REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

METRO PACIFIC TOLLWAYS DEVELOPMENT CORPORATION, Petitioner,	**CTA EB NO. 2115** (CTA AC No. 191)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.,*** **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** ***JJ.***
MAKATI CITY AND NELIA A. BARLIS IN HER CAPACITY AS INCUMBENT CITY TREASURER OF MAKATI CITY, Respondents.	Promulgated: MAY 21 2021 4:20pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is petitioner Metro Pacific Tollways Development Corporation's (**petitioner**'s) Motion for Reconsideration (**MR**) filed on 21 October 2020[1], with Comment/Opposition thereto from respondents Makati City (**Makati City**) and Nelia A. Barlis, in her capacity as incumbent City Treasurer of Makati City (**City Treasurer**) filed on 11 December 2020.[2]

The MR seeks the reversal of the Court *En Banc*'s Decision promulgated on 30 September 2020 (**assailed Decision**). The dispositive portion of the assailed Decision reads:

[1] Rollo, pp. 109-117.
[2] Id., pp. 121-128.

...

WHEREFORE, with the foregoing, petitioner Metro Pacific Tollways Development Corporation's Petition for Review filed on 06 August 2019 is **DENIED** for lack of merit. Accordingly, the Decision dated 29 January 2019 and Resolution dated 10 July 2019, respectively, of the Special First Division in CTA AC No. 191, entitled *Metro Pacific Tollways Development Corporation v. Makati City and Nelia A. Barlis in her capacity as Incumbent City Treasurer of Makati City*, are **AFFIRMED**.

SO ORDERED.

...

In its MR, petitioner primarily argues that the cases of *City of Manila, et al. v. Cosmos Bottling Corporation*[3] (**Cosmos**) and *International Container Terminal Services, Inc. v. The City of Manila, et al.*[4] (**ICTSI**) are not applicable in the instant case as the same were promulgated after the issuance of the subject Billing Assessment Form Nos. 08874[5] and 08876[6] on 23 January 2014.

According to petitioner, the prevailing doctrine at that time was the case of *City of Manila, et al. v. Rizal Commercial Banking Corporation*[7] (**RCBC**) where this Court ruled that the taxpayer is free to choose which remedy (between Sections 195[8] and 196[9] of the Local Government Code [**LGC**] of 1991, as amended) will be enforced.

---

3 G.R. No. 196681, 27 June 2018.

4 G.R. No. 185622, 17 October 2018.

5 Exhibit "P-5", RTC Records, Volume II, p. 353; Annex "D" of Petition for Review dated 06 October 2017, Division Docket, p. 69.

6 Exhibit "P-6", id., p. 354; Annex "E" of Petition for Review dated 06 October 2017, id., p. 71.

7 CTA AC No. 148, 27 January 2018.

8 **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 (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

9 **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.

Second, petitioner, for the first time in this MR, avers that the subject Billing Assessment Forms are not notices of assessment contemplated and required under Section 195 of the LGC of 1991, as amended. According to it, the notice of assessment is one which is issued and signed by the local treasurer. Petitioner thus invokes the case of *Metro Pacific Tollways Corporation v. Makati City and Hon. Jesusa E. Cuneta*[10], where the Third Division of this Court ruled that billing assessment forms issued by the Makati City Business Permits Office and signed by the City Administrator/OIC Head, Business Permits Office and by the City Mayor cannot be considered as the notice of assessment required under Section 195 of the LGC of 1991, as amended.

Third, petitioner insists that even assuming *arguendo* that it availed of the wrong remedy, procedural rules and technicalities must be excused when strict adherence thereto will impede the administration of justice, citing the case of *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*[11] (**CMTC**). In the said case, the Supreme Court ruled, among others, that "where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction".

On the other hand, respondents allege that petitioner failed to present any new argument and/or legal basis to warrant the reversal of the assailed Decision. Corollary, petitioner merely reiterated the arguments already raised in its previous pleadings which have been thoroughly discussed and passed upon by the Court *En Banc*.

We resolve.

After going over the arguments raised by the parties, We are constrained to deny petitioner's MR.

We find no merit in petitioner's claim that the cases of *Cosmos* and *ICTSI*, which were both promulgated in 2018, are not applicable herein as the same were promulgated after the issuance of the subject

[10] CTA AC No. 204, 09 October 2019.
[11] G.R. No. 170488, 10 December 2012.

Billing Assessment Forms on 23 January 2014 and that it is the case of *RCBC* that should apply.

It must be emphasized that the *RCBC* case was only promulgated on 27 January 2018, on the same year when *Cosmos* and *ICTSI* were promulgated and long after the subject Billing Assessment Forms were issued in 2014. *In Albino S. Co v. Court of Appeals, et al.*[12], the Supreme Court ruled:

> ...
>
> Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system . . ." **The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate.** The settled rule supported by numerous authorities is a restatement of the legal maxim "*legis interpretation legis vim obtinet*" — the interpretation placed upon the written law by a competent court has the force of law. The doctrine laid down in *Lucero* and *Macarandang* was part of the jurisprudence, hence, of the law, of the land, at the time appellant was found in possession of the firearm in question and when he arraigned by the trial court. It is true that the doctrine was overruled in the *Mapa* case in 1967, **but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had <u>relied on the old doctrine and acted on the faith thereof</u>**. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society".
>
> ...

Applying the same herein, petitioner could not have validly relied on *RCBC* when it chose to pursue solely the remedy under Section 196 instead of filing the necessary protest required by Section 195 (both of the LGC of 1991, as amended) as all of its prior filings in the administrative and judicial levels were made even before the promulgation of *RCBC* in 2018.

---

12 G.R. No. 100776, 28 October 1993 citing *The People of the Philippines v. Jose Jabinal y Carmen*, G.R. No. L-30061, 27 February 1974; Italics in the original text, emphasis and underscoring supplied.

To elucidate, petitioner was issued the subject Billing Assessment Forms on 23 January 2014 and it paid the assessed amounts on 29 January 2014. Thereafter, petitioner filed an administrative claim for refund on 08 January 2016[13] which it later on amended and filed on 18 January 2016.[14] Finally, on 28 January 2016, petitioner filed a judicial claim[15] before the Regional Trial Court of Makati City (**RTC Makati**).

As can be readily observed, all events transpired prior to the promulgation of *RCBC*. Thus, petitioner could not have relied on the "old doctrine" (in *RCBC*) and acted on the basis thereof as all the antecedent proceedings occurred before its promulgation in 2018. Consequently, as petitioner did not rely (as it could not possibly have relied) on an "old doctrine", the general rule that the interpretation upon a law by the Supreme Court constitutes a part of the law as of the date that law was originally passed should apply.

With respect to petitioner's assertion that the subject Billing Assessment Forms could not be considered as notices of assessment under Section 195 of the LGC of 1991, as amended, the Court *En Banc* cannot also side with petitioner.

First, the said contention was raised for the first time in this MR. In *Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.*[16], the Supreme Court ruled:

> ...
>
> In the case of *Aguinaldo Industries Corporation (Fishing Nets Division) vs. Commissioner of Internal Revenue and the Court of Tax Appeals*, this doctrine was explained by this Court as follows:
>
>> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level would be to sanction a procedure whereby the court — which is supposed to review administrative determinations would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give

13 Annex "G" of Complaint, RTC Records, Folder I, pp. 46-59.
14 Annex "H" of Petition for Review, Division Docket, pp. 74-87.
15 RTC Records, Folder 1, p. 1.
16 G.R. No. 222436, 23 July 2018; Citations omitted and emphasis supplied.

> administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.
>
> **Here, it is not disputed that CIR raised the issue** that the alleged failure to present VAT official receipts with the imprinted words "zero rated" adopting the dissent of Justice Del Rosario, **only at the latter stage of the appeal on Motion for Reconsideration of the CTA *En Banc*'s decision. Accordingly, with the doctrine that issues may not be raised for the first time on appeal, CIR should not be allowed by this Court to raise this matter.**
>
> ...

It is a settled rule that issues not raised below cannot be pleaded for the first time on appeal because a party is not allowed to change its theory on appeal. To do so would be unfair to the other party and offensive to rules of fair play, justice and due process.[17]

Second, even if the Court *En Banc* would choose to pass upon the said new argument, it would only serve to magnify the contradictions in petitioner's claims.

In the Complaint[18] it filed before the RTC Makati, petitioner made the following allegation:

> ...
>
> 3. Defendant Nelia A. Barlis ("Defendant City Treasurer") is the incumbent City Treasurer of Makati City, and holds office at the City Treasurer's Office, Makati City Hall, J.P. Rizal Street, Barangay Poblacion, Makati City, Metro Manila. **The Office of the City Treasurer, erroneously assessed deficiency LBT on Plaintiff's dividend income received for the year 2012.**[19]
>
> ...

Petitioner echoed the same in its prior Petition for Review filed with the Court in Division the pertinent portion[20] of which reads:

---

17 *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue,* G.R. Nos. 201665 and 201668, 30 August 2017.

18 RTC Records, Folder 1, pp. 1-2.

19 Emphasis supplied.

20 Division Docket, p. 9.

> ...
>
> 5. Respondent Nelia A. Barlis was the incumbent City Treasurer of Makati City, and held office at the City Treasurer's Office, Makati City Hall, J.P. Rizal Street, Barangay Poblacion, Makati City, Metro Manila, and was impleaded in her official capacity, **as it was her office that issued the assessment against Petitioner for LBT** on dividend income received by Petitioner for the year 2013.[21]
>
> ...

Under Section 4, Rule 129[22] of the Rules of Court, a judicial admission requires no proof. The Court cannot lightly set it aside, especially when the opposing party relies upon it and accordingly dispenses with further proof of the fact already admitted.[23]

Moreover, in *Joshua S. Alferor, et al. v. Josefina M. Halasan, et al.*[24], the Supreme Court ruled:

> ...
>
> ...A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.
>
> ...

Based on the foregoing, it is procedurally infirm for petitioner to raise, at this very late stage of the proceedings, the issue on whether or not the Billing Assessment Forms are notices of assessment contemplated in Section 195 of the LGC of 1991, as amended, especially so when its judicial admissions before the RTC Makati and the Court in Division are diametrically opposed to the present legal position petitioner takes.

---

[21] Emphasis supplied.

[22] **Sec. 4.** *Judicial admissions.* — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[23] *Commissioner of Internal Revenue v. Petron Corporation*, G.R. No. 185568, 21 March 2012.

[24] G.R. No. 165987, 31 March 2006; Citations omitted.

Verily, petitioner's failure to raise such issue in the two (2) previous proceedings (before the RTC Makati and the Court in Division), coupled by its own admission that it was respondent City Treasurer that issued the subject Billing Assessment Forms, would unduly prejudice and place respondents at a disadvantage as the latter could no longer present evidence to rebut petitioner's belated claim.

Lastly, petitioner desires to be excused from procedural rules and technicalities, citing the case of *CMTC*. The Court *En Banc,* however, cannot oblige.

In *CMTC,* the Supreme Court reversed the Court of Appeals' dismissal of the appeal due to therein petitioner's failure to file the required appellant's brief within the reglementary period. The Supreme Court, however, found that there is a strong desire to file an appellant's brief on therein petitioner's part and that it had no participatory negligence in the dismissal of its appeal as it was completely attributable to the gross negligence of its counsel.

Thus, aside from the fact that such factual circumstances do not obtain herein, it must also be noted that the instant case involves a claim for refund of allegedly erroneously or illegally paid local business tax for which petitioner must strictly comply with the mandatory and jurisdictional conditions prescribed therefor.

While the case of *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[25] involves a claim for refund under Section 112(C) of the National Internal Revenue Code (**NIRC**), as amended, the Court *En Banc* nevertheless finds the same equally applicable herein insofar as it ruled that strict compliance with the mandatory and jurisdictional conditions prescribed by law is essential and necessary for a claim for tax credit or refund to prosper, *viz:*

> ...
>
> As this Court has repeatedly emphasized, a tax credit or refund, like tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund by showing that he has strictly complied with the conditions for the grant of the tax refund

---

[25] G.R. No. 173241, 25 March 2015; Emphasis supplied.

> or credit. **Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. Noncompliance with the mandatory periods, nonobservance of the prescriptive periods, and nonadherence to exhaustion of administrative remedies bar a taxpayer's claim for tax refund or credit...**
>
> ...

Since the instant case involves a claim for refund, the Court *En Banc* cannot excuse petitioner from procedural rules and technicalities, owing to the nature of a claim for refund which must be strictly construed against the taxpayer.

With the above disquisitions, the Court *En Banc* finds no reason to disturb the assailed Decision.

WHEREFORE, the foregoing considered, petitioner Metro Pacific Tollways Development Corporation's Motion for Reconsideration filed on 21 October 2020 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

(With due respect, I maintain my D.O.)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I concur with J. MRL's D.O.)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, I concur with J. Liban's D.O.)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice