REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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| **CITY OF MAKATI AND JESUSA CUNETA AS CITY TREASURER OF THE CITY OF MAKATI,** Petitioner, | **CTA AC No. 235** |
| | ***Members:*** |
| **- versus -** | **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **GLOBAL BUSINESS POWER CORPORATION,** Respondent. | ***Promulgated:*** MAR 01 2022 11:58 a.m. |

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# DECISION

**UY, J.:**

Before this Court is a *Petition for Review (of the Decision dated 08 August 2019)*[1] filed by petitioners City of Makati and Jesusa Cuneta as City Treasurer of Makati, against Global Business Power Corporation, praying for the annulment, reversal, and setting aside of the Decision dated August 8, 2019[2] and Order dated January 6, 2020[3], both rendered by the Regional Trial Court (RTC) – Branch 150, Makati City, in Civil Case No. 16-394, entitled "*Global Business Power Corporation, Petitioner, vs. City of Makati and Amalia C. Santos, Ph.D., in her official capacity as the OIC-City Treasurer of the City of Makati, Respondents,*" the dispositive portions of which respectively read as follows:

**Decision dated August 8, 2019:**

"WHEREFORE, based on the foregoing, the instant petition is Granted. Respondents are directed to refund

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[1] Docket, pp. 5 to 25.
[2] Docket, pp. 30 to 42.
[3] Docket, p. 43.

or credit in favor of Petitioner Global Business Power Corporation the amount of Php15,205,941.98, representing its erroneously collected and paid local business taxes for the calendar years 2012 to 2015.

**SO ORDERED."**

**Order dated January 6, 2020:**

"In view of the foregoing, the motion for reconsideration is denied.

**SO ORDERED."**

## THE FACTS

Petitioner City of Makati is a local government unit created and existing pursuant to law. Petitioner Jesusa Cuneta[4] is the duly appointed Treasurer of the City of Makati tasked with the implementation of the City's Revenue Code, including, among others, the duty to act on and approve claims for refund provided by law. She may be served with summons, notices and other court processes at her office at the City Hall of Makati, J.P. Rizal St., Makati City.[5]

Respondent Global Business Power Corporation is a corporation duly organized and existing under Philippine law, with principal office at GT Tower International, 6813 Ayala Avenue corner H.V. Dela Costa Street, Makati City.[6] It is duly registered with the Securities and Exchange Commission (SEC) with Company Registration No. A200204236, and was registered on March 13, 2002 as a holding company.[7]

Based on their Renewal of Business Permit Application, respondent was assessed by petitioner as a holding company and not as a bank or financial institution, but having a rate similar to that

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[4] Respondent in RTC Civil Case No. 16-394 was OIC-City Treasurer of City of Makati was Ms. Amalia C. Santos.
[5] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), RTC Docket (Civil Case No. 16-394) – Vol. 2, p. 422.
[6] Par. 3, Summary of Admitted Facts, JSFI, RTC Docket (Civil Case No. 16-394) – Vol. 2, p. 423.
[7] Pars. 4 and 6, Summary of Admitted Facts, JSFI, RTC Docket (Civil Case No. 16-394) – Vol. 2, p. 423.

of a bank or financial institution under Section 3A.02(p) of the Revised Makati Revenue Code (RMRC).[8]

For the calendar years 2012 to 2015, respondent paid local business taxes imposed by petitioner City of Makati based on the dividend income received by respondent in the corresponding calendar years, as follows:[9]

| Period Covered | Date of Pay-ment | Official Receipt No. | Tax Base | Basic Tax | Surcharge | Interest | Surcharge/ Interest | Total |
|---|---|---|---|---|---|---|---|---|
| Year 2012 | 9/30/ 2014 | MKTCF2397 182BA | 252,880,266.00 | 455,410.53 | 113,852.63 | 300,570.95 | 414,423.58 | 869,834.11 |
| Year 2013 | 9/30/ 2014 | MKTCF2397 182BA | 1,381,152,833.00 | 2,614,078.63 | 653,519.66 | 1,097,913.02 | 1,751,432.68 | 4,365,511.31 |
| First Quarter 2014 | 10/20/ 2014 | MKTCF2455 105BA | 2,315,833,715.85 | 1,157,916.86 | 289,479.22 | 521,062.59 | 521,062.59 | 1,678,979.45 |
| Second Quarter 2014 | 10/20/ 2014 | MKTCF2455 105BA | 2,315,833,715.85 | 1,157,916.86 | 289,479.22 | 451,587.58 | 451,587.57 | 1,609,504.43 |
| Third Quarter 2014 | 10/20 /2014 | MKTCF2455 105BA | 2,315,833,715.85 | 1,157,916.86 | 289,479.22 | 382,112.56 | 382,112.56 | 1,540,029.42 |
| Fourth Quarter 2014 | 10/20/ 2014 | MKTCF2455 105BA | 2,315,833,715.85 | 1,157,916.86 | | | | 1,157,916.86 |
| First Quarter 2015 | 1/22/ 2015 | MKTCF2531 893BA | 1,992,083,188.33 | 996,041.60 | | | | 996,041.60 |
| Second Quarter 2015 | 4/16/ 2015 | MKTCF2622 299BT | 1,992,083,188.33 | 996,041.60 | | | | 996,041.60 |
| Third Quarter 2015 | 7/20/ 2015 | MKTCF2692 739BT | 1,992,083,188.33 | 996,041.60 | | | | 996,041.60 |
| Fourth Quarter 2015 | 7/31/ 2015 | MKTCF2699 485BT | 1,992,083,188.33 | 996,041.60 | | | | 996,041.60 |
| | | | Total | 11,685,323.00 | 1,635,809.94 | 2,753,246.70 | 3,520,618.98 | 15,205,941.98 |

The dividend income of respondent for the periods 2011 to 2014, which were bases of the local business tax (LBT) payments made for the respective succeeding years are summarized as follows:[10]

| Dividends | 2011/2012 | 2012/2013 | 2013/2014 | 2014/2015 |
|---|---|---|---|---|
| | | | | |
| Beginning Balance of Dividend Receivable | | 315,575,000.00 | 2,291,974,791.00 | 1,966,406,000.00 |
| Add: Dividend Income for the Year | 568,455,266.21 | 3,357,552,624.00 | 1,990,264,922.00 | 2,308,481,188.00 |
| Total | 568,455,266.21 | 3,673,127,624.00 | 4,282,239,713.00 | 4,274,887,188.00 |

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[8] Par. 7, Summary of Admitted Facts, JSFI, RTC Docket (Civil Case No. 16-394) – Vol. 2, p. 423.

[9] Par. 8, Summary of Admitted Facts, JSFI, RTC Docket (Civil Case No. 16-394) – Vol. 2, pp. 423 to 424.

[10] Par. 12, Summary of Admitted Facts, JSFI, RTC Docket (Civil Case No. 16-394) – Vol. 2, pp. 424 to 425.

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|---|---|---|---|---|
| Less: Ending Balance of Dividend Receivable | 315,575,000.00 | 2,291,974,791.00 | 1,966,406,000.00 | 2,282,804,000.00 |
| **Dividends Received Subjected to Business Taxes** | **252,880,266.21** | **1,381,152,833.00** | **2,315,833,713.00** | **1,992,083,188.00** |

On March 3, 2016, respondent filed with the petitioner an administrative claim for refund or tax credit of the LBT paid.[11]

Respondent received on March 28, 2016, a reply-letter from petitioner OIC-City Treasurer of Makati City, stating that respondent's request may not be given due consideration.[12]

On April 13, 2016, respondent, as plaintiffs, filed its *Petition for Refund*[13] with the RTC – Makati, entitled "Global Business Power Corporation, Petitioner, v. City of Makati and Amalia C. Santos, Ph.D., in her official capacity as the OIC-City Treasurer of the City of Makati, Respondents", docketed as Civil Case No. 16-394, praying that judgment be rendered ordering petitioners, as respondents, to refund the amount of ₱15,205,941.98, representing unlawfully collected business taxes under Section 3A.02(p) of the Revised Makati Revenue Code (RMRC). The case was raffled to RTC – Branch 56, Makati City, on April 14, 2016.[14]

Petitioners filed their *Answer with Affirmative Defense*[15] in Civil Case No. 16-394 on May 20, 2016. Said case was referred to the Philippine Mediation Center on September 2, 2019. JDR conference was tentatively set on October 28, 2016. Per Mediator's Report dated September 23, 2016, the parties failed to reach a settlement. Thus, at the scheduled JDR conference, there being no settlement reached by the parties, JDR was terminated and the court ordered to re-raffle the case.

Thus, Civil Case No. 16-394 case was re-raffled to RTC – Branch 150, Makati City, on January 31, 2017.[16] Proceedings then ensued.

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[11] Par. 13, Summary of Admitted Facts, JSFI, RTC Docket (Civil Case No. 16-394) – Vol. 2, p. 425.
[12] Par. 14, Summary of Admitted Facts, JSFI, RTC Docket (Civil Case No. 16-394) – Vol. 2, p. 425.
[13] RTC Docket (Civil Case No. 16-394) – Vol. 1, pp. 1 to 21.
[14] RTC Docket (Civil Case No. 16-394) – Vol. 1, p. 1.
[15] RTC Docket (Civil Case No. 16-394) – Vol. 1, pp. 300 to 306.
[16] Order dated February 13, 2017, RTC Docket (Civil Case No. 16-394) – Vol. 2, p. 399.

On August 8, 2019, the RTC – Branch 150, Makati City promulgated the assailed Decision granting respondent's *Petition for Refund.*[17]

A *Motion for Reconsideration ( Re: Decision dated 08 August 2019)* was then filed by petitioners on August 27, 2019.[18] Thereafter, respondent's *Comment/Opposition (To Motion for Reconsideration Re: Decision dated 8 August 2019)* was filed on September 26, 2019.[19] Subsequently, on October 11, 2019, petitioner filed a *Reply to Comment Opposition (Re: Motion for Reconsideration of Decision dated 08 August 2019);*[20] and on November 4, 2019, respondent filed a *Rejoinder (To Reply to Comment/Opposition: dated 11 October 2019).*[21]

On January 6, 2020, the RTC issued the assailed Order denying petitioners' motion for reconsideration.[22]

Aggrieved, petitioners filed the present *Petition for Review (of the Decision dated 08 August 2019*[23] on February 7, 2020.

On June 2, 2020, respondent then posted its *Comment/Opposition (to Petition for Review).*[24]

In compliance with this Court's Resolution dated October 30, 2020,[25] the RTC – Branch 150 of Makati City transmitted to the Court its records of Civil Case No. 16-394 on January 6, 2021.[26]

Thereafter, the Court ordered the parties to file their respective memorandum in the Resolution dated January 20, 2021,[27]

Considering the filing of respondent's *Memorandum* on March 1, 2021,[28] and petitioners' *Memorandum* on March 4, 2021,[29] this

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[17] RTC Docket (Civil Case No. 16-394) – Vol. IV, pp. 476 to 488.
[18] RTC Docket (Civil Case No. 16-394) – Vol. IV, pp. 490 to 504.
[19] RTC Docket (Civil Case No. 16-394) – Vol. IV, pp. 517 to 535.
[20] RTC Docket (Civil Case No. 16-394) – Vol. IV, pp. 539 to 544.
[21] RTC Docket (Civil Case No. 16-394) – Vol. IV, pp. 546 to 551.
[22] RTC Docket (Civil Case No. 16-394) – Vol. IV, p. 553.
[23] Docket, pp. 5 to 25.
[24] Docket, pp. 52 to 72.
[25] Docket, p. 81.
[26] RTC Branch 150 of Makati City's *Transmittal* dated January 4, 2021, Docket, pp. 82 to 86.
[27] Docket, p. 88.
[28] Docket, pp. 89 to 115.
[29] Docket, pp. 118 to 132.

case was deemed submitted for decision on March 10, 2021.[30]

Hence, this decision.

## THE ISSUES

Petitioners submit the following issues for this Court's resolution, to wit:

"1. Whether or not the Respondent is a holding company.

2. Whether or not as a holding company, Respondent being tax under Section 3A.02(p) of the Revised Makati Revenue Code has legal basis.

3. Whether or not Respondent is entitled to the refund or issuance of a tax credit certificate in the amount of **Fifteen Million Two Hundred Five Thousand Nine Hundred Forty-One Pesos and 98/100** (P15,205,941.98) for the paid Local Business Taxes arising from dividends received."[31]

***Petitioners' arguments:***

Petitioners argue that respondent is a holding company as registered with the SEC and as a business in the City of Makati. As a holding company, it is properly taxed under Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC. Allegedly, for purpose of Local Business Tax, as a holding company, petitioner's gross receipts should include dividend income.

In addition, petitioners contend that respondent did not file a valid protest to the assessment. Clearly from the evidence presented by both parties in Civil Case No. 16-394, petitioner issued assessments for business taxes on dividend income for the following years: for the year 2012 on August 27, 2014; and for the year 2014 on October 17, 2014; while payments thereon were made by respondent on September 30, 2014 and October 20, 2014, respectively. Likewise, respondent was also assessed for the year

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[30] Resolution dated March 10, 2021, Docket, p. 135.
[31] Statement of the Issues, *Petition for Review (of the Decision dated 08 August 2019)*, Docket, p. 9.

2015 and corresponding payments were made by respondent. Petitioner points out that no protest was filed relative to said payments nor were the payments made under protest.

Additionally, unless repealed by Congress, Section 187 of the Local Government Code (LGC) remains to be the proper and exclusive procedure to question the constitutionality or legality of tax ordinances and revenue measures.

Petitioners also aver that Section 3A.02(p) of the RMRC in relation to Section 3A.02(g) and (h) remain to be valid since these were never questioned nor attacked directly under Section 187 of the LGC.

Finally, petitioners maintain that under Section 143(h) of the LGC, the LGU is empowered to impose tax on any business which the *Sanggunian* concerned may deem proper to tax.

***Respondent's counter-arguments:***

Respondent admits that it is a holding company. However, the dividend income it received as a holding company, is not income from goods or services sold, and is not subject to local business tax.

According to respondent, Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC violates Section 27(D)4 of the National Internal Revenue Code. Moreover, the CTA's declaration that Section 3A.02(p) of the RMRC is *ultra vires* also means that it is unconstitutional.

Respondent also avers that the present case is not on all fours with the case of *City of Manila and Office of the Treasurer of Manila vs. Cosmos Bottling Corporation* (*Cosmos Bottling* case),[32] cited by petitioners, since the present case is a claim for refund of erroneously paid local business tax pursuant to Section 196 of the LGC of 1991. Finally, respondent argues that the doctrine of *solutio indebiti* applies to erroneously or illegally paid taxes, and the instant claim was filed within the two-year period.

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[32] G.R. No. 196681, June 27, 2018.

## THE COURT'S RULING

The *Petition for Review* is partly meritorious.

***Respondent is a holding company.***

At the outset, it is noted that the first issue raised for this Court's resolution is whether or not respondent is a holding company.

Records however show that there is no dispute with regard to this matter, as both parties have readily admitted that respondent is a holding company, as stated in the *Joint Stipulation of Facts and Issues* before the lower court.[33]

The main issue for resolution in this case, therefore, is whether or not respondent, as a holding company, is liable for local business taxes on the dividend income it received for the taxable years in question.

***Local business taxes cannot be imposed on dividends received by respondent as a holding company, as there is no showing that the latter is a bank or other financial institution.***

As mentioned earlier, petitioners claim that respondent, as a holding company registered in the City of Makati is properly taxed under Section 3A.02(p)[34] in relation to Section 3A.02(h)[35] of the RMRC.

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[33] Refer to Pars. 4 and 6, Summary of Admitted Facts, JSFI, RTC Docket (Civil Case No. 16-394) – Vol. 2, p. 423.

[34] Section 3A.02(p) - Imposition of Tax. — There is hereby levied an annual tax on the following businesses at rates prescribed therefore: 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.

[35] Section 3A.02(h) 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 (I) 1, as provided in this code.

Moreover, petitioners argue that as a holding company, respondent need not be a service contractor, nor an owner or operator of banks and other financial institutions, in order that Section 3A.02(h) can be made to apply. Petitioners further argue that once it is classified as a holding company, the tax prescribed therein (20% of 1%) shall be made to apply on its gross receipts, which covers dividends and interest income.

Petitioners are mistaken.

In the case of *The City Treasurer of Makati vs. Michigan Holdings, Inc.*[36], the Supreme Court affirmed the decision of the CTA *En Banc* in the case of *Michigan Holdings, Inc. vs. The City Treasurer of Makati, et al.*[37], and held that the assessment for local business taxes issued against a holding company, levying business taxes on dividend income, is *ultra vires,* when it is neither a bank nor a non-bank financial intermediary.[38]

Applying the foregoing ruling to the subject case, respondent, although admittedly a holding company, there is, however, no indication that it is a bank, nor is there any showing that it can be deemed as a financial intermediary. Therefore, respondent cannot be held liable for local business taxes on its dividend income, as imposed by petitioner City of Makati. In other words, the imposition by petitioner of LBT on respondent's dividend income should be cancelled for being *ultra vires.*

***Availment of the appropriate remedy under Sections 195 and 196 of the Local Government Code of 1991.***

Having established that the imposition of local business taxes on respondent's dividend income as a holding company is *ultra vires,* We shall now resolve the issue on whether or not respondent is entitled to its claim for refund in the amount of ₱15,205,941.98.

Relative thereto, it becomes necessary to determine whether or not respondent availed of the proper administrative remedy

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[36] G.R. No. 224322, March 24, 2021
[37] CTA EB No. 1093, June 17, 2015, CTA A.C. No. 99, September 19, 2013.
[38] *The City Treasurer of Makati vs. Michigan Holdings, Inc.,* G.R. No. 224322, March 24, 2021.

provided under the Local Government Code of 1991, specifically, either under Section 195 or Section 196 thereof, in pursuing its refund claim of its alleged erroneous payment of local business taxes imposed on its dividend income prior to its judicial recourse before the Regional Trial Court of Makati City, Branch 150. Failure on the part of respondent to utilize the appropriate procedural remedy would be fatal to its refund claim.

We look into the provisions of Sections 195 and 196 of the LGC of 1991, to wit:

> "**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 assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.
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> **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."

Sec. 195 provides the procedure for protesting an assessment. Under this provision, a notice of assessment must have been issued by the local treasurer or his duly authorized representative for nonpayment of alleged correct taxes, fees or charges, the amount of deficiency, surcharges, interests and penalties. Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may *appeal* with the court of competent jurisdiction within thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty 60-day period prescribed herein, otherwise, the assessment becomes conclusive and unappealable.

Sec. 196 provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge wherein the taxpayer claimant must file a written claim for refund with the local treasurer before resorting to court action, and the same must be initiated within two (2) years from date of payment before resorting to judicial action. No specific period is provided under this Section within which the local treasurer must decide the written claim for refund or credit. In case of inaction on the part of the local treasurer on the administrative refund claim, the taxpayer claimant must now institute judicial action before the lapse of the two-year prescriptive period as the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription.

Moreover, considering that Section 196 does not expressly mention an assessment issued by the local treasurer, a taxpayer claimant may avail of the remedy of refund of taxes under Sec. 196, even without a prior protest as there would be no assessment to assail in the first place.

In the case of *International Container Terminal Services, Inc. vs. The City of Manila, et al.* (*International Container* case),[39] a distinction was made as to the applicability of the provisions of Section 195 and Section 196 of the LGC of 1991, to wit:

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[39] G.R. No. 185622, October 17, 2018.

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

Clearly from the foregoing jurisprudence, it is only when no assessment has been issued against the taxpayer, will the remedy under Section 196 be applied independently of the periods provided under Section 195, and the taxpayer need not observe the 60+30-day period prescribed under the latter provision.

In the instant case, petitioners invoke the ruling of the Supreme Court in the *Cosmos Bottling* case in support of their contention that the subject assessments have now become final and executory, since respondent did not file a valid protest to the assessments.

For its part, respondent counters that the filing of a valid protest is *not necessary* to claim for refund; and that the *Cosmos Bottling* case is not on all fours with the facts of this case. Specifically, respondent avers the following:

> "23. The Cosmos case is not on all fours with the present case as the facts are not similar. In the Cosmos case, the taxpayer was issued an assessment notice after an investigation was conducted by the local government. The assessment notice being referred to in Section 195 of the Local Government Code, is not the voluntary payment of local business tax that is due every January. In the Cosmos case, the taxpayer was examined and was issued an assessment notice. The taxpayer contested the assessment notice by filing a protest letter, along with a tender of payment.
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> 24. **In the present case however, there is no protest letter to speak of. Petitioner voluntary paid the local business taxes that are due every year. What is peculiar in the Cosmos case that is not present in the instant case is the presence of an assessment notice and a written protest. For the Cosmos case to apply, these two must be present.**"[40] *(Emphasis added)*

In other words, respondent admits that there was no written protest filed to assail the supposed assessments for local business taxes on its dividend income as a holding company. However, respondent asserts that the jurisprudential pronouncements in the *Cosmos Bottling* case are not applicable to this case. According to the respondent, for the *Cosmos Bottling* case to apply, there must be both an assessment notice *and* a written protest.

Respondent is mistaken.

Respondent cannot claim that the *Cosmos Bottling* case is not applicable to its case, since the said case and the *International Container* case, are judicial decisions, which interpret Sections 195 and 196 of the LGC of 1991.

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[40] Pars. 23 and 24, *Comment/Opposition (To Petition for Review)*, Docket, p. 58.

Needless to state, judicial decisions applying or interpreting the laws or the Constitution form part of the legal system of the Philippines.[41] Moreover, judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, **to the extent that they are applicable**, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.[42]

Such being the case, the interpretation made by the Supreme Court on Sections 195 and 196 of the LGC of 1991, in the *Cosmos Bottling* and *International Container* cases, are judicial decisions, and thus, necessarily become, to the extent that these are applicable, the criteria that must control the actuations of those called upon to abide by them (*e.g.*, respondent) and those duty-bound to enforce obedience to them (*e.g.*, petitioners).

Contrary to the stance of respondent that there must be an assessment notice and a written protest for the *Cosmos* case to apply, there is nothing in the said case which decrees that the ruling therein shall be applicable only when there is an assessment notice and a written protest. For clarity, as ruled in the *Cosmos* case (as well as in the *International Container* case), when there is an assessment notice, it behooves the concerned taxpayer to file a written protest letter against it, regardless of whether or not there was payment of the assessed tax; otherwise, the assessment shall become final and executory, and thus, the refund being claimed, if any, shall not perforce be forthcoming.

***The Notice of Assessment dated September 17, 2014 has become final and unappealable, while no assessments were issued for taxable years 2014 and 2015.***

In the instant case, records would show that there was a *Notice of Assessment* issued against respondent, specifically for the years ***2012 and 2013***.[43] Applying the pronouncements in the *Cosmos*

[41] Article 8, Civil Code of the Philippines.

[42] *Herrera vs. Mago, et al.*, G.R. No. 231120, January 15, 2020, citing *Office of the Ombudsman vs. Vergara*, G.R. No. 216871, December 6, 2017.

[43] Refer to Par. 7, Summary of Admitted Facts, JSFI, RTC Docket (Civil Case No. 16-394) – Vol. 2, p. 423; *Notice of Assessment* dated September 17, 2014, RTC Docket Civil Case No. 16-394) – Vol. II, p. 21.

*Bottling* case, respondent was mandated to file a written protest against it. In view of respondent's failure to file the necessary protest against the subject assessment, the assessment for 2012 and 2013 is now final and executory.

To reiterate, in the Court *a quo*, petitioners were only able to present the *Notice of Assessment* dated September 17, 2014, **covering the years 2012 and 2013**, in the aggregate amount of ₱5,494,320.13.[44] It appearing that no protest against the said *Notice of Assessment* was lodged by respondent before the petitioner City Treasurer, the same has become final and executory. Such being the case, the said amount of ₱5,494,320.13 must already be deducted from the amount of refund claim (*i.e.*, ₱15,205,941.98).

As for the succeeding years 2014 and 2015, however, petitioners did not present the corresponding *Notice of Assessment* for the amount of ₱9,711,621.85. Hence, absent proof of the issuance of an assessment for said years, respondent is not mandated to file a protest under Sec. 195 of the LGC of 1991. Instead, respondent's alleged erroneous payment of the said amount may rightfully be the subject of a refund claim under Sec. 196 of the LGC of 1991.

To summarize, this Court holds that the dividends received by respondent as a holding company, is *not* the proper subject of local business taxes, as imposed by the petitioner City of Makati. However, due to respondent's failure to file a protest against the *Notice of Assessment* dated September 17, 2014, covering **the years 2012 and 2013**, the same is now final and executory.

Thus, respondent is only entitled to a refund in the reduced amount of **₱9,711,621.85**, covering **the years 2014 and 2015**, computed as follows:

| | Amount |
|---|---|
| Total amount of the refund claim | ₱ 15,205,941.98 |
| Less: Assessment that has become final and executory (years 2012 and 2013) | 5,494,320.13 |
| **Refundable amount** | **₱ 9,711,621.85** |

[44] Exhibits "3" and "3-A", RTC Docket (Civil Case No. 16-394) – Vol. II, pp. 21 to 22.

**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. Petitioners are **ORDERED TO REFUND** respondent Global Business Power Corporation the amount of **₱9,711,621.85**, representing erroneously collected and paid local business taxes for the years 2014 and 2015.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

WE CONCUR:

*( With Concurring Opinion )*
**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*

## ATTESTATION

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

**ERLINDA P. UY**
*Associate Justice*
Chairperson, 3rd Division

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the 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

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*Third Division*

| | |
|---|---|
| **CITY OF MAKATI AND JESUSA CUNETA AS CITY TREASURER OF THE CITY OF MAKATI,** | **CTA AC NO. 235** (Civil Case No. 16-394) |
| Petitioners, | Members: |
| - versus - | **UY,** *Chairperson* **RINGPIS-LIBAN,** and **MODESTO-SAN PEDRO,** JJ. |
| **GLOBAL BUSINESS POWER CORPORATION,** Respondent. | Promulgated: MAR 01 2022 11:58 a.m. |

x-----------------------------------------------------------------------------------------x

# CONCURRING OPINION

***RINGPIS-LIBAN, J.:***

I concur that the local business tax ("LBT") collected and paid for 2012 and 2013 falls under Section 195 of the Local Government Code ("LGC") of 1991, and is not subject of a refund claim under Section 196.

In the case at bar, the Notice of Assessment[1] dated September 17, 2014, signed by Respondent Treasurer of Makati City, was issued as a result of an examination by virtue of Letter of Authority LA-2014 No. 0419, pursuant to Section 171 of the LGC of 1991, which provides:

> "**Section 171.** *Examination of Books of Accounts and Pertinent Records of Businessmen by Local Treasurer.* - **The provincial, city, municipal or barangay treasurer may**, by himself or through any of his deputies duly authorized in writing, **examine the books, accounts, and other pertinent records of any person, partnership, corporation, or association subject to local taxes,**

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[1] RTC Docket, Exhibits "3" and "3-A", pp. 21-22.

> **fees and charges in order to ascertain. assess, and collect the correct amount of the tax, fee, or charge**. Such examination shall be made during regular business hours, only once for every tax period, and shall be certified to by the examining official. Such certificate shall be made of record in the books of accounts of the taxpayer examined.
>
> In case the examination herein authorized is made by a duly authorized deputy of the local treasurer, the written authority of the deputy concerned shall specifically state the name, address, and business of the taxpayer whose books, accounts, and pertinent records are to be examined, the date and place of such examination and the procedure to be followed in conducting the same.
>
> For this purpose, the records of the revenue district office of the Bureau of Internal Revenue shall be made available to the local treasurer, his deputy or duly authorized representative."[2]

Said assessment became final and unappealable when Petitioner failed to file a written protest under Section 195.

From all the foregoing, I vote to **PARTIALLY GRANT** the Petition for Review. Accordingly, Petitioners should be **ORDERED TO REFUND** in favor of Respondent the aggregate amount of Php9,711,621.85, for having been erroneously or illegally collected.

Ma. Belen

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

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[2] *Emphasis supplied.*