Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

CHINA BANKING CORPORATION,
Petitioner,

-versus-

THE CITY TREASURER OF MANILA,
Respondent.

CTA EB CASE NO. 1144
(Civil Case No. 07-116920)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:

NOV 05 2015
3:01 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves respondent's "Motion for Reconsideration" of the Decision dated September 4, 2015 of this Court en banc, the dispositive portion of which states:

> "**WHEREFORE**, this petition is hereby **GRANTED**. The decision dated August 14, 2007 and Order dated March 8, 2010 of the Regional Trial Court, National Capital Region, Branch 45 of Manila docketed as Civil Case No. 07-116920 are hereby **REVERSED** and **SET ASIDE**. The Orders dated August 20, 2004 and November 11, 2004 of the Metropolitan Trial Court of Manila Branch 19 are likewise **REVERSED** and **SET ASIDE**. The instant case is hereby **REINSTATED**, and respondent City Treasurer of Manila is **REQUIRED** within the period available pursuant to Section 4 of Rule 16, 1997 Revised Rules of Civil Procedure **TO FILE** its answer before the Metropolitan Trial Court of Manila Branch 4. The Metropolitan Trial Court is ordered to proceed with dispatch to the trial on the merits.
>
> **SO ORDERED.**"

In assailing this Court's Decision, respondent reasserts its arguments previously raised in the Comment and Memorandum filed before this Court. Respondent seeks reconsideration on the following ground:

a. Lack of cause of action and prematurity;
b. Non-exhaustion of administrative remedies; and
c. Lack of authority to sue.

On October 27, 2015, petitioner filed a "Comment/Opposition to Motion for Reconsideration". Petitioner avers that petitioner's complaint for refund was filed within the period prescribed by law and that the authority of Shirley T. Tan to sign the Verification and Certification of Non-Forum Shopping in petitioner's complaint has been rightly recognized by the Courts.

We resolve to deny the motion.

After a careful examination of respondent's "Motion for Reconsideration", the Court finds that the issues and arguments raised in said motion had already been sufficiently passed upon and fully discussed by the Court's Decision dated September 4, 2015. To reiterate, We find no merit on respondent's arguments of lack of cause of action, prematurity, non-exhaustion of administrative remedies and lack of authority to sue, to wit:

> "In the recovery of any tax, fee, or charge erroneously or illegally collected, a written claim for refund or credit filed with the local treasurer is necessary within two (2) years from the date of the payment.[1] Section 196 of R.A. 7160 otherwise known as "Local Government Code of 1991" provides as follows:

[1] METRO MANILA SHOPPING MECCA CORP., SHOEMART, INC., SM PRIME HOLDINGS, INC., STAR APPLIANCES CENTER, SUPER VALUE, INC., ACE HARDWARE PHILIPPINES, INC., HEALTH AND BEAUTY, INC., JOLLIMART PHILS. CORP., and SURPLUS MARKETING CORPORATION vs.MS. LIBERTY M. TOLEDO, in her official capacity as the City Treasurer of Manila, and THE CITY OF MANILA, G.R. No. 190818, June 5, 2013.

> 'No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.'

Claiming for refund under Section 196 of R.A. 7160, is a remedy different from protest under Section 195[2] of RA 7160. In this case, petitioner was able to file its claim for refund within the two year period. The business tax appears to have been paid on January 2005 while the claim for refund was filed on February 2006, well within the year period.[3] Evidently, respondent's arguments for lack of cause of action, prematurity and non-exhaustion of administrative remedies pursuant to Section 195 of RA 7160 must fail. Furthermore, we find no merit on respondent's argument that the Shirley T. Tan as Assistant Vice President has no authority to sign the Verification and Certification against Forum Shopping of the Complaint before the Municipal Trial Court considering that Shirley T. Tan as Manager was the one authorized based on the Secretary's Certificate[4]. Thus, we find that the Regional Trial Court was correct when it ruled as follows:

> "It is to be noted that the present case is one for refund of sum of money and payment under protest is not necessary, nevertheless, the claim for refund must categorically demand for the reimbursement of the overpaid amount. xxx. This the plaintiff has accomplished in its letter dated February 24, 2006.

[2] SEC. 195. Protest of Assessment. - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling 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.

[3] Municipal Trial Court Docket. pp. 11-23.

[4] Ibid. pp. 9-10.

xxx xxx xxx.

Furthermore, the Secretary's Certificate dated May 14, 2003 shows that Shirley T. Tan is one of the authorized officers who can singly sign complaints and other documents as stated therein for and in behalf of the Bank. As there is no identity of causes of actions among the twenty (20) other cases filed by plaintiff against the defendant, the plaintiff is, therefore, not guilty of forum shopping."

While the Regional Trial Court was correct in applying Section 196 of R.A. 7160 and sustaining the authority of the signatory in the verification and certification, it erred when it ruled that there was double taxation. At the outset, Tax Ordinance No. 7988, otherwise known as Revised Revenue Code of the City of Manila repealing Tax Ordinance No. 7794 entitled, Revenue Code of the City of Manila was already declared void by the Supreme Court in the case of Coca Cola Bottler's Philippines, Inc. vs. City of Manila, GR No. 156252, June 27, 2006. Thus, the controversy of whether there is double taxation is rendered moot when tax ordinance was declared void and of no legal effect. xxx.

Clearly, Tax Ordinances No. 7988 and No. 8011 is null and for the following reasons:

(1) Tax Ordinance No. 7988 was enacted in contravention of the provisions of the Local Government Code (LGC) of 1991 and its implementing rules and regulations; and

(2) Tax Ordinance No. 8011 could not cure the defects of Tax Ordinance No. 7988, which did not legally exist.

In addition, in another case involving of Coca Cola[5] *and Tax Ordinance No. 7988, the Supreme Court finds that there is indeed double taxation if a taxpayer is subjected to both the taxes under Sections 14 and 21 of Tax Ordinance No. 7988.xxx."*

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[5] THE CITY OF MANILA,LIBERTY M. TOLEDO, in her capacity as THE TREASURER OF MANILA and JOSEPHSANTIAGO, in his capacity as the CHIEF OF THE LICENSE DIVISION OF CITY OFMANILA vs. COCA-COLA BOTTLERS PHILIPPINES, INC., G. R. NO. 181845, AUGUST 4, 2009.

Furthermore, respondent has yet to file an answer before the Metropolitan Trial Court of Manila Branch 4. Thus, We rule:

> *"Records disclosed that the issues were not yet joined and that the parties have yet to present their respective evidence. Thus, we hold that the instant case should proceed to trial for the parties to adduce their respective evidence to support their positions in the defense of their asserted rights."*

In sum, We find no cogent reason to reverse or modify our Decision. No substantial argument has been adduced to warrant the reconsideration sought.

WHEREFORE, premises considered, respondent's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(I maintain my Concurring & Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen S L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice