REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PROVINCE OF CAMARINES SUR, represented by the Office of the Provincial Treasurer, Petitioners,	CTA AC NO. 110
	Members:
-versus-	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
FULGENTES COCKPIT ARENA, represented by Ramon Melvin Fulgentes, Respondent.	Promulgated: FEB 17 2015 3:26 p.m.

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DECISION

***Fabon-Victorino, J.*:**

In the Verified Petition For Review dated July 22, 2013, petitioner Province of Camarines Sur (Province) assails the Decision dated March 5, 2013 and the Order dated May 21, 2013 denying its Motion for Reconsideration, both rendered by the Regional Trial Court (RTC), Branch 31, Pili, Camarines Sur, wherein the RTC dismissed petitioner's complaint for collection of sum of money constituting unpaid amusement tax by respondent Fulgentes Cockpit Arena (Cockpit).

Petitioner Province is a local government unit duly organized and existing under Philippine laws, now under incumbent governor, Luis Raymund F. Villafuerte, Jr., with seat of government at the Provincial Capitol Complex, Cadlan, Pili, Camarines Sur.[1]

[1] The Parties, Verified Petition For Review, docket page 23

Respondent Cockpit, on the other hand, is owned by Ramon Melvin Fulgentes and administered by Franklin Fulgentes, and operates at Camaligan, Camarines Sur.[2]

Petitioner Province, through its Sangguniang Panlalawigan, passed and approved Provincial Tax Ordinance No. 30, Series of 1992, pursuant to the mandate of Section 140 of the Local Government Code (LGC) empowering the Province to levy an amusement tax, to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement, at a rate of not more than thirty percent (30%) of the gross receipts from admission fees. [3]

Thus, by virtue of the said Provincial Tax Ordinance, an amusement tax was imposed upon herein (respondent) Fulgentes Cockpit Arena, considering that it falls within the category of an amusement place as defined in Article II, Section 2-b of the said ordinance, in relation to Section 183 of the Local Government Code.[4]

On February 11, 2005, respondent sent a letter dated February 10, 2005 to petitioner, requesting the deferment of collection of amusement tax imposed on operators of cockpits.[5] Respondent sent another letter on March 8, 2005, reiterating its request for deferment of collection of the said tax.[6]

Despite respondent's request, petitioner issued in July 2006 a Certificate of Tax Delinquency (Amusement Tax on Admission)[7] against respondent for the period of February to December 2005. Petitioner likewise issued several demand letters to respondent for the payment of amusement tax.[8]

Subsequently, petitioner filed a Complaint for Collection of Sum of Money on October 26, 2005, before the Regional

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[2] The Parties, Verified Petition For Review, docket page 23
[3] Quoted from the assailed Decision dated March 5, 2013, with some editing for punctuation marks, and other minor edits for easier readability.
[4] Id.
[5] RTC records, pp. 384 to 386.
[6] RTC records, pp. 387 to 388.
[7] RTC records, p. 263.
[8] RTC records, pp. 265 to 274.

Trial Court of Naga City[9], and the said case was raffled to Branch 31 of the same Court on October 27, 2005.[10]

In its Answer thereto, respondent alleged that the amusement taxes being collected from it was based on the invalid and unlawful imposition of taxes and the petitioner has mistakenly included respondent's cockpit within the coverage of amusement tax under Provincial Tax Ordinance No. 30, Series of 1992.

During trial, petitioner presented Mario Alicaway and Joy Mencias-Maderal as its witnesses. On the other hand, respondent presented as witnesses, Franklin Fulgentes, Ramon Melvin Fulgentes, and Geronimo Estabillo.

After trial on the merits, the RTC rendered the assailed Decision dated March 5, 2013, dismissing petitioner's claim for unpaid amusement tax, the dispositive portion of which states, as follows:

> "WHEREFORE, in view of all the foregoing, this case is hereby DISMISSED.
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> SO ORDERED."

In its ruling, the RTC held that petitioner exceeded its authority when it imposed amusement tax on respondent, through the enactment of Provincial Tax Ordinance No. 30, Series of 1992, which imposed amusement tax on all places of amusement, including but not limited to theaters, movie houses, concert halls, resorts, and cockpits. The RTC added that Tax Ordinance No. 30, enacted by virtue of delegated authority specified in Section 140 of the Local Government Code (LGC) of 1991, upon which the Tax Ordinance No. 30 was based, illegally expanded the provisions of Section 140 of the LGC by including cockpits in the enumeration of amusement places subject to amusement tax.

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[9] As stated in the Complaint, RTC records, p. 2.
[10] Annex "A", CTA *rollo*, pp. 33 to 35; RTC records, pp. 2 to 4.

This ruling was effectively affirmed when the RTC issued the similarly assailed Order dated May 21, 2013 denying petitioner's Motion for Reconsideration for lack of merit.

Unconvinced, petitioner elevated the matter to this Court via the instant Petition for Review.

The petitioner avers that the RTC erred in ruling that petitioner Province exceeded its authority when it enacted Tax Ordinance No. 30 including cockpits as a place of amusement, hence subject to amusement tax. In so ruling, the RTC effectively invalidated Tax Ordinance No. 30, which is beyond the RTC's competence.

Petitioner cited Section 187 of R.A. No. 7160, otherwise known as the Local Government Code of 1991 which allegedly provides that any question on the constitutionality or legality of tax ordinances or revenue measures, such as Tax Ordinance No. 30, may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice, who has sixty (60) days from receipt to decide the appeal. Only after this remedy before the Secretary of Justice, may the aggrieved party, upon the lapse of the 60-day period, seek recourse to the proper court.

Petitioner points out that Tax Ordinance No. 30 took effect on January 1, 1993, as indicated in Section 53 thereof. Thus, any question as to its constitutionality or validity should have followed the procedure laid down in Section 187 of the LGC.

Moreover, respondent failed to comply with the prescriptive period within which to assail the validity or legality of Tax Ordinance No. 30 provided under Section 187 of the LGC. Hence, respondent can no longer question the validity of Tax Ordinance No. 30 in its complaint filed with the RTC on October 26, 2005, since the period to impugn its legality had already lapsed.

Also by questioning the validity of the subject Ordinance in an action for collection of unpaid amusement tax before the RTC, respondent is guilty of attacking the Ordinance collaterally which is proscribed in this jurisdiction. Thus, the RTC erred when it ruled that petitioner could not collect the subject amusement taxes for the reason that the law upon which it was based was invalid.

Further, contrary to the RTC's ruling, petitioner Province acted within its authority when it included cockpits in the definition of the term "amusement places" in Tax Ordinance No. 30. The petitioner Province only based its definition from the provision in the LGC, as implemented by Article 220(b) of its Implementing Rules and Regulations which defines amusement as a measurable diversion and entertainment, and synonymous to relaxation, avocation, pastime or fun. Considering that a cockpit is also for entertainment purposes, its inclusion in the term "amusement places" was proper. Section 140 of the LGC likewise provides legal basis for petitioner's imposition of amusement tax against respondent. It provides that a province, such as petitioner, may levy an amusement tax from all places of amusement.

Finally, for respondent's failure to file protest in accordance with law, the subject amusement tax assessment became final and demandable. Thus, no more legal obstacle exists for the collection of the subject deficiency amusement taxes.

By way of comment, respondent disputes the contention of petitioner that the constitutionality or legality of Tax Ordinance No. 30 can no longer be questioned since the 30-day period provided for such action under Section 187 of the LGC had already lapsed. According to respondent, petitioner failed to prove the date of effectivity of Tax Ordinance No. 30, hence, there could be no reckoning date for the filing of such an appeal. Respondent puts premium on the testimony of then Provincial Treasurer Mario T. Alicaway who admitted that he could not say with certainty whether Tax Ordinance No. 30 was published in compliance with Section 188 of the LGC. In view of the foregoing, respondent asserts that the period to appeal under Section 187 finds no application in this case.

Finally, respondent agreed with the RTC's observation that petitioner Province exceeded its authority in including cockpits in the term amusement places subject to amusement tax. Section 131(c) of the LGC upon which Tax Ordinance No. 30 was based and on which petitioner derived its authority, confined its listing of amusement places to theaters, cinemas, concert halls, circuses, and other places of amusement wherein one seeks admission to entertain oneself by seeing or viewing shows or performances. For respondent, cockpits do not fall under any of the categories in the enumeration to justify its inclusion as amusement place in Tax Ordinance No. 30.

STATEMENT OF THE ISSUES

The issue submitted for the resolution of the Court can be summarized into the main issue of whether or not petitioner can collect from respondent amusement tax on the latter's cockpit operation pursuant to Tax Ordinance No. 30, in relation to Section 140 of the LGC.

DISCUSSION/RULING

The discussion of the Supreme Court on the nature of the power to tax of local government units in the case of *Pelizloy Realty Corporation, represented by its President, Gregory K. Loy v. The Province of Benguet,* [11] is instructive, thus:

> The power to tax "is an attribute of sovereignty," and as such, inherent in the State. Such, however, is not true for provinces, cities, municipalities and barangays as they are not the sovereign; rather, they are mere "territorial and political subdivisions of the Republic of the Philippines". x x x Therefore, the power of a province to tax is limited to the extent that such power is delegated to it either by the Constitution

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[11] Pelizloy Realty Corporation, Represented herein by its President, Gregory K. Loy vs. The Province of Benguet, G.R. No. 183137, April 10, 2013

or by statute. Section 5, Article X of the 1987 Constitution is clear on this point:

> Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. [Underscoring supplied]

Per Section 5, Article X of the 1987 Constitution, "the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges." Nevertheless, such authority is "subject to such guidelines and limitations as the Congress may provide".

In conformity with Section 3, Article X of the 1987 Constitution, Congress enacted Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

Based on the foregoing legal principle, the power to tax of petitioner Province is subject to the Constitution and "to such guidelines and limitations as the Congress may provide," which in this particular case, is R.A. No. 7160, otherwise known as the LGC. Simply put, petitioner Province's enactment of Tax Ordinance No. 30 imposing amusement tax, being a mere delegated authority, must comply with the limitations provided under the Constitution and the LGC.

Section 140(a) of RA No. 7160 pertinently provides, as follows:

> "SEC. 140. *Amusement Tax*. – (a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls,

> circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees."

Corollarily, Section 131(b) and (c) of RA No. 7160, states:

> "(b) 'Amusement' is a pleasurable diversion and entertainment. It is synonymous to relaxation, avocation, pastime, or fun;
>
> (c) 'Amusement Places' include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performances;"

Evident from the foregoing provisions that amusement tax is to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia and other places of amusement.

To be sure, respondent cockpit is not a theater, cinema, concert hall, circus, or boxing stadium. Neither does it belong to the category of catch-all phrase "other places of amusement."

Under the principle of *ejusdem generis*, where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned.[12]

The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and

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[12] *Miranda vs. Abaya, et al.*, G.R. No. 136351, July 28, 1999.

the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms.[13]

In the case of *Philippine Basketball Association vs. Court of Appeals, et al.*[14], the High Tribunal held:

> While Section 13 of the Local Tax Code mentions "other places of amusement", professional basketball games are definitely not within its scope. Under the principle of *ejusdem generis*, where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned. Thus, in determining the meaning of the phrase "other places of amusement", one must refer to the prior enumeration of theaters, cinematographs, concert halls and circuses with artistic expression as their common characteristic. **Professional basketball games do not fall under the same category as theaters, cinematographs, concert halls and circuses as the latter basically belong to artistic forms of entertainment while the former caters to sports and gaming.** (*Emphasis supplied)*

It must be emphasized that in the cited case, when the assessment for deficiency amusement tax was issued against the Philippine Basketball Association, the governing Tax Code was the Local Tax Code of 1973. RA No. 7160 or the Local Government Code of 1991 was not yet in effect.

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[13] National Power Corporation vs. Angas, et al., G.R. Nos. 60225-26, May 8, 1992.
[14] G.R. No. 119122, August 8, 2000.

Nonetheless, Section 13 of Presidential Decree (PD) No. 231 or the Local Tax Code of 1973 is analogous to Section 140 of the Local Government Code of 1991. This was pointed out in the case of *Pelizloy Realty Corporation, etc. vs. The Province of Benguet*[15], to wit:

> In *Philippine Basketball Association v. Court of Appeals*, the Supreme Court had an opportunity to interpret a starkly similar provision or the counterpart provision of Section 140 of the LGC in the Local Tax Code then in effect. Petitioner Philippine Basketball Association (PBA) contended that it was subject to the imposition by LGUs of amusement taxes (as opposed to amusement taxes imposed by the national government). In support of its contentions, it cited Section 13 of Presidential Decree No. 231, otherwise known as the Local Tax Code of 1973, (which is analogous to Section 140 of the LGC) providing the following:
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>> Section 13. Amusement tax on admission. - The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement xxx.

Notably, the Local Government Code of 1991 adds "boxing stadia" to the enumeration in Section 140, which is absent in Section 13 of the Local Tax Code of 1973. Thus, as pointed out in the *Pelizloy Realty case*[16], the characteristic of boxing stadia is not the same as that of the others enumerated therein, which involves artistic expression. It is then clear that the coverage of the phrase "other places of amusement" has been broadened by the addition of "boxing stadia" in the enumeration. The pertinent portions of the *Pelizloy Realty case* are quoted as follows:

> However, even as the phrase 'other places of amusement' was already clarified in *Philippine Basketball Association*, **Section 140 of the LGC**

[15] G.R. No. 183137, April 10, 2013.
[16] *Supra.*

> **adds to the enumeration of 'places of amusement' which may properly be subject to amusement tax. Section 140 specifically mentions 'boxing stadia' in addition to "theaters, cinematographs, concert halls [and] circuses"** which were already mentioned in PD No. 231. Also, **'artistic expression' as a characteristic does not pertain to 'boxing stadia'**.
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> xxx xxx xxx
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> Indeed, theaters, cinemas, concert halls, circuses, and boxing stadia are bound by a common typifying characteristic in that they are all venues primarily for the staging of spectacles or the holding of public shows, exhibitions, performances, and other events meant to be viewed by an audience. Accordingly, **'other places of amusement' must be interpreted in light of the typifying characteristic of being venues "where one seeks admission to entertain oneself by seeing or viewing the show or performances" or being venues primarily used to stage spectacles or hold public shows, exhibitions, performances, and other events meant to be viewed by an audience.**
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> As defined in The New Oxford American Dictionary, 'show' means "a spectacle or <u>display</u> of something, typically an impressive one"; while 'performance' means "an <u>act of staging or presenting</u> a play, a concert, or other form of entertainment." As such, the ordinary definitions of the words 'show' and 'performance' denote not only visual engagement (*i.e.*, the seeing or viewing of things) but also active doing (*e.g.*, displaying, staging or presenting) such that actions are manifested to, and (correspondingly) perceived by an audience. (*Emphasis supplied)*

From the foregoing, the phrase "other places of amusement" may be interpreted either as (1) venues where one seeks admission to entertain oneself by seeing or viewing the show or performances; or (2) venues primarily used to stage spectacles or hold public shows, exhibitions, performances, and other events meant to be viewed by an audience.

Consequently, to determine whether a cockpit falls under the phrase "other places of amusement," the Court must determine whether or not a cockpit is (1) a venue where one seeks admission to entertain oneself by seeing or viewing the show or performances or (2) a venue primarily used to stage spectacles or hold public shows, exhibitions, performances, and other events meant to be viewed by an audience for entertainment.

A revisit of the record reveals that petitioner failed to present clear and credible evidence, let alone discussion, to convince the Court that a cockpit arena is within the ambit of the phrase "other places of amusement," despite sufficient opportunity during the trial before the RTC.

Petitioner presented documents and the testimonies of its witnesses to prove the amount of respondent's deficiency amusement tax in the latter's operation of a cockpit arena but it did not present any evidence showing that respondent's cockpit arena can in fact be considered as an amusement place subject to amusement tax as contemplated under Section 140 of the Local Government Code. The responsibility of proving by clear and convincing evidence that a cockpit arena is included in the phrase "other places of amusement" lies on petitioner. After all, the rule is, he who alleges, not he who denies, must prove.[17]

Petitioner cannot solely rely on Provincial Tax Ordinance No. 30 as its basis in imposing amusement tax on respondent. It was incumbent upon petitioner to first establish that respondent's cockpit falls under the phrase "other places of amusement" as provided under Section 140 of the LGC, as to justify implementation if not enforcement of Ordinance No. 30 and the collection of the alleged deficiency amusement taxes. Note, that Provincial Tax

[17] Equitable Banking Corporation (Now Known As Equitable-PCI Bank) vs. Ricardo Sadac, G.R. NO. 164772, June 08, 2006

Ordinance No. 30 derives its authority only from Section 140 of the LGC.

To repeat, the power to tax "is an attribute of sovereignty," and as such, inherent in the State. Such, however, is not true for provinces, cities, municipalities and barangays as they are not the sovereign; rather, they are mere "territorial and political subdivisions of the Republic of the Philippines".

Also cardinal is the rule that a municipal corporation unlike a sovereign state is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality cannot assume it. And the power when granted is to be construed in *strictissimi juris*. Any doubt or ambiguity that power must be resolved against the municipality. Inferences, implications, deductions all these have no place in the interpretation of the taxing power of a municipal corporation. [18]

In this case, the definition of "amusement places" in Section 131(c) of the Local Government Code of 1991 is a clear basis for determining what constitutes the "other places of amusement" which may properly be subject to amusement tax impositions by provinces. There is no reason for going beyond such basis. To do otherwise would be to countenance an arbitrary interpretation/application of a tax law and to inflict an injustice on unassuming taxpayers.[19]

WHEREFORE, the Verified Petition for Review dated July 22, 2013 filed by petitioner Province of Camarines Sur, is hereby **DENIED**, for lack of merit.

Accordingly, the assailed Decision dated March 5, 2013, and the Order dated May 21, 2013, both issued by the Regional Trial Court of Pili, Camarines Sur, Branch 31, are **AFFIRMED**.

[18] Icard vs. The City Council of Baguio, et al., G.R. No. L-1281, May 31, 1949.
[19] *Pelizloy Realty Corporation, etc. vs. The Province of Benguet*, G.R. No. 183137, April 10, 2013.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ma. Belen

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
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