CTA Form No. 8

22-000588-0012

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA AC NO. 278

SM PRIME HOLDINGS, INC.,
Petitioner,

- versus -

BARANGAY 350, ZONE 35, DISTRICT III, CITY OF MANILA, FELIPE L. FALCON, JR., in his capacity as the Punong Barangay of Barangay 350, Zone 35, District III of the City of Manila, and **DANIELLA RITZ AGUILA**, in her capacity as Barangay Treasurer of Barangay 350, Zone 35, District III of the City of Manila,
Respondents.

NOTICE OF DECISION

To:

GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO
30/F, 88 Corporate Center, Sedeño corner Valero Streets
Salcedo Village, Makati City

ATTY. ROGELIO G. PIZARRO, JR.
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Mr. FELIPE L. FALCON, JR.
Punong Barangay
Barangay Hall, Laguna corner Felix Huertas Streets
Barangay 350, Zone 35, District III
Manila

Ms. DANIELA RITZ AGUILA
Barangay Treasurer
Barangay Hall, Laguna corner Felix Huertas Streets
Barangay 350, Zone 35, District III
Manila

HON. REBECCA A. CUILLEN-UBAÑA
Presding Judge
Thru: Atty. Lovely C. Estrada
Clerk of Court V
Regional Trial Cout
National Capial Judicial Region
Branch 40, Manila

GREETINGS:

You are hereby notified by these presents that on **September 20, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **September 23, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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SM PRIME HOLDINGS, INC., *Petitioner*,

- versus -

BARANGAY 350, ZONE 35, DISTRICT III, CITY OF MANILA, FELIPE L. FALCON, JR., in his capacity as the Punong Barangay of Barangay 350, Zone 35, District III of the City of Manila, and **DANIELLA RITZ AGUILA**, in her capacity as Barangay Treasurer of Barangay 350, Zone 35, District III of the City of Manila, *Respondents*.

CTA AC NO. 278

Members:

DEL ROSARIO, *P.J.*, Chairperson,
BACORRO-VILLENA, and,
CUI-DAVID, *J.J.*

Promulgated:

SEP 20 2024 1:20PM

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DECISION

DEL ROSARIO, *P.J.*:

Before the Court is the Petition for Review[1] filed by SM Prime Holdings, Inc. (SMPHI) on December 1, 2022 praying that the Court reverse and set aside the Decision dated September 15, 2022[2] of the Regional Trial Court of Manila, Branch 40 dismissing its Complaint/Appeal (docketed as Civil Case No. R-MNL-18-03322-CV) for lack of jurisdiction and for failure to exhaust administrative remedies; ultimately, it prays for the cancellation of the Assessment Notice dated January 15, 2018.[3]

The dispositive portion of the assailed Decision reads:

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[1] Docket (CTA AC No. 278), pp. 5-364.
[2] Id. at 69-77.
[3] Id. at 58, 95.

"**WHEREFORE**, the Complaint is **DISMISSED** for lack of jurisdiction and for failure to exhaust administrative remedies.

SO ORDERED."

PARTIES

Petitioner SMPHI is a corporation duly organized and existing under Philippine Law.[4] It owns and operates SM City San Lazaro, which has cinema theaters.[5]

Respondent Barangay 350, Zone 35, District III, City of Manila (respondent Barangay) is a local government unit (LGU).[6] Respondent Felipe L. Falcon, Jr. (respondent Punong Barangay) was impleaded in his capacity as the Punong Barangay during the time relevant to this case.[7] Respondent Daniela Ritz Aguila (respondent Barangay Treasurer) was impleaded in her capacity as the Barangay Treasurer, during the time relevant to this case.[8]

FACTS

On December 5, 2016, the Sangguniang Barangay of respondent Barangay passed Ordinance No. 02 Series of 2016 enacting the "New Revenue Code of Barangay 350, Zone 35, District III, City of Manila 2016" (Barangay Revenue Code).[9]

On January 15, 2018, petitioner received respondent Barangay Treasurer's handwritten letter of the same date (Assessment Notice) which demanded the payment of Amusement Fee, inclusive of penalties, surcharges and interest, in the aggregate amount of ₱1,051,872.00, in connection with the operation of SM City San Lazaro's cinema theaters for the year 2018.[10]

On March 8, 2018, petitioner submitted its written protest dated February 22, 2018 (Protest) to respondent Barangay Treasurer on the ground that the Barangay Revenue Code failed to comply with the mandatory requirements of the Local Government Code (LGC) in the

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[4] Id. at 10.
[5] Id. at 12.
[6] Id. at 10.
[7] Id.
[8] Id. at 10-11.
[9] Docket (Civil Case No. R-MNL-18-03322-CV), pp. 45-66.
[10] Docket (CTA AC No. 278), pp. 13, 69 and 95. The Assessment Notice is actually a handwritten computation of tax assessed for 2018 signed by respondent Barangay Treasurer.

enactment of tax ordinance, and respondent Barangay has no authority to assess Amusement Fees on petitioner.[11]

On March 27, 2018, petitioner received respondent Barangay Treasurer's Letter dated March 27, 2018, and respondent Barangay's Letter dated March 20, 2018, denying petitioner's Protest.[12]

In a Letter dated April 23, 2018 addressed to Rachelle R. Sordan, Secretary of respondent Barangay, petitioner requested for the documents in connection with the Barangay Revenue Code listed therein.[13]

Proceedings in the trial court

On April 26, 2018, petitioner filed its Complaint/Appeal[14] with the trial court, praying for the cancellation and setting aside of the subject Assessment Notice.

Summonses were served upon respondents on May 28, 2018.[15]

On June 13, 2018, respondents filed their Answer with Counterclaim,[16] praying that the Complaint/Appeal be dismissed for utter lack of merit and that while the case is pending decision, they be allowed to collect from petitioner the accurate and proper Amusement Fees to defray the cost of its operation and services to its constituency. In support of the validity of the subject Assessment Notice, respondents allege that Article 244(a) of the Implementing Rules and Regulations of the Local Government Code (LGC-IRR) is inapplicable because no property of the barangay was used in connection with the assailed Assessment Notice. They submit that respondent Barangay has the power and authority to levy reasonable fees and charges on places of recreation which charge admission fees similar to petitioner per Section 152(d)(2) of the LGC. Further, the payment of amusement taxes to the City Government of Manila and respondent Barangay, in relation to the gross sales of its cinema theaters, will not be considered as double taxation as the City of

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[11] Id. at 70.
[12] Id.
[13] Docket (Civil Case No. R-MNL-18-03322-CV), p. 75.
[14] Id. at 1-83.
[15] Id. at 85-86.
[16] Id. at 87-95.

Manila and respondent Barangay are separate and distinct taxing authorities.

Anent petitioner's claim that the Assessment Notice is null and void for being issued based on an ordinance enacted in violation of the mandatory requirements of the LGC and the LGC-IRR, respondents invoke the presumption of regularity in the performance of their duties when they enacted the Barangay Revenue Code.

Respondents emphasize that it is a settled rule that every law, in this case a barangay ordinance, is presumed valid. Petitioner has the burden to prove a clear and unequivocal breach of the law or the Constitution, which petitioner failed to do in its Complaint/Appeal. They assert that to cancel and set aside the Assessment Notice based on petitioner's baseless supposition is an affront to the wisdom, not only of the Sangguniang Barangay that passed it but also of the Punong Barangay who approved it.

Respondents also contend that considering that the Barangay Revenue Code was enacted and passed in order to "generate the necessary and proper revenues to meet the delivery of basic services and to promote and sustain its development projects", it is only proper that respondents be allowed by the Court to collect from petitioner the accurate and proper Amusement Fee to defray what has been appropriated for the calendar year, so as not to jeopardize its operation and services to its constituency, while the case is under consideration.

Upon motion[17] of petitioner, the Pre-Trial Conference (PTC) was set on November 14, 2018.[18]

Respondents filed their Pre-Trial Brief (for the Defendants)[19] on November 13, 2018. Petitioner filed its Pre-Trial Brief[20] on January 7, 2019.

In the Order dated March 11, 2019, the case was referred to the Philippine Mediation Center for court-annexed mediation (CAM) proceedings on March 19, 2019.[21] As the parties failed to settle their

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[17] Id. at 101-105.
[18] Id. at 106.
[19] Id. at 110-113
[20] Id. at 120-220.
[21] Id. at 327-328.

dispute through the CAM, in the Order dated May 22, 2019, the case was set for judicial dispute resolution (JDR) on June 26, 2019.[22]

In the Order dated July 21, 2020, the JDR was terminated and the PTC was set on October 6, 2020.[23] The PTC was reset on November 24, 2020, in view of respondents' failure to submit the judicial affidavits of their witnesses.[24]

On November 16, 2020, petitioner filed an Amended Pre-Trial Brief.[25]

At the PTC on November 24, 2020, respondents' counsel moved to be given additional time to submit the judicial affidavits of their witnesses in consideration of the pandemic situation. With petitioner's objection, the trial court denied respondents' motion. In view of respondents' failure to file their amended Pre-Trial Brief and judicial affidavits of their witnesses, the PTC was conducted *ex-parte*.[26] The Pre-Trial Order[27] was issued on even date.

On January 14, 2021, petitioner filed an Omnibus Motion[28] praying for the correction of the Pre-Trial Order, which was granted in the Order dated January 26, 2021.[29]

In a Manifestation/Motion dated November 8, 2021,[30] respondent Punong Barangay's counsel manifested that respondent Punong Barangay, who engaged his services, is no longer the Punong Barangay of Barangay 350, Zone 35, District III of the City of Manila, as he was replaced by Punong Barangay Efleda C. Dela Cruz, and, sought to be relieved from all his duties and obligations because he was no longer engaged by the other respondents.

In the Order dated November 9, 2021,[31] the trial court simply noted the Manifestation/Motion there being no conformity of respondent Punong Barangay.

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[22] Id. at 329.
[23] Id. at 428.
[24] Id. at 448.
[25] Id. at 449-483.
[26] Id. at 485.
[27] Id. at 485-488.
[28] Id. at 490-503.
[29] Id. at 504-505.
[30] Id. at 594-595.
[31] Id. at 597.

Trial ensued. Petitioner presented two (2) witnesses, namely: Atty. Cresencio T. Meneses I[32] and Atty. Vladi Miguel S. Lazaro.[33]

On April 27, 2022, petitioner filed its Formal Offer of Evidence.[34]

In the Order dated May 4, 2022[35], the trial court admitted petitioner's exhibits except Exhibits "I-1" to "I-6" for non-compliance with the Best Evidence Rule.

On June 13, 2022, petitioner filed a Motion for Reconsideration (Re: Order dated May 4, 2022),[36] seeking admission in evidence of its denied Exhibits.

In the Order dated June 17, 2022,[37] petitioner's Motion for Reconsideration was granted, admitting in evidence Exhibits "I-1" to "I-6" and submitting the case for decision.

On September 15, 2022, the trial court rendered the assailed Decision,[38] dismissing the case.

Proceedings in the Court of Tax Appeals (CTA)

Unsatisfied with the trial court's Decision, petitioner filed on December 1, 2022 the present Petition for Review which was docketed as CTA AC No. 278. It was initially raffled to the Second Division.

In the Resolution dated January 4, 2023,[39] the Court required respondents to file their comment on the Petition for Review and directed the Branch Clerk of Court of the Regional Trial Court of Manila, Branch 40, to elevate the entire records of the case entitled "*SM PRIME HOLDINGS, INC., Plaintiff, vs. BARANGAY 350, ZONE 35, DISTRICT III, CITY OF MANILA, FELIPE L. FALCON, JR., in his capacity as the Punong Barangay of Barangay 350, Zone 35, District III of the City of Manila, and DANIELLA RITZ AGUILA, in her*

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[32] Id. at 559-586, 597-618.
[33] Id. at 391-425, 623-638.
[34] Id. at 639-657.
[35] Id. at 658.
[36] Id. at 661-670.
[37] Id. at 671-672.
[38] Id. at 673-682.
[39] Docket (CTA AC No. 278), pp. 366-367.

capacity as Barangay Treasurer of Barangay 350, Zone 35, District of the City of Manila, Defendants" docketed as Civil Case No. R-MNL-18-03322-CV, both within five (5) days.

In the Resolution dated January 20, 2023,[40] the Court noted the Transmittal Letter of Atty. Lovely C. Estrada, Clerk of Court V, Regional Trial Court of Manila, Branch 40, forwarding the entire original records of Civil Case No. R-MNL-18-03322-CV.

In the Resolution dated March 8, 2023,[41] after considering the allegations, issues and arguments adduced in the Petition for Review and the fact that respondents did not file their comment, the Court gave the parties thirty (30) days to file their memoranda.

On April 12, 2023, petitioner filed its Memorandum.[42]

On May 12, 2023, respondent Barangay belatedly filed its Comment/Opposition (to the Petition for Review dated November 29, 2022).[43]

In the Minute Resolution dated May 29, 2023, the case was transferred to the First Division.[44]

In the Minute Resolution dated February 12, 2024, the case was submitted for decision taking into consideration petitioner's Memorandum, *sans* respondents' memorandum.[45]

ISSUES

Distilled from the listed grounds relied upon by petitioner for the reversal of the assailed Decision, are the following issues for resolution of the Court:

1. Whether the Regional Trial Court erred in dismissing petitioner's Complaint/Appeal for lack of jurisdiction and for failure of petitioner to exhaust administrative remedies;

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[40] Id. at 378.
[41] Id. at 381.
[42] Id. at 382-439.
[43] Id. at 440-449.
[44] Id. at 450.
[45] Id. at 452.

2. Whether the Assessment Notice should be cancelled and set aside;

3. Whether the Barangay Revenue Code is null and void for being enacted in violation of the mandatory requirements of the LGC and LGC-IRR; and,

4. Whether respondent Barangay has authority to impose Amusement Fee.[46]

COURT'S RULING

The present Petition for Review is meritorious.

The Petition for Review is timely filed.

Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended,[47] implementing Section 11 of Republic Act (RA) No. 1125, as amended,[48] provides that a party adversely affected by a decision of the Regional Trial Court may file an appeal with the CTA within thirty (30) days after the receipt of such decision.

Petitioner received via e-mail the assailed Decision of the trial court on November 15, 2023.[49] Pursuant to the aforecited law and rules, it had until December 15, 2023 to appeal the assailed Decision. Thus, the filing of the present Petition for Review on December 1, 2023 was timely.

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[46] Id. at 27-29.

[47] Sec. 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. *(Emphasis supplied)*

[48] Sec. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a **decision**, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the **Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. xxx. *(Emphasis supplied)*

[49] Docket (CTA AC No. 278), pp. 10 and 79.

The Court has jurisdiction over the case.

The question is whether the present controversy involves a local tax case that falls within the ambit of the CTA's appellate jurisdiction under Section 7(a)(3) of RA No. 1125, as amended, *viz.*:

> SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> 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 *(Emphasis supplied)*

This question, in turn, depends ultimately on whether the regulatory fees, i.e., Amusement Fee, imposed under Section 13 of the Barangay Revenue Code is, in fact, a tax.

A local tax case is understood to mean as a dispute between the LGU and a taxpayer involving the imposition of the LGU's power to levy tax, fees, or charges against the property or business of the taxpayer concerned. A local tax case may involve: the legality or validity of a real property tax assessment, protests of assessments, disputed assessments, surcharges or penalties; the validity of a tax ordinance; claims for tax refund/credit; claims for tax exemption; actions to collect the tax due; and even prescription of assessments.[50]

Tax is defined by jurisprudence as "the enforced proportional contributions from persons and property levied by the state for the support of government and for all public needs".[51] The LGC, on the other hand, defines "fee" as "a charge fixed by law or ordinance for the regulation or inspection of a business or activity".[52] Sections 3(o) and (y) of the Barangay Revenue Code also adopt these definitions.[53]

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[50] *Mactel Corporation vs. The City Government of Makati,* G.R. No. 244602, July 14, 2021.
[51] *Republic of the Philippines vs. Philippine Rabbit Bus Lines, Inc.*, G.R. No. L-26862, March 30, 1970.
[52] Section 131 (17), LGC.
[53] Barangay Revenue Code, Section 3. **DEFINITION OF TERMS** – As used in this ordinance, the following words or phrase[s] shall have the corresponding meaning/definition:

xxx xxx xxx

(o) **Fee** – means a charge fixed by law or ordinance for the regulation or inspection of a business activity. It shall also include charges fixed by law or agency for the services of a public officer in the discharge of his official duties.

The nomenclature in a statute given to an exaction is not necessarily indicative of whether it is a tax or a fee.[54]

Romeo P. Gerochi vs. Department of Energy[55] summarizes the distinction between a tax and a fee:

> xxx, it is necessary to distinguish the State's power of taxation from the police power.
>
> The power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency that is to pay it. It is based on the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Thus, the theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.
>
> On the other hand, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxims *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae,* gives effect to a host of its regulatory powers. We have held that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.
>
> **The conservative and pivotal distinction between these two powers rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax**. *(Emphasis supplied)*

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xxx xxx xxx

(y) **Tax –** means an enforce[d] contribution usually monetary in form, levied by the law-making body on person and property subject of its jurisdiction for the precise purpose of supporting government needs. *(Emphasis supplied)*

[54] *Bases Conversion and Development Authority and John Hay Management Corporation vs. City Government of Baguio City, as represented by its Mayor, City Treasurer, and City Legal Officer,* G.R. No. 192694, February 22, 2023; *Felix Calalang vs. Pablo Lorenzo and Primo Villar,* G.R. No. L-6961, June 17, 1955.

[55] G.R. No. 159796, July 17, 2007.

As a test to determine if an exaction is a fee or a tax, one must look into the purpose of its collection. If the exaction is made to raise revenue for the government to discharge its principal functions, the exaction is a tax. If the exaction is primarily regulatory, it is a fee, even if it incidentally raises revenue as long as the revenue generated does not exceed the cost of regulation. If the revenue exceeds the regulatory costs, it is a tax.[56]

Victorias Milling Co., Inc. vs. The Municipality of Victorias, Province of Negros Occidental[57] teaches that the purpose and effect of the imposition determine whether it is a tax or a fee, and that the lack of any standards for such imposition gives the presumption that the same is a tax, *viz.*:

> We accordingly say that the designation given by the municipal authorities does not decide whether the imposition is properly a license tax or a license fee. **The determining factors are the purpose and effect of the imposition as may be apparent from the provisions of the ordinance**. Thus, **"[w]hen no police inspection, supervision, or regulation is provided, nor any standard set for the applicant to establish, or that he agrees to attain or maintain, but any and all persons engaged in the business designated, without qualification or hindrance, may come, and a license on payment of the stipulated sum will issue, to do business, subject to no prescribe[d] rule of conduct and under no guardian eye, but according to the unrestrained judgment or fancy of the applicant and licensee, the presumption is strong that the power of taxation, and not the police power, is being exercised.** *(Emphasis supplied)*

Progressive Development Corporation vs. Quezon City,[58] declares that "if the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax."

In *Smart Communications, Inc. vs. Municipality of Malvar, Batangas (Smart)*,[59] the Supreme Court examined the whereas clauses of the ordinance to determine its purpose in imposing fees on construction activities of the identified special projects including the taxpayer's cell sites within the Municipality of Malvar, Batangas:

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[56] *Bases Conversion and Development Authority and John Hay Management Corporation vs. City Government of Baguio City, as represented by its Mayor, City Treasurer, and City Legal Officer*, G.R. No. 192694, February 22, 2023.
[57] G.R. No. L-21183, September 27, 1968.
[58] G.R. No. L-36081, April 24, 1989.
[59] G.R. No. 204429, February 18, 2014.

> In this case, the Municipality issued Ordinance No. 18, which is entitled "An Ordinance ***Regulating*** the Establishment of Special Projects," to ***regulate*** the "placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus, and provide for the correction, condemnation or removal of the same when found to be dangerous, defective or otherwise hazardous to the welfare of the inhabitant[s]." It was also envisioned to address the foreseen "environmental depredation" to be brought about by these "special projects" to the Municipality. Pursuant to these objectives, the Municipality imposed fees on various structures, which included telecommunications towers.
>
> **As clearly stated in its whereas clauses**, the primary purpose of Ordinance No. 18 is to regulate the "placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus" listed therein, which included Smart's telecommunications tower. Clearly, the purpose of the assailed Ordinance is to regulate the enumerated activities particularly related to the construction and maintenance of various structures. The fees in Ordinance No. 18 are not impositions on the building or structure itself; rather, they are impositions on the activity subject of government regulation, such as the installation and construction of the structures.
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> Since the main purpose of Ordinance No. 18 is to regulate certain construction activities of the identified special projects, which included "cell sites" or telecommunications towers, the fees imposed in Ordinance No. 18 are ***primarily regulatory in nature, and not primarily revenue-raising***. While the fees may contribute to the revenues of the Municipality, this effect is merely incidental. Thus, the fees imposed in Ordinance No. 18 are not taxes.

Petitioner submits that based on the text of the Barangay Revenue Code, the purpose of the Amusement Fee was to raise revenues rather than to regulate the operation of places of recreation. Further, it asserts that while imposing taxes on places for recreation is outside respondents' authority, the Amusement Fee constituted double taxation and completely replicate the amusement taxes that were being imposed by the City of Manila.

As previously mentioned, respondents argue that the Barangay Revenue Code was enacted and passed in order to "generate the necessary and proper revenues to meet the delivery of basic services and to promote and sustain its development projects".

The Amusement Fee subject of this case is based on Section 13 of the Barangay Revenue Code of respondent Barangay, imposing regulatory fees on amusement/recreational establishment and movie house which charge admission per person, *viz.*:

> Section 13. **REGULATORY FEES ON AMUSEMENT / RECREATIONAL ESTABLISHMENT, MOVIE HOUSE WHICH CHARGES ADMISSION PER PERSON**. There is thereby imposed a Regulatory [Fee] of Two Pesos (Php 2.00) for every ticket or charge on admission in amusement/recreational places. The operator of the amusement place shall withhold the fee and prepare the sworn statement for the whole week, each week, and submit the same to the Barangay Treasurer together with the amount of fees due thereon. Submissions of incorrect or falsified returns by the operators shall be imposed a surcharge of twenty-five percent (25%) for the amount due and a fine of Five Hundred Pesos (Php 500.00) for each incorrect return filed.[60]

As can be easily confirmed, the text of Section 13 of the Barangay Revenue Code does not indicate the purpose for the exaction of the regulatory fee nor set any standard for amusement/recreational establishment and movie house owners/operators to establish or agree to attain or maintain.

The whereas clauses of the Barangay Revenue Code, meanwhile, state:

> **Whereas,** the Republic Act 7160, otherwise known as the Local Government Code of 1991 mandates delivery of basic services by the Barangays to its constituents;
>
> **Whereas,** the new demands coherent with times are needed for the delivery of basic services to its constituents are humongous and at once immediate.
>
> **Whereas,** **in order to generate the necessary and proper revenues to meet the delivery of basic services and to promote and sustain its development projects it is imperative for this Sanggunian to enact a new and revise[d] revenue ordinance that covers all possible sources in the Barangay.**
>
> **Whereas,** Section 132 – power to impose, tax, fee, charges or to generate revenues, to be exercised by the sangguniang barangay through an ordinance and

[60] Docket (Civil Case No. R-MNL-18-03322-CV), p. 62.

> Section 152 – Scope of Taxing Powers of the Barangay is operationalized through an ordinance of the barangay in relation to Section 186 of the Republic Act 7160 otherwise known as the Local Government Code of 1991, vested to every local government unit, the power to raise revenues through the levy of taxes, fees and charges which shall accrue exclusively to their own account;
>
> **NOW THEREFORE, BE IT ORDAINED**, to enact Ordinance No. ______, otherwise known as the "**THE NEW REVENUE CODE OF BARANGAY 350, ZONE 35, DISTRICT III, CITY [OF] MANILA, 2016**[.]"[61]

A cursory reading of the whereas clauses readily discloses that **the purpose of the ordinance** is "**to generate the necessary and proper revenues to meet the delivery of basic services and to promote and sustain [respondent Barangay's] development projects**." Similar to its Section 13, there are no set standards for amusement/recreational establishment and movie house owners/operators, like petitioner, to establish or to agree to attain or maintain. Thus, in this case, it is clear that the regulation of amusement/recreational establishments and movie houses is merely incidental.

In fine, the Court finds that the Amusement Fee under Section 13 of the Barangay Revenue Code is primarily for the purpose of raising revenue. Despite the use of the appellations "regulatory fee" or "Amusement Fee", the exaction is appropriately deemed a tax.

Considering the foregoing discussion, the Complaint/Appeal subject of the present controversy is in the nature of a local tax case which falls within the CTA's jurisdiction defined under Section 7(a)(3) of RA No. 1125, as amended.

The trial court erred in dismissing the Complaint/Appeal.

In dismissing petitioner's Complaint/Appeal, the trial court reasoned that while the Complaint/Appeal states that it is for "tax protest" and the prayer merely asks the Court to cancel and set aside the Assessment Notice, the grounds cited in support of the prayer for the cancellation of the assessment are anchored on the legality of the Barangay Revenue Code. The court *a quo* stressed that compliance with Section 187 of the LGC is mandatory before seeking court

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[61] Id. at 46.

intervention citing *Crisanto M. Aala vs. Hon. Rey T. Uy, in his capacity as the City Mayor of Tagum City, Davao del Norte.*[62]

The trial court was not convinced that petitioner's Complaint/Appeal falls under any of the exceptions to the application of the doctrine of exhaustion of administrative remedies as it opined that there are still factual issues to be resolved in determining the validity of the Barangay Revenue Code, particularly Section 13 thereof. It found inapplicable *Evelyn Ongsuco and Antonia Salaya vs. Hon. Mariano M. Malones*[63] *(Ongsuco)* as it concluded that there was a need for petitioner to present evidence considering that the facts on the alleged failure of respondent Barangay to comply with the requirements of the LGC were specifically denied by respondents in their Answer dated June 11, 2018. Moreover, it ruled that the issue on the validity of the Assessment Notice is a collateral attack on the Barangay Revenue Code.

In refuting the foregoing pronouncements, petitioner submits the following propositions: *first*, the trial court should have resolved the Complaint/Appeal on the merits because an appeal to the Secretary of Justice does not apply to Section 13 of the Barangay Revenue Code as it imposed "fees", and not "taxes"; *second*, respondents waived the defense of failure to exhaust administrative remedies for not having raised the same before the trial court; and, *third*, respondents did not deny the facts constituting petitioner's factual allegations pertaining to the fatal defects relative to the enactment of the Barangay Revenue Code. Hence, those factual allegations were deemed admitted and *Ongsuco* is applicable.

The trial court has jurisdiction over the Complaint/Appeal.

Section 187 of the LGC lays down the procedure in challenging the constitutionality or legality of tax ordinances or revenue measures such as the subject Barangay Revenue Code of respondent Barangay, *viz.*:

> Sec. 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**

[62] G.R. No. 202781, January 10, 2017.
[63] G.R. No. 182065, October 27, 2009.

> **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. *(Emphasis supplied)*

On the other hand, Section 195 of the LGC provides the manner of protesting assessments, *viz.*:

> **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 <u>court of competent jurisdiction</u>** otherwise the assessment becomes conclusive and unappealable. (Emphasis and underscoring added)

Section 187 and Section 195 of the LGC bestow upon taxpayers separate, distinct and independent remedies.[64]

The Complaint/Appeal subject of the present appeal was filed by petitioner to nullify the Assessment Notice issued against it pursuant to Section 195 of the LGC,[65] *viz.*:

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[64] *Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis*, CTA EB No. 1093, June 17, 2015; *The City Treasurer of Makati City vs. Michigan Holdings, Inc.*, G.R. No. 224322, March 24, 2021 (Resolution).
[65] Docket (Civil Case No. R-MNL-18-03322-CV), p. 3.

> 5. **This Complaint/Appeal is being filed pursuant to Section 195 of the LGC for the purpose of seeking the nullification of the Barangay Treasurer's letter dated January 15, 2018 (the "Assessment Notice")** which demand SMPHI to pay amusement fees ("Amusement Fees"), inclusive of interest, penalties and surcharges, amounting to ₱1,051,872.00 in connection with the operation of SM San Lazaro's *(infra)* cinema theaters. A Copy of the Defendant Barangay's Assessment Notice is attached as Annex B. (Emphasis added)

Clearly, the Complaint/Appeal is an appeal of a duly protested assessment under Section 195 of the LGC. It is the procedure laid down in Section 195 of the LGC that is applicable not Section 187 of the LGC.

Back when petitioner filed its Complaint/Appeal in 2018, the court of competent jurisdiction referred to in Section 195 of the LGC, in relation to Section 19(8) of Batas Pambansa Bilang 129, as amended by RA No. 7691,[66] and Section 7(a)(3) of RA No. 1125, as amended,[67] is the RTC as the amount involved is more than ₱400,000.00. As a court of competent jurisdiction, the court *a quo* had ample authority to pass upon the merits of petitioner's arguments including the validity or illegality of the subject Barangay Revenue Code, particularly its Section 13.

While Section 195 of the LGC lays down the procedure in protesting assessment of local taxes, it does not specify the grounds for contesting assessments. It does not limit nor exclude grounds for disputing the assessment. There is nothing therein which restricts the basis of the protest of an assessment only on the inaccuracy of the amount of the assessed local tax nor prohibits the defense of lack of basis or infirmity of the legal basis.[68]

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[66] Sec. 19. *Jurisdiction in civil cases.* - Regional Trial Courts shall exercise exclusive original jurisdiction:

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(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds Three hundred thousand pesos (P300,000) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Four hundred thousand pesos (P400,000).

[67] Sec. 7. *Jurisdiction.* - The CTA shall exercise:

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

xxx

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

[68] *Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis*, CTA EB No. 1093, June 17, 2015; *The City Treasurer of Makati City vs. Michigan Holdings, Inc.*, G.R. No. 224322, March 24, 2021 (Resolution).

Evidently, under Section 195 of the LGC, the taxpayer is free to invoke any ground it deems meritorious to support its protest. It does not bar a taxpayer protesting an assessment from assailing the validity of a tax ordinance or a provision thereof premised on either substantial or procedural grounds. Neither does Section 195 of the LGC require that a protest anchored on the infirmity of the legal basis of the assessment be first brought to the Secretary of Justice pursuant to Section 187 of the LGC.

Remarkably, unlike Section 195 of the LGC, there is no proviso for finality in Section 187 of the LGC. Section 195 of the LGC categorically provides that failure to timely appeal to the courts the denial of protest within thirty (30) days from notice or from the lapse of the reglementary sixty (60)-day period, renders the assessment "conclusive and unappealable". In contrast, Section 187 of the LGC is silent as to the consequence of failure to appeal to the court within the prescribed period. The assailed tax ordinance or revenue measure shall remain presumptively valid, albeit subject to challenge in appropriate cases. Otherwise, the Congress would have expressly declared it unappealable.[69]

Jurisprudence is replete with cases where the Supreme Court did not hesitate to scrutinize the validity of tax ordinances or revenue measures even if the same were not previously challenged before the Secretary of Justice in accordance with Section 187 of the LGC.

In *Manila Electric Company vs. City of Muntinlupa*,[70] the City Treasurer sent a letter to *Manila Electric Company* (MERALCO) demanding payment of the franchise tax it owed to Muntinlupa City from 1992 to 1999 pursuant to Section 25 of Municipal Ordinance No. 93-35 and paragraph 7 of the Bureau of Local Government Finance Circular No. 20-98. The City Treasurer likewise requested for MERALCO's certified statement of gross sales/receipts for the years 1992 to 1999 that would support the computation of the franchise tax due. MERALCO instituted a *Petition With Prayer for a Writ of Preliminary Injunction* before the RTC to declare Section 25 of Municipal Ordinance No. 93-35 as null and void for being contrary to law, unjust and confiscatory, and to enjoin the City of Muntinlupa from demanding the submission of its certified statement of gross sales/receipts for the computation of the franchise tax. The RTC struck down Section 25 of Municipal Ordinance No. 93-35, for being *ultra vires* because it was enacted when Muntinlupa was still a municipality which, as such, had no power to levy taxes, fees or

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[69] Id.
[70] G.R. No. 198529, February 9, 2021.

charges already conferred to the provinces following Sections 142 and 137 of the LGC. On appeal, the Supreme Court sustained the RTC's ruling, invalidating the assailed ordinance for being *ultra vires* as Muntinlupa City, then a Municipality at the time the ordinance was enacted, was not authorized to levy a franchise tax.

In *Alta Vista Golf and Country Club vs. The City of Cebu,*[71] the City Treasurer sought to collect from Alta Vista deficiency business taxes, fees, and other charges for the year 1998, which included amusement tax on its golf course. In reply, Alta Vista disputed the amusement tax assessment and proposed to settle first the other items of assessment and, in the meantime that the legality of Section 42 is pending resolution, that it be issued the required business permit. The City Treasurer treated Alta Vista's reply as a protest of the assessment and denied the same. Shortly thereafter, Alta Vista was served a Closure Order. This prompted Alta Vista to file a *Petition for Injunction, Prohibition, Mandamus, Declaration of Nullity of Closure Order, Declaration of Nullity of Assessment, and Declaration of Nullity of Section 42 of Cebu City Tax Ordinance, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction.* The RTC dismissed Alta Vista's case, sustaining the City's position that Section 187 of the Local Government Code is mandatory. The Supreme Court eventually invalidated Section 42 of Revised Omnibus Tax Ordinance for being issued beyond the taxing power of the City of Cebu.

In *City of Cagayan De Oro vs. Cagayan Electric Power & Light Co., Inc. (CEPALCO),*[72] the City of Cagayan De Oro wrote CEPALCO of its passage of Ordinance No. 9503-2005, imposing a tax on the lease or rental of electric and/or telecommunication posts, poles or towers at the rate of ten (10) percent of the annual rental income derived therefrom. CEPALCO filed a *petition for declaratory relief* assailing the validity of Ordinance No. 9503-2005 before the RTC, on the ground that the tax imposed by the disputed ordinance is in reality a tax on income which the City of Cagayan de Oro may not impose, the same being expressly prohibited by Section 133(a) LGC; and assuming the City Council can enact the assailed ordinance, it is nevertheless exempt from the imposition by virtue of RA No. 9284, providing for its franchise. The RTC dismissed the petition for declaratory relief due to CEPALCO's failure to exhaust administrative remedies pursuant to Section 187 of the LGC and for being time-barred under the circumstances. On appeal, the Supreme Court upheld the validity of Ordinance No. 9503-2005 imposing a tax

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[71] G.R. No. 180235, January 20, 2016.
[72] G.R. No. 224825, October 17, 2018.

on the lease or rental of electric and/or telecommunication posts, poles or towers, as a tax on business, but declared that it failed to comply with Sections 143 and 151 of the LGC, for imposing a 10% tax rate. As the ordinance lacked a separability clause, the entire ordinance was declared void.

In *Palma Development Corporation vs. Municipality of Malangas, Zamboanga Del Sur*,[73] the service fees imposed under Section 5G.01 of the Malangas Municipal Revenue Code No. 09, series of 2003, was paid in protest by Palma Development Corporation (PDC). It contended that under the LGC, municipal governments did not have the authority to tax goods and vehicles that passed through their jurisdictions. Thereafter, PDC filed before the RTC an action for declaratory relief against the Municipality of Malangas, assailing the validity of Section 5G.01 of the municipal ordinance. On appeal, the Supreme Court affirmed the RTC's declaration that Section 5G.01 of the Malangas Municipal Revenue Code No. 09, series of 2003 is null and void for being violative of the LGC.

In *Province of Bulacan vs. The Honorable Court of Appeals (Former 12th Division)*,[74] the Provincial Treasurer of Bulacan assessed Republic Cement Corporation (RCC) for extracting limestone, shale and silica from several parcels of private land in the province during the third quarter of 1992 until the second quarter of 1993 pursuant to Section 21 of the Provincial Ordinance No. 3. Believing that the province had no authority to impose taxes on quarry resources extracted from private lands based on Section 21 of the Provincial Ordinance No. 3, RCC formally contested the assessment. The Provincial Treasurer, however, denied its protest. RCC, thus, filed a petition for declaratory relief with the RTC. The RTC dismissed RCC's petition, upon motion of the Province of Bulacan, ruling that declaratory relief was improper as allegedly RCC committed a breach of the ordinance. On appeal, the Supreme Court affirmed the nullification of the assailed assessment by the Court of Appeals, for lack of legal authority of the Province of Bulacan to impose excise taxes on quarry resources extracted from private lands pursuant to its Provincial Ordinance No. 3.

In all the foregoing cases, the failure of taxpayers to appeal a tax ordinance or revenue measure to the Secretary of Justice under Section 187 of the LGC did not place the subject tax ordinance or

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[73] G.R. No. 152492, October 16, 2003.
[74] G.R. No. 126232, November 27, 1998.

revenue measure beyond judicial review. It must be so lest patently illegal tax impositions are validated by mere passage of time.

On this note, *CEPALCO, supra,* [75] is most enlightening:

> Ordinances, like laws, enjoy a presumption of validity. However, this presumption may be rendered naught by a clear demonstration that the ordinance is irreconcilable with a constitutional or legal provision, that it runs afoul of morality or settled public policy, that it prohibits trade, or that it is oppressive, discriminatory, or unreasonable.

It cannot be overemphasized that while an ordinance enjoys the presumption of legality, it may be invalidated if it fails to meet the requirements of a valid ordinance.

Respondents failed to timely raise the defense of non-exhaustion of administrative remedies, thus, deemed waived.

While the institution of an action in court without complying with the requirements of Section 187 will generally lead to the dismissal of the case on the ground of non-exhaustion of administrative remedies,[76] such principle admits of several exceptions[77] and may even be waived if not timely invoked,[78] as in this case.

Perusal of respondent's Answer with Counterclaim and Pre-Trial Brief (for the Defendants) filed in the trial court confirms petitioner's claim that respondents did not raise as an issue petitioner's failure to comply with Section 187 of the LGC. Thus, respondents are deemed to have waived petitioner's non-exhaustion of administrative remedies. In effect, the issue of non-exhaustion of administrative remedies, i.e., failure to appeal to the Secretary of Justice, has been mooted by respondents' failure to timely invoke it as a defense before the trial court.

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[75] G.R. No. 22485, October 17, 2018.
[76] *Municipality of San Mateo, Isabela represented by Municipal Mayor Crispina R. Agcaoili, M.D. vs. Smart Communications, Inc.*, G.R. No. 219506, June 23, 2021.
[77] *Crisanto M. Aala vs. Hon. Rey T. Uy, in his capacity as the City Mayor of Tagum City, Davao del Norte,* G.R. No. 202781, January 10, 2017.
[78] *GMA Network, Inc. vs. ABC Development Corporation (ABC),* G.R. No. 205986, January 11, 2023, citing *Soto vs. Jareno*, G.R. No. G.R. No. L-38962, September 15, 1986.

The issues raised are purely legal questions.

The defense of failure to exhaust administrative remedies is also unavailing as the present case involves purely legal questions.

Section 10, Rule 8 of the Rules of Court sets forth the manner how a material allegation of fact should be specifically denied, *viz.*:

> SEC. 10. Specific denial. – A defendant must specify each material allegation of fact the truth of which he or she does not admit and, whenever practicable, shall set forth the substance of the matters upon which he or she relies to support his or her denial. Where a defendant desires to deny only a part of an averment, he or she shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made to the complaint, he or she shall so state, and this shall have the effect of a denial.

A denial based on lack of knowledge or information sufficient to form a belief as to the truth of an averment, however, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the party's knowledge that its averment of ignorance must be palpably untrue.[79]

Section 11, Rule 8 of the Rules of Court, on the other hand, provides that material allegations in a pleading asserting a claim shall be deemed admitted when not specifically denied:

> Sec. 11. Allegations not specifically denied deemed admitted. – Material averments in a pleading asserting a claim or claims, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied.

The Complaint/Appeal alleged, among others:

> 12. [Petitioner] respectfully submits that the Assessment Notice should be cancelled and set aside on the basis of the following grounds:
>
> 12.1. The Barangay Revenue Code, which is the basis of the Assessment Notice in assessing Amusement Fees on [petitioner], is null and void for being enacted in violation of the mandatory

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[79] *Spouses Ramon Villuga and Mercedita Villuga vs. Kelly Hardware and Construction Supply, Inc.*, G.R. No. 176570, July 18, 2012.

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requirements of the LGC and its implementing rules and regulations (the "LGC-IRR").

> **(a) The Barangay Revenue Code was not approved by a majority of the [respondent] Barangay's Sangguniang Barangay.**
>
> **(b) The [respondent] Barangay did not hold public hearings prior to the enactment of the Barangay Revenue Code.**
>
> **(c) The Barangay Revenue Code was not posted in accordance with Sections 59(a) and 511 of the LGC.**
>
> **(d) The Barangay Revenue Code was not published.**
>
> **(e) The Barangay Revenue Code was not transmitted to the Sangguniang Panlungsod within the period prescribed by Section 57(a) of the LGC.**[80] *(Emphasis supplied)*

Respondents denied the foregoing allegations, in this manner:

<u>SPECIFIC DENIALS</u>

Defendants specifically deny the allegations in:

2.1) Paragraph 9 is partially denied in so far as the argument of the plaintiff regarding the Assessment Notice, the failure of the Barangay Revenue Code to comply with the mandatory requirements of the Local Government Code and the lack of authority of the defendant barangay to assess amusement fees on the plaintiff are concerned;

3) However, paragraph 12 to 60, being the statements of the plaintiff in support of its arguments and discussions on its cause of action, the defendant has no reason to admit or deny such statements.[81]

The Court finds that respondents' denial in their Answer falls short of the requirements under Section 10, Rule 8 of the Rules of Court. Respondents cannot simply deny the allegations without as much as setting forth the substance of the matters upon which they rely to support their denial. It is frivolous for them to say that they are without knowledge or information sufficient to form a belief as to the truth of the material averments made in paragraph 12 of the Complaint/Appeal, considering that respondent Punong Barangay presides over the meetings/proceedings of the Sangguniang

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[80] Docket (Civil Case No. R-MNL-18-03322-CV), pp. 5-6.
[81] Id. at 88.

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Barangay. Further, respondents had the control of records or the better means of proof regarding the facts alleged.[82]

Consequently, for failure to specifically deny the material allegations in the Complaint/Appeal, respondents are deemed to have admitted the material averments in paragraph 12 of the Complaint/Appeal. In effect, the issue of whether the Barangay Revenue Code and its Section 13 are valid became a purely legal question, i.e., whether the Barangay Revenue Code and Section 13 are valid despite respondents' failure to comply with the procedural requirements under the LGC and LGC-IRR on the enactment and effectivity of a barangay revenue code.

Under this circumstance, even if respondents timely invoked petitioner's failure to exhaust administrative remedies, such failure is inconsequential.

The assessment is void as the imposition of Amusement Fee is patently illegal.

Respondents anchor their authority to impose the subject Amusement Fee on Section 152(d)(2) of the LGC. They also deny double taxation since the City Government of Manila is an LGU separate and distinct from respondent Barangay, relative to the exaction of the Amusement Fee based on the gross sales of cinema theaters.

Section 152 of the LGC defines the scope of the taxing powers of the barangay, *viz.*:

> "Section 152. Scope of Taxing Powers. - The barangays may levy taxes, fees, and charges, as provided in this Article, which shall exclusively accrue to them:
>
> (a) **Taxes.** - On stores or retailers with fixed business establishments with gross sales or receipts of the preceding calendar year of Fifty Thousand pesos (P50,000.00) or less, in the case of cities and Thirty thousand pesos (P30,000.00) or less, in the case of municipalities, at a rate not exceeding one percent (1%) on such gross sales or receipts.
>
> xxx xxx xxx

[82] *Teodoro Berdin vs. Hon. Eufracio A. Mascariñas*, G.R. No. 135928, July 6, 2007.

> **(d) Other Fees and Charges. - The barangay may levy reasonable fees and charges:**
>
> (1) On commercial breeding of fighting cocks, cockfights and cockpits;
> (2) **On places of recreation which charge admission fees**;
> *(3)* On billboards, signboards, neon signs, and outdoor advertisements. *(Emphasis supplied)*

Under Section 152(a) of the LGC, the barangay is authorized to impose taxes but only on stores or retailers with fixed business establishments with gross sales or receipts of the preceding calendar year of ₱50,000.00 or less, in the case of cities; and ₱30,000.00 or less, in the case of municipalities, at a rate not exceeding 1% on such gross sales or receipts.

The LGC and the LGC-IRR do not define "stores" and "retailers". Necessarily, the Court needs to resort to their ordinary and usual meaning following the principle of statutory construction that words should be construed in their ordinary and usual meaning.[83]

A store is "a business establishment where usually diversified goods are kept for retail sale".[84] "Retail" is defined as "to sell in small quantities directly to the ultimate consumer".[85] Thus, a retailer is someone who is engaged in the business of retail.

From these definitions, what Section 152(a) seeks to tax are business establishments engaged in habitually selling direct to the general public merchandise, commodities or goods for consumption. Undeniably, petitioner, a cinema theater owner/operator, is not a store or retailer with fixed establishment, contemplated under Section 152(a) of the LGC, which may be taxed on its gross sales or receipts as sought by Section 13 of the Barangay Revenue Code.

On the other hand, Section 152(d)(2) of the LGC authorizes the barangay to levy other fees and charges on places of recreation which charge admission fees, like petitioner as owner/operator of cinema theaters. Article 233 of the LGC-IRR, however, qualifies that

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[83] *Alfredo T. Romualdez vs. The Honorable Sandiganbayan (Fifth Division) and the People of the Philippines*, G.R. No. 152259, July 29, 2004.
[84] Store, Merriam-Webster Website <https://www.merriam-webster.com/dictionary/store> (visited July 10, 2024).
[85] Retail, Merriam-Webster Website <https://www.merriam-webster.com/dictionary/retailer> (visited July 10, 2024).

such fee or charge may not be based on gross sales or receipts, to wit:

> Art. 233. Fees and Charges. — The municipality may impose and collect such reasonable fees and charges on businesses and occupations and, except as reserved to the province in Article 229 of this Rule, on the practice of any profession or calling before any person may engage in such business or occupation, or practice such profession or calling provided that **such fees or charges shall only be commensurate to the cost of issuing the license or permit and the expenses incurred in the conduct of the necessary inspection or surveillance**.
>
> **No such fee or charge shall be based on capital investment or gross sales or receipts of the person or business liable therefor**. (Boldfacing added)

Notwithstanding the above prohibition, the Amusement Fee imposed under Section 13 of the Barangay Revenue Code is computed based on gross sales or receipts, i.e., ₱2.00 for every ticket or charge on admission in amusement/recreational places. Such imposition is a clear violation of Article 233 of the LGC-IRR. Thus, even if the Court considers the Amusement Fee as "Other Fees and Charges" imposed pursuant to Section 152(d)(2) of the LGC, the same must be invalidated for being violative of Article 233 of the LGC-IRR.

Plainly, under Section 152 of the LGC, respondent Barangay is not authorized to impose a tax on amusement/recreation establishments. It may only impose fees and charges, which should not be based on the capital investment or gross sales or receipts of the taxpayer.

True, Section 186 of the LGC grants respondent Barangay residual taxing power, *viz.*:

> SECTION 186. Power To Levy Other Taxes, Fees or Charges. - Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: Provided, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: Provided, further, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

The foregoing provision, notwithstanding, the residual power to tax under Section 186 of the LGC may be exercised only when there is neither a grant nor a prohibition by statute; or when such taxes, fees, or charges are not otherwise specifically enumerated in the LGC, National Internal Revenue Code, as amended, or other applicable laws.[86] Interestingly, Sections 140 and 151 of the LGC, reserve the power to levy tax on the proprietors, lessees, or operators of theaters and cinemas to the province and the city, *viz.*:

> **SECTION 140**. **Amusement Tax** - (a) **The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas**, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.
>
> (b) In the case of theaters of cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.
>
> (c) The holding of operas, concerts, dramas, recitals, painting and art exhibitions, flower shows, musical programs, literary and oratorical presentations, except pop, rock, or similar concerts shall be exempt from the payment of the tax herein imposed.
>
> (d) The sangguniang panlalawigan may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the sangguniang panlalawigan may impose such surcharges, interests and penalties.
>
> (e) The proceeds from the amusement tax shall be shared equally by the province and the municipality where such amusement places are located.
>
> 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**: xxx *(Emphasis supplied)*

In sum, since the subject Amusement Fee, which is veritably a tax, is beyond the authority of respondent Barangay to impose, any exaction based thereon is invalid. Section 13 of the Barangay Revenue Code is patently *ultra vires*.

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[86] *Alta Vista Golf and Country Club vs. The City of Cebu,* G.R. No. 180235, January 20, 2016.

At all events, the Court sees no reason to pass upon the validity of the entire Barangay Revenue Code. Considering the foregoing disquisition, the validity of the Barangay Revenue Code is not the very *lis mota* of this case. Doing so will not change the outcome of this case.

WHEREFORE, premises considered, the Petition for Review is **GRANTED.** The Assessment Notice dated January 15, 2018 issued by respondent Barangay Treasurer, Daniela Ritz Aguila, demanding payment of Amusement Fee, inclusive of penalties, surcharges and interest for the year 2018 amounting to ₱1,051,872.00 is hereby **CANCELLED**. Respondent Barangay 350, Zone 35, District III, City of Manila, its agents and any person acting on its behalf are **ENJOINED** from enforcing the Assessment Notice against petitioner SM Prime Holdings, Inc.

Respondent Barangay's Comment/Opposition (to the Petition for Review dated November 29, 2022) filed on May 5, 2023 is **EXPUNGED** from the records for being filed out of time.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice