REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CITY OF MANILA, ET. AL.,
Petitioners,

C.T.A. AC NO. 52
(Civil Case No. 06-1305-CFM)

-versus-

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

ACE HARDWARE PHILS., INC., ET. AL.,
Respondents.

Promulgated:
SEP 29 2008 ; 9:00 am

x---x

DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed pursuant to Republic Act No. 9282, praying for the reversal of:

1. the Order[2] dated August 24, 2007 rendered by Branch 114 of the Regional Trial Court of Pasay City ("Court *a quo*") in Civil Case No. 06-1305-CFM, entitled *"ACE HARDWARE PHIL.,*

[1] *Rollo*, C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), pp. 45 – 144 with Annexes.
[2] *Id.*, pp. 59 – 62, Annex "A" of the Petition for Review.

INC., ET. AL. v. THE CITY OF MANILA and *THE CITY TREASURER OF MANILA,"* which ordered herein petitioners, the City of Manila and the City Treasurer, to refund or issue tax credits to herein respondents in the aggregate amount of Php4,271,883.75, representing payment of taxes under Section 21 of the Revenue Code of the City of Manila ("RCM") for the fourth ("4th") quarter of 2004, and the aggregate amount of Php4,717,742.43, representing overpayment of increased local business taxes under Sections 15, 16, 17, 18, and 19 from the 4th quarter of 2004 to the 4th quarter of 2005, pursuant to the rates imposed by Ordinance Nos. 7988 and 8011; and

2. the Order[3] dated February 4, 2008 of the Court *a quo* which denied herein petitioners' Motion for Reconsideration.

Antecedent Facts

The facts of the case are as follows:

Petitioner City of Manila is a local government unit organized and existing under Republic Act No. 409,[4] with address at the Office of the City Mayor, City Hall, Manila.[5]

Petitioner Liberty M. Toledo is the duly appointed City Treasurer of Manila, empowered to perform the duties of said office including, among others, the collection of all local taxes, fees and charges, and the power to decide,

---

[3] *Rollo*, C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), p. 63, Annex "B" of the Petition for Review.
[4] *Id.*, p. 45, Petition for Review.
[5] *Id.*, p. 68, Annex "D" of the Petition for Review.

approve and grant refunds or tax credits of erroneously or excessively paid taxes, with office address at the City Hall of Manila.[6]

Respondents are domestic corporations organized and existing under Philippine law, with office address at SM Building, Roxas Boulevard Extension, Pasay City. They conduct their business operations within the jurisdiction of the City of Manila.[7]

Respondent ACE Hardware Phils., Inc. is primarily engaged in the business of conducting and carrying on a general hardware business, whether wholesale or retail.[8]

Respondent SM Mart, Inc. is primarily engaged in the business of selling general merchandise of all kinds on wholesale or retail basis. It also offers the services of a foreign exchange dealer.[9]

Respondent SM Prime Holdings, Inc. is primarily engaged in the business of developing, operating and maintaining the business of modernized commercial shopping centers.[10]

Respondent Star Appliances Center, Inc. is primarily engaged in the business of selling, marketing, and buying, whether wholesale or retail, of home and office appliances, electric supplies and equipment, communication devices, hardware, machinery and other allied products, including repair and servicing thereof.[11]

---

[6] *Rollo*, C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), pp. 68 – 69, Annex "D" of the Petition for Review.
[7] *Id.*, p. 255, Respondents' Memorandum *(Ad Cautelam)*.
[8] *Id.*, p. 69, Annex "D" of the Petition for Review.
[9] *Id.*
[10] *Id.*, p. 70.
[11] *Id.*

Respondent Supervalue, Inc. is primarily engaged in the business of conducting, operating and maintaining the business of a modernized supermarket and all business appurtenant thereto, within the compound or premises of its establishment.[12]

Finally, respondent Watson Personal Care Stores Phils., Inc. is primarily engaged in the merchandising business, both wholesale and retail, of cosmetics, beauty and health products.[13]

Respondents all pay local business taxes imposed pursuant to the RCM, which was enacted through Ordinance No. 7794 dated July 1, 1993, as amended by Ordinance No. 7807 dated September 27, 1993.[14]

The RCM was subsequently amended by Ordinance No. 7988 dated February 25, 2000 which, in turn, was amended by Ordinance No. 8011 dated February 22, 2001. The amendments introduced by Ordinance Nos. 7988 and 8011 increased the rates of the local business taxes applicable to respondents under Sections 15, 16, 17, 18, 19, 23, 24 and 25 of the RCM. In addition, Ordinance No. 7988 amended Section 21 of the RCM by imposing additional business tax on respondents and other taxpayers situated in Manila.[15]

Accordingly, from the 4th quarter of 2004 to the 4th quarter of 2005, respondents individually paid business taxes to petitioners under Section 21 of RCM, as amended by Ordinance Nos. 7988 and 8011, in the total amount of Php4,271,883.75, broken down as follows:[16]

---

[12] *Rollo,* C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), p. 70, Annex "D" of the Petition for Review.
[13] *Id.,* p. 71.
[14] *Id.,* p. 255, Respondents' Memorandum *(Ad Cautelam).*
[15] *Id.,* pp. 255 – 256.
[16] *Id.,* pp. 257 – 259.

ACE Hardware Phils., Inc.	₱148,086.20
SM Mart, Inc.	2,434,931.63
SM Prime Holdings, Inc.	646,820.88
Star Appliance Center, Inc.	517,811.12
Supervalue, Inc.	417,867.71
Watson Personal Care Stores Phils., Inc.	106,366.21
TOTAL:	₱4,271,883.75

In addition, respondents individually paid higher local business taxes under Sections 15, 16, 17, 18, 19, 23, 24 and 25 of the RCM, from the 4th quarter of 2004 to the 4th quarter of 2005. The following table shows the difference between the old tax rates under the RCM and the new tax rates imposed by Ordinance Nos. 7988 and 8011:[17]

	Actual Tax Paid Under Ord. Nos. 7988 and 8011	Tax Computed Under the prior RCM (Ord. Nos. 7794 and 7807)	**Additional Tax paid**
ACE Hardware Phils., Inc.	₱509,072.99	₱346,611.16	**₱162,461.83**
SM Mart, Inc.	7,684,915.04	5,107,639.94	**2,577,275.10**
SM Prime Holdings, Inc.	15,420,130.85	15,316,706.74	**103,424.11**
Star Appliance Center, Inc.	1,718,735.95	1,160,282.34	**558,453.61**
Supervalue, Inc.	3,440,936.26	2,327,926.03	**1,113,010.23**
Watson Personal Care Stores Phils., Inc.	734,825.82	531,708.27	**203,117.55**
TOTAL:	₱29,508,616.91	₱24,790,874.48	**₱4,717,742.43**

All in all, respondents paid additional local business taxes in the aggregate amount of Php4,717,742.43.[18]

[17] *Rollo*, C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), pp. 256 - 257, Respondents' Memorandum *(Ad Cautelam)*.
[18] *Id.*, p. 257.

On December 20, 2004, respondents filed with the City Treasurer their individual protests of payments and requests for a tax credit or refund of the business taxes erroneously paid under Section 21 of the RCM for the 4th quarter of 2004. Respondents, however, did not receive any response from the City Treasurer.[19]

On various dates from 2004 to 2005, respondents protested the payment of additional local business taxes under Sections 15, 16, 17, 18, 19, 21, 24 and 25 of the RCM, as amended by Ordinance Nos. 7988 and 8011. Respondents likewise filed claims for refund or tax credit of the protested amounts. The protests and claims for refund were filed on the following dates:[20]

DATE	DOCUMENT FILED
March 18, 2005	Protest and claim for refund of excess local business taxes paid for the 4th quarter of 2004 to the 1st quarter of 2005.
June 15, 2005	Protest and claim for refund of excess local business taxes paid for the 2nd quarter of 2005.
September 20, 2005	Protest and claim for refund of excess local business taxes paid for the 3rd quarter of 2005.
December 16, 2005	Protest and claim for refund of excess local business taxes paid for the 4th quarter of 2005.

In separate letters dated April 8, 2005 and June 28, 2005, petitioner City Treasurer denied respondents' protests and claims for refund of excess local business taxes paid from the 4th quarter of 2004 to the 2nd quarter of 2005.[21]

---

[19] *Rollo*, C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), p. 259, Respondents' Memorandum *(Ad Cautelam)*.
[20] *Id.*, pp. 259 - 260.
[21] *Id.*, p. 260.

Thereafter, in separate letters dated October 11, 2005 and January 12, 2006, petitioner City Treasurer acknowledged receipt of respondents' letters formally protesting and claiming the refund of excess local business taxes paid in the 3rd and 4th quarters of 2005.[22]

On October 19, 2006, within the two-year statutory period to claim for refund, respondents filed a Complaint[23] for refund against the petitioners based on two causes of action. Their first cause of action pertains to the Section 21 taxes they paid pursuant to Ordinance Nos. 7988 and 8011; while their second cause of action concerns the additional local business taxes they paid under Sections 15, 16, 17, 18, 19, 23, 24 and 25 of the RCM, as amended by Ordinances Nos. 7988 and 8011. In the Complaint, respondents prayed for a refund of the Section 21 taxes paid for the 4th quarter of 2004 in the total amount of Php4,271,883.75, and the excess local business taxes paid from the 4th quarter of 2004 to the 4th quarter of 2005 in the total amount of Php4,717,742.43.[24] The case was docketed as Civil Case No. 06-1305-CFM, and was raffled to Branch 114 of the Regional Trial Court of Pasay City.

On February 9, 2007, petitioners filed their Answer to the Complaint filed by respondents.[25] In their Answer, petitioners admitted the material allegations of the Complaint, in so far as the payments made by respondents, the existence of their protests and claims for refund, and the letters issued by petitioner City Treasurer. Petitioners raised, as an affirmative and special defense, the lack of cause of action. They argued that the declaration in the case of *"Coca-Cola Bottlers*

---

[22] *Rollo*, C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), p. 260, Respondents' Memorandum *(Ad Cautelam)*.
[23] *Id.*, pp. 67 - 101, Annex "D" of the Petition for Review.
[24] *Id.*, p. 261, Respondents' Memorandum *(Ad Cautelam)*.
[25] *Id.*, p. 47, Petition for Review.

Philippines, Inc. v. City of Manila, et. al."[26] is not doctrinal. And assuming that Ordinance Nos. 7988 and 8011 have been declared invalid, petitioners claimed that the assessments of taxes on respondents are still valid, as these are anchored on Ordinance No. 7807. They also interposed that respondents have no personality to claim for a refund because they are mere withholding agents. Petitioners likewise pointed out that there is no double taxation, and that assuming there is, it is still permissible.[27]

Pursuant to Section 1, Rule 18 of the 1997 Revised Rules of Court ("ROC"), respondents filed an "*Ex-Parte* Motion to Set Case for Pre-Trial" on March 1, 2007. The Court *a quo,* however, referred the parties to Mediation in an Order dated June 1, 2007. Since no amicable settlement was reached, a Pre-Trial Conference was held on August 17, 2007.[28]

During the Pre-Trial Conference, the parties and the Court *a quo* agreed that based on the pleadings filed by the parties, there was no genuine issue as to any material fact of the case, and that the only issue involved is a pure question of law which can be resolved based on the pleadings and the records of the case, without need of trial. The Court a *quo* thus ruled that Summary Judgment was proper, pursuant to Rule 35 of the ROC.[29]

The Ruling of the Court A Quo

On August 24, 2007, Judge Edwin B. Ramizo issued an Order in favor of respondents, ruling that:

---

[26] G.R. No. 156252, 493 SCRA 279, June 27, 2006.
[27] *Rollo*, C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), pp. 102 - 126, Annex "E" of the Petition for Review.
[28] *Id.*, pp. 261 - 262, Respondents' Memorandum *(Ad Cautelam)*.
[29] *Id.*, p. 60, Annex "A" of the Petition for Review.

"After a careful and judicious study of the records of the case, this Court finds for the plaintiffs.

As early as August 17, 2000, then Department of Justice (DOJ) Secretary Artemio Tuquero issued a Resolution declaring Tax Ordinance No. 7988 null and void and without legal effect. Likewise, Tax Ordinance No. 8011 was declared void by the DOJ thru then Secretary Hernando Perez in July 2001. The Department of Justice reasoned out that Ordinance No. 8011 is also null and void, being only a mere amendatory ordinance of an already nullified ordinance. Furthermore, the nullity of Ordinance Nos. 7988 and 8011 has been established beyond doubt by the Supreme Court itself in the case of Coca-Cola Bottlers vs. City of Manila, 493 SCRA 279. Thus, for all intents and purposes, the issue on whether the City of Manila can still use Ordinance Nos. 7988 and 8011 in its tax collections has been clearly settled.

WHEREFORE, in view of the foregoing, this Court renders judgment in favor of the plaintiffs and directs the defendants to grant a refund and/or tax credit:

a) to plaintiff Ace Hardware Phils., Inc.

1. the amount of Php162,461.83 representing overpayment of increased local business taxes under Sections 15, 16, 17, 18 and 19 of the Revenue Code of the City of Manila for the 4th quarter of 2004 to the 4th quarter of 2005.

2. the amount of Php148,086.20 representing payment of taxes under Section 21 of the Revenue Code of the City of Manila for the 4th quarter of 2004.

b) to plaintiff SM Mart, Inc.

1. the amount of Php2,577,275.10 representing overpayment of increased local business taxes under Sections 15, 16, 17, 18 and 19 of the Revenue Code of the City of Manila for the 4th quarter of 2004 to the 4th quarter of 2005.

2. the amount of Php2,434,931.63 representing payment of taxes under Section 21 of the Revenue Code of the City of Manila for the 4th quarter of 2004.

c) to plaintiff SM Prime Holdings, Inc.

1. the amount of Php103,424.11 representing overpayment of increased local business taxes under Sections 15, 16, 17, 18 and 19 of the

Revenue Code of the City of Manila for the 4th quarter of 2004 to the 4th quarter of 2005.

2. the amount of Php646,820.88 representing payment of taxes under Section 21 of the Revenue Code of the City of Manila for the 4th quarter of 2004.

d) to plaintiff Star Appliance Center, Inc.

1. the amount of Php558,453.61 representing overpayment of increased local business taxes under Sections 15, 16, 17, 18 and 19 of the Revenue Code of the City of Manila for the 4th quarter of 2004 to the 4th quarter of 2005.

2. the amount of Php517,811.12 representing payment of taxes under Section 21 of the Revenue Code of the City of Manila for the 4th quarter of 2004.

e) to plaintiff Supervalue, Inc.

1. the amount of Php1,113,010.23 representing overpayment of increased local business taxes under Sections 15, 16, 17, 18 and 19 of the Revenue Code of the City of Manila for the 4th quarter of 2004 to the 4th quarter of 2005.

2. the amount of Php417,867.71 representing payment of taxes under Section 21 of the Revenue Code of the City of Manila for the 4th quarter of 2004.

f) to plaintiff Watsons Personal Care Stores, Phils. Inc.

1. the amount of Php203,117.55 representing overpayment of increased local business taxes under Sections 15, 16, 17, 18 and 19 of the Revenue Code of the City of Manila for the 4th quarter of 2004 to the 4th quarter of 2005.

2. the amount of Php106,366.21 representing payment of taxes under Section 21 of the Revenue Code of the City of Manila for the 4th quarter of 2004.

No pronouncement as to costs.

SO ORDERED.

Pasay City, Metro Manila, August 24, 2007."[30]

Aggrieved, petitioners filed a Motion for Reconsideration[31] on October 1, 2007, which was denied by the Court *a quo* in its Order dated February 4, 2008.[32]

The Issues

Hence, the present recourse with petitioners ascribing to the Court *a quo* the following errors:

> "i. The Honorable Court *a quo* gravely erred in entertaining the case despite the fact that it has no jurisdiction over the case.
>
> ii. The Honorable Court *a quo* gravely erred in its failure to dismiss the case despite failure of plaintiffs[33] to observe a condition *sine qua non* before resort to court may be had.
>
> iii. The Honorable Court *a quo* gravely erred in its failure to dismiss the case for plaintiffs' failure to state cause of action.
>
> iv. The Honorable Court *a quo* gravely erred in its failure to dismiss the case despite violation by plaintiffs of Section 4, Rule 8 of the 1997 Rules of Court.
>
> v. The Honorable Court *a quo* gravely erred in applying the case of *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, Liberty M. Toledo, City Treasurer, and Joseph Santiago, Chief, Licensing Division of Manila*, docketed as G.R. No. 156252, June 27, 2006."[34]

With the filing of the respondents' Memorandum on July 14, 2008 by registered mail, and the petitioners' Memorandum on July 22, 2008, this case was deemed submitted for decision in the Court's Resolution promulgated on August 12, 2008.[35]

---

[30] *Rollo*, C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), pp. 60 – 62, Annex "A" of the Petition for Review.
[31] *Id.*, pp. 128 – 144, Annex "F" of the Petition for Review.
[32] *Id.*, p. 63, Annex "B" of the Petition for Review.
[33] Herein respondents.
[34] *Rollo*, C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), pp. 49 – 50, Petition for Review.
[35] *Id.*, p. 295.

The Ruling of the Court

The Petition for Review is devoid of merit.

Based on the Memoranda submitted by the parties, the Court has determined that the following are the issues that have to be resolved:

(1) Whether or not the Court *a quo* erred in not dismissing the case for failure of the respondents to observe Sections 187 and 195 of the Local Government Code ("LGC") before resort to court;

(2) Whether or not respondents failed to comply with Section 4, Rule 8 of the ROC; and

(3) Whether or not the *Coca-Cola* case applies to the instant case.

Sections 187 and 195 of the Local Government Code do not apply

Petitioners insist that the Court *a quo* has no jurisdiction over the subject matter of the claims of respondents. They argue that the allegations of respondents in their Complaint renders the regular courts, such as the Court *a quo*, as having no jurisdiction to hear and decide the case. They claim that respondents are barred from filing the present action for failure to observe Sections 187 and 195 of the LGC, which provide that:

> "Sec. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearing.* — xxx : 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: xxx : 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 the appropriate proceedings with a court of competent jurisdiction."

> "Sec. 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating

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

Petitioners further contend that since respondents failed to appeal the revenue measures within 30 days from their enactments, respondents may no longer file a complaint for refund.

The Court is not persuaded.

An appeal to the Secretary of Justice pursuant to Section 187 of the LGC is not necessary where there is no question on the constitutionality or legality of a tax ordinance or revenue measure.[36]

In this case, respondents are merely asking for a refund of business taxes erroneously assessed and collected under Ordinance Nos. 7988 and 8011. Respondents are not questioning the validity or constitutionality of the subject Ordinances. As a matter of fact, the issue of the constitutionality of Ordinance Nos. 7988 and 8011 has already been resolved in the case of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila, Liberty Toledo, et. al.*,[37] where the Supreme Court declared the said Ordinances null and void on the ground of failure to comply

[36] The Treasurer of the City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 28, November 28, 2007; City of Manila, et. al., v. Columbia Pictures Industries, Inc., C.T.A. AC No. 29, August 30, 2007; and Zarcon Development Corporation v. The City Treasurer of Manila, C.T.A. AC No. 24, May 16, 2007.
[37] *Supra*, note 26.

with the publication requirements. As the Court sees it, Section 187 of the LGC does not apply.

Anent the argument of petitioners that respondents are *estopped* from claiming a refund because they failed to protest or appeal the assessment as required in Section 195 of the LGC, the Court finds the same untenable.

In *Alcan Packaging Starpack Corporation (formerly Starpack Philippines Corporation) v. The Treasurer of the City of Manila,*[38] it has been held that Section 195 of the LGC pertains to protests on the assessment/s issued by the local treasurer against a taxpayer who has been found not to have paid its correct taxes, fees, or charges. In other words, the said provision does not apply when the case involves a claim for refund of taxes paid under the RCM.[39]

What is applicable in claims for refund is Section 196 of the LGC, which states that:

> "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."

Pursuant to the aforequoted provision, to successfully sue in court for a refund of any local tax, fee, or charge, two things must be done, to wit:

1) the taxpayer concerned must file a written claim for refund or credit with the local treasurer; and

[38] C.T.A. AC No. 17 (Civil Case No. 01-102097), September 11, 2006.
[39] The Treasurer of the City of Manila v. Unilever Philippines, Inc., *supra,* note 36; City of Manila, et. al. v. Columbia Pictures Industries, Inc., *supra,* note 36; and Liberty M. Toledo, in her capacity as The Treasurer of The City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 21, May 10, 2007.

2) the case or proceeding for refund has to be filed 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.[40]

In the instant case, respondents complied with both requisites. There is no dispute that respondents timely filed their protests and claims for refund with petitioner City Treasurer, and their Complaint for refund with the Court *a quo*.[41] Hence, the Court *a quo* did not err in taking cognizance of this case.

Ms. Cecilia R. Patricio is authorized to file the Complaint for Refund

Petitioners also allege that Ms. Cecilia R. Patricio has no legal capacity to sue, as respondents failed to state her authority to certify and verify the Complaint filed by respondents, which is a clear violation of Section 4, Rule 8 of the ROC, which provides:

> "Sec. 4. *Capacity*. — Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. A party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge. "

The allegation of petitioners is belied by the Secretary's Certificates attached to the Complaint which expressly state that Ms. Cecilia R. Patricio is "authorized and empowered to act, negotiate, sign, conclude and deliver for and in the name of the Corporation for the filing of a Complaint with the appropriate

[40] China Banking Corporation v. City Treasurer of Manila, C.T.A. E.B. No. 182 (RTC Civil Case No. 04-108990), July 27, 2006.
[41] *Rollo*, C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), p. 261, Respondents' Memorandum *(Ad Cautelam)*.

court for the refund of taxes paid to the City of Manila from the 4th quarter of 2004 to the 4th quarter of 2005."[42]

Moreover, as pointed out by respondents, petitioners have already admitted respondents' capacity to sue in their Answer.[43] In fact, during the Pre-Trial Conference on August 17, 2007, the parties agreed that there was no genuine issue as to any material fact of the case, as all material facts were admitted by both parties, which include the juridical circumstances of respondents.[44]

In view of the foregoing, the Court finds Ms. Cecilia R. Patricio duly authorized to sign the Verification and Certification of the Complaint filed by respondents.

The Court a quo correctly applied the Coca-Cola case

Petitioners are adamant that the declaration of the Supreme Court in the *Coca-Cola* case has no bearing on this case. They are of the view that the question raised before the Supreme Court relates only to the dismissal of the injunction case filed by Coca-Cola Bottlers Philippines, Inc., and that the ruling of the Supreme Court on the invalidity of Ordinance Nos. 7988 and 8011 was only for the purpose of determining whether the Regional Trial Court of Manila was correct in dismissing the case on the ground that the case was mooted in view of the enactment of Ordinance No. 8011.

The contention of petitioners holds no water.

---

[42] *Rollo*, C.T.A. AC No. 52 (Civil Case No. 06-1305-CFM), pp. 98 - 101, Annex "D" of the Petition for Review.
[43] *Id.*, p. 102, Annex "E" of the Petition for Review.
[44] *Id.*, pp. 261 - 262, Respondents' Memorandum *(Ad Cautelam)*.

The Supreme Court in the case of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila, et. al.,*[45] ruled that:

> "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,* if an order or law

---

[45] *Supra*, note 26.

sought to be amended is invalid, then it does not legally exist, there should be no occasion or need to amend it."

Clearly, the *Coca-Cola* case did not merely address the procedural issues, but disposed of the case on the merits, *i.e.*, on the substantive grounds.

It bears stressing that the Supreme Court has the last word on what the law is; it is the final arbiter of any justifiable controversy. Simply put, there is only one Supreme Court from whose decisions all other courts should take their bearings.[46] Hence, under the doctrine of *stare decisis,* the Court must apply the *Coca-Cola* case to the case at bar.

According to respondents, prior to the amendments introduced by Ordinance Nos. 7988 and 8011, they were not liable for the Section 21 tax due to a qualifying provision, to wit:

> "PROVIDED, that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof."

This provision however was deleted by Ordinance Nos. 7988 and 8011. As a result, respondents were made liable to pay the Section 21 tax of the RCM, in addition to the increased rates of local business taxes under Sections 15, 16, 17, 18, 19, 23, 24 and 25 of the RCM, likewise introduced by Ordinance Nos. 7988 and 8011.

In view of the nullification of Ordinance Nos. 7988 and 8011 by the Supreme Court, it is only just and proper that respondents be granted a refund not only of the additional local taxes under Sections 15, 16, 17, 18, 19, 23, 24 and 25, but also of the Section 21 taxes paid by them.

[46] Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, 406 SCRA 178, July 15, 2003.

The reasoning of petitioners that even if Ordinances Nos. 7988 and 8011 have been declared null and void, respondents are still not entitled to a refund under Section 21 because they would still be liable under Section 21 of the RCM, as amended by Ordinance No. 7807, must also fail.

Section 21 of the RCM, as amended by Ordinance No. 7807, states that:

> "SEC. 21. *Tax on Businesses Subject to the Excise, Value Added or Percentage Taxes Under the NIRC* — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of FIFTY PERCENT (50%) OF ONE PERCENT (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:
>
> A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said Code.
>
> B) On the gross receipts of keepers of garages, cars for rent or hire driven by the lessee, transportation contractors, persons who transport passenger or freight for hire, and common carriers by land, air or water, except owners of bancas and owners of animal-drawn two-wheel vehicle.
>
> C) On the amount paid on every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services, except amounts paid by the government, its political subdivisions or instrumentalities; diplomatic services; public international organizations or any of their agencies based in the Philippines; and news services.
>
> The tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter.
>
> D) Excisable goods subject to VAT
>
> (1) Distilled spirits
>
> (2) Wines

(3) Tobacco products (other than cigarettes, cigars and chewing tobacco)

(4) Tobacco specially prepared for chewing

(5) Fireworks

(6) Cinematographic films

(7) Saccharine

(8) Coal and coke

(9) Fermented liquor, brewer's wholesale price, excluding the ad valorem tax

(10) Automobiles, manufacturers or importers selling price

(11) Non-essential goods based on wholesale price, net of excise tax and VAT

(a) Jewelry, whether real and imitation. pearls, precious and semi-precious stones and imitations thereof; goods made of, or ornamented, mounted or fitted with precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of the teeth.)

(b) Perfumes and toilet waters.

(c) Yachts and other vessels intended for pleasure or sports.

(12) Mineral products, based on actual market value of the annual gross output at the time of removal

(E) Excisable goods not subject to VAT

(1) Naphtha when used as raw materials for production of petro-chemical products.

(2) Asphalt.

PROVIDED, that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof."

Sections 15, 16, 17, 18, 19, 23, 24 and 25 of the same Code, on the other hand read:

"Sec. 15. *Tax on Wholesalers, Distributors, or Dealers.* — There is hereby imposed a graduated tax on wholesalers, distributors or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

xxx xxx xxx"

"Sec. 16. *Tax on Essential Commodities.* — A percentage tax at the rate of one half (1/2) of the rates prescribed under Sections 14, 15, and 17 is hereby imposed on exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder:

(1) Rice and corn;

(2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed, or preserved food, sugar, salt and other agricultural, marine, and fresh water products. whether in their original state or not;

(3) Cooking oil and cooking gas;

(4) Laundry soap, detergents, and medicine;

(5) Agricultural implements, equipment and post harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;

(6) Poultry feeds and other animal feeds;

(7) School supplies; and

(8) Cement."

"Sec. 17. *Tax on Retailers.* — There is hereby imposed a graduated tax on Retailers in accordance with the following schedule:

xxx xxx xxx"

"Sec. 18. *Tax on Contractors.* — A percentage tax is hereby imposed on contractors and other independent contractors, in accordance with the following schedule:

xxx xxx xxx"

"Sec. 19. *Tax on Banks, Insurance Companies and Other Financial Institutions* — A percentage tax is hereby imposed on banks, insurance companies and other financial institutions, at the rate of TWENTY PERCENT (20%) OF ONE PERCENT (1%) on the gross receipts from all sources of the preceding calendar year derived from interests, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property and other investments.

However, on premiums received by insurance companies a flat rate of eleven percent (11%) of one percent (1%) is hereby imposed."

"Sec. 23. *Caterer's Tax* — On gross receipts of proprietors and operators of cafes, cafeterias, ice cream and other refreshments parlors, restaurants, soda fountains, carinderias or food caterers including clubs and caterers, an annual tax on the gross sales or receipts of the preceding calendar year is hereby imposed as follows, from:

1. The sale of food, soft drinks or refreshment at one percent (1%);

2. The sale of beer, wines and other liquor at three percent (3%);

3. The sale of cigarettes and other tobacco products at three percent (3%).

On newly established business, a tax of one-half (1/2) of one percent (1%) of the capital investment is hereby imposed."

"Sec. 24. *Tax on Real Estate Developers, Dealers and Lessors* — On real estate developers dealers, lessors or sub-lessors of real estate including accessorias, apartels, pension inns, apartments, condominia, houses for lease, rooms and spaces for rent, a tax of SEVENTY FIVE PERCENT (75%) OF ONE PERCENT (1%) per annum on the gross receipts for the preceding calendar year is hereby imposed.

For newly started business, the initial tax shall be one-half (1/2) of one percent (1%) of the capital investment."

"Sec. 25. *Tax on Privately-Owned Public Markets and Shopping Centers* — There is hereby imposed a tax of TWO PERCENT (2%) on the gross receipts for the preceding calendar year on owners or operators of privately-owned public markets and shopping centers.

For newly started privately-owned public markets and shopping centers the tax shall be one-half (1/2) of one percent (1%) of the capital investment."

These provisions were enacted by the City Council of Manila pursuant to Sections 151 and 143 of the LGC, which declare that:

"Sec. 151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, the City may levy taxes, fees, and charges which the province or municipality may impose: .

xxx xxx xxx "

"Sec. 143. *Tax on Business.* — The municipality may impose taxes on the following businesses:

xxx xxx xxx

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities xxx

(d) On retailers, xxx

(e) On contractors and other independent contractors, xxx

(f) On banks and other financial institutions, xxx

xxx xxx xxx

(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."

From the foregoing, it is apparent that Sections 15, 16, 17, 18 and 19 of the RCM are counterpart provisions of Sections 143 (b), (c), (d), (e) and (f) of the

LGC, respectively. While Sections 23, 24, and 25 of the RCM are based on Section 143 (e) of the LGC, which imposes a tax on contractors, defined in Section 4 (h) of the RCM as:

> "h) 'Contractor' – includes persons, natural or juridical, not subject to professional tax under Section 11 of this ordinance, whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.
>
> As used in this Section, the term 'contractor' shall include arrastre proprietors or operators; barber shops, battery charging establishments proprietors or operators; beauty parlors, bookbinders, business agents, cinematographic film owners, lessors and distributors, commercial brokers, demolition and salvage works, detective and watchman agencies, dockyards proprietors or operators, dress shops, dry cleaning or dyeing establishments, engraving establishments, filling contractor, forwarding establishments, funeral parlors, furniture shops proprietors or operators, general building, general engineering and specialty contractors, greasing and washing of motor vehicles, hatters, heavy equipment proprietors or operators, hotels, motels proprietors or operators, house and sign painters, immigration brokers, installations of water system and gas or electric light, heat or power; lithographers, lodging houses proprietors or operators, massage clinics, sauna, turkish and swedish baths, master plumbers, milliners, mine drilling apparatus proprietors or operators, parking lots proprietors or operators, photographic studios, planning or surfacing and recutting of lumber, plastic lamination, plating establishments, printers, publishers, except those engaged in the publication or printing of any newspaper, magazine, review, or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of advertisements; repair shops for the repair of: any kind of mechanical and electrical devices, instruments, apparatus, sawmills under contract to saw or cut logs belonging to others; shoe repairing by machines or any mechanical contrivance; slenderizing and body building saloons and similar establishments, smelting plants, smiths, stevedoring, tailors shops, upholstering shops proprietors or operators, vulcanizing shops proprietors or operators, warehousing proprietors or operators."

In a number of instances, this Court has already ruled that businesses taxed under Sections 14, 15, 17, 18 and 24 of the RCM can no longer be taxed under Section 21 thereof.[47] The underlying reason for this ruling is Section 143 (h) of the LGC, which requires that the business tax that may be imposed on "any business" must not be otherwise specified in the preceding paragraphs. Under this provision, the city shall only impose a tax in either one of the paragraphs but not both.[48]

Following these precedents and pursuant to Section 143 (h) of the LGC, petitioners are proscribed from taxing respondents under Section 21 of the RCM, as respondents have already paid their respective local business taxes under Sections 15, 16, 17, 18, 19, 23, 24 and 25 of the same Code. To do so would constitute double taxation, which means taxing the same person twice by the same jurisdiction for the same thing.[49]

All told, the Court finds no reason to reverse the ruling of the Court *a quo*.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. The Orders dated August 24, 2007 and February 4, 2008 rendered in Civil Case No. 06-1305-CFM are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

---

[47] Liberty M. Toledo and the City of Manila v. Metro Manila Shopping Mecca, et. al., C.T.A. AC No. 36, May 9, 2008; The Treasurer of the City of Manila v. Unilever Philippines, Inc., *supra*, at note 36; Unilever Philippines, Inc. v. The Treasurer of the City of Manila, C.T.A. AC No. 25, June 18, 2007; Zarcon Development Corp. v. The City Treasurer of the City of Manila, *supra*, at note 36; Liberty M. Toledo, in her capacity as the Treasurer of the City of Manila vs. Unilever Philippines, Inc., C.T.A. AC No. 21, May 10, 2007; Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila, C.T.A. AC No. 15, July 21, 2006; and International Container Terminal Services v. The City of Manila, et al., C.T.A. AC No. 11, May 17, 2006.

[48] City of Manila, et. al. v. Columbia Pictures Industries, Inc., *supra*, note 36, (Civil Case No. 02-102663), August 30, 2007.

[49] Commissioner of Internal Revenue v. Solidbank Corporation, G.R. No. 148191, 416 SCRA 436, November 25, 2003.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached after due consultation with the members of the Division of the Court of Tax Appeals before the case was assigned to the writer of the opinion of the Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division