REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

CITY TREASURER OF MANILA,
Petitioner,

- versus -

METROPOLITAN BANK AND TRUST COMPANY,
Respondent.

CTA AC NO. 97

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

MAR 2 5 2013

4:20 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

This is an appeal pursuant to Section 3(a)(3) of Rule 4 of the Revised Rules of the Court of Tax Appeals from the Decision dated June 6, 2012 and the Order dated July 27, 2012 of Presiding Judge Liwliwa S. Hidalgo-Bucu of Branch 34 of the Regional Trial Court (RTC) of Manila in Civil Case No. 09-120876 entitled "Metropolitan Bank and Trust Company vs. City Treasurer of Manila".

Petitioner Marisa C. de Guzman (petitioner) filed this case in her capacity as the City Treasurer of the City of Manila, with office address at the Ground Floor, Manila City Hall, Taft Avenue, Manila.[1]

On the other hand, respondent Metropolitan Bank and Trust Company is a domestic corporation duly organized under the laws of the Philippines, with principal office address at Metrobank Plaza, Sen. Gil Puyat Avenue, Makati City.[2]

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[1] Par. 2, The Parties, Petition for Review, docket, p. 10.
[2] Par. 1, Parties, Petition for Refund, RTC Records, p. 1.

Respondent claims the refund of its erroneous payment of business taxes in the City of Manila in the year 2007. In violation of Republic Act (RA) No. 7160 and the rule against double taxation, the City of Manila collected business taxes on the basis of both Sections 21 and 19 of the Manila Revenue Code (MRC). Section 21(a) imposes tax at the rate of fifty percent (50%) of one percent (1%) on the gross sales or receipts of persons who sell goods and services in the course of trade or business, among others, subject to excise tax, value-added tax (VAT) or percentage tax under the MRC. Section 19 imposes a tax of thirty percent (30%) of 1% on the gross receipts of banks and other financial institutions, derived from interest, commission and discounts from lending activities as well as other income/receipts. Being a bank and a financial institution, petitioner is taxed pursuant to Section 19 of the MRC and as a business entity under Section 21, when in fact, they essentially relate to the same business.[3]

The factual antecedents are based on the records and the Decision of the Court *a quo*.[4]

On February 7, 2007, respondent wrote a letter addressed to Ms. Liberty Toledo questioning the tax assessment of the City of Manila to respondent under Section 21 of the MRC, copy of which was received by the Office of the City Treasurer of Manila on the same date.[5]

On February 12, 2007, the City Treasurer of Manila replied through a letter denying the protest to the tax assessment.[6]

After receiving the letter, respondent again wrote a letter dated February 16, 2007, reiterating its explanation why it should not be taxed under Section 21 of the MRC.[7]

In reply, the City Treasurer of Manila required respondent to submit audited financial statements of individual branches, which respondent complied with by submitting the Statement of Gross

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[3] Annex "B", Petition for Review, docket, pp. 22-23.
[4] RTC Records, pp. 568-576; docket, pp. 22-30.
[5] Annex "B", Petition for Review, docket, p. 25.
[6] *Id.*
[7] *Id.*

Receipts for Banks and Other Banking Institution, attached in its letter dated April 30, 2007.[8]

On February 16, 2007, respondent paid business taxes for the year 2007 under Sections 19 and 21 of the MRC for its business and offices located and registered in the City of Manila.[9]

On July 30, 2007, the City Treasurer received a letter dated July 2, 2007 from respondent, which allegedly constitutes respondent's formal written claim for refund of the purported excess payment of business taxes for the year 2007 on the basis that herein petitioner unlawfully collected the business taxes under Section 21 of the MRC, amounting to double taxation.[10]

Through a letter dated January 5, 2007, respondent followed up its request but petitioner did not reply.[11]

On February 16, 2009, having received no reply from petitioner on its claim for tax refund and the two-year prescriptive period was about to expire, respondent filed a Petition for Refund with the RTC of Manila.[12]

On February 24, 2009, the City Treasurer was served with summons, together with a copy of the original Petition.[13]

On March 17, 2009, the City Treasurer filed her Answer with Motion to Dismiss. The City Treasurer alleged, by way of special and affirmative defenses, that petitioner has not exhausted administrative remedies; hence, it has no cause of action against it and that the filing of the case is premature which necessitates the immediate dismissal thereof. Also, respondent's claim for refund dated July 2, 2007, on the alleged excess payment of business taxes with the City Treasurer of Manila in the amount of P10,771,602.92 includes claim for the year 2005 to 2007 amounting to P32,095,908.89. Thus, it is not true that it filed a claim for refund amounting to P10,771,602.92. When Mayor Alfredo Lim assumed the post, he immediately ordered, thru a Memorandum dated July 16, 2007, the immediate stoppage of

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[8] *Id.*
[9] *Id.*
[10] *Id.*, pp. 25-26.
[11] *Id.*, p. 26.
[12] *Id.*, p. 26.
[13] *Id.*, p. 23.

the implementation of Section 21 of the MRC, as it was declared null and void by the Supreme Court and instead, implemented Ordinance No. 7794. Had respondent exhausted all available administrative remedies, it should have requested the new administration for tax refund or credit and this unnecessary case should not have been filed. Thus, the case should be dismissed and the claim for refund or tax credit must be filed with the City Treasurer's Office, which is now processing all claims for tax refund or credit on account of the voided Ordinance No. 7988, as amended by Ordinance No. 8011. Having failed to exhaust the administrative remedies pertinent to its claim for refund amounting to P10,771,602.92, the instant case should be dismissed. There is no double taxation as Section 21 of the voided tax ordinance is imposed on respondent's clients and since the latter is covered by excise tax, VAT or percentage tax under the MRC, it is liable to collect the tax from its customers and remit the same to the City Government. Failure of which, it shall pay the corresponding amount of the tax based on the gross sales.[14]

On May 6, 2009, respondent filed its Opposition to Answer with Motion to Dismiss, traversing the grounds raised by the City Treasurer for the dismissal of the case. Respondent contended that its cause of action is based on Section 196 of the Local Government Code (LGC) of 1991. Respondent filed its claim for refund of excess payment in the amount of P10,771,602.92 in a letter dated July 2, 2007. Considering the City Treasurer's inaction on its claim and the two-year prescriptive period was about to expire, respondent has no other recourse but to file the petition. Respondent followed up and reiterated its request for refund in its Letter dated January 5, 2009, but to no avail.[15]

In its Order dated July 14, 2009, the trial court denied the City Treasurer's motion to dismiss, relying on Section 196 of the Local Government Code.[16]

After the issues have been joined, the case was set for pre-trial conference. It was during this stage that petitioner sought the amendment of its Petition to rectify the amount of excess payment being claimed to be refunded. Despite the opposition interposed by the City Treasurer, the Court granted respondent's motion in the Order dated January 20, 2010 and the Amended Petition was

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[14] *Id.*, p. 23.
[15] *Id.*, pp. 23-24.
[16] *Id.*, p. 24.

admitted. The City Treasurer, in her Comment/Opposition, manifested that she will not file an answer to the Amended Petition. The case was referred to the Philippine Mediation Center (PMC) unit for possible mediation but the same was not successful, per Mediator's Report dated March 29, 2010. At the scheduled pre-trial conference on June 29, 2010, both parties agreed to terminate the same and raised the following issues:

> "1. Whether or not plaintiff[17] is entitled to its refund of the paid taxes to the defendant[18] in the amount of Php10,771,602.92.
>
> 2. Whether or not there is a valid demand for the payment of the same."[19]

On June 6, 2012, the trial court decided in favor of herein respondent. It ratiocinated that there was no dispute that respondent paid business taxes for taxable year 2007 to the City Treasurer's Office of Manila, under Sections 19 and 21 of the Manila Revenue Code, but contested the payment of taxes under Section 21 on the ground of double taxation. Also, respondent was able to sufficiently establish its entitlement to the refund of taxes it previously paid with the City Treasurer's Office of Manila and to prove that there was also a written demand/claim for tax refund by respondent. The court *a quo* likewise found that herein respondent's claim is supposedly P10,870,791.81 instead of P10,771,602.92. Furthermore, under the principle of *solutio indebiti*[20] and citing the case of *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*[21], the trial court ordered the City Treasurer to return or refund the taxes erroneously/illegally collected from respondent. The dispositive portion of the lower court's decision reads:

> "***WHEREFORE***, in view of all the foregoing, judgment is hereby rendered in favor of petitioner Metropolitan Bank and Trust Company and against respondent City Treasurer of Manila ordering the latter to refund to the former the amount of ***TEN MILLION EIGHT HUNDRED SEVENTY THOUSAND SEVEN***

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[17] Herein respondent.
[18] Herein petitioner.
[19] *Id.*, p. 24.
[20] Articles 2154-2155 of the New Civil Code.
[21] G.R. No. 167274-75, July 21, 2008.

HUNDRED NINETY TWO PESOS AND SEVENTY TWO CENTAVOS (Php10,870,792.72) representing the unlawfully collected business taxes under Section 21 of the Manila Revenue Code.

SO ORDERED."[22]

On June 25, 2012, the City Treasurer moved[23] for the reconsideration of the trial court's Decision and respondent filed its Comment/Opposition[24] to the City Treasurer's motion.

The trial court, in its Order[25] dated July 27, 2012, denied the City Treasurer's Motion for Reconsideration and found that the grounds relied upon by the City Treasurer are mere reiteration of the matters already considered and passed upon in the assailed Decision.

On September 19, 2012, the City Treasurer of Manila filed this Petition for Review.[26]

On October 22, 2012, respondent filed its Comment/Opposition[27] to petitioner's Petition for Review.

In support of the assigned errors, petitioner argues that the trial court should have dismissed the case for respondent's failure to observe a condition *sine qua non* before resort to court was made and the trial court erred in finding that there was a valid demand by respondent. Petitioner posits that it was very clear that the demand letter dated July 2, 2007 sent by respondent to herein petitioner pertains to claims for 2005, 2006, and 2007 in the amounts of P10,551,994.84, P10,772,311.13, and P10,771,602.92, respectively, or in the total amount of P32,095,908.89. Petitioner emphasizes on the amount of P10,771,602.92 for the year 2007, pointing out that respondent later claims that the amount of claim for 2007 should be amended as **P10,870,792.72**. Petitioner also points out that the sole witness, Agnes Lista, testified that respondent's claim was in the amount of **P10,870,791.80**. Petitioner asserts that the said amount is different from the claim contained in the demand letter

[22] Annex "B", Petition for Review, docket, p. 30.
[23] RTC Records, pp. 579-582.
[24] RTC Records, pp. 585-598.
[25] Annex "A", Petition for Review, docket, p. 21.
[26] Docket, pp. 10-18.
[27] Docket, pp. 119-133.

(**P10,771,602.92**) or that stated in the Amended Petition for Refund in the amount of **P10,870,792.72**. Petitioner alleges that she did not receive any demand letter or claim for refund for either of the amounts claimed by respondent. Petitioner bases its arguments on Section 196 of the Local Government Code, which provides that failure to comply with the requisite demand is fatal to the cause of respondent.

Respondent, on the other hand, argues that while there is a discrepancy in the amounts pertaining to taxable year 2007 stated in the demand letter and which was proven during trial, this does not negate the fact that a written claim for refund for the business taxes paid for taxable year 2007 was sent to and received by the Office of the City of Treasurer on July 30, 2007. And the fact of receipt was even admitted by petitioner.

Petitioner also avers that the trial court erred in allowing the amendment of the Petition for Refund pursuant to Section 2 of Rule 10 of the Rules of Court.

Respondent however contends that the Amended Petition for Refund was filed by reason of oversight, mistake and human frailty in view of the mistakes in some of the amounts of the taxes alleged to have been paid. Respondent cited the case of *Royal Cargo Corporation vs. DFS Sports Unlimited, Inc.*[28], where the Supreme Court held that when evidence is offered on a matter not alleged in the pleadings, the court may admit it even against the objection of the adverse party, where the latter fails to satisfy the court that the admission of the evidence would prejudice him in maintaining his defense upon the merits, and the court may grant him continuance to enable him to meet the new situation created by the evidence.[29]

Finally, petitioner argues that the court *a quo* erred in ordering the refund of P10,870,792.72, which is the amount indicated in the Amended Petition for Refund, despite the fact that respondent's sole witness testified that the amount being claimed is P10,870,791.80.

In the Court Resolution[30] dated January 8, 2013, this case was submitted for decision considering that respondent filed its

[28] G.R. No. 158621, December 10, 2008.
[29] Docket, p. 126.
[30] Docket, p. 167.

Memorandum[31] on December 20, 2012 and that petitioner did not file her Memorandum based on the Report[32] dated January 4, 2013 of the Records Division.

Petitioner raised the following assignment of errors for this Court's resolution:

> "i. The Honorable court a quo erred in its failure to dismiss the case for failure to observe condition sine qua non before resort to court is made.
>
> ii. The Honorable Court erred in finding that there was a valid demand by the respondent.
>
> iii. The Honorable Court a quo erred in allowing the amendment of the petition.
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> iv. The Honorable Court a quo erred in ordering the refund of P10,870,792.72 which is the amount indicated in the Amended Petition, despite the fact that respondent's sole witness testified that the amount being claimed is P10,870,791.80."[33]

Before delving into the issues raised, and in order to put this case in proper perspective, this Court reckons it appropriate to revisit the Supreme Court's Decisions in *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, et al.*[34] and in *The City of Manila, et al. vs. Coca-Cola Bottlers Philippines, Inc.*[35]

In *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, et al.*[36], the Highest Tribunal affirmed the Department of Justice's (DOJ) Resolution dated July 5, 2001 in declaring Tax Ordinance No. 8011 null and void and without legal effect. The pertinent parts of the Decision are as follows:

[31] Docket, pp. 145-165.
[32] Docket, p. 166.
[33] Assignment of Errors, Petition for Review, docket, p. 13.
[34] G.R. No. 156252, June 27, 2006.
[35] G.R. No. 181845, August 4, 2009.
[36] G.R. No. 156252, June 27, 2006.

"On 25 February 2000, the City Mayor of Manila approved Tax Ordinance No. 7988, otherwise known as 'Revised Revenue Code of the City of Manila' repealing Tax Ordinance No. 7794 entitled, 'Revenue Code of the City of Manila.' Tax Ordinance No. 7988 amended certain sections of Tax Ordinance No. 7794 by increasing the tax rates applicable to certain establishments operating within the territorial jurisdiction of the City of Manila, including herein petitioner.

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On 17 August 2000, then DOJ Secretary Artemio G. Tuquero issued a Resolution declaring Tax Ordinance No. 7988 null and void and without legal effect, xxx

xxx xxx xxx

During the pendency of the said case, the City Mayor of Manila approved on 22 February 2001 Tax Ordinance No. 8011 entitled, 'An Ordinance Amending Certain Sections of Ordinance No. 7988'. Said tax ordinance was again challenged by petitioner before the DOJ through a Petition questioning the legality of the aforementioned tax ordinance on the grounds that (1) said tax ordinance amends a tax ordinance previously declared null and void and without legal effect by the DOJ; and (2) said tax ordinance was likewise not published upon its approval in accordance with Section 188 of the Local Government Code of 1991.

xxx xxx xxx

It is undisputed from the facts of the case that Tax Ordinance No. 7988 has already been declared by the DOJ Secretary, in its Order, dated 17 August 2000, as null and void and without legal effect due to respondents' failure to satisfy the requirement that said ordinance be published for three consecutive days as required by law. Neither is there quibbling on the fact that the said Order of the DOJ was never appealed by the City of Manila, thus, it had attained finality after the lapse of the period to appeal.

Furthermore, the RTC of Manila, Branch 21, in its Decision dated 28 November 2001, reiterated the findings of the DOJ Secretary that respondents failed to follow the procedure in the enactment of tax measures as mandated by Section 188 of the Local Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. From the foregoing, it is evident that Tax Ordinance No. 7988 is null and void as said ordinance was published only for one day in the 22 May 2000 issue of the Philippine Post in contravention of the unmistakable directive of the Local Government Code of 1991.

Despite the nullity of Tax Ordinance No. 7988, the court *a quo*, in the assailed Order, dated 8 May 2002, went on to dismiss petitioner's case on the force of the enactment of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988. Significantly, said amending ordinance was likewise declared null and void by the DOJ Secretary in a Resolution, dated 5 July 2001, elucidating that '*[I]nstead of amending Ordinance No. 7988, [herein] respondent should have enacted another tax measure which strictly complies with the requirements of law, both procedural and substantive.* ***The passage of the assailed ordinance did not have the effect of curing the defects of Ordinance No. 7988 which, any way, does not legally exist.*** ' Said Resolution of the DOJ Secretary had, as well, attained finality by virtue of the dismissal with finality by this Court of respondents' Petition for Review on *Certiorari* in G.R. No. 157490 assailing the dismissal by the RTC of Manila, Branch 17, of its appeal due to lack of jurisdiction in its Order, dated 11 August 2003.

Based on the foregoing, this Court must reverse the Order of the RTC of Manila, Branch 21, dismissing petitioner's case as there is no basis in law for such dismissal. The amending law, having been declared as null and void, in legal contemplation, therefore, does not exist. Furthermore, even if Tax Ordinance No. 8011 was

> not declared null and void, the trial court should not have dismissed the case on the reason that said tax ordinance had already amended Tax Ordinance No. 7988. As held by this Court in the case of *People v. Lim*,[12] if an order or law sought to be amended is invalid, then it does not legally exist, there should be no occasion or need to amend it."[13]

However, in the case of *The City of Manila, et al. vs. Coca-Cola Bottlers Philippines, Inc.*[37], Coca-Cola Bottlers Philippines was once again assessed on the basis of Section 21 of Tax Ordinance No. 7794, as amended, before the Supreme Court could declare Tax Ordinance Nos. 7988 and 8011 null and void. Respondent filed a protest with therein petitioner on the ground that the said assessment amounted to double taxation, as Coca-Cola Bottlers Philippines was taxed twice, *i.e.*, under Sections 14 and 21 of Tax Ordinance No. 7794, as amended by Tax Ordinance Nos. 7988 and 8011. The High Court held that there was double taxation and denied the City of Manila's petition in the following manner:

> "The Court easily infers from the foregoing circumstances that petitioners themselves believed that prior to Tax Ordinance No. 7988 and Tax Ordinance No. 8011, respondent was exempt from the local business tax under Section 21 of Tax Ordinance No. 7794. Hence, petitioners had to wait for the deletion of the exempting *proviso* in Section 21 of Tax Ordinance No. 7794 by Tax Ordinance No. 7988 and Tax Ordinance No. 8011 before they assessed respondent for the local business tax under said section. Yet, with the pronouncement by this Court in the *Coca-Cola* case that Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were null and void and without legal effect, then Section 21 of Tax Ordinance No. 7794, as it has been previously worded, with its exempting *proviso*, is back in effect. Accordingly, respondent should not have been subjected to the local business tax under Section 21 of Tax Ordinance No. 7794 for the third and fourth quarters of 2000, given its exemption therefrom since it was already paying the local business tax under Section 14 of the same ordinance.

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[37] G.R. No. 181845, August 4, 2009.

Petitioners obstinately ignore the exempting *proviso* in Section 21 of Tax Ordinance No. 7794, to their own detriment. Said exempting *proviso* was precisely included in said section so as to avoid double taxation.

Double taxation means taxing the same property twice when it should be taxed only once; that is, 'taxing the same person twice by the same jurisdiction for the same thing.' It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as 'direct duplicate taxation,' **the two taxes must be imposed on the same subject matter**, for the **same purpose**, by the **same taxing authority, within the same jurisdiction, during the same taxing period**; and the taxes must be **of the same kind or character**.

Using the aforementioned test, the Court finds that there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business.

The distinction petitioners attempt to make between the taxes under Sections 14 and 21 of Tax Ordinance No. 7794 is specious. The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that when a municipality or city has already imposed a business tax on manufacturers, *etc.* of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers,

> *etc.* to a business tax under Section 143(h) of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentage tax under the NIRC, and that are **'not otherwise specified in preceding paragraphs.'** In the same way, businesses such as respondent's, already subject to a local business tax under Section 14 of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], can no longer be made liable for local business tax under Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC]."

It must be pointed out that this case is a product born by the nullification of the amendment to Section 21 of the Manila Revenue Code in the above-mentioned cases. Hence, all taxes collected under the said provision in the above-cited amendatory ordinances are deemed to have been illegally or erroneously collected. However, the taxpayers who paid under such a provision, which is tantamount to double taxation, need to comply with the mandatory requirements under Section 196 of the LGC before they can be entitled to a tax refund.

Pursuant to Section 196[38] of the Local Government Code, a taxpayer who wishes to file a local tax refund must:

1. File a written claim for refund or credit with the local treasurer; and
2. File such written claim within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.

Petitioner emphasizes that respondent did not comply with the first requisite. Petitioner's contention that there was no valid demand or claim for refund lies on the discrepancy in the amounts claimed by respondent for the year 2007 (a) as indicated in the demand letter dated July 2, 2007 in the amount of P10,771,602.92; (b) as testified by witness Agnes Lista that the amount claimed by respondent for 2007 is P10,870,791.80; and (c) as prayed for in the Amended

[38] SEC. 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 the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

Petition for Refund in the amount of P10,870,792.72. Petitioner concludes that because of this discrepancy, she did not receive any demand letter or claim for refund for either of the amounts claimed as stated in the Amended Petition or gathered from Agnes Lista's testimony. Therefore, there being no valid demand, there was a violation of the doctrine of non-exhaustion of administrative remedies.

The court *a quo* ratiocinated that respondent was able to sufficiently establish that there was a valid demand for refund, to wit:

> "From the foregoing, the petitioner has sufficiently established its entitlement for the refund of the taxes it previously paid with the City Treasurer's Office of Manila, the same having been illegally collected and Section 21 of the Manila Revenue Code upon which the collection of tax was based, was declared null and void. Contrary to the respondent's allegations, there was a valid written demand/claim for tax refund by the petitioner as contained in its letter dated July 2, 2007. A scrutiny of the said letter revealed that the demand for tax refund covered the taxable year 2005, 2006 and 2007. Since the two-year prescriptive period for 2005 and 2006 has already lapsed, the petitioner is only pursuing its claim for 2007. Notably, the petitioner is initially claiming the amount of Php10,771,606.92 for 2007. However, after a reconsideration of their documents, it turned out that its claim is supposedly Php10,870,791.81. While there is a discrepancy on the amounts stated in the demand letter and that which was proven during the trial, this does not negate the fact that a written claim for refund was sent to, and received by the Office of the City Treasurer on July 30, 2007. The fact of receipt was admitted by the respondent. The contention of the respondent that petitioner should have filed a request for tax refund under the new administration of Mayor Alfredo Lim is not anymore necessary since petitioner has already filed its claim with the City Treasurer prior to the assumption to office of Mayor Lim. Considering the inaction of the City Treasurer on its request and the two-year prescriptive period was about to expire, it has no other recourse than to beat the deadline and filed the instant petition for refund with the Court. xxx"

This Court agrees with the trial court.

Clearly, petitioner's contention and conclusion is *non sequitur*. Nowhere does Section 196 of the Local Government Code 1991 provide that the demand for refund has to be the exact amount claimed to the last decimal point or else consider one's claim for naught. This is a too literal reading of the law that tends to frustrate the fundamental principle of equity, that those who erroneously paid in good faith must be given back what is his, as no man should unjustly enrich himself at the expense of another. Hence, this Court finds invalid petitioner's contention that there was a violation of the doctrine of non-exhaustion of administrative remedies since the discrepancies in the amounts being claimed by respondent must be considered as non-filing of a valid refund claim.

Anent the issue pertaining to the granting of respondent's motion to file an Amended Petition for Refund, it is the Court's view that petitioner's assertion is untenable.

Section 3 of Rule 10 of the Rules of Court provides as follows:

> "SEC. 3. *Amendments by leave of court.* - Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard."

There is no dispute that respondent filed a Manifestation and Motion to Admit Amended Petition with Leave of Court[39] and an Amended Petition for Refund[40] dated February 1, 2010 after petitioner filed her Answer.

The court *a quo* has discretion whether to grant such a motion or not. And the court *a quo* allowed the amendment of the Petition in order to conform to or authorize presentation of evidence, to wit: *Je*

[39] Annex "F", Petition for Review, docket, pp. 53-56.
[40] Annex "F", Petition for Review, docket, pp. 57-65.

"As to the discrepancy in the amount of claim/demand stated in the demand letter with that proven during trial, it must be stressed that the Court allowed the amendment of the Petition in order to conform to or authorize presentation of evidence. Thus, the amended Petition indicating therein the amount of claim for Php10,870,791.81 was admitted and the petitioner was authorized to present evidence on its claim as stated in its Amended Petition. In fact, the said amount was not even contested by the respondent. What the respondent is arguing is that it did not receive any written claim for the amount of Php10,870,791.81. Be that as it may, the petition have sufficiently proven its claim for refund in the amount of Php10,870,791.81."[41]

In the case of *Philippine National Bank vs. The Honorable Court of Appeals, et al.*[42], the Supreme Court explicated the judicial policy on amendments in this wise:

"Amendments to pleadings are generally favored and should be liberally allowed in furtherance of justice in order that every case may so far as possible be determined on its real facts and in order to speed the trial of causes or prevent the circuity of action and unnecessary expense, unless there are circumstances such as inexcusable delay or the taking of the adverse party by surprise or the like, which might justify a refusal of permission to amend. These circumstances do not obtain in the case at bar.

As aforementioned, petitioner filed an opposition to the assailed motion stating petitioner's legal grounds therefor and subsequently a motion for reconsideration of the denial of aforesaid opposition. This eliminates the element of surprise and denial of due process sought to be avoided in instances where amendments to pleadings are snowed."

Aside from the fact that it is the trial court's discretion to grant or deny the filing of the Amended Petition for Refund, there is no indication that the amendment was intended for delay or to surprise

[41] Annex "B", Petition for Review, docket, p. 29.
[42] G.R. No. L-45770, March 30, 1988.

petitioner. Petitioner's defense need not be modified as no substantial change occurred with the amendment of the petition. Moreover, there was no denial of due process as petitioner was given notice and the opportunity to be heard as evidenced by her Comment/Opposition to the Manifestation and Motion to Admit Amended Petition[43] dated December 8, 2009.

Thus, this Court has no reason to disturb the exercise of discretion of the court *a quo* in allowing the filing of the Amended Petition for Refund.

Finally, petitioner contends that the court *a quo* erred in ordering the refund of P10,870,792.72, which is the amount indicated in the Amended Petition for Refund, despite the fact that respondent's sole witness testified that the amount being claimed is P10,870,791.80.

Petitioner's contention is clearly devoid of merit.

Agnes Lista's testimony is not the only evidence that the court *a quo* considered in reaching its conclusion that indeed respondent is entitled to a tax refund. Based on the documentary evidence submitted by respondent, borrowing the words of the court *a quo*, respondent "has sufficiently established its entitlement for the refund of the taxes it previously paid with the City Treasurer's Office of Manila, the same having been illegally collected and Section 21 of the Manila Revenue Code upon which the collection of tax was based, was declared null and void."[44]

Petitioner contends that respondent should have requested the new administration of Mayor Alfredo Lim, through the City Treasurer's Office, for tax refund or credit since Section 21 of the Manila Revenue Code was declared null and void and the City Treasurer's Office was processing all claims for tax refund on account of the voided ordinance.

Again, there is no such provision in the LGC that whenever there is a new administration, a new claim for tax refund should be filed by the taxpayer. It is sufficient that the taxpayer was able to

[43] RTC Records, pp. 273-275.
[44] Docket, p. 28.

comply with Section 196 of the LGC. Inasmuch as respondent was able to satisfy the requirements under Section 196 of the LGC, respondent is entitled to a tax refund.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the assailed Decision dated June 6, 2012 and the Order dated July 27, 2012 of Branch 34 of the Regional Trial Court of Manila in Civil Case No. 09-120876 entitled "Metropolitan Bank and Trust Company vs. City Treasurer of Manila" are hereby **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice