Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

THE CITY GOVERNMENT OF MAKATI, THE CITY TREASURER OF MAKATI CITY, and the OFFICER-IN-CHARGE OF THE OFFICE OF THE CITY ADMINISTRATOR AND HEAD OF BUSINESS PERMITS OFFICE,
Petitioners,

-versus-

HONORABLE REGIONAL TRIAL COURT, MAKATI CITY, BRANCH 59 and MACTEL CORPORATION,
Respondents.

CTA EB NO. 1465
(CTA AC No. 147)

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

Promulgated:
FEB 14 2018 3:37 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(2), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2]

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.* - The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) xxxxx.
(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and

dated February 9, 2016, rendered by the Second Division of this Court in CTA AC No. 147, and its Resolution[3] dated May 18, 2016. The Second Division of this Court dismissed petitioners' Petition for Certiorari for lack of jurisdiction.

Petitioners assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated February 9, 2016:

> "***WHEREFORE***, *premises considered, the Petition for Certiorari is hereby* ***DISMISSED*** *for lack of jurisdiction.*
>
> ***SO ORDERED.***"

Resolution dated May 18, 2016:

> "***WHEREFORE***, *premises considered, the Motion for Reconsideration (Re: Decision dated 09 February 2016) is hereby* ***DENIED*** *for lack of merit.*
>
> ***SO ORDERED.***"

The pertinent facts as narrated by this Court's Division in its Decision are as follows:

> *"Petitioner City Government of Makati ("petitioner City Government") is a local government unit created under Republic Act No. 7854, headed by its City Mayor and acting through the other public petitioners herein.*
>
> *Petitioner City Treasurer of Makati City ("petitioner City Treasurer") is the local government official in charge of the collection of all local taxes, fees and charges in Makati City.*

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review as provided in Rule 43 of the Rules of Court. The Court En Banc shall act on the appeal.
(c) xxx.

[2] En banc docket, pp. 63-78.
[3] En banc docket, pp. 79-87.

Petitioner Officer in Charge of the Office of the City Administrator and Head of the Business Permits Office ("petitioner City Administrator") is the local government official in charge of the issuance of business permits and licenses in Makati City.

All the foregoing petitioners hold office at the Makati City Hall where they may be served with summons and other court processes.

On the other hand, private respondent Mactel Corporation is a corporation duly organized and existing under Philippine laws with principal office address at the 4th Floor, Power Realty Building, 1012 Arnaiz Avenue, Makati City. It may be served with summons and other court processes through its counsel on record, Reyes Rojas & Associates, with office address at Unit 1502 Jollibee Plaza Condominium, F. Ortigas Jr. Road, Ortigas Center, Pasig City.

While the public respondent, the Regional Trial Court-Branch 59, Makati City, is impleaded as a nominal party pursuant to Section 5, Rule 65 of the Rules of Court. The RTC-Branch 59, Makati City is the one who rendered the assailed Orders dated April 28, 2015 and August 6, 2015, respectively

As gleaned from the records of the case, private respondent is engaged in the business of trading of cellular phones and other telecommunications equipment on wholesale and retail basis. It is principally into dealership of call cards for major telecom operators such as Globe Telecom and Smart Communications.

As call card dealer, its transaction[s] are fast paced and in volume. Profit, however, is marginal as dealers like petitioner are only given a standard discount of ten percent (10%) of the face value of the call card. Thus, a call card with a face value of P300.00 is sold by telecom operators at P270.00 only, which in turn, was sold by private respondent at P273.00 or a markup of P3.00 per card.

On August 1, 2005, petitioner City Treasurer issued a Notice of Assessment against private respondent for its alleged deficiency taxes, fees and charges in the total amount of P30,799,127.21 covering the periods of 2001-2004.

On October 13, 2005, private respondent filed a protest with petitioner City Treasurer claiming that there

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was a gross discrepancy in the amount used as a basis in the said assessment. Private respondent insisted that the assessment was based on gross sales/receipts of the face value of the call cards, instead of the 10% discount of the face value of the call cards from which private respondent derived its profit. Moreover, it also asserts that call cards should be classified not as goods but as pre-paid service because after the face value of the card is exhausted, the plastic card is virtually useless.

On October 19, 2005, private respondent's protest was denied, thus, prompting private respondent to elevate the matter to the Regional Trial Court of Makati via a judicial appeal.

Then, on November 21, 2005, private respondent filed a Petition for Review entitled "Mactelecom Corp., represented by its President Emmanuel P. Te vs. The City of Makati and The City Treasurer of Makati". The case was raffled to the RTC-Branch 148, Makati City and was docketed as Civil Case No. 05-1040. Thereafter, trial ensued.

Accordingly, on November 13, 2007, the RTC-Branch 148, Makati City rendered a Decision in Civil Case No. 05-1040. In the said Decision, the court found the assessment unjust, excessive and confiscatory. The court held that the assessment should only cover the actual income derived by private respondent. Henceforth, the court nullified petitioners' assessment and directed the latter "to compute [private respondent]'s tax on the 10% discount given by the telecom operators as discount."

Several years thereafter, petitioner City Treasurer issued a Notice of Assessment dated January 14, 2015, under Letter of Authority No. 2014-0345, again assessing private respondent for deficiency taxes, fees and charges covering the taxable period 2010-2013 in the amount of P157,200,855.92.

Meanwhile, on even date, private respondent tried to apply for the renewal of its business permit via Business Permit Application Form (Form 101-A) of Makati City, but the latter refused to issue the same due to an alleged business tax deficiency for taxable year 2014 in the total amount of P24,693,707.82, including surcharges and deficiency. Thereafter, petitioner City Administrator issued a Billing Statement dated January 22, 2015.

On February 6, 2015, private respondent filed its protest to the Notice of Assessment dated January 14,

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2015. Also, in its Letter dated February 10, 2015, private respondent tried to protest the Billing Statement but petitioner City Administrator allegedly refused to receive said letter.

On March 4, 2015, private respondent filed a Petition (With Application for Temporary Restraining Order and/or Preliminary Injunction) with the Regional Trial Court of Makati City. The Petition is for Declaratory Relief with Application for Temporary Restraining Order (TRO) and/or Preliminary Injunction for petitioners alleged unlawful withholding of the issuance of private respondent's business permit and/ or denial of its application for renewal thereof.

The case was lodged before the public respondent and was docketed as Civil Case No. 15-177.

During the hearing for the issuance of a TRO, petitioners undertook not to pursue any remedies against private respondent for its alleged deficiency taxes, thereby no longer needing the issuance of a TRO. Thus, the only issue left was whether private respondent is entitled to the issuance of a Writ of Preliminary Injunction and Mandatory Injunction.

On April 28, 2015, the court a quo issued the first interlocutory Order assailed by petitioners the fallo of which reads as follows:

> *"WHEREFORE, premises considered, let Writs of Preliminary Injunction and Mandatory Injunction be issued upon the filing of a bond of P500,000.00 ordering [respondents], their successors, agents, assignees and any and all persons or entities acting on their behalf, under their authority or in coordination to DESIST and REFRAIN from further proceeding with the assessment of local taxes of [petitioner] until the resolution of this case.*
>
> *Furthermore, [respondents] are hereby ordered to issue a temporary business permit in favor of [petitioner].*
>
> *SO ORDERED."*

Accordingly, after posting of the required bond, the court a quo issued a Writ of Preliminary Injunction on May 11, 2015, enjoining petitioners to refrain from assessing and collecting excessive taxes and to issue a temporary

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business permit until the issue on deficiency taxes has been resolved by petitioner City Treasurer.

On May 13, 2015, petitioners filed a Motion for Reconsideration (of the Order dated 28 April 2015), while private respondent filed its Comment (Re: Motion for Reconsideration dated 14 May 2015) on June 19, 2015.

On August 6, 2015, the court a quo issued the second interlocutory Order assailed by petitioners, which denied the latter's Motion for Reconsideration for utter lack of merit and, further, proceeded to set the main case for pre-trial conference.

Aggrieved, petitioners elevated the matter with the Court of Tax Appeals (CTA) via the instant Petition for Certiorari on August 27, 2015.

On September 15, 2015, this Court issued a Resolution, ordering respondents to file comment, not a motion to dismiss, within ten (10) days from receipt thereof. Thus, after being granted an extension of time, private respondent filed its Comment on October 2, 2015.

In the Resolution dated October 9, 2015, this Court gave the parties a period of thirty (30) days from notice thereof within which to file their simultaneous memoranda. Thereafter, the instant petition shall be considered submitted for decision. Furthermore, this Court ordered the Branch Clerk of Court or the Officer-in-Charge of the RTC-Branch 59, Makati City to elevate the entire original records of the case.

On November 16, 2015, private respondent filed a Manifestation stating that it hereby adopts its Comment to the Petition and the arguments contained therein as its Memorandum. On the other hand, petitioners filed their Memorandum (for the Petitioners) on November 23, 2015.

On November 25, 2015, the Branch Clerk of Court of RTC-Branch 59 of Makati City, Atty. Jayme M. Luy, filed a Transmittal elevating the entire complete records of the case, consisting of Three Hundred Three (303) pages, in compliance with this Court's October 9, 2015 Resolution.

Thereafter, the Court's Division dismissed the Petition for Certiorari for lack of jurisdiction and denied the Motion for Reconsideration thereon for lack of merit. Hence, the present petition was filed.

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Petitioners raised the following issues:

"A. WHETHER OR NOT THE HONORABLE SECOND DIVISION OF THE COURT OF TAX APPEALS GRAVELY ERRED IN NOT DECLARING THAT THE PRESENT CASE INVOLVES NOT ONLY ONE LOCAL TAX ISSUE, BUT TWO LOCAL TAX ISSUES, AND AS A CONSEQUENCE THEREOF, GRAVELY ERRED IN DISMISSING THE PRESENT PETITION FOR CERTIORARI DATED 27 AUGUST 2015.

B. WHETHER OR NOT THE HONORABLE SECOND DIVISION OF THE COURT OF TAX APPEALS GRAVELY ERRED IN NOT DECLARING THAT SUPREME COURT CASE OF "THE CITY OF MANILA, REPRESENTED BY MAYOR JOSE L. ATIENZA, JR. AND MS. LIBERTO M. TOLEDO, IN HER CAPACITY AS THE CITY TREASURER OF MANILA VS. HON. CARIDAD H. GRECIA-CUERDO, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT BRANCH 112, PASAY CITY, SM MART, INC., SM PRIME HOLDINGS, INC., STAR APPLIANCES CENTER, SUPERVALUE, INC., ACE HARDWARE PHILIPPINES, INC., WATSON PERSONAL CARE STORES, PHILS., INC., JOLLIMART PHILS. CORP., SURPLUS MARKETING CORPORATION AND SIGNATURE LINES", G.R. No. 175723 DATED FEBRUARY 4, 2014, IS SQUARELY APPPLICABLE IN THE CASE AT BAR"

In the Resolution[4] dated December 27, 2016, the Court gave due course to the petition and required the parties to submit their respective memoranda. Both parties complied, Thus, in the Resolution dated May 3, 2017, the case was submitted for decision.

In its Memorandum, petitioners maintain that the present case involves two local tax issues and the applicability of the Supreme Court case of The City of Manila,

[4] En banc Docket, pp. 115-116.

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et al. vs. Hon. Caridad H. Grecia-Cuerdo, et al. [5]. Respondent on the other hand, argued that the Court does not have jurisdiction over the subject matter of the case and that the Court's Second Division actually applied the case of The City of Manila, et al. Vs. Hon. Caridad H. Grecia-Cuerdo, et al.[6]

We resolve.

The main issue is whether the Court in Division has jurisdiction over the case.

Pursuant to Section 7(a)(3) [7] of Republic Act (RA) 1125[8], as amended by RA 9282[9], and Rule 4, Section 3(a)(3) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, the Court in Division has jurisdiction over 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, to wit:

> *"Rule 4*
> *JURISDICTION OF THE COURT*
>
> *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:*
> *xxxxxx*
> *(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;"*
> *xxxxx*

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[5] G.R. No. 175723, February 4, 2014.

[6] Ibid.

[7] Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxxxxx.
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;
xxxxxx.

[8] An Act Creating the Court of Tax Appeals.

[9] 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 of Republic Act No. 1125, as amended, otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

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Evidently, the Court has exclusive appellate jurisdiction over decisions, orders or resolutions of the Regional Trial Courts in local tax cases. With the Court's powers as granted by the Constitution and inherent in the exercise of its appellate jurisdiction, the Court has also authority to take cognizance of petitions for *certiorari* questioning interlocutory orders issued by the RTC in a local tax case[10]. The Supreme Court in the case of The City of Manila, et al. vs. Hon. Caridad H. Grecia-Cuerdo, et al.[11], instructively ruled as follows:

> *"xxx, [S]ection 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and* ***to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government****.*
>
> *On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of* certiorari *in these cases.*
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> *Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of* certiorari. *In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.*
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> *Consistent with the above pronouncement, this Court has held as early as the case of J.M. Tuason & Co., Inc. v.*

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[10] The City of Manila, et. al. vs. Hon. Caridad H. Grecia-Cuerdo, et. al., G.R. No. 175723, February 4, 2014.
[11] Ibid.

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> *Jaramillo, et al. that "if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of* certiorari, *in aid of its appellate jurisdiction. This principle was affirmed in De Jesus v. Court of Appeals, where the Court stated that "a court may issue a writ of certiorari in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court." The rulings in J.M. Tuason and De Jesus were reiterated in the more recent cases* of *Galang, Jr. v. Geronimo and Bulilis v. Nuez.*
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> *Furthermore, Section 6, Rule 135 of the present Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer."*

Concomitantly, the Court in Division has exclusive jurisdiction over local tax cases resolved by Regional Trial Courts. Likewise, the Court in Division has authority to take cognizance of petitions for *certiorari* questioning interlocutory orders issued by the RTC in a local tax case. Having discussed the jurisdiction of the Court's Division over petitions for *certiorari* questioning interlocutory orders issued by the RTC in a local tax case, the next question is whether the assailed interlocutory orders of the RTC of Makati City Branch 59 were issued in a local tax case. The answer is no.

The power of local government units to impose taxes within its territorial jurisdiction derives from the Constitution itself, which recognizes the power of these units to create its own sources of revenue and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy[12]. Among a taxpayer's remedies over the local government unit's power to impose tax is to contest the assessed local tax as provided under Section 195 or to claim

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[12] Section 5, Article X of the 1987 Constitution.
Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

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a refund under Section 196 of the Local Government Code, to wit:

> ***"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. 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.*
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> ***Section 196.*** *Claim for Refund of Tax Credit. - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit."*

The above-mentioned provisions provide that the local treasurer 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, 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 therein **within which to appeal with the court of competent jurisdiction.** Likewise, a taxpayer may file a written claim for refund or

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credit with the local treasurer and no case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment or from the date the taxpayer is entitled to a refund or credit. In relation thereto, Republic Act No. 9282, Section 7(a)(3)[13] provides that the CTA exercises exclusive appellate jurisdiction to review on appeal 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 <u>or</u> appellate jurisdiction.[14] Thus, the Court's jurisdiction to review the decisions, orders or resolutions of the RTC over local tax cases pertains to and pursuant to Section 195 and 196 of the Local Government Code.

In the case at bar, the petition filed by respondent taxpayer before the Regional Trial Court of Makati City, Branch 59 is not a local tax case under to Section 195 or 196 of the local Government Code. The petition filed by respondent taxpayer is neither an appeal to the denial of the protest nor a claim for refund.

A perusal of respondent taxpayer's petition docketed as Civil Case No. 15-177 before the Regional Trial Court of Makati City, Branch 59 reveals that it is "For: Declaratory Relief with Application for Temporary Restraining Order and/or Preliminary Injunction"[15]. However, in the body of the petition, in the "Nature of the Petition", it states that it is a Petition for Certiorari and Mandamus under Rule 65 of the 1997 Revised Rules of Civil Procedure. Nonetheless, what determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought[16].

The cause of action in a complaint is not determined by the designation given to it by the parties. The allegations in the body of the complaint define or describe it. The designation or caption is not controlling more than the allegations in the complaint.[17] Basic as a hornbook

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[13] Supra. Note 7.
[14] China Banking Corporation vs. City Treasurer of Manila, G.R. No. 204117, July 1, 2015.
[15] Division Docket, pp. 47-64.
[16] Villena vs. Payoyo, G.R. No. 163021, April 27, 2007, 522 SCRA 592.
[17] Hernudd vs. Lofgren, G.R. No. 140337, September 27, 2007, 534 SCRA 205.

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principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The averments in the complaint and the character of the relief sought are the ones to be consulted.[18]

While it is true that the case involves two local taxes, specifically, the Billing Assessment dated 22 January 2015 and the Notice of Assessment dated 22 January 2015 which petitioner reiterates, it is not automatic that it is a local tax case within the original or appellate jurisdiction of the Regional Trial Courts and thereafter within the exclusive appellate jurisdiction of this Court. Otherwise stated, involvement of local tax in a case does not mean that it is a local tax case appealable to this Court.

An examination of respondent taxpayer's arguments and reliefs sought in the petition before the Regional Trial Court of Makati City, Branch 59 reveals that it is a petition for certiorari and mandamus and not an appeal to the denial of the protest nor a claim for refund pursuant to Section 195 and 196 of the local Government Code. Respondent based its cause of action on the implications of the Decision dated 13 November 2007, which was a final and executory judgment. Thus, petitioner's arguments must fail. We find that the Second Division of this Court correctly ruled as follows:

> *"xxx, the petition with the court a quo is private respondent's recourse for the unjustifiable denial of its business permit. xxx, while the instant controversy seems like a tax case, the truth of the matter is that it is actually civil in nature.*
>
> *Furthermore, in the assailed Order dated August 6, 2015, the court a quo held that:*
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>> *"xxx With regard to the Notice of Assessment, [private respondent] noted how it departed from the Decision dated 13 November 2007, and in fact, alleged that it was still pursuing the proper administrative remedies, prior to the issuance of injunctive relief. [Private respondent] herein did not directly protest the assessment which as of the moment, is the subject proper proceeding with [petitioner] City Treasurer. What it seeks to correct is*

[18] EDITHA PADLAN vs. ELENITA DINGLASAN and FELICISIMO DINGLASAN, G.R. No. 180321, March 20, 2013.

the previous acts committed by [petitioners], particularly the very basis of the assessment it issued and its relation to the effects of the Decision dated 13 November 2007. The issue shall be delved into deeply by this Court once it goes into the merits of the instant Petition. At this point, this Court understand that [private respondent] does not seek to protest the amount of the assessment, but based upon its Petition, it merely seeks to define its rights under the Decision dated 13 November 2007."[19]

Additionally, the Court finds that the Second Division of this Court correctly ruled as follows:

"What petitioner failed to consider is that the proceedings in the court a quo did not examine the assessments themselves, specifically the Notice of Assessment dated January 14, 2015 for 2010- 2013, but rather the total disregard of Mactel's rights under a final and executory judgment. As a matter of fact, the deficiency business tax assessment for taxable years 2010-2013 is still an ongoing process. That being so, this takes it out of the ambit of a tax case as the issues therein strictly pertain to due process and immutability of final judgment, and not just the correctness of an assessment, xxx."[20]

Having discussed that the petition filed by respondent taxpayer before the Regional Trial Court of Makati City, Branch 59 is neither a local tax case nor an appeal pursuant to Sections 195 and 196 of the Local Government Code, therefore, the ruling in the case of The City of Manila, et al. vs. Hon. Caridad H. Grecia-Cuerdo, et al.[21] is not squarely applicable in the case at bar.

In sum, the petition is bereft of merit. There is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by the evidence on record and it is consistent with prevailing law and jurisprudence.

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Decision dated February 9, 2016, rendered by the Second Division of this Court in CTA

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[19] En banc docket, pp. 75-76.
[20] En banc docket, p. 86.
[21] G.R. No. 175723, February 4, 2014.

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AC No. 147, and its Resolution dated May 18, 2016 are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(I join PJ Del Rosario's Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
(I join PJ Del Rosario's Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

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

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

THE CITY GOVERNMENT OF MAKATI, THE CITY TREASURER OF MAKATI CITY, and the OFFICER-IN-CHARGE OF THE OFFICE OF THE CITY ADMINISTRATOR AND HEAD OF BUSINESS PERMITS OFFICE, Petitioners,	**CTA EB NO. 1465** (CTA AC No. 147)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA**, JR., **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, *JJ.*
HONORABLE REGIONAL TRIAL COURT, MAKATI CITY, BRANCH 59 and MACTEL CORPORATION Respondents.	Promulgated: FEB 14 2018 3:37p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia* of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, which denies the Petition for Review and affirms the Decision dated February 9, 2016 rendered by the Court in Division and its Resolution dated May 18, 2016 in CTA AC No. 147.

In the assailed Decision and Resolution, the Court in Division ruled that the Petition for Certiorari filed by petitioner therein does not involve a local tax case, and thus, is not within the jurisdiction of the Court of Tax Appeals (CTA). According to the *ponencia*, the case is an original action for *certiorari* and *mandamus* pursuant to Batas Pambansa (BP) Blg. 129, as amended, and not an appeal on the denial of the protest nor a claim for refund pursuant to Sections 195 and 196 of the Local Government Code (LGC) of 1991.

In affirming the assailed Decision and Resolution, the *ponencia* holds that "[w]hile it is true that the case involves two local taxes, specifically the Billing Assessment dated 22 January 2015 and the Notice of Assessment dated 22 January 2015, it is not automatic that it is a local tax case within the original or appellate jurisdiction of the Regional Trial Courts, and thereafter within the exclusive appellate jurisdiction of this Court."[1] It quotes the assailed Decision of the Court in Division, *viz.*:

> "xxx, the petition with the court a quo is private respondent's recourse for the unjustifiable denial of its business permit. xxx, while the instant controversy seems like a tax case, the truth of the matter is that it is actually civil in nature."[2]

To my mind, however, private respondent's Petition (With Application for Temporary Restraining Order and/or Preliminary Injunction) filed with the Regional Trial Court (RTC) in Civil Case No. 15-177 is an off-shoot of the assailed deficiency local business tax assessments. The afore-stated Petition sought an injunctive relief against petitioners assessing and collecting its alleged deficiency taxes, to wit:

> "Wherefore, in view of the foregoing, petitioner Mactelecom Corporation respectfully prays that:
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> 1. After notice and summary hearing, a Temporary Restraining Order be issued prohibiting respondents and all those acting in their behalf and instructions, **<u>from assessing and collecting the alleged deficiency taxes</u>** of petitioner, contrary to the Decision dated 13 November 2007.
>
> 2. After hearing, a Writ of Preliminary Injunction be issued prohibiting respondents and all those acting in their behalf and instructions, **from <u>assessing and collecting the alleged deficiency taxes</u>** of petitioner, contrary to the Decision dated 13 November 2007, and a Writ of Preliminary Mandatory Injunction be issued for the issuance of a temporary business permit in favor of petitioner.
>
> 3. After due proceedings, a judgment be rendered declaring that the **<u>alleged deficiency taxes of petitioner, contrary to the Decision dated 13 November 2007, are illegal, invalid, null and void</u>**.

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[1] *Ponencia*, p. 13.
[2] *Id.*

4. Further, a judgment be rendered compelling respondents to comply with the Decision dated 13 November 2007, particularly the order that **assessment should only cover the actual income derived by the petitioner**."[3] (Boldfacing and underscoring supplied)

Private respondent's fundamental cause of action is anchored on the resolution of the issue relative to the propriety of the local business tax assessments and collection of taxes. Needless to say, to resolve the issue of whether private respondent is entitled to the issuance of a business permit, the RTC must necessarily rule on the propriety of the local business tax assessments.

On this point, the Supreme Court's pronouncement in *CE Casecnan Water and Energy Company, Inc. vs. The Province of Nueva Ecija, et al. (CE Casecnan)*[4] is enlightening. In *CE Casecnan*, petitioner therein filed with the RTC a Complaint **for injunction** and damages with application for a temporary restraining order (TRO) and preliminary injunction, praying to restrain the collection of the 2008 real property tax assessment. In resolving the issue of whether the CTA has jurisdiction over a special civil action for certiorari assailing an interlocutory order issued by the RTC therein, the Supreme Court opined:

> *"The RTC injunction case is a local tax case.*
>
> In maintaining that it is the CA that has jurisdiction over petitioner's certiorari petition, the latter argues that the injunction case it filed with the RTC is not a local tax case but an ordinary civil action. It insists that it is not protesting the assessment of RPT against it but only prays that respondents be enjoined from collecting the same.
>
> The Court finds, however, **that in praying to restrain the collection of RPT, petitioner also implicitly questions the propriety of the assessment of such RPT. This is because in ruling as to whether to restrain the collection, the RTC must first necessarily rule on the propriety of the assessment. In other words, in filing an action for injunction to restrain collection, petitioner was in effect also challenging the validity of the RPT assessment.** As aptly discussed by the CA:
>
>> x x x [T]he original action filed with the RTC is one for Injunction, with an application for Temporary Restraining Order and a Writ of Preliminary Injunction

[3] AC No. 147, docket, p. 59.
[4] G.R. No. 196278, June 17, 2015.

> to enjoin the province of Nueva Ecija from further collecting the alleged real property tax liability assessed against it. Simply because the action is an application for injunctive relief does not necessarily mean that it may no longer be considered as a local tax case. The subject matter and the issues, not the name or designation of the remedy, should control. While an ancillary action for injunction may not be a main case, the court [still has] to determine, even in a preliminary matter, the applicable tax laws, rules and jurisprudence. x x x
>
> xxx xxx xxx
>
> No doubt, **the injunction case before the RTC is a local tax case. And as earlier discussed, a certiorari petition questioning an interlocutory order issued in a local tax case falls under the jurisdiction of the CTA.**" (Boldfacing and underscoring supplied)

On the basis of the foregoing, I am of the view that the Court in Division has jurisdiction to take cognizance of the Petition for Certiorari assailing the Orders issued by the RTC in Civil Case No. 15-177, involving as it does a local tax case.

All told, I **VOTE** to: (i) **GRANT** the Petition for Review filed by petitioners City Government of Makati, City Treasurer of Makati City, and the Officer-in-Charge of the Office of the City Administrator and Head of Business Permits Office; and, (ii) **REMAND** the case to the Court in Division for the determination of the merits of the case.

ROMAN G. DEL ROSARIO
Presiding Justice