REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

SOUTH CHINA RESOURCES, INC. (NOW KNOWN AS "SOCRESOURCES, INC."), Petitioner,	**CTA AC NO. 196**
	Members:
- versus –	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
OFFICE OF THE CITY TREASURER AND/OR MAKATI CITY, Respondents.	Promulgated: APR 16 2019 10:44 am

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves respondents' **Motion for Reconsideration**, filed through registered mail on November 20, 2018 and received by the Court on December 4, 2018, with petitioner's **Opposition with Motion to Expunge** filed on December 21, 2018.

In their Motion, respondents seek reconsideration and setting aside of the Court's Decision promulgated on October 17, 2018 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. The assailed Decision dated October 11, 2017 and Order dated January 8, 2018, issued by the Regional Trial Court, Branch 66, Makati City in SP. Proc. No. M-7835 is **REVERSED** and **SET ASIDE**. Billing Assessment Nos. 019510, 019511 and 019512, all dated January 13, 2015 are **CANCELLED**.

> Respondent is **ORDERED** to credit petitioner's payment in the amount of ₱981,478.90 to its future business tax and regulatory fee obligations, including petitioner's regulatory fee as a holding company **for taxable years 2014 and 2015**.
>
> **SO ORDERED**."

Respondents assert that unless repealed by Congress, Section 187 of the Local Government Code (LGC) is the proper and exclusive procedure to question the constitutionality or legality of tax ordinances and revenue measures. Section 3A.02 (p) in relation to Section 3A.02 (g) and (h) of the Revised Makati Revenue Code (RMRC) remains to be valid since it was never questioned nor attacked directly under Section 187 of the LGC.

Respondents contend that in questioning the disputed assessment, petitioner was questioning the validity or constitutionality of Section 3A.02 (p) in relation to Section 3A.02 (g) and (h) of the RMRC. Thus, the Regional Trial Court (RTC) was correct in ruling that it had no jurisdiction to rule on their validity or constitutionality. It is well settled that the validity of a law can be challenged only in a direct action and not collaterally.

Respondents further insist that under Section 143 (h) of the LGC, the local government unit is empowered to impose tax on any business which the *sanggunian* concerned may deem proper to tax. Since the imposition of taxes on holding companies is not expressly prohibited by the LGC, the enactment of Section 3A.02 (p) of the RMRC in relation to Section 3A.02(g) and(h) is valid and within the confines of the law.

Respondents also plead that the *Michigan Holdings Inc.* case, where the Court *En* Banc cancelled the assessment levying local business tax on the dividend income of Michigan Holdings Inc., a holding company, should have been remanded to RTC Makati City, Branch 134 for further proceedings and proper disposition instead of the Court *En Banc motu proprio* ruling on all potential issues which can be inferred from the case, including the validity of Section 3A.02 (p) in relation to Section 3A.02 (g) and (h) of the RMRC.

On the other hand, petitioner points out that respondents' Motion should be expunged from the records of the case for being a mere scrap of paper and/or denied for utter lack of merit.

Petitioner claims that the instant Motion is a mere scrap of paper for failure to comply with Section 4, Rule 15 of the Rules of Court, which requires that every written motion must be set for hearing and that the notice of said hearing shall be served in such a manner as to ensure its receipt by the other party at least three days before the date of hearing.

Petitioner further contends that it is not required to comply with the procedure under Section 187 of the LGC before it may seek recourse before the court *a quo* and this Court and submits that respondents are already barred by estoppel from raising this argument for the first time on appeal. Even assuming that the Court may pass upon respondents' argument, it should be disregarded because it is grossly misleading and does not apply to this case. In the proceedings, petitioner assails respondents' erroneous application of Section 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC, in assessing its deficiency taxes pursuant to Section 195 of the LGC, and not the constitutionality of the same. Thus, it correctly availed itself of the remedies before the court *a quo* and this Court under Section 195, and not Section 187 of the LGC.

THE COURT'S RULING

The Court finds respondents' Motion bereft of merit.

Lack of notice of hearing cured since petitioner was given opportunity to comment

Perusal of the Motion readily shows that indeed respondents failed to include a notice of hearing of their Motion. Page 9 of their Motion reads[1]:

<u>NOTICE OF HEARING/COPY FURNISHED</u>

ESGUERRA & BLANCO
Counsel for Petitioner
4th & 5th Floors, S&L Building,
Dela Rosa corner Esteban Streets,
Legaspi Village, 1229 Makati City

EXPLANATION
(Under Section 11, Rule 13
New Rules on Civil Procedure)

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[1] Docket, p. 1722.

> Service was made by registered mail because the messengers of the above-named counsel for respondent have to file and serve other equally important documents, papers, and pleadings.
>
> Makati City, 19 November 2018.
>
> Atty. Catherine G. Dela Cruz"

The general rule is that the three-day notice requirement in motions under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process.[2] Nevertheless, **the three-day notice requirement is not a hard and fast rule**. When **the adverse party had been afforded the opportunity to be heard**, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized.[3]

Rules of procedure are tools designed to facilitate the attainment of justice, and courts must avoid their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice.[4]

In the case at bar, petitioner was granted the opportunity to be heard when it was given by the Court a period of ten (10) days to file its comment or opposition to respondents' Motion in the Resolution dated December 11, 2018. With petitioner's filing of its Opposition with Motion to Expunge, petitioner was not prejudiced. Hence, the lack of notice of hearing of petitioner's Motion was cured and procedural due process was substantially complied with.

Validity or constitutionality of Section 3A.02 (p) of the Revised Makati Revenue Code in relation to Section 3A.02 (g) and (h) not in question

Petitioner's protest to the assessment cannot be deemed as a collateral attack on the provisions of the RMRC. An attack is said to

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[2] *Jehan Shipping Corporation vs. National Food Authority*, G.R. No. 159750, December 14, 2005.
[3] *Marylou Cabrera vs. Felix Ng*, G.R. No. 201601, March 12, 2014.
[4] *Id.*

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be collateral when in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof.[5]

In the assailed Decision, the Court ruled on "whether petitioner, as a holding company, is engaged in activities which may classify it within the term bank and other financial institution thereby making it liable for local business tax on its gross receipts at the rates provided under subsection (h) of Section 3A.02 of the RMRC". The assailed Decision pertinently states:

> "**The crux of the controversy, therefore, revolves on whether petitioner, as a holding company, is engaged in activities which may classify it within the term bank and other financial institution thereby making it liable for local business tax on its gross receipts at the rates provided under subsection (h) of Section 3A.02 of the RMRC.**
>
> After a careful review of the evidence presented in the proceedings *a quo*, the Court finds that petitioner's gross receipts were not derived from activities that may classify it as a "bank and other financial institutions". In truth, petitioner merely invested in companies for its own benefit as authorized under its Amended Articles of Incorporation. Petitioner's 2009 to 2014 Audited Financial Statements reveal that its revenues or gross receipts were limited to gains from sale of its foreign and domestic stocks, interest income from deposits, dividend income, foreign exchange gains and gain on sale of investments. There is nothing therein which would show that petitioner generated revenues from services rendered or commissions from investments made on behalf of third parties. As a holding company, petitioner merely invested in other companies and earned dividends therefrom.
>
> In *Michigan Holdings, Inc. vs. City Treasurer of Makati, Nelia A. Barlis*, the Court *En Banc* unanimously held that dividend and interest income of holding companies are not subject to local business tax, *viz.*:
>
>> 'Indeed, if the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its Section 3A.02(h), instead of placing them all by themselves in Section 3A.02(p) and then making the tax rates in either Section 3A.02(h) or (g) applicable to them. That holding companies, exclusively, were placed in a separate section, shows that they comprise a category distinct from the class of "banks and other financial institutions" as defined by Section

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[5] *Heirs of Cayetano Cascayan, represented by La Paz Martinez vs. Spouses Oliver and Evelyn Gumallaoi and the Municipal Engineer of Bangui, Ilocos Norte, G.R. No. 211947, July 3, 2017.*

JM

> 131(e) of the LGC. That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by Section 133(a) that the taxing powers of LGUs shall not extend to the levy of income tax, except on banks and other financial institutions.'

In the absence of evidence showing that petitioner engaged in activities which brought it within the ambit of a bank or other financial institution, and considering that respondents had no authority to impose local business taxes upon holding companies' dividend, interest income and profit from the exchange or sale of property, petitioner may not be held liable for local business tax on its gross receipts derived from sale of its foreign and domestic stocks, interest income, dividend income, foreign exchange gains and gain on sale of investments.

In fine, Billing Assessment Nos. 019510, 019511 and 019512, all dated January 13, 2015 were issued by respondents in violation of Section 133 of the LGC. Hence, said Billing Assessments are void and must accordingly be cancelled." (Boldfacing supplied)

Clearly, the Court did not make any pronouncement as to the validity or constitutionality of Section 3A.02 (p) in relation to Section 3A.02 (g) and (h) of the RMRC. Thus, respondents' claim is baseless.

The CTA in Division has jurisdiction over the case and need not remand the case to the RTC

Respondents' proposition that the case be remanded to the court *a quo* for disposition is likewise untenable.

There is no necessity to remand the case to the court *a quo* as this Court is vested with jurisdiction to rule on the validity and correctness of the assessment pursuant to Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, *viz.*:

"Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

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> 3. **Decisions, orders** or resolutions of the **Regional Trial Courts** in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction; xxx"

All told, the Court finds no cogent reason that justifies a modification or reversal of the assailed Decision. Consequently, respondents' Motion must perforce fail.

WHEREFORE, premises considered, respondents' **Motion for Reconsideration**, filed through registered mail on November 20, 2018 and petitioner's **Motion to Expunge** filed on December 21, 2018 are hereby **DENIED** for lack of merit. Accordingly, the Decision dated October 17, 2018 is **AFFIRMED**.

Petitioner's **Manifestation** filed on January 25, 2019 and respondents' **Compliance** filed on January 14, 2019 are **NOTED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice