REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE CITY OF MAKATI AND THE CITY TREASURER OF MAKATI CITY,
Petitioners

-versus-

CITYLAND, INC.,
Respondent.

CTA EB No. 1428
(CTA AC No. 125)

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CITYLAND, INC.,
Petitioner

-versus-

THE CITY OF MAKATI AND THE CITY TREASURER OF MAKATI CITY,
Respondents.

CTA EB No. 1439
(CTA AC No. 125)

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

Promulgated:

DEC 19 2017 4:12 p.m.

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R E S O L U T I O N

MINDARO-GRULLA, J.:

Submitted for resolution of this Court *En Banc* are the following:

1. Motion for Reconsideration (Re: Decision dated 28 June 2017) filed by petitioners the City of Makati and the City Treasurer of Makati City in CTA EB 1428; and

2. Respectful Motion for Partial Reconsideration filed by petitioner Cityland, Inc., petitioners in CTA EB No. 1439 *(City/and, Inc. vs. City of Makati and the City Treasurer of Makati City).*

Petitioners in CTA EB No. 1428 insist on the validity of subjecting Cityland to business tax as a real estate developer (or as owner/ operator of real estate developer) based on Section 3A.02(m) of the Revised Makati Revenue Code.

We resolve to deny petitioner's Motion for Reconsideration. A perusal of the contents of the Motion shows that the grounds raised therein relate to or are the exact same arguments that has been comprehensively passed upon in the Decision dated June 28, 2017.

For emphasis, a municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. If granted under a charter or a statute, and that power when granted is to be construed in *strictissimi juris.* As such, in this case, any doubt or ambiguity must be resolved against the city of Makati City officials must keep in mind tax ordinances, though well-meaning, reasonable and profitable, must conform to national law. Making sure our ordinances are legally sound is necessary to protect the city against vexing suits in the future and likewise encourage businesses instead of stunting them.

Section 143 of the LGC has been held to be "*the very source of the power of municipalities and cities to impose a local business tax*, and to which any local business tax imposed x x x must conform."[1]

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[1] Nursery Care Corporation, etal., v. Anthony Acevedo, in his capacity as the Treasurer of Manila, and the City of Manila, G.R. No. 180651, July 30, 2014.

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Relative thereto, Section 151[2] states that a city government may impose business tax on the businesses enumerated under the former. ***Dealers*** "in any article of commerce of whatever kind or nature" are covered under Section 143(b), while ***developers*** may be deemed covered by Sec. 143(h), which makes business tax imposable on "any business, not otherwise specified in the preceding paragraphs."

Section 3A.02(m) of the Revised Makati Revenue Code imposes business tax "on owners or operators of real estate developer." The language of this provision is clear. Sec. 3A.02(m) of the Revised Makati Revenue Code is directed towards the ***Real Estate Developer itself, which has a personality separate and distinct from its stockholders, owners and operators.*** (Emphasis supplied)

It is worth stressing out that one of the primary and basic rules in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation[3].

In the case at bar, the attempt of the petitioners to in effect delete "owners and operators" so as to impose the tax directly on the real estate developer, runs counter to the rules of statutory construction, and would effectively amend the said provision. The city treasurer by herself is without authority to amend the Revised Makati Revenue Code, for that power is vested by the Local Government Code solely in the Sangguniang Panlungsod.

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[2] **Section 151. Scope if Taxing Powers**. - Except as otherwise provided in this Code, **the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code**.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

[3] Francisco I. Chavez vs. Judicial and Bar Council, eta/., G.R. No. 202242, July 17, 2012, En Banc, citing National Food Authority (NFA) vs. Masada Security Agency, Inc., 493 Phil. 241, 250 (2005); Philippine National Bank vs. Garcia, Jr., 437 Phil. 289 (2002).

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Clearly, by imposing the business tax on "owners and operators of real estate developer", rather than directly upon the real estate developer, the Sangguniang Panlungsod of Makati City contemplated these i***"owners and operators" to be entities different from the real estate developer itself***. Otherwise, the tax would have simply been directly imposed on the said developer.

Also, there is nothing in the records that would show that Cityland in fact acted as operator. Petitioners did not bother to establish that Cityland's juridical personality and that of its "owners and operators" are one and the same. Instead, petitioners postulated that the "owners and operators" clause in Section 3A.02(m) of the Revised Makati Revenue Code should be disregarded, so that the business tax may be imposed directly on the real estate developer.

Indubitably, as correctly cited by the Court in Division[4], respondent has contradicted her own allegations in interpreting Section 3A.02(m), to wit:

> "What respondent did, in her Answer, was to conclude that 'from the definition of 'Real Estate Developer' under Section 3A.01 (xx), it is crystal clear that Petitioner Cityland, Inc. should be classified as a Real Estate Developer.' Respondent insisted that the business tax imposed by Sec. 3A.02(m) is squarely upon the real estate developer, and not "owners and operators". Respondent posited in her Answer:
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>> '10. The allegation that Petitioner City land, Inc. cannot be taxed under Sec. 3A.02(g) since Sec. 3A.02(m) allegedly imposes the tax towards the 'owners and operators' of the real estate developer is illogical and misleading.
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>> 11. ***It cannot be denied that such particular section of the Revised Makati Revenue Code [Sec. 3A.02(m)] is directed towards the Real Estate***

[4] CTA EB No. 1428, En Banc Docket, p.29.

> ***Developer itself, which has a personality separate and distinct from its stockholders, owners and operators***.'

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Under the premises, it was the petitioners who gave this Court serious cause to doubt the validity of the provision, as well as the assessment based thereon.

Considering that there was no sufficient evidence to establish Cityland to be the owner/operator of a real estate developer, Section 3A.02(m) of the Revised Makati Revenue Code is inapplicable to it.

Consequently, it strays beyond the limit fixed by Section 146 of the Local Government Code, it is an *ultra vires* exercise of local taxing power, which is a violation of Section 146 of the Local Government Code. Therefore, it is null and void and cannot be given any effect.

Anent the procedural issue raised by Cityland that the Court in Division's Decision had already become final and executory for failure to strictly comply with Section 6(3), Rule 15 of the Revised Rules of the Court of Tax Appeals, has certainly been rendered moot and academic.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, even in cases where supervening events had made the cases moot, courts do not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, the bar and the public. Moreover, as an exception to the rule on mootness, the courts will decide a question otherwise moot if it is capable of repetition, yet evading review.[5]

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[5] Integrated Bar of the Philippines v. Atienza, G.R. No. 175241, February 24, 2010, 613 SCRA 518, 523, *citing* Funa v. Ermita, G.R. No. 184740, February 11, 2010.

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It is noteworthy that substantial justice, equity and fair play take precedence over technicalities and legalisms. Law and justice are inseparable, and we must keep them so. To be sure, there are some laws that, while generally valid, may seem arbitrary when applied in particular case because of its peculiar circumstances. Accordingly, it is the duty of this Court to find a balance between the word and the will, and to ensure that justice may be done even as the law is obeyed.

As judges, We are not automatons. ***We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence.***[6]

In view of the foregoing, this Court finds no valid justification to compel a modification or reversal of the assailed Decision.

WHEREFORE, premises considered, the Motion for Reconsideration (Re: Decision dated 28 June 2017) filed by petitioners the City of Makati and the City Treasurer of Makati City in CTA EB 1428 and the Respectful Motion for Partial Reconsideration filed by petitioner Cityland, Inc., in CTA EB No. 1439 are hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

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[6] Zacarias Cometa and Herco Realty & Agricultural Corporation vs. Court Of Appeals and Jose Franco, G.R. No. 141855. February 6, 2001.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice