REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MICHIGAN HOLDINGS, INC.,
Petitioner,

CTA AC CASE No. 99
(Civil Case No. RTC 08-225)

Members:

CASTAÑEDA, JR. *Chairperson*,
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

-versus-

THE CITY TREASURER OF MAKATI CITY, NELIA A. BARLIS,
Respondent.

Promulgated:

SEP 19 2013

4:10 pm.

X- -X

DECISION

CASANOVA, *J.*:

Before this Court is an appeal via a Petition for Review[1], seeking the reversal of the Decision[2] (Assailed Decision) dated September 21, 2011 dismissing petitioner's appeal in relation to its assessment of Deficiency Tax Assessment for 2006 and the Order[3] (Assailed Order) dated October 4, 2012 denying petitioner's Motion for Reconsideration, both rendered by Branch 134 of the Regional Trial Court (RTC) of Makati City in Civil Case No. RTC 08-225 entitled ***MICHIGAN HOLDINGS, INC. vs. THE CITY TREASURER OF MAKATI CITY, NELIA A. BARLIS.***

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[1] Docket, pp. 00005-000018.
[2] "Annex B", Petition for Review, Docket, pp. 00023-00026.
[3] "Annex A", Petition for Review, Docket, pp. 00019-0022.

The facts of the case, as culled from the records, are briefly narrated as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal place of business located at the 33rd Floor, Tower One Building, Ayala Triangle, Ayala Avenue, Makati City. Petitioner may be served with legal processes through the undersigned counsels at the address below indicated.[4]

Respondent is the duly appointed City Treasurer of Makati City with the power to impose and collect LBT under The Revised Makati Revenue Code. Respondent may be served with court and legal processes at her office at the Office of the City Treasurer, Business Tax Division, Makati City Hall, Makati City or alternatively through statutory counsel Attys. Rogelio U. Marasigan and Anthony T. Zamora, Office of the City Attorney, at 18th Floor, New Makati City Hall, Makati City.[5]

Petitioner was duly registered with the Securities and Exchange Commission ("SEC") on December 17, 1999 and was primarily organized to purchase, subscribe for, or otherwise, and acquire, own, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property.

On January 24, 2008, petitioner received a Billing Assessment[6] from respondent, assessing the former for deficiency local business tax in the amount of P660,521.40, including surcharge and interest.

On January 29, 2008, petitioner filed a letter of protest[7] dated January 28, 2008, disputing the assessment for deficiency local business tax on the ground that the income subject of the said assessment are not subject to business tax as these are income generated from passive investments.

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[4] The Parties, Petition for Review, p. 00006-00007.
[5] *Ibid.*, p. 00007.
[6] "Annex C", Petition for Review, Docket, pp. 00028-00029.
[7] "Annex D", Petition for Review, Docket, pp. 00030-00031.

In a letter[8] dated February 6, 2008 and received by petitioner on February 13, 2008, respondent partially granted petitioner's protest and reversed the assessment in so far as the gain on sale of shares and interest income were concerned. Respondent, however, denied petitioner's request for the reversal of the assessment for deficiency taxes, fees and surcharge for dividend income pursuant to Section 3A.02 (p) of the Revised Makati Revenue Code.

On March 14, 2008, petitioner filed a Request for Reconsideration[9] dated March 12, 2008, reiterating its argument that dividend income is not subject to business tax as these are income generated from its passive investments.

On March 24, 2008, petitioner filed a complaint[10], docketed as Civil Case No. 08-225, against respondent before the RTC, praying for the cancellation of the remaining deficiency tax assessment on dividend income.

On September 21, 2011, the RTC promulgated the Assailed Decision[11], dismissing the complaint on the ground that the complaint is a direct attack on the constitutionality and validity Section 3A.02 (p) of The Revised Makati Revenue Code, the basis of the deficiency tax assessment. RTC ruled that it had no jurisdiction to rule on the constitutionality and validity of the tax ordinance, hence the dismissal.

Petitioner filed its Motion for Reconsideration[12] on November 17, 2011. The RTC issued the Assailed Order[13] on October 4, 2012 denying the said Motion.

Hence, this Petition for Review.

Petitioner raised this sole issue in its petition:

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[8] "Annex E", Petition for Review, Docket, p. 00032.
[9] "Annex F", Petition for Review, Docket, pp. 00033-00034.
[10] "Annex G", Petition for Review, Docket, pp. 00035-00038.
[11] See Note 2.
[12] RTC Docket, pp. 133-148.
[13] See Note 3.

> THE RTC ACTED NOT IN ACCORD WITH OR CONTRARY TO THE CONSTITUTION AND JURISPRUDENCE WHEN IT DISMISSED THE COMPLAINT FOR CANCELLATION OF LOCAL TAX ASSESSMENT ON THE GROUND THAT IT HAS NO JURISDICTION TO RULE ON THE CONSTITUTIONALITY AND LEGALITY OF SECTION 3A.02 (p) OF THE REVISED MAKATI REVENUE CODE.

Petitioner's main argument is that it is a well settled rule that RTCs have the judicial power to decide on the constitutionality of a law or tax ordinance, as held by the Supreme Court in several cases.

On January 28, 2013, respondent filed her Comment (Re: Petition for Review dated 15 November 2012)[14]. In her Comment, respondent alleged that questions on the validity of any of the provisions of the Revised Makati Revenue Code should be raised before the Secretary of Justice pursuant to Section 187 of the Local Government Code (LGC) and Article 275 of its Implementing Rules and Regulations. Respondent further alleged that the remedy sought by petitioner in filing the instant case with the RTC is erroneous as it is the Secretary of Justice who has the authority to decide on the issue at hand. Respondent prays that the present petition be dismissed for lack of merit and legal basis.

On February 15, 2013, petitioner filed its Reply[15], reiterating its previous argument that the power to decide on the constitutionality of a law or tax ordinance resides in the RTC.

In a Resolution[16] dated April 19, 2013, this Honorable Court ordered the parties to submit their respective memorandum within thirty (30) days from the receipt of the notice hereof. On June 14, 2013, petitioner filed a Manifestation[17] stating that it will not be

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[14] Docket, pp. 000102-000107.
[15] *Ibid.*, pp. 000112-000115.
[16] *Id.*, p. 000125.
[17] *Id.*, pp. 000135-000136.

submitting its Memorandum and instead will be adopting all the allegations and arguments stated in its Petition for Review as well as in its Reply. Respondent, on the other hand, filed its Memorandum (For the Respondents)[18] on July 4, 2013. In a Resolution[19] dated July 10, 2013, the instant case was submitted for decision.

We find the present petition scant of merit.

The crux of the controversy in the present petition is whether or not the RTC has jurisdiction to rule on the constitutionality and legality of Section 3A.02 (p) of The Revised Makati Revenue Code.

We agree with the respondent that the RTC does not have jurisdiction to rule on the constitutionality of and legality of Section 3a.02 (p) of the Revised Makati Revenue Code. Instead, the authority to decide on the said issue is lodged in the Secretary of Justice, in pursuant to the provisions of the LGC and its Implementing Rules and Regulations.

Section 187 of the LGC explicitly provides that

> "**Section 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

[18] *Id.*, pp. 000137-000145.
[19] *Id.*, p. 000148.

> period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction. (Emphasis supplied)

Article 275 of the Rules and Regulations Implementing the LGC,[20] likewise, provides:

> "**ARTICLE 275.** *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures.* — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Rule 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 furthermore 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 and 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.
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> All tax ordinances or revenue measures shall be numbered consecutively throughout the calendar year and continuously from year to year, using the last two (2) digits of the calendar year in which it is enacted, followed by its denominated number. For example, an ordinance is passed in January, 1992, and it is the first ordinance for that year. The ordinance shall be denominated and numbered as Tax Ordinance No. 92-001. The next shall be Tax Ordinance No. 92-002, Tax Ordinance No. 92-003, and so forth. (Emphasis supplied)

Hence, the law is clear that any question on the legality and validity of a tax ordinance or a revenue measure implemented by a

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[20] February 21, 1992.

local government unit should be appealed to the Secretary of Justice and not before the RTC.

This position is further confirmed in a number of decisions[21] promulgated by the Supreme Court where it was explicitly provided that an appeal to the Secretary of Justice is the proper remedy when the issue to be resolved is the legality or validity of a tax ordinance, and failure to do so is fatal to the cause of the petitioner. In the case of *Cagayan Electric Power and Light Company Co., Inc. vs. City of Cagayan de Oro*[22], it was held that:

> "Clearly, the law requires that the dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file his appeal to the Secretary of Justice, within 30 days from effectivity thereof. In case the Secretary decides the appeal, a period also of 30 days is allowed for an aggrieved party to go to court. But if the Secretary does not act thereon, after the lapse of 60 days, a party could already proceed to seek relief in court. These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. For this reason the courts construe these provisions of statutes as mandatory.
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> A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. Consequently, any delay in implementing tax measures would be to the

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[21] Jardine Davies Insurance Brokers, Inc., vs. Hon. Erna Aliposa, in her capacity as Presiding Judge of Branch 150 of the Makati Regional Trial Court, City (Previously Municipality) of Makati and Rolando M. Carlos, in his capacity as Acting Treasurer of Makati, G.R. No. 118900, February 27, 2003, Hagonoy Market Vendor Association, vs. Municipality of Hagonoy, Bulacan, G.R. No. 137621, February 06, 2002.

[22] G.R. No. 191761, November 14, 2012 *citing* Antonio Z. Reyes, Eliseo P. Ocampo and Editha Arciaga-Santos vs. Court of Appeals, Hon. Secretary of Justice Franklin Drilon and Mayor Jinggoy Estrada (Jose Ejercito) of the Municipality of San Juan, Metro Manila, G.R. No. 118233, December 10, 1999.

> detriment of the public. It is for this reason that protests over tax ordinances are required to be done within certain time frames. In the instant case, it is our view that the failure of petitioners to appeal to the Secretary of Justice within 30 days as required by Sec. 187 of R.A. 7160 is fatal to their cause."

We quote, with approval, the pertinent portion of the Assailed Decision:

> "Questioning the legality of the tax assessment is different from questioning the legality of Sec. 3A.02 (p) of the Makati Revenue Code. In the former, protest may be filed in the City Treasurer as what had been done by the plaintiff, but in the latter **tax ordinances and revenue measures must be questioned before the Secretary of justice under Section 187 of the Local Government Code. Also in the former under Section 195 of the Local Government Code, from the decision of the local treasurer,** the taxpayer, if still in disagreement, may file within thirty (30) days from receipt thereof or from the lapse of sixty (60) day period an appeal with the court of competent jurisdiction, otherwise the assessment becomes conclusive and unappealable (sic). Nowhere from the Complaint can it be shown that the present case is an appeal from the tax assessment made by the defendants as the plaintiff was actually seeking for the permanent cancellation or setting aside of the questioned tax assessment.
>
> According to the plaintiff, to allow defendants to impose taxes on passive incomes will violate the spirit and letter of the National Internal Revenue Code and run afoul of Sections 130 (b) (4) and 133 (a) of the Local Government Code. Such allegation in effect is questioning the validity of Sec. 3A.02(p) of the Makati Revenue Code which is outside the jurisdiction of this Court. xxx (*Emphasis supplied*)

We, likewise, reiterate the following portion of the Assailed Order where the RTC explicitly ruled that it is the Secretary of Justice and not the RTC who has jurisdiction to hear the legality or constitutionality of Section 3A.02 of the Revised Makati Revenue Code:

> "**The Court is now faced with the issue of how it can rule on the impropriety of the imposition of taxes on dividends when the law on which it was based was never questioned and presumed to be correct. Granting, the imposition on the dividends earned by the plaintiff was inconsistent with National Internal Revenue Code and of the Local Government Code, the remedy of the plaintiff is to question its validity under Section 187 of the Local Government Code, and evident from the latter law is the fact that this Court has no jurisdiction to hear the legality or constitutionality of Section 3A.02 of the Revised Makati Revenue Code**." (*Emphasis supplied)*

We, thus, affirm the RTC's ruling that it has no jurisdiction to decide on the legality or constitutionality of Section 3A.02 (p) of the Revised Makati Revenue Code.

Anent the other issues raised by the parties in the case at bench, this Honorable Court, likewise, finds no reversible error in the Assailed Decision and Assailed Resolution which are both hereby affirmed.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
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, Second Division

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