REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CITY TREASURER OF MANILA,
Petitioner,

- versus -

CHINA BANKING CORPORATION and the HON. JANSEN R. RODRIGUEZ, REGIONAL TRIAL COURT, BRANCH 06, MANILA,
Respondents.

CTA A.C. NO. 81

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

DEC 18 2012 ; 2:00 p.m.

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DECISION

Fabon-Victorino, J.:

This appeal by way of a Petition for Review filed by petitioner City Treasurer of Manila, seeks to reverse the Resolution dated April 19, 2011[1] rendered by the Regional Trial Court (RTC) of Manila, Branch 6 in Civil Case Nos. 06-116033 and 07-116663, entitled "China Banking Corporation vs. Hon. Liberty M. Toledo in her capacity as City Treasurer of Manila."

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[1] Annex "A", Petition for Review, docket, pp. 29 to 35.

The assailed Resolution directed petitioner to refund the taxes paid by respondent China Banking Corporation in the amount of P1,644,842.84, collected pursuant to Section 21 of the Manila Revenue Code, believing that the latter is legally liable to pay the same.

Petitioner, represented by Vicky R. Valientes, currently the Officer-in-Charge (OIC) of the Office of the City Treasurer of Manila, is holding office at the Ground Floor, City Hall, Manila.

Respondent China Banking Corporation, on the other hand, is a domestic universal banking corporation, with principal office at 8745 Paseo de Roxas corner Villar Street, Makati City.

Respondent Hon. Jansen R. Rodriguez is a nominal party, impleaded in his capacity as the Presiding Judge of the RTC of Manila, Branch 6.

Sometime in January of 2006, respondent bank, without a formal assessment and as a pre-requisite to the renewal of its business permits and licenses, was assessed taxes in the amount of P5,338,799.58[2] pursuant to Sections 19 and 21 of the Manila

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[2] Erroneously stated as P5,338,099.00 in the Resolution dated April 19, 2011.

Revenue Code (MRC), based on its income of P657,937,131.31 for the year 2005. A portion of the alleged total amount due was for the business tax of P3,289,685.68, based on Section 21 of MRC, as amended by Manila City Ordinance (MCO) No. 7988,[3] which was made payable to the city government on a quarterly basis, as follows:

Quarter	Total Amount Payable	Section 21 Tax
1st Quarter	P 1,388,529.27	P 822,421.42
2nd Quarter	P 1,316,756.77	P 822,421.42
3rd Quarter	P 1,316,756.77	P 822,421.42
4th Quarter	P 1,316,756.77	P 822,421.42
Total	**P5,338,799.58**	**P3,289,685.68**

On July 18, 2006, respondent BBC Branch paid under protest[4] the 3rd quarterly installment of P1,316,756.77, per Official Receipt No. BAL-003354,[5] part of which in the amount of P822,421.42 was collected as business tax pursuant to Section 21 of MRC, as amended by MCO No. 7988.

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[3] Par. 6, Statement of Facts, Petition for Review, Civil Case No. 06-116033, RTC Records, p. 2; Par. 6, Statement of Facts, Petition for Review, Civil Case No. 07-116663,RTC Record, pp. 2 to 3.
[4] Annex "C", Petition for Review, Civil Case No. 06-116033, RTC Records, p. 18.
[5] Annex "B", Petition for Review, Civil Case No. 06-116033, RTC Records, p. 17.

On September 5, 2006, respondent received from petitioner a reply letter[6] dated August 29, 2006 requiring it to file a formal protest letter. Reacting on the said reply letter, respondent wrote petitioner a letter[7] dated September 15, 2006, referring to its letter of July 17, 2006 as its protest letter which is allegedly compliant with all the requirements of a written protest.

In a letter dated October 11, 2006[8] filed on even date, respondent demanded from petitioner the refund of P822,421.42 it paid under protest.

On October 16, 2006, respondent, on the ground of inaction on the part of petitioner, elevated its protest and claim for refund to the RTC through a Petition for Review docketed as Civil Case No. 06-116033 and raffled to Branch 6.

In its Comment[9] filed on December 27, 2007, petitioner raised the following defenses: (a) respondent was covered by Section 21 of the MRC, as amended by MCO No. 7988; (b) there was no prohibited double taxation; and (c) absence of cause of

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[6] Par. 9, Statement of Facts, Petition for Review, Civil Case No. 06-116033, RTC Records, pp. 3 to 4; Annex "D", Petition for Review, Civil Case No. 06-116033, RTC Records, p. 19.
[7] Annex "E", Petition for Review, Civil Case No. 06-116033, RTC Records, pp. 20 to 21.
[8] Annex "F", Petition for Review, Civil Case No. 06-116033, RTC Records, p. 22.
[9] Civil Case No. 06-116033, RTC Records, pp. 29 to 34.

action on the part of respondent who has no personality to file the Petition being a mere withholding agent.

On October 18, 2006, respondent bank's BBC Branch paid under protest[10] the fourth quarterly installment of P1,316,756.77, for which it was issued Official Receipt No. BAJ-003802. [11] Of the said amount, P822,421.42 was for business tax collected by virtue of Section 21 of the MRC, as amended by MCO No. 7988.

On December 19, 2006,[12] respondent formally demanded for the refund of the amount paid under protest. On the same day, respondent received a letter dated December 7, 2006[13] from petitioner denying its protest.

In a letter[14] dated January 11, 2007, received on January 22, 2007, petitioner stressed that it could not act on respondent's claim for refund as it would violate the rule on *sub-judice vis-à-vis* the other similar cases between them

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[10] Annex "C", Petition for Review, Civil Case No. 07-116663, RTC Records, pp. 20 to 21.
[11] Par. 7, Statement of Facts, Petition for Review, Civil Case No. 07-116663, RTC Records, p. 3; Annex "B", Petition for Review, Civil Case No. 07-116663, RTC Records, p. 19.
[12] Annex "D", Petition for Review, Civil Case No. 07-116663, RTC Records, p. 22.
[13] Annex "E", Petition for Review, Civil Case No. 07-116663, RTC Records, pp. 23 and 25.
[14] Annex "F", Petition for Review, Civil Case No. 07-116663, RTC Records, p. 24.

> statue (sic), ordinance or resolutions unconstitutional, illegal and null and void, the Decision of the Regional Trial Court, Branch 40, Manila declaring Ordinance 7988 valid, shall be followed, enforced and implemented by answering (petitioner). (Respondent), therefore, shall be assessed anew under the tax rates contained in and imposes (sic) by Ordinance 7988;
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> 5 (Respondent) is covered by Section 21 although it is already paying tax under Section 19 because (respondent) is engaged in business subject to value-added tax under the NIRC;
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> 6. The tax imposed under Section 21 is not tax on the business per se, rather, it is a tax on the person availing of the goods and services of the business. x x x

On October 10, 2008, respondent filed a Reply and Opposition to Motion to Dismiss.[16]

In the Resolution of November 26, 2009,[17] the RTC denied petitioner's motion to dismiss.

Subsequently, Civil Case No. 06-116033 and Civil Case No. 07-116663 were consolidated by virtue of the Order dated July 23, 2010.[18] On the ground that the two cases involved purely questions of law, the RTC also directed the parties to file their respective memoranda in lieu of trial.

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[16] Civil Case No. 07-116663, RTC Records, pp. 71 to 82.
[17] Civil Case No. 07-116663, RTC Records, pp. 90 to 91.
[18] Civil Case No. 07-116663, RTC Records, pp. 109 to 110.

questioning the imposition of local business tax under Section 21 of the MRC, as amended by MCO No. 7988.

On February 1, 2007, respondent filed another Petition for Review with the RTC of Manila, docketed as Civil Case No. 07-116663, also raffled to Branch 6.

On May 18, 2007, petitioner filed its Answer with Motion to Dismiss[15] with the following special and affirmative defenses:

> 3. (Respondent) has no cause of action. (Petitioner's) official duties of assessing and collecting local taxes, fees and charges are mandated by her official duties and responsibilities as City Treasurer of Manila, as well as the provisions of RA 7160 and the Revenue Code of Manila-City Ordinance No. 7794 as amended by Ordinance No. 7807, 7988 and 8011. Since there was no official communication received by their office from the City Legal Officer of Manila informing that Ordinance 7988 had been declared NULL and VOID, she has no other recourse but to enforce the mandate of the tax ordinance. What her Office had received was a Decision of the Regional Trial Court, Branch 40, Manila, in Civil Case No. 01-99874, dated March 25, 2002, the dispositve portion of which stated, among others, "2, Declaring City of Manila Ordinance No. 7988 valid." Said Decision has become final and executor on August 11, 2002. x x x;
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> 4. Considering that only court of competent jurisdiction can declare a law,

[15] Civil Case No. 07-116663, RTC Records, pp. 33 to 38.

The consolidated cases were submitted for decision after respondent filed its Memorandum on August 25, 2010[19] and petitioner, on September 14, 2010.[20]

On April 19, 2011, the RTC issued the assailed Resolution granting respondent's Petitions for Review, in this wise:[21]

> WHEREFORE, PREMISES CONSIDERED, the Court finds the Petition for Refund meritorious and accordingly declares that herein Petitioner not liable for business taxes under Section 21 of the City of Manila's Revenue Code having already paid business taxes under Section 19 thereof.
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> As prayed for, the respondent is directed to refund the taxes paid by herein petitioner for the 2nd quarter and 4th quarter of the year 2006 pursuant to Section 21 of the MRC with the total amount of P1,644,842.84 plus interest at the legal rate from the date of payment by petitioner until full refund by the respondent. In the alternative, herein defendant may give tax credit to herein petitioner for the aforementioned tax payment made as hereinabove computed. Further, the Court awards an amount of P20,000.00 as attorney's fees plus P2,000.00 for every appearance made.

Relentless, petitioner filed with the Court the instant Petition for Review on July 15, 2011.

[19] Civil Case No. 07-116663, RTC Records, pp. 112 to 126.
[20] Civil Case No. 06-116033, RTC Records, pp. 84 to 91.
[21] Civil Case No. 07-116663, RTC Records, pp. 127 to 133.

Petitioner claims that it is obliged to continue collecting taxes upon covered taxpayers, including respondent bank pursuant to both Sections 14 and 21 of the MRC in the absence of elements that would constitute double taxation.

Besides, respondent did not file a formal protest letter mandated under Section 195 of R.A. 7160, otherwise known as the Local Government Code of 1991, despite receipt of its letter dated August 29, 2006. For failure to exhaust administrative remedies, the instant petition should be dismissed.

Finally, petitioner believes that by seeking refund, respondent is actually challenging the constitutionality of the assessment made under Section 21 of the MRC. However, respondent did not assail the law before the Secretary of Justice within 30 days from its effectivity as required under Section 187 of the Local Government Code.

On the other hand, respondent argues that petitioner actually changed its theory on appeal when it raised the issue of non-exhaustion of administrative remedies, which is not allowed. Allegedly, respondent did not timely raise this issue before the

RTC, thus it is deemed waived as a defense. It also filed a formal protest through its letters dated August 29, and October 18, 2006, as well as of October 11, and December 19, 2006, claiming for refund of the subject taxes before it lodged the present Petitions for Review with the RTC on October 16, 2006 and February 6, 2007.

On its alleged failure to assail the constitutionality of the subject local tax ordinance with the Secretary of Justice, respondent opines that Section 187 of the LGC finds no application in the case at bar. The remedy availed of is within the province of petitioner and not of the Secretary of Justice. Besides, the imposition under Section 21 and Section 19 of the MRC had already been declared null and void by the Supreme Court in the case of *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila (Coca-Cola*).[22] Thus, the assailed Resolution dated April 19, 2011 directing the refund of the amount paid under protest on the ground that the collection of local business tax pursuant to Section 21 is illegal.

On the issue of double taxation, clear from the *Coca-Cola* case that there is double taxation in the imposition of both

[22] G.R. No. 156252, June 27, 2006.

Section 19 and 21, contrary to the allegation of petitioner. Section 19 was lifted from Section 143(f) of the Local Government Code (LGC) while Section 21 was lifted from Section 143(h) of the same code. Section 143(h) pertinently states that the municipality may impose taxes "On any business, not otherwise specified in the preceeding paragraphs." Since respondent is already being taxed under Section 143(f), then it can no longer be taxed under Section 143(h) of the same Section for it constitutes double taxation, as correctly held by the RTC in its Resolution dated April 19, 2011.

After respondent filed its Memorandum on December 8, 2011[23] and petitioner, on January 24, 2012[24], the case was submitted for decision on February 1, 2012.[25]

The following issues are for the resolution of the Court: [26]

> 1. Whether or not the imposition of local business tax under Section 21 of the MRC constitutes impermissible double taxation;
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> 2. Whether or not the questioned assessment had already become conclusive and unappealable for failure of respondent to observe the prescribed period under the Local Government Code; and

[23] Docket, pp. 110 to 123.
[24] Docket, pp. 144 to 148.
[25] Docket, pp. 151 to 152.
[26] Issues, Petition for Review, docket, p. 7.

3. Whether or not respondent has exhausted available remedies.

The issues raised by petitioner may be summed up into one principal issue of whether the RTC was correct in holding that respondent bank is not liable for taxes under Section 21 of the MRC justifying the refund of the taxes collected and paid for the year 2006.

Sections 19 and 21 of Ordinance No. 7794, otherwise known as the Manila Revenue Code, respectively, provide:

> SECTION 19. *Tax on Banks, Insurance Companies and Other Financial Institutions*. - A percentage tax is hereby imposed on banks and other financial institutions, at the rate of seventy-five percent (75%) of one percent (1%) on the gross receipts of the preceding calendar year derived from the interests, commissions and discounts from lending activities, income from financing leasing, dividends, rentals from property and profit from exchange or sale of property, insurance premium.
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> SECTION 21. *Tax on Business Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC*. — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:

> A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said Code.
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> xxx xxx xxx
>
> **PROVIDED, that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof**. *(Emphasis supplied)*

The proviso of Section 21 of the Ordinance No. 7794, as amended, specifically provides that "all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof." This proviso was subsequently deleted when the City of Manila enacted Ordinance No. 7988.

Subsequently however, Ordinance Nos. 7988 and 8011 were declared null and void in the case of *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, Liberty M. Toledo-City Treasurer and Joseph Santiago-Chief, Licensing Division*,[27] in the following fashion:

[27] G.R. No. 156252, June 27, 2006.

It is undisputed from the facts of the case that Tax Ordinance No. 7988 has already been declared by the DOJ Secretary, in its Order, dated 17 August 2000, as null and void and without legal effect due to respondents' failure to satisfy the requirement that said ordinance be published for three consecutive days as required by law. Neither is there quibbling on the fact that the said Order of the DOJ was never appealed by the City of Manila, thus, it had attained finality after the lapse of the period to appeal.

Furthermore, the RTC of Manila, Branch 21, in its Decision dated 28 November 2001, reiterated the findings of the DOJ Secretary that respondents failed to follow the procedure in the enactment of tax measures as mandated by Section 188 of the Local Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. From the foregoing, it is evident that Tax Ordinance No. 7988 is null and void as said ordinance was published only for one day in the 22 May 2000 issue of the Philippine Post in contravention of the unmistakable directive of the Local Government Code of 1991.

Despite the nullity of Tax Ordinance No. 7988, the court *a quo*, in the assailed Order, dated 8 May 2002, went on to dismiss petitioner's case on the force of the enactment of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988. Significantly, said amending ordinance was likewise declared null and void by the DOJ Secretary in a Resolution, dated 5 July 2001, elucidating that "*[I]nstead of amending Ordinance No. 7988, [herein] respondent should have enacted another tax measure which strictly complies with the requirements of law, both procedural and substantive.* ***The passage of the assailed ordinance did not have the effect of curing the defects of Ordinance No. 7988 which, any way, does not legally exist.***" Said Resolution of the DOJ Secretary had, as well, attained

> finality by virtue of the dismissal with finality by this Court of respondents' Petition for Review on *Certiorari* in G.R. No. 157490 assailing the dismissal by the RTC of Manila, Branch 17, of its appeal due to lack of jurisdiction in its Order, dated 11 August 2003.
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> Based on the foregoing, this Court must reverse the Order of the RTC of Manila, Branch 21, dismissing petitioner's case as there is no basis in law for such dismissal. The amending law, having been declared as null and void, in legal contemplation, therefore, does not exist. Furthermore, even if Tax Ordinance No. 8011 was not declared null and void, the trial court should not have dismissed the case on the reason that said tax ordinance had already amended Tax Ordinance No. 7988. As held by this Court in the case of *People v. Lim*, if an order or law sought to be amended is invalid, then it does not legally exist, there should be no occasion or need to amend it.

By virtue of the foregoing declaration of nullity of Ordinance No. 7988, the exempting proviso of Section 21 of Ordinance No. 7794 was inevitably reinstated and remained effective and enforceable. In fine, the imposition of tax under Section 21 of Ordinance No. 7794 when the taxpayer is already being taxed under Section 19 is illegal.

Anent the issue of double taxation, the Supreme Court, in the case of *The City of Manila, et al. vs. Coca-Cola Bottlers*

Philippines, Inc.[28], explained the reason why the imposition of additional local business tax under Section 21 of the MRC, as amended by MCO No. 7988, constitutes double taxation. The High Tribunal stated, thus:

> Double taxation means taxing the same property twice when it should be taxed only once; that is, 'taxing the same person twice by the same jurisdiction for the same thing.' It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as 'direct duplicate taxation,' **the two taxes must be imposed on the same subject matter**, for the **same purpose**, by the **same taxing authority, within the same jurisdiction, during the same taxing period**; and the taxes must be **of the same kind or character**.
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> Using the aforementioned test, **the Court finds that there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business**.
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> The distinction petitioners attempt to make between the taxes under Sections 14

[28] G.R. No. 181845, August 4, 2009.

> and 21 of Tax Ordinance No. 7794 is specious. The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that when a municipality or city has already imposed a business tax on manufacturers, *etc.* of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, *etc.* to a business tax under Section 143(h) of the same Code. Section 143(h) may be imposed only on businesses that are subject to **excise tax, VAT, or percentage tax under the NIRC, and that are 'not otherwise specified in preceding paragraphs.'** In the same way, businesses such as respondent's, already subject to a local business tax under Section 14 of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], can no longer be made liable for local business tax under Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC]. (*Emphasis supplied*)

Indeed, double taxation in this case exists. Respondent was taxed twice by the same taxing authority and jurisdiction for the same taxing periods and subject matter - first under Section 19, then under Section 21 of Ordinance 7794.

Significantly, Section 143 of the LGC, the provision upon which the power of cities and municipalities to impose local business tax emanates, shows that when a municipality or city imposes local business tax on a bank or financial institution pursuant to Section 143(f)[29], the same municipality or city may no longer subject the same bank or financial institution to local business tax under Section 143(h)[30] of the same Code. In the same manner, banks and financial institutions already made liable for local business tax under Section 19 of the MRC, which is based on Section 143(f) of the LGC, may no longer be subjected to local business tax pursuant to Section 21 of the MRC, which is based on Section 143(h) of the LGC.[31]

On the alleged failure of respondent to exhaust administrative remedies, Section 1(j), Rule 16 of the Rules of Court provides that one of the grounds for a motion to dismiss is when a condition precedent for filing the claim has not been complied with. Compliance with conditions precedent, such as exhaustion of administrative remedies, is required in certain

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

[30] (h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: *Provided*, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.
The Sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.

[31] *China Banking Corporation vs. Hon. Liberty M. Toledo*, CTA AC Case No. 69, October 20, 2011.

cases before resorting to judicial actions.[32] However, pursuant to Section 1 of Rule 9 of the Rules of Court, non-compliance with conditions precedent must be pleaded in a motion to dismiss or in the answer; otherwise, the same is deemed waived. Further, the failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court. It only deprives the complainant of a cause of action, which is a ground for a motion to dismiss. If not seasonably invoked, this ground is deemed waived and the court is competent to take cognizance of the case and try it.[33]

The record reveals that petitioner never raised respondent's alleged non-exhaustion of administrative remedies in her Answer with Motion to Dismiss for Civil Case No. 07-116663 and in its Comment for Civil Case No. 06-116033. Under Section 1 of Rule 9 of the Rules of Court, petitioner is deemed to have waived this ground. It is late in the day for petitioner to invoke this ground on appeal before this Court.

Even assuming *arguendo* that petitioner is not precluded from raising the defense of non-exhaustion of administrative

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[32] *Jaime C. Lopez vs. City of Manila, et al.*, G.R. No. 127139, February 19, 1999; *Soledad Dy vs. Court of Appeals, et al.*, G.R. No. 121587, March 9, 1999.

[33] *C.N. Hodges vs. The Municipal Board of the City of Iloilo, et al.* G.R. No. L-18276, January 12, 1967; *The Municipality of La Trinidad, et al. vs. The Court of First Instance of Baguio-Benguet, et al.*, G.R. No. L-33899, June 28, 1983.

remedies, petitioner's arguments are nonetheless devoid of merit.

First, Section 187[34] of the LGC does not apply in the present case inasmuch as respondent is not questioning the legality or constitutionality of Section 21 of the MRC, as amended by Manila City Ordinance Nos. 7988 and 8011. Since respondent is not availing of the remedy provided under Section 187 of the LGC, it is not required to follow the procedure as well as the periods stated in Section 187 of the LGC before it could file the Petitions for Review with the RTC of Manila.

Second, Section 195 of the LGC[35] is as well not applicable. Section 195 of the LGC applies to cases where the taxpayer fails

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[34] SECTION 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.* – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: xxx *Provided, finally*, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal; the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

[35] SECTION. 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that the 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

to pay the correct taxes, fees and charges, and the local treasurer issues a notice of assessment stating the deficiencies and the required payment, including the penalties and surcharges. Under this provision, the taxpayer shall file a written protest with the local treasurer contesting the assessment and follow the procedure provided therein; otherwise, such assessment shall become final and executory.[36]

As borne by the record of the case, petitioner did not issue any notice of assessment for the unpaid taxes. Petitioner merely informed respondent of the taxes due, charges and fees payable to petitioner when respondent applied for the renewal of its local business permits and licenses. Said amount includes local business tax imposed pursuant to Section 21 of the MRC, as amended by MCO No. 7988. In other words, the procedure and periods prescribed in Section 195 of the LGC do not apply in the case at bench.

Under the factual milieu, the applicable provision is Section 196 of the LGC, which states as follows:

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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-day (60) period prescribed herein within which to appeal with the court of competent jurisdiction, otherwise the assessment becomes conclusive and unappealable.

[36] *China Banking Corporation vs. Hon. Liberty M. Toledo*, CTA AC Case No. 69, October 20, 2011

> 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.

Under the foregoing provision, respondent is not required to file a written protest. Respondent needs only to comply with the following conditions for purposes of pursuing in court a claim for refund of erroneously or illegally collected local tax, fee, or charge, thus:

> 1. the taxpayer concerned must file a written claim for refund or tax credit with the local treasurer; and,
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> 2. the case or proceeding for refund has to 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.[37]

As established, respondent paid the local business taxes due for the third (3^{rd}) and fourth (4^{th}) quarters of the year 2006 on July 18, 2006 and October 18, 2006, respectively. The

[37] *China Banking Corporation vs. City Treasurer of Manila,* CTA EB No. 182, July 27, 2006; *City of Manila, et al. vs. ACE Hardware Phils, Inc., et al.,* CTA AC No. 52, September 29, 2008.

written claims for refund of local business taxes paid for the third and fourth quarters of the year 2006 were respectively filed on October 11, 2006 and December 19, 2006. Furthermore, respondent filed the Petitions for Review on October 16, 2006 (docketed as Civil Case No. 06-116033) and on February 1, 2007 (docketed as Civil Case No. 07-116663) before the RTC of Manila.

Respondent as well exhausted available administrative remedies when it submitted the written claims for refund to petitioner. It also timely filed its judicial claims for refund before the RTC of Manila. In short, respondent has complied with the requisites under Section 196 of the LGC.

Finally, the Court notes that the dispositive portion of the assailed Resolution which states:

> WHEREFORE, PREMISES CONSIDERED, the Court finds the Petition for Refund meritorious and accordingly declares that herein Petitioner not liable for business taxes under Section 21 of the City of Manila's Revenue Code having already paid business taxes under Section 19 thereof.
>
> As prayed for, the respondent is directed to refund the taxes paid by herein petitioner for the **2nd quarter** and 4th quarter of the year 2006 pursuant to Section 21 of the MRC with the total amount of

> P1,644,842.84 plus interest at the legal rate from the date of payment by petitioner until full refund by the respondent. In the alternative, herein defendant may give tax credit to herein petitioner for the aforementioned tax payment made hereinabove computed. Further, the Court awards an amount of P20,000.00 as attorney's fees plus P2,000.00 for every appearance made. [38] (*Emphasis supplied*)

It appears however from the following pleadings filed by respondent with the RTC of Manila that it erroneously wrote second (2nd) quarter instead of third (3rd) quarter as one of the periods covered by the claims for refund, to wit:

> 1. Petition for Review docketed as Civil Case No. 06-116033 - paragraph 7, Statement of Facts;[39] and
>
> 2. Memorandum - paragraph 5, Statement of Facts and of the Case.[40]

Consequently, in the assailed Resolution of RTC ordered the refund of the local business taxes paid by respondent for the second (2nd) quarter and the fourth (4th) quarter of the year 2006.

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[38] Civil Case No. 07-116663, RTC Records, p. 133.
[39] Civil Case No. 06-116033, RTC Records, p. 3.
[40] Civil Case No. 07-116663, RTC Records, p. 113.

The Court, however, observed that the Official Receipts[41] and the claims for refund[42] attached to respondent's Petitions for Review filed with the RTC all indicate that respondent's claims for refund actually pertain to the local taxes paid for the third (3rd) and fourth (4th) quarters of the year 2006, amounting to P822,421.42 per quarter. Also, paragraph 32 of respondent's Petition for Review[43] in Civil Case No. 06-116033 specifically mentioned and referred to the 3rd quarter and not to the second quarter of 2006.

A fortiori, and in conformity with the documentary evidence submitted by respondent, modification of the assailed Resolution is warranted to reflect the correct quarter involved in the order to refund, replacing second (2nd) quarter of 2006 with third (3rd) quarter of 2006.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**, for lack of merit.

Respondent Regional Trial Court of Manila, Branch 6, is hereby directed to effect the necessary correction in the

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[41] Civil Case No. 06-116033, RTC Records, p. 17; Civil Case No. 07-116663, RTC Records, p. 19.
[42] Civil Case No. 06-116033, RTC Records, p. 22; Civil Case No. 07-116663, RTC Records, p. 22.
[43] Civil Case No. 06-116033, RTC Records, p. 13.

dispositive portion of the assailed Resolution dated April 19, 2011 replacing second (2^{nd}) quarter of 2006 with third (3^{rd}) quarter of 2006.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ON LEAVE
ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P.UY
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice