REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VITARICH CORPORATION, Petitioner,	**CTA AC NO. 292**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
CITY TREASURER OF CAGAYAN DE ORO CITY, LOCAL GOVERNMENT OF CAGAYAN DE ORO CITY, Respondent.	Promulgated:
	3:10 p.m.

x - x

DECISION

***FERRER-FLORES, J.*:**

Before this Court is a **Petition for Review** filed by **Vitarich Corporation** praying for the reversal and setting aside of the Decision dated October 5, 2022 (assailed Decision)[1] and Order dated May 2, 2023 (assailed Order),[2] both issued by the Regional Trial Court (RTC) of Cagayan de Oro City – Branch 38, in Civil Case No. 2014-195, entitled *"Vitarich Corporation, Plaintiff, versus City Treasurer of Cagayan de Oro City, Local Government of Cagayan de Oro City, Defendants."* The dispositive portions of the said Decision and Order respectively read as follows:

Decision dated October 5, 2022:

> IN VIEW OF THE FOREGOING, the complaint is hereby DISMISSED.
>
> SO ORDERED.

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[1] Docket, pp. 83 to 87; RTC Docket (Civil Case No. 2014-195) – Vol. 3, pp. 234 to 238.
[2] *Id.* at 140 to 142.

<u>Order dated May 2, 2023</u>:

IN VIEW OF THE FOREGOING, the motion for reconsideration is DENIED.

SO ORDERED.

Petitioner further prays for this Court to order and direct respondents to issue the tax refund or tax credit in its favor in the amount of **₱2,792,278.60**, plus legal interest and attorney's fees.[3]

THE PARTIES

Petitioner Vitarich Corporation is a corporation incorporated, duly organized, and existing under laws of the Philippines with principal place of business at Abangan Sur, Marilao, Bulacan.[4]

Respondent **City Treasurer of Cagayan de Oro City** can be served summons, and other process of this Court in his office at Office of the City Treasurer, City Hall. Cagayan de Oro City.[5]

Respondent **Local Government of Cagayan de Oro City** is an entity established under the Local Government Code (LGC) of 1991.[6]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Petitioner was the registered owner of five parcels of land in Tablon, Cagayan de Oro City, covered by Transfer Certificates of Title (TCT) Nos. T-37040, T-37168, T-33284, T-42303 and T-37042.[7] It sold the said properties to Lancer Holdings Corporation under the *Deed of Absolute Sale* dated February 17, 2014.[8]

During the implementation of the *Deed of Absolute Sale*, respondent City Treasurer demanded the payment of local taxes on "*Real Estate Lessors, Real Estate Dealer and Real Estate Developers*", in accordance

[3] Prayer, *Petition for Review*, Docket, p. 68.
[4] Par. 1, *Complaint*, vis-à-vis par. 1, *Answer with Special & Affirmative Defenses*, RTC Docket (Civil Case No. 2014-195) – Vol. 1, pp. 21 and 94, respectively.
[5] Par. 2, *Id.*
[6] Par. 3, *Id.*
[7] Par. 5, *Id.* at 22 and 94.
[8] Par. 6, *Complaint*, RTC Docket (Civil Case No. 2014-195) – Vol. 1, p. 23; and RTC Decision dated October 5, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 3, p. 234.

with Section 58(h) of the Cagayan de Oro City Ordinance No. 8847-2003, at a rate of 2% of Gross Sales or Receipts of the preceding calendar year.[9]

To avoid any delay in transferring title to the buyer, petitioner paid ₱2,792,278.60 through Manager's Check in the name of the City Treasurer dated April 7, 2014.[10]

Petitioner filed its claim for refund through its letters dated March 1, 2014[11] and April 28, 2014.[12] Respondent City Treasurer denied petitioner's request for refund in the letter dated May 7, 2014.[13]

PROCEEDINGS BEFORE THE COURT *A QUO*

On August 4, 2014, petitioner filed its *Complaint* with the RTC,[14] praying for the Court to render judgment: (1) declaring that it is a taxpayer not engaged in the real estate business, and therefore, not liable to the 2% sales tax for real estate lessors, real estate dealer and real estate developers; (2) ordering respondents City Treasurer and/or the Local Government Unit of Cagayan de Oro City to refund or return ₱2,792,278.60 plus legal interest; and, (3) ordering respondents City Treasurer and/or Local Government Unit of Cagayan de Oro City to pay attorney's fees of at least ₱100,000 plus cost of suit. The case was initially raffled to RTC – Branch 23, Cagayan de Oro City.

In reply, respondents filed their *Answer with Special & Affirmative Defenses* on September 30, 2014,[15] interposing, by way of special and affirmative defenses, that (a) the *Complaint* is not verified by duly authorized representative; (b) the Verification and Certification Against Forum Shopping is not dated; (c) petitioner is engaged in the business of realty brokerage; and, (d) petitioner is a lessor of realty.

Petitioner filed its *Reply* on October 3, 2014 through registered mail.[16]

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[9] Par. 7, *Complaint*, RTC Docket (Civil Case No. 2014-195) – Vol. 1, p. 23; and RTC Decision dated October 5, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 3, p. 234.
[10] Par. 8, *Complaint*, vis-à-vis par. 1, *Answer with Special & Affirmative Defenses*, RTC Docket (Civil Case No. 2014-195) – Vol. 1, pp. 23 and 94, respectively.
[11] March 7, 2014, Annex E attached to *Complaint*, RTC Docket (Civil Case No. 2014-195) – Vol. 1, p. 83.
[12] Par. 9, *Complaint*, vis-à-vis par. 4, *Answer with Special & Affirmative Defenses*, RTC Docket (Civil Case No. 2014-195) – Vol. 1, pp. 23 and 94, respectively.
[13] Par. 10, *Id.*
[14] RTC Docket (Civil Case No. 2014-195) – Vol. 1, pp. 21 to 28.
[15] *Id.* at 94 to 99.
[16] *Id.* at 101 to 109.

Petitioner posted its *Ex-Parte Motion to Set for Pre-Trial* on April 16, 2015.[17] In the Order dated August 3, 2018,[18] RTC – Branch 23 of Cagayan de Oro City set the case for preliminary conference on April 12, 2019 and was reset on July 22, 2019.[19] Respondents filed their *Pre-Trial Brief* on April 8, 2019,[20] while petitioner filed its *Pre-Trial Brief* on May 14, 2019.[21]

The case was re-raffled to RTC – Branch 24 of Cagayan de Oro City in view of the designation of RTC – Branch 23 as Drugs Court pursuant to the Order dated July 10, 2019.[22]

The case was then scheduled for status hearing on September 12, 2019.[23] Thereafter, the same was referred for mediation on September 27, 2019,[24] while the Judicial Dispute Resolution (JDR) was re-scheduled on December 5, 2019.[25] The parties, however, failed to settle amicably before the Philippine Mediation Center.[26]

In the Order dated December 5, 2019,[27] RTC – Branch 24 ordered the records of the case to be remanded to the Office of the Clerk of Court for re-raffling for reasons of failed mediation and due to the inhibition of the presiding judge.

The RTC – Branch 21 of Cagayan de Oro City, where the case was re-raffled, set the case for JDR Conference on February 14, 2020.[28] Considering that petitioner failed to appear during the JDR Conference, RTC – Branch 21 dismissed the case pursuant to Section 5, Rule 18, Rules on Civil Procedure.[29]

On March 17, 2020, petitioner filed its *Motion for Reconsideration*[30] of the dismissal which the Court *a quo* granted in the Order dated June 8, 2020.[31] The Court *a quo* found that the JDR Conference may not be feasible because the issues raised are legal in nature and hence initially set the Pre-

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17 RTC Docket (Civil Case No. 2014-195) – Vol. 1, pp. 110 to 111.
18 *Id.* at 164.
19 Notice of Hearing dated May 15, 2019, RTC Docket (Civil Case No. 2014-195) – Vol. 1, p. 208.
20 RTC Docket (Civil Case No. 2014-195) – Vol. 1, pp. 167 to 173.
21 *Id.* at 190 to 198.
22 *Id.* at 211.
23 *Id.* at 215 to 216.
24 *Id.* at 217.
25 *Id.* at 219 to 220 and 222.
26 Mediator's Report dated November 22, 2019, *Id.* at 221.
27 RTC Docket (Civil Case No. 2014-195) – Vol. 1, p. 223.
28 Notice [JDR Conference] dated January 3, 2020, RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 3 and 5.
29 Dismissal dated February 14, 2020, RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 7 to 9.
30 RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 10 to 12.
31 *Id.* at 27.

Trial Conference.[32] Several dates set for Pre-Trial were cancelled as the parties were given opportunities to settle amicably.[33] As the parties failed to settle the case amicably despite several opportunities given, the Court *a quo* directed them to submit their respective memoranda.[34]

Petitioner filed its *Memorandum* on July 9, 2021,[35] while respondents filed their *Memorandum* on July 28, 2021.[36] Hence, the Court *a quo* submitted the case for resolution on August 2, 2021.[37]

On August 5, 2021, petitioner filed its *Manifestation and Motion for Leave to File Reply Memorandum*,[38] which was admitted in the Order dated August 9, 2021.[39] In the Order dated September 30, 2021,[40] the Court *a quo* directed to remove the case from the list of cases that are submitted for decision pending the filing of the respondents of their rejoinder to the reply of petitioner. Respondents filed their *Rejoinder to Plaintiff's Reply Memorandum* on October 15, 2021,[41] while petitioner posted its *Surrejoinder Memorandum* on October 25, 2021.[42] Thereafter, the Court *a quo* set the case for clarificatory hearing on March 30, 2022[43] and May 16, 2022.[44] Petitioner filed its *Manifestation of Answers to Queries* on May 16, 2022,[45] while respondents filed their *Comment* on May 24, 2022.[46] However, on May 16, 2022, the presiding judge of the RTC - Branch 21 inhibited from hearing the case.[47]

The case was then transferred to RTC – Branch 38 of Cagayan de Oro City which set the same for status hearing on July 5, 2022.[48] During the status hearing, the Court *a quo* gave the parties a period to submit their final memoranda.[49]

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32 Notice of Pre-Trial dated June 8, 2020, RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 28 to 30.
33 RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 50 to 60, 76 to 77.
34 Minutes of Court Session held on, and Order dated, May 3, 2021, RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 79 and 81.
35 RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 82 to 95.
36 *Id.* at 177 to 190.
37 Minutes of Court Session held on, and Order dated, August 2, 2021, *Id.* at 200 and 201.
38 RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 202 to 215.
39 *Id.* at 227.
40 *Id.* at 245.
41 *Id.* at 246 to 253.
42 *Id.* at 259 to 272.
43 Order dated March 23, 2022 and Notice of Hearing dated March 25, 2022, *Id.* at 409 to 410.
44 Order dated March 30, 2022 and Notice of Hearing dated April 19, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 3, pp. 12 to 13.
45 *Id.* at 15 to 20.
46 RTC Docket (Civil Case No. 2014-195) – Vol. 3, pp. 34 to 41.
47 Minutes of Court Session held on, and Order dated, May 16, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 3, pp. 29 and 31.
48 Notice of Hearing dated June 7, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 3, p. 49.
49 Minutes of Court Session held on, and Order dated, July 5, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 3, pp. 98 to 99.

Respondents filed their *Final Memorandum* on July 20, 2022,[50] and *Comment (Addendum to the Final Memorandum)* on July 25, 2022.[51] Petitioner filed its *Memorandum*[52] and *Reply Memorandum*[53] on September 22, 2022.

On October 5, 2022, the RTC – Branch 38 issued the assailed Decision which dismissed the *Complaint*.[54]

Petitioner filed its *Motion for Reconsideration or for New Trial* on January 10, 2023,[55] while respondents' *Comment/Opposition (To the Moton for Reconsideration or New Trial)* was filed on March 22, 2023,[56] and petitioner's *Reply* was filed on June 5, 2023.[57] The Court *a quo* denied the motion in the Order dated May 2, 2023.[58]

PROCEEDINGS BEFORE THIS COURT

Petitioner then filed the present *Petition for Review* on June 23, 2023.[59]

In compliance with this Court's Resolution dated September 8, 2023,[60] the RTC – Branch 38 of Cagayan de Oro City submitted its records of Civil Case No. 2014-195 on December 6, 2023.[61]

Respondents then posted their *Comment to the Petition for Review* on November 30, 2023.[62] Petitioner posted its *Reply* on January 8, 2024.[63]

Thus, in the Minute Resolution dated March 13, 2024,[64] the Court ordered the parties to file their respective memoranda. In compliance thereto, petitioner's *Memorandum* was posted on June 20, 2024,[65] and

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[50] RTC Docket (Civil Case No. 2014-195) – Vol. 3, pp. 145 to 156.
[51] *Id.* at 158 to 162.
[52] *Id.* at 164 to 191.
[53] *Id.* at 205 to 232.
[54] *Id.* at 234 to 238.
[55] RTC Docket (Civil Case No. 2014-195) – Vol. 4, pp. 1 to 15.
[56] *Id.* at 125 to 133.
[57] *Id.* at 152 to 162.
[58] *Id.* at 140 to 142.
[59] Docket, pp. 16 to 75.
[60] *Id.* at 94.
[61] RTC – Branch 38 of Cagayan de Oro City Transmittal Letter posted on December 6, 2023 and received by the Court on December 11, 2023, Docket, pp. 120 to 126.
[62] Docket, pp. 96 to 117.
[63] *Id.* at 127 to 147.
[64] *Id.* at 182.
[65] *Id.* at 189 to 229.

respondents' *Memorandum* was posted on June 18, 2024.[66] On July 15, 2024, petitioner filed its *Reply Memorandum*.[67]

The case was submitted for decision on July 9, 2024.[68]

THE ISSUES

Petitioner submits the following issues for this Court's resolution, to wit:

1. Is the classification of the City Government of Petitioner as Real Estate Lessor, Real Estate Dealer and Real Estate Developer under City Ordinance No. 8847-23, subject to the realtor's tax valid or not?

2. Is the imposition of the realtor's tax after the classification valid or not?

3. Is Petitioner entitled [to] a tax refund or a tax credit?[69]

Petitioner's arguments:

Petitioner argues that it is not a real estate lessor, real estate dealer and real estate developer; It maintains that respondents' imposition of realtor's tax is invalid because it has no legal basis; thus, petitioner is entitled to the reimbursement or return of ₱2,792,278.60. Finally, petitioner claims that it is entitled to attorney's fees.

Respondents' counter-arguments:

Respondent contends that there is legal basis for the assessment of 2% real estate dealer's tax. It asserts that petitioner is liable as real estate dealer under Section 58(h) of Cagayan de Oro City Ordinance No. 8847-2003 and that corporate rehabilitation does not exempt petitioner from paying local taxes. For respondent, the Bureau of Local Government Finance (BLGF) has no authority to interpret tax laws. Lastly, respondent avers that the City Government and its City Treasurer's Office are not liable to any claim for cost of the suit, attorney's fees and such other monetary claims including damages, if there be any.

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66 Docket, pp. 244 to 266.
67 *Id.* at 270 to 285.
68 Minute Resolution dated July 9, 2024, Docket, p. 269.
69 Issues, petitioner's *Memorandum*, Docket, p. 195.

THE RULING OF THE COURT

The *Petition for Review* lacks merit.

As borne out by the records, the resolution of the present case is primarily dependent on the application of Sections 143(h) and 151, both of the LGC of 1991, Sections 2 and 3 of BIR Revenue Regulations (RR) No. 7-2003 and Section 58 of Cagayan De Oro City Ordinance No. 8847-2003, to wit:

Sections 143 and 151, LGC of 1991

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

(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 subsection (a), (b) and (d) of this Section:

xxx xxx xxx

(1) Rice and corn;

(2) Wheat or cassava flour, meat, dairy products, locally manufactures, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;

(3) Cooking oil and cooking gas;

(4) Laundry soap, detergents, and medicine;

(5) Agricultural implements, equipment and post-harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;

(6) Poultry feeds and other animal feeds;

(7) School supplies; and

(8) Cement.

xxx xxx xxx

(h) On **any business**, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax:

Provided, That on any business subject to 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. (*Emphasis added*)

xxx xxx xxx

Section 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: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

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.

Sections 2 and 3 of RR No. 7-2003[70]

SEC. 2. DEFINITION OF TERMS. – For purposes of these Regulations, the following terms shall be defined as follows:

xxx xxx xxx

d. ***Real estate dealer*** shall refer to any person engaged in the business of buying and selling or exchanging real properties on his own account as a principal and holding himself out as a full or part-time dealer in real estate.

e. ***Real estate developer*** shall refer to any person engaged in the business of developing real properties into subdivisions, or building houses on subdivided lots, or constructing residential or commercial units, townhouses and other similar units for his own account and offering them for sale or lease.

f. ***Real estate lessor*** shall refer to any person engaged in the business of leasing or renting real properties on his own account as a principal and holding himself out as lessor of real properties being rented out or offered for rent.

g. ***Taxpayers engaged in the real estate business*** shall refer collectively to real estate dealers, real estate developers, and/or real estate lessors. Conversely, the term '***taxpayers not engaged in the real estate business***' shall refer to

[70] Providing the Guidelines in Determining Whether a Particular Real Property is a Capital Asset or an Ordinary Asset Pursuant to Section 39(A)(1) of the National Internal Revenue Code of 1997 for Purposes of Imposing the Capital Gains Tax under Sections 24(d). 25(A)(3), 25(B) and 27(D)(5), or the Ordinary Income Tax under Section 24(A), 25(A) & (B), 27(A), 28(A)(1) and 28(B)(1), or the Minimum Corporate Income Tax (MCIT) under Sections 27(E) and 28(A)(2) of the same Code, RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 342.

persons other than real estate dealers, real estate developers and/or real estate lessors. A taxpayer whose primary purpose of engaging in business, or whose Articles of Incorporation states that its primary purpose is to engage in the real estate business shall be deemed to be engaged in the real estate business for purposes of these Regulations.

SEC. 3. GUIDELINES IN DETERMINING WHETHER A PARTICULAR REAL PROPERTY IS A CAPITAL ASSET OR ORDINARY ASSET.-

a. ***Taxpayers engaged in the real estate business***. – Real property shall be classified with respect to taxpayers engaged in the real estate business as follows:

1. ***Real Estate Dealer.*** - All real properties acquired by the real estate dealer shall be considered as ordinary assets.

2. ***Real Estate Developer.*** – All real properties acquired by the real estate developer, whether developed or undeveloped as of the time of acquisition, and all real properties which are held by the real estate developer primarily for sale or for lease to customers in the ordinary course of his trade or business or which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year and all real properties used in the trade or business, whether in the form of land, building, or other improvements, shall be considered as ordinary assets.

3. ***Real Estate Lessor.*** – All real properties of the real estate lessor, whether land and/or improvements, which are for lease/rent or being offered for lease/rent, or otherwise for use or being used in the trade or business shall likewise be considered as ordinary assets.

4. ***Taxpayers habitually engaged in the real estate business.*** - All real properties acquired in the course of trade or business by a taxpayer habitually engaged in the sale of real estate shall be considered as ordinary assets. Registration with the HLURB or HUDCC as a real estate dealer or developer shall be sufficient for a taxpayer to be considered as habitually engaged in the sale of real estate. If the taxpayer is not registered with the HLURB or HUDCC as a real estate dealer or developer, he/it may nevertheless be deemed to be engaged in the real estate business through the establishment of substantial relevant evidence (such as consummation during the preceding year of at least six (6) taxable real estate sale transactions, regardless of amount; registration as habitually engaged in real estate business with the Local Government Unit or the Bureau of Internal Revenue, etc.,).

A property purchased for future use in the business, even though this purpose is later thwarted by circumstances beyond the taxpayer's control, does not lose its character as an ordinary asset. Nor does a mere discontinuance of the active use of the property change its character

b. ***Taxpayer not engaged in the real estate business***. - In the case of a taxpayer not engaged in the real estate business, real properties, whether land, building, or other improvements, which are used or being used or have been previously used in the trade or business of the taxpayer shall be considered as ordinary assets. These include buildings and/or improvements subject to depreciation and lands used in the trade or business of the taxpayer.

A depreciable asset does not lose its character as an ordinary asset, for purposes of the instant provision, even if it becomes fully depreciated, or there is failure to take depreciation during the period of ownership.

Monetary consideration or the presence or absence of profit in the operation of the property is not significant in the characterization of the property. So long as the property is or has been used for business purposes, whether for the benefit of the owner or any of its members or stockholders, it shall still be considered as an ordinary asset. Real property used by an exempt corporation in its exempt operations, such as a corporation included in the enumeration of Section 30 of the Code, shall not be considered used for business purposes, and therefore, considered as capital asset under these Regulations.

Real property, whether single detached; townhouse; or condominium unit, not used in trade or business as evidenced by a certification from the Barangay Chairman or from the head of administration, in case of condominium unit, townhouse or apartment, and as validated from the existing available records of the Bureau of Internal Revenue, owned by an individual engaged in business, shall be treated as capital asset.

Section 58 of Cagayan De Oro City Ordinance No. 8847-2003[71]

Section 58. ***Imposition of Tax.*** — There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduate business in the amounts hereafter prescribed:

xxx xxx xxx

a) **Tax on Real Estate Lessors, Real Estate Dealera and Real Estate Developers**:

Rate – 2% of Gross Sales or Receipts

[71] RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 361(back) and 363 (back).

Basis – Gross Sales or Receipts of the preceding calendar year (*Emphasis added*)

Based on the foregoing Section 143(h) in relation to Section 151 of the LGC of 1991, a city, like respondent Cagayan de Oro City, is empowered to impose business taxes, *inter alia*, on real estate lessor, real estate dealer or real estate developer. It is, thus, necessary to determine first whether petitioner should be considered as real estate lessor, real estate dealer or real estate developer as defined in Section 2 of RR No. 7-2003. Otherwise, Section 58(h) of Cagayan De Oro City Ordinance No. 8847-2003 which imposes 2% tax on real estate lessors, real estate dealer and real estate developers shall not apply to petitioner.

Nevertheless, this Court has exclusive appellate jurisdiction over the present case, pursuant to Section 7(a)(3) of Republic Act (RA) No. 1125[72], as amended by RA No. 9282[73], to wit:

SEC. 7. *Jurisdiction.* — **The CTA shall exercise:**

(a) **Exclusive appellate jurisdiction to review by appeal, as herein provided:**

xxx xxx xxx

(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;** *(Emphases added)*

Appellate jurisdiction is the authority of a court higher in rank **to re-examine** the final order or judgment of a lower court which tried the case now elevated for judicial review.[74] As a corollary, it is a cardinal rule that when a case is appealed, the appellate court has the power to **review the case in its entirety.**[75]

Notably, the Court *a quo* (*i.e.*, RTC – Branch 38) did not conduct a pre-trial as it merely proceeded to order the parties to submit their final memoranda in the Order dated July 5, 2022.[76] Moreover, prior to the raffle

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72 AN ACT CREATING THE COURT OF TAX APPEALS.
73 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
74 *Garcia, et al. vs. De Jesus, et al., etseq.*, G.R. Nos. 88158 and 97108-09, 4 March 1992.
75 *Sazon vs. Vasquez-Menancio*, G.R. No. 192085, 22 February 2012.
76 Minutes of Court Session held on, and Order dated, July 5, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 3, pp. 98 to 99.

of the case to RTC – Branch 38, in the Order dated June 8, 2020,[77] RTC – Branch 21 found that the JDR Conference may not be feasible because the **issues raised are legal in nature**. Thereafter, several dates set for pre-trial were cancelled by RTC – Branch 21 to give the parties the chance to settle amicably.[78] But as the parties failed to settle the case, RTC – Branch 21 directed them to submit their respective memorandum in the Order dated May 3, 2021.[79] Thus, no presentation of evidence by both parties was had. *Apropos*, in the Order dated June 8, 2020,[80] and May 3, 2021,[81] the RTC – Branch 21 decreed as follows:

> **Order dated June 8, 2020**
>
> xxx xxx xxx
>
> The pending incident is the JDR Conference. Under the amended 2019 Rules on Civil Procedure, the Court is given the discretion to determine whether the JDR conference is feasible or not. Perusing the records, this Court finds that the JDR conference may not be feasible because the issues raised are legal in nature. Hence, without prejudice of the parties to manifest during the pre-trial that a JDR conference will be held, let the pre-trial conference be set on July 7, 2020 at 1:30 o'clock in the afternoon.
>
> **WHEREFORE,** premises considered, the motion for reconsideration is granted. The dismissal Order dated February 14, 2020 is set aside. This case is revived.
>
> Set this case for pre-trial **on July 7, 2020 at 1:30 o'clock in the afternoon**.
>
> Issue the appropriate pre-trial notice pursuant to A.M. No. 19-10-20-SC.
>
> Email this order to counsels and then send a hard copy.
>
> **SO ORDERED.**
>
> **Order dated May 3, 2021**
>
> In spite of several opportunities given to parties to settle this case amicably, they failed.
>
> As agreed upon, the plaintiff is directed to submit their memorandum not later than June 30, 2021. The defendants will submit

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77 RTC Docket (Civil Case No. 2014-195) – Vol. 2, p. 27.
78 RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 50 to 60, 76 to 77.
79 Minutes of Court Session held on, and Order dated, May 3, 2021, RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 79 and 81.
80 RTC Docket (Civil Case No. 2014-195) – Vol. 2, p. 27.
81 Minutes of Court Session held on, and Order dated, May 3, 2021, RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 79 and 81.

their memorandum fifteen (15) days from receipt of the memorandum of the plaintiff.

The following issues are to be considered in their memorandum.

1. Is the classification of the City Government of plaintiff as Real Estate lessor, Real Estate dealer at Real Estate Developer under City Ordinance No. [No.] 8847-23[,] subject to the realtor's tax valid or not?
2. Is the imposition of the realtor's tax after the classification valid or not?
3. Is plaintiff entitled for a tax refund or a tax credit?

To monitor status, calendar this case on August 2, 2021 at 1:30 in the afternoon.

The hearing on July 21, 2021 is cancelled.

SO ORDERED.

The case was then transferred to RTC – Branch 38 of Cagayan de Oro City which set the same for status hearing[82] where the Court *a quo* gave the parties a period to submit their final memoranda in the Order dated July 5, 2022,[83] to wit:

In today's status hearing, it appears that the case was already deemed submitted for resolution before the RTC Branch 21 inhibited from this case.

In view of the foregoing, both parties are hereby given fifteen (15) days, to submit their final memoranda, after which the same shall be resolved.

SO ORDERED.

To this Court's mind, however, the Court *a quo* erred in classifying the foregoing issues as *"legal issues"*, as it failed to appreciate the distinction between a legal issue or question of law and a factual issue or question of fact.

In *Sugar Regulatory Administration vs. Central Azucarera De Bais Inc.*,[84] the Supreme Court distinguished between a question of law and a question of fact, to wit:

...A question of law arises when there is doubt as to the applicable law and jurisprudence on a certain set of facts. It must not

[82] Notice of Hearing dated June 7, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 3, p. 49.
[83] Minutes of Court Session held on, and Order dated, July 5, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 3, pp. 98 to 99.
[84] G.R. No. 253821, March 6, 2023.

call for an examination of the probative value of the evidence. On the other hand, **a question of fact exists when there is controversy as to the truth or falsity of the alleged facts**, *viz.*:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. **For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. <u>The test, therefore, is not the appellation given to the question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact</u>.** *(Emphases and underscoring added)*

The *"legal issues"* identified by the Court *a quo* hardly fall under the definition of a *"question of law"*. This is simply because the said issues do not involve doubt as to the applicable law and jurisprudence on a certain set of facts. Moreover, the resolution of the said issues involves an examination of the probative value of the evidence presented by the litigants. Particularly, the issue of whether petitioner should be considered "*real estate lessor, real estate dealer or real estate developer*", as all defined under the law, would require the presentation of evidence.

Notably, in the process of drafting the resolution after the parties' submission of their respective memoranda, RTC – Branch 21 found that there is a need to set the case for clarificatory hearing on March 30, 2022[85] and May 16, 2022[86] as there are matters that needed to be clarified.

Thus, contrary to the Court *a quo*'s stance, the issues considered before this Court are actually questions of fact or factual issues. As such, the party litigants should have respectively presented and offered their evidence to establish their factual assertions in the proceedings below. The offer of evidence is necessary because it is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial.[87] In other words, it is clear that for

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[85] Order dated March 23, 2022 and Notice of Hearing dated March 25, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 409 to 410.

[86] Order dated March 30, 2022 and Notice of Hearing dated April 19, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 3, pp. 12 to 13.

[87] *Ramos vs. Spouses Domingo A. Dizon and Edna Medina Dizon*, G.R. No. 137247, August 7, 2006, citing *Chua vs. Court of Appeals, et al.*, G.R. No. 88383, February 19, 1992.

evidence to be considered, the same must be formally offered.[88] Nonetheless, this rule may be relaxed and the evidence not formally offered may be admitted and considered by the trial court provided the following requirements are present, *viz.*: *first*, the same must have been duly identified by testimony duly recorded, and *second*, the same must been incorporated in the records of the case.[89]

In this case, because of the directive by RTC – Branch 21 in the in the Order dated June 8, 2020,[90] and May 3, 2021,[91] and RTC – Branch 38 in the Order dated July 5, 2022,[92] the litigants never respectively presented their evidence. And while the petitioner's exhibits were pre-marked, the same were never identified by testimony, nor are they offered in evidence. Thus, to be sure, there was no basis for the Court *a quo*'s findings of facts and judgement.

Without any evidence presented or offered in the proceedings below to show whether petitioner is considered a *real estate lessor, real estate dealer or real estate developer*", as the said terms are defined by law, this Court cannot determine the propriety or validity of the arguments respectively raised by the parties in this case.

Considering that the proceedings in the Court *a quo* have not yet reached the pre-trial stage and the parties have yet to present their respective evidence, the remand of the case for the conduct of pre-trial and further proceedings for the reception of evidence to thoroughly examine the claims and defenses of the parties is in order. To be sure, the issue of whether petitioner is entitled to a refund or tax credit in the aggregate amount of ₱2,792,278.60 plus legal interest and attorney's fees must be resolved first by the Court *a quo*.

WHEREFORE, in light of the foregoing considerations, the **Petition for Review** is **DENIED**.

Accordingly, the assailed Decision dated October 5, 2022 and Order dated May 2, 2023, rendered by the RTC – Branch 38, Cagayan de Oro City, in Civil Case No. 2014-195, entitled *"Vitarich Corporation, Plaintiff, versus*

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[88] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, citing *Elvira Mato Vda. De Oñate vs. The Court of Appeals, et al.*, G.R. No. 116149, November 23, 1995.

[89] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, citing *People vs. Napat-a* and *People vs. Mate.*

[90] RTC Docket (Civil Case No. 2014-195) – Vol. 2, p. 27.

[91] Minutes of Court Session held on, and Order dated, May 3, 2021, RTC Docket (Civil Case No. 2014-195) – Vol. 2, pp. 79 and 81.

[92] Minutes of Court Session held on, and Order dated, July 5, 2022, RTC Docket (Civil Case No. 2014-195) – Vol. 3, pp. 98 to 99.

City Treasurer of Cagayan de Oro City, Local Government of Cagayan de Oro City, Defendants", are hereby **REVERSED** and **SET ASIDE**. Let this case be **REMANDED** to RTC – Branch 38, Cagayan de Oro City, for further proceedings on the merits of the refund claim.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

We Concur:

MA. BELEN M. RINGPIS-LIBAN
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's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Second Division 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