REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

THE MUNICIPAL TREASURER OF THE MUNICIPALITY OF CLAVER, represented by CARYL DEE LUKBAN,
Petitioner,

- versus -

PLATINUM GROUP METALS CORPORATION (PGMC),
Respondent.

CTA AC NO. 183
(Civil Case No. 8208)

Members:

Del Rosario, *P.J., Chairperson,*
Uy, and
Mindaro-Grulla, *JJ.*

Promulgated:
APR 16 2019 10:53 am

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AMENDED DECISION

DEL ROSARIO, P.J.:

This resolves the following:

1. respondent's **"Motion for Reconsideration (of the Honorable Court's Decision dated 9 August 2018)"** filed on September 6, 2018, with petitioner's Comment filed on September 26, 2018, and respondent's Reply (to Comment dated 24 September 2018) filed on October 17, 2018;

2. petitioner's "**Motion for Clarification"** filed on September 12, 2018, with respondent's Comment (on Motion for Clarification dated 12 September 2018) filed on October 5, 2018; and,

3. respondent's **"Motion to Set Case for Oral Argument"** filed on January 11, 2019, with petitioner's Comment filed on February 6, 2019.

Motion for Reconsideration

Respondent seeks reconsideration of the Court's Decision dated August 9, 2018, the dispositive portion of which reads:

> "WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is GRANTED. Accordingly, the Decision dated February 14, 2017 rendered by the RTC-Branch 29, in Civil Case No. 8208, is hereby CANCELLED and SET ASIDE. The assessments for local business taxes by petitioner Municipal Treasurer of the Municipality of Claver, Surigao del Norte, against respondent Platinum Group Metals Corporation (PGMC) in the amount of P83,981,477.43 for the year 2015 and P61,833,811.88 for the year 2016 are hereby UPHELD.
>
> SO ORDERED."

In support of its Motion, respondent contends that its entitlement to Income Tax Holiday (ITH) under Article 39 (a)(1) of the Omnibus Investment Code carries with it the exemption from local business tax as expressly provided under Section 133(g) of the Local Government Code. It also argues that even assuming that petitioner had the authority to assess respondent for local business tax in 2015 and 2016, petitioner's Notice of Assessment dated April 18, 2016, which was based on its shipments in 2014 and 2015, is patently illegal.

In its Comment, petitioner avers that respondent's argument that its entitlement to ITH carries with it the exemption from local business tax has been completely passed upon in the Decision sought to be reconsidered.

Petitioner also states that respondent has introduced for the first time a new theory that the assailed Assessment Notice is illegal because it was not based on gross receipts but on the value of its shipments. Petitioner argues that this is an implied admission that the theory it has previously adopted about its exemption from local business tax is baseless. Petitioner also asserts that the rules of fair play, justice and due process prevent respondent from deviating from its original and consistent theory, and that respondent cannot anymore raise an entirely new issue or argument at this very late stage of the case.

Petitioner, nonetheless, explains that it computed respondent's local business tax using as tax base the value of respondent's shipments as there was no available data as far as respondent's actual gross receipts is concerned, other than the summary of shipments from the Mines and Geosciences Bureau (MGB) showing the value of its products for the relevant years.

Petitioner also points out that respondent never challenged the basis or correctness of the computation of gross receipts in its protest against the Notice of Assessment, nor impugned the same before the trial court, and not even before this Court when this case was pending resolution. According to petitioner, it is too late for respondent to challenge the correctness of the gross receipts as declared in the Notice of Assessment, and respondent is now estopped from attacking the computation, which it has previously accepted when it protested the Notice of Assessment.

Finally, petitioner avers that while respondent conveniently claims that the value of its shipments is not the same as its gross receipts, it did not present any evidence to prove such contention.

In its Reply, respondent argues that the Court may rule upon the validity of the assessments issued by petitioner without legal authority, citing Section 1 of Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA), which provides that "in deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case." Respondent likewise cites *Commissioner of Internal Revenue vs. Lancaster Philippines*[1] where the Court's authority to rule on an issue which was not raised by the parties was affirmed. Respondent submits that the Court has the power and duty to rule on the validity of the assessment especially since on its face it was derived illegally.

Respondent further posits that petitioner failed to discharge its duty to ascertain and assess the correct taxes when it admitted that the assessment was based on the gross value of the shipments and not on respondent's gross receipts. Citing paragraphs 1 and 2, Section 171 of the LGC, respondent insists that the local treasurer has a legal obligation to ascertain, assess, and collect the correct taxes and is accorded the power to examine the books of accounts and pertinent records of the taxpayer. Respondent argues that without a proper examination of its records, as it never even received a letter of authority for the conduct of an examination, petitioner could not have ascertained the correct taxes allegedly due from it.

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[1] G.R. No. 183408, 12 July 2017.

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In conclusion, respondent states that the assessments which petitioner issued despite respondent's exemption from local taxes for the years covered by its ITH, without legal basis and without an examination of the records, are null and void.

Motion for Clarification

Petitioner states that while the Court found respondent liable for the assessed local business taxes for the years 2015 and 2016, the Decision is silent as to the interest and surcharges. To petitioner, the Decision upholding the assessments necessarily and by force of law includes respondent's concomitant obligation to pay interest and surcharges arising from its failure to pay the subject business taxes; thus, petitioner seeks clarification of the assailed Decision dated August 9, 2018 to obviate any possible dispute between the parties. Petitioner invokes this Court to clarify and expressly include in the assailed Decision that respondent is also liable for interest and surcharges arising from its failure to pay its local business taxes due for the years 2015 and 2016 based on the pertinent provisions of Ordinance No. 2012-02.

Respondent, in its Comment, prays for the denial of petitioner's Motion for Clarification. It states that it cannot be held liable for interest and surcharge on an unauthorized, void assessment, as said interest and surcharge imposed by the Local Government Code of 1991 (LGC) and the Municipal Ordinance No. 2012-02 apply only to validly assessed taxes that remain unpaid. Respondent theorizes that petitioner had no authority to assess the taxes in view of its ITH which carries with it the exemption from local business tax. Respondent also posits that the business tax assessments issued without conducting an examination of its books of accounts and records, but were derived from the alleged gross value of its shipments, are not authorized by the LGC or by Municipal Ordinance No. 2012-02. According to respondent, the local business tax must be based on the gross receipts of the business citing Section 143 of the LGC, and Section 2B.010 of Municipal Ordinance No. 2012-02.

Motion to Set Case for Oral Argument

Respondent claims that during the trial before the Regional Trial Court of Surigao City – Branch 29 (RTC Branch 29), the main issue threshed out was its entitlement to exemption from local business tax in view of its ITH incentive under Article 39(a)(1) of the Omnibus Investment Code. When RTC Branch 29 affirmed its local tax exemption in a Decision dated 14 February 2017, it was thus needless and moot to discuss the illegality of the tax basis of petitioner's assessment. When petitioner questioned the RTC Decision before this Court, it merely elevated the issue on the applicability of the local tax exemption, and respondent had no occasion to delve into the substance of petitioner's Notice of Assessment. After this Court set aside the RTC Decision through the assailed Decision, respondent filed its Motion for Reconsideration to move for a re-examination of the validity of petitioner's assessment.

Respondent states that the Court has discretion to set the case for oral argument under Section 3, Rule 15 of the RRCTA. Respondent claims that the conduct of an oral argument will give the parties full opportunity to explain and support their position on the validity of the assessment which they were barely able to do before the RTC Branch 29.

In its Comment, petitioner states that the contention in respondent's Motion to set the case for oral argument is totally misleading. Petitioner maintains that respondent never challenged the basis or correctness of the computation of gross receipts as reflected in the Notice of Assessment when it filed its protest before the Municipal Treasurer of Claver. Respondent never impugned the basis of the gross receipts in the Notice of Assessment when it filed its Petition for Review with the court *a quo*, and the only issue raised therein was its alleged entitlement to local tax exemption. When petitioner challenged the propriety of the court *a quo's* decision before this Court, respondent likewise did not raise the issue of the alleged illegality of the Notice of Assessment. Petitioner stresses that the new theory raised by respondent for the first time in its Motion for Reconsideration that the Notice of Assessment is illegal because it was not based on gross receipts but on the value of its shipments was not discussed in the proceedings before the Municipal Treasurer of Claver, the court *a quo* and before this Court.

Petitioner further argues that respondent's Motion to Set Case for Oral Argument is evidently designed to delay the final resolution of this case.

RULING OF THE COURT

After carefully evaluating the arguments of the parties, the Court finds respondent's Motion for Reconsideration meritorious.

Hence, this Amended Decision.

Section 1, Rule 9 of the Rules of Court states:

> "**Section 1.** *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim."

The general rule is that defenses and objections not pleaded either in a motion to dismiss or in an answer are deemed waived. This rule admits of exceptions that allow the Court to dismiss the claim on the following grounds, albeit not pleaded either in a motion to dismiss or in an answer: (i) it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter; (ii) that there is another action pending between the same parties for the same cause; and, (iii) or that the action is barred by a prior judgment or by statute of limitations.

Furthermore, Section 15, Rule 44 of the Rules of Court limits the questions that may be raised on appeal, *viz.*:

> "Section 15. *Questions that may be raised on appeal.* – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties."

The theory-of-the-case principle forbids parties from changing their theory of the case or their cause of action on appeal.[2] It affirms that courts of justice have no jurisdiction or power to decide a question not in issue. Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. The rule rests on the fundamental tenets of fair play.[3]

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[2] Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, G.R. No. 159593, October 12, 2006.
[3] Henry Mon vs. Court of Appeals, G.R. No. 118292, April 14, 2004.

The foregoing rule, however, admits of exceptions, such as those enumerated in Section 1, Rule 9 of the Rules of Court and that which is allowed under existing jurisprudence.

In ***Lianga vs. Lianga***[4] and ***Quasha vs. LCN Construction Corp.***[5] the Supreme Court was categorical in its pronouncement that **"in the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal only when the factual bases thereof <u>would not require presentation of any further evidence</u> by the adverse party in order to enable it to properly meet the issue raised in the new theory."**

Canlas vs. Tubil[6] also elucidates:

> "As a rule, a change of theory cannot be allowed. However, **when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory**, as in this case, the Court may give due course to the petition and resolve the principal issues raised therein."

The foregoing exception is obtaining in the case at bar.

To be sure, **it is settled that local business tax should be based on gross sales or gross receipts.**[7] Specifically, for **mining companies, local business tax should be based on their gross receipts,** as clarified in Local Finance Circular 02-09, [8] *viz.*:

> SECTION 3. Business Tax on Mining Companies. — **The tax on mining companies shall be levied on their gross receipts for the preceding calendar year**, as follows:
>
> a) Mining companies which exclusively operate for the extraction of minerals, metallic or non-metallic, the tax rate shall not

[4] G.R. No. L-38685, March 31, 1977.
[5] G.R. No. 174873, August 26, 2008.
[6] G.R. No. 184285, September 25, 2009.
[7] Section 143 of the Local Government Code of 1991(Republic Act No. 7160); *Ericsson Telecommunications, Inc. vs. City of Pasig*, G.R. No. 17667, November 22, 2007.
[8] Local Finance Circular 02-09 (Prescribing the Guidelines Governing the Power of Provinces, Cities and Municipalities to Impose Local Taxes, Fees and Charges on Mining Companies Pursuant to the Pertinent Provisions of Republic Act No. 7160, Otherwise known as the Local Government Code of 1991 and its Implementing Rules and Regulations (IRR)" dated August 20, 2009.

> exceed two percent (2%) of their gross receipts pursuant to Section 143 (h) of the LGC imposed under the ordinance of the local government unit (LGU) concerned.
>
> b) Mining companies whose operations include the processing of extracted minerals to finished products shall be taxed on their gross receipts pursuant to Section 143 (a) of the LGC imposed under the ordinance of the LGUs concerned." (Boldfacing supplied)

The term "gross receipts" is defined in Local Finance Circular No. 02-09, as follows:

> "Gross 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)."

In this case, however, it is **undisputed** that the **Notice of Assessment**, assessing respondent for deficiency local business taxes for the years 2015 and 2016, issued by petitioner was **based on the 2014 and 2015 shipments of respondent**. No further evidence is required to be presented in connection with the manner and bases by which the assessed amounts were computed. The assessments speak for themselves.

In fact, by just perusing the evidence on record, specifically the Letter dated April 18, 2016[9] issued by the Office of the Municipal Treasurer, the Court could readily ascertain whether or not the Notice of Assessment attached thereto is valid. Said Letter explicitly states that:

> "Xxx, attached is our assessment of your local taxes for CY 2015 income reference is CY 2014 and for local taxes for CY 2016 income reference is CY 2015. **Our gross receipts references are the Summary of Shipment of your company from Mines and Geosciences Bureau Regional Office No. XIII** (see attached)." (Boldfacing and underscoring supplied)

Indeed, it is well within the power of this Court to rule on the validity of the Notice of Assessment taking into consideration the patent and undisputed fact that the Notice of Assessment, assessing respondent for deficiency local business taxes for the years 2015 and 2016, was based on respondent's shipments and not on its gross receipts for 2014 and 2015.

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[9] Annex "D" of petitioner's Petition for Review in CTA AC No. 183; Annex "A" of respondent's Petition for Review in Civil Case No. 8208.

As the Notice of Assessment issued against respondent for 2015 and 2016 was not based on its 2014 and 2015 gross receipts, the same is void *ab initio.* The Notice of Assessment could not be a valid source of obligation to pay deficiency local business taxes for the years 2015 and 2016 on the part of respondent. **Being a void assessment, the Notice of Assessment bears no fruit[10] and should be slain at sight.**

In light of the foregoing, the Court will no longer belabor the other issues raised in the parties' respective motions.

WHEREFORE, respondent's "Motion for Reconsideration (of the Honorable Court's Decision dated 9 August 2018)" filed on September 6, 2018 is **GRANTED**. Accordingly, the August 9, 2018 Decision of this Court is **REVERSED and SET ASIDE**. The Notice of Assessment issued against respondent for the years 2015 (based on its 2014 shipments) and 2016 (based on its 2015 shipments) is **CANCELLED**.

With the foregoing declaration of the nullity of the present tax assessment and the cancellation of the Notice of Assessment issued against respondent for the years 2015 and 2016, petitioner's Motion for Clarification filed on September 12, 2018, and respondent's Motion to Set Case for Oral Argument filed on January 11, 2019 are considered **MOOT and ACADEMIC**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

(See Dissenting Opinion)
ERLINDA P. UY
Associate Justice

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

[10] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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THE MUNICIPAL TREASURER OF THE MUNICIPALITY OF CLAVER, represented by CARYL DEE LUKBAN, Petitioner,	**CTA AC No. 183** (Civil Case No. 8208)
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
PLATINUM GROUP METALS CORPORATION (PGMC), Respondent.	***Promulgated:*** APR 16 2019 10:53 am

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DISSENTING OPINION

UY, J.:

With all due respect to my esteemed colleagues, I dissent with the majority opinion of this Court, in granting respondent's *Motion for Reconsideration*, thereby reversing its Decision dated August 9, 2018, and cancelling the Notice of Assessment issued against respondent for the years 2015 and 2016.

I respectfully disagree to the application in this case of the judicial doctrine that *"a party may change his legal theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory."*[1] In my humble opinion, the applicable doctrine is the one enunciated in *City Mayor,*

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[1] *Lianga vs. Lianga*, G.R. No. L-38685, March 31, 1977; *Quasha vs. LCN Construction Corp.*, G.R. No. 174873, August 26, 2008; and *Canlas vs. Tubil*, G.R. No. 184285, September 25. 2009.

et al. vs. Rizal Commercial Banking Corporation,[2] wherein the Supreme Court said:

> "The issues in every case are limited to those presented in the pleadings. The object of the pleadings is to draw the lines of battle between the litigants and to indicate fairly the nature of the claims or defenses of both parties. **Points of law, theories, issues and arguments should be brought to the attention of the trial court to give the opposing party an opportunity to present further evidence material to these matters during judicial proceedings before the lower court. Otherwise, it would be too late to raise these issues during appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.**" *(Emphasis and underscoring supplied)*

In this case, it would be utterly unfair to petitioner if this Court would allow respondent to change its theory, at this late stage of the proceedings.

I am aware that for mining companies, the local business tax to be imposed on them should be based on their gross receipts, pursuant Section 3 of the Local Finance Circular No. 02-09[3], which provides as follows:

> "SECTION 3. Business Tax on Mining Companies. — **The tax on mining companies shall be levied on their gross receipts for the preceding calendar year**, as follows:
>
> a) Mining companies which exclusively operate for the extraction of minerals, metallic or non-metallic, the

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[2] G.R. No. 171033, August 3, 2010.

[3] SUBJECT: Prescribing the Guidelines Governing the Power of Provinces, Cities and Municipalities to Impose Local Taxes, Fees and Charges on Mining Companies Pursuant to the Pertinent Provisions of Republic Act No. 7160, Otherwise Known as the Local Government Code of 1991 and its Implementing Rules and Regulations (IRR).

> tax rate shall not exceed two percent (2%) of their gross receipts pursuant to Section 143 (h) of the LGC imposed under the ordinance of the local government unit (LGU) concerned.
>
> b) Mining companies whose operations include the processing of extracted minerals to finished products shall be taxed on their gross receipts pursuant to Section 143 (a) of the LGC imposed under the ordinance of the LGUs concerned."

Without doubt, We can find the following statements in petitioner's Notice of Assessment dated April 18, 2016,[4] to wit:

> "xxx, attached is our assessment of your local taxes for CY 2015 income reference is CY 2014 and for local taxes for CY 2016 income reference if CY 2015. **Our gross receipts references are the Summary of Shipment of your company from Mines and Geosciences Bureau Regional Office No. XIII** (see attached)."

However, a plain reading of the foregoing would reveal that petitioner is also aware that the local business tax base for mining companies, such as respondent, is indeed their *"gross receipts"*; it is just that petitioner's references are the *"Summary of Shipment...from* (the) *Mines and Geosciences Bureau Regional Office No. XIII"*.

Relative thereto, upon receipt of petitioner's Notice of Assessment, respondent, in its protest thereto, could have already and simply denied, with corresponding evidence, that its *"gross receipts"* is not the same as the *"gross values"* indicated in the said *Summary of Shipment*, if such was really the case [in addition to his stance that it is exempt from the imposition of the local business tax because of the income tax incentives it is enjoying under Article 39(A)(1) of the Omnibus Investment Code]. However, it did not. Respondent simply remained silent about the matter from the time of its receipt of the said Notice of Assessment, until now, by arguing that the subject tax assessments are void because the same were not based on its *"gross receipts"*.

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[4] Docket (CTA AC No. 183), p. 44; RTC Docket (Civil Case No. 8208), p.

In *Philippine Bank of Communication vs. Court of Appeals, et al.*,[5] the Supreme Court held:

> "xxx. In *Santiago Syjuco, Inc. vs. Castro*,[6] we had the occasion to reiterate that:
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>> **The principles of equitable estoppel, sometimes called estoppel *in pais*, are made part of our law by Art. 1432 of the Civil Code.** Coming under this class is estoppel by silence, which obtains here and as to which it has been held that:
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>>> xxx **an estoppel may arise from silence as well as from words. 'Estoppel by silence' arises where a person, who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts in reliance on which he acts to his prejudice.** Silence may support an estoppel whether the failure to speak is intentional or negligent.
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>>> **'Inaction or silence may under some circumstances amount to a misrepresentation and concealment of facts, so as to raise an equitable estoppel. When the silence is of such a character and under such circumstances that it would become a fraud on the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act on, it will operate as an estoppel. This doctrine rests on the principle that if one maintains silence,**

[5] G.R. No. 106858, September 5, 1997.
[6] 175 SCRA 171 (1989).

> **when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent.** He who remains silent when he ought to speak cannot be heard to speak when he should be silent.'" *(Emphases and underscoring supplied)*

The rule on estoppel *in pais* is a well-settled rule of equity which has been adopted by the courts of law that where for instance A has, by his acts or representations, or by his silence when he ought to speak out, intentionally or through culpable negligence, induced B to believe certain facts to exist, and B has rightfully acted on his belief, so that he will be prejudiced if A is permitted to deny the existence of such facts, A is conclusively estopped to interpose a denial thereof.[7]

In this case, respondent, when it ought to speak out about the supposed fact that the *"gross values"* indicated in the *Summary of Shipment* referred to in the subject Notice of Assessment is not the same as its *"gross receipts"* to which the local business tax should be imposed, intentional or through culpable negligence, remained silent about the same. Respondent had every opportunity to raise the said matter, if such was really the case, in its protest letter dated July 15, 2016,[8] in its *Petition for Review* and other pleadings filed in the Court *a quo*, and in the pleadings it filed in the instant case; but nothing is said about any disparity between the said *"gross values"* and its *"gross receipts"*.

Truth be told, the basic theory of respondent, before filing the instant *Motion for Reconsideration*, is merely that petitioner's Notice of Assessment is not valid because it is exempt from local taxation pursuant to Article 39(a)(1) of Executive Order No. 226, as amended by Republic Act No. 7916, in relation to Section 133(g) of the Local Government Code of 1991—nothing more.

As a corollary, as borne out by the pleadings filed by petitioner in the proceedings below and in the instant case, it is not hard to

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[7] *Pasion vs. Melegrito*, G.R. No. 166558, March 28, 2007.
[8] Par. 5, *Petition for Review* vis-à-vis Par. 11, *Comment*, RTC Docket (Civil Case No. 8208), pp. 2 and 64.

surmise that petitioner was induced to believe that the said *"gross values"* is indeed the same as petitioner's *"gross receipts"*. If it was otherwise, petitioner could have explained and showed her reason why she used the said *"gross values"* as reference, for treating the same as equivalent to *"gross receipts"*.

Correspondingly, respondent is now estopped from questioning that the *"gross values"* indicated in the *Summary of Shipment* referred to in the subject Notice of Assessment as not the same as its *"gross receipts"* to which the local business taxes were imposed.

Nevertheless, it must be pointed out that using the *"gross values"* indicated in the said *Summary of Shipment*, as the basis for the imposition of the subject local business taxes, is not necessarily erroneous.

Section 2(g)of Local Finance Circular No. 02-09[9]—the very same administrative issuance which mandates that the local business tax base for mining companies is their *"gross receipts"*—defines the said term in this wise:

> "SECTION 2. *Definition of Terms.* — The following terms shall mean:
>
> xxx xxx xxx
>
> g) ***Gross 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)." *(Emphasis and underscoring supplied)*

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[9] SUBJECT: Prescribing the Guidelines Governing the Power of Provinces, Cities and Municipalities to Impose Local Taxes, Fees and Charges on Mining Companies Pursuant to the Pertinent Provisions of Republic Act No. 7160, Otherwise Known as the Local Government Code of 1991 and its Implementing Rules and Regulations (IRR).

The term *"include"* means *"to take in or comprise as a part of a whole"*.[10] Thus, the foregoing definition is merely inclusive of a broader definition of the term *"gross receipts"*, which may include the *"gross values"* as indicated in the subject *Summary of Shipment*. With the use of the said word *"include"* in the definition of the term *"gross receipts"*, this latter term must not be given a restrictive interpretation.

Such being the case, the Notice of Assessment dated April 18, 2016 issued against respondent cannot be outrightly declared void, upon the reason that the *"gross receipts reference"* thereof is the *"Summary of Shipment...from* (the) *Mines and Geosciences Bureau Regional Office No. XIII"*.

In light of the foregoing considerations, I VOTE that respondent's *Motion for Reconsideration* be denied for lack of merit.

ERLINDA P. UY
Associate Justice

[10] The Merriam-Webster Dictionary © 2005, p. 249.