REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CITY OF MAKATI AND NELIA A. BARLIS, IN HER CAPACITY AS THE MAKATI CITY TREASURER, *Petitioners,*	**CTA AC No. 208** Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.*
CASOP ATLAS CORPORATION, *Respondent.*	Promulgated: JAN 09 2020 . 9:00 am

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DECISION

MANAHAN, *J.:*

This involves a Petition for Review filed by the City of Makati and the Makati City Treasurer, against Casop Atlas Corporation (Casop), praying for the reversal and setting aside of the Decision and Order of the Regional Trial Court-Branch 132, Makati City (RTC Makati-Branch 132) in Civil Case No. 13-1108, entitled Casop Atlas Corporation v. City of Makati and Nelia A. Barlis, in her capacity as the Makati City Treasurer. It is also prayed that the notice of assessment be declared conclusive and unappealable; and, that Casop be made liable to pay the deficiency local business tax for taxable years 2011 and 2012 in the aggregate amount of Php6,597,600.25.

FACTS

Petitioner City of Makati is a local government unit created by law.[1] Petitioner Nelia A. Barlis is the duly appointed City Treasurer of Makati, empowered to perform the duties of said office.[2] Petitioners are charged with the implementation of Makati City Ordinance No. 2004-A-025 dated October 27, 2005, otherwise known as the Revised Makati Revenue Code (RMRC),

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[1] RTC Docket, Vol. 2, Joint Stipulation of Facts, p. 420, par. 2.
[2] *Id.*

as well as the collection and assessment of local business taxes in the City of Makati.[3]

Respondent is a corporation duly organized and existing under the laws of the Republic of the Philippines.[4] Its primary purpose as stated in its Amended Articles of Incorporation is:

Primary Purpose

The primary purpose for which such Corporation is formed is:

To invest in, purchase, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of real and personal property of every kind and description, including but not limited to shares of stock, bonds, debentures, notes, evidences of indebtedness, and other securities or obligations of any corporation or association engaged in trade or business or organized for any lawful purpose in or outside of the Philippines; to pay for such in money or by exchanging therefor stocks, bonds, securities, contracts, obligations, or other evidences of indebtedness, of this or any other corporation; to receive, collect and dispose of the interest, dividends, and income arising from such property, and to possess and exercise in respect thereof all the rights, powers and privileges of ownerships, including all the voting powers of any stock so owned.

Pursuant to Letter of Authority LA-2013 Nos. 0191 conducted pursuant to Section 171 of the Local Government Code of 1991 (LGC), City of Makati's Revenue Officer Ms. Maureen Macadaeg examined Casop's books of accounts and other accounting records for taxable years 2011 to 2012.[5]

Casop received a copy of the Notice of Assessment dated April 24, 2013 (assessment) demanding payment of Php6,597,600.25, representing deficiency local business tax (LBT), fees, and charges for taxable period 2011 to 2012, inclusive of interest and penalties.[6] The table attached to the assessment reveals that the City of Makati derived the "Gross Sales" figure of Php2,101,274,606.00 from Casop's Audited

[3] RTC Docket, Vol. 2, Joint Stipulation of Facts (JSFI), p. 420, par. 2.
[4] *Id.*, par. 1.
[5] *Id.*, par. 3.
[6] *Id.*, p. 421, par. 4.

Financial Statements for the year ended December 31, 2011, specifically as contained in the Statements of Comprehensive Income attached thereon, which had been submitted by Casop to the City of Makati.[7]

On June 28, 2013, Casop filed with the City of Makati, in accordance with Section 195 of the LGC, a written protest contesting the assessment and requesting its cancellation.[8] Casop argued that it is not a holding company as defined in the RMRC. It also argues that the LGC prohibits local governments from imposing income tax except when imposed on banks and other financial institutions. In this case, Casop argues that it is not a bank nor a financial institution.

On September 20, 2013, Casop filed with the Regional Trial Court of Makati, its Petition dated September 13, 2013 in which it sought the cancellation of the assessment for deficiency LBT for taxable period 2011 to 2012 in the total amount of Php6,597,600.25.[9]

On February 26, 2014, Casop received a copy of City of Makati's Answer dated February 21, 2014, which stated that the City Treasurer of Makati had issued and served on Casop a letter on July 11, 2013 denying Casop's written protest, and that Casop had allegedly failed to appeal the same within thirty (30) days from its receipt of the denial of the protest.[10]

The denial of the protest issued by the City of Makati on July 11, 2013 was delivered on July 14, 2013 to the Salvador & Associates law offices at U-815-816 Tower One & Exchange Plaza, Ayala Ave., BAV, City of Makati and received by a certain "Cora Calumba", a legal secretary for the law office of Salvador & Associates.[11]

After trial, RTC Makati-Branch 132 rendered a Decision dated March 2, 2018, ruling as follows:

> The Court will go [to] the first issue, whether or not CAC may be classified as [a] holding company. The answer is in the affirmative. Atty. Gerardo V. Francisco,

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[7] Docket, CTA AC No. 208, RTC Decision dated March 2, 2018, p. 21.
[8] RTC Docket, Vol. 2, JSFI, p. 421, par. 5.
[9] *Id.*, par. 6.
[10] *Id.*, par. 7.
[11] *Id.*, par. 8.

Director, Treasurer and Corporate Secretary of CAC admitted that CAC is a holding company.

However, petitioner [Casop] averred that CAC is not a holding company under the provisions of the Revised Makati Revenue Code. The Revised Makati Revenue Code, particularly Section 3A.01 (dd), provides that a company, to be considered as a holding company, must satisfy the following two (2) conditions before it may be considered as a holding company for local business tax purposes in the City of Makati: (a) it is a controlling company that has one or more subsidiaries; and (b) its activities are confined primarily to the management of its subsidiaries. Accordingly, CAC does not fall within the category of a holding company. The argument is tenable.

Section 3A.01(dd) of the Revised Makati Revenue Code, provides that *"Holding Company – a controlling company that has one or more subsidiaries and confines its activities primarily to their management."*

The *Notice of Assessment* dated 24 April 2013 shows that CAC deficiency Taxes, Fees and Charges P6,597,600.25 (Covering Taxable Period: 2011-2012). On the other hand, CAC's *General Information Sheet* for the year 2011 shows that CAC has no subsidiary/affiliate. Furthermore, the *General Information Sheet* of CCC for the year 2011 filed with SEC shows that the number of shares of stock of CAC with CCC was only 7.73%. Thus, CAC was merely a minority shareholder of, and did not control and manage CCC.

In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, the Supreme Court held that:

> *In construing this provision, we should be guided by the principle that tax statutes are strictly construed against the taxing authority. This is because taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Hence, tax laws may not be extended by implication beyond a clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.*

> With this, the Court will no longer resolve the other issues.
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> **WHEREFORE**, premises considered, judgment is hereby rendered **GRANTING** the present *Petition*, and **ANNULLING** the assessment for local business tax made by the City of Makati through its City Treasurer Nelia A. Barlis as contained in the *Notice of Assessment* dated 24 April 2013.
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> **SO ORDERED**.[12]

The Motion for Reconsideration filed by the City of Makati was likewise denied, as follows:

> **WHEREFORE**, premises considered, the *Motion for Reconsideration* filed by respondents City of Makati and Nelia A. Barlis, in her capacity as the Makati City Treasurer on 13 March 2018 is hereby ordered **DENIED** for lack of merit.
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> **SO ORDERED**.[13]

On July 24, 2018, the instant *Petition for Review (of the Decision dated 09 July 2019)*[14] was filed by the petitioners City of Makati and Nelia A. Barlis, in her capacity as the Makati City Treasurer. Petitioners argue that Casop is a holding company as it declared in its application for business permits and licenses in Makati City. It is also stated that Casop was properly taxed under Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC. Finally, it is argued that Casop failed to comply with the period required to file a judicial action questioning the assessment.

On August 23, 2018, respondent Casop filed its *Comment (Re: Petition for Review dated August 8, 2018)*.[15]

On September 3, 2018, the parties were given thirty (30) days within which to submit their respective memoranda.[16]

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[12] Docket, RTC Decision dated March 2, 2018, p. 26.
[13] Docket, RTC Order dated July 9, 2018, p. 35.
[14] Docket, pp. 7-18.
[15] Docket, pp. 46-67.
[16] Docket, Resolution dated September 3, 2018, p. 69.

Petitioners submitted their *Memorandum*[17] on October 3, 2018, while respondent filed its *Memorandum*[18] on October 10, 2018.

The record of the case was transmitted by the RTC Makati-Branch 132 on January 1, 2019.[19] Thus, on January 22, 2019 the case was deemed submitted for decision.[20]

ISSUE

The following issues are submitted:

1. Whether or not respondent is a holding company;

2. Whether or not as a holding company, respondent being taxed under Section 3A.02(p) of the Revised Makati Revenue Code has legal basis; and

3. Whether or not the instant petition was filed beyond the reglementary period.

RULING OF THE COURT

At the outset, it must be stated that petitioners' Verification and Certification of Non-Forum Shopping, attached to the instant petition, failed to comply with the rules.

Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides:

Rule 6
PLEADINGS FILED WITH THE COURT

SEC. 2. *Petition for review; contents.* – The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. <u>The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court</u>. A

[17] Docket, pp. 74-81.
[18] Docket, pp. 82-103.
[19] Docket, pp. 110-119.
[20] Docket, Resolution dated January 22, 2019, p. 121.

clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition.

Section 3, Rule 46 of the Rules of Court, states:

Rule 46
ORIGINAL CASES

SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

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The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

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The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

The Supreme Court summarized the rules for verification and certification of non-forum shopping, as follows:

As to the verification and certification of non-forum shopping, the Court in *Altres, et al. v. Empleo, et al.*, laid down the following guidelines:

For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed *substantially complied* with when one has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) **As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**

5) The certification against forum shopping must be signed by <u>all</u> the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) **Finally, the certification against forum shopping must be executed by the party-**

> **pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.**

Section 5, Rule 7 of the Rules of Court provides that the certification against forum shopping must be executed by the plaintiff or principal party. The reason for this is that the plaintiff or the principal knows better than anyone, whether a petition has previously been filed involving the same case or substantially the same issues. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized.

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It was held that when an SPA was constituted precisely to authorize the agent to file and prosecute suits on behalf of the principal, then it is such agent who has actual and personal knowledge whether he or she has initiated similar actions or proceedings before various courts on the same issue on the principal's behalf, thus, satisfying the requirements for a valid certification against forum shopping. The rationale behind the rule that it must be the "petitioner or principal party himself" who should sign such certification does not apply. Thus, the rule on the certification against forum shopping has been properly complied with when it is the agent or attorney-in-fact who initiated the action on the principal's behalf and who signed the certification against forum shopping.

However, there was no duly executed SPA appended to the complaint to prove Cañiza's supposed authority to file and prosecute suits on behalf of Gabriel. xxx There was also no evidence of substantial compliance with the rules or even an attempt to submit an SPA after filing of the complaint.

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The Court expounded that the complaint filed for and in behalf of the plaintiff by one who is unauthorized to do so is not deemed filed. An unauthorized complaint does not produce any legal effect. Hence, the court should dismiss the complaint on the ground that is has no jurisdiction over the complaint and the plaintiff.[21] (*Underscoring and emphasis in the original*)

In the instant case, the Verification and Certification of Non-Forum Shopping was signed by Jesusa E. Cuneta, as the alleged authorized representative of the petitioners. However, no proof of Ms. Cuneta's alleged authority was submitted to the Court. Thus, the Court cannot determine if Ms. Cuneta is authorized to cause the preparation and filing of the instant case.

It should also be noted that the Certification of Non-Forum Shopping attached to the instant Petition, states as follows:

> 4. I have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeal[s], or different division thereof, or in any other tribunal or agency;
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> 5. If I hereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeal[s], or different division thereof, or in any other tribunal or agency, I undertake to promptly inform this Honorable Commission of the fact within five (5) days therefrom.[22]

Ms. Cuneta certifies that she has not commenced any other action or proceeding involving the same issues in other courts or tribunals. However, Ms. Cuneta is not one of the petitioners in the instant case and she has not certified whether the petitioners City of Makati and Ms. Nelia Barlis, in her capacity as City Treasurer have commenced any similar action to this case. Neither has she shown her authority to sign such certification against forum shopping.

Thus, the instant petition should be dismissed for a defective Certificate of Non-Forum Shopping.

WHEREFORE, the instant Petition for Review is **DISMISSED**. The Decision dated March 2, 2018 and Order

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[21] *Heirs of Josefina Gabriel v. Secundina Cebrero, et al.*, G.R. No. 222737, November 12, 2018.
[22] Docket, p. 17.

dated July 9, 2018 issued by RTC Makati-Branch 132 in Civil Case No. 13-1108 are **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice