REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CASAS+ ARCHITECTS,
Petitioner,

-versus-

THE CITY OF MAKATI AND **JESUSA E. CUNETA,** IN HER CAPACITY AS THE CITY TREASURER OF THE CITY OF MAKATI**,**
Respondents.

CTA AC Case No. 259

Members:

BACORRO-VILLENA, *Acting Chairperson,*
CUI-DAVID, *JJ.*

Promulgated:

NOV 2 4 2022

x- -x

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* filed on 4 January 2022 by petitioner Casas+ Architects[1] ("**Petitioner**"), against respondents City of Makati and Jesusa E. Cuneta, in her capacity as the City Treasurer of Makati ("**Respondents**"), under Section 3(a), Rule 8,[2] in relation to Section 3(a)(3), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"). Petitioner assails the *Order* dated 4 November 2021 ("**assailed Order**") of the Regional Trial Court of Makati City, Branch 145 ("**RTC**" or "**RTC Makati**"), granting respondents' Motion for

[1] Dated 4 January 2022, received by the Court on 4 January 2022; *Rollo*, pp. 5-38.
[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.
[3] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.
[4] A.M. No. 05-11-07-CTA.

Reconsideration dated 17 September 2021, setting aside the *Decision* dated 30 July 2021, and dismissing petitioner's claim for refund of erroneously paid local business taxes ("**LBT**") in the total amount of Two Million Five Hundred Twenty-Five Thousand One Hundred Three and 20/100 (₱2,525,103.20).

THE PARTIES

Petitioner Casas+ Architects is a duly registered general professional partnership ("**GPP**") existing under the laws of the Philippines, with Company Registration No. A1996-6511 and principal office at Paseo Center, 8757 Paseo de Roxas, Bel-Air, Makati City, Philippines.

Respondent Makati City is a local government unit created under Philippine laws.

Respondent Jesusa E. Cuneta is the duly appointed City Treasurer of Makati, empowered to perform the duties of said officer, including, *inter alia*, the collection of all local taxes, fees, and charges. She holds office at the Office of the City Treasurer, Business Tax Division, Makati City Hall, Makati City.

THE FACTS

The facts, as stated in the *Decision* of the RTC dated 30 July 2021, are as follows:

> The petitioner alleges that it was established as a general professional partnership and registered with the Securities and Exchange Commission (SEC) under SEC Registration No. A1996-6511 dated 18 September 19986. Its primary purpose as stated in Article V of its Articles of Partnership is:
>
> *To provide architectural services requiring application of the science, art or profession of planning sites, planning or designing buildings or architectural structures and their related facilities, interior design and decoration, landscaping, land development by and under the direct supervision of certified architects and other licensed personnel, and do any and all things which a partnership of this kind may lawfully do, including, without limitations, consultation, investigation, evaluation, planning, design, preparation of instruments of services such as drawings and specifications, and the supervision of construction insofar as customarily performed by architects.*

MY

It is licensed to undertake architectural services through its partners who are all duly licensed architects. Being licensed architects, the petitioner's partners are subject to professional tax and have been paying such tax to continue providing professional architectural services. As a [GPP], it is not liable for any income tax but its individual partners are the ones liable for income taxes. From 1998 to the present, respondent City of Makati has assessed the petitioner for LBT as a "contractor" doing architectural services under Sec. 3A.02(g) of the Revised Makati Revenue Code ("**RMRC**").[5] From the second quarter of 2014 until the fourth quarter of 2015, the petitioner was assessed for and paid local business taxes as a "contractor" in the total amount of ₱2,525,103.20, as follows:

Taxable Year	Quarter	Assessment Date	Date Paid	Amount Paid
2014	Second	March 5, 2014	April 21, 2014	₱ 284,933.56
	Third	June 3, 2014	July 21, 2014	284,933.56
	Fourth	September 3, 2014	October 20, 2014	284,933.56
2015	First	January 20, 2015	January 29, 2015	417,575.63
	Second	May 21, 2015	May 25, 2015	417,575.63
	Third	June 3, 2015	July 20, 2015	417,575.63
	Fourth	September 2, 2015	October 20, 2015	417,575.63
	Total			₱ 2,525,103.20

On 15 March 2016 or within two (2) years from the payment of the LBT for the second quarter of 2014 until the fourth quarter of 2015, the petitioner filed its administrative claim for refund. The respondent City of Makati denied the petitioner's claim for refund. In a letter dated 29 May 2017, the City of Makati held that the petitioner's liability as "contractor" is pursuant to Sec. 143(e) of the Local Government Code ("**LGC**") and imposed under Sec. 3A.02(g) of the RMRC.

Petitioner additionally avers that the billing statements were issued pursuant to its application for a business permit for years 2014 and 2015[6] and that it was constrained to pay the taxes indicated in the billing statements so that respondent will issue its business permits or not revoke them.[7]

MT

[5] The Revised Makati Revenue Code, City Ordinance No. 2004-A-025.
[6] Petition for Review, par. 18; *Rollo*, p. 10.
[7] Petition for Review, par. 19; *Rollo*, p. 10.

PROCEEDINGS BEFORE THE COURT *A QUO*

The uncontroverted narration of petitioner of the proceedings before the RTC follows:

Petitioner filed a *Petition for Review* before the RTC on 18 July 2017, pursuant to Section 196 of the LGC. The case was docketed as Civil Case No. R-MKT-02275-CV and was raffled to RTC Makati Branch 61.

On 9 August 2017, respondents filed their *Answer with Affirmative Defenses*. Petitioner filed its *Reply* on 25 August 2017. On 27 December 2017, petitioner received a *Notice* setting the case for pre-trial on 13 March 2018 and ordering both parties to submit their respective pre-trial briefs.

Petitioner filed a *Manifestation*, stating that it has filed its *Pre-Trial Brief* on 8 March 2018. Along with petitioner's *Pre-Trial Brief* are the *Judicial Affidavits* of witnesses Carlos Simon T. Casas and Bernadith Bersabe Nañaga. The RTC received respondents' *Pre-Trial Brief* on 8 March 2018.

On 13 March 2018, petitioner filed a *Motion for Leave of Court to File Additional Judicial Affidavit and Supplemental Pre-Trial Brief*, together with the *Supplemental Pre-Trial Brief* and *Judicial Affidavit* of witness Barbra Anne C. del Castillo.

During the 13 March 2018 hearing, both parties were referred for mediation. The parties appeared before the Philippine Mediation Center for the mandatory court-annexed mediation, but they failed to arrive at an amicable settlement.[8] Likewise, the Judicial Dispute Resolution was unsuccessful.[9] Thereafter, the case was re-raffled to RTC Makati Branch 145.

The preliminary conference was conducted on 20 February 2019 and 22 March 2019.

The pre-trial was held on 3 May 2019. The RTC then issued a *Pre-Trial Order*. Following petitioner's motion, the *Pre-Trial Order* was amended in an *Order* dated 4 June 2019.

MW

---

[8] Record, Vol. 3, p. 961.
[9] Id., at p. 968.

Petitioner presented its witnesses Mr. Carlos Simon T. Casas during the 4 June 2019 hearing, Ms. Bernadith B. Nañaga during the 13 September 2019 hearing, and Ms. Barbra Anne C. Del Castillo during the 27 September 2019 hearing.

Petitioner filed its *Formal Officer of Evidence* dated 14 October 2019, to which respondents filed their *Comment/Opposition to Formal Offer of Evidence* on 24 October 2019. The RTC then issued an *Order* dated 25 October 2019 admitting the documentary evidence of petitioner.

During the 15 November 2019 hearing, respondents presented their witness Mr. Felito A. Manrique. Petitioner moved for the continuance of the presentation of witness, which was granted by the RTC and was scheduled on 20 February 2020, reset to 3 April 2020, 20 August 2020, and finally to 22 October 2020. During the 22 October 2020 videoconferencing hearing, petitioner cross-examined respondents' witness.

On 5 November 2020, petitioner received respondents' *Formal Offer of Evidence*; thus, petitioner filed its *Comment/Objection* on 10 November 2020. On 11 November 2020, the RTC issued an *Order* admitting respondents' documentary evidence. Petitioner and respondents then filed their *Memorandum* on 18 December 2020 and 16 December 2020, respectively.

On 14 October 2021, petitioner received the *Decision* granting the *Petition* and ordering the refund in the amount of ₱835,151.26. The dispositive portion reads:

> **CONSEQUENTLY**, this Court hereby renders judgment ordering the respondents to refund the petitioner the amount of P835,151.26 representing the local business taxes that were erroneously collected from the petitioner for the 3rd and 4th quarters of taxable year 2015.
>
> **SO ORDERED**.

Respondents then filed their *Motion for Reconsideration* on 17 September 2021, to which the petitioner filed a *Comment/Opposition* on 22 October 2021.

On 23 November 2021, Petitioner received the *Order* granting respondents' *Motion for Reconsideration*. The dispositive portion is quoted below:

MV

> **WHEREFORE**, in view of the foregoing, the defendants' Motion for Reconsideration dated 17 September 2021 is hereby **GRANTED**. The Decision of this Court dated 30 July 2021 is **SET ASIDE** and a new one issued **DENYING** the petition.
>
> **SO ORDERED.**

The RTC ratiocinated that assessments were issued by the Office of the City Treasurer for the second quarter of 2014 to the fourth quarter of 2015. As such, the RTC applied Section 195 of the LGC and stated that petitioner failed to comply with the requirement of assailing the assessment by way of a letter-protest or claim for refund within 60 days from the assessment and to bring the action in court within 30 days from the local treasurer's denial of the claim.

PROCEEDINGS BEFORE THIS COURT

On 4 January 2022, petitioner filed a *Petition for Review*[10] before this Court against the *assailed Order* of the RTC.

In a *Resolution* dated 16 February 2022,[11] this Court required respondents to file their comment to the *Petition for Review* within five (5) days from receipt of the said resolution. Respondents failed to file their comment.[12]

The case before the Court was deemed submitted for decision on 14 June 2022.[13]

Hence, this *Decision.*

ISSUES

Petitioner raised the following assignment of errors in its *Petition for Review*:

> A.
>
> WHETHER OR NOT THE RTC MAKATI ERRED WHEN IT HELD THAT PETITIONER WAS ISSUED ASSESSMENTS BY THE OFFICE OF THE CITY TREASURER OF MAKATI.

hm

[10] *Supra* at note 1.
[11] *Rollo*, p. 342.
[12] Records Verification dated 11 May 2022; *Rollo*, p. 343.
[13] Resolution dated 14 June 2022, *Rollo*, p. 344.

B.
WHETHER OR NOT THE RTC MAKATI ERRED WHEN IT APPLIED SECTION 195 (PROTEST OF ASSESSMENT) OF THE LGC INSTEAD OF SECTION 196 (CLAIM FOR REFUND OR TAX CREDIT) OF THE LGC.

C.
WHETHER OR NOT THE RTC MAKATI ERRED IN GRANTING THE RESPONDENTS' MOTION FOR RECONSIDERATION, SETTING ASIDE THE DECISION, AND DENYING PETITIONER'S CLAIM FOR REFUND IN THE AMOUNT OF PHP 2,525,103.20.

PETITIONER'S ARGUMENTS

Petitioner argues that the billing assessments sent to it by respondents are not the assessments contemplated by Section 195 of the LGC, and relatedly, under Section 7B.14 of the RMRC.[14] Invoking the phraseology of Section 195 of the LGC, petitioner posits that an assessment must be triggered or preceded by a "finding", which presupposes an examination of the taxpayer.[15] Petitioner submits that the billing assessments were only issued in relation to its application for renewal of its business permits and not issued or made after an examination.[16] Petitioner further points to the fact that it did not receive any letter of authority or notification letter. Petitioner likewise points that the Local Treasury Operations Manual ("**LTOM**") issued by the Bureau of Local Government Finance ("**BLGF**") was not followed.[17]

Petitioner further argues that the RTC erred in applying the 30-day period under Section 195 of the LGC within which petitioner must file its judicial claim. According to petitioner, it has a two-year period under Section 196 of the LGC, which it contends to be the applicable provision.[18]

Petitioner also asseverates that it is a GPP, and hence, not subject to the tax imposed under Section 3A.02(g) of the RMRC.[19] According to petitioner, it is also not an "owner or operator of business establishment" but is engaged only in architectural services.[20]

---

[14] Petition for Review, par. 48; Rollo, p. 16.
[15] Petition for Review, pars. 49-50; *Rollo*, pp. 16-17.
[16] Petition for Review, pars. 51 and 63; *Rollo*, p. 17 and 22.
[17] Petition for Review, pars. 53-62; *Rollo*, pp. 18-22.
[18] Petition for Review, pars. 69-73; *Rollo*, pp. 25-26.
[19] Petition for Review, pars. 74-81; *Rollo*, pp. 27-29.
[20] Petition for Review, pars. 82-96; *Rollo*, pp. 29-34.

RULING OF THE COURT

The *Petition* is meritorious.

The Court has jurisdiction over the instant Petition.

Before the Court delves into the merits of the case, We shall first resolve whether the subject *Petition* was timely filed and whether the Court has jurisdiction to take cognizance of this case.

Section 7(a)(3) of Republic Act ("**RA**") No. 9282,[21] amending RA No. 1125,[22] provides that:

> Section 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ... ...
>
> **(3)** Decisions, orders or resolutions of the **Regional Trial Court in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;**[23]

The above provision is implemented by Section 3(a)(3), Rule 4 of the RRCTA,[24] to wit:

> Section 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> ... ...
>
> (3) Decisions, resolutions or orders of the **Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.**[25]

[21] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, 30 March 2004.
[22] An Act Creating the Court of Tax Appeals, 16 June 1954.
[23] Emphasis supplied.
[24] A.M. No. 05-11-07-CTA, 22 November 2005.
[25] Emphasis supplied.

The records show that on 23 November 2021, petitioner received the *assailed Order* of the RTC granting respondents' *Motion for Reconsideration.*[26] Under Section 3(a), Rule 8[27] of the RRCTA, petitioner had thirty (30) days from receipt of the *assailed Order* on 23 November 2021, or until 23 December 2021, to file a *Petition for Review* before the CTA.

However, pursuant to CTA Circular No. 02-2021,[28] the Court suspended the filing of all pleadings and other court submissions from 21 December 2021 to 3 January 2022. Accordingly, the filing periods of all pleadings and other court submissions that fell due during the said period were extended for seven (7) calendar days counted from 4 January 2022. Thus, petitioner timely filed the subject *Petition for Review*[29] before this Court on 4 January 2022.

Having settled that the *Petition* was timely filed, We likewise rule that the CTA has the requisite jurisdiction to take cognizance of this *Petition* under Section 3(a)(3), Rule 4[30] of RRCTA.

We now proceed to the merits of the case.

The RTC Makati erred in setting aside its Decision dated 30 July 2021, and in applying Section 195, instead of Section 196 of the LGC.

Sections 195 and 196 of the LGC govern the remedies of a taxpayer for taxes collected by local government units, except for real property taxes.[31]

MN

[26] *Rollo*, p. 29.
[27] Section 3. Who May Appeal; Period to File Petition. — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.
[28] dated 21 December 2021.
[29] *Supra* at note 1.
[30] Section 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.
[31] *International Container Terminal Service, Inc., vs. The City of Manila, et al.*, G.R. No. 185622, 17 October 2018.

Section 195 of the LGC provides:

> *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**.[32]

While Section 196 states:

> *Section 196. Claim for Refund of Tax Credit.*— No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. **No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit**.[33]

Petitioner alleges that it availed of the remedy under Section 196 of the LGC. It claims that the "billing assessments" involved in this case cannot be the notice of assessment contemplated under Section 7B.14(b) of the RMRC and Section 195 of the LGC.[34] Section 7B.14 (b) is a verbatim restatement of Section 195.[35]

[32] Emphasis and underscoring supplied.
[33] Emphasis and underscoring supplied.
[34] Petition for Review, par. 48; *Rollo*, p. 15.
[35] *Section 7B.14. Taxpayer's Remedies.* —
(b) Protest of Assessment. — When the City 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 on 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 City Treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The City Treasurer shall decide the protest within sixty (60) days from the time of its filing. If the City Treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or

Petitioner proceeds to invoke the wordings of Section 195 of the LGC. According to petitioner, the language of Section 195 clearly shows that, before a notice of assessment may be issued, there must first be a "finding" by the local treasurer that the correct taxes, fees, or charges have not been paid; and that the "finding" should arise after a duly authorized examination or inspection of the books and records of petitioner by the local treasurer pursuant to a letter of authority to examine its books and records.[36]

Petitioner claims that in this case, the billing assessments issued by the Business Tax Division of Makati City were in relation to petitioner's application for renewal of its business permits for the years involved; that they were not issued or made after an examination of the books and records of petitioner and a finding by the local treasurer that incorrect taxes were paid; that petitioner did not receive any letter of authority or notification letter for the conduct of an audit of its books; and that it did not receive prior notice of assessment from the City Treasurer.

Petitioner further claims that, in relation to the finding that incorrect taxes were paid, Section 171 of the LGC provides for the procedure for the conduct of examination of books of accounts and pertinent records of business; that under Article 456 of the Implementing Rules and Regulations of the LGC, the BLGF issued the LTOM outlining the rules and procedures for the conduct of examination of books of accounts; that a "Letter of Appointment" shall be signed by the local treasurer indicating the date of examination, the documents to be examined, the years covered and the names and signatures of the Examination Team; that if there is a finding of deficiency tax, the local treasurer shall issue a signed "Letter of Assessment/Assessment Notice;" that in case the taxpayer fails to respond, a Second and Third Assessment Notices may be sent before a Final Demand for Payment may be issued; and that the local treasurer is mandated to issue a "Letter of Confirmation/Certificate of Confirmation/Certificate of Examination" to signify the completion of the examination conducted.[37]

---

partially the assessment. However, if the City Treasurer finds 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-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

[36] Petition for Review, pars. 49-50; *Rollo*, pp. 16-17.

[37] Petition for Review, pars. 53-59; *Rollo*, pp. 18-22.

Petitioner points out that none of the above procedures were followed by respondents.

Among petitioner's observations are (1) that there is no Letter of Authority/Appointment that was received by petitioner;[38] (2) that there is no Letter of Assessment/Assessment Notice;[39] (3) a Second Assessment Notice and a Third Assessment Notice were not issued;[40] (4) a Final Demand for Payment was likewise not issued;[41] and (5) a Letter of Confirmation/Certificate of Confirmation/Certificate of Examination was not issued.[42]

Hence, the billing assessments for the 2nd quarter of 2014 to the 4th quarter of 2015, which were issued by respondents in relation to petitioner's renewal of its business permits, are not the assessments contemplated under Section 195 of the LGC.[43]

We find petitioner's arguments meritorious.

In the case of *City of Manila vs. Cosmos Bottling Corp. (Cosmos Bottling)*, cited in *International Container Terminal Service, Inc., vs. The City of Manila et al. (ICTSI)*,[44] the Supreme Court distinguished between Sections 195 and 196, *viz.*:

> The first provides the procedure for contesting an assessment issued by the local treasurer; whereas the second provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.

[38] Petition for Review, par. 56; *Rollo*, p. 19.
[39] Petition for Review, par. 58; *Rollo*, p. 20.
[40] *Ibid.*
[41] *Ibid.*
[42] Petition for Review, par. 59; *Rollo*, p. 19.
[43] Petition for Review, pars. 51 and 63; *Rollo*, p. 17 and 22.
[44] *International Container Terminal Service, Inc., vs. The City of Manila, et al.*, G.R. No. 185622, October 17, 2018, citing *City of Manila vs. Cosmos Bottling Corp.*, G.R. No. 196681, June 27, 2018.

Obviously, **the application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for non payment of the correct taxes, fees or charges.** Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.

On the other hand, **Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him.** The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.

Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended inaction by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription.

Additionally, Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place. This is not to say that an application for refund can never be precipitated by a previously issued assessment, **for it is entirely possible that the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal.** Thus, under such circumstance, **the taxpayer may**

> **<u>subsequently direct his claim pursuant to Section 196 of the LGC</u>**.[45]

The ruling of the Supreme Court in *Cosmos Bottling* and *ICTSI* is clear and unequivocal. If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the LGC. Thus, it must file a written protest with the local treasurer within 60 days from receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest.

If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid.

On the other hand, if *no assessment notice* is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.

Here, petitioner correctly invoked that these billing statements/assessments do not constitute "assessments" within the ambit of Section 195 of the LGC. Hence, Section 196 of the LGC governs petitioner's claim for refund from the second quarter of 2014 to the fourth quarter of 2015.

To reiterate, the billing statements/assessments were issued by respondents after petitioner's renewal of its business permit for the years 2014 and 2015. Petitioner's Head of Finance and Accounting, Bernadith Bersabe Nañaga, testified on direct examination by way of her *Judicial Affidavit* that the billing statements were in fact issued for local business taxes covering the years 2014 and 2015, and not for deficiency taxes, *viz.*:[46]

---

[45] Emphasis and underscoring supplied.
[46] *Rollo*, p. 93; Judicial Affidavit of Bernadith Bersabe Nañaga.

6. Question: So what is this case all about?

Answer: This case involves the assessment of the Partnership for LBT as a contractor, even if the Partnership is not engaged in such business. In this regard, we were issued several billing statements for local business taxes (LBT) as a contractor from the second quarter of 2014 until the fourth quarter of 2015. Since the City of Makati will not issue business permits without payment of the LBT, the partnership was forced to pay the LBT even though I knew that as a general professional partnership, we cannot be assessed as a contractor.

7. Question: You mentioned that the Partnership was issued billing statements by the City of Makati from the second quarter of 2014 until the fourth quarter of 2015. What do these billing statements require?

Answer: These billing statements require the Partnership to pay LBT allegedly for its revenues from architectural services. They are actually incorrect.

It is clear from the foregoing that there was no prior investigation or examination of petitioner's books of accounts that resulted in a "finding" of deficiency taxes. Neither was there any letter of authority authorizing the examination of petitioner's books before the billing statements/assessments were issued. In fine, their issuance was not triggered or preceded by a "finding" of deficiency or incorrect tax payments by the local treasurer after an examination of its books was conducted.

Given the foregoing, petitioner properly applied Section 196 in the present claim for refund. To reiterate, the billing statements/assessments are not the assessments contemplated under Section 195 of the LGC. Indeed, the court *a quo* erred in granting respondents' *Motion for Reconsideration* and setting aside its *Decision* dated 30 July 2021 and in applying Section 195, instead of Section 196 of the LGC.

Petitioner is purely engaged in the practice of its profession.

Having ruled that the court *a quo* erred in setting aside its Decision dated 30 July 2021, We shall now proceed to determine whether petitioner is entitled to a refund, considering the requirements for refund under Section 196 of the LGC.

As culled from the allegations of petitioner and from the *Decision*[47] of the court *a quo* dated 30 July 2021, respondents do not dispute that petitioner is a GPP. It is not liable for any income tax, but its individual partners who are all licensed architects are subject to individual income taxes. Petitioner was not taxed as GPP but as the owner or operator of a business rendering or offering services for interior decorating and landscaping. Respondents anchor their claim on their impression, upon review of petitioner's financial statements for 2013 and 2014 during the renewal of its business permit, that petitioner was not purely engaged as a GPP but that it was also engaged in services other than in the exercise of its profession. Respondents contend that petitioner's Statement of Comprehensive Income manifests that it was maintaining a significant number of laborers and construction workers. Respondents did not present any proof that petitioner employed laborers and construction workers. On the other hand, petitioner presented evidence to prove that it is not involved in interior decoration but in interior design and that they do not employ laborers and construction workers.

As observed by the court *a quo,* the pieces of evidence do not show that petitioner is engaged in interior decorating. It is involved in interior design and landscaping, which, as provided in RA 9266 and its IRR, as adequately alleged, and proven by petitioner, are encompassed by the practice of architecture.

Petitioner is entitled to the grant of refund in the amount of ₱835,151.26.

Considering that petitioner's remedy falls under Section 196 of the LGC and further considering that petitioner is not

MM

[47] Decision dated 30 July 2021 in Civil Case No. R-MKT-17-02275-CV, *Rollo*, pp. 49-61.

engaged in any activity other than the practice of architecture, We conclude that petitioner is entitled to its claim for refund.

We rule that petitioner's payments of the following billing assessments/statements for LBT imposed under Section 3A.02(g) of the RMRC were erroneous:

Taxable Year	Quarter	Assessment Date	Date Paid	Amount Paid	Deadline for Judicial Claim
2014	Second	5 March 2014[48]	21 April 2014[49]	₱ 284,933.56	21 April 2016
	Third	3 June 2014[50]	21 July 2014[51]	284,933.56	21 July 2016
	Fourth	3 September 2014[52]	20 October 2014[53]	284,933.56	20 October 2016
2015	First	20 January 2015[54]	29 January 2015[55]	417,575.63	29 January 2017
	Second	21 May 2015[56]	25 May 2015[57]	417,575.63	25 May 2017
	Third	3 June 2015[58]	20 July 2015[59]	417,575.63	20 July 2017
	Fourth	2 September 2015[60]	20 October 2015[61]	417,575.63	20 October 2017
	Total			₱2,525,103.20	

In the *ICTSI* case, the Supreme Court emphasized that:

> To be entitled to a refund under Section 196 of the Local Government Code, the taxpayer must comply with the following procedural requirements: ***first,*** file a written claim for refund or credit with the local treasurer; and ***second***, file a judicial case for refund within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.

In essence, the prescriptive period for the filing of a judicial action by the taxpayer is reckoned from the date of the payment of the tax or from the date the taxpayer is entitled to a refund or credit.

---

[48] Petitioner's Exhibit "F"; Billing statement dated March 5, 2014.
[49] Petitioner's Exhibit "H"; Official receipt dated April 21, 2014.
[50] Petitioner's Exhibit "F-1"; Billing Statement dated June 3, 2014.
[51] Petitioner's Exhibit "H-1"; Official receipt dated July 21, 2014.
[52] Petitioner's Exhibit "F-2"; Billing Statement dated September 3, 2014.
[53] Petitioner's Exhibit "H-2"; Official receipt dated October 20, 2014.
[54] Petitioner's Exhibit "G"; Billing Statement dated January 20, 2015.
[55] Petitioner's Exhibit "I"; Official receipt dated January 29, 2015.
[56] Petitioner's Exhibit "G-1"; Billing Statement dated May 21, 2015.
[57] Petitioner's Exhibit "I-1"; Official receipt dated May 25, 2015.
[58] Petitioner's Exhibit "G-2"; Billing Statement dated June 3, 2015.
[59] Petitioner's Exhibit "I-2"; Official receipt dated July 20, 2015.
[60] Petitioner's Exhibit "G-3"; Billing Statement dated September 2, 2015.
[61] Petitioner's Exhibit "I-3"; Official receipt dated October 20, 2015.

Here, petitioner paid the billing assessments/statements for LBT on 21 April 2014, 21 July 2014, 20 October 2014, 29 January 2015, 25 May 2015, 20 July 2015, and 20 October 2015. On 15 March 2016, petitioner filed an administrative claim for refund, which respondent City of Makati denied in a letter dated 29 May 2017.[62] On 18 July 2017, it filed a petition in relation to the claim for refund amounting to ₱2,525,103.20 with the RTC Makati under Section 196 of the LGC.[63]

As previously found by the court *a quo* in the reversed *Decision,* petitioner should have filed its judicial claim for refund as early as 20 April 2016, under Section 196 of the LGC. However, it filed the petition before the RTC only on 18 July 2017 or more than two (2) years from 21 April 2014. Based on the above schedule, the only payments it made within the two (2) year prescriptive period are those for the assessments that were paid on 20 July 2015 and 20 October 2015. Hence, any cause of action that petitioner may have, insofar as its erroneous LBT payments for the second quarter of 2014 to the second quarter of 2015 are concerned, has already *prescribed,* considering the clear language of Section 196, which states:

> *Section 196. Claim for Refund of Tax Credit.* — ... No case or proceeding shall be entertained in **<u>any court</u>** after the expiration of **<u>two (2) years</u>** from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.[64]

Thus, this Court finds petitioner entitled to the grant of refund in the reduced amount of **₱835,151.26** representing the LBT erroneously collected from petitioner for the 3rd and 4th quarters of the taxable year 2015.

The ruling of the RTC in its *Decision* dated 30 July 2021 is reiterated with approval, *viz.*:

> The respondents erred, therefore, when they assessed the petitioner LBT under Sec. 3A.02(g) of the RMRC for rendering or offering services for interior decorating and landscaping. The pieces of evidence do not show that the petitioner is engaged in interior decorating. It is involved in interior design and landscaping, which, as provided in R.A. No. 9266 and its IRR, are encompassed by the practice of architecture. Though the collection from and the payment by

[62] Petition for Review, Pars. 21 and 22, *Rollo*, pp. 11-12
[63] Par. 23, *id.*
[64] Emphasis and underscoring supplied.

> the petitioner of the LBT for the 2nd quarter of 2014 to the 2nd quarter of 2015 was erroneous, it is clear from Sec. 196 of R.A. No. 7160 that any judicial action for the recovery thereof has already prescribed.
>
> **CONSEQUENTLY**, this Court hereby renders judgment ordering the respondents to refund the petitioner the amount of ₱835,151.26 representing the local business taxes that were erroneously collected from the petitioner for the 3rd and 4th quarters of taxable year 2015.

Tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government. This is because taxes are the lifeblood of the nation.[65] The Court emphasizes that while tax refunds are strictly construed against the taxpayer, the Government should not resort to technicalities and legalisms, much less frivolous appeals, to keep the money it is not entitled to at the expense of the taxpayers.[66]

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **PARTIALLY GRANTED**. The assailed Order of the RTC Makati in Civil Case No. R-MKT-17-02275-CV dated 4 November 2021 is **REVERSED** and **SET ASIDE,** and its Decision dated 30 July 2021 is **REINSTATED.**

Accordingly, respondents are **ORDERED** to refund or credit in favor of petitioner Casas+ Architects the reduced amount of ₱835,151.26 representing its erroneously or illegally paid local business tax for the 3rd and 4th quarters of the taxable year 2015.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

[65] *Eastern Telecommunications Phil., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 168856, 29 August 2012, 693 SCRA 464-476.
[66] *Commissioner of Internal Revenue vs. Co*, G.R. No. 241424, 26 February 2020.

ATTESTATION

I attest 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 Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
2nd Division Acting Chairperson

hw

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, 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 Division.

ROMAN G. DEL ROSARIO
Presiding Justice