing a fraudulent return must be intentional and not attributable to "mistake, carelessness, or ignorance."** Thus, for petitioner to invoke the 10-year prescriptive period, it must prove the following with clear and convincing evidence: (1) respondents received taxable income; (2) they underdeclared or did not declare the taxable income in their tax returns; and **(3) they intended to evade payment of correct taxes due.** *(Emphasis supplied)*

It must be noted that under Section 194 of the LGC, only cases involving fraudulent returns can trigger the application of the extraordinary 10-year prescriptive period. The said provision does not include falsity in tax returns as a ground to apply the 10-year period, which otherwise applies under the Tax Code, as amended.

In this case, respondent has failed to establish by clear and convincing evidence the existence of fraud or intent to evade payment in petitioner's payment of its business taxes for taxable years 2008 to 2013, to warrant the application of the 10-year prescriptive period.

In its *Opposition/Answer*,[63] respondent alleges that it was only in 2018 when it discovered, based on the financial statements submitted by petitioner to the SEC, that petitioner has been intentionally underdeclaring its sales receipts by more than hundreds of millions of pesos to evade payment of correct local taxes. Respondent also alleges the following: **(1)** the substantial disparity of petitioner's declared sales against its actual sales only shows that there was a clear intent to evade payment of correct local taxes; **(2)** the sizeable underdeclaration of its sales for the years 2013 to 2016 clearly show petitioner's habit of grossly underdeclaring its sales to defraud the local government; **(3)** such sizeable underdeclaration of sales was done as early as the year 2008 "*as respondent was able to obtain a financial statement of petitioner wherein its net sales for 2007 amounted to ₱238,795,274.62, yet, petitioner merely declared sales of ₱4,603, 498.00 in the taxable year 2008;*" and, **(4)** prior to issuing an assessment in July 2018, respondent had requested petitioner several

[63] RTC Docket (Civil Case No. LP-19-0094), pp. 160 to 164.

times to submit its accounting records or books of accounts to allow respondent to audit and verify petitioner's yearly sales; however, petitioner adamantly refused to comply.

To prove its allegations, respondent submitted the following: **(1)** LOA dated May 31, 2018; **(2)** *Non-Presentation of Documents (Second Notice)* dated July 9, 2018; **(3)** *Final Notice of Non-Presentation of Documents NPS* dated July 18, 2018; **(4)** letter dated July 26, 2018 with attachments; **(5)** letter dated August 10, 2018; **(6)** *Letter of Assessment (Final Notice)* dated September 4, 2018; **(7)** letter-request dated December 3, 2018; **(8)** Judicial Affidavit of Danilo F. Cabangon; and, **(9)** Income Statement of petitioner ending December 31, 2007 filed with the SEC.

After a painstaking review of the foregoing, including the testimonies of the witnesses for this case, We find the evidence on record insufficient to establish that petitioner committed fraud or that it intended to evade the payment of taxes when it filed and paid its local taxes for taxable years 2008 to 2013.

First, the alleged Income Statement of petitioner ending December 31, 2007 filed with the SEC,[64] is merely an excerpt of the entire document, which, in turn, is merely a photocopy of the original. Hence, the said document is unverified and unreliable for purposes of proving petitioner's substantial underdeclaration of sales for taxable year 2008.

Second, the aforementioned pieces of evidence failed to establish petitioner's substantial underdeclaration of sales for taxable years 2009 to 2013, for failure to submit documents showing petitioner's actual sales and declared sales for comparison. Respondent admits that for these years, it merely estimated petitioner's annual sales based on its 2007 financial statements.[65]

Third, petitioner's substantial underdeclaration of sales is only apparent for taxable years 2014 to 2017 based on petitioner's own evidence and admissions.

For these reasons, We disagree with the Court *a quo*'s finding that there was clear intent on the part of petitioner to evade payment of correct taxes and/or to defraud the government, by reason of the

[64] Exhibit "9", RTC Docket (Civil Case No. LP-19-0094), p. 689.
[65] *Supra*, note 63.

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substantial disparity of petitioner's declared sales against its actual sales. To Our minds, insofar as taxable years 2008 to 2013 are concerned, there is neither direct, circumstantial nor corroborating evidence to sustain a finding of fraud.

Consequently, We cannot uphold the Court *a quo*'s ruling applying the 10-year prescriptive period on the assessment for taxable years 2008 to 2013.

This Court shall not sustain findings of fraud upon circumstances which, at most, create only suspicion.[66] Moreover, the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.[67]

There being no fraud or intent to evade payment of taxes on the part of petitioner in the payment of its taxes for taxable years 2008 to 2013, the ordinary 5-year prescriptive period to assess shall apply. Considering that the subject assessment was received by petitioner on August 1, 2018, the right to assess taxable years 2008 to 2013 has prescribed, as shown below:

Period Covered	**Business Tax Due Date**	**Last Day to Assess**
2008	January 20, 2008	January 20, 2013
2009	January 20, 2009	January 20, 2014
2010	January 20, 2010	January 20, 2015
2011	January 20, 2011	January 20, 2016
2012	January 20, 2012	January 20, 2017
2013	January 20, 2013	January 20, 2018

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[68] the Supreme Court declared the final assessment therein as invalid on the ground that the same was issued beyond the prescriptive period to assess, notwithstanding the taxpayer's failure to file a timely protest to the assessment.

[66] *Supra*, note 58.
[67] *Commissioner of Internal Revenue v. Javier, Jr.*, G.R. No. 78953, July 31, 1991.
[68] G.R. No. 162852, December 16, 2004.

In much the same way, even assuming that the assessment letter dated July 26, 2018 is valid and petitioner failed to file a timely protest thereto, this Court would nonetheless declare the assessment pertaining to taxable years 2008, 2009, 2010, 2011, 2012, and 2013 as void due to prescription.

Surely, assessments that have prescribed are deemed void.[69] With the herein assessment being a void assessment, the same could have never attained finality.

Respondent's use of the Presumptive Income Level Assessment Approach (PILAA) lacks factual and legal basis

The Court *a quo*, in the assailed Order, held as follows:

> "**Anent respondent's application of the Presumptive Income Level Assessment Approach (PILAA) in computing the assessment, this Court finds the same proper and falls within the prerogatives of the local respondent, consistent with the fiscal autonomy granted to local government units.** The Court takes the view that BLGF Memorandum Circular No. 01-011-2018 dated 5 January 2017 is not in the nature of a mandatory or prohibitory law within the context of Article 5 of the Civil Code, so as to completely nullify the assessment made by the respondent. Coming as it thus from the Bureau of Local Government Finance, an agency under the auspices of the Department of Finance, the said circular is mere advisory in nature and do not have the effect of nullifying the assessment of respondent. Indeed, as the subject of the circular states, it is couched as "REMINDERS" in the assessment of local business tax, et. al. To rule otherwise would amount to an infringement of the taxing authority of local government units. Indeed, as the cited circular itself suggests, the taxpayer is not without remedy - he may claim for refund of excess business taxes. Hence, regardless of the propriety or validity of the PILAA applied by the respondent,the assessment uapon the petitioner remains valid, demandable, and enforceable." *(Emphasis supplied)*

Petitioner disagrees with the Court *a quo*'s reasoning, and argues that two (2) conditions must be satisfied before the PILAA may be validly used in computing local business taxes: (1) there must be an ordinance duly passed by the local *sanggunian* authorizing the use of the PILAA; and (2) the taxpayer fails to present its books of accounts

[69] *Supra*, note 57.

and other records or that there are no such records to validate the taxpayer's declared income. Petitioner avers that in this case, the first condition was not met as there is no ordinance passed by the local *sanggunian* of Las Piñas City authorizing the use of the PILAA. Petitioner adds that recognition of the principle of local fiscal autonomy should not necessarily translate into abject deference to the power of local government units (LGUs) to impose taxes, as the exercise of such power is explicitly made subject to the provisions of the LGC. One such limitation is Section 132 of the LGC, which mandates that the taxing power of the LGU be exercised through its local *sanggunian* by virtue of an appropriate ordinance.

Respondent counters that even assuming that there were violations of BLGF Memorandum Circular No. 01-05-2017 dated 5 January 2017, the same does not provide for the invalidity of the assessment. Respondent also highlights that petitioner failed to provide proof of its gross receipts or gross sales, or any of its books of accounts and other accounting records, despite several requests issued by respondent to petitioner. Respondent also points out that even during the trial before the Court *a quo*, petitioner did not present its books of accounts and other accounting records for examination and verification. Petitioner merely presented its Statements of Income, Statements of Cash Flow, Statement of Financial Position, and an Auditor's Report, which are self-serving statements, since no supporting receipts and other accounting documents were submitted to the Court. Hence, in the preparation of the notice of assessment, respondent was justified in applying the PILAA.

Even on this score, We rule for petitioner.

One of the most basic tenets of local government taxation is that the power to impose a tax or to generate revenue for the local government is vested with the local legislative body or *Sanggunian* through the passage of an ordinance. Such tenet is embodied in Section 132 of the LGC, *viz.*:

> **Section 132.** *Local Taxing Authority.* - The power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the sanggunian of the local government unit concerned through an appropriate ordinance.

The power of the LGU is derived from the Constitution which grants them the power to create its own sources of revenues and to levy taxes, fees and charges. As such, the power of the LGU to tax is not

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inherent and may be exercised only to the extent that it is delegated, and subject to the guidelines and limitations as Congress may provide.[70]

As the imposition of tax is a legislative function, such power cannot be left to the discretion of the City Mayor or City Treasurer. An ordinance must be enacted by the *Sanggunian* under such terms and conditions as may be necessary such that there is nothing left to do but to enforce it in accordance with the terms and conditions set therein.[71]

In this case, respondent failed to adduce in evidence the full or relevant text of the local ordinance upon which the assailed assessment was based, which would have proved or tended to prove matters on petitioner's liability for local business taxes, and more importantly, the sanctioned manner of or procedure for payment, assessment and collection of taxes applicable in Las Piñas City, including whether the PILAA was allowed or not.

Without proof of the relevant local ordinance, or the terms and conditions governing the City Treasurer of Las Piñas City's authority to impose tax against petitioner, this Court has no basis to uphold respondent's findings in the subject assessment, or to compute the correct taxes, fees, and charges for which petitioner is liable in this case.

Neither can this Court take judicial notice of the relevant local ordinance of Las Piñas City. In *Quezon City Government v. Manila Seedling Bank Foundation, Inc.*,[72] the Supreme Court proclaimed, thus:

> xxx xxx xxx **An ordinance or a part of it is not included in the enumeration of matters covered by mandatory judicial notice under the 1997 Rules of Court, specifically under Rule 129, Sec. 1.** Even with the enactment of Republic Act No. 409, in which Sec. 50 thereof states that "[a]ll courts sitting in the city shall take judicial notice of the ordinances passed by the *[Sangguniang Panlungsod]*," this does not mean that this Court, which has a seat in Quezon City, should procure a copy of the ordinance on its own, which is the duty of the party.
>
> Neither is the court *a quo* required to take judicial notice of municipal or city ordinances that are not before it, and to which it

[70] *Guialani v. Court of Appeals, (Special) Twenty-Second Division*, G.R. Nos. 221253-54, 227527-28 & 231065-68, April 26, 2021.
[71] *Id.*
[72] G.R. Nos. 208788 and 228284, July 23, 2024.

> does not have access. The intent of Republic Act No. 409 is to remove any discretion a court might have in determining whether to take notice of an ordinance, and *not to direct the court to act on its own in obtaining evidence for the record.* **It is the obligation of the party to supply the court with the full text or any part of the ordinance if they so desire for the court to take cognizance thereof** xxx xxx xxx *(Emphases supplied)*

Considering that the records are bereft of any evidence showing the relevant local ordinance of Las Piñas City or a provision thereof allowing the use of the PILAA or other similar tool for the computation, assessment and/or enforcement of local business taxes against petitioner, respondent's use of the PILAA in this case remains unfounded and unjustified, thus, cannot be sustained.

This is not to say that use of the PILAA *per se* is erroneous. To the contrary, this Court has already recognized in several of its decisions that the PILAA may be considered as an appropriate tax assessment and collection tool of the City Treasurer in certain LGUs, in cases where the taxpayer is unable to provide proof of its gross sales or receipts.

As early as 2010, this Court in *First Planters Pawnshop, Inc. v. City Treasurer of Pasay City*,[73] as aptly cited by petitioner, discussed the function, use and limitations of the PILAA, which We affirm and reiterate, in this wise:

> ***Presumptive Income Level Assessment Approach may only be used if financial data is not submitted***
>
> xxx xxx xxx
>
> The PILAA is indeed a tax collection tool which enables the local government units to set a certain income level standard for various business entities based on industry factors. However, the PILAA does not give the respondent a *carte blanche* authority to increase the gross sales/receipts of the taxpayers within its jurisdiction and on that basis, assess the local business tax.
>
> This Court believes that the PILAA may be used by the respondent in computing the local business tax only if the taxpayer is unable to provide proof of its income.
>
> The word "presumptive" is defined as "based on a presumption". A "presumption" is "a legal inference or assumption

[73] C.T.A. EB Case No. 501, December 10, 2010.

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that a fact exists, based on the known or proven existence of some other fact or group of facts." Based on the foregoing definition, the "presumptive income" is a presumed or assumed income level based on known or proven factors. These factors may include information from the industry such as average customers per day, inventory turnover and mark-ups, and other measurable and verifiable indicators specific to the nature of business.

With the petitioner's submission of its sworn declaration of gross income together with its audited financial statements, the respondent could have sufficiently computed the local business tax due without resort to the PILAA. There was no need for the respondent to use a "presumptive income level" since the petitioner has already provided its actual gross income for the taxable years in question.

If the respondent believed that the petitioner underdeclared its gross income, the remedy should have been to compute the local business tax on the petitioner's declared income and then subsequently issued a Letter of Authority for the examination and audit of petitioner's books of accounts and other records. If petitioner fails to present its books of accounts and other records or if the petitioner has no such records to validate its declared income, then the respondent may use the presumptive income level for the assessment of deficiency taxes.

It is also noted that the use of the PILAA is not provided for in the Local Revenue Code of Pasay City. **While the Local Government Code of 1991 (LGC) grants local government units (LGU) the power to create its own sources of revenue, the same is subject to the limitation that the tax be imposed through an appropriate ordinance.** Admittedly, the City Treasurer of Pasay is authorized to collect local business taxes under both the LGC and the Pasay Revenue Code. However, **if the City Treasurer intended to use the PILAA, the same should have been subject to the procedures provided in the LGC regarding public hearings and publication. This is to ensure that the taxpayers are properly informed of the factors used in determining the presumptive income and for the taxpayers to agree to such level of presumptive income applicable to their industry.**

Absent such ordinance authorizing the use of the PILAA and embodying the presumptive income levels to be used by the City Treasurer, the collection of additional local business taxes based on such PILAA was illegal and the petitioner may properly claim the refund of the excess business taxes collected. *(Emphasis supplied)*

Parenthetically, in 2017, the Bureau of Local Government Finance (BLFG), which operates under the Department of Finance (DOF), and is tasked to, among others, assist in the formulation and

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implementation of policies on local government revenue administration, as well as exercise administrative and technical supervision and coordination over the treasury and assessment operations of local governments,[74] issued BLGF Memorandum Circular No. 01-001-17.[75] The latter instructs all provincial, city and municipal treasurers and assistant treasurers, accordingly:

> It has come to the attention of this Bureau of reported erroneous assessment of taxes and fees in the local governments during the registration and renewal of business permits and licenses. In order to ease the process and prevent undue harassment on the part of the taxpayers, all concerned are reminded of the following:
>
> xxx xxx xxx
>
> **B. Assessment of LBT for Renewal of Business Permit**
>
> 1. In the absence of audited Financial Statement, the LBT shall be based on the Sworn Declaration of gross sales or receipts by the taxpayer or its Income Tax Returns (ITR). In case of suspected underdeclaration of gross sales/receipts, the application shall be tagged by the LGU, and the business may be subjected to the examination of books of accounts by the local treasurer, which shall be done after the business renewal period.
>
> 2. If applicable, the following shall not form part of the gross sales or receipts:
>
> i. Receipts from the sale of real properties or realty assets, unless one is engaged in the business of buying or selling real estate;
>
> ii. Determinable discounts at the time of sales, sales returns, excise tax, and value-added tax (VAT);
>
> iii. Passive income, *i.e.*,interest, dividends, and gains from sale of shares; and
>
> iv. Receipts from the printing and/or publishing of books or other reading materials prescribed by Department of Education as school text and reference, for those engaged in the business of printing and publication.

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[74] Section 33, Chapter 4, Title II of Executive Order No. 292, otherwise known as the Administrative Code of the Philippines.
[75] *Reminders in the Assessment of the Local Business Tax (LBT), Registration and Renewal of Business Permits and Licenses and Payment of Community Tax*, January 5, 2017.

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> **3. The Presumptive Income Level Assessment Approach (PILAA)** ***may be used in computing the local business ONLY if the taxpayer is unable to provide proof of its gross sales or receipts.*** **The PILAA** ***may be used in estimating the gross sales or receipts provided that the PILAA is in the local tax ordinance and has undergone public hearings and publications.*** *This is to ensure that the taxpayers are properly informed of the factors used in determining the presumptive income and for the taxpayers to agree to such level of presumptive income applicable to their industry.* ***Absent such ordinance authorizing the use of the PILAA and embodying the presumptive income levels to be used by the Local Treasurer, the collection of additional local business taxes based on such PILAA is illegal*** *and the petitioner may properly claim the refund of the excess business taxes collected.*
>
> 4. The automatic application of additional 10% to 15% increase on the previous year's gross receipts as basis for LBT to meet LGU target or achieve higher collection efficiency without legal basis shall not be practiced.
>
> xxx xxx xxx
>
> In case the existing ordinances or revenue measures of the LGUs are inconsistent with the foregoing, **the local treasurers are enjoined to make the necessary and immediate representations with their respective Local Chief Executives and *Sanggunians* concerned for the amendment thereof to ensure compliance with the existing statutes of the land.** *(Emphasis supplied)*

It is worth noting from the above-cited issuance that even the national government, through the BLGF, acknowledges that, while the PILAA may be used in computing local business taxes against taxpayers who fail to provide proof of their gross sales and/or receipts, such use must be pursuant to a valid local ordinance; otherwise, the collection of additional local business taxes based on the PILAA is considered illegal.

It must be underscored at this point that the Court is fully cognizant of the reality that some taxpayers intentionally underreport their gross sales and/or receipts for the preceding calendar year or quarter, whether in the required Sworn Statement, Income Tax Return, or other similar document submitted to the LGU concerned, to avoid payment of their full tax obligation. The Court is likewise not oblivious to the tactics of some taxpayers who deliberately withhold

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documentation from the LGU concerned to conceal their unlawful practices from scrutiny of the taxing authority. Taking these matters into account, We recognize the use of the PILAA as a means to empower the local government to assess and collect the correct local business taxes, fees, and charges against noncompliant taxpayers, or taxpayers acting in bad faith.

Incidentally, under Section 6 of the National Internal Revenue Code of 1997, as amended, the Commissioner of Internal Revenue is empowered to assess the correct national internal revenue taxes against a taxpayer who fails to file the required return or other document at the time prescribed by law, or files a false or fraudulent return or other document, based on the best evidence obtainable.

Notwithstanding the foregoing, the LGU, through the local treasurer or his duly authorized representative, is not at liberty to use the PILAA with unfettered discretion, as the local taxing power is expressly limited by the LGC, which categorically requires a local ordinance for the exercise of such power. As such, without proof of the relevant local ordinance authorizing the use of **estimated** gross sales and/or receipts as basis for imposing local business taxes against petitioner, as was done by respondent in this case, this Court has no legal basis to uphold the subject assessment. Certainly, this Court cannot and will not give its imprimatur to an act of respondent that is patently without any legal authority.

The Court *a quo*'s invocation of the rule that assessments are *prima facie* presumed correct and made in good faith, and that the taxpayer has the duty of proving otherwise, is merely disputable, and, in this case, is negated by petitioner's evidence of its actual sales which reveals amounts inconsistent with that used by respondent in the subject assessment.

Furthermore, during cross-examination, Mr. Cabangon, who reviewed and submitted the computation of petitioner's local business tax deficiency, testified on the basis he used for determining the actual sales of petitioner, in the following manner:

> ATTY. CARIÑO:
> Is there any law allowing the City Treasurer to base the actual sales of certain entity from the records of the SEC?
>
> A: Yes.
>
> ATTY. CARIÑO:

What law is that?

A: We have the pin mailer that was given by the SEC, to look on the records for our tax payer.

ATTY. CARIÑO:
Well, I am asking you of any law. Can you cite any provision of law?

A: I don't have it.

ATTY. CARIÑO:
And also, Mr. Witness, I noticed that in the year 2008, the actual sale is P262,675,297.08 correct? In the column actual sales, the second figure?

A: Yes, sir.

ATTY. CARIÑO:
And you arrived at this figure because of the 10% increase?

A: Yes, sir.

ATTY. CARIÑO:
And this 10% increase is a presumed increase. Correct, Mr. Witness?

A: Yes, sir.

ATTY. CARIÑO:
Do you have any ordinance, authorizing you to use the presumption or presumed increase of 10% in computing the tax liability?

A: No, sir.

ATTY. CARIÑO:
You have no ordinance. Now, also Mr. Witness, I've noticed that - is it also true, Mr. Witness, that the succeeding actual sales it is always multiplied by 10%, correct?

A: Yes, sir.[76] *(Emphasis supplied)*

Then, on re-direct examination, Mr. Cabangon was allowed to elaborate on the circumstances which led him to compute for petitioner's actual sales based on a 10% increase per year, as follows:

ATTY. ECARMA:
Why did you base that [Tax Data Assessment Form] on SEC record instead of the books of accounts of the O & S Trading?

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[76] *Transcript of Stenographic Notes* dated January 18, 2023, pp. 14 to 15.

A: Sir, we kept on asking them [O & S Trading] based on the notices we gave to them, but they were not able to submit the records. Actually, until now they cannot submit the records.

ATTY. ECARMA:
So, if O & S Trading was able to submit the records, you would not have used the SEC record?

A: Yes, sir.

ATTY. ECARMA:
What was your basis for looking at the SEC record in order to make an assessment?

A: It was in this SEC the tax payers are required on a yearly basis to submit the audited financial statement. At the same time, before the Data Privacy, we have all the LGUs have a pin mailer that they can access the financial statement of the tax payers.

ATTY. ECARMA:
Because there was no books of accounts, you were forced to access the SEC records and subsequently since there was no records what would be the basis of your succeeding statements of the actual sales?

A: Sir, we based it on the inflation and escalation of the market, 10%.

ATTY. ECARMA:
If O & S Trading was able to submit their books of accounts, what would you actually base your assessment on?

A: On the documents that they presented to us, the audited financial statement.

ATTY. ECARMA:
If that were submitted to you?

A: Yes, sir.

ATTY. ECARMA:
So, as you stated earlier these books of accounts have never been submitted?

A: Yes, sir.[77]

However, on re-cross examination, Mr. Cabangon confirmed that the SEC record on which he based petitioner's actual sales beginning from taxable year 2008, was merely an unverified copy, thus:

ATTY. CARIÑO:

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[77] *Transcript of Stenographic Notes* dated January 18, 2023, pp. 23 to 25.

> You said that you based it on the SEC record. So, where is that SEC record, Mr. Witness?
>
> A: Here.
>
> ATTY. CARIÑO:
> Do you have a certified true copy of the SEC record, Mr. Witness?
>
> A: None.

It can be deduced from Mr. Cabangon's testimony that: **(1)** there is no law or local ordinance which authorized him to use the PILAA in computing petitioner's local business tax deficiency; and, **(2)** the amount he used in applying the PILAA was based on an unverified document.

In view of the foregoing, respondent failed to prove to the satisfaction of this Court that it was justified in using the PILAA to determine petitioner's local business tax deficiency. As the use of the PILAA, which stands as the very foundation of the subject assessment, is found to be invalid and illegal, such assessment must be struck down for lack of factual and legal basis; hence, for being void.

The Court need not belabor to discuss the other matters raised by the parties, as a void assessment bears no valid fruit.[78]

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED.** The *Decision* dated May 30, 2023 and *Order* dated August 8, 2023, both rendered by the RTC of Las Piñas City – Branch 254, in Civil Case No. LP-19-0094, are **REVERSED** and **SET ASIDE**.

Accordingly, the letters of assessment issued by respondent against petitioner covering taxable years 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017, are hereby declared **NULL** and **VOID**; thus, the same are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

[78] *CIR v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023.

WE CONCUR:

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes - Fajardo
(With Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
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.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice
Third Division 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

O & S TRADING AND CONSTRUCTION SUPPLY, INC., as represented by JAIME S. GUERRERO, JR., *Petitioner,*	**CTA AC No. 303** **(Civil Case No. LP-19-0094)**
	Members:
- versus -	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
OFFICE OF THE CITY TREASURER OF LAS PIÑAS CITY, *Respondent.*	Promulgated: AUG 01 2025 9:24a.m.

x - x

CONCURRENCE

REYES-FAJARDO, *J.*:

I agree in the: (1) reversal of the Decision dated May 30, 2023 and Order dated August 8, 2023, rendered by Branch 254 of the Regional Trial Court of Las Piñas City in Civil Case No. LP-19-0094; and (2) cancellation of respondent's letters of assessment issued against petitioner for taxable years 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017, for the following grounds: (1) respondent failed to validly issue a notice of assessment against petitioner;[1] and (2) respondent's use of the presumptive income level assessment approach in computing said local tax assessment, lacks legal and factual bases.[2] I pen this to ***add*** another layer of discussion, to augment the conclusions reached in the *ponencia*.

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1 Pages 10-15 of the Decision in CTA AC No. 303.
2 Pages 21-31 of the Decision in CTA AC No. 303.

Section 171[3] of the 1991 Local Government Code[4] states the deputies of the local treasurer concerned may, under written authority from the local treasurer, examine the books, accounts, and other pertinent records of the taxpayer to ascertain, assess, and collect the correct amount of, among others, local taxes. Conversely, if said deputy who examined the taxpayer does *not* possess a valid written authority from the local treasurer, his or her findings, along with the deficiency local tax assessment pivoted thereon, are void.

On May 31, 2018, OIC City Treasurer Susan M. Bombita (CT Bombita) issued a Letter of Authority (LOA),[5] authorizing Danilo F. Cabangon (Cabangon) to examine petitioner's books of account and other accounting record, relative to local taxes, fees, and charges covering the periods 2012 to 2017. Meanwhile, respondent mentioned that "[t]he official notice of assessment issued by the Office of the City Treasurer is the notice dated July 26, 2018 *(pls. see Exh. '4'[6] of respondent)* with <u>attached</u> Tax Data & Assessment Form *(pls. see Exh. '4-A'[7])* and a detailed computation table *(pls. see Exh. '4-B'[8])*."[9] Sifting through these documents would expose the following irregularities:

First. A certain Bong R. Cometo (Cometo) undertook the actual examination of petitioner for deficiency local taxes for years 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017.[10] Cometo was **not** named in CT Bombita's LOA.

To be sure, Cabangon is the person named in CT Bombita's LOA.[11] Cabangon, too, reviewed Cometo's examination.[12] Yet, there is nothing for Cabangon to check or validate, since Cometo's examination is patently void, for being done *sans* a valid LOA from CT Bombita.

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3 **Section 171.** *Examination of Books of Accounts and Pertinent Records of Businessmen by Local Treasurer.* - The provincial, city, municipal or barangay treasurer may, by himself or through any of his deputies duly authorized in writing, examine the books, accounts, and other pertinent records of any person, partnership, corporation, or association subject to local taxes, fees and charges in order to ascertain. assess, and collect the correct amount of the tax, fee, or charge. ...

4 Republic Act No. 7160.

5 Exhibit "1." RTC Record, p. 680.

6 Exhibit "4." RTC Record, p. 683.

7 Exhibit "4-A." RTC Record, p. 684.

8 Exhibit "4-B." RTC Record, p. 685.

9 Second sentence, paragraph 1, under the heading "The Tax & Data Assessment Form (as of June 4, 2019) is not the Official and Formal Notice of Assessment which may be Subject of Protest)," respondent's Memorandum. Docket (CTA AC No. 303), p. 109.

10 *Supra* note 8.

11 *Supra* note 5.

12 *Supra* note 8.

Second. Assuming *arguendo* that Cometo was named in CT Bombita's LOA, Cometo went far beyond the bounds thereof by examining petitioner for deficiency local taxes for years 2008, 2009, 2010, and 2011. To stress, CT Bombita's LOA is only for the periods 2012 to 2017.

All said, the examination performed by Cometo on petitioner is illicit. Being so, Cometo's findings of deficiency local taxes, embodied in respondent's local tax assessment for 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017 issued against petitioner is, as well, null.

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice