REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***THIRD DIVISION***

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| **PUBLIC SAFETY MUTUAL BENEFIT FUND, INC., Now represented by its President JOSE CHIQUITO M. MALAYO (formerly represented by its then President, JOEL NAPOLEON M. CORONEL),** *Petitioner,* | **CTA AC No. 310**<br><br>Members:<br><br>**MANAHAN**, *Chairperson,*<br>**REYES-FAJARDO**, *and*<br>**ANGELES**, *JJ.* |
| -*versus*- | |
| **ROSETTE F. LAQUIAN, CITY TREASURER, SAN JUAN CITY** *Respondent.* | Promulgated:<br>DEC 19 2024<br>3:45 p.m. |

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# DECISION

**MANAHAN, *J.*:**

## THE CASE

In this Petition filed on November 23, 2023, petitioner Public Safety Mutual Benefit Fund, Inc. (PSMBFI) prays for the Court to set aside the Decision[1] dated September 5, 2023 and the Resolution[2] dated October 20, 2023, respectively, of the Regional Trial Court, City of Pasig, Branch 160 (San Juan Station), Metro Manila (Lower Court). PSMBFI further prays for the cancellation of the Tax Order of Payment dated January 18, 2023 and for the refund of the Local Business Tax (LBT) in the amount of Fifteen Million Four Hundred Fourteen Thousand Five Hundred Forty and 74/100 (Php15,414,540.74) paid for the year 2023.

For easy reference, the dispositive portion of the assailed Decision reads:

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[1] Division Docket, pp. 32-43.
[2] Division Docket, pp 44-46. cm

> "**WHEREFORE**, premises considered, the Petition is hereby **DISMISSED**. The Tax Order of Payment dated 18 January 2023 issued by the City Treasurer is hereby affirmed.
>
> **SO ORDERED.**"[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

> "**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is denied for lack of merit.
>
> **SO ORDERED**."[4]

## THE PARTIES

PSMBFI is a non-stock, non-profit domestic corporation organized as a mutual benefit association with business address at No. 318-320 corner 1st and 2nd West Crame Sts., Barangay West Crame, Santolan Road, San Juan City.[5]

Respondent Rosette F. Laquian (now Maria Imelda S. Untal-De Castro)[6] is the City Treasurer of San Juan City.[7]

## THE FACTS

On January 18, 2023, the Office of the City Treasurer of San Juan City issued a Tax Order of Payment[8] (TOP) dated January 18, 2023 against PSMBFI, in the amount of Fifteen Million Five Hundred Ninety Six Thousand Nine Hundred Sixty Three and 72/100 (Php15,596,963.72). PSMBFI received the TOP on the same date.

On January 20, 2023,[9] PSMBFI paid the amount of Fifteen Million Five Hundred Ninety Six Thousand Nine Hundred Sixty Three and 72/100 (Php15,596,963.72) before the Office of the City Treasurer of San Juan.

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[3] See Note 1, p. 43.
[4] See Note 2, p. 46.
[5] Petition, The Parties, Docket, p. 7.
[6] Comment (To the Petition for Review dated 23 November 2023), Docket, p. 160.
[7] See Note 3, p. 8.
[8] Lower Court Docket, p. 71.
[9] Official Receipt No. SJ 1320382, Lower Court Docket, p. 72.

On March 3, 2023,[10] PSMBFI filed before the Office of the City Treasurer of San Juan an "*Administrative Protest with Claim for Refund Tax Order Payment (TOP 7) dated 18 January 2023, Local Business Tax PSMBFI for the year 2023*" dated February 28, 2023.

On May 29, 2023,[11] PSMBFI filed a Petition before the Lower Court.

On September 5, 2023, the Lower Court rendered the assailed Decision.

On September 26, 2023, PSMBFI filed its Motion for Reconsideration (For the Petitioner)[12] before the Lower Court.

On October 20, 2023, the Lower Court issued the assailed Resolution.

On November 23, 2023,[13] PSMBFI filed the instant Petition.

On December 21, 2023, the Court issued a Minute Resolution[14] requiring respondent to file her Comment.

On April 1, 2024, respondent City Treasurer of San Juan, through Maria Imelda S. Untal-De Castro – Officer-in-charge (OIC) of the said office, filed her Comment (To the Petition for Review dated 23 November 2023).[15]

On April 29, 2024,[16] the Court issued a Minute Resolution submitting the case for decision.

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[10] Lower Court Docket, pp. 22-34.
[11] Lower Court Docket, pp. 1-18.
[12] Lower Court Docket, pp. 177-186.
[13] Division Docket, pp. 5-27.
[14] Division Docket, p. 155.
[15] Division Docket, pp. 160-181.
[16] Division Docket, p. 185.

## THE ISSUES

PSMBFI enumerated the following Assignment of Errors in its Petition:

> "a. The Trial Court erred in disregarding PSMBFI as a mutual benefit association which is not subject to local business tax;
>
> b. The Trial Court erred in disregarding that PSMBFI is a mutual benefit association under the:
>
> (i) Corporation Code of the Philippines (CCP);
> (ii) Articles of Incorporation (AAI) and By Laws (BL);
> (iii) Section 30, National Internal Revenue Code (NIRC) and
> (iv) Insurance Code of the Philippines (ICP);
>
> c. The Trial Court erred in disregarding that even the San Juan City Revenue Code (*Article B, Section 1B.01*) defers to the definition of 'insurance company' in 'applicable laws or rules and regulations' such as the CCP, AAI & BL, NIRC, and ICP. When these applicable laws, exclude an MBA such as PSMBFI from the definition of an 'insurance company', thus, not a 'financial institution', PSMBFI is not liable for LBT;
>
> d. The Trial Court erred in disregarding the DOF BLGF Circular No 2-93 and Letter-Opinion dated 14 January 2016 which exclude an MBA from the definition of 'insurance companies' referred to in Section 143 of the LGC of 1991 and Section 2J.02 (I) of the City of San Juan Revenue Code of 2013;
>
> e. The Trial Court's issuance of the subject TOP is violative of due process as it failed to provide PSMBFI the legal basis of the assessment more so, when prior to 2009, San Juan City was imposing LBT on PSMBFI based on the gross receipts from its leasing activity or as a commercial entity only;"[17]

To encapsulate, the Court shall resolve the issue of whether PSMBFI is liable to pay LBT under Section 143 of the LGC.

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[17] Petition, Division Docket, pp. 16-17.

## THE RULING

### The Court has jurisdiction over the case

The Court shall first determine whether it has jurisdiction over the case.

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 canceling 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**." *(Emphasis supplied)*

Based on the above provision, the taxpayer has sixty (60) days from receipt of the notice of assessment to file a written protest. Consequently, the local treasurer has sixty (60) days to decide on the protest. Meanwhile, the taxpayer shall have thirty (30) days to file an appeal from (1) the receipt of the denial of the protest; or (2) from the lapse of the sixty (60)-day period for the local treasurer to decide on the protest. Failure to file an appeal within the prescribed period makes the assessment conclusive and unappealable.

Here, PSMBFI received the TOP on January 18, 2023. Counting sixty (60) days therefrom, PSMBFI had until March 20, 2023[18] to file its written protest. Considering that PSMBFI

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[18] The 60th day falls on March 19, 2023, a Sunday.

filed its written protest on March 3, 2023, the same was timely filed.

Consequently, respondent City Treasurer had sixty (60) days from March 3, 2023, or until May 2, 2023, within which to decide on the protest. Considering that respondent City Treasurer failed to act on the protest, PSMBFI had thirty (30) days from May 2, 2023, or until June 1, 2023, within which to file an appeal. Considering that PSMBFI filed its appeal before the Lower Court on May 29, 2023, the same was also timely filed.

It is noteworthy that PSMBFI's written protest also incorporates a claim for refund. With respect to the refund claim, Section 196 of the LGC provides:

> "**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."

In *City Treasurer of Manila v. Philippine Beverage Partners, Inc., substituted by Coca-Cola Bottlers Philippines,*[19] the Supreme Court addressed the scenario where the taxpayer both assails an assessment and files a claim for refund, as follows:

> "To stress, where an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' within 60 days from receipt of the notice of assessment, and thereafter bring suit in court within 30 days from either decision or inaction by the local treasurer.
>
> Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One*, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two*, bring an action in court

[19] G.R. No. 233556, September 11, 2019.

> within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax."[20]

Guided by the doctrine laid down in the above *Philippine Beverage* case, PSMBFI timely filed its written protest and appeal. Hence, the Court has jurisdiction over the instant case.

**PSMBFI is not liable for LBT**

In this regard, Sections 143(f) and 151, respectively, of the LGC provide:

> "**Section 143**. *Tax on Business*. - The municipality may impose taxes on the following businesses:
>
> xxx xxx xxx
>
> (f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.
>
> xxx xxx xxx"

> "**Section 151**. *Scope of Taxing Powers*. - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes."

Correlating the above-quoted provisions, the LGC empowers a city to impose LBT on financial institutions.

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[20] *Id.*, citing *City of Manila and Office of the City Treasurer of Manila v. Cosmos Bottling Corporation*, G.R. No. 196681, June 27, 2018.

Pursuant to its power to impose LBT on financial institutions, the City of San Juan, through the Office of the Sangguninang Panlungsod, enacted City Ordinance No. 91, Series of 2013, otherwise known as the "City of San Juan Revenue Code of 2013, as amended" (City Ordinance).

Section 1B.01, Article B of the City Ordinance defined banks and other financial institutions, as follows:

> "*Banks and Other Financial Institutions* – include non-bank financial intermediaries, lending investor, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as define[d] under applicable laws and regulations thereunder."

In ruling against PSMBFI, the Lower Court categorized PSMBFI as a financial institution engaged in insurance business, as follows:

> "Here, petitioner realizes gross receipts from the contribution of members to the equity plan (insurance plan), premiums from other insurance plans, investment earnings and other incomes. Thus, respondent asserts that petitioner is doing an insurance business which in essence is an insurance company outside the Insurance Code. And, being a mutual benefit association *per se* does not mean that it is not engaged in the insurance business like insurance companies. Even assuming that it is not, respondent adds that being a mutual benefit association does not mean that it may not also fall under the term 'financial institution.'
>
> It cannot be disputed that the respondent is authorized to impose local business taxes subject only to the parameters and limitations enumerated above. The assailed TOP was issued by respondent consistent with its findings that the petitioner is a financial institution generating income from its other activities not otherwise exempted under the foregoing list.
>
> xxx xxx xxx
>
> In its effort to prove its alleged tax exemption, the petitioner invoked the Corporation Code of the Philippines, Amended Articles of Incorporation and By-Laws, National Internal Revenue Code, as amended, Insurance Code of the Philippines, and even the DOF-BLGF's opinion arguing that it should be treated as a mutual benefit association and should not be subject to local business tax. None of the cited provisions, however, clearly and categorically exempt the petitioner from local business taxation

by reason alone of it being categorized as a mutual benefit association.

First, a reconciliation of the said provisions simply provides that while a mutual benefits association may be exempted from income tax under the NIRC, it is nevertheless taxable on the income of whatever kind and character from any of their activities conducted for profit regardless of the disposition made of such income.

Second, the cited provisions under the Insurance Code similarly do not, in any way, provide that the petitioner is exempted from local business tax. A mere exclusion of a mutual benefit association from the definition of 'insurer' or 'insurance company' obviously cannot justify petitioner's alleged tax exemption. It bears emphasis that the Insurance Code should be read in its entirety.

Section 2(b) of the Insurance Code lists down the transactions that define the term 'doing an insurance business' or 'transacting an insurance business.' As established in the records, the gross receipts of the petitioner include the contribution of members to the Equity Plan (Insurance Plan) and premiums from other insurance plans. It is therefore irrefutable that petitioner is doing an insurance business or transacting an insurance business. It is worth emphasizing that the nature of petitioner's business is determined by its activities and operations, and not merely by its denomination or categorization.

The petitioner cannot use the provisions of the Insurance Code as a shield from tax liability. Petitioner's cited provision even explicitly states that it is only applicable for the purposes of the Insurance Code, which, indubitably, does not extend to local business taxation.

Petitioner likewise failed to provide any evidence to prove its claim that it is exempted from its other generating income activities. While the petitioner presented a BIR Certificate of Tax Exemption, it only shows that the petitioner is exempted from income tax solely on insurance premiums and interest income on loans granted to members. Notably, the very Certificate further provides that the petitioner is liable, however, to all other taxes not enumerated, and that the Certificate is only issued on the basis of the facts and documents as represented and submitted by the petitioner. This is particularly relevant considering the different nature of local business taxation imposed by a different taxing entity.

The petitioner also presented the DOF BLFG letter opinion which effectively granted it exemption from local business tax. While as a general rule, opinion of administrative agencies tasked to implement a law is entitled to great weight, the same cannot and should not derogate upon the LGU's taxing powers." cem

The Court shall now determine whether PSMBFI is an entity exempted from payment of LBT as a Mutual Benefit Association.

Section 403, Chapter VII of Republic Act (RA) No. 10607, otherwise known as the *Insurance Code, as amended,* defines a Mutual Benefit Association as follows:

> "Section 403. Any society, association or corporation, without capital stock, formed or organized not for profit but mainly for the purpose of paying sick benefits to members, or of furnishing financial support to members while out of employment, or of paying to relatives of deceased members of fixed or any sum of money, irrespective of whether such aim or purpose is carried out by means of fixed dues or assessments collected regularly from the members, or of providing, by the issuance of certificates of insurance, payment of its members of accident or life insurance benefits out of such fixed and regular dues or assessments, but in no case shall include any society, association, or corporation with such mutual benefit features and which shall be carried out purely from voluntary contributions collected not regularly and/or no fixed amount from whomsoever may contribute, shall be known as a mutual benefit association within the intent of this Code."

Meanwhile, the Insurance Code categorically declares that a Mutual Benefit Association is an exception to the definition of an insurer or an insurance company. Section 190, Chapter III of the said law states:

> "Section 190. For purposes of this Code, the term *insurer* or *insurance company* shall include all partnerships, associations, cooperatives or corporations, including government-owned or -controlled corporations or entities, engaged as principals in the insurance business, **excepting mutual benefit associations**. Unless the context otherwise requires, the term shall also include professional reinsurers defined in Section 288. *Domestic company* shall include companies formed, organized or existing under the laws of the Philippines. *Foreign company* when used without limitation shall include companies formed, organized, or existing under any laws other than those of the Philippines."*(Emphasis supplied)*

Interestingly, even prior to the amendments introduced by RA No. 10607 to the Insurance Code on July 23, 2012, the Department of Finance (DOF) issued DOF Local Finance

Circular No. 2-93 dated June 16, 1993,[21] where a Mutual Benefit Association is also considered as an exception to the definition of insurance companies, thus:

> "*SECTION 1. Coverage.* - (a) As used herein, the term 'insurance companies' shall mean those formed or organized to save any person or persons or other corporations harmless from loss, damage or liability, arising from any unknown or future or contingent event, or to indemnify or to compensate any person or persons or other corporations for any such loss, damage or liability, or to guarantee the performance of or compliance with contractual obligations or the payment of debts of others.
>
> The term 'insurance companies' shall include all individuals, partnerships, associations, or corporations including government-owned or - controlled corporations or entities, engaged as principals in the insurance business, including their branches, *except mutual benefit associations* and purely cooperative insurance associations organized under the laws on cooperatives. The term shall also include professional reinsurers."*(Emphasis supplied)*

Based on the above-quoted provisions, a Mutual Benefit Association is any non-stock, non-profit society, association, or corporation, organized not for profit but mainly for the purpose of giving several benefits to its members whether by fixed dues or assessments, or by issuance of certificates of insurance. Such entity is not considered as an insurer or an insurance company doing insurance business.

In this case, PSMBFI's Amended Articles of Incorporation (AAOI)[22] pertinently reads:

> "Second – That this Fund is formed primarily:
>
> xxx xxx xxx
>
> 3. To provide financial material aid and comforts to members and their families in case of losses, disability, necessities, unemployment, old age as may be authorized by statutes or regulations prescribed by competent authority;

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[21] Prescribing the Guidelines Governing the Power of Municipalities and Cities to impose the Business Tax on Insurance Companies Pursuant to Sections 143(F) and 151 of RA No. 7160, otherwise known as the LGC of 1991, and its Implementing Rules and Regulations (IRR)

[22] Lower Court Docket, pp. 77-80.

4. To provide retirement pension benefits to members and their families; and

5. In general to do such acts and things and to undertake such activities not otherwise prohibited by law which are calculated to help members and necessary for the accomplishment of the purpose for which the fund has been organized."

Based on the above enumerations, PSMBFI's fund is primarily formed for the purpose of giving several benefits to its members, *i.e.*, financial and material aid to members and their families, retirement pension benefits, and other activities calculated to help the members for the accomplishment of the purpose for which the fund was organized. Considering that PSMBFI is a non-stock, non-profit association undertaking the said purposes, PSMBFI fits the definition of a Mutual Benefit Association under Section 403, Chapter VII of the Insurance Code.

Considering that PSMBFI is a Mutual Benefit Association as discussed above, it necessarily follows that it is not an insurer or an insurance company doing insurance business, as provided for under Section 190, Chapter III of the Insurance Code and DOF Local Finance Circular No. 2-93.

As previously discussed, Section 1B.01, Article B of the City Ordinance empowers City of San Juan to impose LBT on banks and other financial institutions, including insurance companies. In fact, the TOP dated January 18, 2023 imposed the subject assessment amount to PSMBFI for being categorized under "Financial Institution – Insurance Companies."[23] However, considering that PSMBFI is not considered as an insurance company under the above-quoted provisions, respondent's imposition of LBT is therefore improper.

In sum, PSMBFI sufficiently proved that it is a non-stock, non-profit Mutual Benefit Association which is primarily formed for the purpose of giving several benefits to its members, within the contemplation of Section 403, Chapter VII of the Insurance Code. Being a Mutual Benefit Association, PSMBFI is not an insurer or an insurance company as provided for under Section 190, Chapter III of the Insurance Code and DOF Local Finance Circular No. 2-93. Therefore, PSMBFI's categorization as an

[23] See Note 8.

insurance company and the consequent imposition of LBT by reason thereof, is improper.

**ACCORDINGLY**, the instant Petition is **GRANTED**. For the above-stated reasons, the subject Tax Order of Payment dated January 18, 2023 is **DECLARED VOID**. Respondent is **ORDERED TO REFUND** the amount of **Fifteen Million Four Hundred Fourteen Thousand Five Hundred Forty and 74/100 (Php15,414,540.74)**, representing petitioner's erroneously or illegally collected Local Business Tax.

**SO ORDERED.**

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

Marian Ivy F. Reyes-Fajardo

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**HENRY S. ANGELES**
Associate Justice

**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.

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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.

**MA. BELEN M. RINGPIS-LIBAN**
Acting Presiding Justice