REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MS. LIBERTY M. TOLEDO, in her official capacity as the THE CITY TREASURER OF MANILA and the CITY OF MANILA,
Petitioners,

-versus-

METRO MANILA SHOPPING MECCA CORP. AND WAREHOUSE DEVELOPMENT CORPORATION,
Respondents.

C.T.A. AC NO. 36
(Civil Case No. 04-108888)

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ*.

Promulgated:
MAY 09 2008; 11:25am.

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DECISION

***BAUTISTA, J.*:**

The Case

Before Us is a Petition for Review[1] filed pursuant to Republic Act No. 9282, praying for the reversal of:

[1] *Rollo*, pp. 16 – 145, with Annexes.

1. the Decision[2] dated January 12, 2007 rendered by Branch 47 of the Regional Trial Court of Manila ("Court *a quo*") in Civil Case No. 04-108888 entitled *"Metro Manila Shopping Mecca Corp. and Warehouse Development Corporation vs. Ms. Liberty Toledo, in her official capacity as the City Treasurer of Manila and the City of Manila"* which declared the assessments in question null and void and ordered the City of Manila and the City Treasurer to refund or issue tax credits to respondent, Metro Manila Shopping Mecca Corp., the amount of ₱8,205,792.14 and to respondent, Warehouse Development Corp., the amount of ₱113,600.00, representing erroneously paid local business taxes for the year 2002; and
2. the Order[3] dated April 17, 2007 of the Court *a quo* which denied herein petitioners' Motion for Reconsideration.

Antecedent Facts

The facts of the case are as follows:

Petitioner Liberty M. Toledo is the duly-appointed City Treasurer of Manila, empowered to perform the duties of said office including among others, the collection of all local taxes, fees and charges, and the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.[4]

Petitioner City of Manila is a local government unit organized and existing under Republic Act No. 409.[5]

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[2] *Rollo*, pp. 60 – 66,Annex "A" of the Petition for Review.
[3] *Id.*, pp. 67 – 68, Annex "B" of the Petition for Review.
[4] *Id*, p. 61, Decision, Civil Case No. 04-108888.
[5] *Id.*, p. 42, Petition for Review.

Respondents are domestic corporations organized under Philippine laws and doing business in the City of Manila.[6] Respondent Metro Manila Shopping Mecca Corp. is primarily engaged in the business of trading goods on wholesale or retail basis.[7] Respondent Warehouse Development Corporation is primarily engaged in the general business of retail and lessor of shopping mall spaces.[8]

For taxable year January to December 31, 2002, the Business Permits and Licenses Division of the City of Manila assessed respondents annual Local Business Taxes pursuant to Section 21[9] of City Ordinance No. 7794, as amended by City Ordinance Nos. 7807, 7988 and 8011, otherwise known as the Revenue Code of the City of Manila ("RCM"), as follows:[10]

Metro Manila Shopping Mecca Corp.	₱8,205,792.14
Warehouse Development Corp.	113,600.00
TOTAL	**₱8,319,392.14**

Respondents paid the aforementioned assessments. Copies of the Official Receipts covering the payments were marked during the pre-trial as Exhibits "E" to "F".[11]

Petitioner City Treasurer also assessed respondents business taxes imposed on retailers, wholesalers, exporters and importers pursuant to Section 15,[12] Section 17[13] and such other applicable provisions of the RCM,[14] which were also paid.[15]

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[6] *Rollo*, p. 61, Decision, Civil Case No. 04-108888.
[7] *Id.*, p. 102, 2nd Amended Complaint, Annex "F" of the Petition for Review.
[8] *Id.*, p. 103, 2nd Amended Complaint, Annex "F" of the Petition for Review.
[9] Tax on Business Subject to the Excise Tax, Value-Added Tax or Percentage Taxes under the National Internal Revenue Code.
[10] *Rollo*, pp. 61, 63.
[11] *Id.*, p.63.
[12] Tax on Wholesalers, Distributors or Dealers.
[13] Tax on Retailers.
[14] *Rollo*, p. 63.
[15] *Id.*, p. 103.

Believing that the assessments under Section 21 of the RCM are illegal exactions, respondents filed a Complaint[16] on January 20, 2004 with the Court *a quo* for the refund of the total amount of ₱8,319,392.14. Respondents filed an Amended Complaint on February 5, 2004 and a second Amended Complaint on February 16, 2004.[17]

The respondents filed their Answer on March 24, 2004.[18] On August 11, 2004, the case was referred to the Mediation Unit of the Office of the Clerk of Court, RTC Manila, for mediation. On November 30, 2004, the case was returned to the Court *a quo* for trial on the merits.[19]

After the herein respondents filed their Formal Offer of Evidence and the admission thereof by the Court, the parties were given a period of 30 days from the date of the resolution of the Formal Offer of Evidence by the respondents to file their respective Memoranda. The respondents filed their Memorandum on July 14, 2006 and their Supplemental Memorandum on August 24, 2006. The respondents did not file a Memorandum. Thereafter, the case was submitted for decision.[20]

The Ruling of the Court A Quo

On January 12, 2007, Presiding Judge Augusto T. Gutierrez rendered a Decision in favor of respondents, ruling that:

> "It is important to note that after this case was filed, the Supreme Court came out with its decision in the case entitled Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, Liberty M. Toledo - City Treasurer and Joseph Santiago - Chief, Licensing Division (G.R. No. 1562252, June 27, 2006) declaring Ordinance Nos. 7988 and 8011 (which are also the ordinances pursuant to which the taxes

[16] "With Prayer to Issue TRO and Writ of Preliminary Injunction."
[17] *Rollo*, pp. 78-114.
[18] *Id.*, pp. 115 -129.
[19] *Id.*, p. 60.
[20] *Id.*, p. 65.

in this present case are imposed/assessed) null and void. Following the ruling in the Coca-Cola case, this Court has no alternative but to declare the assessments made in the present case as null and void.

WHEREFORE, premises considered, judgment is rendered ordering the defendants to refund to the plaintiffs as follows:

Metro Manila Shopping Mecca Corp.	₱8,205,792.14
Warehouse Development Corp.	113,600.00
TOTAL	**₱8,319,392.14**

OR ALTERNATIVELY, to issue tax credits to the said plaintiffs for the said amounts.

SO ORDERED."[21]

Aggrieved, petitioners filed a Motion for Reconsideration on February 20, 2007, which was denied by the Court *a quo* in the Order dated April 17, 2007.[22]

The Issues

Hence, the present recourse with petitioners ascribing to the Court *a quo* the following errors:

"i. The Honorable Court *a quo* gravely erred in entertaining the case despite the fact that it has no jurisdiction over the case.

ii. The Honorable Court *a quo* gravely erred in its failure to dismiss the case despite failure of plaintiffs[23] to observe a condition sine qua non before resort to court may be had.

iii. The Honorable Court *a quo* gravely erred in its failure to dismiss the case for plaintiffs' failure to state cause of action.

iv. The Honorable Court *a quo* gravely erred in its failure to dismiss the case despite violation by plaintiffs of Section 4, Rule 8 of the 1997 Rules of Court.

v. The Honorable Court *a quo* gravely erred in its failure to dismiss the case despite the fact that the claim of plaintiffs is barred by statute of limitations.

[21] *Id.*,p. 66.
[22] *Rollo*, pp. 67 – 68.
[23] Herein respondents.

> vi. The Honorable Court *a quo* gravely erred in applying the case of Coca-cola Bottlers Philippines, Inc. vs. City of Manila, Liberty M. Toledo, City Treasurer, and Joseph Santiago, Chief, Licensing Division of Manila, docketed as G.R. No. 156252, June 27, 2006."

With the filing of the petitioners' Memorandum on February 1, 2008 and respondents' Memorandum on February 11, 2008, this case was deemed submitted for decision in the Court's Resolution promulgated on March 6, 2008.

The Ruling of the Court

The Petition for Review is devoid of merit.

First Assigned Error

The Honorable Court a quo gravely erred in entertaining the case despite the fact that it has no jurisdiction over the case.

Second Assigned Error

The Honorable Court a quo gravely erred in its failure to dismiss the case despite failure of respondents to observe a condition sine qua non before resort to court may be had.

Petitioners argue that the formulation by respondents of their cause of action renders the regular courts such as the Court *a quo* as having no jurisdiction to hear and decide the case. The prohibitive and oppressive determination of a measure pertains to the Secretary of Justice under Section 187 of the Local Government Code ("LGC"), which requires that any revenue measure may be raised on appeal to the Secretary of Justice within thirty (30) days from its effectivity. Respondents failed to appeal the revenue measure within 30 days from its enactment. They are thus barred to file an action before the Court *a* quo on the said ground, Section 187 being a condition *sine qua non* before resort to a court of competent jurisdiction may be had. Hence, it is grave error on the part of the Court *a quo* to have decided the same in favor of respondents.

Respondents counter-argue that Section 187 of the LGC is not applicable in this case considering that this is a claim for refund of taxes paid under Section 21 of the RCM, as amended. Respondents merely claimed that the imposition of taxes under said Section 21, in addition to taxes under Sections 15 and 17 of the RCM (a) violates the City's taxing powers under the LGC; and (b) constitutes double taxation.

Petitioners' arguments are untenable.

Section 187 of the LGC reads:

> "Sec. 187. Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearing. — . . . : Provided further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: . . . : Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice, acting upon the appeal, the aggrieved party may file the appropriate proceedings with a court of competent jurisdiction."

We have consistently ruled that an appeal to the Secretary of Justice pursuant to Section 187 of the LGC is not necessary where there is no question on the constitutionality or legality of tax ordinances or revenue measures.[24] The Complaint and Amended Complaints filed by herein respondents with the Court *a quo* were for the "refund or recovery of illegally and/or erroneously-collected local business tax, prohibition with prayer to issue TRO and Writ of Preliminary Injunction."[25]

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[24] Zarcon Development Corporation v. The City Treasurer of Manila, C.T.A. AC No. 24, May 16, 2007; City of Manila, Et.Al., v. Columbia Pictures Industries, Inc., C.T.A. AC No. 29, August 30, 2007; and The Treasurer of the City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 28, November 28, 2007.
[25] *Rollo*, pp. 78 – 114, Annexes "D", "E" and "F", respectively, of the Petition for Review.

It is doctrinal in constitutional law that constitutional questions will not be entertained by courts unless they are "specifically raised, insisted upon, and adequately argued."[26] It is well to note that Tax Ordinance Nos. 7988 and 8011, which introduced amendments to the RCM, have been declared null and void by the Supreme Court in *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, Liberty M. Toledo – City Treasurer and Joseph Santiago - Chief, Licensing Division*[27] on the ground of failure to comply with the publication requirements.[28]

Third Assigned Error

The Honorable Court a quo gravely erred in its failure to dismiss the case for plaintiffs' failure to state cause of action.

Petitioners also contend that since there are two different plaintiffs (herein respondents), then there are separate causes of action which materially affect the jurisdiction of the Court *a quo*. Respondents therefore, violated the fundamentals on joinder of causes of actions.

Respondents on the other hand, point out that the parties in this case stipulated that respondents are corporations which are all doing business in the City of Manila. The factual findings of the Court *a quo* and the stipulations of the parties confirmed that the cause of action of the respondents all arose from the same assessment made by petitioners of business taxes for the period January to December 2002. Even assuming that petitioners' vague assertions may have some semblance of

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[26] City of Baguio et. al. v. Hon. Pio R. Marcos et. al., L-26100, February 28, 1969, 27 SCRA 342.
[27] G.R. No. 156252, June 27, 2006, 493 SCRA 279.
[28] Liberty M. Toledo, in her capacity as The Treasurer of the City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 21, May 10, 2007; City of Manila, et. al., v. Columbia Pictures Industries, Inc., C.T.A. AC No. 29, August 30, 2007.

merit, Section 6, Rule 2 of the 1997 Rules of Court is explicit that misjoinder of causes of action is not a ground for dismissal of action.

We agree with respondents.

Section 5 of Rule 2 and Section 6 of Rule 3 of the 1997 Rules of Court, read:

> "Section 5. Joinder of causes of action. — A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:
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> (a) The party joining the causes of action shall comply with the rules on joinder of parties; . . . "
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> "Section 6. Permissive joinder of parties. — All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest."

The foregoing procedural rules are founded on practicality and convenience. They are meant to discourage duplicity and multiplicity of suits.[29]

Permissive joinder of parties requires that: (a) the right to relief arises out of the same transaction or series of transactions; (b) there is a question of law or fact common to all the plaintiffs or defendants; and (c) such joinder is not otherwise proscribed by the provisions of the Rules on jurisdiction and venue.[30]

In this case, there are a series of transactions common to both respondents, which are, petitioners' assessments pursuant to Section 21 of the RCM in addition to Sections 15 and 17 of the same Code. There is also a common question of law, that is,

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[29] Lafarge Cement Philippines, Inc., (formerly Lafarge Philippines, Inc.), Luzon Continental Land Corporation, Continental Operating Corporation and Philip Roseberg v. Continental Cement Corporation, Gregory T. Lim and Anthony A. Mariano, G.R. No. 155173, November 23, 2004, 443 SCRA 543.

[30] Pantranco North Express, Inc., and Alexander Buncan v. Standard Insurance Company, Inc., and Martina Gicale, G.R. No. 140746, March 16, 2005, 453 SCRA 488.

whether there is double taxation. Thus, respondents have the same cause of action against petitioners.

Moreover, assuming *arguendo* that there is a misjoinder of causes of action, the same is not a ground for dismissal of an action as set out in Section 6, Rule 2 of the 1997 Rules of Court:

> "Section 6. Misjoinder of Causes of Action. — Misjoinder of causes of action is not a ground for dismissal of an action. A misjoined cause of action may, on motion of a party or on the initiative of the court, be severed and proceeded with separately."

Fourth Assigned Error

The Honorable Court a quo gravely erred in its failure to dismiss the case despite violation by plaintiffs of Section 4, Rule 8 of the 1997 Rules of Court.

Petitioners posit that due to respondents' failure to state the authority of Mr. Rex Enrico Cruz III, who certified and verified the Amended Complaints at bar, to institute the subject action, the present action should be dismissed. Also, the said Amended Complaints failed to show the facts of the capacity of both of the respondents and Mr. Cruz in violation of Section 4, Rule 8 of the 1997 Rules of Court.

Respondents insist that Mr. Cruz was duly authorized by respondents to file the judicial claim for refund and in fact testified for the respondents during the hearing on June 27, 2005. Both the Complaint and the Amended Complaints contained the duly signed verification and certification of Mr. Cruz. In any event, the Supreme Court has consistently held that the requirement regarding certification and verification of a pleading is formal, not jurisdictional.

Petitioners' arguments do not hold water.

Records reveal that the Complaint's Verification[31] shows that Mr. Cruz is respondents' Legal Counsel and is duly authorized by the latter to initiate legal action against herein petitioners. Respondents also attached to their Memorandum the respective Secretary's Certificates[32] evidencing Board Resolutions which show Mr. Cruz's authority to sign the Verification and Certification of Non-forum Shopping.

It bears stressing that "in rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat vis-à-vis substantive rights, and not the other way around."[33]

Also, as correctly pointed out by respondents in their Memorandum, respondents are corporations and by law, they necessarily possess the capacity to sue, pursuant to Section 36 of the Corporation Code. Respondents pleaded in their Complaint and Amended Complaints that they were duly incorporated. Petitioners failed to disprove such fact; hence, they cannot now be allowed to plainly allege that respondents do not have capacity to sue.

Fifth Assigned Error

> *The Honorable Court a quo gravely erred in its failure to dismiss the case despite the fact that the claim of plaintiffs is barred by statute of limitations.*

Petitioners assert that the protests allegedly filed by respondents before the City Treasurer of Manila are not the letters of demand contemplated by Section 196 of the 1991 LGC. The remedy under Sections 195 and 196 of the LGC are exclusive

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[31] *Rollo*, p. 89.
[32] *Rollo*, pp. 347 -348.
[33] Heirs of Spouses Eugenio Natonton and Regina Arcilla v. Spouses Eulogio and Lily Magaway, G.R. No. 147011, March 31, 2006, 486 SCRA 205.

and not interchangeable, so that the failure of respondents to have availed of the remedy under Section 195 thereof shall bar them from claiming refund under Section 196 of the same Code. Consequently, the Court *a quo* is barred from entertaining the case. In addition, the second Amended Complaint was filed only on February 16, 2004 or more than two (2) years from the time the taxpayer is entitled to refund or tax credit pursuant to Section 196 of the LGC. Thus, the subject assessments had already become final and unappealable by virtue of Section 195 of the LGC.

Respondents maintain that they filed letter-claims for refund dated March 12, 2002[34] and October 30, 2003[35] with petitioners and the letters dated March 15, 2002[36] and December 10, 2003[37] from petitioners which denied these letter-claims for refund. With regard to the filing of the second Amended Complaint, respondents contend that if the amendment merely supplements, amplifies or corrects the facts alleged in the original complaint without constituting a new cause of action, the amendment relates back to the date of the filing of the original complaint for purposes of applying the statute of limitations. Both the Complaint and the Amended Complaint prayed for the refund of ₱8,319,392.14 representing respondents' erroneously paid business taxes for taxable year 2002. Thus, respondents' claim for refund could not have prescribed, since the Amended Complaint merely supplements and amplifies the original Complaint filed on January 20, 2004, which was filed within the two-year prescriptive period.

Petitioners' assertions have no merit.

Section 195 of the LGC reads:

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[34] *Rollo*, p. 223, Annex "B" of respondents' Comment.
[35] *Id.*, pp. 226-227, Annex "D" of respondents' Comment.
[36] *Id.*, p. 225, Annex "C" of respondents' Comment.
[37] *Id.*, p. 222, Annex "A" of respondents' Comment.

> "SEC. 195. Protest of Assessment. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within 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. . . . "

We have consistently ruled that Section 195 of the LGC does not apply when the case involves a claim for refund of taxes paid under Section 21 of the RCM.[38] Hence, Section 196 of the LGC is the applicable provision which provides for the filing of a claim for refund or credit as follows:

> "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."

Pursuant to the afore-quoted provision, to successfully sue in court for a refund of any local tax, fee, or charge, two things must be done, *to wit*:

1) the taxpayer concerned must file a written claim for refund or credit with the local treasurer; and

2) the case or proceeding for refund has to be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.[39]

A perusal of the records of this case shows that respondents complied with both requisites. Respondents timely filed letter-claims for refund dated March 12,

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[38] The Treasurer of the City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 28, November 28, 2007;City of Manila, et.al. v. Columbia Pictures Industries, Inc., C.T.A. AC No. 29, August 30, 2007; Liberty M. Toledo, in her capacity as The Treasurer of The City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 21, May 10, 2007.

[39] China Banking Corporation v. City Treasurer of Manila, C.T.A. E.B. No. 182 (RTC Civil Case No. 04-108990), July 27, 2006.

2002[40] and October 30, 2003[41] with petitioners which were denied by the latter in the letters dated March 15, 2002[42] and December 10, 2003.[43]

Moreover, We rule that there was no late filing of the second Amended Complaint. The Supreme Court has ruled on amendments of pleadings in this wise:

> "It follows that **when the amended complaint does not introduce new issues, causes of action, or demands, the suit is deemed to have commenced on the date the original complaint was filed, not on the date of the filing of the amended complaint.** In other words, for demands already included in the original complaint, the suit is deemed to have commenced upon the filing of such original complaint. In short, for purposes of determining the commencement of a suit, the original complaint is deemed abandoned and superseded by the amended complaint only if the amended complaint introduces a new or different cause of action or demand."[44] *(Emphasis supplied)*

In the instant case, the amendments to the original Complaint and to the first Amended Complaint did not create a new or different cause of action. The second Amended Complaint merely provided for a more accurate statement of the facts and legal bases already alleged in the original Complaint and first Amended Complaint. Thus, the filing of the second Amended Complaint relates back to the date of filing the Original Complaint. Hence, respondents' claim is not yet barred by prescription for having filed their claim for refund, both administrative and judicial, within the two-year prescriptive period.

Sixth Assigned Error

> *The Honorable Court a quo gravely erred in applying the case of Coca-cola Bottlers Philippines, Inc. vs. City of Manila, Liberty M. Toledo, City Treasurer, and Joseph Santiago, Chief, Licensing Division of Manila, docketed as G.R. No. 156252, June 27, 2006.*

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[40] *Rollo*, p. 223, Annex "B" of respondents' Comment.
[41] *Id.*, pp. 226-227, Annex "D" of respondents' Comment.
[42] *Id.*, p. 225, Annex "C" of respondents' Comment.
[43] *Id.*, p. 222, Annex "A" of respondents' Comment.
[44] Wilfredo P. Verzosa and Pilar Martinez v. Court of Appeals, Hon. Nicodemo Ferrer, and Fe Giron Uson, G.R. Nos. 119511-13, 299 SCRA 100, November 24, 1998.

Petitioners asseverate that the declaration in the *Coca-cola* case has no doctrinal effect inasmuch as the pronouncement that "Ordinance Nos. 7988 and 8011 are null and void and in legal contemplation do not exist" was made in G.R. No. 156252 in order only to determine the propriety of the dismissal (Order dated May 8, 2002 in *Coca-cola Bottlers, Phils., Inc. vs. City of Manila, et.al.* docketed as *Civil Case No. 01-99848*) by the RTC, Branch 21, Manila of the petition for injunction filed by *Coca-cola* on the ground that the case was mooted by the enactment of Ordinance No. 8011. The Order dated May 8, 2002 espoused that the Honorable trial court dismissed the petition for injunction upon judicial notice or on its own terms and not by virtue of the Motion for Reconsideration filed by the City of Manila therein of the Decision dated November 28, 2001 in Civil Case No. 01-99848. Thus, the Court is obliged to set the said case for hearing to eventually determine whether or not it could be granted so that any resolution which may emanate therefrom when eventually decided by the Supreme Court would become the *stare decisis.* The *Coca-cola* case therefore has no doctrinal effect as the trial court has yet to rule on the pending Motion for Reconsideration filed by the City of Manila.

Respondents aver that the Supreme Court in the *Coca-cola* case has already declared in clear and unequivocal terms that Ordinance Nos. 7988 and 8011 of the City of Manila are null and void. Corollarily, the RTC of Manila - Branch 47 correctly applied the ruling in the *Coca-cola* case by declaring the assessments made by petitioners on respondents null and void. There are no reasons to deviate from the ruling and the same must be followed pursuant to the doctrine of *stare decisis.* It is clear that the *Coca-cola* case has not only put to an end the proceedings in Civil Case No. 01-99848 in the RTC of Manila- Branch 21 but it has also put to rest the issue of the constitutionality of the Section 21 tax. By reversing the May 8, 2002 and December 5, 2002 Orders of the RTC of Manila – Branch 21, the Supreme Court in effect affirmed the RTC of Manila – Branch 21 decision dated November 28, 2001, which granted *Coca-cola*'s Complaint for Injunction. In other words, the *Coca-cola* case has disposed of Civil Case No. 01-99848 on the merits and is the latest pronouncement of the Supreme Court on the matter. Therefore, there is no unresolved issue left for adjudication by the RTC of Manila – Branch 21 in Civil Case No. 01-99848.

We agree with respondents.

The RCM was amended by Ordinance No. 7807 in the year 1993. Subsequently, the RCM was amended by Ordinance No. 7988 in the year 2000 and Ordinance No. 8011 in the year 2001.[45] We have consistently adhered to the ruling of the High Tribunal in the *Coca-Cola* case,[46] where Ordinance No. 7988 and Ordinance No. 8011 were declared void.[47] It ruled:

> "It is undisputed from the facts of the case that Tax Ordinance No. 7988 has already been declared by the DOJ Secretary, in its Order, dated 17 August 2000, as null and void and without legal effect due to respondents' failure to satisfy the requirement that said ordinance be published for three consecutive days as required by law. Neither is there quibbling on the fact that the said Order of the DOJ was never appealed by the City of Manila, thus, it had attained finality after the lapse of the period to appeal.

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[45] The Treasurer of the City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 28, November 28, 2007.
[46] G.R. No. 156252, 493 SCRA 279, June 27, 2006.
[47] The Treasurer of the City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 28, November 28, 2007;City of Manila, et.al. v. Columbia Pictures Industries, Inc., C.T.A. AC No. 29, August 30, 2007; Liberty M. Toledo, in her capacity as The Treasurer of The City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 21, May 10, 2007; The Treasurer of the City of Manila v. Alcan Packaging Starpack Corporation (formerly Starpack Philippines Corporation, C.T.A. EB Case No. 261 (C.T.A. Case AC 17), July 30, 2007.

> Furthermore, the RTC of Manila, Branch 21, in its Decision dated 28 November 2001, reiterated the findings of the DOJ Secretary that respondents failed to follow the procedure in the enactment of tax measures as mandated by Section 188 of the Local Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. From the foregoing, it is evident that Tax Ordinance No. 7988 is null and void as said ordinance was published only for one day in the 22 May 2000 issue of the Philippine Post in contravention of the unmistakable directive of the Local Government Code of 1991.
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> xxx xxx xxx
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> Based on the foregoing, this Court must reverse the Order of the RTC of Manila, Branch 21, dismissing petitioner's case as there is no basis in law for such dismissal. The amending law, having been declared as null and void, in legal contemplation, therefore, does not exist. Furthermore, even if Tax Ordinance No. 8011 was not declared null and void, the trial court should not have dismissed the case on the reason that said tax ordinance had already amended Tax Ordinance No. 7988. As held by this Court in the case of *People v. Lim*, if an order or law sought to be amended is invalid, then it does not legally exist, there should be no occasion or need to amend it."

Petitioners assessed and collected from respondents business taxes for the year 2002 based on Section 21 of the RCM, as amended by Ordinance Nos. 7988 and 8011. As Ordinance Nos. 7988 and 8011 were declared void, the Court *a quo* correctly applied the ruling in the *Coca-cola* case. However, it failed to rule on whether Section 21 of the RCM (Tax Ordinance No. 7794, as amended by Ordinance No. 7807) constitutes double taxation. It is well to note that the parties stipulated that the subject assessments against respondents were pursuant to Section 21 of "City Ordinance No. 7794, as amended by City Ordinance Nos. 7807, 7988 and 8011, otherwise known as the Revenue Code of the City of Manila…"[48]

We deem it *apropos* to focus on this matter as it is the main basis of respondents' claim for refund.

[48] *Rollo,* p.61, Decision, Civil Case No. 04-108888.

Sections 15, 17 and 21 of the RCM (Tax Ordinance No. 7794, as amended by Ordinance No. 7807), read:[49]

"SEC. 15. Tax on Wholesalers, Distributors, or Dealers — There is hereby imposed a graduated tax on wholesalers, distributors or dealers in any article of commerce of whatever kind or nature, in accordance with the following schedule:

xxx xxx xxx"

"SEC. 17. Tax on Retailers — there is hereby imposed a graduated tax on Retailers in accordance with the following schedule:

xxx xxx xxx"

"SEC. 21. Tax on Businesses Subject to the Excise, Value Added or Percentage Taxes Under the NIRC — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of FIFTY PERCENT (50%) OF ONE PERCENT (1%) 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.

B) On the gross receipts of keepers of garages, cars for rent or hire driven by the lessee, transportation contractors, persons who transport passenger or freight for hire, and common carriers by land, air or water, except owners of bancas and owners of animal-drawn two-wheel vehicle.

C) On the amount paid on every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services, except amounts paid by the government, its political subdivisions or instrumentalities; diplomatic services; public international organizations or any of their agencies based in the Philippines; and news services;

The tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter.

D) Excisable goods subject to VAT
(1) Distilled spirits
(2) Wines

[49] See Acevedo, Handbook on Manila Taxation, 1993.

(3) Tobacco products (other than cigarettes, cigars and chewing tobacco)
(4) Tobacco specially prepared for chewing
(5) Fireworks
(6) Cinematographic films
(7) Saccharine
(8) Coal and coke
(9) Fermented liquor, brewer's wholesale price, excluding the ad valorem tax
(10) Automobiles, manufacturers or importers selling price
(11) Non-essential goods based on wholesale price, net of excise tax and VAT

(a) Jewelry, whether real and imitation. pearls, precious and semi-precious stones and imitations thereof; goods made of, or ornamented, mounted or fitted with precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of the teeth.)
(b) Perfumes and toilet waters.
(c) Yachts and other vessels intended for pleasure or sports.

(12) Mineral products, based on actual market value of the annual gross output at the time of removal

(E) Excisable goods not subject to VAT
(1) Naphtha when used as raw materials for production of petro-chemical products.
(2) Asphalt.

PROVIDED, that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof."

The Supreme Court defined "double taxation" in the case of *Commissioner of Internal Revenue v. Solidbank Corporation*[50] as follows:

"Double taxation means taxing the same property twice when it should be taxed only once; that is, ". . . taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character." *(Citations omitted)*

[50] G.R. No. 148191, November 25, 2003, 416 SCRA 436.

In a number of instances, We have ruled that businesses taxed under Sections 14, 18 and 24 of the RCM can no longer be taxed under Section 21 thereof.[51] In *Liberty M. Toledo, in her capacity as The Treasurer of the City of Manila vs. Unilever Phils., Inc.,*[52] We held that the imposition of business taxes under Sections 14 and 21 of the RCM, as amended, upon respondent constitutes double taxation, as there was taxation twice for the same subject or activity, which was the business of manufacturing; by the same public authority and within the same taxing jurisdiction, which was the City of Manila; for the same purpose, which was to generate revenues for the local taxing authority; and in the same year or taxing period, which was for taxable year 2004.

In the same vein, the imposition of business taxes on herein respondents under Sections 15 and 17 vis-à-vis Section 21 of the RCM also constitutes double taxation, as there was taxation twice for the same subject or activity, which is the business of wholesale and retail; by the same public authority and within the same taxing jurisdiction, which was the City of Manila; for the same purpose, which was to generate revenues for the local taxing authority; and in the same year or taxing period, which was for taxable year 2002.

Furthermore, in *Unilever Phils, Inc. vs. The Treasurer of the City of Manila,*[53] We elucidated that the taxation of respondent therein under both Sections 14 and 21 of the RCM is expressly prohibited under Section 143 (h) of the LGC. In the instant

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[51] Uniliver Phils., v. The Treasurer of the City of Manila, C.T.A. AC No. 25, June 18, 2007; Swedish Match Phils., Inc. v. The Treasurer of the City of Manila, C.T.A. AC No. 15, July 21, 2006; International Container Terminal Services v. The City of Manila, et al., C.T.A. AC No. 11, May 17, 2006; Zarcon Development Corp. v. The City Treasurer of the City of Manila, C.T.A. AC NO. 24, May 16, 2007; Liberty M. Toledo, in her capacity as the Treasurer of the City of Manila v. Uniliver Phils., Inc., C.T.A. AC No. 21, May 10, 2007.

[52] C.T.A. AC No. 21, May 10, 2007.

[53] C.T.A. AC No. 25, June 18, 2007.

case, Sections 15 and 17 of the RCM are based on Section 143 (b) and (d) respectively of the LGC and Section 21 of the RCM is based on Section 143 (h) of the LGC. The clear tenor of Section 143 (h) of the LGC prohibits double taxation of businesses taxes under paragraphs (a) to (g) thereof. It allows the imposition of new business taxes only in cases "not otherwise specified in the preceding paragraphs [(a) to (g)]. . . ." Section 143 of the LGC provides:

> "Section 143. Tax on Business. — The municipality may impose taxes on the following businesses:
>
> > (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 or nature, in accordance with the following schedule:
> >
> > xxx xxx xxx
> >
> > **(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:**
> >
> > xxx xxx xxx
> >
> > (c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:
> >
> > xxx xxx xxx
> >
> > **(d) On retailers,**
> >
> > xxx xxx xxx
> >
> > (f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.
> >
> > (g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (P50.00) per peddler annually.

> (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 the 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 to exceed the rates prescribed herein." *(Emphasis supplied)*

As both Sections 15 and 21 of the RCM and both Sections 17 and 21 of the same Code, impose business taxes on respondents respectively, there is indeed double taxation.

Based on the foregoing, We find no reversible error committed by the Regional Trial Court of Manila, Branch 47, which merits a reversal of the assailed Decision and Order.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. The Decision dated January 12, 2007 and Order dated April 17, 2007 rendered in Civil Case No. 04-108888 are hereby **AFFIRMED.**

Accordingly, petitioners are hereby **ORDERED TO REFUND or ISSUE TAX CREDITS** to respondent, Metro Manila Shopping Mecca Corp., the amount of ₱8,205,792.14 and to respondent, Warehouse Development Corp., the amount of ₱113,600.00, representing erroneously paid local business taxes for the year 2002.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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 after due consultation with the members of the Division of the Court of Tax Appeals before the case was assigned to the writer of the opinion of the Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division