REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

METRO PACIFIC RESOURCES, INC. (Formerly: Cypress Harbour Properties, Inc.),	**CTA AC NO. 174**
Petitioner,	Members: **BAUTISTA**, *Chairperson,* **FABON-VICTORINO**, *and* **RINGPIS-LIBAN**, *JJ.*
-versus-	
MAKATI CITY AND NELIA A. BARLIS, IN HER CAPACITY AS INCUMBENT CITY TREASURER OF MAKATI CITY,	Promulgated:
Respondents.	NOV 21 2017 3:45 p.m.

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DECISION

BAUTISTA, J.:

The Case

This Petition for Review[1] filed on September 20, 2016, pursuant to *Section 7(a)(3)*[2] *of Republic Act ("RA") No. 1125*[3], as amended, in relation to *Section 3(a)(3)*[4], *Rule 4 of the Revised Rules of the Court of Tax Appeals*[5] *("RRCTA")*, seeks for the Court to reverse and set aside the

[1] *Records, CTA AC No. 174, Petition for Review ("PFR"),* pp. 8-118, with annexes.

[2] SEC. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

(3) Decisions, order 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, as amended.

[4] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* –

The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

xxx xxx xxx

(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;

[5] *A.M. No. 05-11-07-CTA*, November 22, 2005.

Decision[6] dated March 18, 2016, and the Order[7] dated August 5, 2016, both rendered by the Regional Trial Court Branch 57 of Makati City ("RTC"), denying petitioner's claim for refund; and to issue a new one ordering respondents to refund petitioner the amount of Six Million Eight Hundred Ninety-Six Thousand Three Hundred Eighty-Five Pesos and Thirty-Four Centavos (Php6,896,385.34), representing alleged erroneously collected local business tax ("LBT") for taxable year ("TY") 2010.[8]

The Parties[9]

Petitioner Metro Pacific Resources, Inc. (Formerly: Cypress Harbour Properties, Inc.)[10] is a corporation duly organized under the laws of the Philippines, with Securities Exchange Commission ("SEC") Registration No. A1997-00469[11]. Its primary purpose is "[t]o purchase, subscribe for or otherwise acquire and own, hold, use, manage, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of real and personal property of every kind and description, including but not limited to shares of stock, debentures, notes, evidence of indebtedness and other securities, contracts or obligations of any corporation or corporations, association or associations, domestic or foreign, engaged in, but not limited to, the business of real estate, manufacturing, trading and agribusiness and to pay therefore in whole or in part, in cash or by exchanging therefor, stocks, bonds and other evidences of indebtedness or securities of this or any other corporation, while the owner or holder of any of any *(sic)* such real or personal property, stocks bonds, debentures, notes, evidence of indebtedness or other securities, contracts or obligations, to receive, collect and dispose of the interests, dividends and income arising from such property and to possess and exercise in respect thereof all the rights, powers and privileges of ownership, including all voting powers on any stock so owned, without however engaging as an investment company under the Investment Company Act or a finance company or as a dealer in securities or stocks or as a real estate broker or a real estate development company but only holds the foregoing assets for purely investment purposes; to aid either by loans or by guaranty of securities or in any other manner, any corporation, domestic or

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[6] *RTC Records, Vol. 2, Order,* p. 685.
[7] *Id., Decision,* pp. 654-656.
[8] *Records, PFR, Nature of the Petition,* p. 8; *Records, PFR, Prayer,* p. 28.
[9] *RTC Records, Vol. 2, Decision,* p. 654.
[10] *Id., Vol. 1, Offer of Testimony, PFR, Annex A, Amended Articles of Incorporation ("AOI"),* p. 150.
[11] *Id.*

foreign, any share of stock of any debentures, evidences of indebtedness or other security whereof are held by this corporation or in which it shall have interest and to do any act designed to protect, preserve, improve or enhance the value of any property at any time held or controlled by this corporation in which it at all time may be interested."[12]

Respondent City of Makati is a local government unit ("LGU") under the *1991 Local Government Code*[13] *("1991 LGC")*. Respondent Nelia A. Barlis ("Ms. Barlis") is impleaded in her official capacity as the incumbent City Treasurer of Makati City.

The Facts[14]

Petitioner was issued Billing Assessment Form No. 0021642[15] dated January 21, 2011 by the Business Permits Office of Makati City, assessing it for various fees in the total amount of Php6,909,125.34, inclusive of LBT in the amount of Php6,896,385.34. The LBT was assessed on the basis of the amount of dividend and interest income earned by petitioner and reported in its financial statements for the year ending December 31, 2010.

On January 31, 2011, petitioner settled the total assessed amount of Php6,909,125.34 with the Office of the Treasurer, City of Makati.[16]

Thereafter, on January 25, 2013, petitioner filed an administrative claim for refund[17] before respondent Ms. Barlis, alleging erroneous collection of LBT in the amount of Php6,896,385.34. In its application for refund, petitioner argued that the interest and dividend income reported in its financial statements do not constitute "gross receipts" as the term is defined in *Section 131(n) of the 1991 LGC,* or in *Section IB.01(g) of the Revised Makati Revenue Code*[18] *("RMRC")*.

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[12] *RTC Records, Vol. 1, Offer of Testimony, Annex A, AOI,* p. 150.
[13] *Republic Act No. 7160,* January 1, 1992.
[14] *RTC Records, Vol. 2, Decision,* pp. 654-655.
[15] *Id., Vol. 1, Offer of Testimony, Annex C, Billing Assessment Form No. 0021642,* p. 158.
[16] *Id., Official Receipt,* p. 161.
[17] *Id., Annex E, Administrative Claim for Refund,* pp. 408-417.
[18] *Makati City Ordinance No. 2004-A-025,* October 27, 2005.

On January 29, 2013, petitioner filed a Complaint[19] with the RTC, docketed as Civil Case No. 13-086, requesting for the refund of the Php6,896,385.34 amount.

After trial, the RTC rendered a Decision[20] dated March 18, 2016, denying petitioner's claim for refund based on the following grounds: *(1)* petitioner is a holding company taxable under *Section 3A.02(p) of the RMRC,* hence, shall be taxed as a specific class of its own; and *(2)* the documents presented by petitioner do not constitute substantial evidence to prove that it should not be taxed as a holding company under said *Section 3A.02(p) of the RMRC*. The dispositive portion reads, *viz.*:[21]

> **WHEREFORE**, the [petitioner]'s claim for refund is hereby **DENIED** for lack of merit.
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> **SO ORDERED.**[22]

On August 5, 2016, the RTC issued the assailed Order[23], denying petitioner's Motion for Reconsideration[24] filed on June 24, 2016, which was received by petitioner on August 22, 2016,[25] as follows:

> Acting on the [petitioner]'s "MOTION FOR RECONSIDERATION" dated June 23, 2016, together with the [respondents'] "COMMENT..." dated August 1, 2016, and well considering the arguments advanced therein by the parties, the Court finds to *(sic)* cogent reason to disturb the Decision, subject of the instant motion.
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> **WHEREFORE**, the aforesaid motion is **DENIED** for lack of merit.
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> **SO ORDERED.**[26]

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[19] *RTC Records, Vol. 1, Complaint,* pp. 1-43, with annexes.
[20] *Id., Vol. 2, Decision,* pp. 654-656.
[21] *Id., Decision, Dispositive Portion,* p. 656.
[22] Emphases retained.
[23] *RTC Records, Vol. 2, Order,* p. 685.
[24] *Id., Motion for Reconsideration,* pp. 657-675.
[25] *Id., Return Card,* p. 685-A.
[26] Emphases retained.

On September 20, 2016, petitioner filed the instant Petition for Review[27] with the Court, to which respondents filed their Comment (Re: Petition for Review dated 20 September 2016)[28] ("Comment") on December 8, 2016.

On December 14, 2016, the Court gave due course to the Petition for Review, and ordered the parties to submit their respective memoranda within thirty (30) days from notice.[29]

On December 22, 2016, petitioner filed its Memorandum for the Petitioner[30]; while respondents filed their Memorandum (for the Respondents)[31] on January 11, 2017.

On February 20, 2017, the Court promulgated a Resolution[32] submitting the case for decision; hence, this Decision.

The Issues[33]

> WHETHER PETITIONER IS AN INVESTMENT COMPANY;
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> WHETHER PETITIONER IS SIMILARLY SITUATED AS A BANK OR FINANCIAL INSTITUTION WHOSE INTEREST AND DIVIDEND INCOME ARE TAXABLE UNDER *SECTION 3A.02(H) OF THE RMRC*; AND
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> WHETHER TAXABLE GROSS RECEIPTS OF HOLDING COMPANIES UNDER THE *RMRC* INCLUDES DIVIDENDS, INTEREST, AND OTHER ITEMS OF PASSIVE INCOME.

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[27] *Records, PFR*, pp. 8-118, with annexes.
[28] *Id., respondents' Comment (Re: Petition for Review dated 20 September 2016)*, pp. 124-149.
[29] *Id., Resolution*, p. 151.
[30] *Id., Memorandum for the Petitioner*, pp. 152-180.
[31] *Id., Memorandum (for the Respondents)*, pp. 181-207.
[32] *Id., Resolution*, p. 217.
[33] *Records, PFR, Statement of Issues*, p. 11.

Petitioner's Arguments[34]

As to the procedural aspect, petitioner avers that respondents were not denied of due process considering that, notwithstanding its inadvertent failure to attach proof of service to the Petition for Review, respondents were nevertheless notified of the case and were given ample time to file their comment to the Petition, raising substantial issues therein.

As to the substantive aspect, petitioner claims that the instant case involves a purely legal question, that is, whether petitioner, as a holding company, is subject to LBT on dividend income. According to petitioner, since respondents have admitted all the factual allegations of petitioner during trial, the case is already ripe for adjudication; and thus, it is erroneous for the RTC to base its decision on the alleged failure of petitioner to present substantial evidence in support of its claim.

Petitioner also argues that the RTC erred in ruling that it should be taxed similar to banks and financial institutions under *Section 3A.02(h)*[35] *of the RMRC*. Petitioner insists that it is a holding company, and not an investment company nor a bank and/or other financial institution; that, a holding company, such as itself, is akin to a contractor; and thus, it should have been taxed under *Section 3A.02(g)*[36] *of the RMRC*, and not under said *Section 3A.02(h)*; that

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[34] *Records, Memorandum for the Petitioner, Discussions,* pp. 138-147.

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

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(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.

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

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(g) On contractors and other independent contractors defined in SEC. 3A-01 (t) of chapter III of this code; and on owners or operators of business establishments rendering or offering services such as; advertising agencies; rental of space of signs; signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders;

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assuming that a holding company, like itself, holds shares in financial institutions, a holding company and its subsidiaries have separate juridical personalities; that, not all holding companies have subsidiaries which are engaged in banking or financing activities; and hence, only those holding companies which have control over bank or other financial institutions may be considered a bank or financial holding company subject to *Section 3A.02(p) vis-à-vis subsection (h) of the RMRC.*

Further, petitioner argues that *Section 3A.02(p)*[37] *of the RMRC* does not authorize respondents to arbitrarily include dividend, interest, and other items of passive income in the taxable gross receipts of holding companies. Petitioner posits that said *Section 3A.02(p)* makes reference to *Sections 3A.02(g)* or *3A.02(h)* only for purposes of determining the applicable LBT rate on holding companies, but it does not provide guidelines on how to compute or what to include under gross sales and/or receipts upon which the LBT rate shall be applied; and that, hence, the general definition of gross sales and/or receipts under the *Section 131(n)*[38] *of the 1991 LGC* and the *Section IB.01*[39] *of the RMRC* should apply.

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booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; business management services; collecting agencies; escort services; feasibility studies, consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professionals tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic; white/blue printing, photocopying, typing and mimeographing services; car rental, rental of heavy equipment, rental of bicycles and/or tricycles; furniture, shoes, watches, household appliances, boats, typewriters, etc; roasting of pigs, fowls, etc; shipping agencies; shipyard for repairing ships for others; shops for hearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education (DepEd), day care centers; etc.

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

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(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.

[38] SECTION 131. *Definition of Terms.* - When used in this Title, the term:

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(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 deposits or advance payments actually or constructively received during the taxable quarter

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Petitioner claims that as a non-bank or non-financial institution, it is subject to LBT only on amounts received for services performed, citing the case of *Orleyte Company (Philippine Branch) v. The City of Makati*[40] *("Orleyte")*. Petitioner also alluded to the cases of *Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis*[41] *("Michigan")*, and *The City of Makati and Nelia A. Barlis, in her capacity as Incumbent City Treasurer of Makati City v. Metro Pacific Investments Corporation*[42] *("The City of Makati")*, which it claims involves the same issues as in the present case, and the case of *Makati City and Nelia A. Barlis, in her capacity as Incumbent City Treasurer of Makati City v. Maynilad Water Holding Company*[43], wherein this Court ruled that dividend income of a holding company is not subject to LBT.

Finally, petitioner emphasized that it is seeking for the refund of the alleged erroneously collected LBT, and not the issuance of a tax credit certificate ("TCC"), which respondents aver may only be granted in the event that the claim for refund is found to be meritorious.

Respondents' Counter-Arguments[44]

Respondents counter that *Section 3A.02(p)*, in relation to *Section 3A.02(h) of the RMRC*, is clear and unequivocal that a holding company, like petitioner, shall be taxed as a specific class of its own, without reference to it being a contractor or an owner or operator of banks or other financial institutions; and that, as such, petitioner need not be a service contractor nor an owner or operator of banks

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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);

[39] SECTION IB.01. *Words Defined in this Code.* - When used in the Code. -

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(g) 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 deposits or advance payments actually or constructively received during the taxable year 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) paid by the taxpayer.

[40] CTA AC No. 80, November 14, 2012.

[41] CTA *EB* No. 1093, June 17, 2015.

[42] CTA AC No. 143, July 20, 2016.

[43] CTA AC No. 146, October 25, 2016.

[44] *Records, Memorandum (for the Respondents), Discussions*, pp. 196-205.

and other financial institutions for the application of *Section 3A.02(h) of the RMRC.*

Further, respondents aver that *Section 3A.02(p) of the RMRC* is clear that a holding company shall be taxed at the rate of twenty percent (20%) of one percent (1%) on its gross sales and/or receipts, as prescribed under *Section 3A.02(h).*

Respondents also claim that *Section 3A.02(p) of the RMRC,* in relation to *subsections (g) and (h),* was never questioned pursuant to *Section 7B.14(d)*[45], and thus, remains to be valid.

Respondents posit that the *Orleyte* case is not applicable to the case at hand because in that case: *(1)* the Court ruled that the RTC of Makati City erred in classifying *Orleyte* as a holding company-management service, while in the present case, petitioner was correctly classified as a holding company; and *(2)* the taxable years involved therein were 2001-2002, 2002-2003, and 2003-2004, where the Old Makati Revenue Code is applicable, while here, *RMRC* is the one applicable. Further, respondents argue that petitioner cannot rely on the *Michigan* case since it is still pending resolution at the Supreme Court level, and thus, to rely on the same is premature and *sub-judice.*

Assuming that petitioner is entitled for a refund, respondents claim that the same may be granted only in the form of a tax credit pursuant to *Section 7B.14(d) of the RMRC.* In any case, respondents insist that petitioner was unable to overcome the burden of proving that it is entitled to the refund being prayed for.

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[45] SECTION 7B.14. *Taxpayer's Remedies.* -

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(d) Claim for Refund or 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 of refund or credit has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of the City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year.

Lastly, respondents allege that the instant petition should be dismissed outright for failure of petitioner to furnish copies thereof upon respondents and the RTC Branch 57 of Makati City of the Petition for Review, in violation of *Section 1, Rule 7 of the RRCTA,* in relation to *Sections 1, 2 and 3, Rule 42 of the Revised Rules on Civil Procedure.*

The Ruling of the Court

The Petition for Review has merit.

The Court has jurisdiction over the present case.

Section 196 of the 1991 LGC governs the rules on claiming for refund or tax credit of local taxes erroneously or illegally collected:

> 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 payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

Applying the foregoing, to be entitled to a refund or credit of local taxes, the following requirements must concur: *(1)* the taxpayer must file a written claim for refund or credit with the local treasurer; and *(2)* the case or proceeding for refund or credit must 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.[46]

The instant case arose from an assessment issued by respondents against petitioner for LBT for TY 2010 in total amount of Php6,896,385.34. After paying the assessed amount on January 31, 2011,[47] petitioner filed an administrative claim for refund[48] with Ms. Barlis on January 25, 2013. For failure of the local treasurer to act on

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[46] *Metro Manila Shopping Mecca Corp., et al. v. Ms. Liberty M. Toledo, in her official capacity as the City Treasurer of Manila, and The City of Manila,* G.R. No. 190818, June 5, 2013, 697 SCRA 425.
[47] *RTC Records, Vol. 1, Offer of Testimony, Annex C, Official Receipt,* p. 161.
[48] *Id., Annex E, Administrative Claim for Refund,* pp. 408-417.

the claim, on January 29, 2013, petitioner filed a Complaint[49] with the RTC, to which the latter denied in a Decision[50] dated March 18, 2016.

Applying the requirements to the present case, the Court holds that petitioner timely filed its administrative and judicial claims for refund of erroneously or illegally collected LBT, the relevant dates of which are summarized as follows:

DATE OF PAYMENT OF TAX	DATE OF FILING OF ADMINISTRATIVE CLAIM	DATE OF FILING OF JUDICIAL CLAIM	LAST DAY TO FILE BOTH CLAIMS
January 31, 2011	January 25, 2013	January 29, 2013	January 31, 2013

In other words, petitioner was able to comply with the requisite two (2)-year period to file its claim for refund when it filed an administrative claim with the local treasurer on January 25, 2013, and its judicial claim with the RTC on January 29, 2013.

Moreover, *Section 3(a)(3), Rule 4 of the RRCTA,* which implemented *Section 7(a)(3) of RA No. 1125,* provides that the Court has exclusive appellate jurisdiction to review, by way of appeal, decisions or orders of the RTC in local tax cases, *viz.:*

> SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
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> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> xxx xxx xxx
>
> (3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.

As to the period of filing an appeal with the Court of Tax Appeals ("CTA"), *Section 3(a), Rule 8 of the RRCTA* stipulates as follows:

> SEC. 3. *Who may appeal; period to file petition.* - (a) A party adversely affected by a decision, ruling or the inaction

[49] *RTC Records, Vol. 1, Annex C, Complaint,* pp. 1-43, with annexes.
[50] *Id., Vol. 2, Decision,* pp. 654-656.

> of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or the expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx[51]

Thus, an appeal from decisions or orders of the RTC in local tax cases decided or resolved by it in the exercise of its original jurisdiction may be made by filing a Petition for Review before the CTA within thirty (30) days from receipt of a copy of the decision or ruling.

Records reveal that petitioner received the Order of the RTC denying its Motion for Reconsideration on August 22, 2016[52]. Such denial is a decision and resolution issued by the RTC in a local tax case. Counting thirty (30) days therefrom, petitioner had until September 21, 2016 within which to file its appeal with the CTA. Petitioner filed its Petition for Review with the Court on September 20, 2016. Clearly, the Court has jurisdiction to try the present controversy.

Having settled the foregoing, the Court will now proceed to discuss the merits of petitioner's petition. The Court also finds it necessary to address the procedural issue raised by respondents.

Respondents were not denied their right to due process.

In their Comment[53] and Memorandum[54], respondents aver that the present petition should be dismissed outright for failure of petitioner to comply with *Section 1, Rule 7 of the RRCTA* in relation to *Sections 1, 2 and 3, Rule 42 of the Revised Rules on Civil Procedure*, the pertinent provisions state as follows:

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[51] Underscoring ours.
[52] *RTC Records, Vol. 2, Return Card,* p. 685-A.
[53] *Records, respondents' Comment (Re: Petition for Review dated 20 September 2016),* pp. 124-149.
[54] *Id., Memorandum (for the Respondents),* pp. 181-207.

RULE 7

Procedure in the Court of Tax Appeals

SECTION 1. *Applicability of the Rules of the Court of Appeals, Exception.* - The procedure in the Court *en banc* or in Divisions in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules.

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Rule 42

PETITON FOR REVIEW FROM THE REGIONAL TRIAL COURTS TO THE COURT OF APPEALS

SECTION 1. *How appeal taken; time for filing.* - A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. xxx

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SEC. 2. *Form and contents.* - The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set for concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

> The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid court and other tribunal or agency thereof within five (5) days therefrom.
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> SEC. 3. *Effect of failure to comply with the requirements.* - The failure of petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Particularly, respondents contend that they, and the RTC of Makati City, were not furnished with a copy of the Petition, as required under the aforementioned rules; and that, they even had to secure a copy thereof with the Court in order to render and file their Comment.

Despite petitioner's lapse, the Court holds that there is no violation of respondents' right to due process. Records disclose that respondents were duly notified of the present Petition,[55] and that they were able to participate in the proceedings before this Court. In fact, respondents timely filed their Comment and Memorandum within the periods prescribed.

In *Province of Leyte v. Energy Development Corporation*[56], the Supreme Court explained that the purpose of the proof of service is to apprise the other party of the pendency of the action. Thus, if such other party has already been notified of the same and even participated in the proceedings, such purpose would have already been served.[57] The Supreme Court held, to wit:

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[55] *Records, Notice of Resolution,* p. 119.
[56] G.R. No. 203124, June 22, 2015, 760 SCRA 149.
[57] *Province of Leyte v. Energy Development Corporation,* G.R. No. 203124, June 22, 2015, 760 SCRA 149.

> Considering that in this case, the CA had already issued a Resolution dated November 4, 2009 directing EDC to file a comment which the latter had complied with, it cannot be denied that EDC was already aware of the certiorari proceedings before the CA and that jurisdiction had been acquired over its person. The CA, therefore, should have brushed aside the Province of Leyte's procedural mishap and resolved the case on the merits in the interest of substantial justice. The Court's pronouncement in *Barra v. Civil Service Commission* is instructive on this matter:
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> xxx xxx xxx
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> Verily, the demands of justice require the CA to resolve the issues before it, considering that what is at stake here are taxes, albeit locally imposed in this case, which are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. Thus, it is far better and more prudent for the Court to excuse a technical lapse and afford the parties a substantive review of the case in order to attain the ends of justice than to dismiss the same on mere technicalities.[58]

When the other party is duly notified of the proceedings, and was given his/her/its day in court and was able to present his/her/its arguments, a relaxation on the rules is justified. In *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation*[59], the Supreme Court rationalized as follows:

> Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, this Court has allowed liberal construction of the rules when to do so would serve the demands of substantial justice and equity. In *Aguam v. Court of Appeals*, the Court explained:
>
>> The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case."

[58] Citations omitted.
[59] G.R. No. 168115, June 8, 2007, 524 SCRA 333.

> Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[60]

Accordingly, the Court holds that respondents were not denied due process when they were duly notified of the case and were given reasonable opportunity to present their case. In fact, respondents took advantage of such opportunity by taking part in the proceedings and filing their pleadings.

Having settled the foregoing, the Court will now resolve the issue on the propriety of assessment made, and whether a refund is warranted.

Petitioner is not an investment company, nor a bank or other financial institution.

In the instant case, petitioner was assessed for LBT as a "holding/investment" company[61] at the rate of twenty percent (20%)

[60] Citations omitted; underscoring ours.
[61] *RTC Records, Vol. 1, Offer of Testimony, Annex C, Billing Assessment Form No. 0021642,* p. 158.

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of one percent (1%) of its dividend income reported in the financial statements pursuant to *Section 3A.02(p) vis-à-vis subsection (h) of the RMRC*, the pertinent provisions provide:

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

On the other hand, petitioner insists that it is not an investment company, nor a bank or other financial institution; instead, it is a service company, earning management fees for services rendered to its subsidiaries, akin to that of a contractor, and thus, it falls squarely under *Section 3A.02(g) of the RMRC*.

The Court finds in favor of petitioner.

In the case of *ASC Investors, Inc. v City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City*[62] (*"ASC*

[62] CTA AC No. 157, June 7, 2017.

Investors"), what may be considered as a financial or non-financial intermediary was extensively discussed. In that case, the taxpayer was assessed for LBT on the premise that it is a non-bank financial intermediary. However, the Court ruled otherwise, to wit:

> ... [T]here is nothing in the record that indicates or even hints that petitioner is engaged in "lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others," in order to be within the ambit of the term "Financial intermediaries/non-bank financial intermediaries" as defined similarly in (i) Section 2(D)(c) of RA No. 337, or the General Banking Act, as amended; (ii) Section 2.3 of RR No. 9-2004; and (iii) Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas.*[63]

On one hand, *Section 2(D)(c) of RA No. 337* defines "financial intermediaries" as follows:

> (c) "Financial intermediaries" shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others;

On the other hand, a "non-bank financial intermediary" is defined in *Section 2.3 of RR No. 9-2004* in the following manner:

> 2.3. Non-bank Financial Intermediaries – shall refer to persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar

[63] Citations omitted.

instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally.

A more elaborate definition of a financial intermediary is found in *Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the Bangko Sentral ng Pilipinas ("BSP Manual")*, to wit:

> § 4101Q.1 Financial intermediaries. – Financial intermediaries shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.
>
> xxx xxx xxx
>
> To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:
>
> a. 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;
>
> b. Use principally the funds received for acquiring various types of debt or equity securities;
>
> c. Borrow against, or lend on, or buy or sell debt or equity securities;
>
> d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;
>
> e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.
>
> Non-banking financial intermediaries shall include the following:

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> (1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.
>
> (2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term financing, finance, investment, lending and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.
>
> (3) A person or entity performing any of the functions enumerated in Items a to e of this Subsection.

In the instant case, other than the mere admission of petitioner that it is a holding company, respondents failed to establish that as such holding company, petitioner's business is akin to that of an investment company, or a bank or other financial institution, thus should be subject to tax under *Section 3A.02(h) of the RMRC.*

However, petitioner consistently claims otherwise. A careful look into the evidence on record would show that petitioner is not an investment company, nor a bank, or other financial intermediary, as defined above. For one, petitioner is not an entity authorized by the Bangko Sentral ng Pilipinas ("BSP") to perform quasi-banking functions. There is also no showing that petitioner advertised itself as a lending, investing, or financing company. Further, even if petitioner's primary purpose, as stated in its Articles of Incorporation, may involve one of the activities enumerated in the *BSP Manual,* such primary purpose, standing alone, is inadequate to justify the conclusion that petitioner is performing functions of a financial intermediary. In the said *ASC Investors* case, this Court held:

> The Court is also not persuaded that petitioner's primary purpose as stated in its Articles of Incorporation, standing alone, is sufficient to prove that it is performing the functions of a financial intermediary. Certainly, it cannot be assumed that petitioner is engaged in activities as a non-bank

> financial institution or intermediary based on the mere statement of its primary purpose in its Articles of Incorporation.
>
> As held in cases more than one, he who alleges, not he who denies, must prove. Since respondents utterly failed to establish by convincing and credible evidence that petitioner is a non-bank financial intermediary, or is engaged in such activities pursuant to the aforecited laws, and rules and regulations, petitioner cannot be held liable for business taxes on the basis of [*Section 143(f) of the 1991 LGC*], which grants to respondent City the power to impose taxes on "banks and other financial institutions.[64]

Accordingly, the Court holds that petitioner cannot be considered an investment company, nor a bank or other financial institution.

Petitioner is not liable for LBT on its dividend income.

Having settled the foregoing, the Court will now discuss the propriety of subjecting petitioner's dividend income to business tax under *Section 3A.02(h) of the RMRC.*

The taxability of dividend income for purposes of determining the total LBT liability of a holding company has long been settled in this jurisdiction. In *Michigan* case and as reiterated in the case of *The City of Makati,* and in the most recent case of *The City of Makati and The City Treasurer of Makati v. CEMCO Holdings, Inc.*[65], this Court ruled that *Section 3A.02(p)* in relation to *Section 3A.02(h),* both of the *RMRC,* imposing LBT on dividend income of holding companies violates the limit set by *Section 133(a) of the 1991 LGC*. This Court explained:

> Indeed, if the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its *Section 3A.02(h),* instead of placing them all by themselves in *Section 3A.02(p)* and then making the tax rates in either *Section 3A.02(h)* or *(g)* applicable to them.

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[64] Citations omitted.
[65] CTA AC No. 166, January 6, 2017.

> That holding companies, exclusively, were placed in a separate section, shows that they comprise a category distinct from the class of 'banks and other financial institutions' as defined by [*Section 131(e) of the 1991 LGC*]. That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by *Section 133(a)* that the taxing powers of LGUs shall not extend to the levy of income tax, except on banks and other financial institutions.[66]

Furthermore, said *Section 3A.02(p)* in relation to *Section 3A.02(h)*, both of the *RMRC*, also violates *Section 27(D)(4) of the 1997 NIRC*. In the *Michigan* case, this Court explained:

> [*Section 27(D) of the 1997 NIRC*] deals with rates of tax on certain passive incomes. Subsection (4) thereof, covering intercorporate dividends, states that 'Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax' — meaning corporate income tax. Dividends are instead subject, under Section 27(D)(1), to "a final tax at the rate of twenty percent (20%)."
>
> > [] Under Section 27(D)(4) of the Tax Code, dividends received by a domestic corporation from another corporation are not subject to the corporate income tax. Such intra-corporate dividends are some of the passive incomes that are subject to the 20% final tax, just like interest on bank deposits. Intra-corporate dividends, being already subject to the final tax on income, no longer form part of the bank's gross income under Section 32 of the Tax Code for purposes of the corporate income tax.[]
>
> Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the [*RMRC*], likewise violates [*Section 27(D)(4) of the 1997 NIRC*].
>
> [*Section 3A.02(p) of the RMRC*] is thus an ultra vires exercise of local taxing power, and cannot be given effect without violating the principle that an ordinance can neither amend nor repeal but must conform to a statute.

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[66] Underscoring ours.

Applying the foregoing, it is thus erroneous for respondents to impose LBT on petitioner's dividend income, considering that the basis for the imposition thereof is *Section 3A.02(p)* in relation to *subsection (h) of the RMRC,* which violates the limit set by *Section 133(a)*[67] *of the 1991 LGC.* An ordinance, or any part thereof, which contravenes any statue is *ultra vires* and void.[68] Consequently, there is no basis for which the LBT may be collected.

Petitioner is entitled to the refund of LBT in the form of cash, and not tax credit.

Respondents aver that assuming that petitioner is entitled for a refund of the Php6,896,385.34 amount, the same may be granted only in the form of a tax credit. The Court does not agree.

Section 7B.14(d) of the RMRC provides as follows:

> SECTION 7B.14. *Taxpayer's Remedies.* -
>
> xxx xxx xxx
>
> (d) *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 City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.
>
> The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of the City of Makati City during the year, his tax credit, if any, shall be applied in full during the first quarter of

[67] SECTION 133. *Common Limitations on the Taxing Power 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;

[68] *Allied Banking Corporation as Trustee for the Trust Fund of CAP v. The Quezon City Government, et. al.*, G.R. No. 154126, October 11, 2005, 472 SCRA 303.

> the next calendar year or the tax due from him for the same business of said calendar year.

A reading of the foregoing shows that taxpayers have an option to either file a claim for refund or the issuance of TCC in case of tax erroneously or illegally collected. However, if the taxpayer opted for a tax credit, the same may not be recovered in the form of cash, but may only be applied to future tax obligations of the taxpayer.

In the instant case, petitioner is claiming for the refund of LBT erroneously collected by respondents, as shown in the administrative claim for refund[69] filed before respondent Ms. Barlis, in its Complaint[70] before the RTC, and in the instant Petition for Review. Accordingly, the Court finds no basis for which respondents would manifest that if petitioner's claim is meritorious, same may be granted only in the form of a tax credit. To do so is a clear disregard of the mandate of the above *Section 7B.14(d) of the RMRC.*

As to the issue on whether interest income and other items of passive income of a holding company may be subject to LBT, the Court notes that the same were not subjected to LBT by respondents. Hence, the Court finds it unnecessary to discuss the same.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. The March 18, 2016 Decision and the August 5, 2016 Order, both of the Regional Trial Court Branch 57 of Makati City, denying petitioner's claim for refund of local business tax for taxable year 2010 are hereby **REVERSED** and **SET ASIDE**. Accordingly, respondents are **ORDERED** to refund to petitioner the amount of **Six Million Eight Hundred Ninety-Six Thousand Three Hundred Eighty-Five Pesos and Thirty-Four Centavos (Php6,896,385.34)**, representing erroneously collected local business tax for taxable year 2010.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[69] *RTC Records, Vol. 1, Offer of Testimony, Annex E, Administrative Claim for Refund,* pp. 408-417.
[70] *Id., Annex C, Complaint,* pp. 1-43, with annexes.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
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.

ROMAN G. DEL ROSARIO
Presiding Justice