REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NELIA A. BARLIS, in her capacity as the OIC-City Treasurer of the City of Makati, and **THE CITY OF MAKATI,** *Petitioners,*	**CTA AC No. 247** (Civil Case No. 15-315)
	Members:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson, a* **CUI-DAVID**, *JJ.*
GF & PARTNERS, ARCHITECTS, CO., *Respondent.*	Promulgated: SEP 16 2022 9:10 a.m.

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DECISION

CUI-DAVID, J.:

This is a Petition for Review filed on 2 March 2021 by petitioners Nelia A. Barlis, in her capacity as the OIC-City Treasurer of the City of Makati, and the City of Makati [1] ("**Petitioners**"), against respondent GF & Partners, Architects, Co. ("**Respondent**"), under Section 3(a), Rule 8,[2] in relation to Section 3(a)(3), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"), assailing the *Decision* dated 26 December

[1] Dated 2 March 2021, received by the Court on 2 March 2021; *Rollo*, pp. 5-15.
[2] *Section 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. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.
[3] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.
[4] A.M. No. 05-11-07-CTA.

2019 ("**assailed Decision**"), and the *Order* dated 25 January 2021 ("**assailed Order**") of the Regional Trial Court of Makati City, Branch 139 ("**RTC**").

THE PARTIES

Petitioner Nelia A. Barlis was the duly appointed City Treasurer of the City of Makati who issued the protested assessment, with office address at the Office of the City Treasurer, Business Tax Division, Makati City Hall, Makati City.

Petitioner City of Makati is a local government unit created under Philippine laws.

Respondent GF & Partners, Architects Co. ("**GF & P**") is an architectural firm operating as a general professional partnership, duly registered under, and existing by virtue of the laws of the Philippines, with principal office on the 11th Floor, BDO Plaza, 8738 Paseo de Roxas, Makati City.

THE FACTS

The facts, as found by the RTC, are as follows:

On 18 November 2014, respondent received a copy of the *Notice of Assessment* dated 10 November 2014 from the Business Tax Division, Office of the City Treasurer of Makati City, signed by petitioner Barlis, which substantially states that after examination under Letter of Authority LA-2014 No. 0275, respondent was found liable for deficiency taxes, fees, and charges, covering the taxable years 2010 to 2013, in the aggregate amount of ₱3,300,690.47.

Respondent is being assessed for local business tax under Sec. 3A.02(g) of the Revised Makati Revenue Code ("**RMRC**"),[5] which reads:

> 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: ... **interior decorating services**; janitorial services; job placements or recruitment agencies; **landscaping contractors**; ...

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[5] Adopting the Revised Makati Revenue Code, Makati City Ordinance No. 025-A-04, 27 October 2005.

With gross sales or receipts for the preceding calendar year in the amount of:[6]

... ...

On 14 January 2015, or within sixty (60) days from the receipt of the *Notice of Assessment*, respondent filed a *Tax Protest*. Petitioners did not act on the *Tax Protest*.

Upon the failure of petitioners to act on the *Tax Protest* within 60 days, respondent filed a *Petition for Cancellation of Local Business Tax Assessment* before the RTC on 14 April 2015. The case was docketed as Civil Case No. 15-315, and entitled "*GF & PARTNERS, ARCHITECTS, CO. vs. HON. NELIA A. BARLIS, in her capacity as City Treasurer of the City of Makati, and the CITY OF MAKATI.*"

On 19 May 2015, summons was issued and served to petitioners, but they failed to file their answer within the reglementary period.

On 4 January 2016, respondent filed a *Motion to Declare the Respondents*[7] *in Default* (hereinafter referred to as *Motion to Declare Petitioners in Default)* for the failure of petitioners to file a responsive pleading.

On 16 February 2016, petitioners filed before the RTC their *Comment* to respondent's motion to declare them in default. Petitioners still did not file any responsive pleading to respondent's *Petition*.

On 27 July 2016, respondent filed a *Motion to Revive and/or Remove from Archive* the case. On 5 August 2016, the *Motion* was granted by the RTC.

On 15 September 2016, the RTC granted respondent's *Motion to Declare Petitioners in Default,* and an *ex-parte* presentation of respondent's evidence was allowed and set on 15 November 2016.

On 14 November 2016, petitioners filed a *Motion to Lift Order of Default and To Admit Attached Answer.* The RTC denied the motion.

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[6] Emphasis supplied.
[7] Pertaining to petitioners Barlis and the City of Makati.

On 15 November 2016, petitioners filed an *Omnibus Motion: Motion for Reconsideration* and *Motion to Lift Order of Default, and To Admit Attached Answer.* The *Omnibus Motion* was likewise denied.

As a result of the denial, the *ex-parte* presentation of evidence by respondent ensued, and respondent subsequently filed its *Formal Offer of Documentary Evidence.* In an *Order* dated 19 July 2017, the RTC admitted respondent's documentary evidence presented during the *ex-parte* proceedings.

In the *assailed Decision* dated 26 December 2019,[8] the RTC ordered the cancellation of the *Notice of Assessment* dated 10 November 2014 and declared respondent not liable to local business tax for being a general professional partnership ("**GPP**"). The dispositive portion reads:

> **WHEREFORE,** premises considered, the Court hereby renders the Notice of Assessment dated November 10, 2014 **CANCELLED** and declaring petitioner[9] GF & PARTNERS, ARCHITECTS, CO. **NOT LIABLE** to local business tax for being a general professional partnership and for reasons discussed above.
>
> **SO ORDERED.**

On 12 February 2020, petitioners filed their *Motion for Reconsideration (Re: Decision dated 26 December 2019).* Respondent did not file its comment on petitioner's *Motion.*

In the *assailed Order* dated 25 January 2021,[10] the RTC denied petitioners' *Motion for Reconsideration, viz.*:

> **WHEREFORE,** premises considered, respondents'[11] Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

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[8] *Rollo*, pp. 23-28.
[9] Respondent in the instant case.
[10] *Rollo*, p. 29.
[11] Petitioners in the instant case.

PROCEEDINGS BEFORE THE COURT

On 2 March 2021, petitioners filed a *Petition for Review*[12] before this Court against the *assailed Decision* and *Order* of the RTC.

In a *Resolution* dated 11 March 2021,[13] this Court required respondent to file its comment to the *Petition for Review* within ten (10) days from receipt of the said resolution. On 5 July 2021, respondent filed its *Comment.*[14]

In a *Resolution* dated 1 December 2021,[15] the Court ordered the Branch Clerk of Court or the Officer-in-Charge of the RTC to elevate to this Court the entire original records of Civil Case No. 15-315. The parties were likewise ordered to file their respective memoranda in the same resolution.

Respondent filed its *Memorandum* on 21 April 2022,[16] while petitioners failed to file their *Memorandum.*[17] *Records Verification Report* dated 26 April 2022 reveals that the Branch Clerk of Court or the Officer-in-Charge of the RTC was unable to elevate to this Court the entire original records of the instant case.

The case before the Court was deemed submitted for decision on 5 May 2022.[18]

Hence, this Decision.

ISSUES

Petitioners submitted the following issues in their *Petition for Review*:

1. WHETHER OR NOT RESPONDENT IS PURELY A GENERAL PROFESSIONAL PARTNERSHIP.

2. WHETHER OR NOT AS CONTRACTORS, RESPONDENT BEING TAX [*SIC*] UNDER SECTION 3A.02(G) OF THE REVISED MAKATI REVENUE CODE HAS LEGAL BASIS.

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[12] *Supra* at note 1.
[13] *Rollo*, p. 31.
[14] *Rollo*, pp. 32-37.
[15] *Rollo*, p. 40.
[16] *Rollo*, pp. 42-51.
[17] Records Verification Report dated 26 April 2022; *Rollo*, p. 53.
[18] Resolution dated 5 May 2022, *Rollo*, p. 54.

On the other hand, respondent forwards the following issues in its *Memorandum:*

A. WHETHER OR NOT THE RTC IS CORRECT IN RULING THAT GF & P IS NOT LIABLE FOR BUSINESS TAX FOR BEING A GENERAL PROFESSIONAL PARTNERSHIP.

B. WHETHER OR NOT PAYMENT OF THE PROTESTED BUSINESS TAX ASSESSMENT IS NECESSARY TO MAKE THE TAX PROTEST VALID.

C. WHETHER OR NOT THE PETITIONERS, DECLARED IN DEFAULT BY THE RTC, CAN ADDUCE EVIDENCE ON APPEAL.

PETITIONERS' ARGUMENTS

Petitioners argue that respondent is not purely a GPP. Respondent was assessed based on the classification under Section 3A.02(g) of the RMRC as contractor or owner or operator of a business establishment rendering or offering the services enumerated in the said section.[19]

Petitioners further argue that respondent did not file a valid protest under Section 7B.14(c) of the RMRC, which provides that the protest must come with payment of the assessed taxes under protest. Accordingly, the assessment had become final, conclusive, and unappealable.[20]

Without alleging the dates, petitioners state that the protest was filed beyond the reglementary period.[21]

Petitioners also state that Section 187 of the Local Government Code ("**LGC**") still governs the procedure in questioning the constitutionality and legality of tax ordinances and revenue measures[22] and that Section 3A.02(g) of the RMRC remains valid.[23]

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[19] Petition for Review, par. I.1, p. 4.
[20] Petition for Review, par. III.6, p. 5.
[21] Petition for Review, par. III.9, p. 6.
[22] Petition for Review, pars. IV.1-2, pp. 7-8.
[23] Petition for Review, par. V.1, p. 8.

Petitioners likewise cite Section 143(H) of the LGC, which empowers the LGU to impose a tax on any business that the Sanggunian concerned may deem proper to tax.[24]

Finally, petitioners point out that the Bureau of Local Government Finance ("**BLGF**") Opinion dated 28 January 2015, relied upon by the RTC and by respondent, contradicts respondent's position.[25]

RESPONDENT'S ARGUMENTS

Respondent counters that payment of the protested assessment is not necessary to make the *Tax Protest* valid.[26] It further counters that payment under protest is only required in cases involving real property taxes.[27]

Respondent argues that it is a GPP not subject to local business tax.[28] According to respondent, considering that it is a GPP, it is not a corporation; hence, not a taxable entity.[29]

Respondent points out that petitioners' admission that the assessment is based on respondent's "architectural fees" only solidifies its claim that they are not engaged in trade or business but are engaged in the practice of profession.[30]

Respondent likewise points out that petitioners should not be allowed to introduce new matters on appeal before this Court.[31]

RULING OF THE COURT

The instant *Petition* is bereft of merit.

The Court has jurisdiction over the instant Petition.

Before the Court delves into the merits of the case, We shall first resolve whether the subject *Petition* was timely filed

[24] Petition for Review, par. VI.1, p. 9.
[25] Petition for Review, par. VII.1, pp. 9-10.
[26] Comment, par. 3, *Rollo*, p. 32.
[27] Comment, par. 5, *Rollo*, p. 33.
[28] Comment, pars. 7-9, *Rollo*, p. 34.
[29] Memorandum, par. 28, p. 6.
[30] Memorandum, par. 31, p. 6.
[31] Comment, pars. 10-12, *Rollo*, p. 34-35.

and whether the Court has jurisdiction to take cognizance of this case.

Section 7(a)(3) of Republic Act ("**RA**") 9282 provides

> Section 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ... ...
>
> **(3)** Decisions, orders or resolutions of the **Regional Trial Court in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;**[32]

The above provision is implemented by Section 3(a)(3), Rule 4 of the RRCTA, to wit:

> Section 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> ... ...
>
> (3) Decisions, resolutions or orders of the **Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.**[33]

The records show that on 19 February 2021, petitioners received the *assailed Order* of the RTC denying their *Motion for Reconsideration* for lack of merit.[34] Under Section 3(a), Rule 8[35] of the RRCTA, petitioners had thirty (30) days from receipt of the *assailed Order* on 19 February 2021, or until 21 March 2021, to file their *Petition for Review* before the CTA.

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[32] Emphasis supplied.
[33] Emphasis supplied.
[34] *Rollo*, p. 29.
[35] Section 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. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

Petitioners timely filed the subject *Petition for Review*[36] before this Court on 2 March 2021. Having settled that the *Petition* was timely filed, We likewise rule that the CTA has the requisite jurisdiction to take cognizance of this *Petition* under Section 3(a)(3), Rule 4[37] of RRCTA.

We now proceed to the merits of the case.

Respondent is a general professional partnership; hence, it is not liable to pay the local business tax under Sec. 3A.02(g) of the RMRC.

In their *Petition for Review*, petitioners claim that respondent is not purely a GPP. According to petitioners:

> Respondent was assessed based on the classification under Section 3A.02(g) as a contractor and owners or operators of a business rendering services. The City Government used the plaintiff's income from Architectural Fees to assess the deficiency local business tax from 2010 to 2013.[38]

Petitioners further claim that respondent was assessed based on Section 3A.02(g) of the RMRC not as a GPP but as a contractor or as an owner or operator of business establishment rendering or offering the services enumerated in the said section. According to petitioners:

> It should be made clear at the outset that petitioner [*sic*] was not assessed as a GPP. Petitioner [*sic*] was assessed on the classification under Section 3A.02(g) of the RMRC not necessarily as a Contractor defined under Section 3A.01(t), but as owners or operators of business establishments rendering or offering services as enumerated in the said Section 3A.02(g) as quoted below. The City Government used petitioner's [*sic*] income from Architectural Fees.[39]
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>> "Section 34.02(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: ...interior decorating services; ...landscaping contractors; ...."

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[36] *Supra* at note 1.
[37] Section 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.
[38] *Rollo*, p. 8, Petition for Review, par. 1.1, p. 4.
[39] Petition for Review, par. 1.1, p. 4.

In its *Comment* to the *Petition for Review*, respondent counters that:

> 7. In its Decision dated 26 December 2019, the Regional Trial Court of Makati, Branch 139, clearly explained its factual and legal finding that the respondent is a GPP and that it should not be subject to local business tax.[40]
>
> 8. In the instant Petition for Review, on the other hand, the petitioner made a bare claim that the respondent is a contractor liable for local business tax without offering any argument other than its power to collect local business tax from contractors. There is nothing to comment on as the petitioner simply offered nothing but its bare claim.[41]

Respondent likewise presented the following arguments in its *Memorandum*, *viz.*:

> 23. RTC is correct in finding GF & P as a GPP formed by architects for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.
>
> 24. GF & P is not engaged in any trade or business other than the exercise of the profession by the partners constituting it, as evidenced by its primary purpose in its Amended Articles of Partnership dated 15 April 2016....
>
> 25. The fact that the partners constituting GF & P are professionals is evidenced by their Professional Tax Receipts.
>
> 26. As a GPP, the RTC is likewise correct in ruling that GF & P is not liable for business tax...
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> 27. In addition, a GPP is not considered a corporation under Section 131 of the LGC, under Section 22(B) of the National Internal Revenue Code, and under Section IB.01(e) of the RMRC.
>
> 28. Not being a corporation, a GPP is not a taxable entity.
>
> 29. In their Petition for Review, petitioners made a bare claim that GF & P is a contractor liable for local business tax, without offering any argument other than its power to collect local business tax from contractors.

[40] *Rollo*, p. 34, Comment, par. 7.
[41] *Id.*, par. 8.

30. Undoubtedly, the factual and legal findings of the RTC will stand firm against petitioners' bare claim to the contrary.

31. More importantly, petitioners admitted in their Petition for Review that they based their assessment on GF & P's "architectural fees," which is clearly not an income derived from engaging in trade or business but evidently from the exercise of profession.[42]

We find petitioners' arguments to be untenable.

Section 3A.02(g) of the RMRC imposes a local business tax on "contractors and other independent contractors defined in SEC. 3A-01(t), Chapter III of the RMRC, and on owners or operators of business establishments" rendering or offering the services enumerated therein.

Section 3A.02(g) of the RMRC reads, in part:

> SECTION 3A.02. *Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
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> ... ...
>
> (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: ... **interior decorating services**; janitorial services; job placements or recruitment agencies; **landscaping contractors;** ...
>
> With gross sales or receipts for the preceding calendar year in the amount of:
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> ... ...
>
> For purposes of this Section, all general engineering, general building, and specialty contractors ... shall secure the required city business permit and shall be subject to pay the city taxes, fees and charges based the total contract price payable in annual or quarterly installments within the project term.[43]

Relatedly, Section 3A.01(t) of the RMRC defines a *contractor* as follows:

[42] *Rollo*, p. 42-52, Memorandum, pp. 5-6.
[43] Emphasis supplied.

> (t) Contractor — includes persons, natural or juridical, **not subject to professional tax** whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.[44]

Under the above-quoted subsection, persons who are subject to professional tax are not included in the term *contractor*. Hence, they are not subject to the local business tax imposed under Section 3A.02(g) of the RMRC.

Sections 3E.01 and 3E.02 of the RMRC provide for the imposition of annual professional tax on certain professionals, *viz.*:

> SECTION 3E.01. Imposition of Tax. — There is hereby levied annual professional tax on each person engaged in the exercise or practice of his profession requiring government examination at the rate of Three Hundred Pesos (P300.00).
>
> SECTION 3E.02. Coverage. — The following professionals **who passed** the bar examinations, or **any board, or other examinations conducted by the Professional Regulations Commission (PRC)** and other government agencies shall be subject to the professional tax:
>
> Actuaries; **architects**; land and naval; aviators; certified public accountants; chemists; criminologist; custom brokers; dentists; dietitians; engineers; ...[45]

As aptly found by the court *a quo*, the partners of GF & P have been paying their professional tax with the petitioners in their individual capacity under the pertinent provisions of the RMRC.

Given the foregoing and in the absence of any convincing evidence and argument that respondent is engaged in any trade or business other than the general practice of architecture as a profession, We rule that respondent is not subject to the local business tax imposed under Section 3A.02(g) of the RMRC.

In fine, the Court adheres to the finding of the RTC that respondent is a GPP; hence, it is not liable to pay the subject local business tax. We quote the pertinent portion of the court *a quo's Decision*:

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[44] Emphasis and underscoring supplied.
[45] Emphasis and underscoring supplied.

Petitioner was able to prove that it is a general professional partnership. It was established that the partners of GF & Partners have been paying their professional tax with the respondents as evidenced by the Professional Tax Receipts (*Exhibits "H" to "H-40"*). As enunciated by the Supreme Court, one of the key indicators of a general professional partnership is that the partners are taxed individually. In this case, the partners of GF & Partners have been paying their professional tax for several years, among others, individually.

Furthermore, it is clear under the New Civil Code that there is a distinction between a general partnership and a general professional partnership:

> *Article 1767. By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.*
>
> *Two or more persons may also form a partnership for the exercise of a profession.*

In the second paragraph of the said law, it made mention of another type of partnership which is general professional partnership, i.e., two or more persons may also form a partnership for the exercise of a profession. In this case, it was established by the petitioner in the Amended Articles of partnership (*Exhibit "D-2"*) that the purpose of the partnership was for the general practice of architecture, interior decoration, landscaping, land development, and such further activites [*sic*] as may be incident thereto.

Following the ruling of the Supreme Court concerning the tax liability of a general professional partnership, petitioner in this case should not be taxed for local business tax as it is a general professional partnership. The income tax is imposed not on the professional partnership, which is tax exempt, but on the partners themselves in their individual capacity computed on their distributive shares of partnership profits.

Respondent's tax protest was filed within the reglementary period.

Petitioners allege that respondent's protest was filed beyond the reglementary period; thus, it had already attained finality.[42] Petitioner does so without alleging the applicable dates.

[42] Petition for Review, par. III.9, p. 5.

Section 195 of the LGC provides:

> *Section 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. ...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.[43]

Accordingly, from the receipt of the *Notice of Assessment*, respondent only had sixty (60) days to file its *Tax Protest*.

On 18 November 2014, respondent received a copy of the *Notice of Assessment*. Respondent had 60 days from 18 November 2014 or until 17 January 2015 to file a *Tax Protest*. Respondent filed its *Tax Protest* on 14 January 2015, within the reglementary period provided by Section 195 of the LGC.

Respondent had thirty (30) days from receipt of the denial of the *Tax Protest* or the lapse of the sixty (60)-day period as prescribed above, to appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.

Here, petitioners did not act on the *Tax Protest*. Thus, respondent had 30 days from the lapse of the 60-day period to appeal to the RTC. The 60-day period, counted from the filing of the *Tax Protest* on 14 January 2015, expired on 15 March 2015. Respondent had 30 days from 15 March 2015, or until 14 April 2015, to appeal to the RTC. Respondent filed the *Petition for Cancellation of the Tax Assessment* before the RTC on 14 April 2015, which is within the 30-day period.

Clearly, the *Tax Protest* with the local treasurer and the *Petition* with the RTC were both filed on time.

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[43] Emphasis and underscoring supplied.

Respondent's non-payment of the assessed tax does not render the protest invalid.

Petitioners contend that respondent did not file a valid protest under Section 7B.14(c)[44] of the RMRC, which provides that protests must come with a valid payment of the assessed taxes under protest.[45] Petitioners also claim that respondent's failure to pay under protest rendered the assessment final, conclusive, and unappealable.

Respondent counters that payment under protest is required only for the protest of real property tax assessment and not of local business tax.[46]

We find for respondent.

To reiterate, Section 195 of the LGC lays down the procedure for protesting an assessment of local tax, *viz.*:

> *Section 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. ... 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.

A careful perusal of Section 195 above reveals that prior payment of the assessed tax, fee, or charge, is not required in protesting local tax assessments. As respondent correctly argued, this is in contrast with Section 252(a) of the LGC[47] pertaining to protests against a real property tax assessment.

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[44] Section 7B.14. Taxpayer's Remedies. — ...
(c) Payment under Protest. — No protest, however, shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipt the words 'paid under protest.' A copy of the tax receipt shall be attached to the written protest contesting the assessment.
[45] Petition for Review, paragraphs III. 5-6, p. 5.
[46] *Rollo*, p. 33. Comment, par. 5.
[47] Section 252. Payment Under Protest. -

Further, Section 195 has been the subject of a clear-cut interpretation by the Supreme Court.

In the *City of Manila vs. Cosmos Bottling Corporation* ("*Cosmos Bottling* case"), [48] the Supreme Court interpreted Section 195 of the LGC in this wise:

> Clearly, when a taxpayer is assessed a deficiency local tax, fee, or charge, **he may protest it under Section 195 even without making payment of such assessed tax, fee or charge**. **This is because the law on local government taxation, save in the case of real property tax, does not expressly require "payment under protest" as a procedure prior to instituting the appropriate proceeding in court**. **This implies that the success of a judicial action questioning the validity or correctness of the assessment is not necessarily hinged on the previous payment of the tax under protest**.
>
> ... ...
>
> Where an assessment is to be protested or disputed, the taxpayer may proceed (a) without payment, or (b) with payment of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer, otherwise, the assessment becomes conclusive and unappealable.
>
> (a) **Where no payment is made, the taxpayer's procedural remedy is governed strictly by Section 195.** That is, in case of whole of partial denial of the protest, of inaction by the local treasurer, the taxpayer's only recourse is to appeal the assessment with the court of competent jurisdiction. ...
>
> (b) Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (Section 195, LGC) and at the same time seeking a refund of the taxes. ...[49]

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(a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

[48] G.R. No. 196681, 27 June 2018.

[49] Emphasis and underscoring supplied.

The Supreme Court made the same pronouncement in *International Container Terminal Services, Inc. vs. City of Manila* ("*International Container* case"),[54] to wit:

> **If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the Local Government Code. Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment.** If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal.[55]

Both the *Cosmos Bottling* and *International Container* cases are straightforward. In protesting an assessment of local tax, the taxpayer may opt to pay under protest or proceed without payment of the assessed tax under Section 195 of the LGC.

Indeed, Section 7B.14(c) of the RMRC runs counter to the substantive provision of Section 195 of the LGC when it requires the payment of tax as a condition *sine qua non* for a valid protest of a local business tax assessment. Thus, Section 7B.14 (c) of the RMRC must be set aside, for it traverses beyond the provision of its enabling law, *i.e.*, the LGC.

For an ordinance to be valid, it must not only be within the corporate powers of the LGU to enact and be passed according to the procedure prescribed by law, it must also, among others, not contravene the Constitution or any statute.[56] The requirement that the enactment must not violate existing law gives stress to the precept that local government units are able to legislate only by virtue of their derivative legislative power, a delegation of legislative power from the national legislature.[57] The delegate cannot be superior to the principal or exercise powers higher than the latter.[58] Simply put, an ordinance that is incompatible with any existing law or statute is *ultra vires*, hence, null and void.[59]

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[54] G.R. No. 185622, 17 October 2018.
[55] Emphasis and underscoring supplied.
[56] Social Justice Society vs. Atienza, Jr., G.R. No. 156052 (Resolution), 13 February 2008, 568 SCRA 658-724.
[57] City of Manila vs. Laguio, Jr., G.R. No. 118127, 12 April 2005, 495 SCRA 289-338.
[58] Magtajas vs. Pryce Properties Corp., Inc., G.R. No. 111097, 20 July 1994, 304 SCRA 428-454.
[59] Manila Electric Co. vs. City of Muntinlupa, G.R. No. 198529, 9 February 2021.

This has been eloquently expounded in *Batangas CATV, Inc. vs. Court of Appeals.*[56] We quote:

> It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law. In the language of Justice Isagani Cruz (ret.), this Court, in *Magtajas vs. Pryce Properties Corp., Inc.*, ruled that:
>
> > "The rationale of the requirement that the ordinances should not contravene a statute is obvious. Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.
> >
> > 'Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on the right so far as to the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.'
> >
> > This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that

[56] G.R. No. 138810, 29 September 2004, 482 SCRA 544-571.

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> policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax, which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it."[61]

Considering the above discussions, We rule that payment under protest is not required for the validity of respondent's protest against the subject tax assessment.

Finally, the Court sees no need to address and discuss the other issues and arguments advanced by the parties.

WHEREFORE, in light of the foregoing, the instant Petition for Review is **DENIED** for lack of merit.

Accordingly, the *Decision* dated 26 December 2019 and the *Order* dated 25 January 2021 of the Regional Trial Court of Makati City, Branch 139 in Civil Case No. 15-315, are **AFFIRMED**.

SO ORDERED.

LANEE CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[61] Citations omitted.

ATTESTATION

I attest 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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, 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