REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY TREASURER OF MAKATI, rep. by ACTING CITY TREASURER JESUSA E. CUNETA, *Petitioner,*	**CTA EB NO. 2892** (CTA AC No. 257)
	Present:
-versus-	**RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
KURIMOTO (PHILIPPINES) CORPORATION, *Respondent.*	Promulgated: JAN 08 2026 3:50 PM

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DECISION

ANGELES, *J.*:

Before the Court *En Banc* is a *Petition for Review (En Banc)*[1] filed by the City Treasurer of Makati City, represented by Acting City Treasurer Jesusa E. Cuneta (petitioner), against Kurimoto (Philippines) Corporation (respondent), praying for the reversal of the Decision[2] dated August 31, 2023 and Resolution[3] dated March 5, 2024 (assailed orders), both promulgated by the Special Second Division (Court in Division) in CTA AC No. 257, entitled *City Treasurer of Makati rep. by Acting City Treasurer Jesusa E. Cuneta v. Kurimoto (Philippines) Corporation*. The assailed orders denied the *Petition for Review* filed by petitioner before the Court in Division, and affirmed the Orders dated June 7, 2021 and November 17, 2021 promulgated by the Regional Trial Court (RTC) of Makati City - Branch 132, in Civil Case No. R-MKT-19-00308-CV.

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[1] *En Banc* (EB) Docket, pp. 1-13, with Annexes.
[2] EB Docket, pp. 20-36.
[3] EB Docket, pp. 37-39.

ANTECEDENTS

Petitioner is the officer tasked to ascertain, assess and collect correct taxes due to the local government of Makati City.[4]

Respondent is a domestic corporation registered with the Securities and Exchange Commission (SEC) on September 30, 2010 with principal office at 10F Pacific Star Bldg., Makati Ave. cor. Sen. Gil Puyat Ave., Makati City.[5] It is principally engaged in rendering services related to construction, installation works, electric works, piping works, repairs and maintenance, and staff services.[6]

The factual backdrop of the case was narrated by the Court in Division, as follows:

> On January 13, 2016, petitioner issued a Billing Assessment for business tax due from respondent for the taxable year (TY) 2016, amounting to ₱543,775.99 (2016 Assessment).
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> On January 20, 2016, respondent paid the assessed amount of ₱543,775.99 in full. Thus, respondent was issued Makati City Business Permit No. 33999 dated January 20, 2016, valid until December 31, 2016.
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> On January 17, 2017, petitioner issued a Billing Assessment against respondent for deficiency business tax for TY 2016 amounting to ₱107,550.24 plus surcharge and interest of ₱54,850.62, in the total amount of ₱162,400.86 (2017 Assessment). On January 23, 2017, respondent paid the additional assessment of ₱162,400.86.
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> On June 5, 2018, petitioner issued a Notice of Assessment for deficiency taxes, fees, and charges amounting to ₱4,670,384.44, which covered TYs 2013 to 2017 (2018 Assessment), pursuant to Letter of Authority LA-2018 Nos. 0003. In the 2018 Assessment, respondent was assessed additional deficiency business taxes for TY 2016 amounting to ₱704,097.22 plus surcharge and interest, in the total amount ₱1,302,579.86.
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> On July 30, 2018, respondent formally protested the 2018 Assessment amounting to ₱4,670,384.44 and submitted VAT returns and other supporting documents for the protest.
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> On October 26, 2018, respondent filed a petition for review entitled "*Kurimoto (Philippines) Corporation v. City Treasurer of Makati City, represented by Acting City Treasurer Jesusa E.*

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[4] *Joint Stipulation of Facts, Issues and Documents with Joint Motion* dated September 14, 2020, RTC Records - Vol. 2, p.7
[5] *Id.*
[6] RTC Records - Vol. 4, p. 319.

Cuneta," with the RTC Makati City to appeal petitioner's inaction on the protest to the 2018 Assessment within 30 days from the lapse of the 60 days to decide on the protest under Section 195 of the Local Government Code (LGC). The case was assigned to RTC Makati City-Branch 149 and docketed as Civil Case No. R-MKT-18-04608-CV (assessment case). During the pendency of the assessment case, petitioner, with the approval of RTC Makati City-Branch 149, proceeded with reinvestigation of the 2018 Assessment.

Meanwhile, on December 21, 2018, respondent filed with petitioner a letter dated December 14, 2018, requesting a refund or tax credit of the additional business tax payment for TY 2016 amounting to ₱162,400.86 that was paid on January 23, 2017.

On January 23, 2019, respondent filed a petition for a tax refund with the RTC Makati City within two years from the payment of the additional business tax for TY 2016 of ₱162,400.86 on January 23, 2017. The case was raffled to the court *a quo* and docketed as R-MKT-19-00308-CV (refund case).

On July 18, 2019, petitioner, after the reinvestigation of the 2018 Assessment, issued a Revised Notice of Assessment for deficiency taxes, fees, and charges amounting to ₱210,567.34 for TYs 2014, 2015, 2016, and 2017 (Revised Assessment). The Revised Assessment also indicates a tax overpayment by respondent for TY 2016 amounting to ₱243,491.99, with a note that it is subject to "Sec. 7B.14 (d) Claim for Refund of Tax Credit." The said finding was reflected in the attached computation worksheet of the Revised Assessment.

Respondent paid the Revised Assessment amounting to ₱210,567. 34 on September 5, 2019. As a result, petitioner and respondent executed a Judicial Compromise Agreement dated September 5, 2019, for the assessment case before the RTC Makati City-Branch 149.

On October 11, 2019, the RTC Makati City-Branch 149 promulgated a Judgment (Based on Compromise Agreement) approving the Judicial Compromise Agreement dated September 5, 2019 executed by the parties and adopting the terms and conditions therein as part of the dispositive portion of the judgment in Civil Case No. R-MKT-18-04608-CV. Accordingly, the assessment case has been terminated.

Meanwhile, in the refund case before the court *a quo*, respondent filed a Motion for Summary Judgment on February 9, 2021, with petitioner's Comment filed on March 4, 2021.

On May 19, 2021, respondent filed with the court *a quo* Memorandum, while petitioner had yet to file her Reply Memorandum.

On June 7, 2021, the court *a quo* resolved the said motion and issued the first assailed Order, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the Motion for Summary Judgment filed by Petitioner Kurimoto (Philippines) 09 February 2021 is hereby **GRANTED.**
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> Respondent City [T]reasurer of Makati City, represented by Acting City Treasurer Jesus E. Cuneta, is hereby ordered to **REFUND** to Petitioner Kurimoto (Philippines) Corporation the amount ₱162,100.86 representing the tax overpayment for TY 2016.
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> **SO ORDERED.**

On July 29, 2021, petitioner filed a Motion for Reconsideration, with respondent's Comment filed on October 5, 2021.

On November 17,2021, the court *a quo* issued the second assailed Order denying petitioner's Motion for Reconsideration, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, finding no cogent reason why this Court should reconsider its *Order* dated 07 June 2021, the *Motion for Reconsideration* filed by petitioner respondent City Treasurer of Makati rep. by Acting City Treasurer Jesusa E. Cuneta on July 29, 2021 is hereby ordered **DENIED.**
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> **SO ORDERED.**[7]

The proceedings before the Court in Division was likewise recounted, to wit:

On December 17, 2021, petitioner filed the instant Petition for Review.

On January 12, 2022, the Court ordered respondent to file a comment within ten (10) days from notice, and petitioner may file her reply within five (5) days from receipt of respondent's comment.

Respondent then filed a *Comment (Re: Petition for Review dated 16 December 2021)* on February 18, 2022.

On March 15, 2022, the Court gave the parties thirty (30) days from notice to file their respective memoranda. Also, the Court ordered the Branch Clerk of Court or the Officer-In-Charge of the court *a quo* to elevate the entire original records R-MKT-19-00308-CV, entitled "*Kurimoto (Philippines) Corporation v. City Treasurer of Makati City, represented by Acting City Treasurer Jesusa E. Cuneta,*" within ten (10) days from notice.

On April 4, 2022, the Court received the entire records of this case from the Branch Clerk of Court of the court *a quo*, which the Court noted on April 7, 2022.

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[7] EB Docket, pp. 21-24.

> On May 13, 2022, the Court received respondent's *Motion for Extension* to file a memorandum until May 13, 2022, which the Court granted on May 13, 2022.
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> On May 18, 2022, respondent's counsel filed a *Notice of Withdrawal of Appearance*, which the Court noted on May 31, 2022. Accordingly, the Court ordered respondent to cause the appearance of its new counsel within ten (10) days from notice.
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> On July 8, 2022, the Court received petitioner's Memorandum filed through registered mail on June 30, 2022.
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> On August 3, 2022, the Court issued a Resolution expunging petitioner's Memorandum for a clear breach of the period allowed to file the same, reiterating the order to respondent to cause the appearance of its new counsel as ordered in the Minute Resolution dated May 31, 2022; and submitting the case for decision.
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> On September 2. 2022, petitioner filed a *Motion for Reconsideration (on the Resolution of the Court promulgated on August 3, 2022)* and *Manifestation* with attached Memorandum.
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> On September 12, 2022, the Court granted petitioner's *Motion for Reconsideration (on the Resolution of the Court promulgated on August 3, 2022)*; considered petitioner's Memorandum as timely filed; noted petitioner's *Manifestation* and the corrections underlined in the attached Memorandum; and, recalled and set aside the Resolution dated August 3, 2022, submitting this case for decision xxx xxx xxx[8]

On August 31, 2023, the Court in Division promulgated the assailed Decision,[9] with the following dispositive portion:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Orders dated June 7, 2021 and November 17, 2021 of the RTC Branch 132, Makati City, in Civil Case No. R-MKT-19-00308-CV are **AFFIRMED**.

Aggrieved, petitioner filed a *Motion for Reconsideration (On the Decision of the CTA-Second Division Promulgated on August 31, 2023)* on September 22, 2023,[10] to which respondent failed to file a comment.[11]

On March 5, 2024, the assailed Resolution[12] was promulgated, finally denying the aforesaid *Motion* for lack of merit.

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[8] EB Docket, pp. 5-7.
[9] *Supra*, note 2.
[10] Division Docket, pp. 545-554.
[11] *Records Verification* dated January 3, 2024, p. 560.
[12] *Supra*, note 3.

Unrelenting, petitioner filed the instant *Petition for Review (En Banc)*.[13]

PROCEEDINGS BEFORE THE COURT *EN BANC*

In a Resolution dated April 26, 2024,[14] the Court directed petitioner to submit proof of the date of its receipt of the assailed Resolution.

On May 6, 2024, petitioner filed a *Compliance With Manifestation (Re: Notice of Resolution April 26, 2024)*,[15] submitting the original copy of the Notice of Resolution dated March 5, 2024 with the official receiving stamp of petitioner's department dated March 8, 2024, and an affidavit of petitioner's receiving officer. The Court noted the said *Compliance* in a Resolution dated July 1, 2024.[16]

On October 4, 2024, the Court received the Records Verification Report stating that respondent failed to file a comment on the instant *Petition*.[17] Thus, on November 12, 2024, the case was submitted for decision.[18]

ASSIGNMENT OF ERROR

Petitioner assigns the following error allegedly committed by the Court in Division:

> WITH DUE RESPECT, THE HONORABLE SPECIAL SECOND DIVISION OF THE CTA ERRED IN APPLYING SECTION 196 OF THE LOCAL GOVERNMENT CODE INSTEAD OF SECTION 195 OF THE SAME CODE AS BASIS FOR ITS DECISION.[19]

Petitioner disagrees with the Court in Division's heavy reliance on the case of *City of Manila v. Cosmos Bottling Corp.* (*Cosmos* case)[20] as basis for the assailed Decision, and argues that the same has already been effectively superseded by the case of *International Container*

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[13] *Supra*, note 1.
[14] EB Docket, p. 40.
[15] EB Docket, p. 41.
[16] EB Docket, p. 52.
[17] EB Docket, p. 59.
[18] EB Docket, p. 60.
[19] EB Docket, p. 6.
[20] G.R. No. 196681, June 27, 2018.

Terminal Services, Inc. v. City of Manila (*ICTS* case)[21] Petitioner argues that based on the latter case, the presence of an assessment notice is pivotal in determining whether Section 195 or Section 196 of the Local Government Code (LGC) is applicable. Petitioner argues that the Court in Division had a misplaced belief that the billing assessment was irrelevant in this case.

Petitioner further argues that even though respondent opted to pay the assessed tax subject of this case pursuant to the billing assessment, it was still required to follow the procedure under Section 195 of the LGC, *i.e.*, file a written protest within the prescribed sixty (60)-day period. Since it failed to do so, the subject assessment has become final and unappealable, and the case should have been dismissed.

Petitioner also points out that respondent relied on Section 195 of the LGC in filing the instant *Petition*.

For these reasons, petitioner submits that the Court in Division erred in ruling in favor of respondent, declaring it entitled to a tax refund.

RULING OF THE COURT *EN BANC*

Before We rule on the merits of the case, We shall briefly discuss the timeliness of the present appeal.

Petitioner received a copy of the assailed Resolution on March 8, 2024.[22] Pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[23] petitioner had fifteen (15) days from such receipt, or until March 23, 2024, to file an appeal with this Court. Since petitioner filed the present appeal on March 22, 2024, the same was timely filed.

Now, on the merits.

Petitioner argues that the Court in Division erred in relying on the *Cosmos* case as basis for applying Section 196 of the LGC to the case at bar, and in holding that the applicability of Section 196 does not depend on the existence of an assessment notice.

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[21] G.R. No. 185622, October 17, 2018.
[22] Division Docket, p. 561.
[23] A.M. No. 05-11-07-CTA, November 22, 2005.

Petitioner asserts that the *Cosmos* case, which was promulgated on June 27, 2018, has been effectively superseded by the *ICTS* case, which was promulgated on October 17, 2018. Citing the latter case, petitioner posits that the presence of an assessment notice is pivotal in determining whether Section 195 or 196 of the LGC is applicable. Thus, even when respondent paid the assessed tax of ₱162,400.86, it was still required to follow the procedure under Section 195 by filing a written protest within the sixty (60)-day period.

Relying further on the case of *Metro Pacific Tollways Development Corp. v. Makati City*,[24] petitioner submits that the assessment subject of this case has become final and unappealable. Thus, this case should have been outrightly dismissed.

After careful consideration of petitioner's arguments, in light of the facts as established by the records of the case, We find the same to be specious and unconvincing.

To determine whether respondent is entitled to the refund or tax credit of the amount of ₱162,400.86, representing allegedly illegally collected local business taxes (LBT) for taxable year (TY) 2016, the Court must first determine, *one*, whether the remedy availed of by respondent under Section 196 of the Local Government Code of 1991 (LGC)[25] was proper in the instant case; and *two*, whether respondent satisfied all the requirements under the said provision to be entitled to a refund thereunder.

The correlation between Sections 195 and 196 of the LGC

Sections 195 and 196 of the LGC provide, thus:

> SECTION 195. *Protest of Assessment.* — **<u>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.</u>** The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds

[24] C.T.A. AC No. 191, January 29, 2019.
[25] Republic Act No. 7160, October 10, 1991.

> 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. *(Emphasis supplied)*

As can be gleaned from the above, the taxpayer has two (2) administrative remedies against the local taxing authority in the assessment and/or collection of local taxes: **(1)** it can file a written protest with the local treasurer contesting a notice of assessment (Section 195); and/or **(2)** it can file a written claim for refund or credit with the local treasurer for the recovery of taxes erroneously or illegally collected (Section 196). The above-cited provisions also state that these administrative remedies, when appropriate, must first be exhausted before an action can be brought to court.

A more distinct comparison of the two (2) administrative remedies was made by the Supreme Court in the *Cosmos* case,[26] which sufficiently and exhaustively discussed the same, in this wise:

> **[T]he application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges. Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive.** The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may *appeal* with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.
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> On the other hand, **Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or**

[26] *Supra*, note 20.

charge, or that such tax, fee or charge had been illegally collected from him. The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.

Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended inaction by the local treasurer. **In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription.**

Additionally, **Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice.** By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place. **This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal. Thus, under such circumstance, *the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC.***

Clearly, when a taxpayer is assessed a deficiency local tax, fee or charge, he may protest it under Section 195 even without making payment of such assessed tax, fee or charge. This is because the law on local government taxation, save in the case of real property tax, does not expressly require "*payment under protest*" as a procedure prior to instituting the appropriate proceeding in court. This implies that the success of a judicial action questioning the validity or correctness of the assessment is not necessarily hinged on the previous payment of the tax under protest.

Needless to say, there is nothing to prevent the taxpayer from paying the tax under protest or simultaneous to a protest. There are compelling reasons why a taxpayer would prefer to pay while maintaining a protest against the assessment. For instance, a taxpayer who is engaged in business would be hard-pressed to secure a business permit unless he pays an assessment for business tax and/or regulatory fees. Also, a taxpayer may pay the assessment in order to avoid further penalties, or save his properties from levy and distraint proceedings.

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The foregoing clearly shows that a taxpayer facing an assessment may protest it and alternatively: *(1)* appeal the assessment in court, or *(2)* pay the tax and thereafter seek a refund. Such procedure may find jurisprudential mooring in *San Juan v. Castro* wherein the Court described for the first and only time the alternative remedies for a taxpayer protesting an assessment — either appeal the assessment before the court of competent jurisdiction, or pay the tax and then seek a refund. The Court, however, did not elucidate on the relation of the second mentioned alternative option, *i.e.*, pay the tax and then seek a refund, to the remedy stated in Section 196.

As this has a direct bearing on the arguments raised in the petition, we thus clarify.

Where an assessment is to be protested or disputed, the taxpayer may proceed *(a)* without payment, or *(b)* with payment of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; otherwise, the assessment becomes conclusive and unappealable.

> *(a)* Where no payment is made, the taxpayer's procedural remedy is governed strictly by Section 195. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment.
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> ***(b)* Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (Section 195, LGC) and at the same time seeking a refund of the taxes.** In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.
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> **The same implication should ensue even if the taxpayer were to style his suit in court as an action for refund or recovery of erroneously paid or illegally collected tax as pursued under Section 196 of the LGC.** In such a suit for refund, the taxpayer cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes

without necessarily assailing the validity or correctness of the assessment he had administratively protested.

It must be understood, however, that in such latter case, **the suit for refund is conditioned on the prior filing of a written claim for refund or credit with the local treasurer. In this instance, what may be considered as the administrative claim for refund is the letter-protest submitted to the treasurer. Where the taxpayer had paid the assessment, it can be expected that in the same letter-protest, he would also pray that the taxes paid should be refunded to him. As previously mentioned, there is really no particular form or style necessary for the protest of an assessment or claim of refund of taxes. What is material is the substance of the letter submitted to the local treasurer.**

Equally important is the institution of the judicial action for refund within thirty (30) days from the denial of or inaction on the letter-protest or claim, not any time later, even if within two (2) years from the date of payment (as expressly stated in Section 196). Notice that the filing of such judicial claim for refund after questioning the assessment is within the two-year prescriptive period specified in Section 196. **Note too that the filing date of such judicial action necessarily falls on the beginning portion of the two-year period from the date of payment. Even though the suit is seemingly grounded on Section 196, the taxpayer could not avail of the full extent of the two-year period within which to initiate the action in court.**

The reason is obvious. This is because an assessment was made, and if not appealed in court within thirty (30) days from decision or inaction on the protest, it becomes conclusive and unappealable. Even if the action in court is one of claim for refund, the taxpayer cannot escape assailing the assessment, invalidity or incorrectness, the very foundation of his theory that the taxes were paid erroneously or otherwise collected from him illegally. Perforce, the subsequent judicial action, after the local treasurer's decision or inaction, must be initiated within thirty (30) days later. It cannot be anytime thereafter because the lapse of 30 days from decision or inaction results in the assessment becoming conclusive and unappealable. In short, the scenario wherein the administrative claim for refund falls on the early stage of the two-year period but the judicial claim on the last day or late stage of such two-year period does not apply in this specific instance where an assessment is issued.

> To stress, **where an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund *at any time* within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' *within 60 days from receipt of the notice of assessment*, and thereafter bring suit in court *within 30 days from either decision or inaction* by the local treasurer.**
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> **Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One*, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two*, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax.** *(Emphasis supplied)*

Apropos to the present case are the following pronouncements: **(1)** an application for refund or credit under Section 196 of the LGC can arise from a validly issued assessment; and, **(2)** where a valid assessment is issued, the taxpayer may choose to proceed without payment by availing of the remedy under Section 195 of the LGC, or it may choose to pay the assessed tax and avail of the remedy under Section 195 or 196 of the LGC. Regardless of the taxpayer's choice, a written protest must be filed with the local treasurer within sixty (60) days from receipt of the notice of assessment; otherwise, such assessment becomes final and conclusive.

The *Cosmos* case was cited by the Supreme Court in the *ICTS* case,[27] which added, *viz.*:

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

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[27] *Supra*, note 21.

> **<u>If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer.</u>** In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. "Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer."
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> **<u>On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.</u>**
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> xxx xxx xxx
>
> Following [the *Cosmos* case], refund is available under both Sections 195 and 196 of the Local Government Code: for Section 196, because it is the express remedy sought, and for Section 195, as a consequence of the declaration that the assessment was erroneous or invalid. Whether the remedy availed of was under Section 195 or Section 196 is not determined by the taxpayer paying the tax and then claiming a refund.
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> What determines the appropriate remedy is the local government's basis for the collection of the tax. It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state "the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties." In *Yamane v. BA Lepanto Condominium Corp.*:
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> xxx xxx xxx
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> No such precondition is necessary for a claim for refund pursuant to Section 196. *(Emphasis supplied)*

A perusal of the above-cited jurisprudence clearly shows that there is **no inconsistency** between the *Cosmos* case and the *ICTS* case, so as to warrant petitioner's insistence that the latter effectively superseded the former. Both cases state that where a valid assessment was issued and the taxpayer opts to pay the assessed tax, it must still file a written protest within the sixty (60)-day period, and then file a court action within thirty (30) days from either the decision or inaction of the local treasurer. Both cases also state that the taxpayer may question the validity and correctness of the assessment under Section 195 of the LGC, and, **at the same time**, seek a refund or credit of the taxes paid pursuant to such assessment.

There is nothing in the *Cosmos* case nor in the *ICTS* case that expressly or even impliedly limits an action for refund of taxes paid pursuant to a valid assessment, to Section 195 of the LGC *only*.

In fact, in the *Cosmos* case, the Supreme Court stated that an application for refund can be precipitated by a previously issued assessment "*for it is entirely possible that the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal. Thus, under such circumstance, the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC.*"[28] It also stated that in an action for refund of erroneously paid or illegally collected tax under Section 196 of the LGC, "*the taxpayer cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes without necessarily assailing the validity or correctness of the assessment he had administratively protested.*"[29] Thus, "*the suit for refund is conditioned on the prior filing of a written claim for refund or credit with the local treasurer. In this instance, what may be considered as the administrative claim for refund is the letter-protest submitted to the treasurer.*"[30] Evidently, these pronouncements expressly pertain to a scenario where an action for refund under Section 196 of the LGC is allowed notwithstanding the fact that payment of the tax sought to be recovered was made pursuant to a valid assessment.

Further, a closer look at the *ICTS* case reveals that, while the High Court proclaimed Section 195 as a remedy against a notice of assessment, and that a valid notice of assessment is not a precondition for a claim for refund under Section 196,[31] **such proclamations cannot be construed to restrict the application of Section 196 *only* to cases where there is no valid assessment involved. Neither can they be taken to mean that resort to Section 196 is *barred* by the presence of a valid assessment. If anything, such statements in the *ICTS* case merely differentiate between the requirements or conditions that trigger the application of Section 195, and those that trigger the application of Section 196.**

To be sure, in the *ICTS* case, one of the issues resolved by the Supreme Court was whether Section 195 or 196 of the LGC applied to the taxpayer's claim for refund of LBT paid pursuant to several assessments. The Supreme Court held that the subject "assessments"

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[28] *Supra*, note 20.
[29] *Id.*
[30] *Id.*
[31] *Supra*, note 21.

could not be considered as a valid notice of assessment as required under Section 195 of the LGC, since they did not contain any amount of deficiency, surcharges, interests, and penalties due from the taxpayer. There being no valid notice of assessment that would trigger the application of Section 195, the Supreme Court proceeded to resolve the taxpayer's claim for refund within the parameters of Section 196.[32]

It must be noted that the *ICTS* case did not involve the scenario contemplated by the *Cosmos* case, where the taxpayer receives a *valid* notice of assessment, pays the assessed tax, and subsequently files a claim under Section 196. Thus, heavy reliance on the ruling in *ICTS* case may be improper in resolving cases involving factual circumstances materially different from that in the *ICTS* case. Meanwhile, the general pronouncements in the *Cosmos* case remain controlling as guiding principles in the application (or non-application) of Sections 195 and 196 of the LGC.

So while the availment of the remedy under Section 196 does not depend upon the existence of a valid notice of assessment, a taxpayer who receives such assessment and pays the same may subsequently claim a refund under Section 196, subject to the conditions provided by the LGC and the above-cited jurisprudence.

Respondent's recourse under Section 196 of the LGC was proper in the instant case

There is no dispute on the existence and validity of the Billing Assessment dated January 17, 2017 **(subject assessment)**. Records of the case show that the parties stipulated on the existence, authenticity, faithful reproduction, contents and due execution of the subject assessment,[33] and no issue was raised thereon during the course of the proceedings before the RTC of Makati City - Branch 132 and the Court in Division. Neither is there any issue on the authority of the Business Permits Office of Makati City to issue the subject assessment, considering the parties' joint stipulation that it was the City Treasurer who issued the same.[34] There being no issue on this point, the subject assessment remains valid.

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[32] *Id.*
[33] *Joint Stipulation of Facts, Issues and Documents with Joint Motion* dated September 14, 2020, RTC Records - Vol. 2, p. 10.
[34] *Joint Stipulation of Facts, Issues and Documents with Joint Motion* dated September 14, 2020, RTC Records - Vol. 2, p. 8.

Despite the validity of the subject assessment, however, respondent's recourse under Section 196 of the LGC to recover the taxes it paid pursuant to such assessment, was proper in this case.

To recall, on January 13, 2016, petitioner issued against respondent a Billing Assessment for LBT due for TY 2016 in the amount of ₱543,775.99, which respondent paid in full.

In the following year, or on January 17, 2017, petitioner issued against respondent the subject assessment, likewise covering TY 2016, and for additional LBT in the amount of ₱162,400.86, computed as follows:[35]

Kind of Fee / Tax	Tax Base	Tax Amount	%INT	Sur. / Int.	Total
Actual Gross per F.S.	86,843,497.50	651,326.23			
Declared Gross	72,503,465.44	543,775.99			
		107,550.24	51	54,850.62	*162,400.86*

Respondent paid the total assessed amount of ₱162,400.86. Since respondent did not file a written protest with the local treasurer within sixty (60) days from its receipt of the subject assessment, *ordinarily*, pursuant to Section 195 of the LGC, the subject assessment should have attained finality.

However, in this case, in the following year, or on June 5, 2018, petitioner issued against respondent a Notice of Assessment, this time covering TYs 2013 to 2017, including TY 2016. With respect to TY 2016, additional LBT in the amount of ₱1,302,579.86 was assessed against petitioner, computed as follows:[36]

TY	Gross Sales Per Audit				Tax Due	Tax Paid	Variance	25% Surcharge	2% Monthly Interest		Total
	Per Audit	Declared	In other localities	Should be in Makati					Rate	Amount	
2016	289,478,325.00	72,503,465.44	108,755,198.15	180,723,126.85	1,355,423.45	543,775.99	811,647.46				
							(107,550.24)	(as per OR #3105746BT dated 1/23/17)			
							704,097.22	176,024.31	60%	422,458.33	*1,302,579.86*

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[35] Exhibit "D", Division Docket, p. 85.
[36] Exhibit "G-1", Division Docket, p. 179.

Clearly from the foregoing, the subject assessment did not attain finality because, although respondent paid the assessed tax and failed to file a written protest within sixty (60) days from notice, **petitioner itself re-opened the assessment for TY 2016 by assessing against respondent additional LBT in the amount of ₱1,302,579.86, beyond the 60-day period and until the issuance of the Notice of Assessment on June 5, 2018.**

The fact that petitioner deducted the basic tax paid on January 23, 2017 (₱107,550.24) from the net basic tax due in the Notice of Assessment dated June 5, 2018 (₱811,647.46) only shows that the assessment for TY 2016 continued as the basic tax paid on January 23, 2017 was considered in arriving at the final assessed amount for TY 2016 (₱1,302,579.86).

Verily, petitioner's act of proceeding with the assessment for TY 2016 beyond the alleged finality of the same, belies petitioner's claim that the subject assessment had become final and unappealable.

This Court cannot give its assent to petitioner's notion that the subject assessment became final as to respondent, for its failure to file a written protest thereto, but remained open as to petitioner, who continued to audit respondent beyond the alleged finality of the same. Such a notion is not only grossly unfair but also devoid of reason.

Moreover, Section 171 of the LGC and Article 259 of the Rules and Regulations Implementing the LGC[37] limit the conduct of an examination of the books of accounts and other pertinent records of any taxpayer to **only once** for every tax period. Hence, any view tending to suggest that the subject assessment had attained finality independently of the assessment for TY 2016 per the Notice of Assessment dated June 5, 2018, must be rejected.

Considering that the subject assessment had not yet attained finality in March 2017, respondent, through the filing of a written protest to the 2018 Notice of Assessment on July 30, 2018, timely assailed the assessment for TY 2016 at the administrative level. Respondent likewise timely filed an action in court **(Assessment Case)** within thirty (30) days from petitioner's inaction on the said protest. Respondent thus complied with the conditions expressly laid down in the *Cosmos* case for the successful prosecution of an action for refund in case the taxpayer had received an assessment.[38]

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[37] Administrative Order No. 270, February 21, 1992.
[38] *Supra*, note 20.

More importantly, respondent filed an administrative claim for refund on December 21, 2018 covering the ₱162,400.86 it paid on January 23, 2017. It also filed a judicial claim for refund **(Refund Case)** on January 23, 2019. Both refund claims were filed within the two (2)-year prescriptive period provided under Section 196 of the LGC.

It bears noting that in the assessment worksheet attached to the Revised Notice of Assessment[39] issued by petitioner on July 18, 2019 during the pendency of the Assessment Case, there appears to be an overpayment of LBT in the amount of ₱243,491.99 for TY 2016, computed as follows:

Tax Due	Tax Paid	Variance	25% Surcharge	2% Monthly Interest		Total
				Rate	Amount	
407,834.24	543,775.99	(135,941.75)				
		(107,550.42)	(as per OR #3105746BT dated 1/23/17)			
		(243,491.99)	(Sec. 7B.14 (d) Claim for Refund of Tax Credit)			

Beside the overpaid amount is a notation referring respondent to a particular provision for the refund of the same. The above computation and notation both indicate, at least, petitioner's acknowledgement that there was a tax paid to and collected by petitioner, that such tax was more than what was due, and that such tax may be the subject of a claim for refund.

Furthermore, in the *Judicial Compromise Agreement*[40] dated September 5, 2019 executed by the parties and approved by the court in the Assessment Case through a *Judgment (Based on Compromise Agreement)* promulgated on October 11, 2019, the parties agreed that the payment of the settlement amount of ₱210,567.34 by respondent "*constitutes the full settlement of deficiency business taxes, surcharge and interest for taxable years 2013 until 2017 and that no further assessments for business taxes shall be issued by the City Treasurer for the said years.*" Notably, the disposition of the overpaid tax for TY 2016 was left unaddressed. It cannot be presumed that such overpaid tax formed part of the full settlement, as such conclusion would effectively result in unjust enrichment in favor of petitioner. As such,

[39] Exhibit "I", Division Docket, pp. 205-206.
[40] Exhibit "J", Division Docket, pp. 213-215.

the overpaid tax (or the portion thereof that has not yet prescribed, *i.e.*, ₱162,400.86) remains subject to refund.

Anent petitioner's reliance on the case of *Metro Pacific Tollways Development Corp. v. Makati City*,[41] suffice it to say that this Court is not bound to uphold the ruling of the CTA in another case in disposing of the present one.

In view of the foregoing, as respondent has established all the requisites under the law and jurisprudence for a successful claim for refund under Section 196 of the LGC, We find no reason to deny its recourse under the said provision for purposes of recovering the overpaid LBT in the amount of ₱162,400.86.

We thus find no reason to reverse the ruling of the Court *a quo* which held that respondent properly filed its judicial claim for refund within two (2) years after it erroneously paid the amount of ₱162,400.86, and that respondent sufficiently satisfied the twin conditions for prosecuting an action for refund before the court.

WHEREFORE, premises considered, the instant *Petition for Review* is **DENIED.** Accordingly, the Decision dated August 31, 2023 and Resolution dated March 5, 2024, are **AFFIRMED.**

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[41] *Supra*, note 24.

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice