REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

THE CITY TREASURER OF THE CITY OF MANILA,
Petitioner,

- versus -

ZARCON DEVELOPMENT CORPORATION,
Respondent.

C.T.A. E.B. NO. 309
(C.T.A. AC NO. 24)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

DEC 1 8 2008 5:00 p.m.

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DECISION

UY, J.:

Petitioner seeks a review of the Decision dated May 16, 2007 and Resolution dated August 6, 2007, both rendered by the First Division of this Court[1] (Court in Division) in C.T.A. AC No. 24 entitled "Zarcon Development Corporation, petitioner, v. The City Treasurer of the City of Manila, respondent", pursuant to Section 18 of Republic Act (R.A.) No. 1125, as amended by Republic Act (R.A.) No. 9282, the dispositive portions of which read as follows:

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[1] Ponencia of Associate Justice Caesar A. Casanova, concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

Decision in C.T.A. AC No. 24 promulgated on May 16, 2007:

"**IN VIEW OF THE FOREGOING**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the December 20, 2005 Decision and April 17, 2006 Order, both issued by the Hon. Mercedes Posada-Lacap of RTC Br. 15, City of Manila, are hereby **SET ASIDE**.

Accordingly, the August 6, 1999 assessment, in the amount of PhP71,799.79 representing tax due pursuant to Section 21 of Manila City Ordinance 7794, issued by the respondent City Treasurer of the City of Manila is hereby **WITHDRAWN** and **CANCELLED**.

SO ORDERED."

Resolution denying petitioner's Motion for Reconsideration promulgated on August 6, 2007:

"**WHEREFORE**, there having no new matters or issues advanced by the respondent in the present motion which may compel this Court to reverse, modify or amend the assailed Decision, respondent's 'Motion for Reconsideration' is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

As found by the Court in Division and borne by the records of this case, these are the undisputed facts.

Petitioner City of Manila, acting through the City Treasurer's Office, is a public corporation organized and existing under R.A. No 409, as represented by Liberty M. Toledo, of legal age, Filipino, and is suing in her public capacity as City Treasurer of Manila.

On the other hand, respondent Zarcon Development Corporation is a domestic corporation engaged in business as a real estate lessor with office address at 1818 M.H. Del Pilar Street, Malate, Manila. As such, it is subject to local business tax under Section 24 (Tax on Real Estate Developers, Dealers and Lessors) of Ordinance No. 7794, as amended, also known as the Revenue Code of the City of Manila (Manila Revenue Code). For the year 1998, it paid local business tax in the amount of Php107,699.70 pursuant thereto.

On October 11, 1999, respondent received a Letter from the Office of the City Treasurer dated August 6, 1999 about its supposed outstanding tax liability in the amount of Php71,799.79 representing tax due under Section 21 (Tax on Businesses Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC) of the same Ordinance No. 7794, as amended.

On October 25 1999, respondent, through counsel, protested the assessment in accordance with Section 195 of the Local Government Code (LGC) of 1991 and requested that the assessment be withdrawn and cancelled. Receipt of the protest letter was acknowledged by the petitioner City Treasurer in the Letter October 28, 1999 stating that she has no discretion to legally suspend implementation of the assessment, and therefore cannot withdraw or cancel the same. Respondent replied on November 17, 1999 requesting for a reconsideration, but no action was taken by the City Treasurer.

Thereafter, respondent filed a Complaint for Withdrawal and/or Cancellation of Assessment with the Metropolitan Trial Court (Metro TC) of Manila, Branch 24, on December 7, 1999, entitled "Zarcon Development Corporation, plaintiff, v. The City Treasurer City of Manila, defendant" docketed as Civil Case No. 165738. It was respondent's position as plaintiff in said case that since it has already paid taxes as a real estate lessor under Section 24 of Ordinance No. 7794, as amended, it should no longer be liable under Section 21 of the same ordinance based on the same receipts, as the intent of the Ordinance is to tax taxpayers only once.

A Motion to Dismiss dated February 2, 2000 was filed by the petitioner as defendant therein, on the ground of lack of jurisdiction over the subject matter of the case and/or nature of the claim, as the same was incapable of pecuniary estimation because it involved legality of tax assessment which is cognizable by the Regional Trial Court. Respondent filed an Opposition thereto on February 29, 2000, contending that the complaint merely seeks to determine the propriety of the subject assessment, and does not seek to challenge the constitutionality or legality of the ordinance itself. The Motion to Dismiss was denied in the Order dated November 9, 2000.

Subsequently, petitioner filed a Motion for Reconsideration dated December 11, 2000, stressing that in deciding whether to cancel the subject assessment, the court must necessarily adjudicate on the legality of the same and, in effect, also determine the constitutionality of the ordinance. The lower court granted the motion in the Order dated May 2, 2001 and dismissed the case for lack of jurisdiction. Consequently, respondent filed a Notice of Appeal on July 18, 2001 and the case was elevated to the Regional Trial Court (RTC) of Manila, Branch 15, docketed as Civil Case No. 01-101663.

In accordance with Section 7, Rule 40 of the 1997 Rules of Civil procedure, both parties filed their respective Memorandum. In the Order dated May 10, 2002, Branch 15 of the RTC of Manila, affirmed the assailed Order of the lower court on the ground of lack of jurisdiction and ruled thus:

> "With the affirmance of the lower Court's decision, this Court can proceed to try this case on the merits pursuant to Section 8, Rule 40 of the 1997 Rules of Civil Procedure. In finally disposing the issue raised by the complaint, this Court has to pass upon the validity of the assessment, this case therefore is a tax case which should be heard by the branches of this Court designated to hear tax cases.
>
> WHEREFORE, let the record of this case be forwarded to the office of the Executive Judge for reraffle to the branches designated to hear tax cases.
>
> SO ORDERED.
>
> Manila, Philippines, May 10, 2002."[2]

However, the RTC subsequently modified its previous order and took cognizance of the case instead of reraffling it to the branches designated to hear tax cases in the Order dated December 19, 2002,[3] and set the case for trial. After trial, the parties submitted their respective Memorandum. On December 20, 2005, Presiding Judge Mercedes Posada-Lacap rendered a Decision[4] finding Section 21 of Manila City Ordinance No. 7794 to be valid and not an instance of double taxation. Thus, Civil Case No. 01-101663 was dismissed. Respondent filed a Motion for Reconsideration on March 10, 2006 praying for a reconsideration of said Decision but the same was denied in the Order dated April 17, 2006.[5]

Consequently, herein respondent, filed an appeal by way of Petition for Review before the First Division of this Court (Court in Division) on June 8, 2006 as the petitioner in C.T.A. AC No. 24. A Comment thereto was filed on

[2] Order, Civil Case No. 01-101663, Regional Trial Court of Manila, Branch 15, p. 2, Docket, p. 71.
[3] Docket, p. 72.
[4] Docket, pp. 80-86.
[5] Docket, p. 87.

July 14, 2006[6] by the City Treasurer of The City of Manila as respondent therein, and the case was given due course in the Resolution dated August 4, 2006 requiring both parties to file their respective Memorandum. In compliance thereto, petitioner filed a Memorandum on September 11, 2006, while respondent filed a Manifestation on September 14, 2006 stating that it filed a Memorandum dated September 13, 2006 through registered mail, and further prayed that the said Manifestation be noted and that the attached Memorandum be admitted. The Court in Division, in a Resolution dated September 19, 2006, noted respondent's manifestation; and accordingly, the attached Memorandum was admitted as part of the records of this case. Thereafter, the case was considered submitted for decision.

On May 16, 2007, the Court in Division rendered the assailed Decision[7] granting respondent's Petition for Review and setting aside the December 20, 2005 Decision and April 17, 2006 Order, both issued by the Hon. Mercedes Posada-Lacap of Branch 15 of the RTC of Manila and accordingly considered the August 6, 1999 assessment issued by petitioner City Treasurer of the City of Manila, in the amount of Php71,799.79 representing tax due pursuant to Section 21 of Ordinance No. 7794, as withdrawn and cancelled.

On June 15, 2007, petitioner filed her Motion for Reconsideration seeking reconsideration of the aforesaid Decision. Subsequently, the Court in Division denied the said motion for lack of merit in its Resolution dated August 6, 2007.[8]

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[6] Docket, pp. 88-110.
[7] Annexes "A" to "A-16", inclusive, Docket, pp. 38-44.
[8] Annexes "B" to "B-2", inclusive, Docket, pp. 55-57.

Hence, the instant Petition for Review[9] filed on September 20, 2007 before the Court *En Banc* praying that: (a) the Decision dated May 16, 2007 and the Resolution dated August 6, 2007 of the Court in Division be reversed and set aside; and (b) the Decision dated December 20, 2005 and the Order dated April 17, 2006 of the RTC of Manila, Branch 15, be reinstated.

For failure of respondent to file its Comment within the period prescribed by this Court, respondent was deemed to have waived the filing of the same in the Resolution dated January 18, 2008.[10] Considering however the issues raised and arguments proffered by petitioner, the Court *En Banc* resolved to require the parties to file their respective Memorandum within thirty (30) days from receipt of said Resolution. Petitioner filed her Memorandum on February 22, 2008[11] while respondent filed its Memorandum on February 26, 2008[12], and this case was deemed submitted for decision in the Resolution dated March 5, 2008.[13] Hence, this Decision.

THE ISSUE

Petitioner raised the following errors/rulings committed by the Court in Division, for the Court *En Banc*'s consideration, *viz*:

> "I. That respondent Corporation does not assail the validity of Ordinance No. 7794 of the City of Manila, otherwise known as the Revenue Code of Manila, but merely questions its liability under Section 21 thereof. Hence, the required notice to the Solicitor General is not necessary;

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[9] Docket, pp. 10-33. Prior thereto, a Motion for Extension of Time to File for Petition for Review was initially filed on September 5, 2007 by petitioner, Docket, pp. 3-5, which was granted in the Resolution dated September 10, 2008, Docket, p. 9.
[10] Docket, p. 197.
[11] Docket, pp. 198-220.
[12] Docket, pp. 224-268.
[13] Docket, p. 316.

II. That appeal to the Secretary of Justice is not necessary in the present case;

III. That Section 21 is not an indirect tax. It is a tax on business subject to excise, value-added or percentage tax and not on the purchasing power of the buyer, which is not a business activity;

IV. That the assessment of taxes under Section 21 and Section 24 of Ordinance (No.) 7794, otherwise known as the Manila Revenue Code, as amended, constitute double taxation;

V. That the present petition (Petition for Review filed before the Court in Division) was filed on time or within the reglementary period prescribed by law;

VI. That despite the absence of a Board Resolution, a Secretary's Certificate attached to the Complaint established the legal capacity of Mr. Carlos Z. Ortoll to institute an action against the petitioner (herein respondent);

VII. That the assessment against petitioner (herein respondent) for deficiency local business tax in the amount of Php 71,799.79, under Section 21 of Ordinance (No.) 7794 should be cancelled and withdrawn."[14]

Based on the assigned errors raised by herein petitioner, the principal issue in this case revolves upon the validity of the assailed assessments imposed by the City of Manila against respondent pursuant to Section 21 of Ordinance No. 7794, as amended, otherwise known as the Manila Revenue Code.

THE COURT EN BANC'S RULING

The petition is bereft of merit.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review would readily reveal that the grounds relied upon and the matters raised are mere restatements of petitioner's previous

[14] Docket, pp. 14-15.

arguments raised before the Court in Division which had already been exhaustively discussed and passed upon by it in its assailed Decision and Resolution.

Be that as it may, with the end view of further clarifying the decision of the Court in Division, We adhere to its findings on the focal issue as to whether or not the assessment, in the amount of P71,799.79 representing tax due pursuant to Section 21 of Manila City Ordinance No. 7794 issued by herein petitioner City Treasurer of the City of Manila, may be withdrawn and cancelled.

First and Second Assignment of Errors:

I. *That respondent Corporation does not assail the validity of Ordinance No. 7794 of the City of Manila, otherwise known as the Revenue Code of Manila, but merely questions its liability under Section 21 thereof. Hence, the required notice to the Solicitor General is not necessary; and*

II. That appeal to the Secretary of Justice is not necessary in the present case.

As to the first and second assigned errors, petitioner points out that the finding of the Court in Division that respondent was not questioning the validity of Ordinance No. 7794 of the City of Manila is misplaced as petitioner maintains that respondent, in filing the case before the Metropolitan Trial Court of Manila, challenges the validity of Section 21 of the said Ordinance, and as principal relief, prays for the withdrawal and cancellation of subject assessment; and that respondent's claim that the case merely questions the implementation of Section 21, but does not assail the constitutionality of the

Manila Revenue Code is allegedly unpersuasive. Put simply, respondent would like to justify its failure to exhaust administrative remedy by claiming that the constitutionality of the same Code is not questioned.

Further, petitioner alleges that the First Division of this Court failed to consider that the respondent is trying to make a scheme to support their failure to avail of a pre-condition for judicial intervention on questions of constitutionality of tax ordinance or measures, outlined in the Local Government Code under Section 187 thereof, which necessitates the filing of an appeal within thirty (30) days from the effectivity of the assailed ordinance or measure to the Secretary of Justice who shall render a decision within sixty (60) days from date of receipt of the appeal. Such failure on the part of a taxpayer is allegedly fatal to its cause.

We disagree with petitioner's contentions.

As correctly found by the Court in Division, respondent is merely seeking the withdrawal or cancellation of subject assessments for its supposed tax liabilities under Sections 21 of the Manila Revenue Code, as it is already taxed for the same business activity under Section 24 of the same Code, thereby constituting double taxation; and that it was not seeking to strike the validity of neither provision of the said ordinance. In contending that there was double taxation, herein respondent did not question the constitutionality of Section 21 of the said ordinance, neither was there a clear showing that the relief prayed for by respondent is to strike down the validity of any of the provisions of the Manila Revenue Code. Thus, the procedural requirements laid down under Section 187 of the Local Government Code is not applicable in the instant case pertaining to the "Procedure for the Approval and Effecitivty of Tax Ordinances and Revenue Measures".[15]

Well-entrenched in constitutional law is the precept that constitutional questions will not be entertained by courts unless they are "specifically raised, insisted upon, and adequately argued."[16] Nevertheless, Tax Ordinance Nos. 7988 and 8011, which introduced amendments to the Manila Revenue Code, have been declared null and void by the Supreme Court in ***Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, Liberty M. Toledo - City Treasurer and Joseph Santiago – Chief, Licensing Division***[17] on the ground of failure to comply with the publication requirements.

Therefore, the procedural requirements invoked by petitioner, that there must be notice to the Solicitor General and appeal to the Secretary of Justice, not being applicable in this case, is therefore, dispensable.

Third and Fourth Assignment of Errors

> *III. That Section 21 is not an indirect tax. It is a tax on business subject to excise, value-added or percentage tax and not on the purchasing power of the buyer, which is not a business activity; and*
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> *IV. That the assessment of taxes under Section 21 and Section 24 of Ordinance (No.) 7794, otherwise known as*

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[15] "The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided,* That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further,* That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however,* That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally,* That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction."
[16] City of Baguio vs. Marcos, 27 SCRA 342 (1969).
[17] 492 SCRA 279 (2006).

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> *the Manila Revenue Code, as amended, constitute double taxation.*

Petitioner disagrees with the ruling of the Court in Division that: "Section 21 is not an indirect tax. It is a tax on business subject to excise, value-added or percentage tax, and not on the purchasing power of the buyer, which is not a business activity"; and "[t]he assessment of taxes under Section 21 and Section 24 of Ordinance 7794, as amended, constitute double taxation".[18]

Instead, it argues that the tax imposed under Section 21 is in the nature of an indirect tax, while the tax imposed under Section 24 is a business tax. Petitioner emphasizes that Section 21 is not a tax on the business per se, rather, it is a tax on the person availing of the goods and services of the business, more specifically, the consumers and/or the end users of the goods and services. The business is rendered as a conduit, tasked with collecting such taxes from its end-users with the obligation of remitting the same to the taxing authority making respondent merely a withholding agent under Section 21 of the Manila Revenue Code. Thus, petitioner contends that there is no double taxation, and even granting that there is double taxation, it is nevertheless not prohibited, and though it is not favored, it is permissible.

We find petitioner's arguments untenable and uphold the Court in Division's ruling that the assessments against respondent should be withdrawn and cancelled on the ground of double taxation.

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[18] Paragraph 15, Petition for Review, p. 19.

Section 21 and Section 24 of the Manila Revenue Code read as follows:

> "**Section 21.** *Tax on Business Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC.* — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar is hereby imposed:
>
> A) On persons who sell goods and services in the course of trade of business, and those who import goods whether for business or otherwise, as provided for in sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said code.
>
> B) On the gross receipts of keepers of garages, cars for rent or hire driven by the lessee, transportation contractors, persons who transport passengers or freight for hire, and common carriers land, air or water, except owners of *bancas* and owners of animal-drawn two-wheel vehicle.
>
> C) On the amount paid on every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services, except amounts paid by the government, its political subdivisions or instrumentalities; diplomatic services; public international organizations or any of their agencies based in the Philippines; and news services.
>
> The tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter.
>
> D) Excisable goods subject to VAT
>
> (1) Distilled spirits
> (2) Wines
> (3) Tobacco products (other than cigarettes, cigar and chewing tobacco)
> (4) Tobacco specially prepared for chewing
> (5) Fireworks
> (6) Cinematographic film
> (7) Saccharine

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(8) Coal and Coke
(9) Fermented liquor, brewer's wholesale price, excluding the *ad valorem* tax
(10) Automobiles, manufacturers or importers selling price
(11) Non-essential goods based on the wholesale price, net of excise tax and VAT

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

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

E) Excisable goods not subject to VAT

(1) Naptha when used as raw material for production of petrochemical products
(2) Asphalt" *(Underscoring Ours)*

"**Section 24.** *Tax on the Real Estate Developers, Dealers and Lessors* - On real estate developers/ dealers, lessors or sub-lessors of real estate including accesorias, appartels, pension inns, apartments, condominia, houses for lease, rooms and spaces for rent, a tax of SEVENTY FIVE PERCENT (75%) OF ONE PERCENT (1%) per annum on the gross receipts for the preceding calendar year is hereby imposed.

For newly started business, the initial tax shall be one-half (1/2) of one percent (1%) of the capital investment."

It appears that petitioner strongly relies on the proviso mentioned in the second paragraph of Section 21(C) in insisting that there is no double taxation

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in respondent's case because Section 21 is an indirect tax as it is a tax on the person availing of the goods and services of the business, more specifically, the consumers and/or the end users of the goods and services; thus, allegedly making respondent a mere withholding agent and therefore not subjecting it to double taxation.

We are not convinced.

Applying the rule on statutory construction which states: "*ad proximum antecedens fiat relatio nisi impediatur sentencia* (*relative words refer to the nearest antecedent, unless it be prevented by the context*)", We find that the aforementioned qualifying proviso under the second paragraph of Section 21 stating that "the tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services", refers only to the immediately preceding paragraph of the same subsection (C) of said section. In other words, the same merely refers to "overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services", being the nearest antecedent thereto, and not to the other paragraphs of the same provision such as paragraph (A) of said section.

Moreover, a similar provision found under Section 120 of the National Internal Revenue Code (NIRC) of 1997 supports the finding that the subject *proviso* qualifies only paragraph (C) of Section 21 of the Manila Revenue Code, as amended referring to a tax imposed on every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services. To quote:

> "**SEC. 120.** *Tax on Overseas Dispatch, Message or Conversation Originating from the Philippines.* —
>
> (A) *Persons Liable.* — There shall be collected upon every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment service, a tax of ten percent (10%) on the amount paid for such services. The tax imposed in this Section shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter." *(Underscoring Ours)*

In ascertaining the intention of the lawmaker, courts are permitted to look into prior laws on the same subject and to investigate the antecedents of the statute involved. This rule is especially applicable in the interpretation of codes, revised, or compiled statutes, for the prior laws which have been codified, compiled, or revised will show the legislative history that will clarify the intent of the law or shed light on the meaning and scope of the codified or revised statute.[19]

Having established that the subject *proviso* indeed does not qualify paragraph (A) of Section 21, the tax imposed under the same provision is therefore not a tax on end-users, but a tax on the business of respondent, which notably, is already made to pay tax under Section 24 of the Manila Revenue Code for the same business activity. In other words, respondent is not merely a withholding agent contrary to petitioner's assertion, but the principal party liable for the tax imposed therein. This leads us to the issue as to whether or not there is double taxation in the case at bench.

[19] Agpalo, Ruben, Statutory Construction, 5th Edition, 2003, p. 98.

The Supreme Court defined "double taxation" in the case of ***Commissioner of Internal Revenue vs. Solidbank Corporation***[20] as follows:

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

After carefully analyzing the Court in Division's ruling on this issue, We see no reason to reverse its finding that there is indeed direct duplicate taxation (the obnoxious type of double taxation) as it is in consonance with the foregoing jurisprudence. We agree with the First Division's finding that the imposition of the business taxes upon respondent under Section 21 (A) and Section 24 of the Manila Revenue Code, as amended, constitutes double taxation, as there was taxation twice, for the same subject or activity, which is the business of real estate lessors; by the same public authority, which is the City of Manila; within the same taxing jurisdiction, which is again the City of Manila; for the same purpose, which is to generate revenue for the City of Manila; and, in the same year or taxing period, which is the gross receipts for the year 1998.

Fifth Assigned Error

> *V. That the present petition (referring to the Petition for Review filed before the Court in Division) was filed on time or within the reglementary period prescribed by law.*

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[20] 416 SCRA 436 (2003).

As to the fifth assigned error, petitioner contends that the Petition for Review filed by herein respondent before the Court in Division was filed out of time, and therefore the First Division of this Court did not acquire jurisdiction over it. According to petitioner, Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, provides that an appeal from the RTC in the exercise of its appellate jurisdiction shall be analogous to that of Rule 43 of the 1997 Rules of Civil Procedure which provides a period of fifteen (15) days to elevate the case to the CTA *En Banc* citing Rule 4, Sec. 2 par. B of the Revised Rules of the Court of Tax Appeals.[21]

Petitioner's claim is misplaced.

At the outset, Branch 24 of the Metropolitan Trial Court (Metro TC) of Manila dismissed the case on the ground of lack of jurisdiction because the subject of the case was incapable of pecuniary estimation. When the case was elevated to Branch 15 of the Regional Trial Court (RTC) of Manila, the latter affirmed the finding of lack of jurisdiction and took cognizance of the case in exercise of its original jurisdiction pursuant to Section 8 Rule 40 of the 1997 Rules of Civil Procedure.

Although it initially ordered the reraffle of the case to the appropriate RTC designated to hear tax cases in the Order dated May 10, 2002, it later modified said order on December 19, 2002 by correspondingly taking cognizance of said case, and proceeded to hear the merits of the case in the exercise of its original jurisdiction. Thereafter it rendered its Decision dated December 20, 2005 and Order dated April 17, 2006.

[21] Paragraph 31, Petition for Review, Docket, p. 29.

In the light of the foregoing factual antecedents of the case, Section 11, paragraph 2 of R.A. No. 1125, as amended by R.A. No. 9282, providing for a period of thirty (30) days from receipt of the decision or ruling to elevate the case by way of a petition for review before the Court of Tax Appeals is the applicable procedure in this case, together with Section 3 (a), Rule 8 of the Revised Rules of the Court of Tax Appeals which likewise provides a period of thirty (30) days from receipt of a copy of the questioned decision or ruling of the Regional Trial Court, whether in exercise of its original or appellate jurisdiction, to appeal to this Court.

Records show that respondent received the Order of Branch 15 of the RTC of Manila denying its Motion for Reconsideration on May 9, 2006; hence, respondent had until June 8, 2006 to file its Petition for Review before the Court in Division, which respondent, as petitioner, did on even date. Therefore, respondent's Petition for Review docketed as CTA AC No. 24 assigned to the Court in Division was filed within the prescribed period.

Sixth Assigned Error

> *IV. That despite the absence of a Board Resolution, a Secretary's Certificate attached to the Complaint established the legal capacity of Mr. Carlos Z. Ortoll to institute an action against the petitioner (referring to herein respondent).*

Petitioner faults the Court in Division in taking cognizance of the Petition for Review dated June 8, 2006 in CTA A.C. No. 24, in spite of the fact that the complaint was defective due to the alleged insufficient form of the Verification and Certification of Non-Forum Shopping. It argues that respondent, as petitioner therein, failed to present a Board Resolution authorizing its Vice-President, Mr. Carlos Z. Ortoll, who signed the subject Verification and Certification, to sue for and in behalf of the corporation. Petitioner further avers that a Secretary's Certificate incorporated in the instant Petition cannot substitute a Board Resolution and will not cure the defect.

We are not persuaded.

In numerous cases, the Highest Court upheld the validity of a Verification and Certification of Non-Forum Shopping accompanied by a Secretary's Certificate even without the Board Resolution itself. In a more recent case of ***Varorient Shipping Co., Inc. vs. NLRC,***[22] the Supreme Court in fact, recognized a secretary's certificate attached to the petition as substantial compliance with the Rules on verification and certification requirements. Thus:

> "There is sufficient jurisprudential justification to hold that Varorient has substantially complied with the verification and certification requirements. We have held in a catena of cases with similar factual circumstance that there is substantial compliance with the Rules of Court when there is a belated submission or filing of the secretary's certificate through a motion for reconsideration of the Court of Appeals' decision dismissing the petition for certiorari."

Accordingly, even without the presentation of the Board Resolution itself, the Secretary's Certificate attached to the Petition for Review attesting the authority granted to the signatory, is considered sufficient compliance with the existing Rules.

<u>*Seventh Assigned Error*</u>

> *VII. That the assessment against petitioner (herein respondent) for deficiency local business tax in the*

[22] G.R. No. 164940, November 28, 2007.

> *amount of Php 71,799.79, under Section 21 of Ordinance (No.) 7794 should be cancelled and withdrawn.*

Finally, petitioner insists that the subject taxes have already been collected by the respondent corporation as such amount was included in the amount that respondent collected from its end-users. The withdrawal and cancellation of assessment in favor of respondent as ordered in the assailed Decision will prejudice the continuous public service being extended by the city government.

Again, We are not convinced.

Petitioner failed to substantiate its claim that the subject taxes have already been collected from respondent's end-users or clients. More importantly, the Court previously ruled that respondent is not a withholding agent for the petitioner; hence, nothing has been collected by respondent that should be remitted to petitioner. It should be emphasized that taxpayers cannot be prejudiced for the reason that the alleged tax due has already been appropriated and used by the taxing authority.

The Supreme Court, in the recent case *of* ***Rafael Arsenio S. Dizon, in his capacity as the Judicial Administrator of the Estate of the deceased Jose P. Fernandez vs. CTA and CIR***, [23] reiterated that tax burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports, tax statutes being construed *strictissimi juris* against the

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[23] G.R. No. 140944, April 30, 2008 citing the case of *Commissioner of Internal Revenue vs. The Court of Appeals, Central Vegetable Manufacturing Co., Inc., and the Court of Tax Appeals*, G.R. No. 107135, February 23, 1999, 303 SCRA 508, 516-517, citing *Province of Bulacan vs. Court of Appeals*, 299 SCRA 442 (1998); *Republic vs. IAC*, 196 SCRA 335 (1991); *CIR vs. Firemen's Fund Ins. Co.*, 148 SCRA 315 (1987); and *CIR vs. CA*, 204 SCRA 182 (1991).

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government. Any doubt on whether a person, article or activity is taxable is generally resolved against taxation.[24]

In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the Court in Division when it rendered its assailed Decision and Resolution dated May 16, 2007 and August 6, 2007, respectively.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

See attached Concurring & Dissenting Opinion

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[24] Manila International Airport Authority vs. Court of Appeals, G.R. No. 155650, July 20, 2006, 495 SCRA 591, 619.

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

THE CITY TREASURER OF THE CITY OF MANILA,
Petitioner,

-versus-

ZARCON DEVELOPMENT CORPORATION,
Respondent.

C.T.A. EB NO. 309
(C.T.A. AC NO. 24)

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

DEC 18 2008 5:00 p.m.

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CONCURRING AND DISSENTING OPINION

PALANCA-ENRIQUEZ, J.:

Dissenting

With due respect to the Majority, after taking a second hard look at the pertinent facts of the case, in relation to applicable laws and jurisprudence, and consistent with my Dissenting Opinions in the cases of *Liberty M. Toledo, in her Capacity as The Treasurer of the City of Manila vs. Unilever Philippines, Inc., C.T.A. AC No. 21,* promulgated on May 10, 2007; *Unilever Philippines, Inc. vs. The Treasurer of the City of*

Manila, C.T.A. AC No. 25, promulgated on June 18, 2007; *Treasurer of the City of Manila vs. Alcan Packaging Corporation (formerly Starpack Philippines Corporation), C.T.A. EB No. 261,* promulgated on July 30, 2007; *City of Manila vs. Columbia Pictures Industries, Inc., C.T.A. EB No. 337*, promulgated on August 5, 2008, *International Container Terminal Services, Inc. vs. The City of Manila, C.T.A. EB No. 277,* promulgated on September 5, 2008, *City of Manila vs. Coca-Cola Bottlers Philippines, C.T.A. AC No. 32*, promulgated on October 24, 2008, I find it difficult to agree with the Majority that there exists a direct duplicate taxation between *Sections 21 and 24 of the Manila Revenue Code (MRC)*, for the following ratiocinations:

The Taxes Imposed By *Sections 21* and *24*
of the Revenue Code of Manila
are Two Different and Distinct Taxes, as they
Embrace Two Different Subject Matters

Section 21 of *Manila Revenue Code* provides:

> "SEC. 21. – Tax on Businesses Subject to the Excise, Value Added or Percentage Taxes under the NIRC. – On any of the following businesses and articles of commerce subject to the excise, value added or percentage taxes under the National Internal Revenue Code hereinafter referred to as the NIRC, as amended, a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:

A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said code.

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

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

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

D) Excisable goods subject to VAT

(1) Distilled spirits
(2) Wines
(3) Tobacco products (other than cigarettes, cigars and chewing tobacco)
(4) Tobacco specially prepared for chewing
(5) Fireworks
(6) Cinematographic films

(7) Saccharine
(8) Coal and coke
(9) Fermented liquor, brewers' wholesale price, excluding the ad valorem tax
(10) Automobiles, manufacturers or importers selling price
(11) Non-essential goods based on wholesale price, net of excise tax and VAT

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

(b) Perfumes and toilet waters.

(c) Yachts and other vessels intended for pleasure sports.

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

E) Excisable goods not subject to VAT.

(1) Naptha when used as raw materials for production of petro-chemical products.

(2) Asphalt

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Pursuant to the above provision, the tax under *Section 21(A)* is imposed on businesses subject to excise, value-added or percentage taxes under the NIRC. Therefore, a real estate developer/dealer, lessor or sub-lessor of real estate, accesoria, apartelle, pension inn, apartment, condominium, house for lease and room and space for rent (hereafter referred to as "real estate developer, dealer, lessor or sub-lessor"), whose business is not subject to value added tax, is beyond the contemplation of *Section 21*. To illustrate, a real estate developer, dealer, lessor or sub-lessor, whose monthly rental income does not exceed P10,000.00, or the aggregate income rental during the year does not exceed P1,500,000.00, is VAT exempt *(Section 109 (x) of the NIRC of 1997, as amended by RA 9337; and Revenue Regulations No. 16-2005)*. Applying *Section 21*, it is not subject to local business tax thereunder. However, such real estate developer, dealer, lessor or sub-lessor may be liable to pay the local business tax under *Section 24,* which provides:

> "SEC. 24. *Tax on Real Estate Developers, Dealers, and Lessors.* – On real estate developers/dealers, lessors or sub-lessors of real estate including accessorias, apartels, pension inns, apartments, condominia, houses for lease, rooms and spaces for rent, a tax of SEVENTY FIVE PERCENT (75%) OF ONE PERCENT (1%) per annum on

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the gross receipts for the preceding calendar year is hereby imposed.

For newly started business, the initial tax shall be one-half (1/2) of one percent (1%) of the capital investment."

Section 24, therefore, imposes a tax on all real estate developers/dealers, lessors or sub-lessors of real estate, accessorias, apartelles, pension inns, apartments, condominia, houses for lease, rooms and space for rent on their gross receipts for the preceding calendar year, within the jurisdiction of the City of Manila, without any qualification as to their monthly rental/lease income received. Unlike in *Section 21*, which covers only real estate developer, dealer, lessor or sub-lessor that are subject to excise tax, VAT or percentage tax.

Considering that the taxes imposed under *Sections 21 and 24 of the Manila Revenue Code* embrace entirely distinct and different subject matters, on this basis alone, it is clear that there is no double taxation between *Sections 21 and 24* of the same Code.

Further, *Section 21* is not a direct tax on persons who sell goods and services, but a tax payable by the persons paying for the services rendered by the respondent, in view of the modifying paragraph of *Section 21,* which states that "the tax shall be payable by the person

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paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax, within twenty (20) days after the end of each quarter". Respondent merely acts as the withholding or collecting agent of the tax paid by the persons paying for the services rendered.

A careful examination and scrutiny of *Section 21 of Ordinance No. 7794, as amended by Ordinance No. 7807,* clearly shows that the qualifying provision on who is required to pay the tax applies to *subsections A, B and C,* as shown by the fact that *subsections A, B and C* enumerate business establishments that are subject to tax. The succeeding *subsections D and E* already classify the goods that are subject and not subject to Value Added Tax.

The fact that said qualifying provision applies to *subsections A, B, and C of Section 21* is clear from *Section 21* itself considering that said qualifying provision was embodied and incorporated in *Section 21,* as a separate and concluding paragraph for business establishments enumerated in *subsections A, B and C of Section 21.* It is bolstered by the fact that said modifying provision provides a period when to pay the tax, to wit, "within twenty (20) days after the end of each quarter", which is applicable to all consumers/end-users of business establishments enumerated in *subsections A, B and C of Section 21,* including those who develop, deal, lease and sub-lease real estates, like respondent.

It is clear, categorical, and needs no further interpretation or construction. Settled is the rule in statutory construction that "when the law is clear, the function of the courts is simple application" *(Woodridge School, Inc. vs. ARB Construction Co., Inc., 516 SCRA 185).*

Considering that *Section 21* was not declared invalid, the above-quoted modifying provision is also presumed valid. After all, such proviso transgresses no inherent and constitutional provisions. Neither is it antithetical to any of the fundamental principles of local taxation under *Section 130 of the LGC.* A *fortiori*, the local business tax is a tax on end users, thereby negating the presence of direct double taxation.

<u>Elements of
Double Taxation</u>

Double taxation is sometimes known as "duplicate" taxation. Duplicate taxation may be direct or indirect. Direct duplicate taxation or double taxation in the objectionable or prohibited sense (also known as obnoxious) means that the same property is taxed twice when it should be

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taxed only once; and that both taxes are imposed on the same property or subject matter for the same purpose, by the same State, Government, or taxing authority within the same jurisdiction or taxing district during the same taxing period and covering the same kind or character of tax (*Villanueva vs. City of Iloilo, 26 SCRA 594*).

On the other hand, indirect duplicate taxation is permissible double taxation. This is allowed if the taxes are of different nature or character, imposed by different taxing authorities (*Tax Principles and Remedies by Japar B. Dimaampao, 2nd ed., p. 122*).

The elements of direct double taxation are as follows:

1) taxing twice;
2) same person/property or subject matter;
3) by the same taxing authority;
4) within the same jurisdiction or taxing district;
5) for the same purpose; and
6) in the same year or taxing period.

<u>No Double Taxation</u>

These elements do not obtain in the case of *Section 21 and 24 of Ordinance No. 7794,* as amended by *Ordinance No. 7807*. First, these two (2) taxes are of two (2) different kinds or characters. The tax imposed upon respondent under *Section 24* is a tax on developers, dealers, lessors and sub-lessors of real estate. It is classified as a direct tax, which is demanded from the respondent primarily burdened to pay the same, in contrast to *Section 21,* which is payable not by the respondent itself, but by the persons leasing or renting the real estate of the respondent. Respondent only acts as the withholding or collecting agent of the City of Manila of the tax imposed on its lessees.

Second, the taxes in *Sections 24* and *21* are payable by two entirely different and distinct entities. *Section 24* is payable by the respondent, as a developer, dealer, lessor and sub-lessor of real estate. On the other hand, *Section 21* is payable by respondent's lessees, or the persons availing of respondent's real estate business.

Third, although the two taxes deal on one activity, real estate development, lease or sub-lease, *Section 24* and *21* are imposed on entirely different subject matters. The subject matter of *Section 24* is the privilege of engaging in real estate development, dealing, leasing or sub-leasing. The tax is imposed for the business of development, dealing, leasing or sub-leasing of real estate. On the other hand, *Section 21* is imposed on establishments subject to excise, value-added or percentage taxes under the NIRC, which may not be subject to *Section 24*, if said business establishment is exempt from excise, value-added or percentage taxes under the NIRC, as previously illustrated. It is payable by the persons availing of the services of such business establishments.

Evidently, a tax on respondent, as a developer, dealer, lessor or sub-leasor of real estate, is different from the tax imposed on businesses subject to excise, value added or percentage tax, payable by their lessees. Under *Section 21*, respondent merely acts as the withholding or collecting agent of the City of Manila, while the ones actually paying the tax are its lessees/end-users.

In sum, there is no double taxation, because there is no taxing twice, on the same person *(Procter & Gamble Philippines Manufacturing Corp., vs. Municipality of Jagna, 94 SCRA 903)*, or the same subject matter, by the same taxing authority, within the same jurisdiction, in different taxing periods, some of the property in the territory.

Since the assailed assessment imposed under *Section 21 of Ordinance No. 7794,* the original ordinance, was amended by the first amendatory *Ordinance No. 7807*, which still both subsist, and

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considering further that the ruling in the *Coca-Cola Bottlers Phils., Inc. vs. City of Manila, et al., 493 SCRA 291*, declared null and void the amendatory *Ordinance Nos. 7988 and 8011* only, I reiterate that respondent is covered by *Section 21.* Respondent cannot, therefore, be exempted from the imposition of *Section 21*.

Concurring

However, as to the other issues raised by petitioner City of Manila, I fully concur with the Majority that petitioner's contentions are bereft of merit.

Considering that there is no double taxation, I therefore sustain the City of Manila's assessment dated August 6, 1999 against respondent Zarcon Development Corporation in the amount of P71,799.79. Accordingly, I vote to **GRANT** the present Petition For Review on the ground that there is no double taxation between *Sections 21 and 24 of the Manila Revenue Code*.

OLGA PALANCA-ENRIQUEZ
Associate Justice