# REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
# QUEZON CITY

## FIRST DIVISION

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| **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,** *Chairperson, 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:** JUN 10 2015 ; 1:14 p.m. |

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# DECISION

**UY, J.:**

Before Us is a Petition for Review filed on November 16, 2012 by University of Luzon, Inc., seeking the reversal and setting aside of the Decision dated April 12, 2012[1] rendered by the Regional Trial Court – Branch 41, Dagupan City, in Civil Case No. 2011-0167-D entitled *"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"*, the dispositive portion of which reads:

> "WHEREFORE, premises considered, judgment is hereby rendered ***dismissing*** the complaint for lack of merit.

[1] Docket, pp. 54 to 63.

SO ORDERED."

## THE FACTS

Petitioner University of Luzon, Inc. is an educational corporation, created under Philippine laws, with principal office and place of business at Perez Boulevard, Dagupan City, represented by its President, Dr. Macarthur M. Samson, Sr.[2]

The respondents are as follows: respondent City of Dagupan is a municipal corporation under Philippine laws; respondent Benjamin S. Lim is of legal age, married, Filipino, then City Mayor of Dagupan City, and a resident of Dagupan City; respondent Vladimir T. Mata is likewise of legal age, married, Filipino, then City Administrator of Dagupan City, and a resident of Dagupan City; respondent Romelita F. Alcantara is also of legal age, married, Filipino, the City Treasurer of Dagupan City, and a resident of Dagupan City.[3]

The said respondents imposed, assessed and billed the petitioner business tax in the amount of ₱966,945.36 for the year 2011, per Business Tax Assessment and Billing dated September 9, 2009.[4]

On January 21, 2011, petitioner, through counsel, requested respondent City Treasurer Alcantara for the writing-off of previously imposed Business Tax and for the City to cease the imposition of Business Tax on petitioner.[5]

Subsequently, on February 18, 2011, Dr. Samson, as President of petitioner, together with the Presidents of Lyceum-Northwestern University, and Collegio de Dagupan, sent a Letter of Protest (Re: Business Tax on Private Schools) to respondent City Mayor, the Vice Mayor, and the Presiding Officer of the *Sangguniang Panglungsod* and its Members, protesting the imposition of business tax on private schools for the reason, among others, that an educational institution is not a business establishment, and that educational institutions are not subject to business tax under the Local Government Code (Book II, Local Taxation and Fiscal Matters) and the Revenue Code of Dagupan City (City Ordinance No. 1855).[6]

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[2] Par. 1, Petition vis-à-vis Par. 1, Answer, RTC Docket, pp. 2 and 44.
[3] Par. 2, Petition vis-à-vis Par. 2, Answer, RTC Docket, pp. 2 to 3, and 44.
[4] Par. 3, Petition vis-à-vis Par. 2, Answer, RTC Docket, pp. 3 and 44.
[5] Par. 4, Petition vis-à-vis Par. 3, Answer, RTC Docket, pp. 3 and 44.
[6] Par. 5, Petition vis-à-vis Par. 4, Answer, RTC Docket, pp. 3 and 44.

In the letter dated March 9, 2011 by City Administrator Mata addressed to Dr. Samson, respondents maintain, among others, that petitioner cannot claim any exemption from taxes.[7] In reply to the said letter, Dr. Samson, with the President of Lyceum Northwestern University, through the letter dated March 14, 2011, informed respondent City Administrator Mata, among others, that they are not invoking any tax exemption; but they are saying that the respondent City cannot impose business tax on educational institutions as there is not a law or ordinance imposing the said tax on educational institutions.[8] In the letter dated April 1, 2011 of respondent City Administrator Mata, however, respondents stood firm on their position that petitioner is liable for payment of business tax.[9]

On May 31, 2011, petitioner filed a Petition with the Regional Trial Court-Branch 41, Dagupan City,[10] praying that judgment be rendered: (1) declaring the imposition, assessment and billing of business tax on petitioner by respondents as void *ab initio*; and (2) perpetually restraining respondents from imposing, assessing, billing and collecting business tax on petitioner, and directing respondents to write-off all prior impositions, assessments and billings of business tax on petitioner. The case was docketed as Civil Case No. 2011-0167-D (For Injunction and Declaration of Nullity of Business Tax).

On April 12, 2012, the Court *a quo* rendered its Decision, dismissing the complaint for lack of merit.[11]

Petitioner filed its Motion for Reconsideration on May 24, 2012,[12] praying that the said Decision be reconsidered and set aside, and that a new Decision be rendered and entered granting the reliefs prayed for in the Petition.

Respondents then filed their Comment/Opposition to the Motion for Reconsideration on June 21, 2012,[13] praying that petitioner's Motion for Reconsideration be denied for lack of merit and the original Decision be upheld.

Petitioner filed its Reply on July 18, 2012,[14] reiterating its prayer

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[7] Par. 6, Petition vis-à-vis Par. 5, Answer, RTC Docket, pp. 4 and 45.
[8] Par. 7, Petition vis-à-vis Par. 6, Answer, RTC Docket, pp. 4 and 45.
[9] Par. 8, Petition vis-à-vis Par. 7, Answer, RTC Docket, pp. 4 and 45.
[10] RTC Docket, pp. 2 to 11.
[11] RTC Docket, pp. 320 to 329.
[12] RTC Docket, pp. 332 to 367.
[13] RTC Docket, pp. 378 to 384.
[14] RTC Docket, pp. 385 to 401.

in its Motion for Reconsideration.

In its Resolution dated October 10, 2012,[15] the Court *a quo* denied petitioner's Motion for Reconsideration for lack or merit.

Undaunted, petitioner filed the instant Petition for Review on November 16, 2012, praying that the Decision dated April 12, 2012 rendered by the Regional Trial Court-Branch 41, Dagupan City, be reversed and set aside, and that a Decision be rendered and entered:

1) Declaring sub-paragraph (i) of paragraph h) of Section 109 of the Revenue Code of Dagupan void *ab initio*;
2) Perpetually restraining respondents from assessing, billing and collecting the business tax imposed under sub-paragraph (i) of paragraph h) of Section 109 of the Revenue Code of Dagupan;
3) Directing respondents to write off all prior impositions, assessments and billings of business tax on the petitioner.

However, in the Resolution dated December 11, 2012,[16] the instant Petition for Review was denied due course by this Court and dismissed on procedural ground, for failure of petitioner to comply with the requisite proof of service of the instant Petition to herein respondents, under Section 3, Rule 42 of the 1997 Rules of Civil Procedure in relation to Section 4(a), Rule 8 of the Revised Rules of the Court of Tax Appeals.

On January 24, 2013, petitioner filed a Motion for Reconsideration of the said Resolution,[17] explaining the reasons why it was not able to submit the requisite proof of service, and submitting a copy of the same. Respondents filed their Comment/Opposition to the said Motion for Reconsideration on February 21, 2013,[18] pursuant to the directives of this Court in its Resolution dated January 30, 2013.[19]

In light of petitioner's explanation in its Motion for Reconsideration filed on January 24, 2013, this Court granted the said motion, reinstated the instant Petition for Review, and ordered respondents to file their Comment within ten (10) days from

[15] RTC Docket, pp. 414 to 415.
[16] Docket, pp. 177 to 182.
[17] Docket, pp. 183 to 196.
[18] Docket, pp. 201 to 203.
[19] Docket, p. 198.

receipt thereof, in the Resolution dated September 10, 2013[20].

On October 16, 2013, respondents filed their "Comment To Petition for Review",[21] praying for the dismissal of the instant Petition for Review for lack of merit and to uphold the Decision dated April 12, 2012 rendered by the Regional Trial Court – Branch 41.

In the Resolution dated November 25, 2013,[22] this Court ordered the Branch Clerk of Court of the Regional Trial Court – Branch 41, Dagupan City, to elevate to this Court the entire original records of Civil Case No. 2011-0167-D, within ten (10) days from receipt of the said Resolution. Failing to do so, this Court again directed the said Branch Clerk of Court to elevate the said records, and ordered the parties to submit their respective memorandum in the Resolution dated March 13, 2014.[23]

Subsequently, petitioner submitted its Memorandum on April 28, 2014;[24] while respondents filed their Memorandum on May 9, 2014.[25]

On May 20, 2014, the Branch Clerk of Court of the Regional Trial Court – Branch 41, Dagupan City forwarded the entire records of Civil Case No. 2011-0167-D.[26] Correspondingly, the instant case was submitted for decision on June 11, 2014.[27]

Hence, this Decision.

## THE ISSUES

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

I

> "Whether the *'all-encompassing and catch-all proviso'* in sub-paragraph (i) of paragraph h), Section 109 of the Revenue Code of Dagupan is valid and effective.

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[20] Docket, pp. 217 to 220.
[21] Docket, pp. 227 to 229.
[22] Docket, pp. 249 to 250.
[23] Resolution dated March 13, 2014, Docket, pp. 253 to 254.
[24] Docket, pp. 259 to 290.
[25] Docket, pp. 294 to 301.
[26] Docket, pp. 314 to 319.
[27] Docket, pp. 322 to 323.

II

Whether the Petitioner herein falls under, and is covered by Section 109 (h)(i) of the Revenue Code of Dagupan.

III

Whether the Petitioner is estopped from questioning the authority of the Respondents in assessing and collecting the business tax imposed under Section 109 (h)(i) of the Revenue Code of Dagupan.

IV

Whether the Petitioner has sufficient cause of action against the Respondents."[28]

On the other hand, respondents submit the following issues for this Court's resolution, *viz*:

"I

Whether or not the Honorable Court *a quo* erred in holding and ruling that the Revenue Code of Dagupan is valid and effective since it was enacted based on the LGC of 1991.

II

Whether or not the Petitioner falls under and covered by Section 143 (h) of the LGC of 1991 and Section 109 (h)(i) of the Revenue Code of Dagupan City.

III

Whether or not the Honorable Court *a quo* erred in holding and ruling that the Petitioner is estopped from questioning the authority of the Respondent City in imposing and collecting business tax for the year 2011, considering that before said year it has been religiously paying its business taxes."[29]

The foregoing issues raised by both parties are hereby summarized, as follows:

1. Whether the Revenue Code of Dagupan City (City Ordinance No. 1855) is valid and effective;

2. If the subject tax ordinance is valid and effective, whether petitioner is liable for the local business tax for the year

[28] Docket, pp. 18 to 19, and 266.
[29] Docket, p. 306.

2011; and

3. Whether petitioner is estopped to question the authority of the respondent city in imposing the local business tax for the year 2011, considering that before the said year, petitioner has been paying its business taxes.

***Petitioner's arguments:***

Petitioner argues that the ordinance in question transgresses the equal protection clause, the rule of uniformity, and the due process of law clause, under the 1987 Constitution.

As regards respondents' alleged violation of the equal protection clause, petitioner points out that the *Sangguniang Panglungsod* of Dagupan did not bother to identify, clearly, expressly and unambiguously, what are the businesses in Dagupan City that are not otherwise specifically enumerated or mentioned in paragraphs (a) to (g), inclusive, of Section 143 of the LGC of 1991, and in paragraphs a) to g), inclusive, of Section 109 of the Revenue Code of Dagupan. Likewise, the said *Sangguniang Panglungsod* did not bother to consider valid substantial differences in situations of these businesses as required under the equal protection clause of Section 1, Article III, of the 1987 Constitution.

Furthermore, petitioner contends that it was neither informed, nor was it invited to the public hearing required under Section 186 of the Local Government Code of 1991. According to petitioner, respondent city failed to comply with the mandate of Section 188 of the Local Government Code of 1991 and the mandate in Section 316 of the Revenue Code of Dagupan, regarding the publication thereof.

Lastly, petitioner points out that the Court *a quo* erred in holding and ruling that: (1) petitioner falls under, and is covered by Section 109 (h)(i) of the Revenue Code of Dagupan; (2) petitioner is estopped from questioning the authority of respondents in imposing and collecting the business tax under the same provision; and (3) petitioner has no sufficient cause of action against respondents.

***Respondents' counter-arguments:***

Respondents counter-argue that on the basis of Section 143 of the Local Government Code, the *Sangguniang Panlungsod* of Dagupan City, way back in the year 1992, enacted City Ordinance

No. 1440-92 entitled "An Ordinance Imposing Levy and Collection of Taxes on Business in the City of Dagupan Authorized Under Republic Act 7160 and for Other Purposes", which in turn was later incorporated in City Ordinance No. 1855, otherwise known as the "Revenue Code of Dagupan City". According to respondents, said Revenue Code is a compilation or codification of all existing revenue-related ordinances previously enacted by the *Sangguniang Panlungsod* of Dagupan City, hence, the provisions relative to the imposition of business taxes found in the later ordinance was lifted from the former ordinance, with slight adjustments in the amount of percentage of tax to be charged in accordance with the rates fixed by the Local Government Code of 1991.

Moreover, respondents submit that prior to the filing of the instant case, petitioner had been religiously paying business taxes and regulatory fees to the City of Dagupan.

Allegedly, the subject Ordinance was published in full in the January 8, 2006 issue of the Sunday Punch, a newspaper of local circulation in the Province of Pangasinan. In relation thereto, respondents assert that the Sunday Punch, as well as other publications of local circulation publishes weekly issues, hence, a particular issue can be found or obtained from local newsstands for the entire week, which substantially complies with the requirement of publication in full for three consecutive days under the Local Government Code of 1991.

Furthermore, respondents aver that the Regional Trial Court did not err in upholding the validity and effectivity of the Revenue Code of Dagupan and that petitioner is covered by the same; and that the said Court likewise correctly ruled that petitioner is estopped from questioning the authority of respondents in imposing and collecting business taxes from petitioner.

Lastly, respondents maintain that there was no failure or not even lack of compliance with the requirement of public hearing with respect to the enactment of the Revenue Code of Dagupan City (City Ordinance No. 1855).

## THE RULING OF THE COURT

We deny the instant Petition for Review.

In this case, it is apparent that petitioner is questioning the constitutionality and legality of Revenue Code of Dagupan City (City Ordinance No. 1855).

Petitioner, however, failed to observe the provisions of Section 187 of the Local Government Code of 1991, which provides as follows:

> "SEC. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.*— The procedure for the 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 with sixty (60) days from the receipt of appeal: *Provided, however,* That such appeal shall not have the effect of suspending the effectivity of the ordinance and accrual and payment of the tax, fee or charged 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." *(Emphasis supplied)*

The above provision requires that any question on the constitutionality or legality of tax ordinances or revenue measures be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who has sixty (60) days from date of receipt of appeal to render a decision.

In *Reyes, et al. vs. Court of Appeals, et al.*,[30] the Supreme Court said:

> "Clearly, the law requires that the dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file his appeal to the Secretary of Justice, within 30 days from effectivity thereof. In case the Secretary decides the appeal, a period also of 30 days is allowed for an aggrieved party to go to court. But if the

[30] G.R. No. 118233, December 10, 1999.

> Secretary does not act thereon, after the lapse of 60 days, a party could already proceed to seek relief in court. **These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court.** Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. **For this reason the courts construe these provisions of statutes as mandatory.**
>
> A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public. **It is for this reason that protests over tax ordinances are required to be done within certain time frames. In the instant case, it is our view that the failure of petitioners to appeal to the Secretary of Justice within 30 days as required by Sec. 187 of R.A. 7160 is fatal to their cause.**" *(Emphases supplied)*

Furthermore, in *Hagonoy Market Vendor Association vs. Municipality of Hagonoy, Bulacan,*[31] the Supreme Court said:

> "The aforecited law requires that **an appeal of a tax ordinance or revenue measure should be made** to the Secretary of Justice **within thirty (30) days from effectivity of the ordinance and even during its pendency, the effectivity of the assailed ordinance shall not be suspended**. xxx <u>At this point, it is apropos to state that the timeframe fixed by law for parties to avail of their legal remedies before competent courts is not a 'mere technicality' that can be easily brushed aside.</u> <u>**The periods stated in Section 187 of the Local Government Code are mandatory**</u>. xxx Being its lifeblood, collection of revenues by the government is of paramount importance. The funds for the operation of its agencies and provision of basic services to its inhabitants are largely derived from its revenues and collections. Thus, it is essential that **the validity of revenue**

[31] G.R. No. 137621, February 6, 2002.

> **measures is not left uncertain for a considerable length of time**. Hence, the law provided a time limit for an aggrieved party to assail the legality of revenue measures and tax ordinances." *(Underscoring supplied)*

In this case, there is no indication that petitioner ever resorted to the remedy provided under Section 187 of the Local Government Code of 1991 to question the constitutionality or validity of the subject tax ordinance.

As a rule, the remedy within the administrative machinery must be resorted to first and pursued to its appropriate conclusion before the court's judicial power can be sought.[32] Since petitioner failed to appeal to the Secretary of Justice within the mandatory period of thirty (30) days as required under Section 187 of the Local Government Code of 1991, such failure is fatal to petitioner's cause.

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

**SO ORDERED**.

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

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

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

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[32] *Banco De Oro, et al. vs. Republic of the Philippines, et al.*, G.R. No. 198756, January 13, 2015.

## CERTIFICATION

Pursuant to Section 13 of 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's First Division.

**ROMAN G. DEL ROSARIO**
Chairperson
Presiding Justice

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,*

-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:

JUN 10 2015 ; 1:14 p.m.

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# DISSENTING OPINION

***DEL ROSARIO, PJ.:***

With utmost respect, I express my dissent with the *ponencia* of my esteemed colleague, Associate Justice Erlinda P. Uy, which dismissed the Petition for Review due to petitioner's non-exhaustion of administrative remedies pursuant to Section 187 of Republic Act No. 7160, or the Local Government Code of 1991 (LGC). The *ponencia* ratiocinated that failure to raise any question on the constitutionality or legality of tax ordinances or revenue measures to the Secretary of Justice within thirty (30) days from the effectivity thereof is fatal to the subject petition.

I am, however, of the opinion that the subject petition is in the nature of an assessment of business taxes issued by the City Government of Dagupan against petitioner, *albeit* the grounds relied upon in assailing such

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assessment involves the constitutionality of Revenue Code of Dagupan City (City Ordinance No. 1855). Section 195 of the LGC also applies.

True, Sec. 187 of the LGC specifies the remedy of an appeal before the Department of Justice to question the constitutionality or validity of a local tax ordinance or tax measure.

> "**Section 187.** *Procedure for Approval and Effectivity of Tax, Ordinances and Revenue Measures; Mandatory Public Hearings.* - 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."

Although aforequoted procedure is premised on the rule that exhaustion of administrative remedies is a condition *sine qua non* before judicial action may be resorted to, the Supreme Court, in *Allied Banking Corporation vs. Quezon City Government, et al.*[1] recognized the "well-settled exception in cases where the controversy does not involve questions of fact but only of law."

In this case, petitioner raised the following issues[2] for this Court's resolution,

> I
>
> "Whether the 'all-encompassing and catch-all proviso' in sub-paragraph (i) of paragraph (h), Section 109 of the Revenue Code of Dagupan is valid and effective.
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> II
>
> Whether the Petitioner herein falls under, and is covered by Section 109 (h)(i) of the Revenue Code of Dagupan.

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[1] G.R. No. 154126, October 11, 2005, *citing* Ty vs. Trampe, G.R. No. 117577 December 1, 1995.

[2] Petition for Review, *CTA Division Docket*, pp. 18-19.

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III

Whether the Petitioner is estopped from questioning the authority of the Respondents in assessing and collecting the business tax imposed under Section 109 (h)(i) of the Revenue Code of Dagupan.

IV

Whether the Petitioner has sufficient cause of action against the Respondents."

On the other hand, respondents submitted the following issues[3] for this Court's resolution, *viz:*

"I

Whether or not the Honorable Court *a quo* erred in holding and ruling that the Revenue Code of Dagupan is valid and effective since it was enacted based on the LGC of 1991.

II

Whether or not the Petitioner falls under and covered by Section 143 (h) of the LGC of 1991 and Section 109 (h) (i) of the Revenue Code of Dagupan City.

III

Whether or not the Honorable Court *a quo* erred in holding and ruling that the Petitioner is estopped from questioning the authority of the Respondents City in imposing and collecting business tax for the year 2011, considering that before said year it has been religiously paying its business taxes."

The foregoing issues involve questions of law in which resort to Section 187 of the LGC need not be strictly followed. In *Tongonan Holdings and Development Corporation vs. Atty. Francisco Escaño, Jr.*[4], the Supreme Court distinguished a question of law from a question of fact, *viz:*

"In *Republic of the Philippines v. Malabanan,* this Court distinguished a question of law from a question of fact. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented,

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[3] Memorandum for Respondents, *CTA Division Docket*, pp. 294-301; 295.
[4] G.R. No. 190994, September 7, 2011 *citing Republic of the Philippines vs. Malabanan,* G.R. No. 169067, October 6, 2010.

> the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact."

The import of Section 187 of the LGC, when applied strictly, brings about an absurd situation where new businesses in the locality established after the enactment and effectivity of a tax ordinance and the lapse of the period to appeal with the Secretary of Justice are deprived of a remedy to question the constitutionality of a tax ordinance in view of the restricted period provided in the said provision of the LGC.

More importantly, the LGC does not state that Section 187 of the LGC is mutually exclusive with Section 195 of the same Code. In providing the manner by which an assessment may be protested, Section 195 states:

> "**Section 195.** *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling 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."

Notably, Section 195 does not preclude the taxpayer from raising the constitutionality of a tax ordinance, which is the basis of a tax assessment.

Moreover, records reveal that the assessment for business taxes for the year 2011 against petitioner was prepared on September 7, 2009.[5] Yet, Section 194 provides that local taxes shall be assessed within five (5) years from the date they became due,[6] which tax is imposed based on the gross

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[5] *CTA Division Docket*, p. 133.
[6] Section 194. Periods of Assessment and Collection. -

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sales or receipts for the preceding calendar year[7] and the same is due for payment until the $20^{th}$ day of January.[8]

Also, a notice of assessment should be sufficiently informative in order to apprise the taxpayer of the legal basis of the tax.[9] 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.

All told, I **VOTE** to **GRANT** the Petition for Review 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 be cancelled.

**ROMAN G. DEL ROSARIO**
Presiding Justice

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(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)*

[7] Sec. 143, LGC.

[8] 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)*

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