

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

**SYNOVATE INC. (formerly PMI
ASIA, INC.),**

Petitioner,

- versus -

C.T.A. AC NO. 53

Members:

CASTAÑEDA, JR., *Chairperson*
UY, and
PALANCA-ENRIQUEZ, JJ.

**PASIG CITY, HON. ROBERTO C.
EUSEBIO IN HIS CAPACITY AS
MAYOR OF PASIG CITY, HON.
CRISPINA V. SALUMBRE IN
HER CAPACITY AS TREASURER
OF PASIG CITY, AND PASIG
CITY BUSINESS PERMIT AND
LICENSE OFFICE,**

Respondents.

Promulgated:

JAN 08 2010

✓ 1:02 p.m.

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DECISION

UY, J.:

THE CASE

This case is an appeal from the Decision¹ of the Regional Trial Court of Pasig City, Branch 268, in the case of "Synovate Inc. (formerly PMI Asia, Inc.) vs. Pasig City, Roberto C. Eusebio, in his capacity as Mayor of Pasig City, Crispina V. Salumbre, in her capacity as Treasurer of Pasig City, and Pasig City Business Permit and License Office," docketed as SCA No. 3145. The assailed Decision

¹ Rendered by the Honorable Judge Amelia C. Manalastas on April 22, 2008, Docket, pp. 37-42

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denied the petition for cancellation of assessment filed by herein petitioner before the Court *a quo* due to prescription and for lack of merit.

THE PARTIES

Synovate Inc. (Petitioner) is a domestic corporation primarily engaged in the business of management consulting. Its business address is located at unit 1704 PSE Centre, West Tower, Ortigas, Pasig City.¹

Respondent Pasig City is a local government unit organized and existing under Republic Act No. 7829 and is represented in this case by respondent Roberto C. Eusebio, the duly elected Mayor of Pasig City.

Respondent Crispina V. Salumbre is the duly appointed City Treasurer of Pasig City, authorized under the Local Government Code to perform the duties of said office, including, among others, the assessment and collection of local business taxes due to the City of Pasig.

Respondent Business Permit and License Office is a department of Pasig City government, with power and authority to perform its duties, primarily the evaluation of applications for business permits.

THE FACTS

On December 7, 2004, petitioner received from respondent City Treasurer a Notice of Assessment for deficiency taxes due arising from undeclared taxable receipts in the sum of ₱ 718,340.91 for taxable years 2000 to 2004.²

In a letter dated January 12, 2005, petitioner assailed the assessment and asked respondent City Treasurer to recall the same.³

¹ RTC Records, pp. 41-42.

² RTC Records, pp. 64-65

³ RTC Records, p. 66.

In another letter dated January 28, 2005 to respondent City Treasurer, petitioner protested the Notice of Assessment dated December 7, 2004.⁴

On January 28, 2005, petitioner also wrote respondent Business Permit and License Office (BPLO) after the latter denied petitioner's application for business permit for 2005. Petitioner requested respondent BPLO to grant the application without need of prior payment of the assessed deficiency business tax or execution of the prescribed compromise agreement.⁵

Upon approval by the respondent Mayor on January 28, 2005, respondent BPLO accepted petitioner's payment and issued a temporary business permit.⁶

On March 29, 2005, petitioner wrote the Bureau of Local Government Finance of the Department of Finance (BLGF-DOF) and requested a ruling on the correct basis for assessing business tax under Section 143 of the Local Government Code of 1991, and on the issue of whether a local government may validly withhold the issuance of business permit as a remedy to enforce collection of deficiency tax assessments.⁷

On June 13, 2006, the BLGF-DOF issued a ruling⁸, pertinent portions of which state as follows:

"Under Section 143 of the LGC on Tax on Business, business tax is imposed based on the gross sales or receipts of the business being taxed for the preceding calendar year. Section 131 of the same Code defines the term 'gross sales or receipts' as follows:

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In view of the foregoing, this Bureau concurs with your stand that the gross revenue as reported in the audited financial statements of Synovate Inc. is not the basis for assessing business

⁴ RTC Records, pp. 68-72.

⁵ RTC Records, pp. 73-74.

⁶ RTC Records, pp. 75-77 and 78-83.

⁷ RTC Records, pp. 84-90.

⁸ RTC Records, pp. 91-99.

tax but should be based on money and properties received in consideration of the services rendered or articles sold, exchanged or leased. As aptly stated in your letter, the basis of taxation clearly excludes the value of services actually rendered or articles actually sold, exchanged or leased but payment for which has not been received by the taxpayer, actually or constructively, within the taxable period.

Anent your second query, we agree with your position that the city government is not authorized under the LGC to withhold business permit as a means of enforcing the collection of delinquent taxes. In this regard, the LGC provides for specific remedies for enforcing the collection of delinquent taxes, which do not include the withholding of business permit. Section 174 of the said Code states:

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However, the taxpayer is entitled under the law to protest a tax assessment. An assessment is not final upon its mere issuance but becomes so only under certain conditions or circumstances specified under the law. Thus, while the legal remedies to contest an assessment is still available to the taxpayer, the local government cannot force the taxpayer to pay where such payment is not a requisite for exercising such legal remedies."

On July 11, 2006, petitioner wrote respondent City Treasurer a request for: (1) the cancellation of assessment of local business taxes for taxable years 2000 to 2004 as contained in the Notice of Assessment dated December 7, 2004; (2) the issuance of the corresponding clearance of business tax liabilities for taxable years 2000 to 2004; and (3) the issuance of business permits for taxable years 2005 and 2006.⁹

On September 7, 2006, respondent City Treasurer sent petitioner a Letter of Authority for the examination of books of accounts and other records of business, and for the assessment and collection of taxes, fees and charges due from petitioner for 2005 and prior unexamined years.¹⁰

⁹ RTC Records, pp. 100-101.

¹⁰ RTC Records, p. 103.



On April 23, 2007, respondent City Treasurer wrote petitioner a letter, which served as the final notice for petitioner to immediately pay deficiency tax in the amount of ₱ 1,152,833.00, computed as follows:¹¹

	2005	2004	2003	2002	2001
Gross Revenues per AFS Revenues	199,984,292.00	141,842,077.00	131,112,749.00	94,869,588.00	77,624,948.00
Gross Taxable Income Per RA 7160 Pasig	199,984,292.00	141,842,077.00	131,112,749.00	94,869,588.00	77,624,948.00
Business Tax Due					
Pasig City Ordinance #25-SER	1,401,990.00	994,995.00	919,889.00	666,187.00	545,475.00
Gross Declarations	169,512,821.00	150,242,343.00	112,308,563.00	69,284,346.00	86,341,906.00
Business Tax Paid	1,188,690.00	1,053,796.00	788,260.00	487,090.00	606,493.00
Undeclared Taxable Sales	30,471,471.00	(8,400,266.00)	18,804,186.00	25,585,242.00	(8,716,958.00)
Basic Deficiency Tax Due	213,300.00	(58,802.00)	131,629.00	179,097.00	(61,019.00)
Add: Penalties					
25% Surcharge	53,325.00		32,907.00	44,774.00	
2% Int. per month	68,256.00		94,773.00	128,950.00	
Total Penalties	121,581.00		127,680.00	173,724.00	
Totals	334,881.00	(58,802.00)	259,310.00	352,820.00	(61,019.00)

	2000	1999	1998	TOTALS
Gross Revenues per AFS Revenues	62,455,398.00	36,115,089.00	10,213,599.00	754,217,740.00
Gross Taxable Income Per RA 7160 Pasig	62,455,398.00	36,115,089.00	10,213,599.00	754,217,740.00
Business Tax Due				
Pasig City Ordinance #25-SER	439,288.00	254,906.00	73,595.00	5,296,324.00
Gross Declarations	48,482,218.00	34,367,542.00	1,265,578.00	671,805,317.00
Business Tax Paid	341,476.00	244,913.00	16,100.00	4,726,818.00
Undeclared Taxable Sales	13,973,180.00	1,747,547.00	8,948,021.00	82,412,421.00 ¹²
Basic Deficiency Tax Due	97,812.00	9,993.00	57,495.00	569,500.00 ¹³
Add: Penalties				
25% Surcharge	24,453.00	2,498.00	14,374.00	172,332.00
2% Int. per month	70,425.00	7,195.00	41,397.00	410,995.00
Total Penalties	94,878.00	9,693.00	55,770.00 ¹⁴	583,327.00
Totals	192,690.00	19,686.00	113,266.00	1,152,833.00

On July 3, 2007, petitioner filed with respondent City Treasurer a Formal Protest of Assessment.¹⁵

¹¹ RTC Records, pp. 104-108.

¹² Should be P82,412,423.00.

¹³ Should be P569,505.00.

¹⁴ Should be P55,771.00.

¹⁵ RTC Records, pp. 109-115.

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As there was no action on said protest, petitioner filed before the Regional Trial Court, Branch 268, Pasig City, a Petition for the Cancellation of Local Business Tax Assessments for taxable years 1998-2005, with Petition for Certiorari and Preliminary Mandatory Injunction on October 4, 2007.¹⁶

Respondents filed their Comment/Opposition¹⁷ on November 6, 2007, and petitioner filed its Reply¹⁸ on November 29, 2007.

During the hearing held on December 12, 2007, the parties manifested that the only issue involved is purely a question of law and they intend to file their respective memorandum in support of their petition and opposition.¹⁹

Petitioner and respondents filed their Memoranda on January 21, 2008.

On April 22, 2008, the trial court *a quo* rendered the assailed Decision, the significant parts of which are hereunder quoted for ready reference, to wit:

"The instant petition was filed on October 4, 2007 as per stamped receipt appearing on the petition. Without touching on the substantive issues raised by the petitioner, the petition was filed out of time. Pursuant to the aforequoted provision, the subject assessments, the 2004 Assessment has become **final and unappealable**.

As regards the issue on the withholding of the petitioner's business permit, Respondent may validly withhold issuance of business permit for non payment of local business taxes, fees and charges pursuant to Sec. 77 (d) of the Pasig Revenue Code of 1992, which reads 'Mayor's permit may not be issued to any person, partnership and/or corporation who; violated any Ordinance or Regulation relative to permit and licenses granted, failed to pay the tax or fee of a business discovered operating without a license, and fails to pay the fine, penalty, basic tax or other liabilities from misdeclaration an underdeclaration of the taxable receipts/sales within Thirty (30) days from the date of the demand.''e) The Municipal Mayor may revoke a permit or close an establishment for the following causes:

¹⁶ RTC Records, pp. 7-27.

¹⁷ RTC Records, pp. 334-351.

¹⁸ RTC Records, pp. 362-380.

¹⁹ RTC Records, p. 398.

1. Refusal to pay discovered tax liabilities and/or indebtedness;
2. Violation of any condition set forth in the permit;
3. Abuse of privilege to do business or pursue an activity to the injury of public morals and peace; and
4. When the place of business becomes a nuisance or is being used by disorderly characters, criminals or women of ill repute." xxx

WHEREFORE, foregoing premises considered, the *petition is hereby DISMISSED* for lack of merit."

Petitioner received the assailed Decision on June 20, 2008.²⁰ Hence, petitioner filed the instant petition on July 18, 2008, praying for a judgment declaring:

"1. The 2004 Assessment has been superseded by the 2007 Assessment and therefore never became final and unappealable. Therefore, there is no basis for the Regional Trial Court's dismissal of the Petition on the ground that the 2004 Assessment has become final and unappealable;

2. The Petition for the cancellation of the 2007 Assessment filed with the Regional Trial Court was filed on time, therefore, there is no basis for the Regional Trial Court's dismissal of the Petition;

3. The Regional Trial Court erred in dismissing the Petition on the ground merely of technicalities when Petitioner fully alleged and substantiated with supporting documents the substantive issues which are inevitably connected with the procedural matters upon which the Regional Trial Court based its dismissal of the Petition;

4. The 2007 Assessment where Petitioner is sought to be assessed local business taxes on taxable gross income for the years 1998 to 2005 in the total amount of Php1,152,833.00, inclusive of interests and surcharges, is null and void and bereft of any factual and legal basis;

5. Assuming, for the sake of argument, that there is legal basis for the 2004 and 2007 Assessments, the assessment of local business taxes for 2001 and prior years has prescribed; and

6. There is no valid legal basis for Respondents City Mayor's and the BPLO's refusal to issue business permits to Petitioner for

²⁰ See Registry Return Receipt attached to the original copy of the assailed Decision.



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the years 2005, 2006, and 2007 on the basis merely of its non-payment of the deficiency tax sought to be cancelled in the instant case. Accordingly, no liability shall be imposed on Petitioner for its operation without a proper business permit for the years 2005 to 2007."²¹

On August 29, 2008, respondents filed their Comment²² and interposed the following allegations:

1. The 2004 and 2007 Assessments are already final and appealable;²³

2. The petition filed before the Regional Trial Court was filed beyond the period provided under the Local Government Code for filing appeals for protest of assessments;²⁴

3. The Regional Trial Court was correct in dismissing the petition since the contested assessments were final and not subject of an appeal;²⁵

4. Respondents are correct in using as basis for assessment of deficiency local business taxes, the amount appearing in petitioner's audited financial statements for 1998 to 2005 as gross "revenues from contracts" as these reflect the gross receipts from transactions for said period;²⁶

5. Petitioner cannot use the cash basis accounting method solely for the purpose of computing local business taxes when it has been using the accrual method of accounting for book keeping and for computing National Internal Revenue Taxes;²⁷ and

6. Respondent Pasig City Business and License Center can validly withhold petitioner business permit as the latter failed to comply with the requirements provided under Section 77 of the Local Government Code.²⁸

Petitioner filed its Reply to Comment, *Ex Abudante ad Cautelam*²⁹ on September 15, 2008, and made the following counter-arguments:

²¹ Docket, pp. 31-32.

²² Docket, pp. 536-557.

²³ Docket, p. 539.

²⁴ Docket, p. 540.

²⁵ Docket, p. 542.

²⁶ Docket, p. 543.

²⁷ Docket, p. 545.

²⁸ Docket, p. 555.

²⁹ Docket, pp. 654-684.



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1. The instant Petition for Review is filed pursuant to Section 11 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) in conjunction with Rule 42 of the 1997 Rules of Civil Procedure;³⁰

2. The protest of the 2007 Assessment was timely filed on July 3, 2007 since July 1, 2007 was a Sunday and July 2, 2007 was officially declared as a non-working day in Pasig City;³¹

3. Respondents admitted the timely filing of the protest to the 2007 Assessment on July 3, 2007;³²

4. The sixty (60)-day period for respondent Treasurer to decide on the 2007 Assessment is reckoned from the date of filing of the protest on July 3, 2007. Consequently, the thirty (30)-day period for petitioner to file an appeal with the court of competent jurisdiction is reckoned from the lapse of the sixty (60)-day period for respondent Treasurer to decide on the protest;³³

5. The Petition for cancellation of the 2007 Assessment was timely filed on October 1, 2007;³⁴

6. The fact of filing of the Petition with the RTC on October 1, 2007 is supported by copies of the registry receipts attached by petitioner in all of its pleadings filed with the RTC as well as the Manifestation filed with the RTC on October 4, 2007;³⁵

7. Respondents' allegation that both the 2004 and 2007 Assessments have become final and executory amounts to direct double taxation;³⁶

8. Both 2004 and 2007 Assessments are null and void and may therefore be assailed at any time;³⁷

9. Respondent Treasurer's assessment of local business tax based on revenues appearing in petitioner's Audited Financial Statements has been specifically declared by the Supreme Court as without any basis;³⁸ and

10. The power to tax is strictly construed against LGUs.³⁹

³⁰ Docket, p. 654.

³¹ Docket, p. 655.

³² Docket, p. 656.

³³ Docket, p. 657.

³⁴ Docket, p. 659.

³⁵ Docket, p. 661.

³⁶ Docket, p. 667.

³⁷ Docket, p. 668.

³⁸ Docket, p. 670.

³⁹ Docket, p. 672.



The case was submitted for decision on January 12, 2009, after petitioner filed its Memorandum on December 19, 2008, and respondents filed their Memorandum on December 18, 2008.⁴⁰

THE ISSUES

Petitioner raised the following issues⁴¹ for this Court's resolution:

1. Whether or not the 2004 Assessment became final and unappealable;
2. Whether or not the Petition filed at the Regional Trial Court was filed out of time;
3. Whether or not the Regional Trial Court erred in dismissing the petition on the ground of technicalities without considering the substantive issues involved;
4. Whether or not the City Treasurer's Assessment of local business taxes based on gross revenues of petitioner, as declared in its Audited Financial Statements, in both 2004 and 2007 Assessments is valid;
5. Whether or not the 2004 Assessment and the 2007 Assessment are null and void and therefore unenforceable;
6. Whether or not the right of respondent City Treasurer to assess petitioner deficiency local business tax for 2001 and prior years has prescribed; and
7. Whether or not the refusal of respondents Mayor and BPLO to issue business permits to petitioner has legal basis.

THIS COURT'S RULING

Section 195 of the Local Government Code⁴² (LGC) provides:

"SECTION 195. *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of

⁴⁰ Docket, p. 798.

⁴¹ Docket, pp. 11-12.

⁴² Republic Act No. 7160.



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 canceling 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-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

From the above-quoted provision, the petitioner has sixty (60) days from receipt of the notice of assessment to file a written protest with respondent City Treasurer; while the latter shall decide within sixty (60) days from the time of the filing of protest.

Based on the records of the case, petitioner filed its protest within the sixty (60)-day period or on January 28, 2005. In turn, respondent City Treasurer had sixty (60) days or until **March 29, 2005** to decide on the protest. As respondent City Treasurer did not act on the protest, petitioner had thirty (30) days from March 29, 2005 or until **April 28, 2005** to file an appeal with the court of competent jurisdiction.

The Petition for Cancellation of Local Business Tax Assessment for taxable years 1998-2005 with Petition for Certiorari and Preliminary Mandatory Injunction was filed on October 4, 2007 before the court *a quo*. Based on Section 195 of the LGC, petitioner failed to observe the remedies provided under Section 195 of the LGC. It did not file an appeal within the period provided by law, and has therefore lost its right to appeal. Hence, the 2004 assessment became conclusive and unappealable.



Basic is the principle that where the law provides for the remedies against the action of an administrative board, body, or officer, relief to courts can be sought only after exhausting all remedies provided. The reason rests upon the presumption that the administrative body, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Therefore, where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to the courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts.⁴³

As the 2004 assessment covering taxable years 1999-2003 became conclusive and unappealable, respondent City Treasurer may not review, modify, or correct the same by issuing the 2007 assessment. Neither can petitioner treat the 2007 assessment as an act of respondent City Treasurer vacating the 2004 assessment, and from which it may file another protest for deficiency business tax assessments for the same taxable years. Section 195 of the LGC is clear. The assessment became conclusive and unappealable, and thus it can no longer be a subject of an appeal.

Similarly, petitioner cannot file a Petition for Certiorari and Preliminary Mandatory Injunction as a substitute for the lost appeal.⁴⁴ The special civil action for *certiorari* is a limited form of review and is a remedy of last recourse. This extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. It cannot be allowed when a

⁴³ *Jaime C. Lopez vs. City of Manila, et al.*, G.R. No. 127139, February 19, 1999.

⁴⁴ *Romulo D. San Juan vs. Ricardo L. Castro, in his capacity as City Treasurer of Marikina City*, G.R. No. 174617, December 27, 2007.



party to a case fails to appeal despite the availability of that remedy, *certiorari* not being a substitute for a lapsed or lost appeal. To reiterate, a petition for review is a mode of appeal, while a special civil action for *certiorari* is an extraordinary process for the correction of errors of jurisdiction. The two remedies are distinct, mutually exclusive and not alternative or successive.⁴⁵

This Court does not agree with petitioner in arguing that the trial court erred in dismissing the petition based on technicality, without looking into the substantive issues involved in the case.

The Supreme Court made the following explanation in the case of *Auria Limpot vs. Court of Appeals, et al.*⁴⁶:

"Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to suppose that substantive law and adjective law are contradictory to each other or, as has often been suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give effect to both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive and adjective rights is equally guaranteed by due process whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court."

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We conclude as we began, by stressing that procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights, as in this case. Like all rules, they are required to be followed except only when for the most persuasive of reasons they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Such reasons are not present here. We do not find that compelling justification for the

⁴⁵ *Heirs of Lourdes Potenciano Padilla represented by Nicanor P. Padilla III vs. Court of Appeals and Ernesto S. Aure*, G.R. No. 147205, March 10, 2004.

⁴⁶ G.R. No. L-44642, February 20, 1989.



exception sought and so must sustain the respondent court. While it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. Justice eschews anarchy."

However, this Court finds that the Regional Trial Court erred in dismissing the petition.

In its petition before the court *a quo*, petitioner prayed, among others, for the cancellation of the Assessment dated April 23, 2007 (2007 Assessment). Hence, the subject of the petition was not merely the 2004 Assessment, but also the 2007 Assessment. The Regional Trial Court should have ruled on the issues pertaining to taxable years 1998, 2004, and 2005, subject of the 2007 Assessment.

Pursuant to Section 19 of the Pasig Revenue Code of 1992,⁴⁷ all taxes, fees and charges shall be paid within the first twenty (20) days of January or of each subsequent quarter, as the case may be. In relation thereto, Section 194 of the LGC provides:

"SECTION 194. *Periods of Assessment and Collection.* - (a) Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period: *Provided*, That, taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.

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(c) Local taxes, fees, or charges may be collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period: *Provided*, however, That, taxes, fees, or charges assessed before the effectivity of this Code may be

⁴⁷ Ordinance No. 25, Series of 1992.



collected within a period of three (3) years from date of assessment.

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Clearly, the assessment for deficiency business taxes for taxable year 1998 had already prescribed. Respondents may assess petitioner for deficiency business taxes only for taxable years 2004 and 2005.

In examining the 2007 Assessments for taxable years 2004 and 2005, this Court takes note of, and relies on, the Supreme Court's ruling in *Ericsson Telecommunications, Inc. vs. City of Pasig, et al.*⁴⁸, quoted as follows:

"Respondent is authorized to levy business taxes under Section 143 in relation to Section 151 of the Local Government Code.

Insofar as petitioner is concerned, the applicable provision is subsection (e), Section 143 of the same Code covering contractors and other independent contractors, to wit:

SEC. 143. *Tax on Business.* - The municipality⁴⁹ may impose taxes on the following businesses:

x x x x

(e) On contractors and other independent contractors, in accordance with the following schedule:

With gross receipts for the	Amount	of
preceding calendar year in the	Tax	Per
amount of:	Annum	

x x x x

(Emphasis supplied)

The above provision specifically refers to *gross receipts* which is defined under Section 131 of the Local Government Code, as follows:

x x x x

⁴⁸ G.R. No. 176667, November 22, 2007.

⁴⁹ A city may levy taxes, fees, and charges which the province or municipality may impose. (Section 151, LGC)

(n) '*Gross Sales or Receipts*' include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and the deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT);

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The law is clear. *Gross receipts* include money or its equivalent actually or constructively received in consideration of services rendered or articles sold, exchanged or leased, whether actual or constructive.

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Revenue Regulations No. 16-2005 dated September 1, 2005 defined and gave examples of 'constructive receipt', to wit:

SEC. 4.108-4. *Definition of Gross Receipts.* -- x x x

'**Constructive receipt**' occurs when the money consideration or its equivalent is placed at the control of the person who rendered the service without restrictions by the payor. The following are examples of constructive receipts:

(1) deposit in banks which are made available to the seller of services without restrictions;

(2) issuance by the debtor of a notice to offset any debt or obligation and acceptance thereof by the seller as payment for services rendered; and

(3) transfer of the amounts retained by the payor to the account of the contractor.

There is, therefore, constructive receipt, when the consideration for the articles sold, exchanged or leased, or the services rendered has already been placed under the control of the person who sold the goods or rendered the services without any restriction by the payor.

In contrast, *gross revenue* covers money or its equivalent actually or constructively received, **including the value of services rendered or articles sold, exchanged or leased, the payment of which is yet to be received.** This is in consonance with the International Financial Reporting Standards,



which defines *revenue* as the gross inflow of economic benefits (cash, **receivables**, and other assets) arising from the ordinary operating activities of an enterprise (such as sales of goods, sales of services, interest, royalties, and dividends), which is measured at the fair value of the consideration received or **receivable**.

As aptly stated by the RTC:

'[R]evenue from services rendered is recognized when services have been performed and are billable.' It is 'recorded at the amount received or **expected to be received**.' (Section E [17] of the Statements of Financial Accounting Standards No. 1).

In petitioner's case, its audited financial statements reflect income or revenue which accrued to it during the taxable period although not yet actually or constructively received or paid. This is because petitioner uses the accrual method of accounting, where income is reportable when all the events have occurred that fix the taxpayer's right to receive the income, and the amount can be determined with reasonable accuracy; the right to receive income, and not the actual receipt, determines when to include the amount in gross income.

The imposition of local business tax based on petitioner's gross revenue will inevitably result in the constitutionally proscribed double taxation – taxing of the same person twice by the same jurisdiction for the same thing – inasmuch as petitioner's revenue or income for a taxable year will definitely include its gross receipts already reported during the previous year and for which local business tax has already been paid.

Thus, respondent committed a palpable error when it assessed petitioner's local business tax based on its gross revenue as reported in its audited financial statements, as Section 143 of the Local Government Code and Section 22(e) of the Pasig Revenue Code clearly provide that the tax should be computed based on *gross receipts*."

As there is only one Supreme Court from whose decisions all other courts should take their bearings, this Court must adhere to its rulings.⁵⁰ Therefore, the 2007 Assessment for taxable years 2004 and 2005 should be cancelled for lack of basis.

⁵⁰ *Development Bank of the Philippines v. NLRC*, G.R. No. 108031, March 1, 1995.



As regards the refusal of respondents to issue a business permit, petitioner posits that such refusal without prior payment of the 2004 Assessment is tantamount to a disregard of petitioner's right to protest the assessment.⁵¹ Petitioner likewise contends that Section 77(b) of the Pasig Revenue Code of 1992 is invalid for being contrary to the provisions of the LGC. According to petitioner, as stated by the BLGF-DOF in its opinion, Section 174 of the LGC specifies the remedies of a local government unit in the collection of local taxes and withholding of business permit is not among such remedies and thus, said Section 77(d) is null and void for being *ultra vires*.

Petitioner's contentions are specious.

For easy reference, Section 77(d) of Pasig Revenue Code of 1992 (Pasig Ordinance No. 25, Series of 1992, as amended) provides as follows:

"d) Mayor's Permit may not be issued to any person, partnership and/or corporation who; violated any Ordinance or Regulation relative to permit and license granted, failed to pay the tax or fee of a business discovered operating without a license, and fails to pay the fine, penalty, basic tax or other liabilities from misdeclaration an underdeclaration of the taxable receipts/sales within Thirty (30) days from the date of the demand." (Emphases supplied)

This Court will not be hasty in declaring a tax ordinance invalid or illegal, as it is mindful of the well-etched dictum by the Supreme Court in *People vs. Vera*⁵² that: "A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation." Especially so, the power to determine any question on the legality of tax ordinances, such as the Pasig Revenue Code of 1992, is not within the province of this Court, but is primarily

⁵¹ Par. 95, Petitioner's Memorandum, Docket, p. 790.

⁵² 65 Phil. 56, 82 (1937).



lodged on the Secretary of Justice, pursuant to Section 187 of the LGC of 1991,⁵³ and under certain conditions, is vested with the courts of general jurisdiction or the Regional Trial Courts.⁵⁴ It must be emphasized that this Court is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.⁵⁵

The Pasig Revenue Code of 1992, including Section 77(d) thereof, enjoys the presumption of validity, unless declared otherwise.⁵⁶ There being no contrary declaration, respondent Mayor has the duty, inter alia, to "(e)nsure that all taxes and other revenues of the city are collected" and "(i)ssue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance".⁵⁷

Petitioner's postulate that the refusal of respondents to issue a business permit is tantamount to a disregard of petitioner's right to protest the assessment is not well-taken. Nothing in the above-quoted Section 77(b) prevents petitioner from protesting an assessment under Section 195 of the LGC. Moreover, it is also herein noted that, notwithstanding the non-payment of the deficiency tax,

⁵³ Section 187 of the LGC of 1991 provides:

"SEC. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.* The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of the 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:* *Provided, however*, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally*, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction." (*Emphasis supplied*)

⁵⁴ *Ongsuco, et al. and Malones*, G.R. No. 182065, October 27, 2009, citing *J.M. Tuason and Co., Inc. vs. Court of Appeals* (113 Phil. 673, 681 [1961]), *Ynot vs. Intermediate Appellate Court* (232 Phil. 615, 621 [1987]), *Commissioner of Internal Revenue vs. Santos* (343 Phil. 411, 427 [1997]).

⁵⁵ *Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

⁵⁶ *Ongsuco, et al. and Malones*, G.R. No. 182065, October 27, 2009.

⁵⁷ Section 8(b)(3)(cc) and (dd), Republic Act No. 7829; Section 455(b)(3)(iii) and (iv), Republic Act No. 7160 (LGC).

respondents issued a "temporary permit" upon the request of petitioner, even while the protest was pending.⁵⁸

There is also no merit in petitioner's reliance on the opinion of the BLGF-DOF, that the Section 174 of the LGC specifies the remedies of a local government unit in the collection of local taxes and withholding of business permit is not among such remedies. Said Section 174 provides as follows:

"SEC. 174. *Civil Remedies.* – The civil remedies for the collection of local taxes, fees, or charges, and related surcharges and interest resulting from delinquency shall be:

(a) By administrative action thru distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and

(b) By judicial action.

Either of these remedies or all may be pursued concurrently or simultaneously at the discretion of the local government unit concerned."

However, a cursory reading of the foregoing provision would reveal that it is not couched in an exclusive manner, or that other remedies in the collection of local taxes are not available to the local government concerned. In fact, the introductory provision of Chapter IV (CIVIL REMEDIES FOR COLLECTION OF REVENUES), Title I, Book II, of the LGC—to which Section 174 belongs— is merely expressed in a permissive manner, to wit:

"SEC. 172. *Application of Chapter.*— The provisions of this Chapter and the remedies provided herein **may** be availed of for the collection of any delinquent local tax, fee, charge, or other revenue." (*Emphasis supplied*)

Be that as it may, respondents' refusal to issue a business permit in favor of petitioner on the basis of the said Section 77(b) is not justified. As We already ruled, the local business tax should not be based on petitioner's gross revenues, but on its gross receipts. Thus, there being no underdeclaration on the part of

⁵⁸ RTC Records, pp. 75-77 and 78-83.

the petitioner, the issuance of the corresponding business permits for the years 2005 to 2007 is warranted.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondents are hereby **ORDERED** to **CANCEL** and **SET ASIDE** the Assessment Notice dated April 23, 2007 for the taxable years 2004 and 2005; and to issue business permits for taxable years 2005, 2006, and 2007 in favor of petitioner.

SO ORDERED.


ERLINDA P. UY
Associate Justice

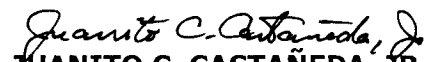
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

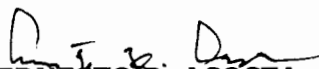
ATTESTATION

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.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice

Court of Tax Appeals
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