REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

MALAYAN EDUCATION SYSTEM, INC. (FORMERLY KNOWN AS MALAYAN COLLEGES INC. AND PRESENTLY OPERATING UNDER THE NAME OF MAPUA UNIVERSITY), *Petitioner,*	**CTA AC No. 225** (Civil Case No. 15-592)
	Members:
	DEL ROSARIO, *P.J.*, *Chairperson, and* **MANAHAN**, *J.*
-versus-	Promulgated:
CITY OF MAKATI, CITY MAYOR, AND CITY TREASURER, *Respondents.*	OCT 30 2020 9:52am

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DECISION

MANAHAN, *J.:*

This case involves the *Petition for Review*[1] filed by petitioner Malayan Education System, Inc. (MESI) against respondent City of Makati, its City Mayor, and its City Treasurer pursuant to Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the reversal of the *Decision* dated March 21, 2019[2] and *Order* dated June 7, 2019[3] in Civil Case No. 15-592 of the Regional Trial Court (RTC) – Branch 58, Makati City. Petitioner also prays to declare null and void the Notice of Assessment (NOA) dated March 6, 2015[4], to permanently enjoin the respondents from assessing and/or collecting local business tax on its tuition fees and other educational receipts, and to refund the amount of Php8,160,000.00 which petitioner paid under protest for deficiency local business taxes for the years 2009 to 2013.

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[1] Docket, CTA AC No. 225, pp. 27-77.
[2] *Id.*, Annex "A", pp. 80-89.
[3] *Id.*, Annex "B", p. 90.
[4] *Id.*, pp. 169-170. *am*

The dispositive portions of the assailed Decision and Order of RTC-Branch 58, Makati City, read as follows:

Decision dated March 21, 2019:[5]

> "**WHEREFORE**, premises considered, for the failure of plaintiff to prove its case, the Court renders judgment DISMISSING the instant Complaint for lack of merit.
>
> **SO ORDERED**."

Order dated June 7, 2019:[6]

> "**WHEREFORE**, premises considered, the Court **DENIES** the Motion for (of the Decision dated March 21, 2019) filed by Plaintiff Malayan Education Systeme (sic), Inc., for lack of merit.
>
> **SO ORDERED**."

THE PARTIES

Petitioner MESI is a technology-focused educational institution and has one of the biggest engineering schools in the Philippines, operating two (2) campuses or branches in the following location: a) Muralla Street, Intramuros, Manila (Manila Campus); b) Sen. Gil J. Puyat Avenue Makati City. [7] It is also a domestic corporation duly organized and existing under and by the virtue of the laws of the Republic of the Philippines with principal address at MIT Compound, Muralla Street, Intramuros, Manila.[8]

Respondent City of Makati is a municipal corporation duly created and existing under and by virtue of Republic Act (RA) No. 7854[9]. On the other hand, respondent City Mayor of Makati is the local chief executive exercising supervision over the City Treasurer of Makati and is mandated by RA No. 7160, otherwise known as the "Local Government Code (LGC) of 1991," to ensure that all taxes and other revenues of the city are collected, while respondent City Treasurer of Makati is the

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[5] *Supra*, Note 2.
[6] *Supra*, Note 3.
[7] Docket, RTC Decision dated March 21,2019, p. 80.
[8] *Id.*, Petition for Review, p. 29.
[9] Otherwise known as Charter of the City of Makati.

local official who is responsible for the assessment, imposition and collection of the tax in question.[10]

THE FACTS

On September 11, 2014 petitioner received a copy of Letter of Authority (LOA) No. 2014-0430 dated September 1, 2014 issued by respondent City Treasurer requesting for the former's various business records and/or documents for taxable years (TYs) 2009 up to December 31, 2013.[11]

On September 18, 2014, petitioner submitted said records and documents as evidenced by a letter signed by its controller.[12]

On March 13, 2015, petitioner received the NOA dated March 6, 2015, stating that it has outstanding obligation to respondent City of Makati in the amount of Php17,190,741.08 inclusive of interest and penalty charges representing deficiency local business taxes (LBT) covering TYs 2009 to 2013.[13]

On May 11, 2015, petitioner filed an administrative protest against the said assessment with respondent City Treasurer within sixty (60) days from receipt of the NOA pursuant to Section 195 of LGC of 1991.[14]

On May 25, 2015, petitioner received a letter dated May 18, 2015 from the respondents enjoining the former to settle its tax liabilities.[15]

On June 24, 2015, petitioner filed a Complaint before the RTC – Branch 58, Makati City to appeal the denial of its administrative protest by the respondents and to seek cancellation of NOA dated March 6, 2015.[16]

On July 21, 2015, the Board of Directors and Stockholders of petitioner held a special meeting which

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[10] Docket, Petition for Review, pp. 29-30.
[11] Docket, RTC Decision dated March 21, 2019, p. 80.
[12] *Id.*
[13] *Id.*, pp. 80-81.
[14] *Id.*, p. 81
[15] *Id.*
[16] *Id.*

approved the change of its corporate name from Malayan Colleges, Inc. (Operating under the name of Mapua Institute of Technology) to Malayan Education System, Inc.[17]

On January 30, 2018, petitioner attempted to renew its business permit for the year 2018 with the respondents but the latter refused to grant it without the prior settlement of the disputed deficiency LBTs, fees, or charges of the subject NOA. Petitioner was constrained to pay 30% of said assessment in the amount of Php5,160,000.00 since it was just one day before January 31, 2018, the deadline for the renewal of its business permits.[18]

On June 29, 2018, petitioner filed a claim for refund of its partial payment of Php5,160,000.00 with respondent City Treasurer.[19]

Thus, petitioner filed an Amended and Supplemental Complaint dated July 2, 2018[20] which added to its original prayer, a claim for refund of the partial payment of Php5,160,000.00. The subsequent payments totalling Php3,000,000.00 were further made to the City Treasurer on January 31, 2019, April 24, 2019 and July 24, 2019.[21] However, they were no longer included in the complaint filed before the RTC but formed part of the instant petition before this Court.

On March 21, 2019, the trial court dismissed the case under the assailed Decision which was received by petitioner on May 8, 2019. Hence, petitioner moved for reconsideration of said decision but was denied anew by the trial court under the assailed Order which it received on July 10, 2019.[22]

Thus, petitioner filed the instant petition for review on September 4, 2019 which was admitted after this Court granted[23] its motion for extension of time to file said petition[24].

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[17] Docket, RTC Decision dated March 21, 2019, p. 81
[18] *Id.*
[19] *Id.*, Petition for Review, p. 69; Docket, p. 200.
[20] *Id.*, Annex "D" of Petition for Review, pp. 139-165
[21] *Id.*, Petition for Review, p. 32.
[22] *Id.*, Petition for Review, p. 29.
[23] *Id.*, Resolution dated September 25, 2019, pp. 255-256.
[24] *Id.*, pp. 8-11.

On September 25, 2019, this Court directed the respondents to submit their comment on the said petition. Such comment[25] was submitted on October 15, 2019, hence, the case was declared[26] deemed submitted for decision on November 5, 2019.

ISSUE

Whether or not petitioner is subject to the payment of local business tax.

Petitioner's Arguments[27]

Petitioner argues that the RTC-Branch 58 erred when it failed to rule that respondents are not authorized under the 1987 Philippine Constitution and the LGC to impose LBT on its tuition and related educational fees, and that the imposition of business taxes had no authority from the Commission on Higher Education (CHED) and there was no public consultation/hearing conducted.

Petitioner also argues that the RTC-Branch 58 erred in ruling that its right to due process was not violated even though respondents failed to specify in the NOA the specific provision of Makati City tax ordinance violated and in ruling that respondents' right to assess has not yet prescribed.

Petitioner insists that RTC-Branch 58 did not address the issues raised in its Memorandum such as respondents' imposition of taxes without consultation with CHED and in ruling that it had not discharged the burden of proof required.

Petitioner avers that it is therefore entitled to the refund of the amount of Php8,160,000.00.

Respondents' Counter-Arguments[28]

Respondents, on the other hand, argue that the instant petition was filed out of time as Section 9 of Republic Act (RA) No. 9282 as well as Section 3 of the Revised Rules of the Court of Tax Appeals (RRCTA) did not provide for an additional fifteen (15) day period or an extension of time to file an appeal

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[25] *Id.*, Comment and Opposition to the Petition for Review, pp. 267-277.
[26] *Id.*, Resolution dated November 5, 2019, pp. 288-289.
[27] *Supra.*, Note 1.
[28] *Supra.*, Note 21.

from a decision of the RTC in the exercise of its original jurisdiction.

Respondents also argue that the NOA as well as the detailed worksheet explain the nature of the deficiency business taxes indicated therein.

Respondent further avers that petitioner is claiming tax exemption under Section 4(3), Article XIV of the 1987 Philippine Constitution to which it is not entitled since it is a non-stock, **profit educational institution**, hence, liable to pay LBT under Section 3A.02 of the Revised Makati Revenue Code, the tax ordinance.

Respondents insist that the subject assessment has not yet prescribed since the LBT for 2008 accrued only in January of 2009 and since the LOA was received by petitioner on September 10, 2014, said assessment may still be collected.

Respondents also insist that the decision rendered by RTC-Branch 58 tackled all the factual and legal issues raised by petitioner.

RULING OF THE COURT

The Court has jurisdiction over the Petition for Review

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[29] The jurisdiction of the CTA regarding local tax cases is provided under Section 7(a)(3) of RA No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "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**;" (*Emphasis supplied*)

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[29] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

Similarly, Section 3(a)(3) of Rule 4 of 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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> xxx xxx xxx
>
> (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**;" (*Emphasis supplied*)

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court cannot decide the case on the merits.[30]

The instant petition arose from the dismissal of petitioner's complaint before RTC-Branch 58, Makati City against respondents' assessment on the former's alleged deficiency LBT for the years 2009 to 2013. Thus, the subject matter of the case falls under Section 7(a)(3) of RA No. 1125, as amended, and Section 3(a)(3) of Rule 4 of RRCTA.

Case records also reveal that the assailed Decision and Order were received by the petitioner on May 8, 2019 and July 10, 2019, respectively.

Section 3(a), Rule 8 of the RRCTA also provides:

> SEC. 3. *Who may appeal; period to file petition.* –
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> (a) **A party adversely affected by a decision, ruling** or the inaction **of** the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal

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[30] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.

> revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a **Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by Jaw for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review with in the two-year period prescribed by law from payment or collection of the taxes. (*Emphasis supplied*)

Thus, petitioner had thirty (30) days from July 10, 2019 or until August 9, 2019 to file its petition. Having been granted an extension of time to file its petition, the instant Petition for Review was timely filed on September 4, 2019.

Respondents, in their comment or opposition to the instant petition, argue that Section 9 of RA No. 9282 as well as Section 3 of the RRCTA did not provide for an additional fifteen (15) day period or an extension of time to file an appeal from a decision of the RTC in the exercise of its original jurisdiction.

Respondents must be aware that this Court is allowed to entertain such motion considering that under the law that created this Court, the proceedings herein is not strictly governed by technical rules of evidence.[31]

Further, motion for extension of time to file other pleadings, affidavits and any other papers[32] other than motion for extension of time to file Answer has become prohibited only on May 1, 2020, the effectivity date of A.M. No. No. 19-10-20-SC or the 2019 Proposed Amendments to the 1997 Rules of Civil Procedures. Thus, the grant of the extended period to file the petition was proper.

Petitioner is not covered by the tax exemption under Section 4(3), Article XIV of the 1987 Philippine Constitution

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[31] Section 8, Republic Act No. 1125, as amended by RA No. 9282 and 9503.
[32] Section 12(e), Rule 15, 1997 Rules of Civil Procedures, as amended.

Petitioner avers that as an educational institution, it is accorded a special tax treatment or exemption as well as preferential coverage and protection under the 1987 Philippine Constitution.

In the assailed Decision, the said constitutional provision was considered, however, respondent's power to tax the income of petitioner was upheld, to wit:[33]

> "As to whether or not plaintiff as an educational institution, enjoys preferential treatment under Constitution and therefore not subject to tax, this Court finds in the affirmative in so far as preferential treatment only in accordance with Article XIV, Sections 1 and 17 of the Constitution. However, there is no law exempting the school from local business tax. On the contrary, plaintiff should be imposed local business tax under Revised Makati Revenue Code City Ordinance No. 2004-A-025 Sec. 3A.02.
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> xxx xxx xxx
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> As to the issue of whether or not plaintiff's income or receipts from school operations should form part of its gross receipt for local business tax purpose, this Court again finds in the affirmative. Only lands, building and improvements actually and directly used for religious and educational purpose which are exempt from tax. Likewise, all revenues and assets of a non-stock, non-profit educational institutions used actually, directly and exclusively for educational purpose are also exempt from taxes and dues."

A close scrutiny of the petition for review and the assailed decision will show that the actual bone of contention is the taxability or exemption from LBT of petitioner's income from its school-related activities.

In the instant petition, petitioner raised its preferential treatment under the Constitution as an educational institution although without particularly mentioning the provision of the constitution as to its income's exemption from taxation. Hence, it is only proper to revisit the constitutional provision on exemption from taxation of educational institutions.

Section 28(3), Article VI and Section 4(3), Article XIV of the 1987 Philippines Constitution provides for exemption from taxation of educational institutions, to wit:

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[33] Docket, RTC Decision dated March 21, 2019, pp. 88-89.

> "SECTION 28. (1) xxx xxx xxx.
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> (2) xxx xxx xxx.
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> (3) Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and **all lands, buildings, and improvements, actually, directly, and exclusively used for** religious, charitable, or **educational purposes shall be exempt from taxation**.
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> xxx xxx xxx
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> SECTION 4. (1) xxx xxx xxx.
>
> (2) xxx xxx xxx.
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> (3) **All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties.** Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.
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> Proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions subject to the limitations provided by law including restrictions on dividends and provisions for reinvestment." (*Emphasis supplied*)

As shown above, the exemption of real properties of any educational institution actually, directly, and exclusively used for the said purpose is absolute.

Unlike in the preceding paragraph, the exemption of an educational institution is relative or subject to qualification and that said **exemption is available only to non-stock, non-profit educational institutions** although it may be extended to proprietary educational institutions subject to further limitations.

Section 1(1.4) of Department of Finance Department Order No. 137-87 dated December 16, 1987, or the "**Rules and Regulations Implementing Section 4 (3), Article XIV of the New Constitution**", defines "Non-Profit" as "no part of the income inures directly or indirectly to any individual or member."

In *Commissioner of Internal Revenue v. De La Salle University, Inc.*,[34] the Supreme Court laid down the requisites

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[34] G.R. Nos. 196596, 198841, and 198941, November 09, 2016.

for availing the tax exemption under Section 4(3), Article XIV of the 1987 Philippines Constitution, to wit:

> "The Court then significantly laid down the requisites for availing the tax exemption under Article XIV, Section 4 (3), namely: (1) the taxpayer falls under the classification **non-stock, non-profit educational institution**; and (2) the **income** it seeks to be exempted from taxation is **used actually, directly and exclusively for educational purposes**."

Thus, petitioner must first prove that it is a non-stock, non-profit educational institution

Upon closer look at petitioner's certificate of registration with the Securities and Exchange Commission together with its Amended Articles of Incorporation, they reveal that petitioner is not a non-stock, non-profit educational institution but a proprietary one.

Also, Section 87 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines provides:

> Sec. 87. Definition. - For the purposes of this Code, **a non-stock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers,** subject to the provisions of this Code on dissolution: Provided, That any profit which a non-stock corporation may obtain as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized, subject to the provisions of this Title.
>
> The provisions governing stock corporation, when pertinent, shall be applicable to non-stock corporations, except as may be covered by specific provisions of this Title.

Petitioner's Amended Articles of Incorporation provided for two (2) kinds of capital stock, namely, common shares and preferred shares. The latter share has preference in assets at the time of dissolution and fully participating in the distribution of dividends.[35] It only means that petitioner intended to distribute its income by way of dividends which is contrary to the character of being a non-stock entity and instead, is more characteristic of a stock corporation or a proprietary entity.

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[35] Docket, pp. 193-194.

Further, Section 94 of the same law provides for the manner of distribution of assets upon dissolution of a non-stock corporation. However, as mentioned in the preceding paragraph, the preferred shareholders of petitioner have preference on its assets which is contrary to the said provision. Thus, taking all these circumstances, petitioner is indeed not a non-stock, non-profit corporation which is entitled to the exemption under the 1987 Constitution. Thus, petitioner may be taxed by the government for being a proprietary educational institution.

Respondents' power to tax proprietary educational institution is not subject to the authority of CHED

Petitioner faulted the Trial Court in deciding the case without considering the authority of CHED before the imposition of tax on the petitioner as an educational institution. Petitioner is totally mistaken.

Petitioner should be aware that the 1987 Philippine Constitution delegated the power to tax to the local government units (LGUs) over their territorial jurisdiction. Section 5 Article X of the 1987 Philippine Constitution provides:

> "**SECTION 5.** Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments."

Such delegated power was codified in the subsequent enactment by the Philippine Congress of the LGC of 1991. Section 129 of the said law provides:

> "**SECTION 129.** *Power to Create Source of Revenue* - Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units." an

In *Luz R. Yamane, in her capacity as the City Treasurer of Makati City v. BA Lepanto Condominium Corporation*[36] (*Yamane*), the Supreme Court ruled:

> "The power of local government units to impose taxes within its territorial jurisdiction derives from the Constitution itself, which recognizes the power of these units "to create its own sources of revenue and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy." These guidelines and limitations as provided by Congress are in main contained in the Local Government Code of 1991 (the "Code"), which provides for comprehensive instances when and how local government units may impose taxes. The significant limitations are enumerated primarily in Section 133 of the Code, ..."

However, the exercise of this taxing power of the LGUs is subject to conditions, among them is the requirement that they should enact the appropriate ordinance through their Sanggunian as provided under Section 132 of the LGC, to wit:

> "**SECTION 132.** *Local Taxing Authority* - The power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the Sanggunian of the local government unit concerned through an appropriate ordinance."

In the exercise of its power to tax, LGUs are subject to the limitations imposed by the Constitution and the LGC of 1991, notwithstanding the CHED rules and regulations cited by petitioner.

However, in the enactment of an ordinance, public hearing is a requirement. Section 186 of LGC provides:

> "**SECTION 186.** *Power To Levy Other Taxes, Fees or Charges.* – Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: Provided, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: Provided, further, That the **ordinance levying such taxes, fees or charges shall not be enacted without any prior public**

[36] G.R. No. 154993 October 25, 2005.

hearing conducted for the purpose." (*Additional boldfacing ours*)

In *Belen C. Figuerres v. Court of Appeals, et.al.*[37], the Supreme Court emphasizes such requirement in the enactment of an ordinance, to wit:

> "Petitioner is right in contending that public hearings are required to be conducted prior to the enactment of an ordinance imposing real property taxes. R.A. No. 7160, §186 provides that an ordinance levying taxes, fees, or charges "shall not be enacted without any prior public hearing conducted for the purpose."

It was petitioner's belief that when respondent City of Makati imposed taxes on its income as an educational institution, the latter did not consult the CHED. However, petitioner did not adduce any empirical evidence that indeed respondent did not conduct a public hearing prior to such imposition to determine whether respondent LGU gravely abused its authority in the imposition of said taxes. Hence, the trial court did not err in not ruling as to respondent's power to tax proprietary educational institutions sans consultation with CHED.

Petitioner's right to due process was violated by respondents by not indicating in the NOA the particular provision of law which the former supposedly violated

Petitioner faulted the trial court in ruling that its right to due process was not violated even though respondents failed to specify in the NOA the specific provision of the local tax ordinance allegedly violated.

On the other hand, respondents argued that the NOA as well as the detailed worksheet attached to it explained the nature of the deficiency LBT.

Section 195 of the LGC provides:

> **SECTION 195.** *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that

[37] G.R. No. 119172, March 25, 1999.

> 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. (*Additional boldfacing ours*)

The abovementioned provision is akin to Section 228 of the 1997 National Internal Revenue Code, as amended, which requires that, in order for an assessment to be valid, "taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

The question is, did the respondents properly inform petitioner as to the legal and factual bases of the tax assessment?

We rule in the negative.

A strict scrutiny of the subject NOA shall reveal that nowhere in its face or in the attached detailed worksheet showing the computation of said assessment did respondents inform petitioner as to the particular law it violated which resulted in said assessment.

It is true that in the detailed worksheet, the respondents indicated the income subject of said assessment. However, it failed to indicate the particular provision of law violated that served as its basis for such assessment.

Respondents must be aware that the essence of due process in administrative proceedings is not only for the petitioner to have the opportunity to be heard but as well as the opportunity to properly and intelligently prepare for the answer to such charges. As held in *Alberta De Joya Iglesias v. The Office of the Ombudsman, et al.*[38], to wit:

> Administrative due process demands that the party being charged is given an opportunity to be heard. Due process is complied with "if the party who is properly notified of allegations against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions."
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> In *F/O Ledesma v. Court of Appeals*:
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>> Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an o£portunity (sic) to seek a reconsideration of the action or ruling complained of.
>
> An important component of due process is the right of the accused to be informed of the nature of the charges against him or her. **A proper appraisal of the accusations would give the accused an opportunity to adequately prepare for his or her defense. Otherwise, substantial justice would be undermined.** (*Emphasis supplied*)

Furthermore, in *Commissioner of Internal Revenue v. Azucena T. Reyes*[39], the Supreme Court ruled that such observance of due process is not merely formal but a substantive requirement of law, to wit:

> "*Fourth,* petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. A void assessment bears no valid fruit.
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> The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative

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[38] G.R. No. 180745, August 30, 2017.
[39] G.R. Nos. 159694 and 163581, January 27, 2006. *an*

> investigations: that taxpayers should be able to present their case and adduce supporting evidence."

Based on the said factual findings, it will be difficult for the petitioner to prepare an adequate defense against such assessment if it is left guessing as to what particular law it violated in the first place.

It appears based on the records of the case that it was only during the trial that petitioner came to know that the assessment was based on Section 3A.02 of Makati City Ordinance No. 2004-A-025, or the Revised Makati Revenue Code, as shown in the pleadings it filed in the trial court and such provision was only discussed in the assailed Decision itself.

The failure of the respondents to indicate the particular provision of the Revised Makati Revenue Code allegedly violated by petitioner in the face of the NOA violates glaringly the constitutional right to due process of petitioner. Such violation impugns the validity of said assessment.

In *Yamane* case, the Supreme Court ruled that the NOA issued by the LGU should be sufficiently informative to apprise the taxpayer of the legal basis of the tax, to wit:

> "Our careful examination of the record reveals a highly disconcerting fact. At no point has the City Treasurer been candid enough to inform the Corporation, the RTC, the Court of Appeals, or this Court for that matter, as to what exactly is the precise statutory basis under the Makati Revenue Code for the levying of the business tax on petitioner. We have examined all of the pleadings submitted by the City Treasurer in all the antecedent judicial proceedings, as well as in this present petition, and also the communications by the City Treasurer to the Corporation which form part of the record. Nowhere therein is there any citation made by the City Treasurer of any provision of the Revenue Code which would serve as the legal authority for the collection of business taxes from condominiums in Makati.
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> 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 charge,

the amount of deficiency, surcharges, interests and penalties...." (*Emphasis supplied*)

In the exercise by the state of its power to tax, be by the National government or by the LGUs, the law should be construed strictly against them and liberally in favor of taxpayer as held in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[40], to wit:

> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. Hence in *Commissioner of Internal Revenue v. Algue, Inc.*, it was said -
>
>> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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>> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

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[40] G.R. No. 185371, December 08, 2010.

> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.** If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate x x x that the law has not been observed. (Emphasis supplied).

The prescriptive period of assessment is not reckoned from the date of the receipt of LOA but when the LBT becomes due for a particular taxable period

Petitioner also argues that the trial court erred in ruling that respondents' right to assess has not yet prescribed. It is the position of the respondents that the subject assessment has not yet prescribed since the LBT for 2008 accrued only in January of 2009 and since the LOA was received by petitioner on September 10, 2014, said assessment, therefore, may still be collected.

Section 194(a) of the LGC provides:

> **SECTION 194**. *Periods of Assessment and Collection.* - (a) **Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due**. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period: Provided, That, taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due. (*Emphasis supplied*)

Similarly, Section 167 of LGC provides when the payment of LBT is due, to wit:

> **SECTION 167**. *Time of Payment.* - Unless otherwise provided in this Code, **all local taxes, fees, and charges shall be paid within the first twenty (20) days of January** or of each subsequent quarter, as the case may be. The Sanggunian concerned may, for a justifiable reason or cause, extend the time of payment of such taxes, fees, or charges without surcharges or penalties, but only for a period not exceeding six (6) months. (*Emphasis supplied*)

Based on the foregoing, the reckoning point in the assessment of LBT is the date when such taxes become due and not on the date of receipt of the LOA. Further, the LOA[41] covered the audit/examination of petitioner's books of accounts and other records for TYs 2009 to 2013. Thus, applying aforesaid legal provisions, the following are the prescriptive periods:

Gross Receipt as Basis for Assessment	TY	Due Date of Payment	End of Prescriptive Period
2008	2009	January 20, 2009	January 20, 2014
2009	2010	January 20, 2010	January 20, 2015
2010	2011	January 20, 2011	January 20, 2016
2011	2012	January 20, 2012	January 20, 2017
2012	2013	January 20, 2013	January 20, 2018

Pursuant to Section 194(a) of the LGC, the NOA (not the LOA) must be issued within five (5) years from the date the LBT becomes due.

In the present case as the above table would show, the assessments for TYs 2009 and 2010 have already prescribed since the NOA was belatedly issued on March 6, 2015[42].

Based on the foregoing, the LBT assessments for TYs 2009 to 2013 are rendered null and void for violation of petitioner's right to due process. In addition, the LBT assessments for TYs 2009 and 2010 are void for having been issued beyond the five-year prescriptive period to assess.

Petitioner is entitled to a refund

The factual antecedents of this case reveal that after petitioner's protest was finally denied through respondent's letter dated May 18, 2015, it filed a complaint before the Trial Court on June 24, 2015 seeking for the cancellation of the NOA

Due to the necessity of securing a business permit from respondents, petitioner paid the partial assessment amounting

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[41] Docket, pp. 167-168.
[42] *Id.*, p. 169.

to Php5,160,000.00 on January 31, 2018, and then immediately filed a claim for refund on June 29, 2018.[43] Thus, petitioner filed an Amended and Supplemental Complaint dated July 2, 2018 by including therein a claim for refund of the amount of Php5,160,000.00. The additional payment of Php3,000,000.00, made on installment basis on January 31, 2019, April 24, 2019 and July 24, 2019, respectively, was also claimed in the instant petition.

Having ruled that the NOA of respondents is null and void, the Court deems it proper, just, and equitable, to order the refund of the LBTs to petitioner.

In *International Container Terminal Services, Inc. v. The City of Manila, et al.*[44], the Supreme Court ruled that refund of tax payment based on invalid assessment by LGU follows as a matter of course once the court sets aside such assessment even without a claim of refund filed therein, to wit:

> "... 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.'**
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> xxx xxx xxx
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> Further, the issue at the core of petitioner's claims for refund, the validity of Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807, is a question of law. **When the issue raised by the taxpayer is purely legal and there is no question concerning the reasonableness of the amount assessed, then there is no need to exhaust administrative remedies**.
>
> Thus, petitioner's failure to file written claims of refund for all of the taxes under Section 21 (A) with respondent City Treasurer is warranted under the circumstances." (*Emphasis supplied*)

Additional exceptions to the doctrine of exhaustion of administrative remedies have also been discussed in the case of *Samar II Electric Cooperative, Inc. (SAMELCO II), et al. v. Ananias D. Seludo, Jr.*[45], to wit:

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[43] *Id.*, Petitioner's Letter dated June 27, 2018 to the City Treasurer, pp. 200-201.
[44] G.R. No. 185622, October 17, 2018.
[45] G.R. No. 173840, April 25, 2012.

> True, the doctrines of primary jurisdiction and exhaustion of administrative remedies are subject to certain exceptions, to wit: (a) where there is *estoppel* on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) **where the question involved is purely legal and will ultimately have to be decided by the courts of justice;** (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings." (*Emphasis supplied*)

In the instant case, the validity of the subject assessment is anchored on the applicability of Section 4(3), Article XIV of the 1987 Philippine Constitution and the onset of prescription, which are questions of law. Likewise, the computation of the amount of LBTs assessment was never questioned. Thus, the claim for refund falls under the exception to the tenet of exhaustion of administrative remedies.

WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assailed RTC–Branch 58, Makati City *Decision* dated March 21, 2019[46] and *Order* dated June 7, 2019[47] are hereby **REVERSED** and **SET ASIDE**. The Notice of Assessment dated March 6, 2015 is hereby **DECLARED NULL** and **VOID** and respondents are **ORDERED** to refund the amount of Php8,160,000.00 to petitioner. Anent petitioner's prayer that it be declared a tax exempt educational institution under the Philippine Constitution, the same is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[46] *Supra.*, Note 2.
[47] *Supra.*, Note 3.

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice