REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HON. LOURDES R. JOSE, in her capacity as City Treasurer of City of Caloocan, Petitioner,	CTA AC NO. 127
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
	Promulgated:
TIGERWAY FACILITIES AND RESOURCES, INC., Respondent.	SEP 27 2016 2:15 p.m.

x---x

DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review, petitioner Lourdes R. Jose, in her official capacity as City Treasurer of the City of Caloocan, assails the (1) Decision dated July 8, 2014, which directed the refund of the amount of P485,195.01 in favor of respondent, plus interest until fully refunded, and the (2) Order dated December 3, 2014 denying her motion for reconsideration, both rendered by the Regional Trial Court (RTC), Branch 212, Mandaluyong City. The subject amount for refund or credit represents respondent's erroneous or excessive payment of business taxes, fees and charges to petitioner for the year 2005.

Petitioner was the City Treasurer of Caloocan at the time of the filing of the complaint with the RTC.[1]

[1] Par. 2, Petition For Review dated March 6, 2015

Respondent Tigerway Facilities and Resources, Inc., on the other hand, is a domestic corporation, with main office at 433 R. Pascual Street, Mandaluyong City.[2]

On January 21, 2005, the Caloocan City Business Permits and Licensing Office (BPLO) issued an Order of Payment[3] directing respondent to pay business tax and fees in the amount of P219,429.80.

On January 25, 2005, respondent paid[4] the assessed amount leading to the issuance in its favor of a Mayor's Permit[5] for the said year for its factory located in Caloocan. Subsequently, BPLO issued a Final Demand[6] to respondent demanding payment of deficiency business tax of P1,220,720.00 for the year 2005, on account of the alleged ocular inspection conducted on its business establishment on May 27, 2005.

BPLO subsequently issued to respondent a Notice of Deficiency[7] dated July 15, 2005 reiterating its demand for payment of business tax deficiency of P1,220,720.00. This was followed by the Last and Final Demand[8] dated December 2, 2005 and Order of Payment[9] dated December 8, 2005 for the same amount citing as ground another ocular inspection of respondent's business establishment on June 10, 2005.

The amount of the alleged business tax deficiency was later reduced to P500,000.00 as indicated in the Order of Payment[10] dated December 29, 2005, which respondent paid[11] on the same date.

On December 27, 2007, respondent filed a written claim for refund or credit with petitioner on the ground that

---

[2] Paragraph 1, Complaint filed on December 28, 2007, RTC Records, p. 1.
[3] Annex "B", RTC Records. p. 29.
[4] Annex "C", Official Receipt dated January 25, 2005 issued by the Office of the Treasurer of Caloocan, RTC Records. p. 30.
[5] Annex "D", RTC Records. p. 31.
[6] Annex "E", Final Demand signed by Chief of BPLO, Atty. Melanie T. Soriano-Malaya on June 30, 2005, RTC Records. pp. 32-33.
[7] Annex "F", RTC Records. p. 34.
[8] Annex "G", RTC Records. p. 35.
[9] Annex "G-1", RTC Records. p. 36.
[10] Annex "H", RTC Records. p. 37.
[11] Annex "I", Official Receipt, RTC Records. p. 38.

the additional assessments against it had no factual or legal basis. Respondent further alleged that its own review revealed that the deficiency due from it should be P234,234.79 instead of the P219,429.80 which it paid on January 25, 2005. However, since respondent already paid P219,429.80 on January 25, 2005 and P500,000.00 on December 29, 2005 for a total of P719,429.80, it is entitled to a refund in the amount of P485,195.01 (P719,429.80 - P234,234.79).[12]

On December 28, 2007, respondent filed a Complaint for Refund or Credit of Local Tax and Fees[13] with the RTC, Mandaluyong pursuant to Section 196 of the Local Government Code (LGC), praying, among others, for the refund or credit of the amount of P485,195.01 alleged to have been erroneously paid to petitioner.

In the assailed Decision[14] dated July 8, 2014, the RTC-Mandaluyong City ordered the refund or credit to respondent the amount of P485,195.01, in the following fashion:

> "WHEREFORE, IN VIEW OF THE FOREGOING, the instant complaint is GRANTED. The defendant Treasurer of the City of Caloocan is hereby ORDERED to:
>
> A. Refund or credit to plaintiff the amount of Four Hundred Eighty Five Thousand One Hundred Ninety Five Pesos and 1/100 (Php 485,195.01), plus interest at the legal rate at 6% per annum from the time of payment to defendant on 29 December 2005 until actual refund or credit has been made;
>
> B. Defendant's counterclaim is DENIED for lack of merit.
>
> SO ORDERED."

---

[12] Annex "J", RTC Records. pp. 39-40.
[13] RTC Records. pp. 1-8.
[14] RTC Records. pp. 700-709.

The RTC affirmed its ruling when it denied petitioner's Motion for Reconsideration[15] in the similarly assailed Order[16] of December 3, 2014.

On March 6, 2015 or within the extended period granted, petitioner filed the instant Petition for Review.[17]

Petitioner contends that the RTC should have dismissed the claim for refund filed by respondent for lack of cause of action thereby depriving the RTC of jurisdiction.

Contrary to respondent's claim, the subject assessment could no longer be impugned, even indirectly through a claim for refund, as it already gained finality given that respondent failed to file a written protest against the assessment within sixty days from receipt thereof as provided under Section 195 of the Local Government Code (LGC). A violation of the said provision rendered the refund case filed by respondent beyond the competence of the RTC to entertain.

Even assuming that a claim for refund was a proper available remedy, nevertheless it should have been denied as respondent was unable to prove that the subject taxes were erroneously or illegally collected from it as stated in Section 196 of the LGC.

On the other hand, petitioner was able to clearly prove that the assessment was properly issued. The inspection of the business premises of respondent in Caloocan on June 10, 2005, showed that respondent made misrepresentations in procuring its Mayor's permit as it was discovered that it was into laundry business without a Mayor's permit. Also, respondent has a business area of 6,000 square meters as opposed to its declaration of only 1,000 square meters.

---

[15] RTC Records. pp. 730-737.
[16] RTC Records. pp. 771-772.
[17] Petitioner received the copy of the Order dated 3, 2014, denying her Motion for Reconsideration on January 6, 2015. Under Section 3 (a), Rule 8 of the RRCTA, petitioner has thirty (30) days from receipt of the Order or until February 5, 2015 within which to file a Petition for Review before this Court. However, petitioner filed two (2) Motions for Extension of Time to file the Petition for Review, requesting for a period of fifteen (15) days for each Motion; i.e. from February 5, 2015 to February 20, 2015 and from February 20, 2015 to March 7, 2015. Both Motions were granted by this Court. Hence, petitioner has until March 7, 2015 to file the present Petition for Review, docket, pp. 11-14; 17-20.

These findings became the bases for the additional assessment against respondent, which should have been sustained by the RTC.

Although respondent did not file any comment or opposition to the Petition, despite directive,[18] it filed a Memorandum[19] on July 3, 2015[20], while petitioner filed its own on June 25, 2015[21].

In her Memorandum, petitioner merely reiterated her arguments in her Petition for Review.

On the other hand, respondent contends that petitioner failed to consider that aside from the remedy under Section 195 of the LGC, an alternative remedy is also available under the circumstances and that is to pay the tax assessed within the 60-day period to protest, and thereafter seek refund of the taxes within two (2) years from the payment thereof pursuant to Section 196 of the same Code. An exercise of any of the two options would prevent the assessment from becoming final and executory. And respondent duly exercised the alternative remedy preventing the subject assessment from becoming final and executory, hence, could still be subject to review by the RTC.

For respondent, the RTC was correct in granting its claim for refund since the taxes paid arose from an assessment that had no basis except petitioner's finding during an alleged inspection conducted on respondent's business premises. Respondent however doubts if such inspection really occurred. Further, it was never specified whether the subject assessment was the result of the May 27, 2005 or the June 10, 2005 inspection. More importantly, no evidence was adduced by petitioner to prove that its computation of deficiency business taxes and fees was based on respondent's gross receipts, floor area of the business premises, and number of employees.

---

[18] Records Verification dated April 13, 2015.
[19] RTC Records. pp. 85-91.
[20] By registered mail and received by this Court on July 9, 2015
[21] RTC Records. pp. 74-83.

The case was submitted for decision on October 8, 2015.[22]

STATEMENT OF THE ISSUES

1. Whether the RTC has jurisdiction over the subject matter of the case in view of petitioner's failure to file a written protest pursuant to Section 195 of the LGC; and,

2. Whether respondent is entitled to refund or the issuance of tax credit in the amount of P485,195.01, as granted by the RTC.

DISCUSSION/RULING

Sections 195 and 196 of LGC pertinently provide:

> **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

[22] Resolution dated October 8, 2015, docket, p. 118.

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

The crux of the controversy is whether the remedy invoked by respondent under Section 196 of the LGC is available to it exclusive of the remedy under Section 195 of the LGC. The Supreme Court had the occasion to rule on the issue in a similar case as follows:

> "The Court agrees with petitioner that as a general precept, **<u>a taxpayer may file a complaint</u>** assailing the validity of the ordinance and **<u>praying for a refund of its perceived overpayments without first filing a protest to the payment of taxes</u>** due under the ordinance. This was our ruling in *Ty v. Judge Trampe*:
>
> > . . . Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench, however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the

> very validity of *any* increase."[23] (emphasis provided)

In another case, the High Court underscored the options available to an aggrieved taxpayer ruling that a taxpayer may choose either to appeal the assessment before the court of competent jurisdiction or pay the tax and then seek a refund, thus:

> "Petitioner should thus have, following the earlier above-quoted Section 195 of the Local Government Code, either appealed the assessment before the court of competent jurisdiction or paid the tax and then sought a refund."[24]

By tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[25] Courts are bound by prior decisions. Thus, once a case has been decided one way, courts have no choice but to resolve subsequent cases involving the same issue in the same manner.[26]

Attention must also be focused on the nature of the action taken by respondent as determined by the material averments in its complaint and on the character of the relief sought, not by the defenses asserted in the answer or motion to dismiss.[27]

A reading of respondent's complaint with the RTC sufficiently indicates that it was a claim for refund or credit

---

[23] Jardine Davies Insurance Brokers, Inc. vs. Hon. Erna Aliposa, In her capacity as Presiding Judge of Branch 150 of the Makati Regional Trial Court, City (Previously Municipality) of Makati and Rolando M. Carlos, In his capacity as Acting Treasurer of Makati, G.R. No. 118900, February 27, 2003
[24] San Juan vs. Castro, G.R. No. 174617, December 27, 2007.
[25] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003
[26] Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, G.R. Nos. 184360 & 184361; Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.), G.R. No. 184384, February 19, 2014
[27] Jimenez Jr, et al. and Jordana, G.R. No. 152526, November 25, 2004

falling under Section 196 of the LGC. The complaint specifically prayed for refund or credit of the amount of P485,195.01 representing business tax and fees paid in 2005 which respondent claimed to be excessive, hence, should be refunded or credited to it. Effectively, respondent assailed the legality of the amount collected from it not only because it was excessive but also without any basis.

To be entitled to a refund/credit of local taxes under Section 196 of the LGC, the following procedural requirements must concur: (1) the taxpayer must file a written claim for refund/credit with the local treasurer; and (2) the case or proceeding for refund must be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.[28]

Evidence show that BPLO issued the subject assessment on December 29, 2005,[29] ordering respondent to pay the reduced amount of P500,000.00 which respondent paid on the same date. On December 27, 2007, respondent filed a written claim[30] for refund or credit anchored on the absence or lack of factual or legal basis for the additional assessment. On December 28, 2007, respondent filed a Complaint for Refund or Credit of Local Tax and Fees with the RTC, which is obviously within two (2) years from the date of the payment of the tax on December 29, 2005. Clearly, the two (2) procedural requisites under Section 196 of the LGC had been complied with.

As to the merits of the claim for refund, the present Tax Code and under the principle of due process, the taxpayer must be informed in writing of the law and the facts upon which a tax assessment is based; otherwise, the assessment is void.[31] The old law merely required that the taxpayer be notified of the assessment made by the Commissioner of Internal Revenue (CIR). This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts upon which the assessment is

[28] Metro Manila Shopping Mecca Corp., et al. vs. Ms. Liberty M. Toledo, et al., G.R. No. 190818, June 5, 2013
[29] See Exhibit H, RTC Record, p. 331
[30] See Exhibit P, RTC Record, p. 341
[31] Commissioner of Internal Revenue vs. Reyes, G.R. No. 159694, January 27, 2006

based. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. [32]

While the foregoing jurisprudence was based on the Tax Code or the NIRC, as amended, in the context of according due process to taxpayers, there is no reason why the same cannot apply to local taxes based on the LGC subject of the instant case.

The existence of the assessment was communicated to respondent in the following documents, to wit:

1) Undated Final Demand[33]
2) Notice of Deficiency dated July 15, 2005[34]
3) Order of Payment dated December 2, 2005[35]
4) Last and Final Demand dated December 2, 2005[36]
5) Order of Payment dated December 8, 2005[37]
6) Order of Payment dated December 29, 2005[38]
7) Order of Payment dated January 13, 2009[39]

In all these communications, petitioner failed to provide any factual and legal bases for the issuance of the subject assessment. There was nothing in the documents which states the applicable law, how the amount of the assessment was arrived and the facts used in the computation of the assessment.

In fact, the additional payment made by respondent in the amount of P500,000.00 was due to an Order of Payment dated December 29, 2005[40] broken down as P400,000.00 for business tax, and P100,000.00 for Mayor's Permit. Notably, the said Order of Payment failed to provide the factual and legal bases justifying the issuance of the subject additional assessment. Worse, petitioner submitted in evidence

---

[32] Commissioner of Internal Revenue vs. Enron Subic Power Corporation, G.R. No. 166387, January 19, 2009.
[33] Exhibit M, RTC Record, p. 335; also Exhibit 3, RTC Record, p. 643
[34] Exhibit N, RTC Record, p. 337; also Exhibit 2, RTC Record, p. 641
[35] Exhibit O-1, RTC Record, p. 340; also Exhibit 9, RTC Record, p. 659
[36] Exhibit O, RTC Record, p. 339
[37] Exhibit G, RTC Record, p. 330
[38] Exhibit H, RTC Record, p. 331
[39] Exhibit 5, RTC Record, p. 644
[40] Exhibit H, RTC Record, p. 331

another Order of Payment dated January 13, 2009 also assessing the amount of P500,000.00. The said amount is broken down as P400,000.00 for business tax, and P100,000.00 for Mayor's Permit. Again, the document failed to elaborate on how the amount assessed was arrived at.

Further, on use of respondent's business floor area as basis for the additional assessment, petitioner presented three (3) Inspection Slips, two of which were dated June 10, 2005[41] and the other, February 7, 2008.[42] A hard look on the said documents divulged conflicting facts. The Inspection Slip dated February 7, 2008 indicated 7,550 (6,000 + 1,500 + 50) square meters while the two Inspections Slips dated June 10, 2005 each indicated 1,000 square meters. Significantly, the three documents as well failed to state the law and the facts upon which the assessment was based. In addition, the three Inspection Slips do not explain how the said floor area was used in the computation of the subject assessment.

The same is true with regard the other documents[43] presented by petitioner. It is also worth to note that these documents failed to show proof of their receipt by respondent.

All said, the subject assessment is void.

As to the subject claim for refund, undeniably respondent paid the amount of P219,429.80 on January 25, 2005 as evidenced by Official Receipt No. 0371047, [44] and the amount of P500,000.00, on December 29, 2005, as evidenced by Official Receipt No. 0818945,[45] or for a total of P719,429.80.

While the subject assessment is void for failure to comply with the due process requirement in the assessment and collection of taxes, nonetheless by respondent's own

---

[41] Exhibit 11 and 12, RTC Record, pp. 661-662
[42] Exhibit 10, RTC Record, p. 660
[43] Exhibits 6, 6-a, 6-b, 6-c, 6-d, and 6-e, RTC Record, pp. 645-650 and Exhibit 8, RTC Record, p. 658
[44] Exhibit I, RTC Record, p. 332
[45] Exhibit J, RTC Record, p. 333

admission,[46] it is liable for business taxes and fees in the amount of P234,234.79.

An admission made by a party in the course of the proceedings does not require proof.[47] A judicial admission binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it.[48]

Considering that respondent admitted its tax liability in the amount of P234,234.79, and it was proved that respondent paid a total of P719,429.80, respondent is therefore entitled to a refund in the amount of P485,195.01 (P719,429.80 - P234,234.79), as correctly held by the RTC in the assailed Decision dated July 8, 2014.

WHEREFORE, the Petition for Review dated March 6, 2015 filed by petitioner Lourdes R. Jose, in her capacity as City Treasurer of City of Caloocan, is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[46] See Par. 16, Complaint dated December 28, 2007, RTC Record, p. 5 and Exhibit P, RTC Record, pp. 341-342
[47] Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue, G.R. No. 157594, March 9, 2010
[48] Commissioner of Internal Revenue vs. Manila Electric Company (MERALCO), G.R. No. 181459, June 9, 2014

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.

LOVELL R. BAUTISTA
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.

ROMAN G. DEL ROSARIO
Presiding Justice