REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

UNIVERSITY OF LUZON, INC., represented by its President, Dr. MacArthur Samson, Sr., Petitioner,	**CTA AC No. 98** (Civil Case No. 2011-0167-D, Regional Trial Court, Branch 41-Dagupan City)
	Members:
- versus -	**DEL ROSARIO,** *P.J.*, **UY,** and **MINDARO-GRULLA,** *JJ.*
THE CITY OF DAGUPAN, HON. CITY MAYOR BENJAMIN S. LIM, CITY ADMINISTRATOR VLADIMIR T. MATA, and CITY TREASURER ROMELITA F. ALCANTARA, Respondents.	**Promulgated:** APR 20 2016; 11:27am.

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION OF DECISION"** filed on November 4, 2015, with respondents' **"COMMENT TO PETITIONER'S MOTION FOR RECONSIDERATION"** filed on December 18, 2015, praying for the reversal of this Court's Decision dated June 10, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.
>
> **SO ORDERED.**"

In the said Motion, petitioner argues that the doctrine of exhaustion of administrative remedies is subject to exceptions, to wit: (1) when the question raised is purely legal; (2) when the administrative body is in estoppel; (3) when the act complained of is patently illegal; (4) when there is urgent need for judicial intervention; (5) when the claim involved is small; (6) when irreparable damage will be suffered; (7) when there is no other plain, speedy and adequate remedy; (8) when strong public interest is involved; (9) when the subject controversy is a private land; and (10) in *quo warranto* proceedings.

In this connection, petitioner claims that the instant case falls under the first and third exceptions, *i.e.*, the question raised is purely legal, and the act complained of is patently illegal. Petitioner points out that it questioned the interpretation of the provisions of the Revenue Code of Dagupan, and that there is no provision in the said Revenue Code which expressly imposed a business tax on educational institutions in Dagupan City, respectively.

Upon the other hand, respondents contend that Section 187 of the Local Government Code of 1991 providing for the periods within which to avail of legal remedies before competent courts is not a mere technicality but is mandatory and that failure to observe the same is fatal to petitioner's cause. Furthermore, respondents assert that the said provision is based on sound policy for the orderly discharge of judicial functions and to prevent the courts from being swamped by cases before they are even heard at the administrative level.

THE RULING OF THE COURT

While this Court agrees with petitioner that the doctrine of exhaustion of administrative remedies may not be applied in this case, We still maintain Our ruling that the instant Petition for Review must be dismissed for lack of merit. Thus, We deny petitioner's Motion for Reconsideration.

The rule on the exhaustion of administrative remedies is intended to preclude a court from arrogating unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence. Thus, a case where the issue raised is a purely legal question, well within the competence; and the jurisdiction of the court and not the administrative agency, would clearly constitute an exception. Resolving questions of law, which involve the interpretation and application of laws, constitutes essentially an exercise of judicial power that is exclusively allocated to the Supreme Court and such lower courts the Legislature may establish.[1]

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood being admitted.[2]

An examination of the records in the Court *a quo* reveals that the issues raised are as follows:

> "As agreed upon by counsels, the main issues to be resolved in this case are: 1) Whether plaintiff has cause of action against the defendants for Injunction to enjoin defendants from collecting business tax from plaintiff University of Luzon; **(2) Whether the plaintiff is subject to business tax under the City Revenue Code of Dagupan City (City Ordinance No. 1855) or the Local Government Code; (3) Whether defendant City Government of Dagupan is authorized to collect business tax under the City Revenue Code of Dagupan City (City Ordinance No. 1855) or under the Local Government Code.**"[3] *(Emphasis supplied)*

The second and third issues clearly involve questions of law, since the doubt or controversy is on the correct application of the law or ordinance to a certain set of facts established in the proceedings *a quo*. And while the first issue is not technically a legal question, the resolution thereof is dependent on the said second and third issues.

Correspondingly, finding that the issues raised in the Court *a quo* involves questions of law, the doctrine of exhaustion of administrative remedies may not be applied in this particular case.

As will be shown momentarily, however, and in conjunction with the resolution of the said questions of law, the act complained of cannot be considered as patently an illegal act. In fact, We find that the collection of the subject business tax by respondents is

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[1] *Alta Vista Golf and Country Club vs. The City of Cebu, et al.*, G.R. No. 180235, January 20, 2016, citing *Ongsuco v. Malones,* 619 Phil. 492, 504-506 (2009).
[2] *Id.*
[3] Pre-Trial Order dated November 10, 2011, RTC Records, p. 288.

sanctioned by law, and consequently, petitioner is liable for the payment of the subject business tax imposed under the ordinance in question.

Proceeding from the finding that the said issues are purely questions of law, We shall address them jointly.

For ease of reference, the provision in question, *i.e.*, Section 109 (h)(i) of the City Revenue Code of Dagupan City (City Ordinance No. 1855) is quoted as follows:

> "**Section 109. Imposition of Tax.** There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in amounts hereafter prescribed:
>
> xxx xxx xxx
>
> h) **Fixed Taxes.** There is hereby imposed an annual fixed tax on the following business:
>
> xxx xxx xxx
>
> i. On any business, not otherwise specified in the paragraph in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:		Amount of Tax per Annum
Less than P10,000.00		165.00
10,000.00 or more but less than	15,000.00	220.50
15,000.00 or more but less than	20,000.00	302.00
20,000.00 or more but less than	30,000.00	440.00
30,000.00 or more but less than	40,000.00	660.00
40,000.00 or more but less than	50,000.00	825.00
50,000.00 or more but less than	75,000.00	1,320.00
75,000.00 or more but less than	100,000.00	1,650.00
100,000.00 or more but less than	150,000.00	2,200.00
150,000.00 or more but less than	200,000.00	2,750.00
200,000.00 or more but less than	300,000.00	3,850.00
300,000.00 or more but less than	500,000.00	5,500.00
500,000.00 or more but less than	750,000.00	8,000.00
750,000.00 or more but less than	1,000,000.00	10,000.00
1,000,000.00 or more but less than	2,000,000.00	13,750.00
2,000,000.00 or more but less than	3,000,000.00	16,500.00
3,000,000.00 or more but less than	4,000,000.00	19,800.00
4,000,000.00 or more but less than	5,000,000.00	23,100.00

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5,000,000.00 or more but less than	6,500,000.00	24,375.00
6,500,000.00 or more		at the rate of thirty seven and a half percent (37 ½ %) of one percent (1%)

Any business subject to the excise, value added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall be two percent (2%) of gross value or receipts of the preceding calendar year."

The foregoing provision is clear: it applies to businesses which are not specifically mentioned. Nevertheless, it must be pointed out that the said provision was lifted from, or is anchored on, Section 143(h) of the Local Government of Code of 1991, to wit:

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

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:

xxx xxx xxx

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

xxx xxx xxx

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:

xxx xxx xxx

(d) On retailers,

xxx xxx xxx

nb

> Provided, however, That barangays shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (₱50,000.00) or less, in the case of cities, and Thirty thousand pesos (₱30,000.00) or less, in the case of municipalities.
>
> (e) On contractors and other independent contractors, in accordance with the following schedule:
>
> xxx xxx xxx
>
> (f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.
>
> (g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (₱50.00) per peddler annually.
>
> **(h) <u>On any business</u>, not otherwise specified in the preceding paragraphs, <u>which the sanggunian concerned may deem proper to tax</u>: *Provided*, That on any business subject to excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.**
>
> **The sanggunian concerned may prescribe a schedule tax rates but in no case to exceed the rates prescribed herein."** *(Emphasis and underscoring supplied)*

Section 143 of the Local Government Code of 1991 defines the general power of a municipality (or a city, if read in relation to Section 151[4] of the same Code) to tax businesses within its jurisdiction.

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[4] 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 imposed: *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.

While paragraphs (a) to (g) thereof identify the particular businesses and fix the imposable tax rates for each, paragraph (h) is apparently the "catch-all provision" allowing the municipality or city to impose tax *"on any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax*[.]"[5] Plainly, Section 143(h), in relation to the said Section 151, both of the Local Government Code of 1991, provides that the city may impose taxes, fees, and charge on any business which is not specified in Section 143 (a) to (g) and which the *sanggunian* concerned may deem proper to tax.[6]

The term *"business"* has already been defined by jurisprudence and law. The plain and ordinary meaning of a *"business"* is restricted to activities or affairs where profit is the purpose or livelihood is the motive, and the term *business* when used without qualification, should be construed in its plain and ordinary meaning, restricted to activities *for profit* or livelihood.[7] As a corollary, the term *"business"* is defined by Section 131(d) of the Local Government Code of 1991 as a *"trade or commercial activity regularly engaged in as a means of livelihood or* ***with a view to profit****."*

Thus, an educational institution, so long as it is engaged in "business", may be taxed under Section 109 (h)(i) of the City Revenue Code of Dagupan City (City Ordinance No. 1855), although it is not specifically mentioned therein.

While petitioner alleged to the effect that it is not a "business establishment",[8] such allegation is belied by Article VI of its own Amended By-Laws, which reads:

> **"ARTICLE VI**
> **DIVIDENDS**
>
> "*SECTION 1.* The Board of Trustees may declare dividends only from **the <u>surplus profits</u> arising from the <u>business of the Corporation</u>**."[9] *(Emphasis and underscoring)*

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[5] *City of Manila, et al. vs. Colet, et al., etseq.,* G.R. Nos. 120051, 121613, 121675, 121704, 121720-28, 121847-55, 122333, 122335, 122349, and 124855, December 10, 2014.

[6] *Cagayan Electric Power and Light Co., Inc. vs. City of Cagayan De Oro,* G.R. No. 191761, November 14, 2012.

[7] *The Collector of Internal Revenue vs. The Club Filipino, Inc. De Cebu,* G.R. No. L-12719, May 31, 1962.

[8] Refer to petitioner's Petition, Par. 14, RTC Docket, p. 9.

[9] RTC Docket, p. 167.

Parenthetically, the term "dividend" both in the technical sense and its ordinary acceptation, is that **part or portion of the profits of the enterprise** which the corporation, by its governing agents, sets apart for ratable division among the holders of the capital stock.[10] Thus, it is without question that petitioner is engaged in business, since it is anticipating that it will have profits.

Such being the case, without doubt, petitioner may be held liable to pay the local business tax imposed under Section 109 (h)(i) of the City Revenue Code of Dagupan City (City Ordinance No. 1855). Correspondingly, the Court *a quo* correctly dismissed petitioner's complaint for lack of merit.

WHEREFORE, premises considered, the Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[10] *Nielson & Co. vs. Lepanto Consolidated Mining Co.*, G.R. No. L-21601, December 28, 1968.

REPUBLIC OF THE PHILIPPINES
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FIRST DIVISION

UNIVERSITY OF LUZON, INC., represented by its President, Dr. MacArthur Samson, Sr.,
Petitioner,

-versus-

THE CITY OF DAGUPAN, HON. CITY MAYOR BENJAMIN S. LIM, CITY ADMINISTRATOR VLADIMIR T. MATA, and CITY TREASURER ROMELITA F. ALCANTARA,
Respondents.

CTA AC NO. 98

Present:

DEL ROSARIO, *Chairperson, PJ,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

APR 20 2016 ; 11:27 a.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* insofar as it declares that the doctrine of exhaustion of administrative remedies does not apply to this case as the issues raised before the Court a *quo* involve questions of law. This is the view I have taken in my earlier opinion registered in the assailed Decision of the Court dated June 10, 2015.

The point of my dissent relates to the *ponencia's* conclusion that petitioner is liable for the payment of the subject business tax imposed under Revenue Code of Dagupan City (City Ordinance No. 1855).

With utmost respect, I submit that petitioner is not liable for the subject business tax assessment due to intrinsic infirmity in the manner by which the assessment was issued against petitioner. In this regard I reiterate my earlier opinion dated June 10, 2015 for the cancellation of the business tax assessment against petitioner since a **local business tax assessment two years in advance is not supported by law**, and said assessment against petitioner is devoid of any factual and legal basis, *viz.*:

> "Moreover, records reveal that the assessment for business taxes for the year 2011 against petitioner was prepared on September 7, 2009.[1] Yet, Section 194 *[of the Local Government Code]* provides that local taxes shall be assessed within five (5) years from the date they became due,[2] **which tax is imposed based on the gross sales or receipts for the preceding calendar year[3] and the same is due for payment until the 20th day of January.**[4]
>
> Also, a notice of assessment should be sufficiently informative in order to apprise the taxpayer of the legal basis of the tax.[5] **A local business tax assessment two years in advance is not supported by law, and considering further that business tax imposition should be based on the gross sales or receipts for the preceding calendar year,** the assessment against petitioner dated **September 7, 2009** for business tax for **2011** is devoid of any factual and legal basis, hence, the same should be cancelled and set aside. To hold otherwise would deprive petitioner of its property without due process of law."

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[1] *CTA Division Docket*, p. 133.

[2] 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)*

[3] Sec. 143, LGC.

[4] 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 for payment of such taxes, fees, or charges without surcharges or penalties, but only for a period not exceeding six (6) months. *(Emphasis supplied)*

[5] Yamane vs. BA Lepanto Condominium Corporation, G.R. No. 154993, October 25, 2005.

All told, I **VOTE** to **GRANT** the Motion for Reconsideration filed by University of Luzon. The assailed Decision issued on April 12, 2012 and the Resolution dated October 10, 2012 of the Regional Trial Court-Branch 41 should be reversed and set aside. Accordingly, the business tax assessment for 2011 should appropriately be cancelled and set aside.

ROMAN G. DEL ROSARIO
Presiding Justice