REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

CITY OF MANILA, ET AL.,
Petitioner,

- versus -

COLUMBIA PICTURES INDUSTRIES, INC.,
Respondent.

CTA AC No. 29
(Civil Case No. 02-102663)

Members:

Acosta, *Chairman,*
Bautista, and
Casanova, *JJ.*

Promulgated:

AUG 30 2007 ; 2:30 PM

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DECISION

ACOSTA, P.J.:

This is a Petition for Review brought before this Court pursuant to Republic Act 9282 on April 12, 2007, seeking the reversal of the Decision and Order dated November 8, 2006 and March 7, 2007, respectively, rendered by Judge Amor A. Reyes of Branch 21 of the Regional Trial Court of Manila in Civil Case No. 02-102663.

The assailed Decision restrained the City of Manila (Manila) from collecting taxes under Section 21 of the Manila Revenue Code and ordered the refund of P4,722,672.68, representing additional business taxes which Columbia Pictures Industries, Inc. (Columbia) paid, under this section for the years 1999, 2000 and 2001. The questioned Order on the other hand denied Manila's Motion for Reconsideration.

THE FACTS

Petitioner City of Manila, is a local government unit empowered to, among others, implement the City's Revenue Code, this power includes the collection and assessment of business taxes, revenue fees, and permit fees within the City, with office address at the Ground Floor, Manila City Hall, Taft Avenue, Manila.

Respondent Columbia Pictures Industries, Inc., is a local branch of a foreign corporation duly organized and existing under the laws of Delaware, USA, engaged in the business of distributing cinematographic and television films, with office address at 7th Floor, Times Plaza Building, UN Avenue, corner Taft Avenue, Manila.

Columbia has been paying business taxes as a contractor under Section 18 of the Revenue Code of the City of Manila, enacted through Ordinance 7794, as amended by Ordinance No. 7807 (Manila Revenue Code). However, starting 1999, Manila also assessed Columbia additional business taxes imposed under Section 21 of the Manila Revenue Code. It paid P7,636,657.30 for usual business taxes under Section 18 and P4,722,672.68 as additional business taxes under Section 21, both of the Manila Revenue Code for the years 1999 to 2001.

On January 2, 2002, believing that it had erroneously paid the additional business taxes imposed under Section 21, Columbia wrote Manila asking for a refund thereof. However, on January 12, 2002, Manila, through City Treasurer Liberty M. Toledo, denied Columbia's request for refund. This denial prompted the filing of a case on January 18, 2002, asking for a tax refund or issuance of a tax credit certificate in the amount of P4,722,672.68, plus legal interest, representing business taxes, allegedly illegally collected by the City of Manila for the years 1999, 2000 and 2001 with the Regional Trial Court (RTC) of Manila. This case was docketed as Civil Case 02-102663 and raffled to Branch 21.

On November 8, 2006, the RTC rendered a decision, the dispositve portion of which states:

> "WHEREFORE, premises considered, the Court hereby orders the DISMISSAL of this petition. The respondent is hereby directed to refund or credit the amount of P4,722,672.68 representing the business tax paid under Sec. 21 of the Revenue Code for the period 1999, 2000 and 2001. Without pronouncement as to costs.
>
> SO ORDERED."

Then on March 7, 2007, the RTC issued an Order denying the Motion for Reconsideration of the City of Manila and amended the dispositive portion of the decision to read:

> "WHEREFORE, premises considered, the petition is hereby GRANTED. Defendants are restrained from collecting taxes under Section 21 of the City's Revenue Code. The defendants are directed to refund or credit the amount of P4,722,672.68 representing business taxes for the years 1999, 2000 and 2001 under Section 21 of the City's Revenue Code. Without pronouncement as to costs.

Hence, this Petition for Review filed on April 12, 2007, assigning the following errors allegedly committed by the trial court:

> "14.1. Whether or not the Honorable Regional Trial Court erred in holding that there is direct duplicate taxation in the imposition of Section 21 of the Manila Revenue Code.

14.2 Whether or not the Honorable Regional Trial Court gravely erred in holding that respondent Columbia pictures is entitled to tax refund and or credit for the taxes it paid under Section 21 of the Manila Revenue Code.

14.3. The Honorable Trial Court erred in holding that the herein cause of action has not yet expired;

14.4. The Honorable Trial Court gravely erred when it ignored petitioner's plea the failure of respondent's complaint to prove it's capacity to sue;

14.5 Whether or not the Trial Court erred in granting the motion to amend decision by the herein respondent without explaining the reason for the amendment."

Columbia in its Comment filed on June 12, 2007, argues that it can no longer be taxed under Section 21 of the Manila Revenue Code (MRC) since it is already paying business taxes as a contractor under Section 18 of the same code. According to Columbia, under Section 143 (h) of the Local Government Code (LGC), (the basis of Section 21 of the MRC), a municipality or city may tax any business that is not covered by the enumeration mentioned in subsections (a) to (g) thereof, in view of the qualifying proviso that reads: "On any business not otherwise specified in the preceding paragraphs, which the sanggunian may deem proper to tax". Columbia maintains that the LGC prohibits a municipality or city from imposing business taxes twice, as this constitutes direct duplicate taxation.

On the second issue, Columbia contends that its cause of action in claiming the refund of taxes it paid have not yet expired because what the law requires is the filing of a written claim for refund or credit with the local treasurer and the filing of such claim in court within 2 years reckoned from the date of payment of the tax.

On the third issue, it avers that the City of Manila waived its right to object to the Columbia's supposed lack of capacity to sue, since the issue was raised for the first time in their Memorandum dated July 14, 2006 in the trial court. Moreover, this issue was not included in the enumeration of issues to be resolved by the trial court.

Columbia also claims that the amendment by the trial court of its decision is in order. A careful reading of the body of the trial court's decision would show that it granted claim for refund or tax credit. Thus, there is no need to explain the reason for the amendment.

With the filing of this Comment, the case was deemed submitted for decision.

The Court's Ruling

There is nothing novel with the issues presented in this case. And in the case *"The Treasurer of the City of Manila vs. Alcan Packaging Starpack Corporation (formerly Starpack Philippines Corporation)"*, CTA EB No. 261,[1] the CTA En Banc already ruled that double taxation in its prohibited form exists in cases of these nature.

FIRST ISSUE

whether the City of Manila can validly impose business taxes under Section 21 on businesses already paying taxes under Section 18 of the Manila Revenue Code

[1] *July 30, 2007*

The City of Manila admits that the local government's power to tax is a delegated power and that its authority to impose local taxes is found in Section 143 of the Local Government Code (LGC). It also confesses that Section 18 of the Manila Revenue Code (MRC) is based on Section 143 (e), while Section 21 of the MRC is from Section 143(h). The City only argues that the only limitation provided under Section 143 (h) of the LGC is that, if the tax is on businesses subject to excise, value-added or percentage taxes under the National Internal Revenue Code (NIRC), the local government cannot impose taxes in excess of 2% of gross sales or receipts. According to the City of Manila, Section 18 of the MRC is directed to the business of Columbia as a contractor, while Section 21 is imposed on it for being an enterprise subject to excise, value-added or percentage taxes under the NIRC.

Thus, a reading of the applicable Local Government Code provisions is imperative.

> "SEC. 151. SCOPE OF TAXING POWERS. — Except as otherwise provided in this Code, the City may levy the taxes, fees, and charges which the province or municipality may impose: xxx"
>
> "SEC. 143. TAX ON BUSINESS. The municipality may impose taxes on the following business:
>
> (a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind and nature, xxx
>
> (b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature xxx
>
> (c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities xxx

(d) On retailers, xxx

(e) On contractors and other independent contractors, xxx

(f) On banks and other financial institutions, xxx

(g) On peddlers engaged in the sale of any merchandise or article of commerce, xxx

(h) **On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: *Provided,*** That on any business subject to excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case shall exceed the rates prescribed herein." *(Emphasis Supplied)*

Based on the above provisions of the LGC, the City of Manila enacted the Manila Revenue Code, and the following provisions find application:

"Section 18. –Tax on Contractors. – A percentage tax is hereby imposed on contractors and other independent contractors in accordance with the following schedule: xxx"

"Section 21. Tax on Business Subject to Excise, Value-Added or Percentage Taxes Under the NIRC — On any of the following businesses and articles of commerce subject to excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of fifty (50%) of one (1%) percent per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:

A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of

> Internal Revenue pursuant to the pertinent provisions of the said code."

Indubitably, Section 18 of the Manila Revenue Code (MRC) is based on Section 143(e) of the Local Government Code (LGC), while Section 21 in turn is a variation of Section 143(h), also of the LGC.

Under Section 143(h) of the LGC, the business tax that may be imposed on "any business", comes with the proviso "not otherwise specified in the preceding paragraphs". This could only mean that the municipality, or city, shall only impose the tax in either one of the paragraphs but not both. When the City of Manila imposed both taxes through Sections 18 and 21 of the Manila Revenue Code, the same definitely contradicts the express mandate of Section 143(h) of the Local Government Code.

Section 21 of the MRC reads "on any of the following businesses and articles of commerce subject to excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of . . . is hereby imposed: On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise . . .". It is evident that Section 21 does not impose indirect taxes on businesses, but added a qualification regarding the tax rate to be imposed on businesses and articles of commerce which is subject to excise, VAT or percentage tax under the National Internal Revenue Code.

In other words, the phrase "on any business subject to excise, value-added or percentage tax under the National Internal Revenue Code" in Section 143(h) of the Local Government Code merely qualifies or limits the rate of tax to be imposed on businesses already subject to excise, value-added or percentage tax under the National Internal Revenue Code and does not authorize Local Governments to impose such taxes.

Thus, under subparagraph (h) of Section 143, a municipality or city may tax any business that is not covered by the enumerations mentioned in subsections (a) to (g), based in the qualifying provision that reads: "On business, not otherwise specified in the preceding paragraphs (meaning [a] to [g]), which the sanggunian concerned may deem proper to tax" with further qualification on the rates of taxes to be imposed on businesses already subject to excise, value-added or percentage tax under the National Internal Revenue Code .

Applying the above to the City's Revenue Code, Section 21 cannot be imposed over businesses already subject to business tax under Section 18, as this clearly constitutes direct double taxation. Sections 18 and 21 are both local taxes, imposed on the same business activity by only one public authority, the City of Manila, enforced within the same taxing jurisdiction, for the purpose of raising revenues for the city government and to regulate the conduct of business, which accrue and become due on the same taxing period.

Thus, Columbia correctly argued that when a taxpayer is being taxed under any of subsections (a) to (g) of Section 143, said taxpayer can no longer be taxed under Section 143 (h), because of this qualifying provision.

SECOND ISSUE

whether the RTC erred in holding that Columbia may question the assessment against it

According to Manila in asserting that Section 21 of the Manila Revenue Code (MRC) constitutes direct duplicate taxation, Columbia is seeking to annul the Revenue Code and collaterally attacking its validity under the guise of asking for a refund and the nullification of the assessment; which it can no longer do, for its failure to observe Section 187 of the LGC.

That constitutional questions will not be entertained by the courts unless they are specifically raised, insisted upon, and adequately argued, is a settled doctrine.[2] However, it must be pointed out that Columbia is not attacking the constitutionality of Section 21 of the MRC but merely claims that the imposition of taxes thereunder constitutes double taxation because it is already paying taxes under Section 18 of the same code.

Nevertheless, Tax Ordinance 7988 and 8011, which introduced the amendments to the Manila Revenue Code, has been declared void by the Supreme Court in *Coca-cola Bottlers Philippines vs. City of Manila, Liberty M. Toledo – City Treasurer and Joseph Santiago – Chief, Licensing Division* on the ground of failure to comply with publication requirements.[3]

Double taxation or direct duplicate taxation in its "obnoxious" form means, the taxing twice of the same taxing authority, within the same taxing jurisdiction or district, for the same purpose and the same period, of the same property in the same territory.[4] All these elements exist in this case.

As admitted by the City, during the years 1993 to 1998, Columbia has been paying business taxes as imposed under Section 18 of the Manila Revenue Code, and during the years 1999 to 2001 additional business taxes were imposed following Section 21 of the same Revenue Code, in the amount of P4,722,672.68. There being payment of taxes under Section 18 and Section 21 of the MRC,

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[2] *City of Baguio vs. Marcos, 27 SCRA 342 (1969)*
[3] *493 SCRA 279 (2006)*
[4] *Commissioner of Internal Revenue vs. Solidbank Corporation, 416 SCRA 436 (2003)*

refund of the additional taxes imposed under Section 21 is correct for being constitutive of double taxation

THIRD ISSUE

whether Columbia paid under protest, as required under Section 195 of the Local Government Code and corollary to the first three issues is whether the refund granted by the RTC is proper

Manila argues that Columbia did not pay under protest and failed to question the assessments within sixty (60) days from receipt thereof, and such failure renders the assessment final, executory and unappealable as provided in Section 195. This provision reads:

> "SEC. 195. PROTEST OF THE 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 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 canceling 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 days from receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

By the very title of Section 195 alone, ("Protest of Assessment"), it pertains to protest of the assessment/s issued by the local treasurer against a taxpayer who has been found not to have paid correct taxes, fees, or charges. In this case, assuming for the sake of argument that Columbia did not observe Section 195, the same should not have a negative repercussion on its claim for refund because this provision does not apply. It is Section 196 of the Local Government Code which applies in this case, it states:

> "SEC. 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 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 payment of such tax, fee, or charge,** or from the date the taxpayer is entitled to a refund or credit." *(Emphasis Supplied)*

Columbia filed a written request for refund of the taxes it paid under Section 21 of the Manila Revenue Code for the years 1999 to 2001 on January 2, 2002, broken down as follows:[5]

YEAR	QUARTER	DATE	AMOUNT PAID
1999	1ST	01/21/99	P457,312.35
	2ND	04/14/99	457,312.35
	3RD	07/14/99	457,312.35
	4TH	10/19/99	457,312.35
2000	1ST	01/20/00	361,677.91
	2ND	04/17/00	361,677.91
	3RD	07/20/00	361,677.91
	4TH	10/20/00	361,677.91
2001	1ST	01/22/01	361,677.91
	2ND	04/24/01	361,677.91
	3RD	07/03/01	361,677.91
	4TH	10/02/01	361,677.91
TOTAL			**P4,722,672.68**

The denial of the claim for refund on the other hand, was appealed to the Regional Trial Court on January 18, 2002. Counting two years from date of

[5] Records, page 27

payment until the commencement of the claim for refund in the RTC, the refund for payments made in the 1999 in the amount of P1,829,249.40 have already prescribed following the above-quoted Section 196.

Thus, the grant of the refund should be reduced to P2,893,423.28 (P4,722,672.68 – 1,829,249.40 [P457,312.35 x 4 quarters]).

FOURTH ISSUE

whether Columbia Pictures had capacity
to sue

Manila avers that the Regional Trial Court should have dismissed the case outright for Columbia's failure to prove capacity to sue since Mr. Gener Salamera, the person who verified and made the certification on non-forum shopping does not appear to be authorized by any board resolution duly executed prior to the filing of the complaint. However, aside from this bare assertion, Manila failed to show that indeed the complaint before the Regional Trial Court is fatally flawed.

Moreover, applicable is Section 1, Rule 9 of the Rules of Court which provides:

> "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 prior judgment or by statute of limitations, the court shall dismiss the claim." *(Emphasis Supplied)*

Clearly, the rule is that all grounds to dismiss the case should be pleaded, otherwise they are deemed waived. The only exceptions thereto are: lack of jurisdiction and lack of cause of action which can be raised even for the first time on appeal, all other grounds to dismiss fall under the above-mentioned general rule.[6]

The City of Manila has not shown that it had questioned the alleged lack of capacity to sue of Columbia in a Motion to Dismiss. In addition, this issue was also not raised in the Answer filed with the RTC. Thus, the City of Manila is estopped from raising this issue in this Court.

The Court agrees with Columbia that Manila waived the right to raise the issue of lack of capacity to sue, having made the same for the first time in their Memorandum in the trial court.

FIFTH ISSUE

whether the correction made by the RTC
on the dispositive portion of its decision
was correct

Manila contends that the RTC committed grave abuse of discretion when it granted Columbia's Motion to Amend Decision without explaining the reason therefor.

Section 5 of Rule 135 of the Rules of Court enumerates the inherent powers of courts, one of which is to amend and control its processes and orders as to make them conformable to law and justice.

Here, the dispositive portion of the original decision of the RTC issued on November 8, 2006, states:

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[6] *Pe vs. Intermediate Appellate Court, 195 SCRA 137 (1991)*

> "WHEREFORE, premises considered, the Court hereby orders the DISMISSAL of this petition. The respondent is hereby directed to refund or credit the amount of P4,722,672.68 representing the business tax paid under Sec. 21 of the Revenue Code for the period 1999, 2000 and 2001. Without pronouncement as to costs.
>
> SO ORDERED."

And ruling on the Motion for Reconsideration of the City of Manila, the RTC amended the dispositive portion of the said decision on March 7, 2007 to read:

> "WHEREFORE, premises considered, the petition is hereby GRANTED. Defendants are restrained from collecting taxes under Section 21 of the City's Revenue Code. The defendants are directed to refund or credit the amount of P4,722,672.68 representing business taxes for the years 1999, 2000 and 2001 under Section 21 of the City's Revenue Code. Without pronouncement as to costs."

An examination of the entire decision would reveal that the Regional Trial Court (RTC) merely amended its own decision for it to conform to its findings that Columbia is indeed entitled to the refund it claimed, and consequently restrained the City of Manila from collecting business taxes under Section 21 of the City's Revenue Code. Further, as explained in its Resolution, the RTC merely ruled on and found merit in the Motion for Clarification and/or Amendment of Decision filed by Columbia.

Accordingly, the instant Petition for Review is **PARTIALLY GRANTED**. The Regional Trial Court decision granting the refund and restraining the City of Manila from further collecting taxes from Columbia under Section 21 of the Manila Revenue Code is hereby **AFFIRMED WITH MODIFICATION**.

The City of Manila is **ORDERED** to refund Columbia the reduced amount of **TWO MILLION EIGHT HUNDRED NINETY THREE THOUSAND FOUR HUNDRED TWENTY THREE PESOS & 28/100** (P2,893,423.28), representing the amount of additional business taxes it had paid under Section 21 of the Manila Revenue Code for the years 2000 to 2001. The rest of the amount claimed is **DENIED** for having been barred by prescription.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice