CTA Form No. 8

23-000517-0013

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA AC NO. 307

TAKENAKA CORPORATION-PHILIPPINE BRANCH,
Petitioner,

- versus -

CITY OF MAKATI AND HON. JESUSA E. CUNETA, IN HER OFFICIAL CAPACITY AS THE CITY TREASURER OF MAKATI CITY,
Respondents.

NOTICE OF DECISION

To:

OFFICE OF THE CITY ATTORNEY
(Counsel for the Respondents)
18th Florr, Law Dept., Makati City Hall
Makati City, Metro Manila

ARANAS CRUZ ARANETA PARKER & FAUSTINO LAW OFFICES
Unit 203, Le Metropole Building
155 H.V. Dela Costa corner Tordesillas Streets
Salcedo Village, 1227 Makati City

HON. RICARDO A. MOLDEZ II
Presiding Justice
THRU: BRANCH CLERK OF COURT
National Capital Judicial Region
Regional Trial Court Branch 235
Makati City

GREETINGS:

You are hereby notified by these presents that on **June 3, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 4, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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TAKENAKA CORPORATION – PHILIPPINE BRANCH,
Petitioner,

- versus -

CITY OF MAKATI AND HON. JESUSA E. CUNETA, IN HER OFFICIAL CAPACITY AS THE CITY TREASURER OF MAKATI CITY,
Respondents.

CTA AC NO. 307

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
JUN 03 2025 4:00PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Takenaka Corporation – Philippine Branch (**petitioner**) pursuant to Section 3(a)(3)[2], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the reversal and setting aside of the Decision dated 26 July 2023[3] (**assailed Decision**) and Order dated 28 September 2023[4] (**assailed Order**), both rendered by the Regional Trial Court (**RTC**) of the City of Makati, Branch 235 (**court *a quo***), in Case No. R-MKT-20-

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1 Filed on 31 October 2023, Division Docket, pp. 5-67.

2 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over 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[.]

3 Penned by Presiding Judge Ricardo A. Moldez II, RTC Records, Folder 3, pp. 145-153.

4 Id., p. 202.

01163-SC, entitled *Takenaka Corporation – Philippine Branch v. City of Makati and Jesusa E. Cuneta, in her capacity as City Treasurer of Makati City.*

The assailed Decision[5] dismissed petitioner's judicial protest against respondents' deficiency local business tax (**LBT**) assessments for the taxable years (**TYs**) 2013 to 2017 in the aggregate amount of ₱25,767,396.84, inclusive of 25% surcharge and interest. On the other hand, the assailed Order[6] denied the Motion for Reconsideration[7] (**MR**) thereto filed by petitioner.

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under the laws of Japan[8], with principal office located at 18th floor of The Enterprise Center Tower II, Ayala Avenue, San Lorenzo Village, Makati City.[9] Its primary purpose is to engage in and undertake, either alone or jointly with others, the construction, operation, and/or maintenance of infrastructure, irrigation, power, tourism, and other projects under any of the schemes allowed under the Build-Operate-Transfer (**BOT**) law, as well as foreign funded projects covered by bilateral agreements between the government of the Philippines and foreign governments/financial institutions, as well as local construction projects.[10] Petitioner may be served with summons and other judicial processes through its counsel Aranas Cruz Araneta Parker & Faustino Law offices with address at Unit 203 Le Metropole Building, 155 H.V. Dela Costa Street corner Tordesillas Street, Salcedo Village, Makati City.[11]

Respondent City of Makati, on the other hand, is a local government unit (**LGU**) created by law and vested with authority to impose taxes and fees within its jurisdiction in accordance with the Local Government Code (**LGC**) of 1991. Meanwhile, respondent Hon. Jesusa E. Cuneta is the incumbent City Treasurer of Makati City and

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5 Supra at note 3.
6 Supra at note 4.
7 RTC Records, Folder 3, pp. 154-180.
8 See Amended Securities and Exchange Commission (**SEC**) License, id. Folder 1, p. 178.
9 See Certificate of Registration, id., p. 187.
10 Supra at note 8.
11 Paragraph 12, Petition for Review, Division Docket, p. 9.

impleaded as such as the authorizing officer who issued the Notice of Assessment (**NOA**) dated 11 April 2019.[12] The NOA assessed petitioner for the alleged deficiency LBT. Respondents[13] may be served summons, notices, orders and other processes of this Court through the Office of the Makati City Attorney, 18th Floor Law Department, Makati City Hall, J.P. Rizal Street, Barangay Poblacion, Makati City, Metro Manila.[14]

FACTS OF THE CASE

In the instant petition, petitioner alleges the following antecedent facts:

> ...
>
> 7. On 31 March 2000, [p]etitioner entered into a contract with Philippine International Air Terminals Co. ("PIATCO") to construct the Ninoy Aquino International Airport Terminal 3 ("NAIA 3"). For this purpose, Petitioner established an office in Andrews Avenue corner Salas Street, Villamor Airbase, Pasay City (project location) and registered the same with the Local Government of Pasay City.
>
> 8. Since the start of [p]etitioner's operation, [p]etitioner has used the percentage of completion method of accounting for purposes of recognizing revenue for financial and tax reporting. This was also the accounting method used for LBT purposes.
>
> 9. Accordingly, in the years 2001, 2002, and 2003, [p]etitioner recognized and reported revenues in its Audited Financial Statements ("AFS") even if the actual payment has not yet been made by PIATCO. The same revenues were subjected to LBT and allocated between Pasay and Makati in accordance with the law. ...
>
> 10. In 2004, there arose uncertainty in the collection of [p]etitioner's 2001, 2002, and 2003 receivables from PIATCO because of the on-going dispute between PIATCO and the Government of the Republic of the Philippines ("GRP"). As such, [p]etitioner set up a 100% provision for allowance on impairment of accounts receivable corresponding to revenues recognized in 2001, 2002, and 2003. ...

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12 Exhibit "H", RTC Records, Folder I, pp. 246-247.

13 Respondent City of Makati and respondent Hon. Jesusa E. Cuneta as City Treasurer are collectively referred to as respondents.

14 Paragraphs 13-15, Petition for Review, Division Docket, p. 9.

> 11. To enforce its rights, however, [p]etitioner filed a collection suit before the High Court of Justice, Queen's Bench Division, Technology and Construction Court of London ("High Court") against PIATCO for the latter's failure to pay despite continued construction of the NAIA 3. The High Court subsequently issued a Judgment in favor of [p]etitioner.
>
> 12. Thereafter, [p]etitioner filed a case before the Makati Regional Trial Court ("RTC-Makati") to have the Judgment of the High Court be enforced against PIATCO. On 6 September 2010, RTC-Makati issued a Decision recognizing the High Court's Judgment, thereby directing PIATCO to pay [p]etitioner. RTC-Makati's Decision was appealed up to the Supreme Court, which affirmed RTC-Makati's Decision in a Resolution dated 19 April 2016.
>
> 13. Due to the Supreme Court's favorable Decision, the previously recorded impairment of [p]etitioner's 2001, 2002, and 2003 receivables from PIATCO was reversed in its books of accounts and reported in its 2016 AFS as part of the other operating income account. As discussed above, [p]etitioner uses the percentage of completion method of accounting, that is why the corresponding revenues of the said receivables were already recognized in the years 2001, 2002, and 2003 and were already reported in [p]etitioner's AFS under the contract revenue account and were thus already subjected to national and local taxes in 2001, 2002, and 2003.[15]
>
> ...

Relative to the instant case, on 12 November 2018, petitioner received[16] a Letter of Authority (**LOA**) No. LA-2018-0272 (dated 05 November 2018)[17] which authorized Maureen N. Macadaeg (**Macadaeg**) and Nestor R. Guzman (**Guzman**) to examine the former's books of accounts and other financial records to assess the correct taxes for the period 01 January 2013 to 31 December 2017, or TYs 2013 to 2017.

Thereafter, or on 12 April 2019, petitioner received the NOA dated 11 April 2019, demanding the payment of the deficiency LBT for TYs 2013 to 2017 in the total amount of ₱25,767,396.84. The NOA's worksheet[18] shows the following computation:

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15 Petition for Review, RTC Records, Folder 1, pp. 3-4.

16 Received by Ma. Eloida Tampus. See written name, date and signature in the lower portion of the Letter of Authority.

17 Exhibit "2", RTC Records, Folder 1, p. 341.

18 Supra at note 12, p. 247.

Covering Period	Taxable Year	Particulars	Gross Sales				Tax Due	Tax Paid	Variance	25% surcharge	2% Monthly Interest		Total
			per Audit	Declared	In Other Localities	Should be Declared					Rate	Amount	
2012	2013	Specialty Contractor	-	-	66,300.00	-	-	-	-	-	0%	-	-
2013	2014	Specialty Contractor	117,083,494.00	-	51,000.00	117,032,494.00	877,743.71	-	877,743.71	219,435.93	72%	631,975.47	1,729,155.10
2014	2015	Specialty Contractor	1,082,672,792.00	250,611,835.65	584,760,949.84	497,911,842.16	3,734,338.82	1,879,588.76	1,854,750.06	463,687.51	72%	1,335,420.04	3,653,857.61
2015	2016	Specialty Contractor	471,875,960.00	270,122,573.00	116,661,767.87	355,214,192.13	2,664,106.44	2,025,919.30	638,187.14	159,546.79	72%	459,494.74	1,257,228.67
2016	2017	Specialty Contractor	1,487,128,795.00	23,439,070.20	54,691,163.80	1,432,437,631.20	10,743,282.23	175,793.03	10,567,489.20	2,641,872.30	56%	5,917,793.95	19,127,155.46
									13,938,170.11	**3,484,542.53**		**8,344,684.21**	**25,767,396.84**

The deficiency LBT assessments were based on petitioner's alleged undeclared gross sales as specialty contractor for TYs 2013 to 2017 which were not subjected to any taxes. The NOA further states that should petitioner intend to file a protest to the assessments, it should pay the subject taxes first.

Aggrieved, on 07 June 2019, petitioner filed with the office of respondent City Treasurer of Makati a written Protest[19] against the NOA, praying for the cancellation and withdrawal of the deficiency LBT assessments on the following grounds: (1) the proper *situs* of sales allocation for LBT between the two (2) LGUs was not complied; (2) the reversal of the previously recorded impairment of the income should not be subjected to LBT; and (3) the payment under protest violates petitioner's right to due process.

In response to petitioner's Protest, respondents issued an Order of Payment dated 05 September 2019[20] demanding the payment of the deficiency taxes (for TYs 2013-2017), in the total amount of ₱5,996,915.41. On 13 September 2019, petitioner paid the said amount as evidenced by official receipt (**OR**) No. MKTCF4148731.[21]

On 07 February 2020, respondents wrote a letter to petitioner acknowledging the payment of ₱5,996,915.41 but still, subsequently, demanding the payment of the remaining balance of the assessed

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19 Exhibit "K", RTC Records, Folder 1, pp. 250-260.
20 Exhibit "L", id., p. 279.
21 Exhibit "M", id., p. 280.

deficiency LBT (as stated in the NOA) within ten (10) days from notice thereof.[22]

On 12 March 2020, petitioner filed a Petition for Review[23] with the RTC of Makati, pursuant to Section 195[24] of the LGC of 1991. Initially, the case was raffled to RTC Branch 61 of Presiding Judge Jonathan Honorato D. Lock (**Judge Lock**). Thereafter, respondents were directed to file their comment.[25] On 04 November 2020, the latter filed their Comment/Opposition.[26]

As petitioner presumed that the said Comment/Opposition was belatedly filed, it moved for respondents to be declared in default.[27] In the *interim*, Judge Lock voluntarily inhibited himself from the case since he is a distant relative of one of petitioner's counsels.[28] Consequently, the case was re-raffled to the court *a quo* that denied petitioner's prior motion to declare respondents in default.[29] The case was then scheduled for pre-trial on 04 March 2021.[30]

On 01 March 2021, petitioner filed its Pre-Trial Brief[31] while respondents filed their Pre-Trial Brief[32] on 03 March 2021. During the Pre-Trial Conference, petitioner manifested that it has yet to receive respondents' pre-trial brief and that it intended to submit additional judicial affidavits of its witnesses. Thus, the court *a quo* reset the

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22 Exhibit "N", id., p. 281.

23 Id., pp. 1-73, including attached annexes.

24 **SEC. 195.** *Protest of Assessment*. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

25 Order dated 10 July 2020, RTC Records, Folder 1, p. 76.

26 Id., pp. 77-82.

27 Motion to Declare Respondents in Default filed on 23 November 2020, id., pp. 86-95.

28 See Order dated 21 December 2020, id., pp. 107-109.

29 See Order dated 10 February 2021, id., pp. 112-113.

30 Id.

31 Id., pp. 116-124.

32 Id., pp. 320-325.

pre-trial proper to 22 April 2021.[33] After several cancellations[34], the pre-trial proper eventually proceeded on 03 March 2022.[35] Consequently, the pre-trial was terminated and the Pre-Trial Order was issued therefor.[36] In addition, the case was referred for mediation.[37] However, the parties failed to reach any amicable agreement.[38]

Later, petitioner moved for the amendment of the Pre-Trial Order to include additional witnesses.[39] The court *a quo* granted[40] the motion and accordingly issued the Amended Pre-Trial Order.[41]

In the trial that ensued, petitioner presented the following witnesses, namely: (1) Ma. Eloida M. Tampus (**Tampus**); (2) Masanobu Naoi (**Naoi**); and (3) Allan D. Azurin (**Azurin**).

Tampus declared that she is petitioner's accountant with the responsibility of supervising tax compliance and safekeeping the relevant documents. She testified that respondent City of Makati and Pasay City issued petitioner's business permits and Permit to Operate for the years 2013 to 2017. She further opined that this indicates petitioner's compliance with the LGU requirements and suggests that it had duly paid the corresponding taxes, fees, and charges. She also identified petitioner's Protest (that contested the subject NOA).[42] In her Supplemental Judicial Affidavit, Tampus elaborated that the reversed doubtful account should have not been subjected again to LBT.[43]

Naoi, on the other hand, testified that he is petitioner's general manager and tasked to collect the outstanding balance from the NAIA 3

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33 See Order dated 04 March 2021, id., pp. 327-328.

34 See Amended Constancia dated 22 April 2021, id., p. 333; Order dated 22 July 2021, id., p. 361; Order dated 09 September 2021, id., p. 365; Order dated 24 September 2021, id., p. 366; Order dated 03 November 2021, id., Folder 2, pp. 217-218; Order dated 04 January 2022, id., p. 229; and Order dated 14 January 2022, id., p. 230.

35 See Minutes of the Pre-Trial, id., Folder 2, pp. 233-235.

36 Id., pp. 238-244.

37 See Order dated 03 March 2022, id., pp. 236-237.

38 See Mediator's Report, id., p. 245.

39 See Omnibus Motion [1. Motion to Amend Pre-Trial Order dated 3 March 2022; and 2. Motion to Add Additional Witness], id., pp. 246-251; and Motion for Partial Reconsideration [Re: Order dated 24 March 2022], id., pp. 254-263.

40 See Order dated 24 March 2022, id., pp. 252-253; Order dated 20 April 2022, id., p. 264.

41 Id., pp. 265-271.

42 See Judicial Affidavit of Ms. Ma. Eloida Tampus, Exhibit "P", id., Folder 1, pp. 125-136.

43 See Supplemental Judicial Affidavit of Ms. Ma. Eloida M. Tampus, Exhibit "Q", id, Folder 2, pp. 220-223.

project. He explained that petitioner previously set up a doubtful account for the seemingly uncollectible balance from the construction of the NAIA 3 project (due to the ongoing dispute with the Philippine government). However, in 2016, a decision was rendered which entitled petitioner to collect the said balance. Thus, the latter reversed the doubtful account and recognized the same as its "Other Income" (for the said year). Unfortunately, respondents again assessed the said income for LBT despite being imposed with the same taxes in 2001, 2002 and 2003.[44]

Azurin was the last to take the witness stand. To abbreviate the proceedings, the parties stipulated: (1) on the authenticity and genuineness of the certifications issued by the City of Pasay; (2) that with the issuance of the said certifications, it is implied that petitioner duly paid its taxes in the previous years (particularly for 2002 and 2003); and (3) petitioner duly submitted its tax returns and Audited Financial Statement (**AFS**) to the City of Pasay when it retired its business operations.[45]

After the conclusion of the witnesses' testimonies, on 29 September 2022, petitioner filed its "Formal Offer of Evidence"[46] (**FOE**). Over respondents' objections[47], and save for Azurin's identification card, authorization letter (in his favor) and Judicial Affidavit, the court *a quo* admitted the exhibits.[48]

On the other hand, respondents presented Macadaeg as their sole witness.[49] On the witness stand, Macadaeg testified that the NOA was issued due to a discrepancy between petitioner's declared gross sales and respondents' gross sales *per* audit. Upon petitioner's receipt of the NOA, it filed its Protest thereto. However, respondents denied the same.[50]

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44 See Judicial Affidavit of Mr. Masanobu Naoi (In the Form of Questions and Answers as Part of his Testimony on Direct Examination), Exhibit "R", id., pp. 7-23.
45 See Order dated 08 September 2022, id., Folder 3, pp. 43-45.
46 Id., pp. 45-62.
47 Id., pp. 65-69.
48 See Order dated 10 October 2022, id., p. 71.
49 See Order dated 19 January 2023, id., p. 75.
50 See Judicial Affidavit of Maureen N. Macadaeg, Exhibit "1", id., Folder 1, pp. 334-338.

With no other witnesses to present, on 20 January 2023, respondents filed their FOE.[51] After petitioner filed its Comment/ Opposition[52], the court *a quo* admitted the offered exhibits.[53]

Thereafter, the court *a quo* ordered the parties to file their respective memoranda, after which the case shall be submitted for decision.[54] Hence, on 27 April 2023, both parties filed their Memorandum.[55]

On 26 July 2023, the court *a quo* rendered its Decision denying petitioner's Petition for Review for lack of merit. The dispositive portion reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In so ruling, the court *a quo* explained that tax assessments made by examiners enjoy a presumption of correctness and regularity. Any person who claims otherwise has the burden of proving it. Here, since petitioner assailed the NOA and alleged that it already paid the LBT for the revenues recognized in years 2001, 2002 and 2003 (even without the actual collection thereof), it has the burden of proof to show it. However, the court *a quo* found that it failed to present the relevant ORs as its evidence of payment, for both respondent City of Makati and City of Pasay. Although it was able to present a Certification (dated 16 April 2019)[56] which showed the declared gross receipts and taxes paid thereon from the City of Pasay, the same only verified the fact of payment and the amount thereof. Nonetheless, these do not clearly establish its claim of payment of LBT, particularly with respondent City of Makati. Finding no concrete evidence of payment, the court *a quo* denied petitioner's prayer for the cancellation of the subject NOA.

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[51] Id., Folder 3, pp. 76-79.
[52] See Comment/Opposition [Re: Formal Offer of Evidence dated 20 January 2023], id., pp. 81-87.
[53] See Order dated 27 February 2023, id., p. 90.
[54] See Order dated 27 March 2023, id., pp. 100-101.
[55] See Petitioner's Memorandum, id., pp. 102-132; Respondent's Memorandum, id., pp. 136-142.
[56] Exhibit "I", id., Folder 1, p. 248.

On 15 September 2023, petitioner filed its MR[57] of the assailed Decision. Unconvinced, the court *a quo* denied the same in its similarly assailed Order dated 28 September 2023.[58]

PROCEEDINGS BEFORE THIS COURT

On 31 October 2023, petitioner filed the present Petition for Review.[59] It was raffled to the First Division and docketed as CTA AC No. 307.

In this petition, petitioner asks this Court to: (1) reverse and set aside the court *a quo*'s assailed Decision[60] and Order[61] in Case No. R-MKT-20-01163-SC, arguing that the subject deficiency LBT assessments for TYs 2013 to 2017 in the total amount of ₱25,767,396.84, inclusive of surcharge and interest, were not valid; (2) render judgment declaring the NOA[62] null and void, thus ordering respondents to withdraw the collection of the subject deficiency LBT assessments; and (3) rule that petitioner is not liable for the alleged deficiency LBT for TYs 2013 to 2017.

In a Minute Resolution dated 05 January 2024, the Court directed petitioner to submit the original copy of Naoi's Special Power of Attorney (**SPA**) within ten (10) days from receipt thereof.[63] Immediately, petitioner filed its compliance[64] and submitted a certified true copy of Naoi's SPA[65] in *lieu* of the original.

After noting the submission, the First Division ordered respondents to file a comment to the instant petition[66] and the court *a quo*'s Branch Clerk of Court to elevate the entire original records of Case No. R-MKT-20-01163-SC, both within ten (10) days from notice.[67]

57 Supra at note 7.
58 Supra at note 4.
59 Supra at note 1.
60 Supra at note 3.
61 Supra at note 4.
62 Supra at note 12.
63 Division Docket, p. 526.
64 Id., pp. 527-530.
65 Id., pp. 533-535.
66 See Minute Resolution dated 27 February 2024, id., p. 538.
67 See Letter dated 05 March 2024, id., p. 539.

In compliance with the Court's directive, the court *a quo*'s Branch Clerk of Court forwarded the entire records of Case No. R-MKT-20-01163-SC on 13 March 2024. The submission included four (4) folders, a Table of Contents, a list of exhibits for petitioner, a Certificate of Correctness and Completeness, and the certified true copies of the: (***i***) Minutes of Hearing of various dates; (***ii***) the assailed Decision dated 26 July 2023; and (***iii***) the assailed Order dated 28 September 2023.[68]

The Court noted the above transmittal[69] and also respondents' failure to comment on the instant Petition.[70] Subsequently, it directed the parties to file their respective memoranda.[71]

On 24 May 2024, petitioner filed its Memorandum[72] (through private courier), while respondents filed their Memorandum[73] on 27 May 2024. Finally, in a Minute Resolution dated 03 June 2024[74], the instant case was submitted for decision.

ISSUE

The sole issue submitted for this Court's determination is —

> WHETHER THE COURT *A QUO* ERRED IN RENDERING THE ASSAILED DECISION AND ORDER WHICH DENIED PETITIONER TAKENAKA CORPORATION - PHILIPPINE BRANCH'S PRIOR PETITION FOR REVIEW THAT SOUGHT FOR THE CANCELLATION OF THE PAYMENT OF THE ALLEGED DEFICIENCY LOCAL BUSINESS TAXES ASSESSED FOR TAXABLE YEARS 2013 TO 2017.[75]

ARGUMENTS

Petitioner mainly argues that it already paid the LBT for the revenues reported and recognized in the years 2001, 2002 and 2003. It

68 See Transmittal of Case Records, id., pp. 541-542, and the documents, id., pp. 543-568.
69 See Minute Resolution dated 18 March 2024, id., p. 569.
70 See Records Verification dated 19 March 2024, id., p. 570.
71 See Resolution dated 08 April 2024, id., p. 572.
72 Id., pp. 577-637.
73 Id., pp. 641-652.
74 Id., p. 654.
75 See Issue in the Petition for Review, supra at note 1, p. 33.

explains that it follows the percentage of completion method of accounting which it has consistently applied for financial reporting and taxation for the AFS of the years ended 31 December 2002[76] and 31 December 2003.[77] Accordingly, the incomes of ₱2,230,726,780.00[78], ₱2,421,183,789.00[79] and ₱219,917,721.00[80] were already recognized in the said AFSs although actual payments had yet to be made. Hence, these incomes were allocated between the Cities of Pasay and Makati, and were already assessed and imposed with LBT for the said years.

Petitioner adds that due to the uncertainty of collection from Philippine International Air Terminals Co. (**PIATCO**), in its Annual Income Tax Return (**ITR**) for 2004[81], a total amount of ₱1,476,161,592.00[82] (corresponding to the revenues recognized in 2001, 2002 and 2003) were declared as doubtful or impaired accounts. However, when a judgment was rendered in its favor, it reversed the doubtful account and recognized in the AFS for the year ended 31 December 2016[83] an amount of ₱1,301,889,271[84] as "Other Operating Income, net", which is now the issue in the present controversy since the said income was again imposed with LBT.

Petitioner highlights that, had it not paid all the required taxes for the preceding years, including the years 2001, 2002 and 2003 it will not be able to secure yearly business permits[85] from the respondent City of Makati and Permit to Operate[86] from the City of Pasay. Moreover, petitioner claims that the Certifications dated 16 April 2019[87] and 30 May 2019[88], respectively, that the City of Pasay issued prove sufficiently that it settled all of its tax obligations, otherwise the City of Pasay would not have issued them. According to petitioner, the supposed inability of the City of Pasay to furnish and produce the ORs for the years 2001, 2002 and 2003 is beyond its control, hence it should not be prejudiced by it.

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76 Exhibit "E", RTC Records, Folder 1, pp. 198-217.
77 Exhibit "F", id., pp. 218-243.
78 See Contract Revenues, Exhibit "E", id., p. 202.
79 Id.
80 See Contract Revenues, Exhibit "F" id., p. 222.
81 Exhibit "G", id., pp. 244-245.
82 See line 114, Provision for Doubtful Account, id., p. 245.
83 Exhibit "O", id., pp. 282-319.
84 See Note 14, id., p. 300.
85 Exhibit "C" to "C-4", id., pp. 188-192.
86 Exhibit "D" to "D-4", id., pp. 193-197.
87 Supra at note 56.
88 Exhibit "J", RTC Records, Folder I, p. 249.

As to the absence of ORs to prove its payment of the LBT, petitioner insists that it is not obligated to retain receipts in view of the retention period prescribed in Revenue Regulations (**RR**) No. 17-2013[89], Revenue Memorandum Circular (**RMC**) No. 29-2019[90] and Section 4A.22[91] of the Revised Makati Revenue Code (**RMRC**). Under the said issuances, it only needs to retain the documents for a period of ten (10) years (under RR No. 17-2013 and RMC No. 29-2019) and five (5) years (under the RMRC), respectively. As the ORs for the years 2001, 2002 and 2003 are already beyond the retention periods, it could not be expected to still produce them (under the duty to retain them had long ceased in the first place).

Moreover, petitioner underscores that the documents it submitted, *e.g.* AFSs, Annual ITR, business permits, Permit to Operate, and certifications, are all public documents which enjoy presumption of regularity and are *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of their existence and due execution. In addition, respondents failed to refute them during trial. Thus, these documents should be given probative value and be deemed sufficient to prove petitioner's claim of payment of LBT for the years 2001, 2002 and 2003.

Petitioner also assails the validity of the NOA for the following reasons below.

First, the assessment contained therein disregarded the proper *situs* of sales allocation of LBT between the two (2) LGUs as mandated in Article 2, Section 150[92] of the LGC of 1991 and Section

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89 Preservation of Books of Accounts and Other Accounting Records.

90 Keeping, Maintaining and Registration of Books of Accounts.

91 **SEC.4A.22. True Status of Business; Books being Destroyed or Hidden to Subvert Examination.**

92 **Sec. 150.** *Situs of the Tax.* – …

…

(b) The following sales allocation shall apply to manufacturers, assemblers, contractors, producers, and exporters with factories, project offices, plants, and plantations in the pursuit of their business:

(1) Thirty percent (30%) of all sales recorded in the principal office shall be taxable by the city or municipality where the principal office is located; and

(2) Seventy percent (70%) of all sales recorded in the principal office shall be taxable by the city or municipality where the factory, project office, plant, or plantation is located.

(c) In case of a plantation located at a place other than the place where the factory is located, said seventy percent (70%) mentioned in subparagraph (b) of subsection (2) above shall be divided as follows:

3A.05(a)[93] of the RMRC. It explains that its principal office is in Makati City while the revenue in question is generated in Pasay City. Hence, assuming that the NOA is valid, respondents are only entitled to collect LBT based on the 30% of the gross sales.

Second, respondents committed an error in the computation of LBT since they based the assessment on the gross sales or receipts and the reversal of the previously recorded impairment, write-off of advances from project owners, reversal of portion of provision for constructive obligation and other income. In contrast, Section 143(e)[94] in relation to Section 131(n)[95] of the LGC of 1991, states that LBT should be based only on gross sales or receipts for the preceding year. Nowhere in the said provisions include dividend income, interest income, rental income, or gain from sale of fixed assets in the determination of gross sales or receipts. Hence, in this case, the reversal of the previously recorded impairment and the write-off of advances from project owners, which were already recognized as revenues in the prior years of 2001, 2002 and 2003, should be excluded in the basis for computation of the LBT. Petitioner declares that doing so would inevitably result in unlawful double taxation.

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(1) Sixty percent (60%) to the city or municipality where the factory is located; and
(2) Forty percent (40%) to the city or municipality where the plantation is located.

93 **SEC. 3A.05. Situs of the tax** –
...
Sales Allocation
(1) All sales made by a branch or sales office or warehouse located in the city shall be taxable herein.
(2) In case the principal office and the factory are located in this city, all sales recorded in the principal office and those on the other localities where there is no branch or sales office or warehouses shall be recorded in the principal office and taxable by the city.
(3) (i) If the principal office is located in the city and the factory, project office plant or plantation is located in another locality, thirty percent (30%) of the sales recorded in the principal office shall be taxable by the City of Makati.
(ii) If the factory, project office, plant or plantation is located in this city and the principal office is located in another locality, seventy percent (70%) of the sales recorded in this city shall be taxable herein.

94 **Sec. 143**. *Tax on Business*. - The municipality may impose taxes on the following businesses:
...
(e) On contractors and other independent contractors, in accordance with the following schedule:

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

95 **Sec. 131**. *Definition of Terms*. - When used in this Title, the term:
...
(n) "Gross Sales or Receipts" include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT)[.]

Third, the requirement of payment under protest under the RMRC is directly violative of Section 195[96] of the LGC of 1991 as the latter provision does not require payment before filing the protest. Citing *City of Manila et al. v. Cosmos Bottling Corporation*[97] (**Cosmos Bottling**), petitioner restates that deficiency LBT assessment may be protested without the necessity of payment. Thus, the RMRC's requirement of payment under protest should be disregarded for being contrary to the LGC of 1991.

Petitioner also stresses that after it filed its protest, respondent issued an Order of Payment indicating the amount of ₱5,996,915.41 as deficiency taxes for TYs 2013-2017. It then deemed the said Order of Payment as the full settlement for the said tax assessments.

Lastly, petitioner asserts that in the letter dated 07 February 2020 which denied its Protest, apart from demanding payment, respondent allegedly failed to specify the nature and legal basis of the deficiency tax assessments. Hence, it must be declared null and void.

Respondents, on the other hand, maintain that petitioner failed to file a valid protest. They counter-argue that Section 195 of the LGC of 1991 should be read in conjunction with Section 7B.14(c)[98] of the RMRC which mandates the payment of the alleged deficiency tax before the protest may be entertained. Thus, for failure to pay the tax before the lapse of the sixty (60) day period, the assessment became final, executory and unappealable.

Respondents also maintain that despite petitioner's allegation that it already paid the LBT for the revenues recognized in 2001, 2002 and 2003, the latter failed to present the relevant ORs of the said payment for respondent City of Makati and City of Pasay. In fact, petitioner admitted the unavailability of the said ORs and its inability to produce them. Thus, respondents proceeded with the assessments of

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96 Supra at note 24.

97 G.R. No. 196681, 27 June 2018.

98 **SEC. 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.

the deficiency LBT for petitioner's failure to prove the alleged prior payments.

Respondents also contend that the Certifications from the City of Pasay merely imply that local taxes had been paid in the said jurisdiction. However, these do not prove payment of taxes for respondent City of Makati's assessments of petitioner.

RULING OF THE COURT

Before the Court proceeds to resolve the merits of the case, the Court finds it propitious to first discuss whether it has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS (CTA) HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

The Court of Tax Appeals (**CTA**), being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction.[99] The jurisdiction of the CTA regarding local tax cases is provided under Section 7(a)(3) of Republic Act (**RA**) No. 1125[100], as amended by RA 9282[101] and RA 9503[102], which provides:

> ...
> **SEC. 7.** *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
> ...

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99 *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, 12 March 2014.

100 AN ACT CREATING THE COURT OF TAX APPEALS.

101 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

102 AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> (3) **Decisions, orders or resolutions of the Regional Trial Courts in local tax cases** originally decided or resolved by them **in the exercise of their original** or appellate **jurisdiction**[.][103]
>
> ...

Similarly, Section 3(a)(3) of Rule 4 of the RRCTA states:

> ...
>
> **SEC. 3.** *Cases within the Jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> (a) Exclusive original over 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**[.][104]
>
> ...

As to the reckoning point for filing an appeal before this Court in local tax cases decided by RTCs, Section 11, in relation to the afore-cited Section 7(a)(3) of RA 1125[105], as amended by RA 9282[106] and RA 9503[107], pertinently states:

> ...
>
> **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 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 Section 7(a)(2) herein.

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[103] Emphasis supplied and italics in the original text.
[104] Emphasis supplied and italics in the original text.
[105] Supra at note 100.
[106] Supra at note 101.
[107] Supra at note 102.

> **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. A Division of the CTA shall hear the appeal: *Provided, however*, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.[108]
>
> ...

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action.[109] A court's lack of jurisdiction over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case as the court could not decide the case on the merits.[110]

In its Petition for Review, petitioner alleged that it received the assailed Order[111] on 29 September 2023.[112] Respondents did not dispute this assertion, thus leading as to render this fact incontrovertible. Counting thirty (30) days therefrom, petitioner had until 29 October 2023 to file its petition. However, as the latter date fell on a Sunday, and 30 October 2023, 01 and 02 November 2023 are special non-working holidays (in view of the *Barangay* and *Sangguniang Kabataan Elections*, All Saints' Day and All Souls' Day respectively), the counting of the last day shall not run until the next working day pursuant to Section 1[113], Rule

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108 Emphasis supplied and italics in the original text.

109 *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, 04 February 2015.

110 Id.

111 Supra at note 4.

112 See Paragraph 7, Timeliness of the Petition, Division Docket, p. 8.

113 Section 1. *How to compute time*. – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included.

22 of the 2019 Amendments to the Rules of Civil Procedure (**Rules of Court, as amended**). In this case, 03 November 2023. As the Petition for Review was timely filed on 31 October 2023[114], the Court has jurisdiction over the case.

Now, We proceed with a discussion of the substantive issues raised.

After an assiduous review of the case records and the parties' arguments, this Court finds the present petition partly meritorious.

PAYMENT UNDER PROTEST IS NOT A REQUIREMENT FOR FILING A PROTEST AGAINST LOCAL BUSINESS TAX ASSESSMENT.

Respondents submit that petitioner's Protest was not timely filed since it failed to pay the subject deficiency LBT pursuant to Section 7B.14(c)[115] of the RMRC.

We disagree.

The issue is not novel. In *Cosmos Bottling*[116], the Supreme Court has expressly ruled that Section 195 of the LGC of 1991 does not require payment under protest, to wit –

> ...
>
> 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**

If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

114 Supra at note 1.
115 Supra at note 98.
116 Supra at note 97; Emphasis supplied and italics in the original text.

is not necessarily hinged on the previous payment of the tax under protest.

...

Moreover, this Court has consistently held that municipal ordinances are inferior in status and subordinate to the laws of the state.[117] An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid.[118] 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.[119] 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.[120]

Section 7B.14(c) of the RMRC thus appears to be inconsistent with Section 195 of the LGC of 1991 as it requires payment of the subject deficiency taxes before a protest thereon may be accepted. Verily, Section 7B.14(c) of the RMRC is void for being inconsistent with Section 195 of the LGC of 1991.

PETITIONER FAILED TO PROVE ITS ALLEGATION THAT IT ALREADY PAID THE LOCAL BUSINESS TAXES THAT WERE ALLEGEDLY IMPOSED ON THE REVENUES RECOGNIZED FOR THE YEARS 2001, 2002 and 2003.

Petitioner vehemently contends that the subject deficiency LBT for 2016 was already paid since these pertain to the taxes imposed on the revenues recognized in 2001, 2002 and 2003 from its previous engagement with PIATCO in the construction of the NAIA airport in Pasay City. It explains that the said revenues were subsequently declared as impaired or doubtful accounts in 2004 for the possibility of non-collection. Subsequently, in view of the favorable foreign judgment as affirmed by the Supreme Court, in 2016, the said impaired account was

117 *Batangas CATV, Inc. v. The Court of Appeals, et al.*, G.R. No. 138810, 29 September 2004.
118 Id.
119 Id.
120 Id.

declared as petitioner's "Other Income". Notwithstanding, it was again imposed with LBT.

Respondents counter that petitioner failed to present the relevant ORs evidencing payment of the LBT.

We agree with respondents.

Section 1[121], Rule 31 of the Revised Rules on Evidence, as amended[122], states that the burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his or her claim or defense by the amount of evidence required by law. The same never shifts.[123]

Basic is the rule that a mere allegation is not evidence, and he or she who alleges has the burden of proving his or her allegation with the requisite quantum of evidence.[124] In civil cases, the burden of proof rests upon the plaintiff who must establish their case by preponderance of evidence.[125] Preponderance of evidence is the evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it.[126] It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its non-existence.[127]

In this case, petitioner is alleging the fact of payment of the LBT. Well-settled is the rule that receipt of payment is the best evidence of the fact of payment.[128] However, petitioner admittedly failed to submit the relevant ORs that would have proved the alleged payment of the LBT on the recognized revenues in 2001, 2002 and 2003. Although petitioner seeks refuge from the Bureau of Internal Revenue (**BIR**) issuances that allegedly had excused it from retaining copies of the ORs, the Court is nevertheless mandated to require substantiation of its claim

121 **Sec. 1**. *Burden of proof and burden of evidence.*
122 A.M. No. 19-08-15-SC.
123 See *People of the Philippines v. Orlando Ramos Ordiz*, G.R. No. 206767, 11 September 2019.
124 *Renato C. Tacis and Dionicio Lamis III v. Shields Security Services, Inc, et al.*, G.R. No. 234575, 07 July 2021.
125 *Spouses Eugenio Ponce and Emiliana Nerosa v. Jesus Aldanese*, G.R. No. 216587, 04 August 2021.
126 Id.
127 Id.
128 *Sugar Regulatory Administration v. Encarnacion B. Tormon, et al.*, G.R. No. 195640, 04 December 2012.

(specially that the burden of proof did not shift from petitioner to respondents).

Petitioner also attempted to prove payment by other pieces of evidence; unfortunately, these still fall short of the requirements to establish the fact of payment, as discussed below.

First, petitioner submitted the AFS for the years ended 31 December 2002[129], 31 December 2003[130], 31 December 2016[131] and the Annual ITR for 2004.[132] Conspicuously, there is no breakdown under "Taxes and Licenses" (both in the Statement of Income and Expenses[133], Note 11 for Cost of Contracts[134] and Note 12 for General and Administrative Expenses[135]) to show that LBT was actually imposed and paid on the revenues recognized for 2002 and 2003. Petitioner also did not show any computation or reconciliation between the recognized contract revenues and the alleged LBT payments. Further, petitioner omitted to present the AFS for the year ended 31 December 2001 to show the revenue recognized from the PIATCO engagement and the alleged LBT payment thereon.

Petitioner's claim that the revenue recognized in 2001, 2002 and 2003 were subsequently declared as impaired is similarly without mooring. Based on the AFS, petitioner recognized Contract Revenues in the amounts of ₱2,230,726,780.00, ₱2,421,183,789.00 and ₱219,917,721.00 for 2001, 2002 and 2003, respectively. However, the total of these amounts (₱4,871,828,290.00) does not match the amount that was set up as doubtful account of ₱1,476,161,592.00. Correspondingly, the reversed doubtful account declared as "Other Operating Income, net" of ₱1,301,889,271 is also not equal to the amount set up as doubtful account. Regardless of the obvious differences among the alleged amounts, petitioner failed to explain or establish that the recognized revenues were imposed with LBT in 2001, 2002 and 2003, and the same were again assessed for LBT in 2016. Based on these documents alone, the Court

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129 Supra at note 76.
130 Supra at note 77.
131 Supra at note 83.
132 Supra at note 81.
133 Exhibit "E", RTC Records, Folder 1, p. 202.
134 Exhibit "E", id., p. 215; and Exhibit "F", id., p. 239.
135 Exhibit "F", id., p. 240.

cannot accept petitioner's assertions that the NOA is invalid on the presumption that there is double taxation.

Second, the proffered business permits (from respondent City of Makati) for the years 2013 to 2017[136]; and the Permit to Operate (the City of Pasay) for the same years[137] could not conclusively prove petitioner's payment of the LBT for for 2001, 2002, and 2003. While it may be argued that an LGU may refuse to issue a mayor's permit to any person (natural or juridical) who fails to pay a required tax or fee for the conduct of the business[138], We are still unconvinced to deem that petitioner has indeed paid the LBT for the said years.

If petitioner were to insist that it could not have been issued with business permits for 2013-2017 if it did not pay for the recognized revenues imposed with LBT in 2001, 2002 and 2003, the Court could only retort that the issuance of the business permits does not operate to bar assessments for deficiency LBT for TYs 2013 to 2017.[139]

Contrary to petitioner's stance, the issuance of business permits does not guarantee that a taxpayer may not be subjected to an audit or investigation of his or her previous taxes. Section 194(a)[140] and (b)[141] of the LGC of 1991 are explicit in stating that local taxes, fees or charges may be assessed within five (5) years from the date they became due, or ten (10) years in case of fraud or intent to evade payment from the date of discovery. Should the taxpayer find the assessment/s unreasonable, he or she may protest the said assessment/s pursuant to Section 195[142] of the same law. Conspicuously, the said provisions do not provide that the issuance of business permits entitles a taxpayer to an exemption from the assessment of deficiency local taxes.

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136 Supra at note 85.
137 Supra at note 86.
138 See Sec. 4A.15., Article A, Chapter IV of the Revised Makati Revenue Code.
139 See Purpose in the Formal Offer of Evidence, RTC Records, Folder 3, pp. 46-49.
140 **Sec. 194**. *Periods of Assessment and Collection.* –
(a) 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: *Provided*, That. taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.
141 **Sec. 194**. *Periods of Assessment and Collection.* – ...
(b) 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 the fraud or intent to evade payment.
142 **Sec. 195**. *Protest of Assessment.*

Lastly, petitioner's argument that the Certifications[143] from the City of Pasay indicate that taxes that had been paid for 2001, 2002 and 2003, are only reliable to the extent that the said city is concerned. These have no relevance to the taxes that may have been paid in a different jurisdiction, *i.e.*, respondent City of Makati. Likewise, the Certifications do not indicate that petitioner had paid LBT on the revenues recognized in 2001, 2002 and 2003. They also do not prove that petitioner is not liable for the deficiency LBT for TYs 2013 to 2017. As discussed earlier, the Certifications could not be construed to have granted any exemption from the assessment that the LGU conducted pursuant to Section 194 of the LGC of 1991.

From the foregoing, there is thus no scintilla of evidence to prove the fact of payment of the supposed LBT for the revenues recognized in 2001, 2002 and 2003. Thus, having failed to discharge its burden of proof, We are constrained to deny relief based on such claim.

Nevertheless, despite the conclusions reached above, We cannot countenance the NOA in the instant case.

THE NOTICE OF ASSESSMENT (NOA) FAILED TO INDICATE THE SPECIFIC STATUTORY BASIS FOR WHICH THE ALLEGED LOCAL BUSINESS TAX (LBT) DEFICIENCY WAS BASED.

In the instant case, petitioner maintains that NOA is invalid for the following reasons: (1) failure to follow the *situs* of taxation; (2) using the wrong taxable base for the assessment; (3) requiring petitioner to pay under protest the subject deficiency taxes; and (4) failure of the letter dated 07 February 2020 to specify the factual and legal basis of the deficiency assessment. For an orderly disposition, We shall tackle the last argument.

As a general rule, courts can take cognizance only of the issues pleaded by the parties.[144] As an exception, matters not raised may also

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[143] Supra at notes 56 and 88.

[144] *Ramona T. Logronio, et al., v. Roberto Taleseo, et al.*, G.R. No. 134602, 06 August 1999.

be considered when they are closely related to the issues identified or are necessary and indispensable to their resolution.[145]

In this case, although petitioner did not assail the absence of the legal basis in the NOA but instead in the letter of 07 February 2020 (which demanded payment for the remaining balance of the alleged deficiency taxes), We deem it prudent and proper to also examine the NOA from where the subject deficiency LBT assessments arose.

As provided in Section 195 of the LGC of 1991, the local treasurer shall issue an assessment notice, which contains the nature of tax, fee, or charge and the amount of deficiency including the surcharges, interests, and penalties, *viz*:

> ...
> **SEC. 195.** *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a **notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties**. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.[146]
> ...

An examination of the subject NOA and the attached worksheet reveals that respondents did not expressly indicate, nor provide the specific legal basis for petitioner's deficiency LBT assessments. Similarly, respondents also did not clarify the factual and legal bases of the said

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[145] Id.
[146] Emphasis supplied and italics in the original text.

assessments in the letter dated 07 February 2020 which denied petitioner's protest.

In the oft-cited case of *Luz R. Yamane, in her capacity as the City Treasurer of Makati City v. BA Lepanto Condominium Corporation*[147] (**Yamane**), the Supreme Court has ruled categorically that absent the specific statutory basis of the tax liability, the deficiency assessment may be struck down for being violative of the taxpayer's due process. The relevant portions state –

> ...
> At no point has the City Treasurer been candid enough to inform the Corporation, the RTC, the Court of Appeals, or this Court for that matter, as to what exactly is the precise statutory basis under the Makati Revenue Code for the levying of the business tax on petitioner. We have examined all of the pleadings submitted by the City Treasurer in all the antecedent judicial proceedings, as well as in this present petition, and also the communications by the City Treasurer to the Corporation which form part of the record. **Nowhere therein is there any citation made by the City Treasurer of any provision of the Revenue Code which would serve as the legal authority for the collection of business taxes from condominiums in Makati.**
>
> Ostensibly, **the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax**. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. There may have been *prima facie* compliance with the requirement under Section 195. However in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax. **Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local Government Code alone. What determines tax liability is the tax ordinance, the Local**

[147] G.R. No. 154993, 25 October 2005; Citations omitted and emphasis supplied.

Government Code being the enabling law for the local legislative body.

...

An arduous scrutiny of the records yields that respondents indeed failed to cite the specific provision of the RMRC on which the deficiency taxes have been based.

It is noted that while respondents claimed that petitioner is liable for the deficiency taxes, fees and charges of ₱25,767,396.84 as shown in the NOA of 11 April 2019, the same is devoid of the exact provision of the RMRC on which the assessments were based. Apart from citing Section 7B.14(c) of the RMRC as the basis for payment under protest, there is no mention of the other provision to support the alleged deficiency taxes.

Additionally, the worksheet[148] that shows the computation of the alleged deficiency taxes does not also reflect the specific provision of the RMRC on which the same is based. While it may be argued that the description of "Specialty Contractor" (under the heading Particulars) may be deemed sufficient basis to presume that the subject assessments had been anchored on Section 3A.02(g)[149] of the RMRC, We still cannot ascertain the same due to the following reasons.

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[148] Supra at note 18.

[149] **SEC. 3A.02** *Imposition of Tax* - There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

...

(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 contractors; 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 professionals 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 and/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, 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.

...

First, as culled from the records, after petitioner filed its Protest on 07 June 2019, three (3) months thereafter or on 05 September 2019, respondents issued an Order of Payment (to petitioner) demanding the payment of ₱5,996,915.41. The Order of Payment appears to be an update of the deficiency tax assessments contained in the NOA since the former was also issued pursuant to LOA No. 2018-0272[150], or the same LOA which resulted in the issuance of the NOA. However, except for the amount, the TYs involved and the description of "Specialty Contractor", the Order of Payment also did not mention the specific provision on which the assessments are based.

While there may be no dispute as to the subsequent issuance of the Order of Payment, an issue arises with the variation of the amount of the deficiency taxes. In the NOA, the basic deficiency taxes for TYs 2013 to 2017 amounted to ₱13,938,170.11.[151] On the other hand, though it was not particularly indicated in the Order of Payment, the basic deficiency tax is presumed to be ₱5,996,915.41 since there is an express notation therein which reads, "Total Amount Due Valid Until End of this Month (Deadline of Payment) **Penalties, Surcharges & Interests to be applied after the said deadline.**"[152] Thus, from the foregoing, it can only be concluded that ₱5,996,915.41 is the **basic deficiency taxes** due for payment (for TYs 2013 to 2017) without penalty increments.

The records also reveal that, notwithstanding the seeming difference in the amount of basic deficiency taxes, respondents did not explain this disparity. They did not even attempt to offer any reconciliation or an updated computation of how they arrived at the (new) amount of ₱5,996,915.41.

Furthermore, even if We try to recompute the same based on Macadaeg's explanation that the amount is based on 30% of the audited

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For purposes of this Section, all general engineering, general building, and **specialty contractors** with principal offices located outside Makati but with multi-year projects located in the City of Makati, 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.

150 See upper right portion of the Order of Payment, supra at note 20.

151 The total amount under the column Variance.

152 Emphasis supplied.

gross receipts (or gross sales as stated in the NOA)[153], We still fail to arrive at the amount reflected in the Order of Payment. For clarity, a computation is provided below for the audited gross receipts/sales:

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[153] TSN dated 19 January 2023, RTC Records, Folder 4, pp. 193-196; Italics in the original and emphasis supplied.

...
COURT:
Q: So, you made an Order of Payment for them to receive the money?
WITNESS:
A: Yes, Your Honor.
...
COURT:
Q: Kind of Fee/Tax, 30% of Gross Receipts; Specialty Contractor, Deficiency Tax, Php5,996,915.41. What is your procedure when it's only partial? Don't you put an annotation or a note?
WITNESS:
A: There is none, Your Honor. But it states there the 30% of the gross receipts. So, *ibig sabihin*, Your Honor, 30% *lang yung kinonsider pero kung tutuosin yung* 100% is the amount stated in the Notice of Assessment.
COURT:
Q: So, the 30% of the Php25,767,396.84?
WITNESS:
A: No, Your Honor. 30% of the gross receipts.
COURT:
Q: Ah, gross receipts?
WITNESS:
A: **Of the audited gross receipts.**
...
COURT:
Q: Where's the total amount where the 30% is stated?
WITNESS:
A: It is stated in the Notice of Assessment, Your Honor, *sa* worksheet.
...
COURT:
Q: *Saan yung* 30% *dito*? – *ang daming* figures, sorry.
WITNESS:
A: *Ito po, yung* **audited gross, po. So, 30% of each,** ***tapos kinompyut po namin yung tax; yun yung lumabas nasa*** **five million.**
COURT:
Q: 30% of this?
WITNESS:
A: Yes, *po.*
...
COURT:
Q: ... I'm more interested [in] how you arrive at five million. Because according to you, the Order of Payment was made based on the 30% of the gross receipts?
WITNESS:
A: Yes, Your Honor. And then ... (Interrupted)
COURT:
Q: And I need the amount of gross receipts. So, *saan ko kukunin yung* amount? I need to know where did you get the 30% on what amount in this?
WITNESS:
A: ***Doon po sa*** **audited gross.**
...
COURT:
Q: ***Sa*** **per audit?**
WITNESS:
A: ***Opo.***

Audited Gross Receipts/Sales (AGR/S)[154] (a)	30% (b) = (a * 30%)	Less ₱2 million (c)	Amount subject to tax (d) = (b - c)	Tax Due based on Sec. 3A.02(g) of the RMRC (e)	Add basic tax due of ₱15,000 (f)	Total Basic Tax Due (g) = (e+f)
117,083,494.00	35,125,048.20	2,000,000.00	33,125,048.20	248,437.86	15,000.00	263,437.86
1,082,672,792.00	324,801,837.60	2,000,000.00	322,801,837.60	2,421,013.78	15,000.00	2,436,013.78
471,875,960.00	141,562,788.00	2,000,000.00	139,562,788.00	1,046,720.91	15,000.00	1,061,720.91
1,487,128,795.00	446,138,638.50	2,000,000.00	444,138,638.50	3,331,039.79	15,000.00	3,346,039.79
Total Basic Tax Due based on 30% of AGR/S						**₱7,107,212.34**
Basic Tax Due based on the Order of Payment						₱5,996,915.41
Variance/Difference						**₱1,110,296.93**

Similarly, even if We are to presume that what Macadaeg intended are the amounts under the audited gross receipts/sales that petitioner should have declared, We are still unable to arrive at the amount stated in the Order of Payment. The computation shows:

Should be Declared Gross Receipts/Sales (SDGR/S) (a)[155]	30% (b) = (a * 30%)	Less ₱2 million (c)	Amount subject to tax (d) = (b - c)	Tax Due based on Sec. 3A.02(g) of the RMRC (e)	Add basic tax due of ₱15,000 (f)	Total Basic Tax Due (g) = (e+f)
117,032,494.00	35,109,748.20	2,000,000.00	33,109,748.20	248,323.11	15,000.00	263,323.11
497,911,842.16	149,373,552.65	2,000,000.00	147,373,552.65	1,105,301.64	15,000.00	1,120,301.64
355,214,192.13	106,564,257.64	2,000,000.00	104,564,257.64	784,231.93	15,000.00	799,231.93
1,432,437,631.20	429,731,289.36	2,000,000.00	427,731,289.36	3,207,984.67	15,000.00	3,222,984.67
Total Basic Tax Due based on 30% of SDGR						**₱5,405,841.35**
Basic Tax Due based on the Order of Payment						₱5,996,915.41
Variance/Difference						**₱(591,074.04)**

Second, the letter of 07 February 2020 (which demanded the payment of the remaining balance of alleged deficiency tax of ₱25,248,424.25) did not also specify the specific provision on which the assessments were based. It merely declared that upon review of the Certification of 16 April 2019 which showed the declared gross receipts in the City of Pasay, petitioner under-declared gross receipts for the subject TYs. However, no detailed computation with factual and legal bases were provided.

154 Amounts lifted from the column under "*per* Audit" in the worksheet of the Notice of Assessment, supra at note 18.

155 Amounts lifted from the column under "Should be Declared" in the worksheet of the Notice of Assessment, supra at note 18.

Third, there are variances in the NOA and in the supporting documents *i.e.*, City of Pasay's Certification of 16 April 2019 and respondent City of Makati's business permits which respondents failed to thoroughly explain to petitioner.

Again, to fully apprise Ourselves of the nature of the alleged deficiency LBT assessments, We painstakingly examined and compared all available documents from which the deficiency taxes may have occurred. A simple recalculation of the declared gross receipts using the City of Pasay's Certification of 16 April 2019 would yield that there is a significant variance between the supposed 30% of the declared gross receipts allocated to the City of Makati and the declared gross receipts for TY 2016, as respondents had presumed, to wit:

Taxable Year (a)	70% Declared Gross Receipts based from the Certification of City of Pasay[156] (b)	100% Declared Gross Receipts (c) = (b/70%)	30% Declared Gross Receipt allocated to City of Makati (d) = (c*30%)	Declared Gross Receipt as reflected in the NOA[157] (e)	Difference (f) = (e-d)
2013	66,300.00	94,714.29	28,414.29	-	28,414.29
2014	51,000.00	72,857.14	21,857.14	-	21,857.14
2015	584,760,949.84	835,372,785.49	250,611,835.65	250,611,835.65	-
2016	**116,661,767.87**	**166,659,668.39**	**49,997,900.52**	**270,122,573.00**	**(220,124,672.48)**
2017	54,691,163.80	78,130,234.00	23,439,070.20	23,439,070.20	-

Despite the said difference, respondents also did not give any explanation for it. Likewise, the taxes paid for TYs 2015 and 2016 (as reflected) in the worksheet also do not match the business tax paid indicated in the respondent City of Makati's issued business permits. For convenience, We compare the business tax paid in the NOA *vis-à-vis* in the business permits:

Taxable Year	NOA[158]	Business Permit	Difference
2013	-	- [159]	-
2014	-	- [160]	-

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156 Supra at note 56.
157 Supra at note 18.
158 Supra at note 18.
159 Supra at note 85, RTC Records, Folder 1, p. 188.
160 Id., p. 189.

2015	1,879,588.76	469,897.19[161]	1,409,691.57
2016	2,025,919.30	3,435,610.87[162]	(1,409,691.57)
2017	175,793.03	175,793.03[163]	-

Though the above discrepancy can be simply determined as a timing difference, the same was reached through the Court's own determination and conclusion *sans* any plausible explanation from the respondents.

From the foregoing, it can only be concluded that petitioner was not duly apprised of the nature and legal basis of the alleged deficiency LBT assessments. In *National Power Corporation v. The Province of Pampanga and Pia Magdalena D. Quibal*[164], expounding on the rationale of *Yamane* with regard to the taxpayer's right to be fully informed of the tax assessment, the Supreme Court declared –

> ...
>
> Verily, taxpayers must be informed of the nature of the deficiency tax, fee, or charge, as well as the amount of deficiency, surcharge, interest, and penalty. Failure of the taxing authority to sufficiently inform the taxpayer of the facts and law used as bases for the assessment will render the assessment void. In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, albeit involving national internal revenue taxes, the Court explained the importance of the notice requirement with due regard to the taxpayers' constitutional rights, to wit:
>
>> **The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law.** Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.
>>
>> **The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. Merely notifying the taxpayer of his or her**

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161 Id., p. 190.
162 Id., p. 191.
163 Id., p. 192.
164 G.R. No. 230648 (Resolution), 06 October 2021; Citations omitted, italics and emphasis in the original text.

> **tax liabilities without details or particulars is not enough.**
>
> *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.* held that **a final assessment notice that only contained a table of taxes with no other details was insufficient**: x x x
>
> Any deficiency to the mandated content of the assessment or its process will not be tolerated. x x x
>
> xxxx
>
> A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, **due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest.** To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations "that taxpayers should be able to present their case and adduce supporting evidence."

> Without doubt, the mandate of providing the taxpayer with notice of the facts and laws used as bases for the assessment is not to be mechanically applied. The purpose of this requirement is to adequately inform the taxpayer of the basis of the assessment to enable him to prepare for an intelligent or "effective" protest or appeal of the assessment or decision. Thus, substantial compliance with the law is allowed if the taxpayer is later fully apprised of the basis of the deficiency taxes assessment, which enabled him to file an effective protest.
>
> ...

Here, it can no longer be doubted that petitioner's right to due process was violated for respondents' failure to fully inform it of the nature of the alleged deficiency LBT assessments. Glaringly absent in the NOA and the worksheet are both the factual and legal bases on which the assessments were based. Moreover, despite the subsequent notices (*e.g.*, Order of Payment and letter of 07 February 2020) issued to petitioner, these also did not supplement any explanation or clarification as to the amount paid and the remaining tax deficiency. Further, the unexplained and unreconciled varied discrepancies on the amounts found on the supporting documents and on the NOA's worksheet made it difficult for this Court to uphold respondents' assessments.

The taxpayers' obligation for deficiency taxes cannot depend on a guessing game.[165] To underscore, the taxpayer must be informed of what taxes it is liable to pay, under what authority the obligation to pay is based, how much is the pending tax liability and the period covered.[166] Without these particulars, taxpayers would be deprived of adequate opportunity to prepare for an intelligent appeal as they would have no way of determining what was considered by the taxing authority in making the assessment.[167]

Tax assessments issued in violation of the due process rights of a taxpayer are null and void and of no force and effect.[168] In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[169]

Although We need not belabor on the other issues raised, it also did not escape the Court's attention that the assessments for TYs 2013 and 2014 have already prescribed. Section 194(a) of the LGC of 1991 provides:

> ...
>
> **Sec. 194.** *Periods of Assessment and Collection.* —
>
> (a) 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: *Provided,* That, taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.
>
> ...

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165 *National Power Corporation v. The Province of Pampanga and Pia Magdalena D. Quibal,* id.

166 Id.

167 Id.

168 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, 03 October 2018.

169 *Commissioner of Internal Revenue v. BASF Coating + Inks Phil., Inc.*, G.R. No. 198677, 26 November 2014.

Relative thereto, Section 167 of the same law provides for the due date for the payment of local taxes, *viz*:

> ...
>
> **Sec. 167**. *Time of Payment*. - Unless otherwise provided in this Code, all local taxes, fees, and charges shall be paid within the first twenty (20) days of January or of each subsequent quarter, as the case may be. The sanggunian concerned may, for a justifiable reason or cause, extend the time for payment of such taxes, fees, or charges without surcharges or penalties, but only for a period not exceeding six (6) months.
>
> ...

Based on the foregoing, the reckoning point in the assessment of LBT is the date when such taxes become due. Further, the assessment notice should be issued within five (5) years from the date when the LBT became due. Thus, applying the said provisions, the following are the prescriptive period for TYs 2013-2017 considering the receipt of the NOA on **12 April 2019**:

Gross Receipt as Basis for Assessment	**TY**	**Due date for payment**	**End of prescriptive period**	**Prescribed**
2012	**2013**	**20 January 2013**	**20 January 2018**	**Yes**
2013	**2014**	**20 January 2014**	**20 January 2019**	**Yes**
2014	2015	20 January 2015	20 January 2020	No
2015	2016	20 January 2016	20 January 2021	No
2016	2017	20 January 2017	20 January 2022	No

In sum, the LBT assessments for TYs 2013 to 2017 are rendered null and void for violation of the taxpayer's right to due process. In addition, the LBT assessments for TYs 2013 and 2014 are void due to prescription.

WHEREFORE, the foregoing premises considered, the present Petition for Review filed by petitioner Takenaka Corporation – Philippine Branch on 31 October 2023 is hereby **GRANTED.** Accordingly, the Decision dated 26 July 2023 and Order dated 28 September 2023, both rendered by the Regional Trial Court of the City of Makati, Branch 235, are hereby **CANCELLED AND SET ASIDE.**

Consequently, respondents City of Makati and City Treasurer of Makati or any person duly acting on their behalf are hereby **ENJOINED** and **PROHIBITED** from collecting the subject deficiency local business taxes against petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice