REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NELIA A. BARLIS, in her capacity as the OIC-City Treasurer of the City of Makati, and **THE CITY OF MAKATI,**
Petitioners,

-versus-

GF & PARTNERS, ARCHITECTS, CO.,
Respondent.

CTA AC No. 247
(Civil Case No. 15-315)

Members:

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

Promulgated:

FEB 02 2023
1:55 pm.

x- -x

RESOLUTION

CUI-DAVID, J.:

For resolution of this Court is petitioners' ***Motion for Reconsideration [of the Decision dated 16 September 2022]*** ("*Motion*"), with respondent's ***Comment [To Petitioners' Motion for Reconsideration]*** ("*Comment*").

On 16 September 2022, the Court rendered its *Decision* ("assailed *Decision*") denying petitioners' *Petition for Review* for lack of merit. The dispositive portion reads:

> **WHEREFORE**, in light of the foregoing, the instant Petition for Review is **DENIED** for lack of merit.
>
> Accordingly, the *Decision* dated 26 December 2019 and the *Order* dated 25 January 2021 of the Regional Trial Court of Makati City, Branch 139 in Civil Case No. 15-315, are **AFFIRMED**.
>
> **SO ORDERED.**

On 3 October 2022, petitioners filed the instant *Motion*, to which respondent filed a *Comment* on 4 November 2022,[1] after its *Motion for Extension to File Comment*[2] and *Motion to Admit Comment* were granted by the Court on its *Resolutions* dated 7 November 2022 and 27 December 2022, respectively.

Petitioners' *Motion* was submitted for resolution on 27 December 2022.

Petitioners argue that Section 7B.14(b) of the Revised Makati Revenue Code ("**RMRC**") [3] is the procedural law applicable in the instant case.[4] According to them, Section 187 of the Local Government Code ("**LGC**") remains the proper and exclusive procedure to question the constitutionality or validity of a tax ordinance or revenue measure.[5] Petitioners cite the cases of *Jardine Davies Insurance Brokers Inc. vs. Aliposa*[6] and *Reyes vs. Court of Appeals*[7] to support their contention.

Further, petitioners argue that respondent never questioned the validity of the RMRC and its applicability to them[8] and that the constitutionality or validity of laws cannot be attacked collaterally.[9]

On the other hand, respondent argues that payment under protest is not required[10] and that the applicable law is Section 195 of the LGC,[11] citing the *City of Manila vs. Cosmos Bottling Corporation.*[12]

Respondent further contends that a local government unit's power to tax is merely a grant of the sovereign,[13] and thus, it must conform to the LGC.[14] Hence, according to respondent, payment under protest, not a requirement imposed on protest against local business tax assessments, should not be imposed.[15]

---

[1] Filed through registered mail and received by the Court on 11 November 2022.
[2] Filed on 27 October 2022.
[3] Adopting the Revised Makati Revenue Code, Makati City Ordinance No. 025-A-04, 27 October 2005.
[4] Motion for Reconsideration (of the Decision dated 16 September 2022), par. 5.
[5] *Id.*, pars. 6-7.
[6] G.R. No. 118900, 27 February 2003, 446 SCRA 243-255.
[7] G.R. No. 118233 (Resolution), 10 December 1999, 378 SCRA 232-240.
[8] Motion for Reconsideration (of the Decision dated 16 September 2022), par. 12.
[9] *Id.*, par. 13.
[10] Comment [To Petitioners' Motion for Reconsideration], par. 3.
[11] *Id.*, par. 4.
[12] G.R. No. 196681, 27 June 2018.
[13] Comment [To Petitioners' Motion for Reconsideration], par.6.
[14] *Id.*, par. 7.
[15] *Id.*, par. 8.

Accordingly, the sole issue to be resolved is whether Section 7B.14(c) of the RMRC, which provides that protests must come with a valid payment of the assessed taxes under protest, applies to the instant case.

We resolve.

At the onset, we note that the arguments raised by petitioners have already been judiciously passed upon in the assailed *Decision*. Nevertheless, the Court still deems it proper to discuss the applicability of Section 7B.14(c) of the RMRC anew.

Section 7B.14(c) of the RMRC provides:

> Section 7B.14. Taxpayer's Remedies. — ...
>
> (c) *Payment under Protest.* — No protest, however, shall be entertained **unless the taxpayer first pays the tax**. There shall be annotated on the tax receipt the words 'paid under protest.' A copy of the tax receipt shall be attached to the written protest contesting the assessment. [*Emphasis and underscoring supplied.*]

In contrast, Section 195 of the LGC provides:

> *Section 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. ... The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

As stated in the assailed *Decision*, Section 195 of the LGC does not require the prior payment of the assessed tax in protesting local tax assessments. As respondent correctly argued, this is in contradistinction with Section 252(a) of the LGC [16] pertaining to protests against a real property tax

---

[16] Section 252. Payment Under Protest. -

assessment. This has been settled in the *City of Manila vs. Cosmos Bottling Corporation*, [17] which We likewise quoted in the assailed Decision. We once again quote:

> Clearly, when a taxpayer is assessed a deficiency local tax, fee, or charge, **he may protest it under Section 195 even without making payment of such assessed tax, fee or charge**. **This is because the law on local government taxation, save in the case of real property tax, does not expressly require "payment under protest" as a procedure prior to instituting the appropriate proceeding in court**. **This implies that the success of a judicial action questioning the validity or correctness of the assessment is not necessarily hinged on the previous payment of the tax under protest**.
>
> ... ...
>
> Where an assessment is to be protested or disputed, the taxpayer may proceed (a) without payment, or (b) with payment of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer, otherwise, the assessment becomes conclusive and unappealable.
>
> (a) **Where no payment is made, the taxpayer's procedural remedy is governed strictly by Section 195.** That is, in case of whole of partial denial of the protest, of inaction by the local treasurer, the taxpayer's only recourse is to appeal the assessment with the court of competent jurisdiction. ...
>
> (b) Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (Section 195, LGC) and at the same time seeking a refund of the taxes. ...[18]

Clearly, Section 7B.14(c) of the RMRC is in opposition with Section 195 of the LGC as the former provision requires the payment of tax as a condition *sine qua non* for a valid protest of a local business tax assessment.

(a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

[17] G.R. No. 196681, 27 June 2018.

[18] Emphasis and underscoring supplied.

In the assailed *Decision*, We ruled that Section 7B.14(c) of the RMRC must be set aside, for it traverses beyond the provision of its enabling law, *i.e.*, the LGC. We mentioned:

> For an ordinance to be valid, it must not only be within the corporate powers of the LGU to enact and be passed according to the procedure prescribed by law, it must also, among others, not contravene the Constitution or any statute.[19] The requirement that the enactment must not violate existing law gives stress to the precept that local government units are able to legislate only by virtue of their derivative legislative power, a delegation of legislative power from the national legislature.[20] The delegate cannot be superior to the principal or exercise powers higher than the latter.[21] Simply put, an ordinance that is incompatible with any existing law or statute is *ultra vires*, hence, null and void.[22]

At this juncture, there is no question that Section 7B.14(c) of the RMRC is inconsistent with Section 195 of the LGC, and petitioners do not refute it. The issue at hand is whether Section 7B.14(c) of the RMRC can still apply to the instant case, notwithstanding its inconsistency with the LGC, considering that it has yet to be nullified and its validity was not directly assailed. It is petitioners' supposition that such is the applicable remedy considering that the provision is still valid.

Petitioners contend that Section 187 of the LGC remains the proper and exclusive procedure to question the constitutionality or validity of a tax ordinance or revenue measure[23] and that the constitutionality or validity of laws cannot be attacked collaterally.[24]

We rule in the negative.

Section 187 of the LGC provides:

> *Section 187. Procedure for Approval and Effectivity of Tax, Ordinances and Revenue Measures; Mandatory Public Hearings.* — x x x 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

[19] *Social Justice Society vs. Atienza, Jr.*, G.R. No. 156052 (Resolution), 13 February 2008, 568 SCRA 658-724.
[20] *City of Manila vs. Laguio, Jr.*, G.R. No. 118127, 12 April 2005, 495 SCRA 289-338.
[21] *Magtajas vs. Pryce Properties Corp., Inc.*, G.R. No. 111097, 20 July 1994, 304 SCRA 428-454.
[22] *Manila Electric Co. vs. City of Muntinlupa*, G.R. No. 198529, 9 February 2021.
[23] *Supra* at note 5.
[24] *Supra* at note 9.

> receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction. [*Emphasis and underscoring supplied.*]

The invocation of Section 187 of the LGC is utterly misplaced.

It has long been settled in jurisprudence that the nature of the action, as well as the court or body which has jurisdiction over it, is defined by the material allegations in the complaint, as well as the character of the relief sought.[25]

A perusal of the decision of the Regional Trial Court – Makati City Branch 139 reveals that the petition is for "cancellation of local business tax assessment."[26] Further, it was the inaction of petitioners in relation to respondent's protest that respondent elevated the matter to the court *a quo*.

Given that respondent's prayer and material allegations all point towards the cancellation of petitioners' assessment and *not* the validity of the provisions of the RMRC itself, this Court finds that Section 187 of the LGC is not applicable in the instant case. Further, the cases of *Jardine Davies Insurance Brokers Inc. vs. Aliposa*[27] and *Reyes vs. Court of Appeals,*[28] which petitioners cited, do not find application.

Finally, We adhere to the hierarchy of legal rules — municipal ordinances are inferior in status and subordinate to the laws of the State. Thus, in case of conflict between an ordinance and a statute, the ordinance must be set aside.[29]

It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character

---

[25] See De Vera vs. Spouses Santiago, Sr., G.R. No. 179457, 22 June 2015; Samson vs. Spouses Gabor, G.R. No. 182970, 23 July 2014; Ruby Shelter Builders and Realty Development Corporation vs. Hon. Formaran III, G.R. No. 175914, 10 February 2009; Spouses Mansalud vs. National Housing Authority, G.R. No. 167181, 23 December 2008; Villena vs. Payoyo, G.R. No. 163021, 27 April 2007; Huguete vs. Embudo, G.R. No. 149554, 1 July 2003; and Caiza vs. Court of Appeals, G.R. No. 110427, 24 February 1997.
[26] *Rollo*, p. 23.
[27] G.R. No. 118900, 27 February 2003, 446 SCRA 243-255.
[28] G.R. No. 118233 (Resolution), 10 December 1999, 378 SCRA 232-240.
[29] Municipality of Tupi vs. Faustino, G.R. No. 231896, 20 August 2019.

and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances that infringe the spirit of a state law or are repugnant to the state's general policy. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law.[30]

Accordingly, contrary to petitioners' supposition, payment under protest is not necessary for respondent to file a valid protest as provided under Section 195 of the LGC. As such, the local business tax assessment against respondent has not yet become final and executory, and this Court has jurisdiction to rule on the merits of the assessment. As We have ruled in the assailed *Decision*, respondent is not liable to pay the local business tax imposed under Section 3A.02(g) of the RMRC.

WHEREFORE, premises considered, petitioners' *Motion for Reconsideration (of the Decision dated 16 September 2022)* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[30] *Batangas CATV, Inc. vs. Court of Appeals*, G.R. No. 138810, 29 September 2004, 482 SCRA 544-571.