REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SOUTH CHINA RESOURCES, INC. (now known as "SOCResources, Inc."), *Petitioner,*	**CTA AC No. 197** (Civil Case No. 14-165) (Civil Case No. M-7835)
-versus-	Members:
OFFICE OF THE CITY TREASURER AND/OR MAKATI CITY, *Respondents.*	**CASTAÑEDA, JR.**, *Chairperson* **MANAHAN**, *JJ.*
	Promulgated: AUG 30 2019 1:30 p.m.

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RESOLUTION

MANAHAN, J.:

For resolution is respondent's *Motion for Reconsideration* posted on May 21, 2019, with petitioner's *Opposition (To Respondent's Motion for Reconsideration dated 21 May 21, 2019)* filed on June 3, 2019.

Respondents seek reconsideration of the Court's Decision promulgated on April 30, 2019, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the Petition for Review filed by petitioner South China Resources, Inc. (now known as SocResources, Inc.) is hereby **GRANTED.**
>
> Accordingly, the assailed Decision dated October 11, 2017 and the Order dated January 8, 2018 rendered by the Regional Trial Court of Makati City in Civil Case Nos. 14-165 and M-7835 are **REVERSED** and **SET ASIDE.** Respondents are hereby **DIRECTED** to **CANCEL** and **WITHDRAW** Notice of Assessment No.

13-80381 dated November 12, 2013 as well as Billing Assessment No. 019511 dated January 13, 2015.

SO ORDERED."

Respondents assail this Court's Decision granting petitioner's Petition for Review and which ordered the cancellation of the Notice of Assessment and Billing Assessment dated November 12, 2013 and January 13, 2015, respectively.

Respondents' primary assertion is that petitioner should have complied with the procedure laid out in Section 187 of the Local Government Code of 1991 (LGC of 1991) when questions of the constitutionality or validity of a specific ordinance are raised. In the instant case, respondents maintain that petitioner specifically challenges the validity of Section 3A.02 (p), in relation to Section 3A.02 (g) and (h) of the Revised Makati Revenue Code (RMRC). Respondents further argue that unless repealed by Congress, Section 187 of the LGC of 1991 remains to be the proper procedure to question the constitutionality and validity of tax ordinances and revenue measures.

Finally, respondents submit that under Section 143 (H) of the Local Government Code, the local government unit is empowered to impose tax on any business which the *sanggunian* concerned may deem proper to tax.

In its *Opposition (To Respondent's Motion for Reconsideration)*, petitioner avers that respondents are already barred by estoppel from raising the argument that Section 187 of the LGC of 1991 should have been complied with as this is raised for the first time only on this appeal. It cites several jurisprudence which ruled that no question shall be entertained on appeal unless raised in the proceedings below. Having raised this particular issue only in the motion for reconsideration, petitioner maintains that the appellate court should not entertain this matter based on basic considerations of fairness.

On the substantive aspect of the assessment, petitioner reiterates its argument that it is a holding company and not a manufacturer and as such, its investments and interest income are not subject to local business taxes as they are not in the nature of a "contract price, compensation or service fee" for services performed or to be performed for another person" under Section 1B.01 (g) of the RMRC. Further, petitioner submits that it is not subject to taxes imposed upon holding companies under

Section 3A.02 (p) of the RMRC because it does not earn income for services performed similar to that of a contractor and it is neither a bank nor a financial institution.

RULING OF THE COURT

Respondents' Motion for Reconsideration is bereft of merit.

First, we must resolve petitioner's assertion that questions raised for the first time on this appeal or a motion for reconsideration should no longer be entertained based on considerations of fairness and due process.

Consistent with the basic rules of fairness and due process, questions raised for the first time on appeal or in a motion for reconsideration should, as a general rule, no longer be entertained. However, we find that it depends on the discretion of the court to consider such issues if the nature of such issue presents a purely legal issue and would not require a factual determination requiring the presentation of evidence. The Supreme Court in the case entitled *Bases Conversion Authority vs. Rosa Reyes, Cenando Reyes and Carlos Reyes*[1] provided a strict adherence to this principle when the question raised for the first time involves a factual issue which would require an evaluation of the evidence on record and we quote:

> "At the outset, it bears to note that the second and fourth issues were not raised by petitioner in its opposition to respondents' motion for summary judgement but only in its motion for reconsideration from the RTC's Order dated November 27, 2007. It has been consistently held that appellate courts are precluded from entertaining matters neither alleged nor raised during the proceedings below but ventilated for the first time only in a motion for reconsideration or on appeal. Thus, while these issues may be classified as questions of fact since their resolution would require an evaluation of the evidence on record, the CA was precluded from considering the same."

We find that respondents' assertion that Section 187 of the 1991 LGC should have been followed by petitioner is a purely legal issue which the Court may consider even if it is raised for the first time in their motion for reconsideration.

Respondents' main argument that petitioner should have complied with the provisions of Section 187 of the LGC of 1991 is off tangent because the validity and constitutionality of Section 3A.02 (p), in relation to Section 3A.02 (g) and (h) of the RMRC was

[1] G.R. No. 194247, June 19. 2013.

not an issue in this case, rather it is respondents' erroneous interpretation of the aforesaid provisions that led to the issuance of an erroneous assessment against petitioner. For purposes of discussion, Section 187 of the LGC of 1991 is quoted as follows:

> Section 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.* – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided,* That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further,* **That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however,* That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided,* finally, That within thirty (30 days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.** (emphasis supplied)

The aforequoted provision describes the procedure of questioning the validity or constitutionality of a tax ordinance or revenue measure which the law grants to a concerned taxpayer which was neither raised by the petitioner in its Petition for Review nor disposed of by the Court in its assailed Decision. Rather, the Court ruled on the issue of whether petitioner is engaged in activities that may classify it as a "bank and other financial institution" thereby making it liable for local business tax on its gross receipts at the rates provided under Section 3A.02 (h) of the RMRC. The Court did not delve upon the constitutionality or validity of any of the provisions of the RMRC but simply resolved this particular issue in favor of petitioner in this manner, thus:

> "As to the argument of respondents that petitioner need not be classified as a bank or other financial institutions or a contractor for LBT to apply, we find this an erroneous conclusion.
>
> An analysis of Section 3A.02 (p) of the RMRC states that holding companies shall be taxed either at the rates under subsection (g) or (h) of its gross sales and/or receipts.
>
> We quote Section 3A.02 (g) of the RMRC, thus:
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> xxx xxx xxx

(g) On Contractors and other independent contractors defined in Sec. 3A-01 (t) of chapter III of this Code; and on **owners or operators of business establishments** rendering or offering services such as: advertising agencies; rental of space of signs, signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others: business management services; collecting agencies; escort services; feasibility studies; consultancy services; garages; garbage disposal contactors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops' management consultants not subject to professional tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma-press establishments; rent-a-plant services; polo players; school for an/or horse-back riding academy; real estate appraisers' real estate brokerages' photostatic' white/blue printing; photocopying, typing and mimeographing services; car rental; rental of heavy equipment; rental of bicycles; and/or tricycles; furniture, shoes, watches and household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for hearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education (DepEd), day care centers, etc.:" (emphasis supplied)

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Based on the relevant provisions of Section 3A.02 of the RMRC, the imposition of LBT on a holding company shall either be under *subsection (g)* for owners and operators of business establishments conducting "business management services" or under *subsection (h)* for banks and other financial institutions. It is not a remote possibility that a holding company may conduct or transact other businesses such as the ones described in subsections (g) or (h) of Section 3A.02 of the RMRC, so it is not unlikely that petitioner may engage in businesses that may be classified under said subsections, however evidence on record do not show that petitioner falls under either descriptions to justify the imposition of the LBT.

It must be noted that respondents already acknowledged that petitioner is a holding company as seen from the Letter Denial (of petitioner's protest) dated January 14, 2019 issued by respondent city treasurer of Makati City where the latter re-classified petitioner's business to that of a "holding company" from the earlier classification of "manufacturer".

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In the aforequoted *Michigan Holdings case,* the Court ruled that dividend income is not subject to LBT except when levied on banks

> and other financial institutions and it is clear that petitioner as a holding company cannot be classified as a "bank or other financial institution".
>
> xxx xxx xxx
>
> The records of this case do not show that petitioner is engaged in activities that may be classified as performing functions similar to a bank or other financial institution as defined by pertinent regulations. Its primary purpose as shown in the Articles of Incorporation neither shows that none of its activities are covered by the BSP Manual akin to functions pertaining to a financial institution. Neither can petitioner be classified as an operator of business establishments offering, *inter alia,* "business management services".

WHEREFORE, premises considered, respondents' *Motion for Reconsideration* posted on May 21, 2019, is **DENIED** for lack of merit. Accordingly, the Decision dated April 30, 2019 is **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice