REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

NLEX CORPORATION (FORMERLY MANILA NORTH TOLLWAYS CORPORATION), *Petitioner,*	**CTA AC No. 312**
	Members:
-versus-	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
THE CITY OF CALOOCAN and HON. ANALIZA E. MENDIOLA in her capacity as City Treasurer, *Respondents.*	Promulgated: OCT 08 2025 1:20 p.m.

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DECISION

ANGELES, J.:

Before the Court is a *Petition for Review*[1] personally filed on December 7, 2023 by NLEX Corporation (petitioner) against the City of Caloocan and its City Treasurer, Analiza E. Mendiola (respondents), appealing the Decision[2] dated June 7, 2023 and Order[3] dated October 31, 2023 (assailed rulings), both issued by the Regional Trial Court (RTC) of Caloocan City - Branch 125 in Civil Case No. C-25539.

In the assailed rulings, the Court *a quo* dismissed the *Complaint*[4] filed by petitioner which sought to annul the assessment issued by respondents against petitioner for deficiency local business taxes (LBT) for calendar year (CY) 2019 in the total amount of ₱13,426,220.87, inclusive of penalties, computed under Bill No. M19-067-361916 dated April 10, 2019 (subject assessment).

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[1] Docket, pp. 5-28.
[2] Docket, pp. 35-44.
[3] Docket, pp. 45-46.
[4] RTC Records - Vol. I, pp. 2-9.

FACTS

Petitioner NLEX Corporation (formerly Manila North Tollways Corporation) is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at Km. 12, Balintawak Toll Plaza, NLEX, Baesa, Caloocan City.[5]

Respondent City of Caloocan is a local government unit (LGU) imposing LBT on petitioner, while respondent Mendiola is impleaded in her official capacity as the City Treasurer of Caloocan City.[6]

Tollways Management Corporation (TMC) filed an application for renewal of business permit dated January 9, 2018 for taxable year (TY) 2018 with the Business Permits and Licensing Office (BPLO) of Caloocan City.[7] In the said application, TMC indicated that its gross sales/receipts for the previous year (*i.e.*, 2017) was ₱1,582,125,052.38, attaching thereto a summary of its 2017 gross receipts.[8]

TMC then paid LBT and other fees for TY 2018 on January 31, 2018, April 19, 2018, July 11, 2018, and October 17, 2018, with each payment being evidenced by an Official Receipt issued by the Office of the Treasurer of Caloocan City.[9]

Subsequently, on November 29, 2018, the Securities and Exchange Commission (SEC) approved the Plan of Merger and updated Plan and Articles of Merger executed by and between TMC and petitioner, on April 17, 2017 and July 25, 2018, respectively, where petitioner was the surviving corporation.[10] It was stated in the updated Plan of Merger that the merger shall take effect fifteen (15) days from the approval by the SEC of the Articles of Merger and the issuance of the Certificate of Filing of the Articles of Merger.[11]

On March 27, 2019, the City Treasurer's Office - License Division of Caloocan City received TMC's application for retirement of business dated February 22, 2019. TMC indicated in the said application that

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[5] Pre-Trial Order dated May 24, 2022, RTC Records - Vol. I, pp. 303-310.
[6] *Id.*
[7] Exhibit "F", RTC Records - Vol. I, p. 449.
[8] Exhibit "G", RTC Records - Vol. I, p. 450.
[9] Exhibits "E" to "E-3", RTC Records - Vol. I, p. 450.
[10] Exhibit "A", RTC Records - Vol. I, p. 331.
[11] Exhibit "A", RTC Records - Vol. I, p. 339.

the date of effectivity and "date of business closed" was December 14, 2018.[12]

Thereafter, on April 11, 2019, TMC received the subject assessment issued by the BPLO of Caloocan City and approved by Atty. Emmanuel Emilio P. Vergara, City Government Assistant Department Head II.[13] The pertinent portion of the subject assessment is reproduced, as follows:

	Amount	Discount	Penalty	Total
BUSINESS TAX	12,402,975.40	0.00	1,023,245.47	13,426,220.87
GRAND TOTAL	12,402,975.40	0.00	1,023,245.47	13,426,220.87

This Billing is valid until April 20, 2019
Please make check payable to Caloocan City Treasurer

xxx xxx xxx

On June 10, 2019, TMC filed a Formal Letter of Protest in relation to the subject assessment with the City Treasurer's Office of Caloocan City.[14] Respondents did not act on the protest.[15]

PROCEEDINGS BEFORE THE COURT *A QUO*

Petitioner, having acquired the rights of TMC pursuant to the aforementioned merger with the same, filed a *Complaint*[16] on September 9, 2019 with the RTC of Caloocan City - Branch 125.

Summons[17] was served, after which, respondents filed their *Answer*[18] on November 15, 2019. Petitioner filed its *Reply*[19] thereto on December 6, 2019.

Petitioner then filed its *Pre-Trial Brief*[20] on January 23, 2020, while respondents filed their *Pre-Trial Brief*[21] on January 24, 2020.

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[12] Exhibit "D", RTC Records - Vol. I, p. 444.
[13] Exhibit "C", RTC Records - Vol. I, p. 369.
[14] Exhibit "B", RTC Records - Vol. I, pp. 360-368.
[15] *Supra*, note 5.
[16] *Supra*, note 4.
[17] RTC Records - Vol. I, p. 35.
[18] RTC Records - Vol. I, pp. 43-52.
[19] RTC Records - Vol. I, pp. 55-61.
[20] RTC Records - Vol. I, pp. 81-90.
[21] RTC Records - Vol. I, pp. 212-217.

The parties were directed to proceed to the Philippine Mediation Center for possible amicable settlement of the case. However, on July 13, 2020, the Court *a quo* received the Mediator's Report[22] stating that the mediation was unsuccessful. Respondents then submitted their *Amended Pre-Trial Brief*[23] on May 20, 2022. The Court *a quo* issued the Pre-Trial Order[24] on May 24, 2022.

Trial ensued. Petitioner presented its sole witness, Leslie M. Lorenzo, Senior Manager for Tax Compliance of NLEX Corporation.[25] Thereafter, petitioner filed its *Formal Offer of Exhibits*[26] on September 30, 2022, to which respondents filed their *Comment*[27] on October 24, 2022. The Court *a quo* admitted all of petitioner's offered exhibits.[28]

Respondents likewise presented their sole witness, Atty. Ma. Ethel Christine Din from the BPLO of Caloocan City.[29] Respondents then filed their *Formal Offer of Exhibits*[30] on December 9, 2022, while petitioner filed its *Comment*[31] thereto on January 3, 2023. The Court *a quo* also admitted all of respondents' offered exhibits.[32] The parties filed their respective Memoranda on March 2, 2023.[33] Following this, the case was submitted for decision.

On June 7, 2023, the Court *a quo* promulgated the assailed Decision[34] which dismissed the case for lack of merit.

Petitioner filed a *Motion for Reconsideration*[35] of the assailed Decision on August 2, 2023, and *Motion to Admit Reply* with attached Reply[36] on September 11, 2023. In turn, respondents filed their *Opposition*[37] to the *Motion for Reconsideration* on August 24, 2023,

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[22] RTC Records - Vol. I, p. 222.
[23] RTC Records - Vol. I, pp. 282-289.
[24] RTC Records - Vol. I, pp. 303-310.
[25] *Order* dated September 20, 2022, RTC Records - Vol. I, pp. 303-310.
[26] RTC Records - Vol. I, pp. 314-320.
[27] RTC Records - Vol. I, pp. 467-474.
[28] *Order* dated October 25, 2022, RTC Records - Vol. I, p. 476.
[29] *Order* dated November 29,2022, RTC Records - Vol. I, p. 479.
[30] RTC Records - Vol. I, pp. 480-486.
[31] RTC Records - Vol. II, pp. 1-5.
[32] *Order* dated January 30, 2023, RTC Records - Vol. II, p. 8.
[33] RTC Records - Vol. II, pp. 13-24 for respondents; and pp. 26-48 for petitioner.
[34] *Supra*, note 2.
[35] RTC Records - Vol. II, pp. 64-74.
[36] RTC Records - Vol. II, pp. 86-98.
[37] RTC Records - Vol. II, pp. 76-83.

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and *Opposition*[38] to the *Motion to Admit Reply* with attached Reply on September 21, 2023.

On October 31, 2023, the Court *a quo* issued the assailed Order[39] denying petitioner's *Motion for Reconsideration.*

PRESENT APPEAL

The present appeal[40] was filed before this Court on December 7, 2023. Respondents filed their *Comment*[41] thereto on February 5, 2024.

In compliance with the Minute Resolution dated January 23, 2024 of the Third Division, the Branch Clerk of Court of RTC of Caloocan City - Branch 125 on February 19, 2024 transmitted to this Court the original records of the case, consisting of four (4) folders.

Respondents and petitioner then submitted their respective Memoranda on April 15, 2024 and April 18, 2024.[42] In a Minute Resolution dated May 8, 2024,[43] the case was submitted for decision.

ASSIGNMENT OF ERRORS

Petitioner assigns the following errors:

A. THE RTC COMMITTED A REVERSIBLE ERROR IN NOT RULING THAT THE ASSESSMENT IS VOID BECAUSE IT WAS ISSUED IN VIOLATION OF SECTION 171 OF THE LOCAL GOVERNMENT CODE (LGC).

B. THE RTC COMMITTED A REVERSIBLE ERROR IN RULING THAT PETITIONER IS LIABLE FOR DEFICIENCY LBT FOR CY 2019 BECAUSE THE ASSESSMENT IS VOID FOR LACK OF FACTUAL AND LEGAL BASES.[44]

[38] RTC Records - Vol. II, pp. 102-105.
[39] *Supra*, note 3.
[40] *Supra*, note 1.
[41] Docket, pp. 48-68.
[42] Docket, pp. 110-130 for respondents; and pp. 132-160 for petitioner.
[43] Docket, p.163.
[44] *Supra*, note 1, p. 13.

ARGUMENTS OF THE PARTIES

Petitioner's arguments

First, petitioner contends that the subject assessment is void because it was not issued by the City Treasurer of Caloocan City, in violation of Section 171 of the LGC. Petitioner avers that even the City of Caloocan Revenue Code (CCRC) provides that LBT shall be assessed and collected by the City Treasurer.

Petitioner claims that it was able to prove during the trial that the subject assessment was not issued by the City Treasurer of Caloocan City, but by the BPLO. Respondent allegedly did not present any written authority or any evidence that would prove that the City Treasurer of Caloocan City authorized the BPLO to issue the subject assessment.

Petitioner posits that the mere fact that the subject assessment was made payable to the City Treasurer does not mean that the said assessment was prepared by the latter, or that the latter authorized the BPLO to issue the same. Even assuming that respondent had deputized the BPLO to issue the subject assessment, petitioner maintains that such act was violative of the prevailing rule that the assessment of deficiency LBT is beyond the scope of the functions of the BPLO.

Petitioner further argues that the invalidity of the subject assessment on the ground that it was issued without authority, was raised before the RTC; however, nowhere in the assailed rulings did the RTC resolve or discuss such ground. Petitioner submits that the lack of authority of the BPLO to issue the subject assessment directly affects the validity of the same.

Second, petitioner contends that the subject assessment is void for lack of factual and legal basis, considering that petitioner ceased its business operations on December 14, 2018. Petitioner argues that the Court *a quo*'s dismissal of the Complaint on the ground that the deficiency LBT had already accrued and became payable at the beginning of CY 2019 before petitioner filed its application for retirement of business on March 27, 2019, is contrary to jurisprudence on the nature and purpose of LBT and to the CCRC.

Moreover, petitioner submits that the evidence presented showed that petitioner did not conduct business in Caloocan City in

2019, and that it retired its business operations therein on December 14, 2018. As such, there is no basis to hold it liable for deficiency LBT for CY 2019.

Respondents' counter-arguments

Anent petitioner's *first* argument, respondents counter that the instant *Petition* raised a new issue that was not tried before the Court *a quo*, in violation of Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals (RRCTA).

Respondents allege that petitioner's protest, Complaint, and Pre-Trial Brief all failed to state as an issue the BPLO's supposed lack of authority to issue the subject assessment. The Pre-Trial Order likewise did not state such matter as an issue to be resolved by the Court *a quo*. As such matter was not an issue discussed before the trial court, it may not be raised for the first time on appeal.

Respondents also argue that the subject assessment was issued in accordance with law since it was issued by the City Treasurer of Caloocan City through the BPLO. This conclusion is allegedly supported by Section 69 of the CCRC which provides that an application for retirement/closure of business must be applied with the BPLO, as confirmed by respondents' witness, Atty. Din. Respondents claim that the subject assessment itself clearly indicated that it was from the City Treasurer as the payment for such was to be made to the latter. Since the payment of the tax assessed was made payable to respondent, it was surely issued under respondent's authority.

Respondents further explain that for the processing of business permits and licenses, its BPLO uses a computer-generated software known as Business Permit and Licensing Tax Administration System (BPLTAS) which was actually provided by the City Treasurer's Office. The BPLTAS allegedly automatically indicates the assessment of the taxes due to the taxpayer based on the gross receipts declared in the application for retirement/closure of business, and the BPLO merely enters the information from the said application. In this case, since the subject assessment was issued by the BPLO using the BPLTAS, which was provided by the City Treasurer, the same was indeed made by the latter.

Furthermore, respondents assert that there is nothing in the LGC that prohibits the BPLO to make an assessment of taxpayers applying for business retirement/closure. Sections 170 and 171 of the LGC only refers to the authority of the City Treasurer to collect taxes.

As regards petitioner's *second* argument, respondents counter that they correctly assessed petitioner deficiency LBT for CY 2019. Citing Section 69 of the CCRC, respondents submit that while petitioner actually retired its business on December 14, 2018, it belatedly filed its application for retirement of business on March 27, 2019, or way beyond the period provided by the CCRC (*i.e.*, within twenty (20) days upon closure of the business). Upon the filing of the said application, petitioner had already accrued taxes for operating its business for the first quarter of the year, considering that all local taxes, fees, and charges accrue on the 1st day of January of each year.

Respondents additionally argue that petitioner failed to overcome the presumption that petitioner operated without a business permit during the first quarter of 2019.

Lastly, respondents maintain that no business may be retired or terminated unless all taxes due are paid. Here, petitioner has not paid its taxes due; thus, legally speaking, petitioner has not yet completed its retirement of business.

RULING OF THE COURT

After a careful review of the parties' respective arguments and evidence, We rule to **grant** the instant *Petition for Review*.

Timeliness of the Petition

Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282 (CTA Law), provides a 30-day period within which an appeal may be taken from an adverse decision, order, or resolution of the RTC in local tax cases to the CTA, to wit:

> 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 **<u>the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling</u>** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.
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> xxx xxx xxx
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> *(Emphasis supplied)*

Records show that petitioner received the Order dated October 31, 2023, on November 7, 2023.[45] Petitioner thus had thirty (30) days from such receipt or until December 7, 2023 to file an appeal with this Court. Since petitioner filed the instant *Petition for Review*[46] on December 7, 2023, the same was timely filed.

The power of the Court to rule on issues not stipulated on by the parties

Petitioner argues that the subject assessment is void because it was not issued by the City Treasurer of Caloocan City, in violation of Section 171 of the LGC.

Respondents challenge this argument on the ground that it was raised by petitioner only on appeal and that it was not tried before the Court *a quo*.

On this issue, We find respondents' position to be untenable.

It is a fundamental legal principle that judgment must conform to both the pleadings and the evidence, and must be in accordance with the theory of the action upon which the pleadings were framed and the case was tried.[47]

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[45] *Order* dated October 31, 2023, RTC Records - Vol. II, p. 116.
[46] *Supra*, note 1.
[47] *Lazo v. Republic Surety & Insurance Co., Inc.*, G.R. No. L-27365, January 30, 1970.

Due process considerations justify this principle. Jurisprudence holds that it is improper for the court to enter an order which exceeds the scope of relief sought by the pleadings, **absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief.**[48] It also holds that both parties to a suit are entitled to due process against unforeseen and arbitrary judgments.[49]

In a similar manner, due process considerations underlie the settled rule that points of law, theories, issues and arguments not brought to the attention of the trial court ought not to be considered by the reviewing court, as these cannot be raised for the first time on appeal.[50]

For the limited purpose of illustrating the foregoing jurisprudential precepts, a brief discussion on the case of *Rivera v. Del Rosario*[51] is in order. In this case, the Court of Appeals, as the reviewing court, modified the RTC's judgement to the extent that it upheld the RTC's ruling that the subject Deed of Absolute Sale was null and void, but declared such nullity only with respect to Lot No. 1083-C. The Court of Appeals upheld the validity of the subject Deed of Sale with respect to Lot No. 1083-A.

In overturning the ruling of the Court of Appeals on this point, the Supreme Court noted that during the oral arguments before the Court of Appeals, both petitioners and respondents admitted that Lot No. 1083-A had been expropriated by the government long before the Deed of Absolute Sale was entered into. The Supreme Court also noted that the case before it involves only Lot No. 1083-C. It never involved Lot 1083-A. Thus, it was held that the Court of Appeals had no jurisdiction to adjudicate on Lot 1083-A, as it was never touched upon in the pleadings or made the subject of evidence at trial.[52]

In light of the foregoing ruling, viewed through the prism of due process, the conduct of pre-trial in civil actions is indeed necessary and mandatory. Pre-trial is a procedural device intended to clarify and limit the basic issues between the parties and to take the trial of cases out of the realm of surprise and maneuvering.[53] Thus codified, Section 7, Rule

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[48] *Development Bank of the Philippines v. Teston*, G.R. No. 174966, February 14, 2008.
[49] *Bucal v. Bucal*, G.R. No. 206957, June 17, 2015.
[50] *Secretary of the Department of Agrarian Reform v. Mendoza*, G.R. No. 204905, July 14, 2021.
[51] G.R. No. 144934, January 15, 2004.
[52] *Id.*
[53] *LCK Industries Inc. v. Planters Development Bank*, G.R. No. 170606, November 23, 2007.

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18 of the Revised Rules of Court[54] mandates that the contents of the pre-trial order shall control the subsequent proceedings, unless modified before trial to prevent manifest injustice.

However, the non-inclusion of an issue in the Pre-Trial Order does not bar the court from resolving such matter. Issues not included in the Pre-Trial Order **may be considered if they are impliedly included in the issues raised or inferable by necessary implication from the issues asserted.**[55]

Relatedly, pursuant to Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA),[56] the CTA, in deciding cases brought before it, whether in the exercise of its original or appellate jurisdiction, may not limit itself to the issues stipulated by the parties, **but may also rule upon related issues**, to wit:

> SECTION 1. *Rendition of Judgment.* —
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> xxx xxx xxx
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> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but **may also rule upon related issues necessary to achieve an orderly disposition of the case.** *(Emphasis supplied)*

Moreover, under Section 5, Rule 10 of the Revised Rules of Court, issues not raised in the pleadings, **when tried with the consent of the parties**, shall be treated as if they had been raised in the pleadings. The said provision reads:

> SECTION 5. *No Amendment Necessary to Conform to or Authorize Presentation of Evidence.* — When issues not raised by the pleadings are **tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.** No amendment of such pleadings deemed amended is necessary to cause them to conform to the evidence. *(Emphasis supplied)*

In sum, the court may rule and render judgment on issues not included in the pre-trial order or not stipulated on by the parties when the right of either party to due process is not violated; when the subject issue is impliedly included or inferable by necessary implication from

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[54] A.M. No. 19-10-20-SC, October 15, 2019.
[55] *Waterfront Philippines, Inc. v. Social Security System*, G.R. No. 249337, July 6, 2021.
[56] A.M. No. 05-11-07-CTA, November 22, 2005.

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the issue/s raised; or when the subject issue was tried with the express or implied consent of both parties.

Verily, as early as in the 1999 case *Vlason Enterprises Corp. v. Court of Appeals*,[57] the High Court decreed that the general rule is *allegata et probata* — a judgment must conform to the pleadings and the theory of the action under which the case was tried. But a court may also rule and render judgment on the basis of the evidence before it, even though the relevant pleading has not been previously amended, so long as no surprise or prejudice to the adverse party is thereby caused.

Further, in the case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.*,[58] the Supreme Court, through the *ponencia* of the Chief Justice, held that the CTA was justified in ruling that the taxpayer was denied due process, even though such issue was not expressly raised in the taxpayer's petition for review. The Court held, *viz.*:

> As the CTA *En Banc* held, the CTA Division was justified in ruling on the issue that respondent was denied due process even though it was not expressly raised by respondent in its petition for review. Sec. 1, Rule 14 of the RRCTA provides that "[i]n deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case." **Herein, the issue of the validity of the assessment against respondent also necessarily requires the determination of the matter of the proper issuance of said assessment in accordance with the requirements of due process. In addition, there were sufficient allegations in respondent's petition for review on the dates of issuance by the BIR and receipt by respondent of the PAN and FLD/FAN, as well as documentary and testimonial evidence to establish the essential facts for resolution of the issue which were presented during the trial without any objection from petitioner. This could be deemed as petitioner's implied consent to try the issue, recognized under Sec. 5, Rule 10 of the Revised Rules of Court, which applies suppletorily to the RRCTA.**
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> xxx xxx xxx
>
> *(Emphasis supplied)*

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[57] G.R. Nos. 121662-64, July 6, 1999.
[58] G.R. No. 222476, May 5, 2021.

Applying the foregoing discussion to the case at bar, respondents are correct in pointing out that petitioner's issue on the BPLO's purported lack of authority to issue the subject assessment (subject issue) was not stated in petitioner's administrative protest, nor in its *Complaint* and *Pre-Trial Brief* filed with the Court *a quo*. Neither was the subject issue included in the Pre-Trial Order dated May 24, 2022.[59] A perusal of the said Pre-Trial Order shows that the "Issue to be Tried" before the Court *a quo* is "Whether or not plaintiff has a cause of action against the defendants."

Be that as it may, records reveal that the subject issue was actually tried by the parties before the Court *a quo* with their implied consent.

The issue on the BPLO's authority or lack thereof to issue the subject assessment was tried before the RTC

In the Judicial Affidavit[60] of respondents' witness, Atty. Din, it was stated that her testimony was being offered to prove, among others, that *"[petitioner's] local business tax liability was assessed by the [BPLO] in accordance with the Caloocan City Revenue Code.*"

In relation thereto, Atty. Din made the following statements:

> **1. Q: Ms. Witness, kindly state your name and your employment, if any**
>
> A: I am Ma. Ethel Christine S. Din. I am currently employed with the BPLO of Caloocan City and my current item is Attorney II.
>
> **2. Q: How long have you been connected with the BPLO?**
>
> A: More than ten years now, sir. I started working as Licensing Officer I, since 2011, but since I recently passed the bar, my current item is Attorney II beginning October 27, 2020.
>
> **3. Q: What are duties and responsibilities with the BPLO?**
>
> A: I examine the documents filed by the business entities for the purposes of application, renewal or retirement of their business permits. If these business entities have already complied with the requirements like payment of assessed local business taxes, fees, and

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[59] *Supra*, note 24.
[60] RTC Records - Vol. I, pp. 595-599.

> charges, I prepare the permits and licenses. I also prepare initial assessment of applicants for local business taxes, fees and charges. And from time to time sir, I do whatever is required of me by my superiors such as photocopy of documents, assist during inspection of business entities, attend official meetings and seminars, and the like.
>
> **4. Q: You mentioned that you also prepare initial assessments for local business taxes, fees and charges. How do you assess business entities for local business taxes?**
>
> A: The BPLO assess applicant-businesses for local business tax based on their declared gross sales or receipts for the preceding year as provided in the Local Government Code and the Caloocan City Revenue Code. The applicable rates for computation of the local business tax depends on the category of business as enumerated in the Caloocan City Revenue Code.
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> xxx xxx xxx

During the hearing for respondents' presentation of evidence held on November 29, 2022, Atty. Din was cross-examined on the above-cited statements, as follows:[61]

> Q: Ma'am, may I refer you to your answer to Question No. 3? You mentioned that the preparation of initial assessments for local business taxes is among your duties as part of the BPLO, is that correct?
>
> A: Yes sir.
>
> xxx xxx xxx
>
> ATTY ORTEGA:
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> May the witness be presented with Exhibit "2" of her judicial affidavit, your Honor?
>
> xxx xxx xxx
>
> COURT:
>
> May we know first what is that document? Just to be clarified. What is that document?
>
> WITNESS:
>
> A: Your Honor, this is the assessment for the retirement of business.

[61] *Transcript of Stenographic Notes* dated November 29, 2022, pp. 10-13.

ATTY. ORTEGA:

Q: Can you confirm, Ma'am that this was prepared by the BPLO?

A: Yes, sir.

Q: And not by the City Treasurer, is that correct?

ATTY. NAS:

Your Honor, objection.

COURT:

What is the basis for your objection?

ATTY. NAS:

Your Honor, I am using the same basis a while ago.

COURT:

What is your basis?

ATTY. NAS:

Your Honor, the document speaks for itself.

COURT:

Objection overruled. Witness may answer. Tama po ba yan that the document was prepared by the BPLO and not by the City Treasurer?

WITNESS:

Yes, your Honor.

xxx xxx xxx

(Emphasis and underscoring supplied)

On re-direct examination of Atty. Din, respondents' counsel no longer touched on the subject issue.[62]

It is clear from the above-cited evidence that the subject issue was brought up by respondents themselves when Atty. Din mentioned in her Judicial Affidavit that part of her duties and responsibilities as an officer of the BPLO is to prepare initial assessments for LBT. She

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[62] *Transcript of Stenographic Notes* dated November 29, 2022, p. 18.

also stated how the BPLO assesses applicant-businesses for LBT. Petitioner's counsel then harped on these statements, asking the witness if the BPLO indeed prepares initial assessments for LBT and if the subject assessment was indeed prepared by the BPLO, to which questions the witness answered in the affirmative. While respondents were given an opportunity on re-direct examination to elaborate on Atty. Din's statements, or to prove that the BPLO was authorized to prepare the subject assessment, respondents did no such thing. Neither did respondents present rebuttal evidence on the subject issue considering that the same had already been raised during the trial. It bears noting that the subject issue was also raised in petitioner's Memorandum dated March 2, 2023[63] and Motion for Reconsideration dated August 2, 2023[64] submitted before the RTC.

Matters on the BPLO's purported duty and responsibility to prepare LBT assessments for applicant-businesses cannot, by any logical or legal reasoning, be separated from matters on the BPLO's authority to carry out such function, for to recognize the BPLO's assessment functions without addressing its concomitant authority to effectuate the same is to sanction an act bereft of legal foundation.

Hence, respondents' argument that the subject issue was not tried before the Court *a quo* and was raised only on appeal, is contradicted by evidence on record. Contrariwise, the subject issue was timely raised during the trial, and respondents were afforded several opportunities to be heard with respect to such issue.

Furthermore, it was held in the *Yumex* case[65] that when there are sufficient allegations in the pleadings as well as documentary and testimonial evidence to establish the essential facts for the resolution of an issue which was presented during the trial without any objection from the parties, such could be deemed as the parties' implied consent to try such issue under Section 5, Rule 10 of the Revised Rules of Court, which applies suppletorily to the RRCTA.

In this case, We find the evidence on record sufficient to determine who prepared and issued the subject assessment, and if there was any authority expressly or impliedly given for such actions.

The Court is mindful that during cross-examination, counsel for respondent objected when counsel for petitioner asked the witness,

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[63] *Supra*, note 33.
[64] *Supra*, note 35.
[65] *Supra*, note 58.

Atty. Din, to confirm whether the subject assessment was prepared by her and not by the City Treasurer of Caloocan City. It must be noted, however, that the basis for respondents' objection was "the document speaks for itself,"[66] which is hardly the objection contemplated under Section 5, Rule 10 of the Revised Rules of Court. In any case, upon the Court *a quo*'s clarificatory question, the witness answered that it was the BPLO, not the City Treasurer of Caloocan City, who prepared and issued the subject assessment. At that point, the issue on the BPLO's authority or lack thereof to issue the subject assessment was undeniably raised, and respondent failed to address the matter.

Therefore, in line with the *Yumex* case,[67] respondents are deemed to have impliedly consented to try the subject issue.

The issue on the validity and correctness of the subject assessment necessarily encompasses the authority of the BPLO to issue the same

In *National Power Corp. v. Province of Pampanga*,[68] the Supreme Court ruled that the issue of nullity of the Assessment Letter is not deemed waived even if raised only in the taxpayer's motion for reconsideration of the CTA *En Banc*'s Decision. Citing Section 1, Rule 14 of the RRCTA and jurisprudence, the High Court emphasized that the CTA has ample authority to determine compliance by the taxing authority of the due process requirements under the tax laws even though not expressly raised as an issue in the petition filed before them. The High Court likewise held that the validity or invalidity of the Assessment Letter was integral to the issue of the taxpayer's liability for local franchise tax under the Provincial Tax Code of 1992 of Pampanga.

In the same vein, the issue on the BPLO's authority or lack thereof to issue the subject assessment is necessarily included in and inextricably intertwined with the issue on the legality and correctness of such assessment, which were raised by petitioner in its *Complaint*, *Pre-Trial Brief* and *Motion for Reconsideration* of the assailed Decision, and in the instant *Petition*.

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[66] *Supra*, note 61.
[67] *Supra*, note 58.
[68] *National Power Corp. v. Province of Pampanga*, G.R. No. 230648, October 6, 2021.

Surely courts must first look into the validity and/or legality of the subject assessment, on the basis of evidence already on record, before ruling on the correctness of the taxpayer's liability therein.

For all these reasons, We agree with petitioner that the Court *a quo* should have discussed and rendered judgement on the BPLO's authority to issue the subject assessment, considering that it was timely raised during the trial with the parties' implied consent, that the right of respondents to due process would not have been violated by such judgment as they were given the opportunity to ventilate on the issue, and that the resolution of such issue is necessary to dispose of the other issues raised by the parties in their respective pleadings.

The subject assessment is void as the BPLO had no authority under the Caloocan City Revenue Code to issue the same

Petitioner asserts that both the LGC and CCRC require that LBT shall be assessed and collected by the City Treasurer of Caloocan City. Since it was able to prove during the trial that the subject assessment was issued by the BPLO and not by the City Treasurer of Caloocan City, petitioner submits that the subject assessment is void.

Respondents maintain that the subject assessment was issued in accordance with law since it was issued by the City Treasurer of Caloocan City through the BPLO. Respondents point out that, *one*, the payment for the assessed deficiency taxes was made payable to the City Treasurer of Caloocan City; and, *two*, the subject assessment was issued using the BPLTAS which was provided by the City Treasurer; thus, the subject assessment was issued by the latter.

We are constrained to rule for petitioner.

Codified under Section 132 of the LGC[69] is the power of the LGU to impose taxes or to generate revenue for the local government through the local legislative body or *Sanggunian* and through the passage of an appropriate ordinance.[70]

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[69] Republic Act No. 7160, October 10, 1991.

[70] **Section 132.** *Local Taxing Authority.* - The power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the sanggunian of the local government unit concerned through an appropriate ordinance.

As the power of the LGU is derived from the Constitution which grants it the power to create its own sources of revenues and to levy taxes, fees and charges, such power is not inherent and may be exercised only to the extent that it is delegated, subject to the guidelines and limitations as the Congress may provide.[71]

Thus, with the imposition of taxes being a legislative function, such power cannot be left to the discretion of the City Mayor or City Treasurer. An ordinance must be enacted by the *Sanggunian* under such terms and conditions as may be necessary such that there is nothing left to do but to enforce it in accordance with the terms and conditions set therein.[72]

Section 69 of Caloocan City Ordinance No. 0386-04, otherwise known as the Caloocan City Updated Revenue Code of 2004 (CCURC),[73] provides the governing rules on retirement of business, *viz.*:

> SECTION 69. *Retirement of Business.* — (a) Any person who discontinues or closes his business operation shall within twenty (20) days upon closure of the business apply for the retirement with the **<u>Business Permits and Licensing Office</u>** and surrender his permit to the City Mayor in a prescribed form.
>
> **<u>(b) No business may be retired or terminated unless all the taxes due are paid.</u>** A sworn statement of its gross receipts or sales for the current year shall be presented to the City Treasurer and the corresponding taxes shall be collected.
>
> (c) Failure to retire the business and surrender the business permit within the prescribed period shall subject the taxpayer to a twenty-five percent (25%) surcharge of his business tax liabilities. *(Emphasis supplied)*

In connection therewith, Section 75 of the CCURC provides who may assess and collect LBT, to wit:

> SECTION 75. *Assessment and Collection of Tax on Business by the City Treasurer.* — The tax on business imposed under this Code **<u>shall be assessed and collected by the City Treasurer.</u>** With the approval of the City Mayor and sangguniang barangay concerned, **<u>he may deputize the barangay treasurer to collect</u>**

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[71] *Guialani v. Court of Appeals, (Special) Twenty-Second Division*, G.R. Nos. 221253-54, 227527-28 & 231065-68, April 26, 2021.
[72] *Id.*
[73] Exhibit "4", RTC Records - Vol. I, p. 528.

> **<u>business taxes</u>**, provided the city government shall pay the bond premiums required for the purpose. *(Emphasis supplied)*

Sections 277 and 282 of the CCURC further provide the general provisions on the assessment and collection of all city taxes, thus:

> SECTION 277. *Collection of City Revenues by the City Treasurer.* — All taxes, fees, charges and other revenues **<u>shall be collected by the City Treasurer or his duly authorized deputies and representatives.</u>** The City Treasurer may designate the Barangay Treasurer as his deputy to collect City taxes, fees, and charges. The City government shall pay the premiums of the bond of barangay treasurers deputized to collect City taxes, fees and charges.
>
> xxx xxx xxx
>
> SECTION 282. *Examination of Books of Accounts and Pertinent Records of Business Establishments by City Treasurer.* — (a) **<u>The City Treasurer, or his duly authorized representatives, may examine the books of accounts, and other pertinent records of any business subject to City taxes and fees in order to ascertain, assess, and collect the correct amount of the tax due.</u>** Such examination shall be made during regular business hours, only once for every tax period, and shall be certified to by the examining official. Such certificate shall be made of record in the books of accounts of the taxpayer examined.
>
> **<u>(b) In case the examination herein authorized is made by a duly authorized representative of the City Treasurer, the written authority of the duly authorized representative concerned shall specifically state the name, address, and business of the taxpayer whose books of accounts, and other pertinent records are to be examined, the date and place of such examination, and the procedure to be followed in conducting the same.</u>**
>
> (c) For this purpose, the records of the Revenue District Office of the Bureau of Internal Revenue in the City shall be made available to the City Treasurer pursuant to the provisions of Sec. 171, R.A. 7160. *(Emphasis supplied)*

Based on LBT provisions of Caloocan City's own revenue code, the function of the BPLO insofar as tax assessments are concerned is to process applications for retirement and to retire or terminate businesses upon the payment of all taxes due. **But it is the City Treasurer to whom the sworn statement of gross receipts or sales for the current year shall be presented, and it is the City Treasurer who is authorized to assess and collect LBT.** The City Treasurer may deputize the Barangay Treasurer to collect LBT, but such deputization is subject to several conditions. **Nowhere**

in the LBT provisions of the CCURC is it stated that the BPLO may assess LBT or that it may be deputized to assess LBT on behalf of the City Treasurer.

With respect to the general provisions on the assessment and collection of all city taxes under Sections 277 and 282 of the CCURC, while the City Treasurer is allowed therein to authorize a representative to examine the books of accounts and other pertinent records of any business in order to assess and collect the correct amount of taxes due, such authority must be written and must be duly executed in the manner provided by the applicable rules.

In this present case, a close examination of the subject assessment reveals the following, among others: **(1)** the header indicates the name "BUSINESS PERMITS AND LICENSING OFFICE;" **(2)** it is issued for TMC; **(3)** it contains a computation for business tax with a grand total of ₱13,426,220.87 under Bill No. M19-067-361916; **(4)** the Billing is for taxable year 2019 valid until April 20, 2019; **(5)** stated therein is the phrase "Please make check payable to Caloocan City Treasurer;" and **(6)** it is billed by one Michelle T. Esmao and approved by one Atty. Emmanuel Emilio P. Vergara with the position of "City Government Assistant Department Head II."

Evidently, nothing in the subject assessment even impliedly suggests that the same was issued by the City Treasurer of Caloocan City. To the contrary, quite clearly, the subject assessment was issued by the BPLO of Caloocan City. This conclusion is further supported by respondents' witness, Atty. Din, who established in her Judicial Affidavit[74] and during cross-examination[75] that the subject assessment was prepared by the BPLO of Caloocan City.

Attention must also be drawn to the fact that the identity of the person who billed TMC was not established, and that the person who approved the subject assessment was not proved to be the City Treasurer or his/her duly authorized representative. In fact, respondents failed to present any evidence tending to prove that the BPLO or the person who billed or approved the subject assessment was duly authorized by the City Treasurer to assess LBT against TMC.

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[74] *Supra*, note 60.
[75] *Supra*, note 61.

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Respondents' contention that the subject assessment was issued under the City Treasurer's authority because it was made payable to him/her, is non sequitur and devoid of any legal basis.

There is also no basis for respondents' claim that the subject assessment was made by the City Treasurer since it was issued using the BPLTAS, which was provided by the City Treasurer's Office. Primarily, mere allegation is not evidence and respondents failed to adduce evidence tending to prove their claim. Even assuming that their claim was true, **the duty and responsibility of the City Treasurer of Caloocan City to assess and collect LBT is expressly mandated by the CCURC. As such, it may not be arrogated to the BPLO by the mere act of providing the BPLO with a computer software or application that automatically computes for the taxpayer's deficiency LBT.**

Incidentally, in 2016, the Bureau of Local Government Finance (BLGF), which operates under the Department of Finance and is tasked to, among others, assist in the formulation and implementation of policies on local government revenue administration, as well as exercise administrative and technical supervision and coordination over the treasury and assessment operations of local governments,[76] issued an Opinion[77] discussing its long-held position on the authority of the BPLO to assess local taxes. The pertinent portion of the said Opinion states:

> **Issue No. 1 — Assessment of Local Taxes, Fees and Charges**
>
> **<u>This Bureau has consistently expressed the view that assessment of local taxes, fees and charges is the sole responsibility of local treasurer.</u>** Such view is explicitly cited in the 1st Indorsement dated 14 June 1996, addressed to the City Treasurer of Caloocan City bearing on similar issues, wherein the pertinent issue of which is quoted hereunder:
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> > *"x x x, the City Treasurer is the one responsible for the administration, assessment, collection and enforcement of all local taxes, fees and charges thereat, which include the amusement tax. Therefore,* ***<u>the transfer of the administration, assessment, collection and enforcement of the amusement tax from that office to the Business Permits and Licensing Office under the Office</u>***

[76] Section 33, Chapter 4, Title II of Executive Order No. 292, otherwise known as the Administrative Code of the Philippines.
[77] *Assessment and Collection of Local Taxes, Fees and Charges and the Application of the 10-year Assessment of Back Taxes, Fees and Charges*, Bureau of Local Government Finance Opinion, December 29, 2016.

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> ***of the Mayor is not founded on, nor supported by, any provision of the Code."***

> Further, in a similar case of San Carlos City (Pangasinan), this Bureau maintained its previous position on the matter that assessments and collections of Local taxes, fees and charges are the responsibility of local treasurers, thus:

>> *"x x x,* ***numerous opinions had already been rendered, where it is the firm stand of this Bureau that the assessment function which is preparatory in the computation and collection of business taxes is an inherent function of local treasurers.***
>>
>> *Moreover, under the Local Treasury Operations Manual (LTOM) which is the operating and guiding manual in the discharge of function of local treasurers, it is the treasurer that certified the correctness of the taxes, fees and charges collected and reported by his office pursuant to the pertinent provision of the LGC.*
>>
>> *Another important thing to point out is that* ***in case of protest on assessment, Section 195 of the LGC explicitly provides that the treasurer shall decide the protest within the prescriptive period provided in the law (LGC). Now, in case that the assessment is made by another office or officer and relegate the treasurer in the collection function, the treasurer may not be able to make a justifiable decision on the protest as he is not the one who issued the assessment much more compute for the correct taxes.***
>>
>> *Accordingly, the previous stand of this Bureau on the matter still holds until such time that the same is modified or rescinded accordingly." (Emphasis supplied)*

Subsequently, in 2017, the BLGF issued another Opinion[78] reiterating its position on the authority of the BPLO to assess local taxes, as quoted below:

> With regard to the first issue on the authority of the BPLO to assess tax, **this Bureau has consistently taken the position that the assessment of business tax is an inherent function of local treasurers, pursuant to the LGC of 1991 and its Implementing Rules and Regulations (IRR). Thus, unless**

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[78] *Imposition of Percentage Business Tax Based on Gross Receipts on General Professional Partnership*, Bureau of Local Government Finance Opinion, March 15, 2017.

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> **there are express and explicit provisions of the law to the contrary, specifically stating that the assessment of business taxes shall be conducted by the BPLO, such function shall remain to be exercised by the Office of the City Treasurer.** *(Emphasis supplied)*

While the foregoing Opinions do not bind this Court, it is worth noting that even the executive department, through the BLGF, acknowledges that it is the City Treasurer who is vested with the power and responsibility to assess and collect all local taxes, and unless expressly and explicitly provided by law, the transfer of the same to the BPLO lacks legal basis. In the present case, respondents failed to present any provision of law, local ordinance or applicable rule to support their claim that the BPLO may conduct an assessment of petitioner, even on a preliminary or initial basis.

All of this is not to say that the assessment and/or collection of LBT cannot be delineated or delegated to the BPLO. This Court recognizes the need to streamline administrative procedures for the payment of taxes, fees and charges and to reduce red tape in the local government structure for purposes of efficiency, practicality and convenience of both the taxing authority and the taxpayers. This notwithstanding, as the power and responsibility to assess and collect LBT is conferred upon the City Treasurer of Caloocan City by fiat of local law, and unless it be provided therein that such functions are or may be transferred to the BPLO, this Court is duty-bound to uphold the letter of the law in this regard.

We therefore find that the subject assessment was issued by the BPLO of Caloocan City without proper authorization from the City Treasurer of Caloocan City. Consequently, the subject assessment is null and void.

With the foregoing findings, this Court shall no longer belabor the other arguments raised by the parties, particularly the correctness of the subject assessment, for it is well-established that a void assessment bears no valid fruit.[79]

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**.

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[79] *Supra*, note 68.

Accordingly, the Decision dated June 7, 2023 and Order dated October 31, 2023 both issued by the RTC of Caloocan City - Branch 125 in Civil Case No. C-25539, are **REVERSED** and **SET ASIDE**.

The assessment dated April 10, 2019 issued against TMC under Bill No. M19-067-361916 in the total amount of ₱13,426,220.87, is hereby **CANCELLED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
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
Third Division 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