REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

MAKATI CITY AND HON. JESUSA E. CUNETA, IN HER CAPACITY AS CITY TREASURER,
Petitioners,

- versus -

METRO PACIFIC TOLLWAYS CORPORATION,
Respondent.

CTA EB NO. 2217
(CTA AC No. 204)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUN 14 2021 4:20pm

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioners Makati City (**Makati City**) and Jesusa E. Cuneta, in her capacity as City Treasurer (**City Treasurer**), pursuant to Section 7[2] of Republic Act (**RA**) No. 1125[3], as amended by RA 9282[4], in relation to

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1 Filed on 27 January 2020; *Rollo,* pp. 1-10.

2 **SEC. 7.** *Jurisdiction.* - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
...
3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction[.]

3 AN ACT CREATING THE COURT OF TAX APPEALS.

Rule 4, Section 2(a)(2)[5] and Rule 8, Sections 3(b)[6] and 4(b)[7] of the Revised Rules of the Court of Tax Appeals[8] (**RRCTA**). It seeks the reversal of the Third Division's Decision promulgated on 09 October 2019[9] (**assailed Decision**) and the Resolution issued on 17 December 2019[10] (**assailed Resolution**), respectively, in CTA AC No. 204 entitled *Metro Pacific Tollways Corporation v. Makati City and Hon. Jesusa E. Cuneta, in her capacity as incumbent City Treasurer of Makati City*. The Third Division granted respondent Metro Pacific Tollways Corporation's (**respondent**) prior Petition for Review[11] and denied petitioners' Motion for Reconsideration[12] (**MR**).

Petitioner Makati City is a municipal corporation created by virtue of RA 7854 or *"An Act Converting the Municipality of Makati into a Highly Urbanized City to be known as the City of Makati"*, with address at Makati City Hall, J.P. Rizal Street, Barangay Poblacion, Makati City, Metro Manila.[13]

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4 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

5 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
...
(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction[.]

6 **SEC. 3.** *Who may appeal; period to file petition.* –
...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

7 **SEC. 4.** *Where to appeal; mode of appeal.* –
...
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

8 A.M. No. 05-11-07-CTA dated 22 November 2005.

9 Division Docket, pp. 251-272; Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred by Associate Justice Maria Rowena Modesto-San Pedro with Concurring and Dissenting Opinion from Associate Justice Erlinda P. Uy.

10 Id., pp. 332-337.

11 Id., pp. 8-45.

12 Id., pp. 294-301.

13 Paragraph 2, Compliance, RTC Records, p. 226.

Petitioner City Treasurer is the incumbent City Treasurer of Makati City, and holds office at the City Treasurer's Office, Makati City Hall, J.P. Rizal Street, Barangay Poblacion, Makati City, Metro Manila. Petitioner City Treasurer was only impleaded in her capacity as such.[14]

Respondent Metro Pacific Tollways Corporation (**respondent**) is a corporation duly organized and existing under the laws of the Republic of the Philippines with Securities and Exchange Commission (**SEC**) Registration No. 40590, and principal address at 10/F MGO Building, Legaspi Street corner Dela Rosa Street, San Lorenzo Village, Makati City. Respondent is a holding company.[15]

Pursuant to respondent's application for renewal of business permit in 2015, the Makati City Business Permits Office and the Makati Business Tax Division, issued various Billing Assessment Forms, assessing respondent for Local Business Tax (**LBT**). Subsequently, respondent made the corresponding payments. The details of said Billing Assessment Forms and respondent's payments, as evidenced by official receipts, are as follows:[16]

Billing Assessment Form No.	Official Receipt No.	Date of Payment	Amount of LBT Paid
37633[17]	MKTCF 2565534[18]	06 February 2015	₱3,290,334.17[19]
37634[20]	MKTCF 2565534[21]	06 February 2015	₱279,266.07
	MKTCF 2618735[22]	17 April 2015	₱279,266.07
	MKTCF 2692257[23]	14 July 2015	₱279,266.07
Total			**₱4,128,132.38**[24]

Petitioners' assessment was based on Section 143(f)[25] of the Local Government Code (**LGC**) of 1991, as amended, and Section 3A.02(p)[26]

[14] Paragraph 3, id.
[15] Paragraphs 1 and 4, id.
[16] Paragraph 5, id.
[17] Exhibit "D-1", id., p. 72.
[18] Exhibit "D-4", id., p. 75.
[19] Computed by adding ₱2,179,029.25 + ₱1,111,304.92.
[20] Exhibit "D-2", RTC Records, p. 73.
[21] Supra at note 18.
[22] Exhibit "D-5", RTC Records, p. 76.
[23] Exhibit "D-6", id., p. 77.
[24] The total amount *per* computation of respondent is ₱4,128,142.38 or with a difference of ₱10.00.
[25] **Sec. 143**. *Tax on Business*. - The municipality may impose taxes on the following businesses:

of the Revised Makati Revenue Code (**RMRC**).[27] Corollary, the LBT was computed based on respondent's dividend income which amounted to ₱558,532,143.00 and ₱1,151,630,698.00 for the years 2013 and 2014, respectively.[28]

On 08 January 2016[29], respondent filed an administrative claim for refund[30] with petitioner City Treasurer to contest the subject LBT.[31]

On 03 February 2017, respondent filed a Complaint[32] for refund of erroneously paid LBT before the Regional Trial Court of Makati City (**RTC Makati**). It was docketed as Civil Case No. R-MKT-17-00388-CV.

During the pre-trial before the RTC Makati, the parties jointly moved to submit a set of stipulated facts upon which the court may render judgment without further trial.[33] Pursuant to such, the parties submitted their Compliance on 07 December 2017[34] containing their joint stipulation of facts.

On 13 February 2018, RTC Makati – Branch 145 rendered a Decision[35] dismissing respondent's Complaint for lack of merit. Respondent filed an MR[36] but it was denied in the Order dated 23 April 2018.[37]

...

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

...

26 **SEC. 3A.02.** *Imposition of Tax.* - There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

...

(p) On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year.

...

27 Paragraph 7, Compliance, RTC Records, p. 227.

28 Paragraph 6, id.

29 The parties' stipulation states that the said administrative claim for refund was supposedly filed on 06 January 2015. However, a closer perusal thereof reveals that while the same was dated 06 January 2015, it was in fact filed on 08 January 2016.

30 Annex "G", RTC Records, pp. 42-56.

31 Paragraph 9, Compliance, id, p. 227.

32 Id., pp. 1-23.

33 Pre-Trial Order dated 29 November 2017, id, pp. 224-225.

34 Id., pp. 226-228.

35 Id., pp. 306-336.

36 Id., pp. 337-345.

37 Id., pp. 370-371.

Unsatisfied, on 21 June 2018[38], respondent filed its prior Petition for Review with this Court which was initially raffled to the First Division.

On 01 August 2018, petitioner filed its Comment[39] thereto while the RTC Makati transmitted the original records of the case consisting of 383 pages to the First Division.[40]

On 21 September 2018, respondent filed its Memorandum while petitioners filed theirs on 25 September 2018.[41] Later or on 26 September 2018[42], the case was transferred to the Third Division.[43]

On 09 October 2019, the Third Division promulgated the assailed Decision[44] granting respondent's prior Petition for Review.[45] The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. The assailed Decision dated February 13, 2018 and Order dated April 23, 2018 are **MODIFIED**. Petitioner's claim for tax refund in the total amount of **Php4,128,132.38**, for having been collected without statutory basis is **GRANTED**.
>
> Accordingly, respondents are **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ... **Php4,128,132.38**, representing erroneously or illegally paid LBT for the years 2014 and 2015.
>
> **SO ORDERED.**
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> ...

Aggrieved, petitioners filed an MR[46] contending that respondent, as a holding company, was properly taxed under Section 3A.02(p)[47] in

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38 Supra at note 11.
39 Division Docket, pp. 194-198.
40 Id., pp. 199-201.
41 Respondent's Memorandum, id., pp. 205-203 and Petitioners' Memorandum, id., pp. 232-241.
42 Id., p. 242.
43 Reorganizing the Three (3) Divisions of the Court dated 18 September 2018.
44 Supra at note 9.
45 Supra at note 11.
46 Supra at note 12.
47 Supra at note 26.

relation to Section 3A.02(h)[48] of RMRC. According to petitioners, a holding company is taxed as a specific class of its own, without reference to it being a contractor or owner or operator of banks or other financial institutions, and there is nothing *ultra vires* about their imposition of LBT on holding companies.

Furthermore, to follow respondent's line of reasoning that the taxability of holding companies is supposedly dependent on whether it is a contractor or a bank or financial institution, petitioners could not then collect any LBT from all holding companies within its jurisdiction since holding companies cannot be registered as banks or contractors at the same time.

Petitioners also claim that respondent could only be deemed to have waived its right to contest the assessment when it failed to file any protest. Citing the case of *International Container Terminal Services, Inc. v. The City of Manila, et al.*[49] **(ICTSI)**, they maintain that the same had then become final, executory and demandable.

On the other hand, in its Comment/Opposition[50], respondent contends that it has sufficiently proved that it is not liable for LBT imposed under Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC.

Respondent insists that the Third Division was correct in ruling that it availed of the correct remedy and that it complied with the procedural requisites for refund of local taxes.

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48 **SEC. 3A.02.** *Imposition of Tax.* - There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

...

(h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l) 1, as provided in this code.

...

49 G.R. No. 185622, 17 October 2018.

50 Division Docket, pp. 304-330.

In the assailed Resolution[51], the Third Division stood firm on its earlier ruling and denied petitioner's MR.

Undaunted, petitioners filed the instant Petition for Review[52] where they raise the lone issue –

> WHETHER THE THIRD DIVISION COMMITTED GRAVE ERROR IN HOLDING THAT THE SUBJECT ASSESSMENTS HAVE NOT YET BECOME FINAL, EXECUTORY, CONCLUSIVE AND/OR APPEALABLE.

In support of the above, petitioners primarily allege that respondent, as a holding company, was imposed with LBT under Section 3A.02(p), in relation to Section 3A.02(h) of the RMRC, and for which purpose, respondent's gross receipts should have been included its dividend income.

Petitioners further argue that Billing Assessment Form Nos. 037633 and 037634 can be considered as notices of assessment after the parties consistently admitted their existence as such in the previous proceedings before RTC Makati and in this Court's Third Division. Petitioners then insist that the applicable provision is Section 195[53] and not Section 196[54] of the LGC of 1991, as amended, citing the case of *ICTSI.*

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51 Supra at note 10.

52 Supra at note 1.

53 **Sec. 195.** *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

54 **Sec. 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.

Petitioners explain further that, since notices of assessment were issued and even if it pays the assessed tax, respondent must still file a written protest within sixty (60) days and elevate the case to the court within thirty (30) days from either the decision or inaction of the local treasurer. Since respondent failed to file the required written protest, the assessment had become final, executory and demandable.

Lastly, petitioners add that claims for refund must be made in the manner set forth by law as the burden is on the taxpayer to show that it strictly complied with the conditions for the grant of the refund or credit.

In its Comment/Opposition[55], respondent assails the absence of new arguments that would warrant the further review of the assailed Decision and that the issues previously raised were already exhaustively passed upon by the Third Division.

Respondent further banks on the Third Division's finding that there was no assessment that had become final and unappealable because petitioner City Treasurer did not, in the first place, issue the Billing Assessment Forms. Respondent adds that when an assessment does not contain any amount of deficiency, surcharges, interest due from the taxpayer, they cannot be considered as notice of assessment under Section 195 of the LGC of 1991, as amended.

Respondent also cites the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[56], in insisting that an assessment is valid under Section 195 of the LGC of 1991, as amended, only when the prerequisites are complied with. Particularly, the statement of tax due, its specifics and formal demand for payment within a particular period, coupled with a definite reckoning period. As Billing Assessment Form Nos. 037633 and 037634 reflect only the amount of business license fees, business permit, local government fees and charges, the same are not notices of assessment contemplated under Section 195 of the LGC of 1991, as amended.

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55 *Rollo*, pp. 66-83.
56 G.R. No. 215957, 09 November 2016.

Respondent further avers that it relied on a myriad of cases[57] decided by this Court where it was ruled that Section 195 of the LGC of 1991, as amended, does not apply when the case involves a claim for refund of taxes paid. According to respondent, in the case of *Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila*[58], this Court held that the applicable provision is Section 196 of the LGC of 1991, as amended, in claims for refund.

Lastly, respondent claims that the doctrine and clarifications laid down in the *City of Manila, et al. v. Cosmos Bottling Corporation*[59] (**Cosmos**), promulgated on 27 June 2018, is yet to apply to it due to the fact that the relevant taxes in herein subject case were paid in 2015. Rather, it relied on the rulings from the previous cases, such as in *Romulo D. San Juan v. Ricardo L. Castro, in his capacity as City Treasurer of Marikina City*[60], where the Supreme Court held that the taxpayer should have "either appealed the assessment before the court of competent jurisdiction or paid the tax and then sought a refund".

The Court *En Banc*'s ruling follows below.

To resolve the issues presented here, it is necessary to determine whether Section 195 or Section 196 of the LGC of 1991, as amended, applies given the attending facts. The aforementioned provisions read as follows:

> ...
>
> **Sec. 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;

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57 *Ms. Liberty M. Toledo, et al. v. Metro Manila Shopping Mecca Corp., et al.*, CTA AC No. 36, [09 May 2008] and *Liberty M. Toledo, in her capacity as The Treasurer of the City of Manila v. Unilever Philippines, Inc.*, CTA AC No. 21, 10 May 2007. Note that the other cases mentioned by respondent, particularly, *Alcan Packaging Starpack Corporation (formerly Starpack Philippines Corporation) v. The Treasurer of the City of Manila*; *The Treasurer of the City of Manila v. Unilever Philippines, Inc.*; and, *City of Manila, et al. v. Columbia Pictures Industries, Inc.*, contain no proper citation.

58 CTA AC No. 15, 21 July 2006.

59 G.R. No. 196681, 27 June 2018.

60 G.R. No. 174617, 27 December 2007; Citations omitted.

> otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.
>
> **Sec. 196.** *Claim for Refund of Tax Credit.* - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.
>
> ...

In case Section 195 of the LGC of 1991, as amended, would apply, respondent's claim for refund or credit may no longer prosper as the assessments have already become final and executory due to its own failure to timely file a written protest thereto.

On the other hand, if it is Section 196 of the LGC of 1991, as amended, that is applicable, respondent can dispense with the filing of the protest. Respondent may then proceed to file a written claim for refund with the local treasurer and the court, which should be both within two (2) years from the date of the payment of such tax, fee, or charge, or from the date respondent is entitled to a refund or credit.

Thus, after an assiduous review of the records of the case, the Court *En Banc* finds partial merit in the instant Petition for Review. The reasons are essayed below, *in seriatim*.

PETITIONER CITY TREASURER ISSUED THE BILLING ASSESSMENT FORMS AND RESPONDENT MADE A JUDICIAL ADMISSION TO THAT EFFECT.

An examination of the previous pleadings filed by the parties shows that respondent did not question the fact that the subject Billing Assessment Forms were not issued by petitioner City Treasurer herself. *Rather*, respondent made judicial admissions in its Complaint before the RTC Makati that the assessments were issued by petitioner City Treasurer, as follows:

> ...
>
> 3. ... **The Office of the City Treasurer of Makati City, represented by the Defendant City Treasurer, erroneously assessed the LBT against the Plaintiff** and unduly benefited from its improper collection.
>
> ...
>
> 42. In the case at bar, Defendant City Treasurer imposed LBT against the Plaintiff. It bears stressing that Plaintiff is a holding company. **Clearly, it is erroneous for Defendant City Treasurer to assess LBT on Plaintiff's dividend income.** To impose LBT on the Plaintiff is considered as a tax on income proscribed by Section 133 (a) of the LGC.[61]
>
> ...

Furthermore, the parties even made reference to petitioner City Treasurer's assessment against respondent in their submission of issues to be resolved by the RTC Makati, to wit:

> ...
>
> 1. **Whether or not defendant City Treasurer erred in assessing and collecting LBT from plaintiff** considering that the plaintiff is not a bank or other financial institution;
>
> ...
>
> 5. **Whether or not defendant Office of the City Treasurer of Makati's assessment against the plaintiff** for deficiency of local business tax for the year 2013 has become final and unappealable

[61] Complaint, RTC Records, pp. 2 and 12; Emphasis supplied.

> under Section 195 of the Local Government Code in the absence of any protest by the plaintiff.[62]
>
> ...

As a result, the RTC Makati then proceeded to rule only on the remaining issues raised, as the parties, specifically respondent, found no question or controversy on the fact that the Billing Assessment Forms were issued by the Makati City Business Permits Office, which was signed by the City Administrator/OIC Head, Business Permits Office and by the City Mayor.

Evidently, the RTC Makati did not rule on the supposed absence of a notice of assessment from petitioner City Treasurer herself as the respondent never raised any issue on the same during the proceedings (and even judicially admitted such fact in its pleadings).

The fact that respondent did not question the supposed absence of a notice of assessment issued by petitioner City Treasurer is more evident when it filed its appeal before the Court in Division. A closer reading of its prior Petition for Review could only reveal that it is bereft of any showing that respondent took any issue on the alleged lack of a notice of assessment issued by petitioner City Treasurer herself.

Relatedly, in the said prior Petition for Review, respondent again admitted that petitioner City Treasurer issued the subject assessments, to wit:

> ...
>
> 10. **Respondent City Treasurer's assessment** is based on Section 143(f) of the Local Government Code and Section 3A.02(h) of the Revised Makati Revenue Code ("RMRC").[63]
>
> ...

It must be emphasized that the case under review in this present petition is an appealed case from the RTC Makati's Decision. Thus, respondent cannot raise new matters which were not raised in the

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62 Pre-Trial Order dated 29 November 2017, id., p. 224; Emphasis supplied.
63 Division Docket, p. 10; Emphasis supplied.

administrative level as well as in its prior judicial actions (both in the RTC Makati and the Court in Division). In *Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.*[64], the Supreme Court ruled as follows:

> ...
>
> Euro-Phil contends that CIR raised new matters in its Petition for Review with the CTA *En Banc* and does it again in this Petition for Review which should not be allowed by this Court.
>
> We agree.
>
> In the case of *Aguinaldo Industries Corporation (Fishing Nets Division) vs. Commissioner of Internal Revenue and the Court of Tax Appeals*, this doctrine was explained by this Court as follows:
>
>> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level would be to sanction a procedure whereby the court — which is supposed to review administrative determinations would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.
>
> ...

It is a settled rule that issues not raised below cannot be pleaded for the first time on appeal because a party is not allowed to change his theory on appeal. To do so would be unfair to the other party and offensive to rules of fair play, justice and due process.[65]

As to respondent's judicial admissions, such are binding upon it and no amount of rationalization can offset the same.[66]

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64 G.R. No. 222436, 23 July 2018; Citations omitted and italics in the original text.

65 *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue,* G.R. No. 201665, 30 August 2017.

66 See *Sps. Jose N. Binarao and Preciosisima Binarao v. Plus Builders, Inc.*, G.R. No. 154430, 16 June 2006.

Under Section 4[67], Rule 129 of the Rules of Court, a judicial admission requires no proof. The Court cannot lightly set it aside, especially when the opposing party relies upon it and accordingly dispenses with further proof of the fact already admitted.[68]

In *Joshua S. Alfelor, et al. v. Josefina M. Halasan, et al.*[69], the Supreme Court ruled:

> ...
>
> ...**A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof**; production of evidence is dispensed with. **A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored**, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.
>
> ...

Given the failure of respondent to raise an issue as to the party that issued the subject Billing Assessment Forms and with its judicial admission that it was petitioner City Treasurer herself who issued the assessments, the Court *En Banc* is inclined to treat them as notices of assessment under Section 195 of the LGC of 1991, as amended.

FOR RESPONDENT'S FAILURE TO TIMELY FILE ITS PROTEST TO THE ASSESSMENTS, THE SAME HAVE BECOME FINAL AND EXECUTORY.

Under the above-quoted Section 195 of the LGC of 1991, as amended, the taxpayer has 60 days from receipt of the notice of

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67 **Sec. 4.** *Judicial admissions.* — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

68 *Commissioner of Internal Revenue v. Petron Corporation*, G.R. No. 185568, 21 March 2012.

69 G.R. No. 165987, 31 March 2006; Citations omitted and emphasis supplied.

assessment to file a written protest. In turn, the local treasurer has 60 days from the date of filing of the protest within which to decide the same. The provision further provides that the taxpayer has 30 days, either from the receipt of the denial of the protest or from the lapse of the 60-day period prescribed for the local treasurer to decide on the protest, within which to appeal with the court of competent jurisdiction.

In the instant case, respondent was issued the subject Billing Assessment Form Nos. 037633 and 037634, both dated 28 January 2015, and paid the same on 06 February 2015. Only after almost one (1) year that respondent filed its administrative claim for refund on 08 January 2016.

Since petitioner was issued notices of assessment, it should have filed a written protest with petitioner City Treasurer within 60 days from the receipt thereof. Because it failed to do so on the wrong premise that what applies to it is Section 196 of the LGC of 1991, as amended, the assessment consequently became final and executory.

It must be noted that the pertinent legal issue under consideration has already been laid to rest in *Cosmos* where the Supreme Court ruled that **once an assessment is made or issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two (2) years** from the date of payment as Section 196 of LGC of 1991, as amended, may suggest. **The reason being that the taxpayer must administratively question the validity or correctness of the assessment within 60 days from receipt of the notice of assessment.** In the same case, the Supreme Court lengthily discussed the correct procedure whenever a notice of assessment is issued to the taxpayer, *viz*:

> ...
>
> **Obviously, the application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for non-payment of the correct taxes, fees or charges...**
>
> ...

Where an assessment is to be protested or disputed, the taxpayer may proceed (*a*) without payment, or (*b*) with payment of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; **otherwise, the assessment becomes conclusive and unappealable.**

(*a*) Where no payment is made, the taxpayer's procedural remedy is governed strictly by **Section 195**. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment.

(*b*) Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (**Section 195**, LGC) and at the same time seeking a refund of the taxes. In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.

The same implication should ensue even if the taxpayer were to style his suit in court as an action for refund or recovery of erroneously paid or illegally collected tax as pursued under **Section 196** of the LGC. In such a suit for refund, the taxpayer cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes without necessarily **assailing the validity or correctness of the assessment** he had administratively protested.

It must be understood, however, that in such latter case, the suit for refund is conditioned on the prior filing of a written claim for refund or credit with the local treasurer. In this instance, what may be considered as the administrative claim for refund is the letter-protest submitted to the treasurer. Where the taxpayer had paid the assessment, it can be expected that in the same letter-protest, he would also pray that the taxes paid should be refunded to him. As previously mentioned, there is really no particular form or style necessary for the protest of an assessment or claim of refund of taxes. What is material is the substance of the letter submitted to the local treasurer.

Equally important is the institution of the judicial action for refund **within thirty (30) days from the denial of or inaction on the letter-protest or claim**, not any time later, even if within two (2) years from the date of payment (as expressly stated in Section 196). Notice that the filing of such judicial claim for refund after questioning the assessment is within the two-year prescriptive period specified in Section 196. Note too that the filing date of such judicial action necessarily falls on the beginning portion of the two-year period from the date of payment. Even though the suit is seemingly grounded on Section 196, **the taxpayer could not avail of the full extent of the two-year period within which to initiate the action in court.**

The reason is obvious. This is because an assessment was made, and if not appealed in court within thirty (30) days from decision or inaction on the protest, it becomes conclusive and unappealable. Even if the action in court is one of claim for refund, the taxpayer cannot escape assailing the assessment, invalidity or incorrectness, the very foundation of his theory that the taxes were paid erroneously or otherwise collected from him illegally. Perforce, the subsequent judicial action, after the local treasurer's decision or inaction, must be initiated within thirty (30) days later. It cannot be anytime thereafter because the lapse of 30 days from decision or inaction results in the assessment becoming conclusive and unappealable. In short, the scenario wherein the administrative claim for refund falls on the early stage of the two-year period but the judicial claim on the last day or late stage of such two-year period does not apply in this specific instance where an assessment is issued.

To stress, where an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund *at any time* within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' *within 60 days from receipt of the notice of assessment*, and thereafter bring suit in court *within 30 days from either decision* or *inaction* by the local treasurer.

Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One*, pay the

> **tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two*, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax.**[70]
>
> ...

In *ICTSI*, the Supreme Court reiterated that the taxpayer's remedy is dependent on two things: *first*, on whether a notice of assessment was issued; and, *second*, if the same taxpayer will opt to pay the assessed tax or not. The Supreme Court stated further:

> ...
>
> **If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195** of the Local Government Code. Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal.
>
> **If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period**, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. "Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer."
>
> **On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.**[71]
>
> ...

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70 Supra at note 59; Citations omitted, emphasis, italics and underscoring in the original text, and supplied.

71 Supra at note 49; Citations omitted and emphasis supplied.

From both *Cosmos* and *ICTSI*, it is thus clear that Section 195 of the LGC of 1991, as amended, requiring the filing of a protest would still apply even if the taxpayer opts to pay the amount assessed within the same period of 60 days and subsequently claims for refund under Section 196 of the same law.

On the contrary, Section 196 of the LGC of 1991, as amended, would apply, without requiring prior compliance with Section 195, *if no notice of assessment was issued* to the taxpayer.

Based on the guidelines enunciated above, since the Billing Assessment Forms were issued to respondent and they qualify as the notices of assessment contemplated by law, it could not follow Section 196 of the LGC of 1991, as amended, without complying with the requirement of filing a protest under Section 195 of the same law.

With the Supreme Court's unequivocal declarations in *Cosmos* and *ICTSI*, the Court *En Banc* has no other recourse but to apply the legal rules enunciated in both. In *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*[72], the Supreme Court held:

> ...
>
> ... The Supreme Court, by tradition and in our system of judicial administration, 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.
>
> ...

With respect to petitioner's contention that the jurisprudential guidelines in *Cosmos* and *ICTSI* were not yet in place when the subject notices of assessment were issued, the same is likewise bereft of merit.

In Albino S. Co v. Court of Appeals, et al.[73] (**Albino S. Co**), the Supreme Court ruled:

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[72] G.R. No. 150947, 15 July 2003; Citation omitted.

[73] G.R. No. 100776, 28 October 1993 citing *The People of the Philippines v. Jose Jabinal y Carmen*, G.R. No. L-30061, 27 February 1974; Italics in the original text, emphasis and underscoring supplied.

> ...
>
> Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system . . ." **The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate.** The settled rule supported by numerous authorities is a restatement of the legal maxim "*legis interpretatio legis vim obtinet*" — the interpretation placed upon the written law by a competent court has the force of law. The doctrine laid down in *Lucero* and *Macarandang* was part of the jurisprudence, hence, of the law, of the land, at the time appellant was found in possession of the firearm in question and when he was arraigned by the trial court. It is true that the doctrine was overruled in the Mapa case in 1967, **but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had <u>relied on the old doctrine and acted on the faith thereof</u>**. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.
>
> ...

Respondent, however, claims that it relied upon a "myriad of cases" decided by this Court where it was effectively ruled that Section 195 of the LGC of 1991, as amended, pertains to protests on the assessment and the same does not apply when the case involves a claim for refund. To Our mind, respondent's claim appears to be a mere afterthought. The records show that it did not raise this matter in its prior pleadings, particularly, in its Complaint before the RTC Makati.

Sections 1 and 6, Rule 8 of the 1997 Rules of Civil Procedure pertinently provide:

> ...
>
> **Sec. 1.** *In general.* — **Every pleading shall contain** in a methodical and logical form, a plain, concise and direct **statement of the ultimate facts on which the party pleading relies for his claim** or defense, as the case may be, omitting the statement of mere evidentiary facts.

> **If a defense relied on is based on law, the pertinent provisions thereof and their applicability to him shall be clearly and concisely stated.**
>
> ...
>
> **Sec. 6.** *Judgment.* — **In pleading a judgment or decision of a domestic** or foreign **court**, judicial or quasi-judicial tribunal, or of a board or officer, **it is sufficient to aver the judgment or decision** without setting forth matter showing jurisdiction to render it.[74]
>
> ...

It is noted that respondent's Complaint before the RTC Makati is bereft of any allegation of its reliance on the supposed "myriad of cases" supporting its cause. In fact, even its written claim for refund[75] made no mention of these cases that excuse the filing of a written protest to the assessment.

Furthermore, even after the parties have stipulated the issue of whether the assessment has become final and unappealable in the absence of protest by respondent[76] and with petitioners' defense (in their Answer with Affirmative Defenses[77]) that Section 195 of the LGC of 1991, as amended, applies to it, respondent remained silent on its alleged reliance on the supposed "myriad of cases".

At this point, it is propitious to emphasize that the decisions of this Court do not constitute precedents and do not bind the public. Only the decisions of the Supreme Court constitute binding precedents.[78] Thus, if a litigant or party were to rely on the cases decided by this Court, the same must be alleged as ultimate fact and must be brought to the lower court's attention. Reliance on an old doctrine is certainly an affirmative allegation that cannot be inferred or simply be taken judicial notice of.

As clearly enunciated in *Albino S. Co*, for a doctrine to be applied prospectively, a party must have "relied on the old doctrine and acted

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74 Emphasis supplied.
75 Supra at note 30.
76 RTC Records, pp. 224.
77 Id., pp. 64-65.
78 See *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013.

on the faith thereof." Otherwise, the general rule that the interpretation upon a law by the Supreme Court constitutes a part of the law as of the date that law was originally passed should apply.

From the foregoing, the Court *En Banc* deems the cases of *Cosmos* and *ICTSI* applicable in the present action. Consequently, the assessments against respondent in the total amount of ₱3,569,600.24, representing deficiency LBT for 2014 and 1st quarter of 2015, have already become final and executory as a result of its failure to timely file a protest to said assessments.

THE BILLING ASSESSMENT FORMS DID NOT COVER RESPONDENT'S PAYMENTS ON 17 APRIL 2015 AND 14 JULY 2015 HENCE MUST BE REFUNDED TO RESPONDENT FOR HAVING BEEN ILLEGALLY OR ERRONEOUSLY COLLECTED.

Notwithstanding the disquisitions above on the applicability of Section 195 of the LGC of 1991, as amended, We take exception for respondent's payments of the following:

Official Receipt No.	Date Paid	Amount Paid
MKTCF2618713	17 April 2015	₱279,266.07
MKTCF2692257	14 July 2015	₱279,266.07
Total		**₱558,532.14**

As aptly observed by Associate Justice Erlinda P. Uy in her Concurring and Dissenting Opinion[79] on the assailed Decision, the records of the case show that the payments on 17 April 2015 and 14 July 2015 were not covered by any assessment, *viz*:

> ...
>
> Notwithstanding the finality of the subject tax assessments, however, it must be noted however that a portion of the amount being refunded have not attained finality. This is so because the amounts of ₱279,266.07 and ₱279,266.07 (or the total amount of

[79] Division Docket, pp. 374-394.

> ₱558,532.14), as evidenced by Official Receipts Nos. MKTCF 2618735 and MKTCF 2692257, respectively, were not covered by the above-stated Billing Assessment Forms or any notice of assessment. Thus, relative thereto, for the purpose of the issue of prescription, it must be determined whether the administrative claim for refund for the said aggregate amount was filed within the two (2)-year prescriptive period, pursuant to Section 196 of the LGC of 1991.[80]
>
> ...

We agree with Associate Justice Erlinda P. Uy's discussion that insofar as the payments not covered by the subject Billing Assessment Forms are concerned, Section 196 of the LGC of 1991, as amended, must perforce apply.

A perusal of **Section 196 of the LGC** reveals that, the following procedural requirements must concur: ***first***, the taxpayer concerned must file a written claim for refund/credit with the local treasurer; and, ***second***, the case or proceeding for refund has to 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.[81]

As to the *first requisite*, it is evident that respondent filed an administrative claim for refund[82] with the petitioner City Treasurer on 08 January 2016.

With respect to the *second requisite*, respondent filed its Complaint before the RTC Makati on 03 February 2017. Counting two (2) years from the dates of payment made on 17 April 2015 and 14 July 2015, the judicial claim for refund filed on 03 February 2017 was evidently made within the said 2-year period.

Since respondent was able to timely file its administrative and judicial claims for refund, the next step is to determine whether respondent is entitled to the refund sought to be collected in the total amount of ₱558,532.14.

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80 Id., p. 386; Citations omitted.

81 *Metro Manila Shopping Mecca Corp., et al. v. Ms. Liberty M. Toledo, in her official capacity as the City Treasurer of Manila, et al.*, G.R. No. 190818, 05 June 2013.

82 Supra at note 30.

An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property *not subject to taxation* or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[83]

As stipulated by the parties, petitioner's assessment is based on Section 143(f) of the LGC of 1991, as amended, and Section 3A.02(h) of the RMRC.[84]

Section 143(f) of the LGC of 1991, as amended, provides as follows:

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

On the other hand, Section 3A.02(h) of the RMRC states:

> ...
>
> **SEC. 3A.02.** *Imposition of Tax.* - There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
>
> ...
>
> (h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions,

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83 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, 25 April 2012.

84 Pre-Trial Order dated 29 November 2017, RTC Records, pp. 224-225.

> and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l) 1, as provided in this code.
>
> ...

According to respondent, its dividend income is not subject to LBT imposed on banks and other financial institutions under the aforementioned provision in RMRC, as there is a clear distinction between a holding company on one hand and a bank and/or financial institution on the other.

Corollary, respondent maintains that dividend income, being a passive income, is subject to LBT only if it is earned by banks and financial institutions, as such imposition is considered an income tax which is prohibited under Section 133(a) of the LGC of 1991, as amended, *viz*:

> ...
>
> **Sec. 133.** *Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> (a) Income tax, except when levied on banks and other financial institutions[.]
>
> ...

As such, respondent claims that petitioners have no power to impose and collect LBT on dividend income earned by the former, not being a bank or other financial institution.

We agree with respondent.

In addressing the question of whether or not a local government unit (**LGU**) may impose LBT upon holding companies pursuant to

Section 143(f) of the LGC of 1991, as amended, the Supreme Court, in *City of Davao, et al. v. Randy Allied Ventures, Inc.*[85], ruled in this wise:

> ...
>
> Essentially, LBT are taxes imposed by local government units on the **privilege of doing business within their jurisdictions**. To be sure, the phrase "doing business" means some "trade or commercial activity **regularly engaged in as a means of livelihood or with a view to profit.**" Particularly, the LBT imposed pursuant to Section 143 (f) is premised on the fact that the persons made liable for such tax are banks or other financial institutions by virtue of their being engaged in the business as such. This is why the LBT are imposed on their gross receipts from "interest, commissions and discounts from **lending activities**, income from **financial leasing**, dividends, rentals on property and profit from exchange or sale of property, insurance premium."
>
> In this case, it is clear that RAVI is neither a bank nor other financial institution, *i.e.*, an NBFI. In order to be considered as an NBFI under the National Internal Revenue Code, banking laws, and pertinent regulations, the following must concur:
>
> a. The person or entity is authorized by the BSP to perform quasi-banking functions;
>
> b. The principal functions of said person or entity include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others; and
>
> c. The person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis, to wit:
>
>   1. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
>   2. Use principally the funds received for acquiring various types of debt or equity securities;
>   3. Borrow against, or lend on, or buy or sell debt or equity securities.
>
> ...

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[85] G.R. No. 241697, 29 July 2019; Citations omitted, emphasis in the original text and underscoring supplied.

> In sum, since RAVI is not a bank or other financial institution, *i.e.*, an NBFI, it cannot be held liable for LBT under Section 143 (f) of the LGC. However, this pronouncement is without prejudice to RAVI's potential liability for other taxes, whether national or local, should it so engage in other profit-making activities aside from its management of the SMC preferred shares, and the dividends resulting therefrom.
>
> ...

Furthermore, in *The City of Makati, et al. v. CEMCO Holdings, Inc.*[86], the Court *En Banc* held that LGUs are prohibited from imposing LBT on income realized by entities not classified as a bank or financial institution, to wit:

> ...
>
> However, such omnibus grant of taxing power in favor of LGUs under Section 143 of the LGC is not unbridled as enshrined in Section 133 of the same Code. **In particular, paragraph (a) thereof decrees that save for banks and other financial institutions, LGUs are explicitly proscribed from imposing taxes, fees or charges of any kind, on items of gain or yield which were levied income tax by the national government.** The rule is animated by the doctrine of pre-emption, or the instance where the national government elects to tax a particular area, impliedly withholding from the local government the delegated power to tax the same field. ***Ergo,* as diametrically opposed with petitioners' posture, Section 133(a) of the LGC does not allow, and in fact forbids the imposition of LBT on income realized by entities not classified as a bank or financial institution.**
>
> Significantly, petitioners and respondent expressly acknowledged in their Joint Stipulation of Facts that respondent is not a bank or financial institution as defined under Section 131(e) of the LGC. This fact certainly rocks their argument to its foundation. Note that once the stipulations are reduced into writing and signed by the parties and their counsels, as in this case, they become binding on the parties who made them. Such judicial admission also removes an admitted fact from the field of controversy, and no amount of rationalization can offset it. With the parties' admission that respondent does not fall under the classification of a bank or a financial institution, **petitioners' imposition of LBT on dividend income realized by respondent undoubtedly traverses the**

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86 CTA EB No. 1661, 12 December 2018; Citations omitted, emphasis supplied, italics and underscoring in the original text. This was affirmed by the Supreme Court in its Resolutions dated 07 August 2019 and 27 January 2020 in G.R. No. 247373, as stated in the Court of Tax Appeals Official Website Case History - http://cta.judiciary.gov.ph/history# (last accessed 03 May 2021).

statutory impediment enshrined under Section 133(a) of the LGC, rendering the issuance of the subject assessment *ultra vires* and without any legal consequence, effectively warranting its cancellation and withdrawal.

...

Consequently, petitioner Makati City is proscribed from imposing LBT on the dividend income of respondent (which is not a bank or other financial institutions), the same being in the nature of income tax.

In sum, petitioners' assessment of respondent amounting to ₱3,569,600.24, representing deficiency LBT for 2014 and 1st quarter of 2015, had already become final and executory as a result of respondent's failure to timely file a protest to said assessments. On the other hand, the total amount of ₱558,532.14 paid for the 2nd and 3rd quarters of 2015 *without* any notice of assessment has not yet attained finality hence, must be refunded to respondent for having been erroneously or illegally collected.

WHEREFORE, with the foregoing, the Petition for Review filed by petitioners Makati City and Hon. Jesusa E. Cuneta, in her capacity as City Treasurer, is hereby **PARTIALLY GRANTED**. Accordingly, petitioners are hereby **ORDERED TO REFUND** in favor of respondent Metro Pacific Tollways Corporation the reduced amount of ₱558,532.14, representing Local Business Tax erroneously or illegally collected for 2nd and 3rd quarters of 2015.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(With due respect, I join the Dissenting Opinion of J. San Pedro)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With due respect, I dissent with a Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

<u>CERTIFICATION</u>

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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MAKATI CITY AND HON. JESUSA E. CUNETA, IN HER CAPACITY AS CITY TREASURER OF MAKATI CITY, *Petitioners,*	**CTA EB NO. 2217** (CTA AC No. 204) Present:
-versus-	**DEL ROSARIO, P.J.,** **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA, and** **MODESTO-SAN PEDRO, JJ.**
METRO PACIFIC TOLLWAYS CORPORATION, *Respondent.*	Promulgated: JUN 14 2021 4:21pm

x -- x

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia* finding that petitioner's assessment amounting to ₱3,569,600.24 representing respondent's deficiency local business tax ("LBT") for 2014 and 1st quarter of 2015 had attained finality as a result of respondent's failure to make a timely protest to petitioner City Treasurer.

The *ponencia* anchored the foregoing position on respondent's admission in its Complaint before RTC Makati and in its Petition for Review before the Court in Division that the assessments were issued by petitioner City Treasurer. The *ponencia* then applied the rulings in ***City of Manila v. Cosmos Bottling Corporation***[1] and ***International Container Terminal Services, Inc. v. City of Manila***[2] (hereinafter collectively referred to as "***Cosmos and ICTSI Cases***"), which required prior compliance with ***Section 195 of the LGC*** for refund claims under ***Section 196.***

[1] G.R. No. 196681, 27 June 2018.
[2] G.R. No. 185622, 17 October 2018.

After a judicious review of the facts herein, it is my humble view that this Court should give evidentiary weight to Billing Assessment Form Nos. 037633 and 037634 as evidence contradictory to respondent's admissions in its Complaint and Petition for Review, as such statements were taken out of context.

Although, generally, an admission made in pleadings cannot be controverted by the party making such admission, the rule is not without exceptions. The exception applies when it is shown that the admission was made through palpable mistake or when it is shown that no such admission was in fact made.[3] Courts are also generally given leeway to consider other evidence presented especially when the parties had agreed to submit an issue for resolution of the court on the basis of the evidence presented.[4]

As pointed out in the *ponencia,* one of the issues submitted for resolution of RTC Makati is: "Whether or not defendant Office of the City Treasurer of Makati's assessment against the plaintiff for deficiency local business tax for the year 2013 had become final and unappealable under Section 195 of the LGC in the absence of any protest by the plaintiff."[5] To my mind, however, resolution of this issue necessarily includes a determination if, in fact, a notice of assessment was validly issued pursuant to ***Section 195 of the LGC*** considering that the finality of the assessment relies heavily on whether the assessment complies with the provision. As such, it entails an examination of relevant submitted evidence such as Billing Assessment Form Nos. 037633 and 037634.

A plain reading of ***Section 195 of the LGC*** shows that for an assessment to be valid and, consequently, attain finality, the notice of assessment must:

(i) Be issued by the local treasurer or his duly authorized representative;
(ii) State the nature of the tax, fee, or charge; and
(iii) State the amount of deficiency, the surcharges, interests and penalties.

A scrutiny of Billing Assessment Form Nos. 037633 and 037634 reveals that these were issued by the Makati City Business Permits Office, as signed by the City Administrator/ OIC Head Business Permits Office and by the City Mayor.[6] Clearly, these were not signed by the local treasurer. Neither was there any proof offered that the signatories in the Billing

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[3] Land Bank of the Philippines v. Navarro, G.R. No. 196264, 6 June 2019 *citing* Constantino v. Constantino, Jr., G.R. No. 181508, 2 October 2013 and Atillo, III v. Court of Appeals, G.R. No. 119053, 23 January 1997.
[4] Atillo, III v. Court of Appeals G. R. No. 119053, 23 January 1997.
[5] Pre-Trial Order dated 29 November 2017, RTC Records, p. 224.
[6] As found by the Court in Division in its Decision dated 9 October 2019.

Assessment Forms were the duly authorized representatives of the local treasurer. It is also doubtful that surcharges, interests, and penalties were imposed at this stage, considering that the Billing Assessment Forms were issued in the regular course of renewing respondent's business permit.

From the foregoing, I am of the view that respondent will be greatly prejudiced if this Court will turn a blind eye to the glaring evidence available on record clearly establishing that the Billing Assessment Forms do not meet the requirements of ***Section 195 of the LGC.*** Thus, the Billing Assessment Forms do not qualify as a notice of assessment as contemplated in ***Section 195.***

Moreover, the rule that matters not raised at the administrative level as well as in prior judicial actions cannot be raised on appeal also admits of exceptions. such as when there are jurisprudential developments affecting the issues[7] as is present in the instant case.

Indeed, when the ***Cosmos and ICTSI Cases*** were promulgated in 2018, it clarified the remedies in ***Section 195 and 196 of the LGC.*** According to these cases, a taxpayer cannot pursue its refund claim at any time within the full period of two (2) years provided in ***Section 196.*** The taxpayer must also administratively question the validity or correctness of the assessment in the 'letter-claim for refund' within 60 days from receipt of the notice of assessment pursuant to ***Section 195.***

Notably, however, at the time respondent paid the deficiency LBT and filed a Complaint in RTC Makati in 2015, the ***Cosmos and ICTSI Cases*** were not yet promulgated. Prior to the ***Cosmos and ICTSI Cases,*** the prevailing rule was that only two procedural requirements must concur to be entitled for refund under ***Section 196***: *first,* the taxpayer must file a written claim for refund with the local treasurer; and *second,* the case or proceeding for refund should be filed within two (2) years from the date of payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.[8] Indubitably, there was no requirement that the administrative claim should also be instituted within 60 days from receipt of the notice of assessment under ***Section 195.***

Consistent with the pronouncement of the Supreme Court then, this Court has also held in several cases[9] that the procedural requirements to recover a tax, fee, or charge erroneously or illegally collected pursuant to ***Section 196,*** are the written claim for refund or credit with the local treasurer

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7 Land Bank of the Philippines v. Navarro, G.R. No. 196264, 6 June 2019 *citing* Del Rosario v. Bonga, G.R. No. 136308, 23 January 2001.

8 Metro Manila Shopping Mecca Corp. v. Toledo, G.R. No. 190818, 5 June 2013.

9 China Banking Corp. v. City Treasurer of Manila, CTA EB No. 182 (RTC Civil Case No. 04-108990), 27 July 2006; China Banking Corporation v. The City Treasurer of Manila, CTA EB Case No. 1144, 4 September 2015; Jose v. Tigerway Facilities and Resources, Inc. CTA EB No. 1605, 25 July 2018.

and filing of the case within two (2) years from date of payment or from date taxpayer is entitled to the refund or credit. We have also consistently treated the remedies in ***Sections 195 and 196 of the LGC*** as separate and diverse remedies calling for different requirements and different conditions for their application.[10] As such, a taxpayer assessed by the local treasurer is free to choose which remedy to enforce.[11]

In several instances where this Court was confronted with similar factual antecedents involving the City Treasurer's impositions and collections of deficiency LBT in connection with the renewal of business permits and licenses, we have held that ***Section 196*** (not Section 195) is the more applicable provision, which provides for the procedure and the period for claiming a refund or tax credit of LBT erroneously or illegally collected.[12] In these cases, a written claim with the local treasurer and filing of the case for refund within two (2) years from payment were deemed as sufficient procedural requirements for the refund claim to prosper.

Considering that the ***Cosmos and ICTSI Cases*** reversed the prevailing interpretation of the law, the same should be applied prospectively. Interpretation or construction of a law by courts constitutes a part of the law as of the date the statute is enacted. However, when a prior ruling is overruled and a different view is adopted, the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith in doing so.[13] Consequently, petitioner cannot be faulted for seeking refund pursuant to ***Section 196 of the LGC*** following the prevailing interpretation of the law at the time. Accordingly, respondent's claim for refund at the administrative level and judicial level, which were both filed within two (2) years from the date of payment of taxes, were seasonably filed.

At any rate, even assuming that the ***Cosmos and ICTSI Cases*** will be retroactively applied to the present case, there was no notice of assessment issued to respondent pursuant to ***Section 195 of the LGC***. As the *ponencia* held: "On the contrary, Section 196 of the LGC of 1991, as amended, would apply, without requiring prior compliance with Section 195, *if no notice of assessment was issued* to the taxpayer." Hence, respondent's recourse to ***Section 196*** without prior compliance with ***Section 195*** is proper.

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[10] Jose v. Tigerway Facilities and Resources, Inc. CTA EB No. 1605, 25 July 2018; China Banking Corporation v. The City Treasurer of Manila, CTA EB Case No. 1144, 4 September 2015.

[11] Jose v. Tigerway Facilities and Resources, Inc. CTA EB No. 1605, 25 July 2018

[12] Treasurer of the City of Manila v. China Banking Corp., CTA EB Case No. 867, 23 September 2013; City Treasurer of Manila v. Philippine Beverage Partners, Inc., CTA EB Case No. 1342, 22 December 2016; First Planters Pawnshop, Inc. v. City Treasurer of Pasay City, CTA EB Case No. 501, 10 December 2010.

[13] Visayas Geothermal Power Co. v. Commissioner of Internal Revenue, G.R. No. 197525, 4 June 2014; Suazo v. Suazo, G.R. No. 164493, 12 March 2010; Ting v. Velez-Ting, G.R. No. 166562, 31 March 2009; Paras v. Paras, G.R. No. 147824, 2 August 2007; Pesca v. Pesca, G.R. No. 136921, 17 April 2001.

On the basis of the foregoing, and with the *ponencia's* finding on the substantive issue that petitioner is proscribed from imposing LBT on respondent's dividend income, it is my humble view that petitioner's assessment amounting to ₱3,569,600.24 representing deficiency LBT for 2014 and the 1st quarter of 2015 has not attained finality. The claim for refund was timely contested with the City Treasurer and, thereafter, with RTC Makati within the two (2)-year prescriptive period provided in ***Section 196*** and pursuant to the prevailing rule at the time of the institution of the claim. Accordingly, respondent's claim for refund may prosper.

All told, I therefore **VOTE** to: (i) **DENY** the instant Petition for Review; and (ii) **AFFIRM** the Decision dated 9 October 2019 of the Court in Division ordering the refund or issuance of a tax credit certificate in favor of petitioner in the amount of ₱4,128,132.38 representing erroneously or illegally paid LBT for the years 2014 and 2015.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice