REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

LIQUIGAZ PHILIPPINES CORPORATION, Petitioner,	**CTA AC No. 114**
	Members:
- versus -	**DEL ROSARIO,** ***Chairperson*** **UY,** ***and*** **MINDARO-GRULLA, *JJ.***
CITY OF SAN FERNANDO AS REPRESENTED BY THE CITY TREASURER, Respondent.	***Promulgated:*** DEC 18 2015 ; 1:38 p.m.

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RESOLUTION

UY, *J.*:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"**[1] filed on August 13, 2015, seeking reversal and setting aside of this Court's Decision promulgated on July 28, 2015, together with respondent's **"COMMENT (Motion for Reconsideration dated 12 August 2015)"**[2] filed on September 14, 2015 and petitioner's **"REPLY / REJOINDER TO RESPONDENT'S COMMENT"**[3] filed on September 23, 2015. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, all the foregoing considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Orders dated September 17, 2013 and December 3, 2013, both issued by the Regional Trial Court of the City of San Fernando, Pampanga, Branch 46 in Civil Case No. 14001, are hereby **AFFIRMED**.

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[1] Docket, pp. 345 to 355.
[2] Docket, pp. 358 to 361.
[3] Docket, pp. 363 to 369.

SO ORDERED."

In support of its Motion, petitioner raises the following grounds:

1. The issue in the Petition filed with the Regional Trial Court as the court of competent jurisdiction is whether or not the City of San Fernando can collect or impose business tax based on gross receipts on LPG-cooking gas of petitioner.

2. The Regional Trial Court is the court of competent jurisdiction since the dispute is a question of law or requires an interpretation of law; therefore incapable of pecuniary estimation.

With regard to the first ground, petitioner contends that the case involves a legal question and that the amount of refund is secondary or merely a consequence of the resolution of the main issue. Moreover, petitioner avers that the Court failed to consider that petitioner posted a cash bond in the amount of ₱314,679.69 to restrain the collection of additional business taxes. Thus, petitioner's exposure in this case is more than ₱400,000.00, inclusive of the respondent's excessive collections for the year 2010, 2011, 2012 and the additional assessment for 2010, 2011 and 2013.

Anent the second ground, petitioner argues that taxation like expropriation is an exercise of government power, which involves questions of law and is incapable of pecuniary estimation. Petitioner further claims that the instant case is similar to the case of *Yamane vs. BA Lepanto,*[4] wherein the appeal to the regional trial court was dismissed for lack of merit and not for lack of jurisdiction. Thus, according to petitioner, the Court should heed the ruling in that case in which procedural errors were overlooked because the grant of judicial relief is imperative when the exercise of taxing power is based on whim and not in law.

In respondent's Comment, it is averred that the Court was correct in outrightly dismissing the instant case because petitioner's appeal under Section 195 of the Local Government Code (LGC) before the Regional Trial Court, Branch 46 of the City of San Fernando (RTC of San Fernando), Pampanga was premature and was filed to the court which has no jurisdiction to hear it.

[4] G.R. No. 154993, October 25, 2005.

In its Rejoinder, petitioner reiterates and implores the Court to resolve the real issue in this case, which is, whether or not respondent can impose and collect local business taxes on Liquefied Petroleum Gas (LPG) as cooking gas or petroleum product. Petitioner points out that in the case of *Batangas City, et al. vs. Pilipinas Shell Petroleum Corporation*,[5] where the appeal of the denial of the protest was likewise filed with the RTC, the Supreme Court has already ruled that local government units have no power to tax petroleum products.

THE COURT'S RULING

Petitioner's motion lacks merit.

The Petition for Review filed before the RTC of San Fernando is an action capable of pecuniary estimation inasmuch as it primarily involves payment or refund of local business taxes, fees and other charges.

Petitioner insists that the RTC is the court of competent jurisdiction because the main issue of the Petition filed pursuant to Section 195 of the LGC involves a legal question, and thus, the action is one incapable of pecuniary estimation.

To support its position, petitioner alludes to the cases of *Yamane v. BA Lepanto ("Yamane"* case) and *Batangas City, et al. vs. Pilipinas Shell Petroleum Corporation ("Pilipinas Shell"* case) and alleges that in both cases the Appeal/Petition under Section 195 of the LGC was filed with the RTC and said court took cognizance of the cases and ruled on the legal issue raised therein.

We find petitioner's argument untenable.

To begin with, reliance on the *Yamane* and *Pilipinas Shell* cases is manifestly misplaced because certain facts essential for determining the jurisdiction of the court were overlooked by petitioner.

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[5] G.R. No. 187631, July 8, 2015.

In the *Yamane* case, the Notice of Assessment dated 14 December 1998 signed by the City Treasurer stated that the Corporation is liable to pay the correct city business taxes, fees and charges, computed as totaling **₱1,601,013.77** for the years 1995 to 1997 and the Appeal from the denial of the protest of said assessment was filed with the RTC of Makati. On the other hand, in the *Pilipinas Shell* case, the Notice of Assessment involved a demand for payment of business taxes in the amount of **₱92,373,720.50 and ₱312,656,253.04** and Mayor's Permit Fee in the amount of **₱4,299,851.00** and the Petition for Review pursuant to Section 195 of the LGC was filed before the RTC of Batangas City.

Considering that the total amount of local business taxes, fees and charges in both cases exceeded the jurisdictional amount of ₱300,000.00 or, in the case of Metro Manila, ₱400,000.00, for regional trial courts[6], the RTC of Makati and RTC of Batangas City had the unquestionable jurisdiction to take cognizance of the cases respectively filed before them.

In this case, unlike in the *Yamane* and *Pilipinas Shell* cases, the total amount of local business taxes, fees and charges subject of the purported assessments issued by respondent's City Treasurer for the year 2012 or the amount of refund of the alleged excess payment of business taxes for the year 2011 claimed by petitioner did not exceed the jurisdictional threshold fixed by law. To recall, the Assessment Slip dated 20 January 2012 and the Letter of the City Treasurer dated April 27, 2012 show a total assessment for business taxes, fees and other charges only in the amount of **₱70,429.03**[7]; while the alleged excess payment of business taxes for the year 2011 sought to be refunded only amounts to **₱32,114.71**[8]. Clearly, the RTC of San Fernando did not err in dismissing the appeal filed by petitioner for lack of jurisdiction.

Furthermore, We do not agree with petitioner that the Petition filed before the RTC of San Fernando pursuant to Section 195 of the LGC is one incapable of pecuniary estimation.

In determining whether an action is one the subject matter of which is not capable of pecuniary estimation, the Supreme Court has

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[6] SEC. 19(8). Batas Pambansa Bilang 129 or The Judiciary Reorganization Act of 1980, as amended by Republic Act No. 7691.

[7] Annex "A" and Annex "C" of the Petition for Review filed before RTC of San Fernando, Docket, p. 73 and pp. 76 to 80, respectively.

[8] Annex "B" of the Petition for Review filed before RTC of San Fernando, Docket, p. 74.

adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, the Supreme Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance (now Regional Trial Courts).[9]

In its *"Petition for Review (Under Article 195 Of The Local Government Code)"* filed before the RTC of San Fernando, petitioner prayed for the following reliefs:

> "PRAYER
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> WHEREFORE, premises considered, it is most respectfully prayed that upon adjudication of the merits of this Petition judgment be rendered annulling Respondent's Assessment dated:
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> a. The Assessment dated 20 January 2012, and the Letter of the City Treasurer dated April 27, 2012 assessing additional business taxes based on gross receipts, for being violative of law;
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> b. Pursuant to the foregoing, it is prayed that the Honorable Respondent City Treasurer be ordered to recall the assessments with business taxes and REFUND the excess payments for the years 2011 and 2012;
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> In the meantime, it is most respectfully prayed that the Honorable Court order that the status quo ante be maintained, until final adjudication of the merits of this Petition.
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> Other reliefs just and equitable are likewise prayed for."

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[9] *Singson, et al. vs. Isabela Sawmill, et al.*, G.R. No. L-27343, February 28, 1979.

Based on the foregoing, it is this Court's considered view that the subject matter of the Petition is capable of pecuniary estimation inasmuch as the principal relief sought is payment or recovery of a sum of money; namely, the deficiency local business taxes, fees and charges allegedly assessed against petitioner or petitioner's claimed excess payments of business taxes sought to be refunded. The said money claim is neither purely incidental to, nor a consequence of, the said principal relief. Correspondingly, it is without question that the Petition filed before the RTC of San Fernando by petitioner is one capable of pecuniary estimation.

Petitioner once again invokes the *Yamane* case asking the Court to overlook procedural errors and resolve legal issues raised in the instant case.

We cannot grant petitioner's plea.

Jurisdiction is the power or capacity given by the law to a court or tribunal to entertain, hear and determine certain controversies.[10] It is not a mere rule of procedure which the court may overlook or set aside.

Furthermore, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[11]

Where lack of jurisdiction clearly appears from the complaint filed with the trial court, as in this case, the action may be dismissed *motu proprio* by the appellate court, even if the case has been elevated for review on different grounds. Verily, the dismissal of such cases appropriately ends useless litigations.[12]

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[10] *Dela Cruz vs. Court of Appeals, et al.*, G.R. No. 139442, December 6, 2006.
[11] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.
[12] See *Katon vs. Palanca, et al.,* G.R. No. 151149, September 7, 2009.

Jurisdiction is determined by the allegations of the petition at the time of its filing.

Petitioner also contends, in the alternative, that the Court failed to consider the cash bond posted by petitioner in the amount of ₱314,679.69 to restrain the collection of additional business taxes. Allegedly, the total amount of local taxes, fees and charges involved in this case, inclusive of the respondent's excessive collections for the year 2010, 2011, 2012 and the additional assessment for 2010, 2011 and 2013, fall within the jurisdictional threshold for regional trial courts.

Petitioner is mistaken.

Well settled is the rule that **jurisdiction of the court over the subject matter of the action is determined by the allegations of the complaint** <u>at the time of its filing</u>, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.[13]

In this case, the initiatory pleading filed before the RTC of San Fernando pertains to business taxes for the years 2011 and 2012 only. To be sure, the Petition for Review had the following material allegations, to wit: in the Assessment dated January 20, 2012, petitioner was assessed liabilities for both regulatory fees and business taxes[14]; petitioner referred said assessment to its counsel who immediately protested the assessment for local business taxes based on gross receipts as erroneous, excessive and violative of the Local Government Code and a reassessment and refund of the overpayment for 2011 and reassessment of business tax was requested[15]; and on May 11, 2012, petitioner received a letter from respondent's City Treasurer assessing petitioner for additional tax deficiency amounting to ₱50,303.03[16]. Thus, in its prayer, petitioner

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[13] *Encarnacion vs. Amigo,* G.R. No. 169793, September 15, 2006.

[14] Par. 12, Petition for Review (Under Article 195 Of The Local Government Code), RTC Records (Civil Case No. 14001) Vol. 1, Docket, p. 5.

[15] Par. 12, Petition for Review (Under Article 195 Of The Local Government Code), supra; See also Annex "B: of the Petition for Review.

[16] Par. 13, Petition for Review (Under Article 195 Of The Local Government Code), RTC Records (Civil Case No. 14001) Vol. 1, Docket, pp. 7 to 8.

sought the cancellation of the Assessment dated 20 January 2012 and the Letter of the City Treasurer dated April 27, 2012, assessing petitioner for additional business taxes based on gross receipts, for being violative of law and the refund of excess payments for the years 2011 and 2012.

Considering that the alleged excessive business taxes collected by respondent in 2010 and those sought to be collected for the year 2013 are not alleged in the petitioner's Petition for Review before the trial court, the amounts thereof are deemed irrelevant and should not be considered by the Court in determining the trial court's jurisdiction.

WHEREFORE, in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice