REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

METRO PACIFIC TOLLWAYS CORPORATION, Petitioner,	**CTA AC NO. 204** (Civil Case No. R-MKT-17-00388-CV)
	Members:
- versus -	**UY,** *Chairperson* **RINGPIS-LIBAN,** and **MODESTO-SAN PEDRO,** JJ.
MAKATI CITY AND HON. JESUSA E. CUNETA IN HER CAPACITY AS INCUMBENT CITY TREASURER OF MAKATI CITY, Respondents.	Promulgated: OCT 09 2019 10:22 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The instant Petition for Review[1] seeks to reverse and set aside the Decision dated February 13, 2018[2] and the Order dated April 23, 2018[3], both rendered by Regional Trial Court ("RTC") of Makati – Branch 145 in Civil Case No. R-MKT-17-00388-CV, entitled *"Metro Pacific Tollways Corporation, Plaintiff, versus Makati City and Hon. Jesusa E. Cuneta, in her capacity as City Treasurer of Makati City, Respondents"*, the dispositive portions of which respectively read:

Decision dated February 13, 2018:

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[1] Docket, pp. 8 to 45.
[2] Docket, pp. 48 to 78.
[3] Docket, pp. 46 to 47.

"WHEREFORE, in view of the foregoing findings, the instant complaint for refund is hereby DISMISSED for lack of merit [*sic*].

SO ORDERED."

<u>Order dated April 23, 2018</u>:

"WHEREFORE, for the lack of merit, the Plaintiff's Motion for Reconsideration is DENIED.

SO ORDERED."

<u>The Facts</u>

Petitioner Metro Pacific Tollways Corporation is a corporation duly organized and existing under the laws of Republic of the Philippines, with Securities and Exchange Commission No. 40590, with principal address at 10/F MGO Building, Legaspi Street corner Dela Rosa Street, San Lorenzo Village, Makati City. It is a holding company.[4]

On the other hand, respondent Makati City is a municipal corporation created by virtue of Republic Act ("RA") No. 7854, otherwise known as *"An Act Converting the Municipality of Makati into a Highly Urbanized City to be known as the City of Makati"*, with address at Makati City Hall, J.P. Rizal Street, Barangay Poblacion, Makati City, Metro, Manila.[5]

Respondent Jesusa E. Cuneta is the incumbent City Treasurer of Makati City, and holds office at the City Treasurer's Office, Makati City Hall, J.P. Rizal Street, Barangay Poblacion, Makati City, Metro Manila. She is only being impleaded in her capacity as incumbent City Treasurer.[6]

Pursuant to petitioner's application for renewal of business permit in 2015, the Makati City Business Permits Office, and subsequently, the Makati Business Tax Division, issued various Billing Assessment Forms, assessing

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[4] Pars. 1 and 4, Compliance (Re: Order dated November 29, 2017), RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 226 and 227.

[5] Par. 2, Compliance (Re: Order dated November 29, 2017), RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 226.

[6] Par. 3, Compliance (Re: Order dated November 29, 2017), RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 226.

petitioner for local business taxes ("LBT"). In turn, petitioner made the corresponding payments amounting to a total of Php4,128,132.38.[7]

Respondents computed the LBT based on petitioner's dividend income, which amounted Php558,532,143.00, and Php1,151,630,698.00, for the years 2013 and 2014, respectively.[8] Their assessment was based on Section 143(f) of the Local Government Code ("LGC") of 1991 and Section 3A.02(h) of the Revised Makati Revenue Code ("RMRC").[9]

On January 06, 2016, petitioner filed an administrative claim for refund with respondent City Treasurer to contest the LBT.[10] Consequently, petitioner filed a Complaint before the RTC on February 03, 2017. The case was initially raffled to RTC – Branch 56, and was docketed as Civil Case No. R-MKT-17-00388-CV.[11]

On April 17, 2017, respondents filed their Answer with Affirmative Defenses,[12] raising certain affirmative and/or special defenses, to wit: (1) petitioner is a holding company; (2) petitioner, as a holding company, was correctly imposed with LBT by respondent City Treasurer under Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC; (3) for the purpose of LBT, as a holding company, petitioner's gross receipts should include dividend income; and (4) petitioner, having paid the deficiency LBT assessments without any protest, is proscribed from filing its Complaint for refund of its alleged overpayment of LBT.

Petitioner filed its Reply on May 04, 2017,[13] arguing that the respondents erred in taxing petitioner similar to banks and other financial institutions under Section 3A.02(h) of the RMRC; that respondents erred in arbitrarily interpreting that Section 3A.02(p) of the RMRC includes dividends, interests and other items of passive income, in the holding companies' taxable gross receipts; and that Section 196 of the LGC of 1991 is applicable in the instant claim for refund of erroneously paid LBT.

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7 Pars. 5 and 8, Compliance (Re: Order dated November 29, 2017), RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 227.
8 Par. 6, Compliance (Re: Order dated November 29, 2017), RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 227.
9 Par. 7, Compliance (Re: Order dated November 29, 2017), RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 227.
10 Par. 9, Compliance (Re: Order dated November 29, 2017), RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 227.
11 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 1 to 23.
12 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 62 to 71.
13 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 80 to 92.

Respondents then filed their Pre-trial Brief on June 22, 2017;[14] while petitioner filed its Pre-trial Brief on August 14, 2017.[15]

Civil Case No. R-MKT-17-00388-CV was subsequently referred to Philippine Mediation Center for mediation, pursuant to Section 2(a), Rule 18 of the 1997 Rules of Civil Procedure and the Second Revised Guidelines for the implementation of mediation proceedings approved by the Supreme Court on October 16, 2001.[16]

Unfortunately, no settlement was made. Thus, Judge Bonifacio S. Pascua of RTC – Branch 56, terminated the Judicial Dispute Resolution (JDR) conference on October 13, 2017.[17] Consequently, Civil Case No. R-MKT-17-00388-CV was re-raffled to RTC – Branch 145.

In the Pre-Trial Order dated November 29, 2017,[18] Presiding Judge Carlito B. Calpatura of RTC – Branch 145 stated the jointly submitted issues of the parties for consideration in accordance with the agreement of facts to be submitted by the parties on December 11, 2017, together with the prayer to render judgment without further trial. Thus, the parties submitted their Compliance (Re: Order dated November 29, 2019) on December 07, 2017.[19]

In the Order dated December 11, 2017,[20] the Court *a quo* gave the parties twenty (20) days therefrom, within which to submit their respective memorandum, discussing the issues defined during the pre-trial. In compliance with the said order, the Memorandum for Plaintiff was filed on December 22, 2017,[21] while the Memorandum for Defendants was filed on January 03, 2018.[22]

On February 13, 2018, RTC – Branch 145 rendered the assailed Decision,[23] dismissing petitioner's Complaint for lack of merit.

Not satisfied with the Court *a quo*'s Decision, petitioner filed its Motion for Reconsideration on March 06, 2018.[24] Respondents filed their Comment (To

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14 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 94 to 98.
15 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 120 to 125.
16 Order dated August 16, 2017, RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 166.
17 Order dated October 13, 2017, RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 215.
18 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 224 to 225.
19 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 226 to 228.
20 RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 233.
21 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 234 to 260.
22 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 290 to 297.
23 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 306 to 336; Docket, pp. 48 to 78.
24 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 337 to 344.

the Motion for Reconsideration dated 06 March 2018) on March 20, 2018,[25] while petitioner filed its Reply (To Comment/Opposition dated 19 March 2018) on April 10, 2018.[26]

In the assailed Order dated April 23, 2018,[27] the Court *a quo* denied petitioner's Motion for Reconsideration for lack of merit.

Undeterred, petitioner filed the instant Petition for Review with this Court on June 21, 2018.[28]

Without necessarily giving due course to the said Petition, respondents were directed by the First Division of this Court to file their comment thereon, per its Resolution dated July 05, 2018.[29] In the same Resolution, the Branch Clerk of Court of RTC – Branch 145 was directed to elevate the entire original records of Civil Case No. R-MKT-17-00388-CV to this Court.

Thus, respondents filed their Comment (to the Petition for Review dated 20 June 2018) on August 01, 2018;[30] while the Branch Clerk of Court of RTC – Branch 145 transmitted the original records of the Branch Clerk of Court of RTC – Branch 145 on August 07, 2018.[31]

In the Resolution dated August 20, 2018,[32] the Court required both parties to submit their respective memoranda, within thirty (30) days from receipt thereof. In compliance therewith, the Memorandum for Petitioner[33] and the Memorandum for Respondent[34] were filed on September 21, 2018, and September 25, 2018, respectively.

In the Order dated September 26, 2018,[35] the instant case was transferred to this Division, pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018, entitled "Reorganizing the Three (3) Divisions of the Court".

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25 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 348 to 351.
26 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 352 to 358.
27 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 370 to 371; Docket, pp. 46 to 47.
28 Docket, pp. 8 to 45.
29 Docket, pp. 192 to 193.
30 Docket, pp. 194 to 197.
31 Docket, p. 199.
32 Docket, p. 204.
33 Docket, pp. 205 to 228.
34 Docket, pp. 232 to 240.
35 Docket, p. 242.

On October 10, 2018, the instant case was submitted for decision.[36]

The Issues

The following issues[37] were raised by Petitioner for this Court's resolution:

1. Whether or not petitioner as a holding company should be subject to LBT under Section 3.02(p) in relation to Section 3a.02(h) of the RMRC;

2. Whether or not petitioner should be taxed similar to banks and other financial institutions under Section 3a.02(h) of the RMRC;

3. Whether or not taxable gross receipts of holding companies under the RMRC include dividends, interests and other items of passive income; and

4. Whether or not the assessments have become final and unappealable in the absence of a protest filed pursuant to Section 195 of the LGC of 1991.

Petitioner's Arguments

Petitioner argues that it is a holding company, not a bank or financial institution, hence, it should not be taxed under Section 3A.02(h) of the RMRC. Allegedly, Section 3A.02(p) does not authorize respondents to arbitrarily include dividends, interest and other items of passive income in the taxable gross receipts of holding companies, such as petitioner; thus, RTC Branch 145 committed grave error in dismissing the case on the ground that the assessments become final, executory, conclusive and/or unappealable. Petitioner further stresses that prior decisions of this Court *En Banc*, as well as other branches of the Makati RTC have categorically ruled that dividend income received by holding companies is not subject to LBT.

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[36] Resolution dated October 10, 2018, Docket, p. 244.
[37] Docket, pp. 12 to 13, and 208.

Respondents' Counter-arguments

Respondents, on the other hand, counter-argue that petitioner is a holding company; and as a holding company, was correctly imposed with LBT by respondent City Treasurer under Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC. For the purpose of the LBT, as a holding company, petitioner's gross receipts should include dividend income; and that petitioner, having paid the deficiency LBT assessments without any protest, is proscribed from filing its Complaint for Refund of its alleged overpayment of LBT.

Discussion/Ruling

After careful and thorough evaluation and consideration of the parties' arguments, the Court finds the instant Petition for Review meritorious.

For an orderly disposition of this case, the Court shall determine first the timeliness of the filing of the instant Petition for Review.

Thereafter, We shall primarily address the *fourth* issue raised by petitioner, *i.e.*, whether the assessments have become final and unappealable in the absence of a protest filed pursuant to Section 195 of the LGC, before delving into the other issues raised by petitioner.

The Court has jurisdiction over the present case.

The Court of Tax Appeals ("CTA") is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[38] The jurisdiction of the CTA as regards to local tax cases is provided under Section 7(a)(3) of RA No. 1125, as amended by RA No. 9282, which provides:

> "SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[38] Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.

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(3) Decisions, orders or resolutions **of the Regional Trial Courts** **in** **local** **tax** **cases** originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"[39]

Similarly, Section 3(a)(3) of Rule 4 of the Revised Rules of the Court of Tax Appeals[40] (RRCTA) states:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

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(3) Decisions, resolutions or orders **of the Regional Trial Courts** **in** **local** **tax** **cases** decided or resolved by them in the exercise of their original jurisdiction;"

Under Section 11 of RA No. 1125, as amended by RA No. 9282, a party aggrieved by a decision or ruling of the Regional Trial Court may file an appeal with the CTA within thirty (30) days from its receipt of said decision or ruling:

"SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision, ruling** or inaction **of the** Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the **Regional Trial Courts** **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[41]

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[39] *Emphasis and underscoring supplied.*
[40] A.M. No. 05-11-07-CTA, November 22, 2005.
[41] *Emphasis and underscoring supplied.*

On April 23, 2018, an Order was promulgated by RTC – Branch 145 denying petitioner's Motion for Reconsideration (of the assailed Decision), which was received by petitioner on May 22, 2018.[42] Thereafter, within thirty (30) days therefrom or on June 21, 2018, petitioner elevated said denial *via* the filing of a Petition for Review with this Court. Hence, the instant Petition is clearly filed within the period mandated by law, thereby giving this Court jurisdiction over the present case.

Petitioner availed of the correct remedy under the LGC of 1991.

In the assailed Decision, RTC – Branch 145 denied Petitioner's complaint for refund for its alleged failure to comply with the procedure and manner prescribed by law in assailing the assessment. The court *a quo* declared that since the assessment already attained finality, it had no more jurisdiction to determine the validity of the assessment.

Petitioner on the other hand points out that it is seeking for a refund of overpaid taxes, pursuant to Section 196 of the LGC of 1991, and it is not filing a protest to an erroneous assessment, pursuant to Section 195 of the same law. It further contends that with respect to LBT, the remedies under both provisions are available to the taxpayer, and the latter is free to choose which one to enforce; that nowhere in the LGC of 1991 is it required that a prior resort to Section 195 must be had before availing of the remedy under Section 196 of the same Code. In the instant case, petitioner clearly opted to avail of the remedy outlined under Section 196, to the exclusion of Section 195; and that petitioner, upon receipt of the assessments from respondents, did not protest the assessment, but immediately paid the deficiency LBT and thereafter, filed for an administrative and judicial claim for refund, pursuant to Section 196 of the LGC of 1991.

Sections 195 and 196 of the LGC of 1991 provide:

> "SEC. 195. *Protest of Assessment.* – **When <u>the</u> <u>local</u> <u>treasurer</u> <u>or</u> <u>his</u> <u>duly</u> <u>authorized</u> <u>representative</u> finds that correct taxes, fees, or charges have not been paid, he <u>shall</u> <u>issue</u> <u>a</u> <u>notice</u> <u>of</u> <u>assessment</u>** stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the

42 Docket, p. 12.

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 (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."[43]

"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 or credit has been filed with the local treasurer. **No case or proceeding shall be entertained in any court after the expiration of <u>two (2) years from the date of the payment</u> of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.**"[44]

Based on the foregoing provisions, Section 195 refers to the procedure of protesting an assessment of local taxes, while Section 196 pertains to the rule in claiming the refund of the same. In addition, the application of Section 195 is triggered by a notice of assessment made by the local treasurer or his duly authorized representative.

In the case at bar, there is no dispute that the controversy arose from Billing Assessment Forms No. 037633[45] and 037634[46], both dated January 28, 2015, and that the same were issued pursuant to Petitioner's application for renewal of business permit in 2015. However, a careful perusal of the records show that the said Billing Assessment Forms were issued by the Makati City Business Permits Office, as signed by the City Administrator/OIC Head Business Permits Office and by the City Mayor. Consequently, Billing Assessment Form Nos. 037633 and 037634 cannot be considered as the notice of assessment required under Section 195, for they were not issued by the Office of the City Treasurer nor were they signed by the City Treasurer.

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43 *Emphasis and underscoring supplied.*
44 *Emphasis and underscoring supplied.*
45 RTC Docket, pp. 37 and 72.
46 *Id.*, pp. 38 and 73.

The assessment of business tax is an inherent function of local treasurers, pursuant to the LGC of 1991 and its Implementing Rules and Regulations (IRR). Unless there are express and explicit provisions of the law to the contrary, specifically stating that the assessment of business taxes shall be conducted by the Business Permit and Licensing Office of a city, such function shall remain to be exercised by the Office of the City Treasurer.[47]

Since it is only the local treasurer who is empowered under the law to issue an assessment, and the Billing Assessment Forms in the instant case were not issued by the City Treasurer, there was no assessment to speak of that became final and unappealable. Petitioner need not file a protest to the City Treasurer within sixty (60) days after payment of the tax, for its remedy is not governed by Section 195. Instead, the present case falls under the subject of refund under Section 196.

Nevertheless, assuming *arguendo* that the Billing Assessment Forms are the notice of assessment pertained to under Section 195, Petitioner cannot be faulted for availing the remedy under Section 196.

In *Philippine Bank of Communications v. Hon. Court of Appeals*[48], the Supreme Court pronounced that the broader interest of justice prevails over a wrong mode of appeal. The Court recognized that under exceptional circumstances, as when stringent application of the rules will result in manifest injustice, it may set aside technicalities and proceed with the appeal.

Just recently, the Supreme Court in *La Sallian Educational Innovators Foundation, Inc.* v. *Commissioner of Internal Revenue*[49] reiterated the same doctrine and decided to set aside the denial by the Court of Tax Appeals *En Banc* of the petition solely based on technicalities, *viz*:

> **"This Court has ruled in the past that if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice and depending on the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction.**

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47 Bureau of Local Government Finance Opinion dated March 15, 2017; Bureau of Local Government Finance Opinion No. 033-2016 dated September 19, 2016.
48 G.R. No. 218901, February 15, 2017.
49 G.R. No. 202792, February 27, 2019.

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Otherwise stated, procedural rules are important tools designed to facilitate the dispensation of justice, but legal technicalities may be excused when strict adherence thereto will impede the achievement of justice it seeks to serve.

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It is worthy to note that this kind of lenient application of the rules of procedure for exceptionally persuasive and meritorious reasons is not novel. **In fact, in the case of *Tanenglian v. Lorenzo, et al.*, this Court <u>gave due course to the appeal which was not only made through a wrong mode but was even filed beyond the reglementary period</u>. This Court recognized the broader interest of justice**..."[50]

Indeed, the Supreme Court pronounced in *City of Manila, et. al. v. Cosmos Bottling Corporation*[51] ("*Cosmos Bottling*") and *International Container Terminal Services, Inc. v. The City of Manila*[52] ("*ICTSI, Inc.*") that whenever there is an assessment by the local treasurer, Section 195 applies, whether or not the taxpayer opts to pay the assessed tax. Yet, it must be emphasized that these cases were only promulgated in 2018.

Previously, the prevailing doctrine is that the taxpayer is free to choose which remedy (*i.e.*, Section 195 or Section 196) to enforce. Thus, in *City Treasurer of City of Caloocan v. Tigerway Facilities and Resources, Inc.*[53], this Court *En Banc* held:

"**A taxpayer assessed by the local treasurer for deficiency taxes, fees or charges has generally two (2) remedies to question the local treasurer's assessment, protest such assessment under Section 195 of the LGC <u>or</u> pay the tax under protest and, thereafter, file a claim for refund under Section 196 of the LGC.**

In the case of City of Manila and City Treasurer of the City of Manila vs. Rizal Commercial Banking Corporation, the First

[50] *Emphasis and underscoring supplied.*
[51] G.R. No. 196681, June 27, 2018.
[52] G.R. No. 185622, October 17, 2018.
[53] C.T.A. EB Case No. 1605, C.T.A. AC No. 127, July 25, 2018. Penned by Associate Justice Caesar A. Casanova and concurred in by all other Justices.

> Division of this Court categorically stated that **<u>the taxpayer is free to choose which remedy to enforce</u>**."[54]

Verily, the interpretation or construction of a law by courts constitutes a part of the law as of the date the statute is enacted. Even so, when a prior ruling is overruled and a different view is adopted, the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith in doing so.[55]

In the case at bar, the subject taxes were paid in 2015. Petitioner's resort to the remedy under Section 196, in good faith, during that time, should not therefore be taken against it.

Petitioner complied with the procedural requisites for a refund of local taxes.

Having ruled that petitioner's payment amounting to Php4,128,132.38 is the proper subject of a claim for refund for erroneously or illegally collected tax, fee, or charge under Section 196, We now determine whether or not petitioner complied with the requisites for such claim.

The case of *Metro Manila Shopping Mecca Corp. v. Ms. Liberty M. Toledo*[56] enumerated the procedural requisites for the entitlement to a refund or credit of local taxes under Section 196 of the LGC of 1991, as follows:

1) The taxpayer concerned must file a written claim for refund/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.

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[54] *Emphasis and underscoring supplied.*

[55] Visayas Geothermal Power Company v. Commissioner of Internal Revenue, G.R. No. 197525, June 04, 2014; Jocelyn M. Suazo v. Angelito Suazo and Republic of The Philippines, G.R. No. 164493, March 10, 2010; Benjamin G. Ting v. Carmen M. Velez-Ting, G.R. No. 166562, March 31, 2009; Rosa Yap Paras v. Justo J. Paras, G.R. No. 147824, August 02, 2007; Lorna Guillen Pesca v. Zosimo A. Pesca, G.R. No. 136921, April 17, 2001.

[56] G.R. No. 190818, June 05, 2013.

In the present case, Petitioner paid the disputed amounts on February 06, 2015, April 17, 2015 and July 14, 2015.[57] Counting the two (2)-year prescriptive period under Section 196 of the LGC of 1991, petitioner had until February 06, 2017 within which to file its administrative claim and judicial claim therefor. Considering that petitioner filed its administrative claim covering the said amounts on January 06, 2016[58] and the judicial claim on February 03, 2017[59], the filing thereof is well within the period prescribed by law.

The Php4,128,132.38 was erroneously or illegally collected, hence, the same must be refunded.

Finding that the LBT paid by petitioner in the total amount of Php4,128,132.38 has not prescribed, We shall proceed to jointly resolve the remaining issues raised by petitioner.

Central to the resolution thereof is the question of whether the said amount was erroneously or illegally collected.

The Court rules in the affirmative.

An *"erroneous or illegal tax"* is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[60] In other words, a tax is considered *"erroneous or illegal"* when there is no statutory authority or basis for the collection thereof.

In this case, the LBT paid by petitioner has no statutory basis for its collection.

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57 Php2,179,029.25, Php1,111,304.92 and Php279,266.07 were paid on February 06, 2015, as evidenced by Official Receipt No. MKTCF 2565534, RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 39 and 75. While Php279,266.07 and Php279,266.07 were paid on April 17, 2015 and July 14, 2015, respectively, as evidenced by Official Receipts No. MKTCF 2618735 and MKTCF 2692257, RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 40, 41, 76 and 77.

58 RTC Docket (Civil Case No. R-MKT-17-00388-CV), Compliance (Re: Order dated November 29, 2017), Paragraph 9, p. 227.

59 RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 1 to 23.

60 Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, G.R. No. 188497, April 25, 2012, citing BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

In support of the foregoing findings, a brief review of the parameters of the taxing powers of the City of Makati is in order.

Section 151 of the LGC of 1991 states the power of a city to impose local taxes, to wit:

> "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
>
> **The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%)** except the rates of professional and amusement taxes."[61]

Relative thereto, Section 143 of the LGC of 1991 states the power of municipalities to impose business taxes, to wit:

> "SEC.143. *Tax on Business.* — **The municipality may impose taxes on the following businesses**:
>
> xxx xxx xxx
>
> (e) **On contractors and other independent contractors**, in accordance with the following schedule:

With gross receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than P5,000.00		27.50
5,000.00 or more but less than	10,000.00	61.60
10,000.00 or more but less than	15,000.00	104.50
15,000.00 or more but less than	20,000.00	165.00
20,000.00 or more but less than	30,000.00	275.00
30,000.00 or more but less than	40,000.00	385.00
40,000.00 or more but less than	50,000.00	550.00
50,000.00 or more but less than	75,000.00	880.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,980.00
150,000.00 or more but less than	200,000.00	2,640.00
200,000.00 or more but less than	250,000.00	3,630.00
250,000.00 or more but less than	300,000.00	4,620.00
300,000.00 or more but less than	400,000.00	6,160.00

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[61] *Emphasis and underscoring supplied.*

400,000.00 or more but less than	500,000.00	8,250.00
500,000.00 or more but less than	750,000.00	9,250.00
750,000.00 or more but less than	1,000,000.00	10,250.00
1,000,000.00 or more but less than	2,000,000.00	11,500.00
2,000,000.00 or more		at a rate not exceeding fifty percent (50%) of one percent (1%)

(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, **<u>dividends</u>**, rentals on property and profit from exchange or sale of property, insurance premiums."[62]

Based on the foregoing provisions, municipalities, cities, such as respondent Makati City, may impose business taxes. However, it is clear that cities may levy the said taxes exceeding the maximum rates allowed to municipalities by not more than fifty percent (50%), except the rates of professional and amusement taxes.

Nonetheless, notwithstanding the power of cities to impose business taxes, the said power is subject to further limitations, one of which is indicated under Section 133(a) of the LGC of 1991, *viz*:

"**SEC. 133.** ***Common Limitations on the Taxing Power of Local Government Units.*** — Unless otherwise provided herein, **the exercise of the taxing powers of** provinces, **cities**, municipalities, and barangays **shall not extend to the levy of the following:**

(a) **Income tax, except when levied on banks and other financial institutions;**"[63]

Such being the case, as a corollary to Section 143(f) of the LGC of 1991, **in general**, cities may <u>not</u> levy income tax to certain businesses. However, **by way of an exception**, the said local government units may do so, when the levy is on banks and other financial institutions 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, and insurance.

[62] *Emphasis supplied.*
[63] *Emphasis supplied.*

It must be emphasized that income tax is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income.[64] Income in tax law, in turn, is an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment. It means cash or its equivalent.[65] The rule is well established that cash dividend, whether large or small, are regarded as "income".[66]

Clearly, considering that dividends are regarded as income, cities cannot impose a business tax thereon, unless the imposition is made on a bank and other financial institution.

Respondent Makati City exercised its power to impose business taxes on holding companies under Section 3A.02(p), in relation to Section 3A.02(g) and Section 3A.02(h), all of the RMRC, which provide as follows:

> "SECTION 3A.02. *Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
>
> xxx xxx xxx
>
> (g) On Contractors and other independent contractors defined in SEC. 3A-01 (t) of chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as; advertising agencies; rental of space of signs, signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; **business management services**; collecting agencies; escort services; feasibility studies, consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professionals tax; medical and dental laboratories; mercantile agencies; messengerial services; operators

64 Republic of the Philippines, represented by Energy Regulatory Board v. Manila Electric Company, etseq., G.R. Nos. 141314 and 141369, November 15, 2002.
65 Commissioner of Internal Revenue v. Court of Appeals, et al., G.R. No. 108576, January 20, 1999.
66 Fisher v. Trinidad, G.R. No. L-17518, October 30, 1922.

of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic; white/blue printing, photocopying, typing and mimeographing services; car rental, rental of heavy equipment, rental of bicycles and/or tricycles; furniture, shoes, watches, household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for hearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education (DepEd), day care centers; etc.

With gross sales or receipts for the preceding calendar year in the amount of:

	Amount of Tax per Annum
less than P50,000.00	Exempt
P50,000.00 or more but less than 75,000.00	1,144.00
75,000.00 or more but less than 100,000.00	1,716.00
100,000.00 or more but less than 150,000.00	2,574.00
150,000.00 or more but less than 200,000.00	3,432.00
200,000.00 or more but less than 250,000.00	4,719.00
250,000.00 or more but less than 300,000.00	6,006.00
300,000.00 or more but less than 400,000.00	8,008.00
400,000.00 or more but less than 500,000.00	10,725.00
500,000.00 or more but less than 750,000.00	12,025.00
750,000.00 or more but less than 1,000,000.00	13,325.00
1,000,000.00 or more but less than 2,000,000.00	15,000.00
2,000,000.00	Php15,000.00 plus seventy five percent (75%) of one percent (1%) over 2 million.

xxx xxx xxx

(h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, **dividends**, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l), as provided in this code.

xxx xxx xxx

(p) **On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year.**"[67]

On the basis of the foregoing provisions of the RMRC, the imposition of LBT on a "holding company" shall either be **under Section 3A.02(g)** for owners or operators of business establishments rendering or offering, *inter alia*, "business management services"; **or under Section 3A.02(h)** for owners or operators of banks and other financial institutions. **Under Section 3A.02(g)**, the graduated tax rates are based on the gross sales or receipts, depending on the amount thereof; **while under Section 3A.02 (h)**, the tax rate is fixed at 20% of 1% of the gross receipts derived from dividends, among other income.

In the present case, there is no dispute that petitioner is a holding company.[68] *Apropros*, a "holding company" is defined under Section 3A.01(dd) of the RMRC, to wit:

"SECTION 3A.01. *Definitions.* — When used in this Article:

—

xxx xxx xxx

(dd) ***Holding Company*** **— a controlling company that has one or more subsidiaries and confines its activities primarily to their management.**"[69]

Based on this definition, it is clear that a "holding company" is an entity which controls one or more subsidiaries and confines its activities "primarily" to their management. As such, while a holding company's primary activities are confined to the management of its subsidiaries, it does not preclude such entity

[67] *Emphasis supplied.*
[68] Par. 4, Compliance (Re: Order dated November 29, 2017), RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 227.
[69] *Emphasis supplied.*

from engaging in other activities, which may classify it as within the purview of the term "banks and other financial institutions", which is defined under Section 131(e) of the LGC of 1991 and Section 3A.01(e) of the RMRC, as follows:

> "SEC. 131. *Definition of Terms.* — When used in this Title, the term:
>
> xxx xxx xxx
>
> (e) ***'Banks and other financial institutions'*** include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;"
>
> "SECTION 3A.01. *Definitions.* — When used in this Article: —
>
> xxx xxx xxx
>
> (e) ***Banks and other financial institutions*** — include banks, offshore banking, non-bank financial intermediaries, lending investors, finance and investment companies, investment houses, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange including pre-need companies, as defined under applicable law, or rules and regulations."[70]

However, after a careful review of the evidence presented in the proceedings *a quo*, there is no showing that petitioner falls under the category, or can be considered as within the purview, of the term "Banks and other financial institutions" as defined under Section 131(e) of the LGC of 1991 and Section 3A.01(e) of the RMRC, so as to justify the collection of LBT by respondents on the dividends which were earned by respondent.

Such being the case, the total amount of Php4,128,132.38, being refunded by petitioner, must be granted.

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[70] *Emphasis supplied.*

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. The assailed Decision dated February 13, 2018 and Order dated April 23, 2018 are **MODIFIED**. Petitioner's claim for tax refund in the total amount of **Php4,128,132.38**, for having been collected without statutory basis is **GRANTED**.

Accordingly, respondents are **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **Php Php4,128,132.38**, representing erroneously or illegally paid LBT for the years 2014 and 2015.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

WITH CONCURRING & DISSENTING OPINION
ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

METRO PACIFIC TOLLWAYS CORPORATION, Petitioner,	**CTA AC No. 204** (Civil Case No. 15-134939)
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** JJ.
MAKATI CITY AND HON. JESUSA E. CUNETA IN HER CAPACITY AS INCUMBENT CITY TREASURER OF MAKATI CITY, Respondents.	***Promulgated:*** OCT 09 2019 10:22 a.m.

x - x

CONCURRING AND DISSENTING OPINION

UY, J.:

With all due respect with the learned ponente, Associate Justice Ma. Belen M. Ringpis-Liban, together with Associate Justice Maria Rowena Modesto-San Pedro, it is my humble opinion that the instant *Petition for Review* should only be partially granted.

In a nutshell, it is my humble opinion that petitioner's claim for tax refund in Civil Case No. R-MKT-17-00388-CV in the aggregate amount of **₱3,569,600.24**, representing the local business tax (LBT) Deficit for 2014, the penalties imposed thereon, and the LBT for the 1st Quarter of 2015, must be denied, on the ground that the assessment therefor has already become final and unappealable; while petitioner's claim for tax refund in the total amount of **₱558,532.14**, for having been collected without statutory basis in the year 2015, must be granted.

It has been judicially admitted that the subject Billing Assessment Forms are the notices of assessment issued by respondent City Treasurer.

The majority opinion of this Court expresses the view that Billing Assessment Forms No. 037633 and 037634 cannot be considered as the notice of assessment under Section 195 of the Local Government Code (LGC) of 1991, since they were not issued by the Office of the City Treasurer, nor were they signed by respondent City Treasurer.

However, the fact that said Billing Assessment Forms are equivalent to the notice of assessment issued by the local treasurer under Section 195 of the LGC of 1991 has been judicially admitted by the parties, in the proceedings below, and in the present *Petition for Review.*

Judicial admissions may be made in (a) the pleadings filed by the parties, (b) in the course of the trial either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding, as in the pre-trial of the case.[1]

In petitioner's *Complaint* filed on February 3, 2017 before RTC – Branch 145,[2] the following allegations were made by petitioner, as plaintiff therein, to wit:

> "7. In compliance with the rules and regulations of the City of Makati, Plaintiff applied for its renewal of its business permit in 2015. Pursuant thereto, **the Makati City Permits Office, and subsequently the Makati Business Tax Division issued various Billing Assessment Forms Nos. 37633 and 37634 dated 28 January 2015, <u>assessing Plaintiff</u> for various fees** in the total amount of Four Million One Hundred Forty Thousand Three Hundred Forty Two Pesos and Thirty Eighty Centavos (PHP 4,140,342.38), inclusive of LBT in the amount of Four Million One Hundred Twenty Eight Thousand One Hundred Forty Two Pesos and Thirty Eight Centavos (PHP 4,128,142.38). Copies of Billing Assessment Forms Nos. 37633 and 37634 dated 28 January 2015, are attached herein as Annexes "B" and "C" respectively.

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[1] *Adolfo vs. Adolfo*, G.R. No. 201427, March 18, 2015.
[2] RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 2 and 3.

xxx xxx xxx

> 9. On various dates, **Plaintiff fully paid the assessed amounts** to the City Treasurer of Makati City. Copies of Official Receipt Nos. MKTCF2565534 dated 06 February 2015, MKTCF2618735 dated 17 April 2015, and MKTCF2692257 dated 14 July 2015, are attached herein as Annexes "D", "E", and "F" respectively."

In their *Answer with Affirmative Defenses* filed on April 17, 2017, respondents, as defendants in the same case, the foregoing allegations were admitted by them in this wise:

> "6. **Defendants admit the allegation in paragraph 7 of the Complaint with qualification that Billing Assessment Forms Nos. 37633 and 37634 both dated January 28, 2015 were issued by the Office of the City Treasurer assessing Plaintiff for various fees** in the amount of PHP3,290,334.17 and PHP288,776.07, respectively or a total amount of PHP3,579,110.24. Copies of the Billing Statement Form Nos. 37633 and 37634 are attached as Annexes 'D-1' and 'D-2', respectively;
>
> xxx xxx xxx
>
> 8. Defendants admit the allegations in paragraph 9 Complaint as to the payment made to the City Treasurer of Makati City on various dates;"

Moreover, in the *Compliance (Re: Order dated November 29, 2017)* filed by the parties before RTC – Branch 145,[3] the following stipulations were made by the parties, to wit:

> "5. Pursuant to Plaintiff's application for renewal of business permit in 2015, **the Makati City Permits Office, and subsequently, the Makati Business Tax Division, issued various Billing Assessment Forms, assessing Plaintiff for Local Business Taxes ('LBT').** In turn, Plaintiff made the corresponding payments. The details of said Billing Assessment Forms and payments made by Plaintiff, as evidenced by Official Receipts, are as follows:

Billing Assessment Form No.	Official Receipt No.	Amount of LBT Paid	Date of Payment
37633	MKTCF2565534	Php3,290,344.17	February 6, 2015
37634	MKTCF2565534	Php279,266.07	February 6, 2015

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[3] RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 227.

	MKTCF2565535	Php279,266.07	April 17, 2015
	MKTCF2692257	Php279,266.07	July 14, 2015
TOTAL		Php4,128,142.38	

6. **<u>Defendants</u> computed the LBT based on the Plaintiff's dividend income** which amounted to Five Hundred Fifty-Eight Million Five Hundred Thirty-Two Thousand One Hundred Forty Three Pesos (Php558,532,143.00), and One Billion One Hundred Fifty One Million Six Hundred Thirty Thousand Six Hundred Ninety Eight Pesos (Php1,151,630,698.00), for the years 2013 and 2014, respectively.

7. **<u>Defendant's</u> assessment** is based on Section 143(f) of the Local Government Code and Section 3A.02(h) of the Revised Makati Revenue Code. Plaintiff contests the **<u>Defendant's</u> assessment** and basis.

8. Plaintiff paid the deficiency tax assessments in various dates in year 2015 as shown in the foregoing table in Paragraph 5."

The foregoing stipulations were reiterated by petitioner in its *Memorandum* filed on December 22, 2017 before the RTC – Branch 145.[4]

Even before this Court, petitioner admits that the Billing Assessment Forms No. 37633 and 37634, both dated January 28, 2018, are notices of assessment issued by respondent City Treasurer. This is manifested in the following allegations in the instant *Petition for Review* filed on June 21, 2018, to wit:

"8. In 2015, Petitioner applied for renewal of its business permit with the **Makati City Permits Office and was issued the Billing Assessment Forms 37633 and 37634** both dated January 28, 2015, **<u>assessing Petitioner</u> for various fees** in the total amount of Four Million One Hundred Forty Thousand Three Hundred Forty Two Pesos and Thirty Eight Centavos (Php4,140,342.38), inclusive of LBT in the amount of Four Million One Hundred Twenty Eight Thousand One Hundred Forty Two Pesos and Thirty Eight Centavos (Php4,128,142.38), for which corresponding payments were made by Petitioner, as evidenced by Official Receipts:

Billing Assessment Form No.	Official Receipt No.	Amount of LBT Paid	Date of Payment
37633	MKTCF2565534	Php3,290,344.17	February 6, 2015

[4] RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 235.

37634	MKTCF2565534	Php279,266.07	February 6, 2015
	MKTCF2565535	Php279,266.07	April 17, 2015
	MKTCF2692257	Php279,266.07	July 14, 2015
TOTAL		Php4,128,142.38	

9. **<u>Respondents</u> computed the LBT** based on the Petitioner's dividend income which amounted to Five Hundred Fifty-Eight Million Five Hundred Thirty-Two Thousand One Hundred Forty Three Pesos (Php558,532,143.00), and One Billion One Hundred Fifty One Million Six Hundred Thirty Thousand Six Hundred Ninety Eight Pesos (Php1,151,630,698.00), for the years 2013 and 2014, respectively.

10. **<u>Respondent City Treasurer's</u> assessment** is based on Section 143(f) of the Local Government Code and Section 3A.02(h) of the Revised Makati Revenue Code.

11. In order to secure its business permit for 2015, Petitioner paid the deficiency tax assessments in various dates as shown in the table under Paragraph 8."

Thus, being judicially admitted by the parties herein, it cannot now be denied that the said Billing Assessment Forms No. 037633 and 037634 are tantamount to the notice of assessment contemplated under Section 195 of the LGC of 1991.

The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.[5] Moreover, once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated.[6]

Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course does not require proof.[7] Judicial admissions are legally binding on the party

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[5] *Alfelor, et al. vs. Halasan, et al.*, G.R. No. 165987, March 31, 2006.

[6] *Bayas, et al. vs. The Sandiganbayan (First Division), et al.*, G.R. No. 143689-91, November 12, 2002.

[7] *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010.

making the admissions.[8] A judicial admission also removes an admitted fact from the field of controversy.[9]

Considering that by virtue of the parties' admissions, the Billing Assessment Forms No. 037633 and 037634 may be considered as the notice of assessment contemplated under Section 195 of the LGC of 1991, the remedies provided therein ought to have been observed by petitioner.

Decisions of the Supreme Court interpreting Sections 195 and 196 of the LGC of 1991 should be applied to the instant case.

For easy reference, Sections 195 and 196 of the LGC of 1991 provide as follows:

> "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 sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice 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 (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."
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> "SEC. 196. *Claim for Refund of Tax Credit.* – No case or proceeding shall be maintained in any court for

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[8] *Leynes vs. People of the Philippines*, G.R. No. 224804, September 21, 2016.
[9] *Alfelor, et al. vs. Halasan, et al.*, G.R. No. 165987, March 31, 2006.

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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."

Based on the foregoing provisions, it can be easily surmised that Section 195 refers to the procedure of protesting an assessment of local taxes, while Section 196 pertains to the rule in claiming the refund of the same.

In *City of Manila, et al. vs. Cosmos Bottling Corporation* ("*Cosmos Bottling* case"),[10] the Supreme Court stated a broader distinction between the two provisions, to wit:

> "The first provides the procedure for contesting an assessment issued by the local treasurer; whereas, the second provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.
>
> Obviously, the application of **Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative** for nonpayment of the correct taxes, fees or charges. Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the

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[10] G.R. No. 196681, June 27, 2018.

> assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.
>
> On the other hand, **Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him.** The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.
>
> Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended **inaction** by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription." *(Emphases supplied)*

Nonetheless, in *International Container Terminal Services, Inc. vs. The City of Manila, et al.* ("*ICTS, Inc.* case"),[11] the Supreme Court formulates a correlation between Sections 195 and 196 of the LGC of 1991, in this wise:

> "If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the Local Government Code. Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local

[11] G.R. No. 185622, October 17, 2018.

treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal.

If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. 'Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.'

On the other hand, if no assessment is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.

xxx xxx xxx

What determines the appropriate remedy is the local government's basis for the collection of the tax. **It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state 'the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties.'** In *Yamane v. BA Lepanto Condominium Corp.*:[12]

> Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or

[12] 510 Phil. 750 (2005) [Per J. Tinga, Second Division].

> charge, the amount of deficiency, surcharges, interests and penalties. In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. xxx.
>
> **No such precondition is necessary for a claim for refund pursuant to Section 196.**"
> *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, in case there is a notice of assessment issued by the local treasurer or his duly authorized representative against a taxpayer, and even when the latter disagrees therewith, still opts to pay the assessed tax, fee, or charge, or the amount of deficiency, the surcharges, interests and penalties, such taxpayer must still file a written protest within the 60-day period; and then bring the case to court within 30 days from either the decision or inaction of the local treasurer, wherein the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. If, however, there is no notice of assessment issued by the local treasurer, and the taxpayer claims payment of illegally or erroneously collected taxes and intends the refund thereof, then Section 196 of the same LGC applies, without regard to the provisions of Section 195 of the same law.

Nevertheless, the doctrinal pronouncements in the *Cosmos Bottling* and *ICTS, Inc.* cases were not applied in the Decision in the instant case, on the ground that these cases were only promulgated in 2018. The said Decision considers the supposed prevailing doctrine applicable to petitioner is that the taxpayer is free to choose which remedy (*i.e.*, Section 195 or Section 196) to enforce, pursuant to the pronouncements made by this Court in *City Treasurer of City of Caloocan vs. Tigerway Facilities and Resources, Inc.*[13]

Admittedly, it is settled that when an old doctrine is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.[14]

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[13] C.T.A. EB Case No. 1605, C.T.A. AC No. 127. July 25, 2018.
[14] *People of the Philippines vs. Jabinal*, G.R. No. L-30061, February 27, 1974.

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With all due respect, however, said pronouncements by this Court in the said case cannot be considered as doctrine or jurisprudence.

In the case of "*The Insular Life Assurance Co., Ltd., Employees Association-NATU, et al. vs. The Insular Life Assurance Co., Ltd., et al.*",[15] the Supreme Court held:

> "...the decisions referred to in article 8 of the Civil Code which reads: 'Judicial decisions applying or interpreting the laws of the Constitution shall form a part of the legal system of the Philippines,' **are only those enunciated by this Court of last resort.** We said in no uncertain terms in *Miranda, et al. vs. Imperial, et al.* (77 Phil. 1066) that **'[O]nly the decisions of this Honorable Court establish jurisprudence or doctrines in this jurisdiction.'** xxx." *(Emphases and underscoring supplied)*

Furthermore, in *Commissioner of Internal Revenue vs. San Roque Corporation, et al.*,[16] the High Court said:

> "xxx. Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system. *(Underscoring supplied)*

Thus, the pronouncements of this Court in the case of *City Treasurer of City of Caloocan vs. Tigerway Facilities and Resources, Inc.* cannot be considered as an "old doctrine", which the Supreme Court has overruled in the *Cosmos Bottling* and *ICTS, Inc.* cases. Hence, the latter cases need not be applied prospectively.

The subject tax assessments have become final and unappealable.

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[15] G.R. No. L-25291, January 30, 1971.
[16] G.R. Nos. 187485, 196113, and 197156, February 12, 2013. /*[initials]*

In this case, petitioner points out that it is seeking for a refund of overpaid taxes, pursuant to Section 196 of the LGC, and it is not filing a protest to an erroneous assessment, pursuant to Section 195 of the same law. It further contends that with respect to LBT, the remedies under both provisions are available to the taxpayer, and the latter is free to choose which one to enforce; that nowhere in the 1991 LGC is it required that there should be a prior resort to Section 195 before availing of the remedy under Section 196 of the same Code.

Undoubtedly, petitioner clearly opted to avail of the remedy outlined under Section 196, to the exclusion of Section 195 of the LGC; and that petitioner, upon receipt of the assessments from respondents, did not protest the assessment, but immediately paid the deficiency LBT and thereafter, filed for an administrative and judicial claim for refund, pursuant to Section 196 of the LGC.

In my humble opinion, petitioner is partly correct.

As earlier shown and as borne out by the records of this case, the present case sprung from Billing Assessment Form Nos. 037633[17] and 037634[18], both dated January 28, 2015, issued by respondents. Specifically, Billing Assessment Form No. 037633 assessed petitioner: (1) LBT in the total amount of **₱2,179,029.25** for *"Deficit for 2014/1...Actual Gross per F.S."* and *"Declared Gross"* with the respective tax base of ₱1,151,630,698.00, and ₱62,116,074.00; and (2) interest in the amount of **₱1,111,304.92**; or in the total amount of **₱3,290,334.17**. For Billing Assessment Form No. 037634, petitioner was assessed, *inter alia*, for being a holding company in the amount of **₱279,266.07** for the 1st Quarter of 2015. The said amounts of LBT were paid by petitioner on February 6, 2015, per Official Receipt No. MKTCF2565534 issued by the Office of the Treasurer of the City of Makati, in the total amount of **₱3,569,600.24**.[19]

In view of the said notices of assessment, as embodied in the said Billing Assessment Forms, issued by respondents against petitioner, and considering that the latter opted to pay the said amounts assessed, petitioner should have observed the provisions of Section 195 of the LGC of 1991, in accordance with the jurisprudential pronouncements in the *ICTS, Inc.* case.

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[17] RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 37 and 72.
[18] RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 38 and 73.
[19] RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 39 and 75.

Counting sixty (60) days from January 28, 2015, petitioner had until March 29, 2015, within which to file a written protest with the respondent Treasurer of Makati City. However, in view of its failure to do so, the subject tax assessments became final and unappealable, in accordance with Section 195 of the LGC of 1991.

It must be emphasized that the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal.[20] As the subject tax assessments have already become final, petitioner is precluded from questioning the same.

Notwithstanding the finality of the subject tax assessments, however, it must be noted however that a portion of the amount being refunded have not attained finality. This is so because the amounts of ₱279,266.07 and ₱279,266.07 (or the total amount of ₱558,532.14), as evidenced by Official Receipts Nos. MKTCF 2618735[21] and MKTCF 2692257[22], respectively, were not covered by the above-stated Billing Assessment Forms or any notice of assessment. Thus, relative thereto, for the purpose of the issue of prescription, it must be determined whether the administrative claim for refund for the said aggregate amount was filed within the two (2)-year prescriptive period, pursuant to Section 196 of the LGC of 1991.

Undisputedly, the said amounts of ₱279,266.07 and ₱279,266.07 were paid on April 17, 2015[23] and July 14, 2015[24], respectively. Counting the two (2)-year prescriptive period under Section 196 of the LGC of 1991, petitioner had until April 17, 2017 for the former amount, and until July 14, 2015 for the latter amount, within which to file its administrative claims therefor. Considering that petitioner filed its administrative claim covering the said amounts on January 6, 2016,[25] the filing thereof is well within the period prescribed by law.

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[20] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[21] RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 40 and 76.
[22] RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 41 and 77.
[23] RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 40 and 76.
[24] RTC Docket (Civil Case No. R-MKT-17-00388-CV), pp. 41 and 77.
[25] Par. 9, *Compliance (Re: Order dated November 29, 2017)*, RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 227.

The said total amount of ₱558,532.14 was erroneously or illegally collected, hence, the same must be refunded.

Since the LBT paid by petitioner in the total amount of ₱558,532.14 has not prescribed, it must perforce be determined whether the said amount was erroneously or illegally collected.

An *"erroneous or illegal tax"* is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[26] In other words, a tax is considered *"erroneous or illegal"* when there is no statutory authority or basis for the collection thereof.

In this case, the LBT paid by petitioner in the total amount of ₱558,532.14 has no statutory basis for its collection. In support thereof, a brief review of the parameters of the taxing powers of the City of Makati is in order.

Section 151 of the LGC of 1991 states the power of a city to impose local taxes, to wit:

> "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 **<u>municipality</u> may impose**: xxx
>
> **The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%)** except the rates of professional and amusement taxes." *(Emphases and underscoring supplied)*

Relative thereto, Section 143 of the LGC of 1991 states the power of municipalities to impose business taxes, to wit:

> "SEC.143. *Tax on Business.* — **The municipality may impose taxes on the following businesses**:

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[26] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

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xxx xxx xxx

(e) **On contractors and other independent contractors**, in accordance with the following schedule:

With gross receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than P5,000.00		27.50
5,000.00 or more but less than	10,000.00	61.60
10,000.00 or more but less than	15,000.00	104.50
15,000.00 or more but less than	20,000.00	165.00
20,000.00 or more but less than	30,000.00	275.00
30,000.00 or more but less than	40,000.00	385.00
40,000.00 or more but less than	50,000.00	550.00
50,000.00 or more but less than	75,000.00	880.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,980.00
150,000.00 or more but less than	200,000.00	2,640.00
200,000.00 or more but less than	250,000.00	3,630.00
250,000.00 or more but less than	300,000.00	4,620.00
300,000.00 or more but less than	400,000.00	6,160.00
400,000.00 or more but less than	500,000.00	8,250.00
500,000.00 or more but less than	750,000.00	9,250.00
750,000.00 or more but less than	1,000,000.00	10,250.00
1,000,000.00 or more but less than	2,000,000.00	11,500.00
2,000,000.00 or more		at the rate not exceeding fifty percent (50%) of one percent (1%)

(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 premiums.

xxx xxx xxx" *(Emphases supplied)*

Based on the foregoing provisions, municipalities, cities, such as respondent Makati City, may impose business taxes. However, it is clear that cities may levy the said taxes exceeding the maximum rates allowed to municipalities by not more than fifty percent (50%), except the rates of professional and amusement taxes.

Nonetheless, notwithstanding the power of cities to impose business taxes, the said power is subject to further limitations, one of which is indicated under Section 133(a) of the LGC of 1991, *viz*:

"**SEC. 133.** ***Common Limitations on the Taxing Power of Local Government Units***. — Unless otherwise provided herein, **the exercise of the taxing powers of** provinces, **cities**, municipalities, and barangays **shall not extend to the levy of the following:**

(a) **Income tax, except when levied on banks and other financial institutions**;" *(Emphases supplied)*

Such being the case, as a corollary to Section 143(f) of the LGC of 1991, **in general**, cities may <u>not</u> levy income tax to certain businesses. However, **by way of an exception**, the said local government units may do so, when the levy is on banks and other financial institutions 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, and insurance.

It must be emphasized that income tax is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income.[27] Income in tax law, in turn, is an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment. It means cash or its equivalent.[28] The rule is well established that cash dividend, whether large or small, are regarded as "income".[29]

Clearly, considering that dividends are regarded as income, cities cannot impose a business tax thereon, unless the imposition is made on a bank and other financial institution.

Respondent Makati City exercised its power to impose business taxes on holding companies under Section 3A.02(p), in relation to Section 3A.02(g) and Section 3A.02(h), all of the RMRC, which provide as follows:

"SECTION 3A.02. *Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

xxx xxx xxx

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[27] *Republic of the Philippines, represented by Energy Regulatory Board vs. Manila Electric Company, etseq.*, G.R. Nos. 141314 and 141369, November 15, 2002.
[28] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[29] *Fisher vs. Trinidad*, G.R. No. L-17518, October 30, 1922.

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(g) On Contractors and other independent contractors defined in SEC. 3A-01 (t) of chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as; advertising agencies; rental of space of signs, signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; **business management services**; collecting agencies; escort services; feasibility studies, consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professionals tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic; white/blue printing, photocopying, typing and mimeographing services; car rental, rental of heavy equipment, rental of bicycles and/or tricycles; furniture, shoes, watches, household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for hearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education (DepEd), day care centers; etc.

With gross sales or receipts for the preceding calendar year in the amount of:

	Amount of Tax per Annum
less than P50,000.00	Exempt
P50,000.00 or more but less than 75,000.00	1,144.00
75,000.00 or more but less than 100,000.00	1,716.00
100,000.00 or more but less than 150,000.00	2,574.00

nb

150,000.00 or more but less than 200,000.00	3,432.00
200,000.00 or more but less than 250,000.00	4,719.00
250,000.00 or more but less than 300,000.00	6,006.00
300,000.00 or more but less than 400,000.00	8,008.00
400,000.00 or more but less than 500,000.00	10,725.00
500,000.00 or more but less than 750,000.00	12,025.00
750,000.00 or more but less than 1,000,000.00	13,325.00
1,000,000.00 or more but less than 2,000,000.00	15,000.00

2,000,000.00 P15,000.00 plus seventy five percent (75%) of one percent (1%) over 2 million.

xxx xxx xxx

(h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, **dividends**, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l), as provided in this code.

xxx xxx xxx

(p) **On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year.**

xxx xxx xxx." *(Emphases supplied)*

On the basis of the foregoing provisions of the RMRC, the imposition of LBT on a *"holding company"* shall either be **under Section 3A.02(g)** for owners or operators of business establishments rendering or offering, *inter alia*, *"business management services"*; **or under Section 3A.02(h)** for owners or operators of banks and other financial institutions. **Under Section 3A.02(g)**, the graduated tax rates are based on the gross sales or receipts, depending on the amount thereof; **while under Section 3A.02 (h)**, the tax rate is fixed at 20% of 1% of the gross receipts derived from dividends, among other income.

In the present case, there is no dispute that petitioner is a holding company.[30] *Apropros*, a *"holding company"* is defined under Section 3A.01(dd) of the RMRC, to wit:

> "SECTION 3A.01. *Definitions.* — When used in this Article: —
>
> xxx xxx xxx
>
> (dd) ***Holding Company* — a controlling company that has one or more subsidiaries and confines its activities primarily to their management.**" *(Emphasis supplied)*

Based on this definition, it is clear that a *"holding company"* is an entity which controls one or more subsidiaries and confines its activities *"primarily"* to their management. As such, while a holding company's *primary* activities are confined to the management of its subsidiaries, it does not preclude such entity from engaging in other activities, which may classify it as within the purview of the term *"Banks and other financial institutions"*, which is defined under Section 131(e) of the LGC of 1991 and Section 3A.01(e) of the RMRC, as follows:

> "SEC. 131. *Definition of Terms.* — When used in this Title, the term:
>
> xxx xxx xxx
>
> (e) ***'Banks and other financial institutions'*** include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;"

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[30] Par. 4, *Compliance (Re: Order dated November 29, 2017)*, RTC Docket (Civil Case No. R-MKT-17-00388-CV), p. 227.

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"SECTION 3A.01. *Definitions.* — When used in this Article: —

xxx xxx xxx

(e) ***Banks and other financial institutions*** — include banks, offshore banking, non-bank financial intermediaries, lending investors, finance and investment companies, investment houses, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange including pre-need companies, as defined under applicable law, or rules and regulations." *(Emphasis supplied)*

However, after a careful review of the evidence presented in the proceedings *a quo*, there is no showing that petitioner falls under the category, or can be considered as within the purview, of the term *"Banks and other financial institutions"* as defined under Section 131(e) of the LGC of 1991 and Section 3A.01(e) of the RMRC, so as to justify the collection of LBT by respondents on the dividends which were earned by respondent in the year 2014.

Such being the case, the total amount of ₱558,532.14 paid in 2015, being refunded by petitioner, must be granted.

WHEREFORE, in light of the foregoing considerations, I vote as follows:

1. The instant *Petition for Review* be **PARTIALLY GRANTED**;

2. The assailed Decision dated February 13, 2018 and Order dated April 23, 2018 be **MODIFIED**: (a) **DENYING** petitioner's claim for tax refund in Civil Case No. R-MKT-17-00388-CV in the aggregate amount of **₱3,569,600.24**, representing the LBT Deficit for 2014, the penalties imposed thereon, and the LBT for the 1st Quarter of 2015, on the ground that the assessment therefor has already become final and unappealable; and (b) **GRANTING** petitioner's claim for tax refund in the total amount of **₱558,532.14**, for having been collected without statutory basis in the year 2015; and

3. Respondents be **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner *only* in the amount of **₱558,532.14**, representing erroneously or illegally paid LBT for the year 2015.

ERLINDA P. UY
Associate Justice