REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SAN ROQUE POWER CORPORATION,
Petitioner,

-versus-

MUNICIPALITY OF SAN MANUEL, PANGASINAN, and ELIZABETH T. CORPUZ in her capacity as MUNICIPAL TREASURER OF SAN MANUEL, PANGASINAN,
Respondents.

CTA AC NO. 256
(Civil Case No. U-11272)

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

MAY 10 2023

9:N a.m.

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* [1] filed on November 25, 2021 by petitioner San Roque Power Corporation against respondent Municipality of San Manuel, Pangasinan, and respondent Elizabeth T. Corpuz, in her capacity as the Municipal Treasurer, under Sections 3(a)[2] and 4(a),[3] Rule 8 of the Revised Rules of the Court of Appeals (RRCTA). Petitioner seeks to annul and set aside the Decision dated May 21, 2021 (assailed Decision) and the Resolution dated October 22, 2021

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[1] Docket – Vol. I, pp. 5-43.

[2] SEC. 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction 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 expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] SEC. 4. *Where to appeal; mode of appeal.* – (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

(assailed Resolution) of the Regional Trial Court (RTC) of Urdaneta City, Pangasinan, Branch 45 in Civil Case No. U-11272 entitled "*San Roque Power Corporation v. Municipality of San Manuel, Pangasinan and Elizabeth T. Corpuz in her capacity as Municipal Treasurer of San Manuel, Pangasinan,*" denying petitioner's claim for refund or tax credit of the excess local business tax (LBT) in the amount of Two Million Fifty-One Thousand Four Hundred Sixty Pesos and 65/100 (₱2,051,460.65).

THE PARTIES

Petitioner San Roque Power Corporation is a power generation company under Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001, with principal office located in San Manuel, Pangasinan. It is a contractor under October 11, 1997 Power Purchase Agreement with the National Power Corporation, relative to its operation and maintenance of a power-generating facility in Pangasinan.[4]

Respondent Municipality of San Manuel (San Manuel) is a local government unit (LGU) created and existing under the laws of the Republic of the Philippines, with the seat of government at the Municipal Hall, San Manuel, Pangasinan. It is headed and represented by its Municipal Mayor, Kenneth Marco S. Perez.

Respondent Ms. Elizabeth T. Corpuz is the Municipal Treasurer of the Municipality of San Manuel, with office address at the Municipal Hall, San Manuel, Pangasinan.[5]

THE FACTS

After the effectivity of the Local Government Code (LGC) of 1991,[6] respondent San Manuel passed four (4) revenue ordinances, namely:

1. Municipal Ordinance No. 94-01 (1994 Revenue Code);

2. Municipal Ordinance No. 2004-08 (2004 Revenue Code);[7]

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[4] Par. 8, Parties, Petition for Review, Docket – Vol. I, p. 9.
[5] Par. 2, Parties, Memorandum (For the Respondents), Docket – Vol. II, p. 734.
[6] Republic Act No. 7160, October 10, 1991.
[7] Annex "F" of the Petition for Review, Docket – Vol. I, pp. 87-188.

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3. Municipal Ordinance No. 2012-01 (2012 Revenue Code);[8] and

4. Municipal Ordinance No. 2017-12 (2018 Revenue Code).[9]

These ordinances are based on Sections 143[10] and 191[11] of the LGC on the right of a municipality to impose a business tax on certain businesses operating within its territorial jurisdiction.[12]

The 1994 Revenue Code implemented the provisions of the LGC.[13] Among such provisions are Sections 143 (b) and (e) of the LGC, which imposed LBT on "wholesalers, distributors, dealers in any article of commerce of whatever kind and nature" and "contractors" whose gross sales or receipts for the

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[8] Annex "G" of the Petition for Review, Docket – Vol. I, pp. 189-314.
[9] Annex "H" of the Petition for Review, Docket – Vol. I, pp. 315-333.
[10] SEC. 143. *Tax and Business* — The municipality may impose taxes on the following business:
(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule: ...
(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:	*Amount of Tax Per Annum*
...	...
2,000,000.00 or more	at a rate not exceeding fifty percent (50%) of one percent (1%).

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsection (a), (b) and (d) of this Section: ...
(d) On retailers....
Provided, however, That barangays shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (P50,000.00) or less, in the case of cities, and Thirty thousand pesos (P30,000.00) or less, in the case of municipalities.
(e) On contractors and other independent contractors, in accordance with the following schedule:

With gross receipts for the preceding calendar year in the amount of:	*Amount of Tax Per Annum*
...	...
2,000,000.00 or more	at a rate not exceeding fifty percent (50%) of one percent (1%)

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.
(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (P50.00) per peddler annually.
(h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: *Provided*, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.
The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.
[11] SEC. 191. *Authority of Local Government Units to Adjust Rates of Tax ordinances.* — Local units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.
[12] *See* Decision dated May 20, 2021, Docket – Vol. I, p. 45.
[13] Par. 11, Petition for Review, Docket – Vol. I, p. 10, vis-à-vis par. 26, Comment (to the Petition for Review), Docket – Vol. II, p. 539 & pars. 25 and 32, Memorandum (For the Respondents), Docket – Vol. II, pp. 741 and 744, respectively.

preceding calendar year were at least ₱2,000,000.00, at a rate not exceeding 50% of 1% of their gross sales or receipts.

The 2004 and 2012 Revenue Codes adjusted the rate of said LBT imposed on "wholesalers, distributors, dealers in any article of commerce of whatever kind and nature" and "contractors" at the rate of 55% of 1% and 60% of 1%, of their gross sales or receipts, respectively.

The 2018 Revenue Code imposed an LBT of 65% of 1% of petitioner's gross sales or receipts for the preceding calendar year as provided under Sections 2A.02 (b) and (e).

The LBT rates prescribed in the LGC and the foregoing ordinances are summarized below:

LGC		**2004 Revenue Code**		**2012 Revenue Code**		**2018 Revenue Code**	
Maximum Tax Rate imposable on wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature under Section 143 (b)		Maximum Tax Rate imposable on wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature under Section 2A.02 (b)		Maximum Tax Rate imposable on wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature under Section 2A.02 (b)		Maximum Tax Rate imposable on wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature under Section 2A.02 (b)	
With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum	With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum	With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum	With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
2,000,000.00 or more	At a rate not exceeding fifty percent (50%) of one percent (1%)	2,000,000.00 or more	At a rate not exceeding fifty-five percent (55%) of one percent (1%)	2,000,000.00 or more	At a rate of sixty percent (60%) of one percent (1%)	2,000,000.00 or more	₱13,000.00 plus sixty-five (65%) of one percent (1%) in excess of ₱2,000.00
Maximum Tax Rate imposable on contractors and other independent contractors under Section 143 (e):		Maximum Tax Rate imposable on contractors and other independent contractors under Section 2A.02 (e):		Maximum Tax Rate imposable on contractors and other independent contractors under Section 2A.02 (e):		Maximum Tax Rate imposable on contractors and other independent contractors under Section 2A.02 (e):	
With gross receipts for the preceding Calendar year in the amount of:	Amount of Tax Per Annum	With gross sales or receipts for the preceding calendar year	Amount of Tax Per Annum	With gross sales or receipts for the preceding calendar year	Amount of Tax Per Annum	With gross sales or receipts for the preceding calendar year	Amount of Tax Per Annum

LGC		**2004 Revenue Code**		**2012 Revenue Code**		**2018 Revenue Code**	
		in the amount of:		in the amount of:		in the amount of:	
2,000,000.00 or more	At a rate not exceeding fifty percent (50%) of one percent (1%)	2,000,000.00 or more	Fifty-five percent (55%) of one percent (1%)	2,000,000.00 or more	At a rate of sixty percent (60%) of one percent (1%)	2,000,000.00 or more	₱14,950.00 plus sixty-five (65%) of one percent (1%) in excess of ₱2,000.00

On December 4, 2018, petitioner assailed the validity of Sections 2A.02 (b) and (e) of the 2018 Revenue Code with the Secretary of the Department of Justice (DOJ) in accordance with Section 187[14] of the LGC.[15]

In January 2019, San Manuel informed petitioner that it would not issue a business permit unless petitioner paid the LBT at 65% of 1% of the latter's gross sales or receipts for the preceding calendar year under the 2018 Revenue Code.[16]

On January 18, 2019, petitioner paid the LBT of ₱13,334,494.22[17] for the calendar year 2019 to expedite its application for a business/mayor's permit without prejudice to its claim for refund.[18]

On the same date, petitioner filed with respondent Municipal Treasurer a written claim for refund under Section 196 of LGC. Petitioner requested that it be refunded the excess LBT in the amount of ₱2,051,460.65, representing the difference between the rate of 65% of 1% of gross sales under the 2018 Revenue Code and the rate of 55% of 1% of gross sales.[19]

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[14] SEC. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures*; *Mandatory Public Hearings*. — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however*, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally*, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

[15] Par. 14, Petition for Review, Docket – Vol. I, p. 11.

[16] Decision dated May 20, 2021, Docket – Vol. I, p. 45.

[17] Annex "J", Docket – Vol. I, p. 368, computed as follows:

Gross Sales:	₱2,051,460,648.77
Tax Rate:	65% of 1%
Tax Due:	₱13,334,494.22[17]

[18] Par. 17, Petition for Review, Docket – Vol. I, p. 12.

[19] Par. 18, Petition for Review, Docket – Vol. I, p. 12, vis-à-vis Decision dated May 20, 2021, Docket – Vol. I, p. 46; Annex "K", Docket – Vol. I, pp. 369-378.

In the meantime, when the DOJ Secretary did not act on petitioner's appeal within the period prescribed under the LGC,[20] on March 4, 2019, petitioner filed an appeal *via* a Petition (with Application for the Issuance of a Writ of Preliminary Injunction) with the RTC Urdaneta City, Pangasinan under Section 187 of the LGC.[21] The case was docketed as Civil Case No. U-11239 and was raffled to Branch 46 (First RTC Case).[22]

On April 17, 2019, petitioner filed another Petition[23] with the RTC Urdaneta City, Pangasinan, praying that respondents be ordered to grant petitioner's claim for refund or tax credit for the excess LBT that the latter paid for the calendar year 2019 under Section 196 of the LGC. The case was docketed as Civil Case No. U-11272 and was raffled to the court *a quo* (Second RTC Case).[24]

PROCEEDINGS BEFORE THE COURT *A QUO*

On June 14, 2019, respondents filed their Answer[25] asserting that their basis in imposing the LBT are Sections 143 (b) and (e), and 191 of the LGC. Respondents state that the 2018 Revenue Code is the fourth revision of the tax rates since the effectivity of the LGC in 1991. Respondents add that all revenue ordinances are in accordance with the LGC as they were adjusted not oftener than once every five years, and such adjustment did not exceed 10%. Hence, the adjusted tax rate of 65% of 1% of gross sales or receipts is valid.

On January 14, 2020, petitioner filed a Motion for Summary Judgment[26] stating that there is no genuine issue as to any material fact; hence, it prayed that the court *a quo* render summary judgment in petitioner's favor and against respondents and order respondents to (a) grant petitioner's January 18, 2019 claim, and (b) issue the corresponding refund

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[20] Par. 16, Petition for Review, Docket – Vol. I, p. 12, vis-à-vis Decision dated May 20, 2021, Docket – Vol. I, p. 46.
[21] Docket – Vol. I, pp. 334-361; Annex "R-7", Docket – Vol. II, pp. 657-684.
[22] Par. 16, Petition for Review, Docket – Vol. I, p. 12, vis-à-vis Decision dated May 20, 2021, Docket – Vol. I, p. 46; Docket – Vol. I, pp. 334-361; Annex "R-7", Docket – Vol. II, pp. 657-684.
[23] Annex "L", Petition, Docket – Vol. I, pp. 379-419, with annexes.
[24] *Id.*, par. 6, p. 382: petitioner alleged that under Section 195 of the LGC, the Municipal Treasurer had sixty (60) days, or until March 19, 2019, within which to render a decision on the protest and petitioner had thirty (30) days from receipt of the decision or the lapse of the 60-day period, or until April 18, 2019, within which to appeal or file a petition in a competent court of jurisdiction; but respondent Municipal Treasurer made no decision by March 19, 2019; Petition for Review, par. 19, Docket – Vol. I, p. 13; Annex "L", par. 18, Docket – Vol. I, p. 387; Annex "M", Answer, par. 7, Docket – Vol. I, p. 421.
[25] Annex "M", Answer, Docket – Vol. I, pp. 420-431.
[26] Annex "E", Docket – Vol. I, pp. 62-86.

or tax credit to petitioner for the excess LBT that it paid for the calendar year 2019.

Respondents did not interpose any objection thereto; hence, the court *a quo* granted petitioner's Motion for Summary Judgment and required the parties to submit their simultaneous memoranda.[27] Subsequently, petitioner[28] and respondents[29] submitted their respective memoranda. Petitioner also filed a Reply-Memorandum dated September 9, 2020.[30]

On May 2, 2021, the court *a quo* promulgated the assailed Decision, dismissing the case and disposed of the same, as follows:

> WHEREFORE, the case is hereby DISMISSED, for lack of merit and for violation of the principle of *litis pendentia.*
>
> SO ORDERED.

On October 22, 2021, acting on petitioner's Motion for Reconsideration,[31] with respondents' Comment/Opposition,[32] the court *a quo* issued the assailed Resolution with the following *fallo*:

> Considering that the issues in this case have been properly discussed and passed upon, there are no more compelling reasons that would persuade this court to reconsider its Decision.
>
> Accordingly, for lack of merit, the instant motion is hereby DENIED.
>
> SO ORDERED.

PROCEEDINGS BEFORE THE COURT

On November 25, 2021, petitioner filed a *Petition for Review* before this Court against the assailed Decision and Resolution of the RTC.

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[27] Par. 2, Annex "A", RTC Decision dated May 21, 2021, Docket – Vol. I, p. 46.
[28] Memorandum for the Petitioner, Annex "N", Docket – Vol. I, pp. 432-461.
[29] Memorandum (for the Respondents), Annex "O", Docket – Vol. I, pp. 462-493.
[30] Annex "P", Docket – Vol. I, pp. 494-512.
[31] Annex "Q", Docket – Vol. I, pp. 513-531.
[32] Annex "R-6", Docket – Vol. II, pp. 644-656.

In a Resolution dated December 9, 2021,[33] the Court ordered respondents to file their comment to the *Petition for Review* within ten (10) days from notice thereof.

On February 18, 2022, respondents filed their *Comment (to the Petition for Review).*[34]

In a Resolution dated March 22, 2022,[35] the Court gave the parties thirty (30) days to file their respective memoranda.

On May 5, 2022, petitioner filed its Memorandum,[36] while respondents filed their Memorandum[37] *via* registered mail on May 11, 2022, and received by the Court on May 24, 2022.

With the filing of the parties' respective memoranda, the case was submitted for decision on June 1, 2022.

THE ISSUES

Petitioner raised the following issues in its *Petition for Review*:

> A.
> WHETHER [THE COURT *A QUO*] COMMITTED GRIEVIOUS ERROR WHEN IT INTERPRETED THE 10% CAP ON AN LGU's CAPACITY TO INCREASE LBT UNDER SECTION 191 OF THE LGC AS NOT BEING VIOLATED BY THE RESPONDENTS WHEN THEY INCREASED THE LBT RATE IN EXCESS OF 10% OF THE RATE IMPOSED UNDER THE LGC.
>
> B.
> WHETHER PETITIONER IS ENTITLED TO A REFUND OF THE EXCESS LBT THAT RESPONDENT[S] REQUIRED IT TO PAY FOR CALENDAR YEAR 2019 IN THE AMOUNT OF PhP2,051,460.65.
>
> C.
> WHETHER [THE COURT *A QUO*] COMMITTED GRIEVIOUS ERROR WHEN IT DISMISSED THE RTC PETITION ON THE GROUND OF *LITIS PENDENTIA*.

[33] Docket – Vol. I, p. 533.
[34] Docket – Vol. II, pp. 534-688, with annexes.
[35] Docket – Vol. II, p. 692.
[36] Docket – Vol. II, pp. 693-733.
[37] Docket – Vol. II, pp. 764-770.

Petitioner's arguments:[38]

Petitioner submits that the court *a quo*'s interpretation of Section 191 of the LGC contradicts (a) the very text of said Section 191, (b) Article 281[39] of the Implementing Rules and Regulations (IRR) of the LGC, (c) prevailing jurisprudence, (d) interpretation of the Bureau of Local Government Finance (BLGF), (e) the Constitution, and (f) legislative intent.

For petitioner, Section 191 of the LGC and Article 281 of the IRR limit the authority of the LGUs to increase LBT at a maximum of 10% of the tax rate imposed under Section 143 of the LGC. Petitioner argues that there is no indication in Section 191 of the LGC that "such adjustment" means "every adjustment." If so, Congress would have categorically stated it.

Petitioner also claims that the case of *De Lima v. City of Manila* (*De Lima case*)[40] supports its theory that the 10% cap under Section 191 of the LGC is a cap on aggregate adjustments based on the rates provided under the LGC and not the rates provided in the prevailing tax ordinance.

Petitioner adds that the BLGF confirms petitioner's view that aggregate adjustments by the LGU cannot increase more than 10% of the rates fixed under the LGC, *viz.*:

> Based on the above-quoted provisions of Section 191 of the LGC, LGUs shall have the authority to adjust tax rates as "*prescribed [t]herein,*" not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under the said Code. It must be stressed that the phrase "*prescribed herein*" refers to tax rates under Title One, Book II of the LGC and not existing rates of taxes in the local tax code of the LGU concerned.[41]

Hence, petitioner avers that respondents unlawfully required petitioner to pay LBT at a rate of 65% of 1%; respondents are bound to refund the excess LBT that petitioner paid in the amount of ₱2,051,460.65.

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[38] Pars. 28 to 95, Petition for Review, Docket – Vol. I, pp. 18-38.

[39] Art. 281. *Authority to Adjust Rates of Taxes.* — LGUs shall be authorized to adjust the tax rates prescribed in this Rule not oftener than once every five (5) years, but in no case shall such adjustments exceed ten percent (10%) of the rates fixed in this Rules.

[40] G.R. No. 222886, October 17, 2018.

[41] BLGF Opinion dated February 18, 2016.

Petitioner further argues that the court *a quo* misapplied the doctrine of *litis pendentia* because the Second RTC Case it filed with the court *a quo* seeks to preserve its right to claim a refund or tax credit in accordance with Sections 195 and 196 of the LGC, while the First RTC Case seeks the nullity of the 2018 Revenue Code under Section 187 of the LGC. There is no identity of parties, rights asserted, and reliefs prayed for between the two petitions. Petitioner also alleges that a ruling in the First RTC Case will not amount to *res judicata* in the Second RTC Case.

Respondents' arguments:[42]

Respondents argue that the 2018 Revenue Code is well within the bounds of Sections 143 and 191 of the LGC and jurisprudence. Respondents state that the Supreme Court ruled in the case of *De Lima case* that the basis for adjustment would be the prevailing tax rate, to wit:

> On the other hand, were the LGU decides to make such adjustment, the basis for the increase would be the **prevailing tax rate.** ... [*Emphasis supplied*]

Moreover, respondents cite the case of *Mindanao Shopping Corporation v. Duterte (Mindanao Shopping case),*[43] where the Supreme Court elucidated the maximum amounts of adjustment that can be imposed by an LGU, which are based on the prevailing tax rates.

As a result, there is no legal basis for petitioner to be entitled to a refund or tax credit in the amount alleged to be more than the LBT that it paid for the calendar year 2019.

Respondents also claim that petitioner's reliance on a BLGF Opinion is misplaced because the Supreme Court did "not find that BLGF's interpretation of local tax laws to be authoritative and persuasive"[44] since "the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation, real property assessment, and other related matters, among others."[45]

[42] Pars. 18 to 103, Comment (to the Petition for Review), Docket – Vol. II, pp. 537-561.
[43] G.R. No. 211093, June 6, 2017.
[44] *The City of Iloilo v. Smart Communications, Inc.*, G.R. No. 167260, February 27, 2009.
[45] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, G.R. No. 143867, August 22, 2001.

Finally, respondents argue that the elements of *litis pendentia* and forum shopping are present in this case because there is identity of parties or at least such parties that represent the same interests in both actions. Respondents emphasize that a ruling on the claim for refund will not be possible without dwelling on the constitutionality and legality of the 2018 Revenue Code. Regardless of which party is successful, any judgment rendered in either case will amount to *res judicata* in the present petition.

THE COURT'S RULING

The *Petition* is not impressed with merit.

The Court has jurisdiction over the instant petition.

At the outset, the Court needs to determine whether it has jurisdiction over the instant *Petition.*

Petitioner received the assailed Resolution of the RTC on October 26, 2021.[46]

Under Section 3(a), Rule 8[47] of the RRCTA, petitioner had thirty (30) days from receipt of the assailed Resolution on October 26, 2021, or until November 25, 2021, to file a *Petition for Review* before the Court of Tax Appeals (CTA). Petitioner timely filed the instant *Petition for Review* on November 25, 2021.

Having settled that the *Petition* was timely filed, We likewise rule that this Court has the requisite jurisdiction to take cognizance of this *Petition* under Section 3(a)(3), Rule 4[48] of the RRCTA.

We now proceed to the merits of the case.

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[46] Par. 4, Petition for Review, Docket – Vol. I, p. 8.

[47] SEC. 3. *Who May Appeal; Period to File Petition.* — (a) **A party adversely affected** by a decision, ruling or the inaction 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,** … (*Emphasis supplied*).

[48] 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:
(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.

The court a quo did not commit a grave error in interpreting that the 10% cap on the LGU's capacity to increase LBT under Section 191 of the LGC was not violated by respondents.

Petitioner is not entitled to refund the alleged excess LBT paid for the calendar year 2019 in the amount of PhP2,051,460.65.

Petitioner argues that the court *a quo* grievously erred in interpreting Section 191 of the LGC and in upholding respondents' actions. Petitioner insists that Section 191 and Article 281 of the IRR limit the LGU's authority to increase LBT at a rate not exceeding 10% of the rate imposed in Section 143 of the LGC; that the 10% cap under Section 191 is a cap on aggregate adjustments; and the LGU's aggregate adjustments cannot go beyond 10%.

The crux of the controversy boils down on whether the interpretation of the 10% adjustment rate under Section 191 is based on the rates provided under the LGC or the rates provided in the prevailing tax ordinance.

Section 191 of the LGC provides for the LGUs' authority to adjust rates of tax ordinances, *viz.*:

> SEC. 191. *Authority of Local Government Units to Adjust Rates of Tax ordinances.* - Local units shall have the authority to adjust the tax rates as prescribed herein not oftener than **once every five (5) years**, but in no case shall such adjustment exceed **ten percent (10%)** of the rates fixed under this Code. [*Emphasis supplied*]

Given the foregoing, LGUs may adjust tax rates to not more than ten percent (10%) of the rates fixed under the LGC and no more frequently than once every five (5) years.[49]

[49] *De Lima v. City of Manila*, G.R. No. 222886. October 17, 2018.

In the *Mindanao Shopping case,*[50] the Supreme Court ruled that the application of Section 191 requires the concurrence of two elements, *viz*:

1. There is a tax ordinance that already imposes a tax in accordance with the provisions of the LGC; and

2. There is a second tax ordinance that made adjustment on the tax rate fixed by the first tax ordinance.

The Court finds the presence of the said elements in the present case.

As to the *first element,* respondent San Manuel enacted the first tax ordinance, *i.e.*, the 1994 Revenue Code, to implement the provisions of the LGC.

Anent the *second element,* respondent San Manuel enacted the second tax ordinance, *i.e.*, the 2004 Revenue Code, adjusting the LBT rate in the first tax ordinance ten (10) years later. Then came respondent San Manuel's third tax ordinance, *i.e.*, the 2012 Revenue Code, and the assailed fourth tax ordinance, *i.e.*, the 2018 Revenue Code, adjusting the LBT rates fixed in the second and third tax ordinances, respectively.

Petitioner did not question respondent San Manuel's authority to adjust the LBT rate. However, it argues that a plain and straightforward reading of Section 191 shows that the cumulative or aggregate adjustment to the rates must not exceed 10% of the rates fixed in the LGC.[51]

Petitioner insists that respondent San Manuel exceeded the maximum adjustment rate under Section 191, which purports to be <u>55% of 1%</u> of gross sales or receipts,[52] and went beyond its delegated power to tax when it adjusted the LBT to <u>65% of 1%</u> of gross sales or receipts under Section 2A.02(b) and (e) of the assailed 2018 Revenue Code.[53] Thus, it filed with respondents a written claim for refund of excess LBT payment for the calendar year 2019 in the amount of PhP2,051,460.65, representing the difference between the rate of <u>65% of 1%</u> and the rate of <u>55% of 1%</u> of its gross sales which it alleged to be the

[50] G.R. No. 211093, June 6, 2017.
[51] Par. 32, Memorandum for Petitioner, Docket -Vol. II, pp. 704-705; Par. 32, Petition for Review, Docket -Vol. I, p. 19.
[52] *Id.*
[53] Pars.33-34, Memorandum for Petitioner, Docket -Vol. II, p.705; Par. 32, Petition for Review, Docket -Vol. I, p. 19.

proper and lawful LBT rate that respondents may impose on local taxpayers.[54]

Respondents counter that the pronouncements of the Supreme Court in the *De Lima* and *Mindanao Shopping cases* would negate the allegation of petitioner that the adjustment referred to in Section 191 is a cumulative or aggregate adjustment of the tax rates and that the adjustment be reckoned on the rates fixed under the LGC.[55]

Respondents further counter that:[56]

> 52. Moreover, if we follow the deductions of the Petitioner, on cumulative or aggregate adjustment, there will only be a total increase of 10% perpetually or forever. The words ***"not oftener than once every five (5) years"*** will be rendered absurd or nugatory since if the entire 10% increase is exhausted in one adjustment, there will no longer be adjustments for the next five, ten, or twenty years. With all due respect, the interpretation favored by the Petitioner runs counter to the very principle of autonomy, which is the essence of the passage of the Local Government Code.
>
> 53. In addition, emphasis must be given to the provision of the LGC, which is worded in this wise, "but in no case shall such adjustment exceed ten percent (10%) xxx". The word "adjustment" is use in singular tense. Meaning, the 10% cap applies only in one single adjustment or applies to each adjustment not oftener than once every five years, and not the accumulated or totality of adjustments/increases.
>
> 54. Further, if we stick to these propositions of the petitioner, then the rates of taxes will not coincide with the changes in the circumstances or the economy brought about by the passage of time. The rates of taxes will surely be left behind, stagnant so to speak and will not be of help to the government or to the development of the State or the local government unit. This, logically, is not the intention of the lawmakers, taking into account that taxes are the lifeblood of the government. The title itself of Section 191 of the LGC is a confirmation of the position of the LGU that the rates in the tax ordinance must be adjusted not oftener than once every five years. Otherwise, the statement would be that, the rates in the tax ordinance must be adjusted only once, not earlier than five (5) years after the effectivity of this Code.
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> ... ...

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[54] Par. 11, Memorandum for Petitioner, Docket – Vol. II, p. 697; Petition for Review, Docket – Vol. I, p. 12.
[55] Pars. 50-58, Memorandum (for the Respondents), Docket – Vol. II, pp. 748-751.
[56] *Id.*

> 58. From the foregoing, the 2018 Revenue Ordinance did not violate any of the limitations imposed by law or by the LGC itself as to its enactment and enforceability. [*Emphasis supplied*]

We find merit in respondents' arguments.

In the *De Lima case,*[57] the Supreme Court explicitly declared that the option to increase the tax rates under the LGC arises every five (5) years. When the LGU decides to take that option, the basis for the adjustment or increase would be the *prevailing tax rate, viz.*:

> ...The option to increase the tax rates under the LGC arises **every five (5) years** reckoned from the enactment of the ordinance sought to be adjusted. The decision of whether or not to exercise such option falls upon the LGU, through their respective *sanggunian* taking into consideration the status of each industry balanced with the needs of their respective territory.
>
> In the event that the LGU fails to make such adjustment within the five (5)-year period, the option to increase the prevailing ordinance remains open until such right is exercised, at which point, the five (5)-year period of limitation starts to run again.
>
> On the other hand, were the LGU decides to make such adjustment, **the basis for the increase would be the <u>prevailing tax rate</u>**. ... [*Emphasis supplied*]

In the *Mindanao Shopping case* cited in the *De Lima case,* the Supreme Court clarified that the maximum 10% adjustment under Section 191 of the LGC is based on the ***adjusted tax rate***:

> ... Thus, dictated by justice and fairness, in its initial attempt to implement the LGC, Davao City should, at the very least, **start with 1% (the minimum tax rate) as provided under Section 143 (d) of the LGC.** Considering that 11 years had already elapsed from its implementing in 2006, Davao City could adjust its tax rate twice now which will make its **<u>adjusted tax rate</u>** for retailers pegged at 1.2%, in accordance with Section 191 of the LGC. **To <u>clarify</u>, from 2006-2011 (first 5 years), the initial tax rate should start with <u>*1%*</u>;**[58] **from 2011-2016 (next 5 years) - <u>*1.1%*</u>; thus, for the years**

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[57] G.R. No. 222886, October 17, 2018.
[58] Implementing the 1% rate imposed in the LGC.

> **2017-2021, the tax adjustment is *1.21%.***[59] However, for this purpose, Davao City should pass an ordinance to give effect to the above-discussed tax adjustments. [*Emphasis supplied*]

The ruling that the tax adjustments must be based on the *adjusted or prevailing tax rate* was also shared and highlighted by Justice Marvic Leonen in his Separate Concurring Opinion in *Mindanao Shopping case, viz.:*

> However, I agree that Davao City, in its initial attempt to implement the tax rates under the Local Government Code of 1991 (Local Government Code), can impose the **minimum tax rate of one percent (1%)** on retailers reckoned from 2006 to 2011. I also agree that Davao City may adjust the tax rate on a **staggered basis** due to the lapse of a considerable length of time from the enactment of its new tax ordinance. **Hence, the tax rate on retailers should be <u>1.1%</u> from taxable years 2011 to 2016 and <u>1.21 %</u> for taxable years 2017 to 2021, in accordance with the limitation under Section 191 of the Local Government Code.**
>
> ... ...
>
> **ACCORDINGLY,** I concur in the result. Davao City may impose a tax rate of one percent (1%) on retailers from taxable years 2006 to 2011. Davao City may then adjust the tax rate on retailers on a staggered basis from <u>***1 % to 1.1 %***</u> for taxable years 2011 to 2016 and from <u>***1.1 % to 1.21 %***</u> for taxable years 2017 to 2021. [*Emphasis supplied*]

In the above case, the 10% adjustment was initially applied to the <u>*1%*</u> minimum tax rate provided under Section 143 (d) of the LGC to get the adjusted tax rate of <u>*1.1%*</u> for taxable years 2011 to 2016. After that, the 10% cap was applied to the adjusted tax rate of <u>*1.1 %*</u>, which is the prevailing rate, to obtain the adjusted tax rate of <u>*1.21 %*</u> for taxable years 2017 to 2021. Thus:

> 10% of <u>**1% (initial tax rate)**</u> = .1% (maximum adjustment rate)
> .1% (maximum adjustment rate) + 1% (prevailing LBT rate)
> **= 1.1% adjusted tax rate (2011 to 2016)**
>
> 10% of <u>**1.1% (prevailing tax rate)**</u> = .11% (maximum adjustment rate)
> .11% (maximum adjustment rate) + 1.1% (prevailing LBT rate)
> **= 1.21% adjusted tax rate (2017 to 2021)**

[59] 10% of 1.1% (prevailing LBT rate) = .11% (maximum rate of adjustment); .11% (maximum rate of adjustment) + 1.1% (prevailing LBT rate) = 1.21%

It must be emphasized that the Supreme Court computed the *1.21% adjusted rate* based on the prevailing tax rate of *1.1%* and not on the 1% minimum rate fixed under Section 143 (d) of the LGC.

Given the foregoing jurisprudential pronouncement and the 10% threshold under Section 191, respondent San Manuel could have increased the LBT rate to 66% of 1% of gross sales or receipts. Still, it only imposed 65% of 1%, to wit:

Revenue Code/Ordinance	**Prevailing LBT rate**	**10% maximum allowable rate of adjustment (Sec. 191 of LGC)**	**Total maximum LBT rate**	**Actual LBT rate imposed**
LGC of 1991	50%	N/A	50%	50%
1994 Revenue Code	50%	N/A	50%	50%
2004 Revenue Code	50%	5%	55%	55%
2012 Revenue Code	55%	5.5%	60.5%	60%
2018 Revenue Code	**60%**	**6%**	**66%**	**65%**

Indeed, respondent San Manuel did not violate Section 191 when it passed Section 2A.02 (b) and (e) of the 2018 Revenue Code, increasing the LBT rate from *60% of 1%* to *65% of 1%* in excess of PhP2,000,000.00 gross sales or receipts on "wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature" and on "contractors, and other independent contractors," based on the *prevailing or adjusted tax rate.*

Verily, the power to tax is the most effective instrument to raise needed revenues to finance and support myriad activities of the LGUs for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people.[60] And so, it will be difficult for respondents to enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them effective partners in the attainment of national goals[61] if they could increase only up to 10% of the tax rates under the LGC during its entire existence.

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[60] *National Power Corporation v. City of Cabanatuan*, G.R. No. 149110, April 9, 2003.
[61] LGC, SEC. 2. *Declaration of Policy.* — (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals.

Prescinding from the foregoing discussions, the Court finds petitioner not entitled to its claim for refund of the alleged excess LBT payment for the calendar year 2019 in the amount of PhP2,051,460.65.

The court a quo did not err in dismissing petitioner's case due to litis pendentia.

The court *a quo* dismissed the case as it found that petitioner's filing of the two cases constituted *litis pendentia* on the ground that there is identity of parties and reliefs being prayed for in the two cases. The court *a quo* found that petitioner did not include the payment of tax refund or issuance of tax credit in the First RTC Case as a relief. Still, it could have added the same as a relief since the return of excess tax paid is the natural consequence of the nullity of Sections 2A.02 (b) and (e) of the 2018 Revenue Code.

Petitioner contends that the court *a quo* misapplied the doctrine of *litis pendentia* as it filed the Second RTC Case with the court *a quo* to preserve its right to claim a refund or tax credit. When its First RTC Case was filed under Section 187 of the LGC, it had not yet paid any LBT corresponding to its subject claim and prayed only for the nullity of the 2018 Revenue Code and did not pray for any refund or tax credit.

We sustain the court *a quo*'s finding.

After carefully examining the arguments of the parties and the pertinent jurisprudence, the Court upholds the ruling of the court *a quo* dismissing the case on the ground of *litis pendentia.*

The doctrine of *litis pendentia* was explained by the Supreme Court in *Commissioner of Internal Revenue v. Norkis Trading Co., Inc.*,[62] *viz.*:

> The Court takes *litis pendentia* literally to mean "a pending suit." It may be invoked to dismiss *another pending action* between the same parties involving the same cause of action because "the *second action* becomes unnecessary and vexatious." The dismissal of any one of the two pending actions would logically lead to the cessation of *litis pendentia.*

[62] G.R. Nos. 251306-07, June 16, 2021.

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When the parties finally confine themselves to *one suit* in litigating similar issues between them, the former evil caused by a multiplicity of suits ceases to exist.

The oft-cited case of *Yap v. Chua*[63] laid down the requisites of *litis pendentia*, which are:

1. The identity of parties, or at least such as representing the same interests in both actions;

2. The identity of rights asserted and relief prayed for, the relief being founded on the same facts; and

3. The identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

All these requisites are present in this case.

First, it is undisputed that the principal parties in the two (2) civil actions are the same, *i.e.*, petitioner San Roque Power Corp. and respondent Municipality of San Manuel, to wit:

First RTC Case - Civil Case No. U-11239
Branch 46, RTC Urdaneta City, Pangasinan

San Roque Power Corporation, *petitioner,* v. Office of the Secretary of Justice and Municipality of San Manuel, Pangasinan, *respondents.*

For Annulment under Section 187 of the LGC of Section 2A.02(b) and (e) of the *2018 Revenue Code*

Second RTC Case - Civil Case No. U-11272
Branch 45, RTC Urdaneta City, Pangasinan

San Roque Power Corporation, *petitioner,* v. Municipality of San Manuel, Pangasinan, and Elizabeth T. Corpuz in her capacity as Municipal Treasurer of San Manuel, *respondents.*

For Appeal from the inaction of the Municipal Treasurer(on San Roque's written claim for refund of excess LBT payment for 2019 in the amount of Php2,051,460.65 arising from the enactment of Section 2A.02(b) and (e) of the 2018 Revenue Code increasing the LBT rate from 60% of 1% to 65% of 1%)

The Court agrees with the court *a quo*'s finding that there exists an *identity of parties* in both RTC cases despite the inclusion of the DOJ in the First RTC case as a nominal party and Elizabeth T. Corpuz as the Municipal Treasurer in the

[63] G.R. No. 186730, June 13, 2012.

Second RTC case. It is well-settled that *litis pendentia* requires only *substantial*, and not absolute, identity of parties.[64] There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case.[65] The filing of the First and Second RTC cases was made to disempower respondents from collecting the adjusted LBT rates per the 2018 Revenue Code.

Second, there exists an *identity of rights* asserted and reliefs prayed for in the two cases since the reliefs sought are founded on the same facts and contained identical arguments.

As aptly pointed out in the *City of Caloocan v. Court of Appeals et al.*,[66] there is identity of causes of action if the *same evidence* will sustain the second action. The principle applies even if the relief sought in the two cases differs.[67] If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not.[68]

Here, the relief prayed for by petitioner in the First RTC Case is to annul Section 2A.02(b) and (e) of the 2018 Revenue Code,[69] while in the Second RTC Case, which was elevated to this Court by way of Petition for Review, petitioner's prayer is that it be refunded or be issued a tax credit.[70] Despite the difference in the relief sought, a circumspect reading of the petitions in the First and Second RTC cases reveals that they contained the same allegations and arguments reproduced *verbatim*.[71] More, in the body of the petition filed in the Second RTC Case, which petitioner insists is a claim for refund or tax credit, petitioner also seeks to "*annul* Sections 2A.02 (b) and (e) of the 2018 Revenue Code" allegedly because the rates imposed by respondents are void, excessive, and unlawful.[72]

We quote with approval the finding of the court *a quo* on this point:

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[64] *Guaranteed Hotels, Inc. v. Baltao*, G. R. No. 164338, January 17, 2005.
[65] *Id.*
[66] G.R. No. 145004, May 3, 2006.
[67] *Id.*, citing *Korea Exchange Bank v. Gonzales*, G.R. Nos. 142286-87, April 15, 2005.
[68] *Dy v. Yu*, G.R. 202632, July 8, 2015, citing *Benedicto* v. *Lacson*. G.R. No. 141508, May 5, 2010.
[69] Docket – Vol. I, p. 359; Annex "R-7", Petition (with Application for the Issuance of a Writ of Preliminary Injunction), Docket – Vol. II, p. 682.
[70] Annex "L", Petition, Docket – Vol. I, p. 399.
[71] Pars. 22-35, 37-44, Docket – Vol. I, pp. 346-356 & Docket – Vol. II, pp. 669-679, vis-à-vis pars. 19-40, Docket – Vol. I, pp. 388-397.
[72] Par. 40, Annex "L", Petition, Docket – Vol. I, p. 397.

> Quite interestingly, **[petitioner] is careful not to include as a relief in the present case the declaration of nullity of specific provisions of [the 2018 Revenue Code], albeit in the body of its petition, it clearly assails the validity of the said ordinance**; thus, its prayer for a tax refund or tax credit. Verily, **the court cannot grant or deny [petitioner]'s prayer for a tax refund or tax credit without ruling on the validity of Section 2A.02(b) of [the 2018 Revenue Code]**.[73] [*Emphasis supplied*]

Third, it is worth reiterating that the petitions in the First and Second RTC cases contained the same allegations and arguments reproduced *verbatim*. It follows that the same facts and evidence are necessary to resolve both causes of action.

Pending resolution in the First RTC Case is the constitutionality and validity of the 2018 Revenue Code; on the other hand, petitioner's claim for refund or tax credit in the Second RTC Case is hinged primarily on the alleged unconstitutionality and invalidity of Section 2A.02(b) and (e) of 2018 Revenue Code.

Hence, as correctly found by the court *a quo*, the courts must rule on the validity of specific sections of the 2018 Revenue Code in both cases. Consequently, a decision in one case will amount to *res adjudicata* in the other.

Considering that the elements of *litis pendentia* are present, the conclusion is that *forum shopping* was committed.[74]

Petitioner is guilty of forum shopping.

There is *forum shopping* "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the *same transactions and the same essential facts and circumstances,* and all raising substantially the same issues either pending in or already resolved adversely by some other court."[75]

The test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present or whether

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[73] Decision dated May 20, 2021, Docket – Vol. I, p. 52.
[74] *Dy v. Yu*, G.R. 202632, July 8, 2015.
[75] *Daswani v. Banco De Oro Universal Bank*, G.R. No. 190983, July 29, 2015, citing *Heirs of Sotto v. Palicte*, G.R. No. 159691, February 17, 2014.

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a final judgment in one case amounts to *res judicata* in another.[76] Otherwise stated, the test for determining forum shopping is whether, in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[92] If a situation of *litis pendentia* or *res judicata* arises by virtue of a party's commencement of a judicial remedy identical to one which already exists (either pending or already resolved), then *forum shopping* is committed.

Having established that the elements of *litis pendentia* are present, We rule that petitioner is guilty of *forum shopping.* Hence, the court a *quo*'s dismissal of this case is warranted under Section 5, Rule 7[77] of the Revised Rules of Court.

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

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

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[76] *The Heirs of Mampo v. Morada*, G.R. No. 214526, November 03, 2020; *Yap v. Chua*, G.R. No. 186730, June 13, 2012.
[77] SEC. 5. *Certification against forum shopping.* — ... ...
... If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice