Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MUNICIPALITY OF CAINTA, RIZAL AND THE HON. EDGAR T. VILLANUEVA IN HIS CAPACITY AS THE MUNICIPAL TREASURER OF CAINTA, RIZAL, Petitioner,	**CTA AC NO. 88**
	Members: **CASTAÑEDA, JR.,** Chairperson **CASANOVA,** and **MINDARO-GRULLA, JJ.**
-versus-	
BRILLIANTE REALTY CORPORATION, Respondent.	**Promulgated:** JAN 02 2013 4:30 p.m.

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DECISION

MINDARO-GRULLA, J.:

The instant Petition for Review was filed by petitioners Municipality of Cainta Rizal and Hon. Edgar T. Villanueva in his capacity as then Municipal Treasurer of Cainta, Rizal, pursuant to Section 7(a)(3) of Republic Act (RA) No. 1125, as amended by Section 7 of RA No. 9282, and Sections 3 and 4 of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA).

The instant Petition for Review is an appeal from the Decision[1] dated July 22, 2011 and Order[2] dated January 6, 2012 rendered by the Regional Trial Court, Branch 146, Makati City (RTC of Makati) in Civil Case No. 06-253 entitled "Brillante Realty Corporation vs. The

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[1] RTC Records, pp. 440 to 447.
[2] RTC Records, pp. 477 to 478.

Municipality of Cainta, Rizal and the Hon. Edgar T. Villanueva in his capacity as Municipal Treasurer".

In the assailed Decision, the RTC of Makati cancelled, for lack of basis, the local business tax assessment issued by petitioners against respondent Brillante Realty Corporation, representing additional local business tax, inclusive of surcharges and penalties for the years 1997 to 2005, in the total amount of ₱17,229,423.75. In the assailed Order, the RTC of Makati denied petitioners' Motion for Reconsideration of said assailed Decision for lack of merit.

Petitioner Municipality of Cainta, Rizal is a local government unit created pursuant to law, with its address at the Municipal Hall Building, A. Bonifacio Ave., Brgy. Sto. Domingo, Cainta Rizal.[3]

Petitioner Hon. Edgar T. Villanueva is the then appointed Municipal Treasurer of Cainta, Rizal, with office address at the Treasurer's Office, Municipality of Cainta, Rizal.[4]

Respondent Brillante Realty Corporation is a domestic corporation and primarily engaged in the business of leasing out its properties to its clients.[5] It is registered with the Bureau of Internal Revenue (BIR) as a real estate dealer, with head office located at Y-L

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[3] Par. 2.1, II, The Parties, Petition for Review, Docket, p. 000006.
[4] Par. 2.2, *Id.*
[5] Respondent's Certificate of Filing of Amended Articles of Incorporation with attached Amended Articles of Incorporation, Annex "A", Complaint, RTC Records, pp. 14 to 25.

Finance Building, 115 Herrera Street, Legaspi Village, Makati City.[6] Later on, respondent transferred to its new address located at U-2A, Le Parc Apartment, Makati Avenue, San Lorenzo Village, Makati City.[7] To date, respondent's principal office is located at 15/F, Burgundy Corporate Tower, 252 Sen. Gil Puyat Avenue, Makati City.[8]

On December 23, 1998, respondent, as lessor, entered into a Contract of Lease with Mitsubishi Motors Philippines Corporation (MMPC), as lessee, covering parcels of land located at Ortigas Avenue Extension, Cainta, Rizal.[9]

On October 25, 2005, petitioners issued a local business tax assessment against respondent, representing additional local business tax, inclusive of surcharges and penalties for the years 1997 to 2005, in the total amount of Php17,229,423.75, broken down as follows:[10]

Particulars	Actual Sales	Declared Sales	Year	Tax Due	Tax Paid	Difference	Surcharge	Interest	Total
Based on PLI	88,350,000.00		1997	1,766,550.00		1,766.550.00	441,637.50	1,589,895.00	3,798,082.50
"	96,033,000.00		1998	1,920,210.00		1,920,210.00	480,052.50	1,728,189.00	4,128,451.50
"	104,384,000.00		1999	2,087,230.00		2,087,230.00	521,807.50	1,878,507.00	4,487,544.50

[6] Respondent's BIR Certificate of Registration, Annex "B", Complaint, RTC Records, p. 26.
[7] Respondent's Exhibit "FF", RTC Records, p. 221.
[8] Par. 2.3, II, The Parties, Petition for Review, Docket, p. 000006.
[9] Contract of Lease, Annex "K", Complaint, pp. 43 to 47; Petitioners' Exhibit "1", RTC Records, pp. 330 to 334.
[10] Pars. 3.6 and 3.7 III, Allegations Common to All Causes of Action, Complaint, RTC Records, pp. 4 to 5; Petitioner's Exhibit "4", RTC Records, p. 350; Petitioner's Exhibit "4-B", RTC Records, p. 352.

"	113,460,000.00		2000	454,390.00		454,390.00	113,597.50	408,951.00	976,938.50
Based on Income Statements from SEC	123, 660,000.00		2001	495,190.00		495,190.00	123,797.50	445,671.00	1,064,658.50
"	133,860,000.00		2002	535,990.00		535,990.00	133,997.50	415,392.25	1,085,379.75
"	133,860,000.00		2003	535,990.00		535,990.00	113,997.50	254,595.25	924,582.75
"	133,861,000.00		2004	535,990.00		535,990.00	133,997.50	93,798.25	763,785.75
	TOTALS			8,331,540.00	NIL	8,331,540.00	2,082,885.00	6,814,998.75	17,229,423.75

On December 23, 2005, respondent filed a letter of protest[11] against said local business tax assessment with the office of petitioner Municipal Treasurer.

On February 22, 2006, respondent received a letter[12] dated February 22, 2006 from petitioner Municipal Treasurer denying respondent's protest against the deficiency local business tax assessment.

In view of the denial of its protest, respondent filed a Complaint[13] with the RTC of Makati, which was docketed as Civil Case No. 06-253, wherein respondent prayed for the cancellation and withdrawal of the additional local business tax assessment, inclusive of surcharges and penalties, in the total amount of ₱17,229,423.75, covering the years 1997 to 2005 issued by petitioner Municipal Treasurer.

[11] Respondent's Protest Letter, Annex "L", Complaint, RTC Records, pp. 48 to 55.
[12] Petitioner Municipal Treasurer's Letter dated February 22, 2006, Annex "N", Complaint, RTC Records, pp. 62 to 63; Petitioners' Exhibit "5-a", RTC Records, pp. 353 to 354; Par. 3.9, III, Allegations Common to All Causes of Action, Complaint, RTC Records, p. 5.
[13] RTC Records, pp. 1 to 9.

In their Answer[14] filed on June 26, 2006, petitioners raised the following Special and Affirmative Defenses:

> "Defendants incorporate by way of reference all the foregoing averments and by way of special and affirmative defenses further alleges:
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> Plaintiff has no cause of action against the defendants and in support thereof, the following may be noted:
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> 7. <u>The allegation that the plaintiff corporation is not liable to pay business taxes to defendants since its tax situs is not located in Cainta, Rizal is quite misplaced, if not entirely bereft of any merit</u>;
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> 7.1. It will be recalled that in the Protest Letter dated 23 December 2005, plaintiff alleged *inter alia* that it is not liable for the payment of business taxes to the Municipality of Cainta; that the tax situs of plaintiff's business does not fall within the territory of the municipality of Cainta; that plaintiff has no other link to the municipality other than the real property leased out to Mitsubishi; and that rental payments are accepted and official receipts were issued by the Head Office in Makati; and that it cannot be said that plaintiff established an extension of its Head Office in Cainta;
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> 7.2. Unquestionably, the real property leased-out to the plaintiff is located in the Municipality of Cainta. Thus, for the purpose of collecting taxes under Sec. 143 of the Local Tax Code, the said municipality has the full authority to impose

[14] RTC Records, pp. 70 to 76.

business tax for any sales or transactions consummated involving the lease of the same property.

7.3 In a number of opinions rendered by the Bureau of Local Government Finance, Department of Finance, regarding a query on the situs of taxation, the said agency has been consistent in maintaining the ruling that in cases where the taxpayer is maintaining a principal office in a city but undertaking or consummating sales or transactions located in other cities or municipalities, such as leasing-out real property, maintaining a sales office, project, factory, stock, manufacturing facilities etc., the consistent holding is that the rule on allocation of tax collection for the purpose of determining the venue or place of payment of local business tax should be applied.

7.4. Thus, in DOF-BLGF ltr. Dtd. 5/6/93 to E.V.S. Kenram, Phil., Pasig M. M., the said agency ruled that 'Pursuant to Sec. 150 of the Code, 70% of KPI sales recorded in its principal office in Pasig, MM shall be taxable by Isulan, Sultan Kudarat where its plantation is located, while the remaining 30% is taxable by Pasig, MM where its principal office is located.

7.5. In another opinion, BLGF, 1st ltr. Dtd. 10-24-95 to the Mun. Treas. Of [sic] Plaridel, Bulacan, the agency ruled that 'Pursuant to Sec. 150 of the LGC, the Municipality of Plaridel where ERICSSON is maintaining its project office, has the authority to impose a tax of 70% of its gross receipts recorded in its principal office in Makati City, which in turn has the power to tax the remaining 30% of said gross receipts. Additionally, the same contractor is liable to the payment of mayor's Permit and other regulatory fees which may be imposed by ordinance by the said municipality.

7.6. More so, while it is true that under Section 150 of the Local Government Code of 1991, business taxes shall accrue solely to the local government unit (LGU) where the principal office is located, in the absence of any branch or sales office in another local government unit, yet the Bureau of Local Finance, in its 3rd Indorsement dated December 23, 1994, copy hereto attached, ruled that 30% of all transactions recorded in the principal office shall be taxable by the local government unit where the principal office is located; and that 70% of all transactions recorded in the principal [office] shall be taxable by the LGU where the condominium project is located; and that both LGUs may collect Mayor's Permit and other regulatory fees.

7.7. It will be noted that in the foregoing case, the Oranbo Realty Corporation is likewise engaged in leasing-out real properties. It has a building located in Oranbo [sic] Oranbo Drive, Pasig which it leases out to Aries Corporation for a fee and that its principal office is located in Makati where ORC paid its business taxes from 1988 to 1992 as a real estate dealer.

7.8. Considering the foregoing ruling of the BLGF, and that the facts and issues in this case are indeed identical to the aforecited case of Oranbo Realty Corporation, it is therefore clear that although the principal office of the plaintiff corporation is located in Makati, Cainta is well within its authority to impose business taxes therein since the subject real property leased out to Mitsubishi is located in Cainta. This is in conformity with the tax allocation scheme set forth under Section 150(b) of the Local Tax Code.

8. Likewise devoid of merit is the plaintiff's contention that defendant's right to levy business taxes upon plaintiff for the years 1997 to 2000, if any, has already prescribed.

> 8.1. As regards this issue, defendants herein maintain the position that such authority to assess and collect taxes for the period as stated has not prescribed. Pursuant to Section 194(a) of the LGC and we quote: 'xxx 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 xxx.'
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> 8.2. While it is true that the right to collect taxes terminates after five years from the date they became due, the law, however, further provides that '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 fraud or intent to evade payment.' In the light of such provision, this Office strongly submits that under the attendant circumstances, there exists an apparent intention on the part of the plaintiff corporation to evade the payment of business taxes to the Municipality of Cainta."

On October 19, 2006, the RTC of Makati issued an Order[15] setting the case for pre-trial conference on November 22, 2006 and ordering the parties and their respective counsels to personally appear on said date and submit their respective pre-trial briefs at least three (3) days before said date. During the pre-trial conference on November 22, 2006, the RTC of Makati referred the case to the Philippine Mediation Center for mediation and ordered that if no settlement is reached during the mediation proceedings to be held on December 15, 2006, the pre-trial shall be continued on February 7, 2007.[16] *L*

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[15] RTC, Records, p. 81.
[16] Minutes of the November 22, 2006 Pre-Trial Conference, RTC Records, p. 90; Order dated November 22, 2006, RTC Records, p. 91.

Since no settlement was reached between the parties, the pre-trial conference was held on March 12, 2007.[17] The marking of evidence for both parties was set on April 16, 2007 and the initial trial was set on May 16, 2007. On May 7, 2007, the RTC of Makati issued a Pre-Trial Order stating the facts and issues stipulated by the parties and the documentary evidence that were pre-marked for respondent.[18]

During trial, the parties presented and formally offered their respective witnesses and documentary evidence. In an Order[19] dated April 14, 2008, the RTC of Makati admitted Exhibits "I", "J", "K", "L", "M", "N", "O", "P", "DD", "EE", and "FF" as evidence of respondent. On the other hand, in an Order[20] dated November 30, 2010, Exhibits "1" to "6" and their sub-markings were admitted as evidence for petitioners. The RTC of Makati also directed the parties to submit their Memoranda within thirty (30) days from notice.[21]

On February 23, 2011, petitioners filed their Memorandum,[22] while respondent filed a Manifestation (with Motion for Leave to File Reply to Defendants' Memorandum) on February 14, 2011.[23] Respondent manifested that in view of the RTC of Makati's Order[24]

[17] Order dated March 12, 2007, RTC Records, pp. 140 to 141.
[18] RTC Records, pp. 147 to 149
[19] RTC Records, pp. 147 to 149.
[20] RTC Records, p. 377.
[21] *Id.*
[22] RTC Records, pp. 397 to 403.
[23] RTC Records, pp. 391 to 396.
[24] RTC Records, p. 235.

dated August 6, 2008, which held that petitioners have waived their right to present their evidence and which ordered respondent to file its Memorandum. Respondent filed its Memorandum[25] on September 30, 2008. Thus, respondent prayed, among others, for the RTC of Makati to consider the Memorandum filed on September 30, 2008 in the adjudication of the case and to allow respondent to file a Reply to Defendants' Memorandum.

In an Order[26] dated April 25, 2011, the RTC of Makati submitted Civil Case No. 06-253 for decision after the filing of respondent's Reply to Defendant's Memorandum[27] on April 19, 2011.

On July 22, 2011, the RTC of Makati issued the assailed Decision[28] cancelling the local business tax assessment issued by petitioners against respondent. The dispositive portion of the assailed Decision reads:

> "WHEREFORE, in view of the foregoing, this Court finds that the assessment made by the local government of Cainta for additional local business tax has no basis. Thus, the said assessment of Seventeen Million Two Hundred Twenty Nine Thousand Four Hundred Twenty Three pesos [sic] and Seventy Five Centavos (Php 17,229,423.75) is hereby cancelled and annulled.
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> No pronouncement as to costs.

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[25] RTC Records, pp. 254 to 269.
[26] RTC Records, p. 439.
[27] RTC Records, pp. 424 to 437.
[28] RTC Records, pp. 440 to 447.

SO ORDERED."[29]

Petitioners received the assailed Decision on August 11, 2011.[30] Thus, on August 25, 2011, petitioners filed a Motion for Reconsideration (Re: Decision dated July 22, 2011)[31] with the RTC of Makati. On October 6, 2011, respondent filed its Comment (To Defendants' Motion for Reconsideration).[32] On January 6, 2012, the RTC of Makati issued the assailed Order,[33] denying petitioners' Motion for Reconsideration for lack of merit.

On March 9, 2012, petitioners filed the instant Petition for Review[34] praying to reverse and to set aside the assailed Decision and assailed Order; to dismiss the Complaint filed by respondent with the RTC of Makati for utter lack of merit; and for this Court to direct respondent to pay the local business tax assessed and imposed against it.[35]

Without necessarily giving due course to the Petition for Review, this Court issued an Order that respondent file its Comment, not a Motion to Dismiss, within ten (10) days from notice and that

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[29] *Id.*, p. 446.
[30] Return Card attached to the last page of the Assailed Decision (reverse portion), RTC Records, p. 447.
[31] RTC Records, pp. 448 to 455.
[32] RTC Records, pp. 463 to 474.
[33] RTC Records, pp. 477 to 478.
[34] Docket, pp. 000005 to 000021.
[35] Prayer, Petition for Review, Docket, p. 000018.

petitioners may file their Reply thereto, within five (5) days from receipt of respondent's Comment.[36]

On April 10, 2012, respondent filed its Comment (To the Petition for Review)[37] and prayed that the instant Petition for Review be denied for lack of merit.

In a Resolution[38] dated April 20, 2012, this Court issued an Order that the parties file their Memoranda within a period of thirty (30) days from notice; and also that the Branch Clerk of Court or the Officer-In-Charge of the RTC of Makati elevate to this Court the entire original records of Civil Case No. 06-253 within ten (10) days from notice.

In view of the filing of respondent's Manifestation[39] on May 28, 2012, stating that respondent is adopting its Comment to the Petition for Review dated April 10, 2012 as its Memorandum and considering further petitioners' Manifestation and/or Comment[40] that petitioners, among others, are adopting their Petition for Review dated March 5, 2012 as their Memorandum, this Court submitted the case for decision on August 16, 2012.[41]

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[36] Order dated March 15, 2012, Docket, p. 000032.
[37] Docket, pp. 000045 to 000073.
[38] Docket, p. 000081.
[39] Docket, p.p. 000089 to 000091.
[40] Docket, pp. 000101 to 000107.
[41] Resolution dated August 16, 2012, Docket, p. 000111.

In the instant Petition for Review, petitioners raise the following issues[42] for the Court's resolution:

1. Whether or not the RTC of Makati erred in its finding that the assessment made by petitioners against respondent for local business tax is without basis;

2. Whether or not the period to assess taxes against respondent for the years 1997 to 2005 had already prescribed;

3. Whether or not the assessment made against respondent became final and executory when it allegedly failed to exhaust the administrative remedies available to it that contravenes the rule or doctrine of primary jurisdiction.

At the outset, this Court finds it necessary and important to resolve the procedural issues raised by respondent in its Comment to the Petition for Review.

In respondent's Comment to the Petition for Review, respondent argues that the Petition for Review is plagued with procedural defects that warrant its immediate dismissal. Respondent claims, among others, that the Petition for Review was filed out of time. Paragraph 1.1 of the Petition for Review states that petitioners

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[42] Statement of Issues, Petition for Review, Docket, p. 000008.

received a copy of the assailed Order on January 27, 2012, denying their Motion for Reconsideration. Thus, according to respondent, petitioners had thirty days from January 27, 2012 or until February 26, 2012 within which to file their Petition for Review with this Court. Respondent points out that in paragraph 3.6 of the Petition for Review, petitioners claim that they filed a "Motion for Extension of Time to File Petition for Review" with this Court on February 24, 2012, wherein petitioners requested an extension of fifteen (15) days or until March 9, 2012 within which to file their Petition for Review. For respondent, the filing of the Motion for Extension of Time to File Petition for Review is futile. Respondent argues that the thirty-day period to file a Petition for Review with this Court is not extendible, citing Section 11 of RA No. 1125, as amended by RA No. 9282, Section 3(a) of Rule 8 of the RRCTA as well as a number of Supreme Court decisions.[43]

In their Manifestation and/or Comment, petitioners insist that there is no truth to the allegation of respondent that the Petition for Review was filed out of time. Petitioners posit that prior to the deadline for the filing of said pleading, petitioners filed a Motion for Extension of Time to File Petition for Review requesting an extension

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[43] Footnotes 4, 5 and 6 of respondent's Comment cited the cases of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, June 16, 2006 and the Resolution dated April 24, 2007; *Surigao Electric Co., Inc. vs. The Honorable Court of Tax Appeals, et. al.,* G.R. No. L-25289, June 28, 1974; *Filipinas Investment and Finance Corporation vs. Commissioner of Internal Revnue,* G.R. No. L-23501, May 16, 1967; *Commissioner of Internal Revenue vs. Western Pacific Corporation,* G.R. No. L-18804, May 27, 1965; *The Acting Commissioner of Internal Revenue vs. Lazarus Joseph, et. al.,* G.R. No. L-14034, August 30, 1962; *Ker and Company, Ltd. vs. The Court of Tax Appeals, et. al.* G.R. No. L-12396, January 31, 1962; *Allison J. Gibbs, et. al. vs. Collector of Internal Revenue, et. al.,* G.R. No. L-13453, February 29, 1960; *Johnston Lumber Co., Inc. vs. Court of Tax Appeals, et. al.*, G.R. No. L-9292, April 23, 1957; *Chan Kian vs. The Court of Tax Appeals, et. al.,* G.R. No. L-12184, May 29, 1959; *Bello, et. al. vs. Fernando,* G.R. No. L-16970, January 30, 1962.

of fifteen (15) days or until March 9, 2012 within which to file their Petition for Review. Petitioners further argue that the timeliness of the filing of their Petition for Review was laid to rest when this Court gave due course to said Petition for Review.

Contrary to petitioners' allegation that the issue on the timeliness of the filing of the Petition for Review was already laid to rest when this Court gave due course to the Petition for Review, this Court categorically stated in its Resolution[44] dated March 15, 2012 that it is not necessarily giving due course to the Petition for Review when it ordered respondent to file its Comment to the Petition for Review and petitioners to file their corresponding Reply. Hence, the issue pertaining to the timeliness of the filing of the Petition for Review is not yet settled.

In any event, this Court has to determine the timeliness of the filing of the Petition for Review as it affects the very jurisdiction of this Court to entertain the same and eventually, to decide on the issues raised by petitioners in their Petition for Review.

Section 11 of RA No. 1125, as amended by RA No. 9282 states the rules in appealing a decision of the RTC to this Court, to wit:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the

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[44] Docket, p. 000032.

Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the **Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Sec. 7(a)(2) herein.

Appeal shall be made by filing a **petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon** x x x." *(Emphasis supplied)*

Furthermore, Section 3(a), Rule 8 of the RRCTA provides:

"SEC. 3. *Who may appeal; period to file petition.* – (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. x x x." *(Emphasis supplied)*

Based on the foregoing, it is clear that a taxpayer has a period of thirty (30) days from receipt of the decision or ruling of the RTC within which to appeal the same with this Court.

Respondent insists that this thirty-day period to appeal the decision of the RTC with this Court cannot be extended. This Court does not agree.

Under Section 4 of Rule 8 of the RRCTA, an appeal from a decision of the RTC in the exercise of its original jurisdiction shall be taken to this Court by filing before it a Petition for Review as provided in Rule 42 of the Rules of Court. Evidently, the procedure in this Court, in so far as it pertains to the appeal of a decision of the RTC in the exercise of its original jurisdiction, shall be supplemented by Rule 42 of the Revised Rules of Court.

Section 1 of Rule 42 of the Revised Rules of Court provides:

> "SECTION 1. *How appeal taken; time for filing.* – A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. **Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period**, the Court of Appeals may **grant an additional period of fifteen (15) days only within which to file the petition for review**. No further extension shall be granted except for the most

compelling reason and in no case to exceed fifteen (15) days." *(Emphasis supplied)*

In the case of **The City of Manila, *et al.* vs. Coca-Cola Bottlers Philippines, Inc.**[45], the Supreme Court confirmed that the thirty-day original period for filing a Petition for Review with this Court under Section 11 of RA No. 1125, as amended by RA No. 9282 and implemented by Section 3(a) of Rule 8 of the RRCTA, may be extended for a period of fifteen (15) days and no further extension shall be allowed thereafter except for the most compelling reasons and the additional extension, if any will be given, shall not exceed 15 days. The pertinent portions of said Supreme Court Decision are quoted hereunder:

> "It is crystal clear from the afore-quoted provisions that to appeal an adverse decision or ruling of the RTC to the CTA, the taxpayer must file a Petition for Review with the CTA within 30 days from receipt of said adverse decision or ruling of the RTC.
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> It is also true that the same provisions are silent as to whether such 30-day period can be extended or not. However, Section 11 of Republic Act No. 9282 does state that the Petition for Review shall be filed with the CTA following the procedure analogous to Rule 42 of the Revised Rules of Civil Procedure. Section 1, Rule 42 of the Revised Rules of Civil Procedure provides that the Petition for Review of an adverse judgment or final order of the RTC must be filed with the Court of Appeals within: (1) the original 15-day period from receipt of the judgment or final order to be appealed; (2) an extended period of 15 days from the lapse of the original period; and (3) only for the most

[45] G.R. No. 181845, August 4, 2009.

compelling reasons, another extended period not to exceed 15 days from the lapse of the first extended period.

Following by analogy Section 1, Rule 42 of the Revised Rules of Civil Procedure, the 30-day original period for filing a Petition for Review with the CTA under Section 11 of Republic Act No. 9282, as implemented by Section 3 (a), Rule 8 of the Revised Rules of the CTA, may be extended for a period of 15 days. No further extension shall be allowed thereafter, except only for the most compelling reasons, in which case the extended period shall not exceed 15 days.

Even the CTA *en banc*, in its Decision dated 18 January 2008, recognizes that the 30-day period within which to file the Petition for Review with the CTA may, indeed, be extended, thus:

> Being suppletory to R.A. 9282, the 1997 Rules of Civil Procedure allow an additional period of fifteen (15) days for the movant to file a Petition for Review, upon Motion, and payment of the full amount of the docket fees. A further extension of fifteen (15) days may be granted on compelling reasons in accordance with the provision of Section 1, Rule 42 of the 1997 Rules of Civil Procedure x x x." *(Emphasis supplied)*

Consequently, respondent's position that the thirty-day period to appeal is absolutely non-extendible is erroneous. Clearly, this Court has the discretion to grant an extension of fifteen (15) days within which a party may file a Petition for Review and even an additional 15 days if there are compelling reasons that would warrant the same.

The next question, therefore, is whether petitioners have properly filed a Motion for Extension of Time within the thirty-day reglementary period to file the Petition for Review.

In their Petition for Review, petitioners aver that on February 24, 2012, they filed a Motion for Extension of Time to File Petition for Review with this Court, requesting an extension of 15 days or until March 9, 2012 within which to file their Petition for Review.

However, as far as this Court's records are concerned, the initial pleading which petitioners filed with this Court is the Petition for Review which was filed on March 9, 2012 and docketed as CTA Case AC No. 88. The appropriate fees, consisting of the SAJ and the Sheriff's Fee, were likewise paid only on March 9, 2012. There is nothing in this Court's records which would show that petitioners filed a Motion for Extension of Time to File Petition for Review within the thirty-day reglementary period.

On the other hand, the following circumstances bolster the fact that no Motion for Extension of Time to File Petition for Review was ever filed with this Court. First, if a Motion for Extension of Time to File Petition for Review was indeed filed before this Court, upon receipt of said Motion, it will be immediately docketed and assigned a case number, which shall be placed by the parties on all subsequent pleadings or papers filed in connection with said case. However, as stated earlier, the initial pleading that petitioners filed with this Court is the Petition for Review which, upon its filing, was immediately docketed and assigned a case number.[46] Second, this Court will not receive and assign a case number to said Motion for Extension of Time to File Petition for Review unless and until petitioners submit proof of payment of the appropriate fees. However, records show that the appropriate fees were paid only on March 9, 2012, when the Petition for Review was filed with this Court. Third, if a Motion for Extension of Time to File Petition for Review was actually filed by petitioners, this Court would have acted on it and issued a formal resolution denying or granting the same. The absence of a formal resolution on said Motion for Extension of Time to File Petition for Review should have prompted petitioners' counsel to check this Court's action on said Motion with the Office of the Second Division Clerk of Court. If petitioners made an effort to follow up the status of their Motion, petitioners would have been informed that no Motion for Extension of Time to File Petition for Review was filed with this Court and petitioners would have been given the opportunity to file a valid Motion within the reglementary period.

It is noted that the records forwarded by the RTC of Makati contain, among others, petitioners' Motion for Extension of Time to File Petition for Review wherein petitioners requested a period of 15 days from February 24, 2012 or until March 9, 2012 within which to file the Petition for Review.[47] However, while the RTC Records indicate that said Motion was received by the RTC of Makati on March 2, 2012, said RTC records do not clearly show when petitioners actually posted the same as no copy of the registry receipt

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[46] Section 3, Rule 6 of the RRCTA.
[47] RTC Records, pp. 479 to 482.

was attached to said Motion for Extension of Time to File Petition for Review. [48]

Nonetheless, this Court emphasizes that the filing of the Motion for Extension of Time to File Petition for Review before the RTC of Makati is not a sufficient compliance with the requirements under Section 1 of Rule 42 of the Revised Rules of Court with regard to the extension of the reglementary period within which to file the Petition for Review before this Court. The appeal to this Court of local tax cases decided by the RTCs in the exercise of their original jurisdiction shall be made by filing a Petition for Review under a procedure analogous to that provided under Rule 42 of the Revised Rules of Court. Furthermore, Section 1 of Rule 42 of the Revised Rules of Court provides that the reglementary period to file a Petition for Review may be extended only upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period.

Thus, while this Court may grant an extension of 15 days within which to file a Petition for Review, Section 1 of Rule 42 of the Revised Rules of Court requires the timely filing of a Motion for Extension of Time and the payment of the full amount of the docket and other lawful fees and the deposit of the necessary amount for costs before the expiration of the reglementary period. *c*

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[48] The following information can be seen on the while envelope attached to the Motion for Extension to File Petition for Review, found on p. 483 of the RTC Records: "FEB 29 20" and "28 20".

In the instant case, no Motion for Extension of Time to File Petition for Review was ever filed with this Court within the thirty-day period to perfect an appeal. Likewise, the appropriate fees due from petitioners were not paid within the thirty-day period. Hence, the thirty-day period to file the Petition for Review was not extended.

Petitioners should have filed their Petition for Review on or before February 26, 2012. However, the Petition for Review and the appropriate fees, consisting of the SAJ and the Sheriff Fees, were respectively filed and paid only on March 9, 2012. Therefore, the Petition for Review is dismissible for having been filed out of time.

Motions for extensions are not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extensions or postponement will be granted or that they will be granted the length of time they pray for.[49]

The Supreme Court has consistently ruled in a number of cases that the payment of the full amount of docket fees within the prescribed period is both mandatory and jurisdictional.[50] It is a condition *sine qua non* for the appeal to be perfected and only then can a court acquire jurisdiction over the case.[51] The requirement of an appeal fee is not a mere technicality of law or procedure and

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[49] *Cosmo Entertainment Management, Inc. vs. La Ville Commercial Corporation,* G.R No, 152801, August 20, 2004, citing *Ramos vs. Dajoyag, Jr.,*

[50] *Samuel Julian, represented by his Attorney-in-Fact, Roberto Dela Cruz vs. Development Bank of the Philippines and The City Sheriff,* G.R. No. 174193, December 7, 2011, citing *Tamayo vs. Tamayo, Jr.,* 504 Phil. 179, 183 (2005) and *Aranas vs. Endona,* 203 Phil. 120, 126. (1982).

[51] *Id.,* citing *Meatmasters International Corporation vs. Lelis Integrated Development Corporation,* 492 Phil. 698, 701 (2005).

should not be undermined except for the most persuasive of reasons. Non-observance would be tantamount to no appeal being filed thereby rendering the challenged decision, resolution or order final and executory.[52]

Furthermore, the requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business.[53] The right to appeal is neither a natural right nor a part of due process. The perfection of an appeal within the period and in the manner prescribed by law is mandatory; noncompliance with this legal requirement is fatal and has the effect of making the judgment final and executory.[54] Thus, for failure to timely appeal the case before this Court and pay the appropriate fees within the reglementary period, the assailed Decision and Order of the RTC of Makati which ordered the cancellation of the local business tax assessment against respondent became final, executory, and non-appealable.

It is true that as much as possible, appeals should not be dismissed on a mere technicality in order to afford the litigants the maximum opportunity for the adjudication of their cases on the merits.[55] However, the failure to perfect an appeal is not a mere technicality as it raises a jurisdictional problem which deprives the

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[52] *Id.*
[53] *Heirs of Jose Esplana, et. al. vs. The Court of Tax Appeals, et. al.,* G.R. No. 155758, October 31, 2008, citing *Videogram Regulatory Board vs. Court of Appeals,* G.R. No. 106564, November 28, 1996.
[54] *Fred N. Bello vs. National Labor Relations Commission, Corpuz Moya Security and Services, Inc. and/or Remedios Moya,* G.R. No. 146212, September 5, 2007.
[55] *Id.,* citing *Teresita B. Mendoza vs. Beth David,* G.R. No. 147575, October 22, 2004.

appellate court of jurisdiction over the appeal.[56] After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision in the case.[57] In the instant case, since petitioners' Petition for Review was filed beyond the thirty-day reglementary period, the Court no longer has jurisdiction to entertain the same.

Finally, even on the assumption that the Petition for Review was filed within the reglementary period, the same shall still be dismissed for petitioners' failure to comply with the required attachments under Section 2 of Rule 6 of the RRCTA.

Section 2 of Rule 6 of the RRCTA provides:

> "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. 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. **A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition.**" *(Emphasis supplied)*

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[56] *Id.*, citing *Florentino Zaragoza vs. Pedro Nobleza,* G.R. No. 144560, May 13, 2004.
[57] *Id.*, citing *Allied Banking Corporation and Pacita Uy vs. Spouses David E. Eserjose and Zenaida Eserjose,* G.R. No. 161776, October 22, 2004.

In the Petition for Review, petitioners represent that the original mailed copy of the assailed Decision and the original mailed copy of the assailed Order were attached to the Petition for Review and respectively marked as Annexes "A" and "B". However, a perusal of the copy of the assailed Decision (Annex "A") and the copy of the assailed Order (Annex "B") attached to the Petition for Review reveals that they are mere machine copies.

Even though the RRCTA does not provide for the consequence of such non-compliance with the requirement to attach the duplicate original or certified true copy of the decision or order appealed from, Section 3 of Rule 42 of the Revised Rules of Court may be applied suppletorily, as allowed by Section 1 of Rule 7 of the RRCTA. [58]

Section 3, Rule 42 of the Revised Rules of Court reads:

> "SEC. 3. *Effect of failure to comply with requirements*. – **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and **the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.**" *(Emphasis supplied)*

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[58] *The City of Manila, et. al. vs. Coca-Cola Bottlers Philippines, Inc.*, G.R. No,. 181845, August 4, 2009.

In the case of **B.E. San Diego, Inc. vs. Rosario T. Alzul**,[59] the Supreme Court explained the importance of appending the prescribed attachments to the Petition, holding that:

> "The above proviso explicitly requires the following to be appended to a petition: 1) **clearly legible duplicate original or a certified true copy of the award, judgment, final order, or resolution** appealed from; 2) certified true copies of such material portions of the record referred to in the petition; and 3) other supporting papers.
>
> Obviously, the main reason for the prescribed attachments is to facilitate the review and evaluation of the petition by making readily available to the CA all the orders, resolutions, decisions, pleadings, transcripts, documents, and pieces of evidence that are material and relevant to the issues presented in the petition without relying on the case records of the lower court. The rule is the reviewing court can determine the merits of the petition solely on the basis of the submissions by the parties without the use of the records of the court *a quo*. It is a fact that it takes several months before the records are elevated to the higher court, thus the resulting delay in the review of the petition. **The attachment of all essential and necessary papers and documents is mandatory; otherwise, the petition can be rejected outright under Sec. 7 of Rule 43 of the Rules of Court**, x x x." *(Emphasis supplied; citation omitted)*

Accordingly, the Petition for Review filed by petitioners is dismissible for failure to attach the duplicate originals or certified true copies of the assailed Decision and assailed Order.

[59] G.R. No. 169501, June 8, 2007.

As to the other issues raised herein by petitioners, this Court deems it unnecessary to resolve them.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED**. Accordingly, the assailed Decision dated July 22, 2011 and the assailed Order dated January 6, 2012 of the Regional Trial Court of Makati, Branch 146, in Civil Case No. 06-253 entitled "Brillante Realty Corporation vs. The Municipality of Cainta, Rizal and the Hon. Edgar T. Villanueva in his capacity as Municipal Treasurer" are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

C E R T I F I C A T I O N

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division