REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MINDANAO SHOPPING DESTINATION CORP., ACE HARDWARE PHILIPPINES, INC., INTERNATIONAL TOY WORLD, INC., STAR APPLIANCE CENTER, INC., SUPERVALUE, INC., SURPLUS MARKETING CORP., and WATSONS PERSONAL CARE STORES (PHILIPPINES), INC.,

Petitioners,

CTA AC NO. 62

Members:

\- versus-

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

DAVAO CITY and RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City,

Respondents.

Promulgated:

JAN 21 2011
11:35a.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.*:

THE CASE

This case is a Petition for Review filed on November 3, 2009, under *Section 11 of Republic Act No. 1125 (R.A.1125), as amended by Section 9 of R.A. No. 9282, and Section 3(a), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*

(RRCTA), praying that the Decision[1] dated July 14, 2009 and the Order[2] dated September 4, 2009 rendered by the Regional Trial Court of Davao City, Branch 17 (RTC-Branch 17) be reversed and set aside; and for this Court to render a judgment ordering the respondents to refund or issue a tax credit in favor of petitioners in the total amount of P39,040,737.74, broken down as follows:

Petitioners	Amount
Mindanao Shopping Destination Corp.	Php18,893,128.14
Ace Hardware Philippines, Inc.	Php2,323,551.96
International Toy World, Inc.	Php918,126.39
Star Appliance Center, Inc.	Php3,838,823.57
Supervalue, Inc.	Php11,030,711.88
Surplus Marketing Corp.	Php655,125.53
Watsons Personal Care Stores (Philippines), Inc.	Php1,381,250.23

The dispositive portions of the assailed Decision and Resolution are reproduced hereunder:

Decision dated July 14, 2009:

> "**WHEREFORE**, finding [sic] after careful and painstaking review and evaluation of the evidence, pleadings and arguments of parties and counsels, arriving in a clear and convincing diversity of decision, through a fair and judicious distribution of justice, the court, inevitably orders, the dismissal of the complaint of plaintiffs against the defendant City Government of Davao, declaring the present action for refund of plaintiffs,[sic] premature, without first waiting for the decision and/or resolution of the Court of Appeals, docketed as CA-G.R. 101482.
>
> **SO ORDERED.**"

Order dated September 4, 2009:

> "Accordingly, finding the Motion for Reconsideration of plaintiff through counsel, deviod [sic] of any legal and factual merit, moreover pro-forma and likewise pre-mature, is ordered DENIED. [sic]
>
> **SO ORDERED.**"

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[1] *Rollo*, pp. 66-76

[2] *Rollo*, p. 77

THE PARTIES

Petitioners (also collectively referred to as the "*SM Group of Companies*") are corporations organized and existing under and by virtue of the laws of the Philippines.[3] They are also retailers who conduct business operations at SM City Davao, Quimpo Boulevard corner Tulip Drive, Ecoland Subdivision, Matina, Davao City, within the territorial jurisdiction of respondent City.[4]

Respondent Davao City is a local government unit (LGU) created by law. Respondent Rodrigo S. Riola was impleaded in his capacity as Treasurer of respondent Davao City. Under Section 170 of the Local Government Code (LGC), the respondent Treasurer is responsible for the collection of respondent Davao City's local business taxes.[5]

THE FACTS

The case stemmed from the following facts:

Prior to and during 2005, respondents imposed and collected local business taxes against retailers conducting business operations within Davao City, such as petitioners, on the basis of Section 1(d) in relation to Section 1(b), Article 5, Chapter 3 of the respondent Davao City's Ordinance No. 230, Series of 1991, as amended by City Ordinance No. 2018, Series of 1994 (the "*Old Tax Ordinance*").[6] The former ordinance is the main ordinance being implemented, the latter being a mere amendment thereto.

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[3] RTC *Rollo*, pp. 329-335, Stipulation of Facts, Minutes of Preliminary Conference, April 21, 2009
[4] Admitted by respondents, *Rollo*, p. 95, par. 2 Annex D of the Petition for Review, Answer/Comment to Complaint/Appeal.
[5] *Supra.*
[6] Admitted by respondents, *Rollo*, p. 95, par. 3 Annex D of the Petition for Review, Answer/Comment to Complaint/Appeal.

Specifically, under Section 1(d) in relation to Section 1(b), Article 5, Chapter 3 of the Old Tax Ordinance, the rate of local business tax applicable to, and which respondents used in collecting from retailers, such as petitioners, with gross receipts or sales for the preceding calendar year in excess of P2,000,000.00 was fifty percent (50%) of one percent (1%) of such gross receipts or sales.[7]

Respondents considered petitioners as retailers under the *Old Tax Ordinance*.[8]

From 2002 until 2005, each petitioners' gross receipts or sales for each year covered by that period exceeded P2,000,000.00. Thus, the local business tax rate applicable to and imposed by respondents on the petitioners during said period was 50% of 1% of their respective gross receipts or sales for the preceding calendar year.[9]

Beginning calendar year of 2006 and the 1st, 2nd, and 3rd quarters of 2007, respondents began imposing and collecting local business taxes against retailers conducting business operations within Davao City, using the rates prescribed under Section 69(d), Article 10 of the respondent City's Ordinance No. 158-05, series of 2005, otherwise known as "*The 2005 Revenue Code of the City of Davao*" (the "*New Tax Ordinance*").[10] According to respondents, the imposition and collection of the new tax rates on local business taxes by the City Government against retailers, such as petitioners, were made only upon effectivity of City Ordinance No. 158-05.[11]

[7] Admitted by respondents, *Rollo*, p. 95, par. 4 Annex D of the Petition for Review, Answer/Comment to Complaint/Appeal.
[8] Admitted by respondents, *Rollo*, p. 95, par. 4 Annex D of the Petition for Review, Answer/Comment to Complaint/Appeal.
[9] Admitted by respondents, *Rollo*, p. 95, par. 6 Annex D of the Petition for Review, Answer/Comment to Complaint/Appeal.
[10] Admitted by respondents with qualification, *Rollo*, p. 95, par. 7 Annex D of the Petition for Review, Answer/Comment to Complaint/Appeal.
[11] *Supra*.

The *New Tax Ordinance* was approved by the Mayor of Davao City on December 2, 2005. However, said ordinance was published only on December 23, 24, and 25, 2005 in the Mindanao Mercury Times.[12]

The *New Tax Ordinance* was meant to amend and supersede the *Old Tax Ordinance*, including the latter's rates for local business taxes. Particularly, under Section 69(d), Article 10 of the *New Tax Ordinance*, the local business tax rate which respondents used in collecting from retailers with gross receipts or sales for the preceding calendar year in excess of P400,000.00 is 1½% of such gross receipts or sales.[13]

Petitioners claim that: the new rate imposed by respondents under Section 69(d) of Article 10 of the *New Tax Ordinance* is a 200% increase from the local business tax rate that was then being imposed by the respondents under Section 1(d) in relation to Section 1(b), Article 5, Chapter 3 of the Old Tax Ordinance; and the said *New Tax Ordinance* lowered the gross receipts threshold from P2,000,000.00 (provided under the *Old Tax Ordinance*) to P400,000.00.[14]

However, above assertions were denied by respondents, they contend that under the *New Tax Ordinance*, *wholesalers, distributors, dealers* are classified into one class and treated under Section 69(d) thereof, subjecting, among others, those with gross sales in excess of P2,000,000.00 to a tax rate of fifty-five percent (55%) of one percent (1%) on such gross sales, while retailers are classified and treated under Section 69(d), subjecting, among others, those with gross sales/receipts in excess of

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[12] RTC *Rollo*, p. 334, Stipulation of Facts, Minutes of Preliminary Conference, April 21, 2009; pp. 659-661, Exhibits "KK", "LL", "MM", Mindanao Mercury Times.
[13] Admitted by respondents, *Rollo*, p. 95, par. 8 Annex D of the Petition for Review, Answer/Comment to Complaint/Appeal.
[14] *Rollo*, p. 309, pars. 14 & 15, petitioners' Memorandum

P400,000.00 to a tax rate of 1% of such gross sales/receipts.[15] Respondents insist that the reclassification contained under the *New Tax Ordinance* is pursuant to the existing classification provided under Section 143 (pars. b & d) of R.A. 7160, otherwise known as the Local Government Code of 1991 (LGC). Previous to the amendment, the old Davao City Ordinance No. 230, Series of 1991, erroneously classified the above taxpayers into one and the same taxpayers, subject to the same tax rate.

In October 2006, respondent Davao City enacted Ordinance No. 253, Series of 2006, otherwise known as "An Ordinance Amending The Provision of Section 69, paragraph (d) of Davao City Ordinance No. 158-05, Series of 2005". Thereafter, in February 2007, respondent Davao City enacted Ordinance No. 326-07, Series of 2007, otherwise known as "An Ordinance Further Amending Ordinance No. 253-06, an Ordinance Amending the provision of Section 69, paragraph (d) of Davao City Ordinance No. 158-05, Series of 2005".[16] Davao City Ordinance No. 253, Series of 2006 was not published in any newspaper in Davao City.[17] The tax rate of 1¼% under the *Amendatory Ordinances* was applied beginning the 4th quarter of 2007.[18]

Respondents considered petitioners as retailers under the *New Tax Ordinance* and under Davao City Ordinance No. 253-06 and Ordinance No. 326-07 (latter two ordinances collectively referred to as "*Amendatory Ordinances*").[19]

For the years 2005, 2006, and 2007, each petitioners' gross receipts exceeded P400,000.00.[20] For all the quarters of 2006 and for the 1st, 2nd, and 3rd quarters of 2007, the local business tax rate which respondents imposed upon petitioners is 1½% L

[15] *Rollo*, pp. 1-3 respondents' Memorandum
[16] Admitted by respondents, *Rollo*, p. 97, par. 10 Annex D of the Petition for Review, Answer/Comment to Complaint/Appeal.
[17] RTC *Rollo*, p. 662-678, Letter dated March 20, 2009, Exhibit "NN"
[18] RTC *Rollo*, p. 334, Stipulation of Facts, Minutes of Preliminary Conference, April 21, 2009.
[19] Admitted by respondents, *Rollo*, p. 97, par. 11 Annex D of the Petition for Review, Answer/Comment to Complaint/Appeal.
[20] *Supra*, Note 17.

of their gross receipts, as set forth in the *New Tax Ordinance*.[21] For the 4th quarter of 2007, respondents imposed on the petitioners local business taxes at the rate of 1¼% of their gross receipts, as set forth in the *Amendatory Ordinances*.[22]

Tabular summary[23] of the rates, threshold amounts, and applicable periods of the *Old*, *New*, and *Amendatory Ordinances* as discussed above:

Tax Ordinance	Rate	Threshold Amount	Applicable Period
Old Tax Ordinance	½	P2,000,000.00	2002-2005
New Tax Ordinance	1½	400,000.00	2006 to 1st – 3rd Quarters of 2007
Amendatory Ordinances	1¼	400,000.00	4th Quarter of 2007

Petitioners' alleged in their Memorandum[24] that:

(a) the sum of the local business taxes they paid to respondent Davao City for the years 2006 and 2007 (pursuant to the *New Tax Ordinance* and *Amendatory Ordinances*) are as follows:

Petitioners	Amount
Mindanao Shopping Destination Corp.	₱28,692,930.33
Ace Hardware Philippines, Inc.	3,537,372.88
International Toy World, Inc.	1,406,289.15
Star Appliance Center, Inc.	5,834,990.04
Supervalue, Inc.	16,756,771.05
Surplus Marketing Corp.	1,007,177.04
Watsons Personal Care Stores (Philippines), Inc.	2,135,182.89
Total	**P59,370,713.38**

(b) and, if the rates prescribed under the *Old Tax Ordinance* had been applied by respondents, petitioners would have paid only the following amounts as local business taxes to respondent Davao City:

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[21] *Supra*, Note 17
[22] *Supra*, Note 17.
[23] *Rollo*, p. 312, petitioners' Memorandum
[24] *Rollo*, pp. 312-316

Petitioners	Amount
Mindanao Shopping Destination Corp.	P9,799,827.19
Ace Hardware Philippines, Inc.	1,213,775.88
International Toy World, Inc.	488,162.76
Star Appliance Center, Inc.	1,996,166.47
Supervalue, Inc.	5,726,059.17
Surplus Marketing Corp.	352,051.51
Watsons Personal Care Stores (Philippines), Inc.	753,932.66
Total	**₱20,329,975.64**

Accordingly, the difference between *(a)*, the amounts paid based on the tax base and rate under the *New Tax Ordinance* and the *Amendatory Ordinances*, on the one hand, and *(b)*, the amounts petitioners would have paid using the tax base and rate under the *Old Tax Ordinance*, on the other hand, amount to a total of **₱39,040,737.74**, broken down as follows:

Petitioners	Tax under *New* and *Amendatory Tax Ordinances*	Tax under *Old Tax Ordinance*	Tax under *Old Tax Ordinance*
Mindanao Shopping Destination Corp.	₱28,692,930.33	₱9,799,827.19	₱18,893,128.14[sic][25]
Ace Hardware Philippines, Inc.	3,537,372.88	1,213,775.88	2,323,597.00
International Toy World, Inc.	1,406,289.15	488,162.76	918,126.39
Star Appliance Center, Inc.	5,834,990.04	1,996,166.47	3,838,823.57
Supervalue, Inc.	16,756,771.05	5,726,059.17	11,030,711.88
Surplus Marketing Corp.	1,007,177.04	352,051.51	655,125.53
Watsons Personal Care Stores (Philippines), Inc.	2,135,182.89	753,932.66	1,381,250.23
Total	59,370,713.38	20,329,975.64	**P39,040,737.74**

As legitimate retailers affected by the new tax rates mandated under the *New Tax Ordinance* brought about by the reclassification, petitioners assailed the validity of the said ordinance by filing an appeal before the Department of Justice (DOJ) on January 24, 2006, which appeal was docketed as MTO-DOJ Case No. 02-2006. Petitioners insisted that the above-specified newly adjusted tax rates under the

[25] Figure should be P18,893,1<u>03</u>.14. The right computation is as follows, P28,692,930.33 minus P9,799,827.19 is equivalent to P18,893,1<u>03</u>.14.

questioned ordinance are excessive, oppressive, illegal, confiscatory, in restraint of trade, contrary to the Constitution, and violates Section 191 of the LGC, and that said ordinance is ineffective for non-compliance with the mandatory publication requirement under Section 187 of the LGC.

On July 12, 2006, the Department of Justice came out with a Resolution dismissing the appeal. Petitioners' Motion for Reconsideration of the said resolution was likewise denied.[26]

Aggrieved by the DOJ's resolution, petitioners filed an appeal to the Office of the President, which appeal was docketed as O.P. Case No. 06-L-425. The said appeal and petitioner's Motion for Reconsideration were both denied.[27] This prompted the petitioners to elevate the case to the Court of Appeals pursuant to Rule 43 of the Rules of Court, docketed as CA-G.R. 101482 (the "*CA Case*"). The *CA Case* was filed on December 5, 2007 and its resolution still pending.[28]

In the meantime, pursuant to Section 196 of the LGC, petitioners filed with the respondent Treasurer individual claims for refund of the amounts they paid to respondents under the increased tax rate of 1½% set forth in the New Tax Ordinance for 2006 and the 1st, 2nd, and 3rd quarters of 2007, and the increased rate of 1¼% set forth in the Amendatory Ordinances for the 4th quarter of 2007. Respondent Treasurer denied petitioners' claim for refund for being premature.

On January 18, 2008, petitioners filed with the Davao City RTC a Complaint/Appeal (the "*RTC Case*") with a prayer that judgment be rendered ordering respondents to refund or issue tax credit certificates in favor of the

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[26] *Rollo*, p.70, Annex "A" of the Petition for Review, Decision of RTC Branch 17, Davao City.
[27] *Rollo*, p.71, Annex "A" of the Petition for Review, Decision of RTC Branch 17, Davao City.
[28] *Supra*, Note 27

petitioners for the increased local business taxes petitioners had paid to respondents for the taxable years 2006 and 2007.

After trial on the merits, the RTC Branch 17 of Davao City rendered a Decision declaring the present action for refund of plaintiffs premature, in view of the appealed case pending with the Court of Appeals. Petitioners' Motion for Reconsideration of the above Decision was also denied.

Hence, the instant Petition for Review.

THE ISSUES

The parties submitted the following issues for this Court's resolution:

I. Whether the RTC erred in ruling that the RTC case was a repetition of the *CA Case*. Consequently, it erred when it applied, even by analogy, the principles of *litis pendentia* and/or *res judicata*.

II. Whether the RTC erred in ruling that the RTC Case was "premature" and that petitioners should have first awaited the outcome of the CA Case before filing the RTC Case.

III. Whether the RTC erred in ruling that petitioners' Motion for Reconsideration or Clarification was "*pro-forma*".

IV. Whether petitioners are entitled to a refund or tax credit and if so, in what amounts?

Arguments of Petitioners[29]

Petitioners assert that the RTC Branch 17 of Davao City erred in ruling that the RTC Case was merely a repetition of the CA Case, thus, it erred when it applied, even by analogy, the principles of *res judicata* and/or *litis pendentia*. Petitioners submit that the requisites of *litis pendentia* are not present in this case, *i.e.*, no identity of parties, causes of action, and reliefs sought. For the said reason, the dismissal by

[29] *Rollo*, pp. 305-355, petitioners' Memorandum

the RTC of the complaint on said ground is erroneous and thus, should be reversed and set aside. Also, petitioners posit that it is entirely erroneous to declare that the judgment in the CA Case amounts to *res judicata* in the RTC Case because there is absolutely no similarity of parties, subject matter, and causes of action involved between the CA Case and the RTC Case.

With regard to the second issue, petitioners strongly contend that the RTC erred in ruling the *RTC Case* "premature", citing the case of *Alabang Supermarket Corporation v. City Government of Muntinlupa, et al.*[30] where this Court ruled that a taxpayer should not await the finality of the decision of a court declaring a tax measure void before filing a claim for refund.

Apropos the third issue, petitioners maintain that the RTC erred in ruling that their Motion for Reconsideration or Clarification was "*pro-forma*". The Motion for Reconsideration specifically pointed out RTC's findings and conclusions in the challenged Decision which were not supported by the evidence or which were contrary to law. Petitioners even cited the case of *Department of Agrarian Reform v. Uy,*[31] where the Supreme Court categorically ruled that a movant may raise the same arguments precisely to convince the court that its ruling was erroneous.

Lastly, petitioners claim that they are entitled to a full refund of the local business taxes paid pursuant to the *New Tax Ordinance* and *Amendatory Ordinances* because those issuances are ineffective and illegal. Petitioners refute respondents' argument that the *New Tax Ordinance* did not increase the tax rates for retailers but, rather, only corrected an erroneous tax base and rate on retailers and followed the legal classification, tax base, and rate provided for under Section 143 (pars. b & d) of

[30] CTA EB Case No. 386, February 12, 2009.
[31] 515 SCRA 376, 397-398 (2007)

the LGC. According to petitioners, the above "error correction" or "reclassification" theories are misleading because they conveniently conceal that Section 143 of the LGC does not require respondent Davao City to classify *retailers* separately from *wholesalers*, *distributors*, and *dealers*; neither does Section 143 require respondent City to tax retailers at the rate of 1½%.

Furthermore, petitioners argue that: under Section 143 of the LGC, the imposition of business taxes is absolutely discretionary on the part of respondent Davao City; while it provides for separate schedules for different classes of taxpayers, it does not require respondent Davao City to adopt the same groupings of taxpayers, or to adopt the same tax rates, provided that the rates it imposes do not exceed the prescribed limits, and once a city or other local government unit has chosen to tax a particular business at a particular rate, it becomes bound by its choice of tax rate and, pursuant to Section 191 of the LGC, such tax rate can only be adjusted once every five (5) years and only up to a maximum of 10%.

Moreover, petitioners emphasized that the *Old Tax Ordinance* was enacted by respondent City in 1994, or two years after the LGC took effect. Thus, at the time respondent City chose to tax retailers (such as petitioners) at the rate of ½%, it was well aware that it had the power to tax them at the rate of 1½% but, in the exercise of the discretion granted to it by the LGC, it chose not to do so. Also, respondent Davao City was well aware of the limitations prescribed by Section 191 of the LGC, and that the tax rate it would then impose would be the basis of the 10% maximum increase allowed under Section 191, but again respondent Davao City continued to tax retailers at the rate of ½%.

Petitioners also put in issue the non-compliance with the publication requirements of the *New Tax Ordinance* mandated under Section 188 of the LGC.

According to petitioners, the *New Tax Ordinance* is ineffective and without any force and effect because it was not published within 10-days after approval as prescribed under Section 188 of the LGC. It is undisputed that, although the *New Tax Ordinance* was approved by the Mayor of Davao City on December 2, 2005, it was published only on December 23, 24, and 25, 2007, more than 21 days after the date of its approval.

Arguments of Respondents

In its Memorandum[32] posted on March 2, 2010, respondents submit that: the RTC correctly ruled that the RTC Case is a repetition of the CA Case arguing that under the rules and existing jurisprudence, the requisites of *litis pendentia* are present; there is identity of parties as the real party-in-interest in both cases is the City of Davao, it stands to gain or lose revenues depending of the outcome of both cases; the impleaded city offices and officials in both cases will not gain or be made to answer in their personal capacity as they are mere representatives acting for and in behalf of the City; there is identity of cause of action as between the two actions because the CA Case and RTC Case similarly assails the legality, validity, and constitutionality of the *New Tax Ordinance*; the identical relief sought by petitioners is that they be relieved from paying the local retailer's tax on the basis of the questioned new tax rates for *retailers* under the *New Tax Ordinance* for being illegal, invalid or unconstitutional.

On the second issue, respondents are of the view that the RTC was correct in ruling that the RTC Case was "premature" and that petitioners should have first awaited the outcome of the CA Case before filing the RTC Case. Respondents made

[32] *Rollo*, pp. 361-381, respondents' Memorandum

reference to Article 286 of the Implementing Rules and Regulations of the Local Government Code of 1991, which implies that the mere filing of the written claim with the City Treasurer within the two (2) year prescriptive period reckoned from the time of payment as regard a particular claim for tax refund or credit will suffice to beat the deadline.

As regards the third issue, respondents aver that except for matters raised for clarification therein, a perusal of the Motion for Reconsideration filed by petitioners to the decision of the RTC reveals that the grounds and issues raised and relied upon by petitioners to support such motion have already been previously raised and a mere rehash of what they had averred in their complaint, reply and other previous pleadings. Thus, the RTC correctly treated the same as pro forma motion which did not deserve scant consideration and in fact, did not toll the running of the period to appeal.

On the last issue, respondents beseech this Court to not rule or resolve all the issues raised in relation to the fourth issue on the ground that, except as to the issue on the ineffectivity of the *New Tax Ordinance* for failure to publish said ordinance within ten (10) days from approval thereof, the issues raised herein are the same issues raised in said CA Case which assails the constitutionality and validity of the same ordinance. Thus, any resolution that may be reached by this Court will be preemptory of whatever judgment that may be rendered in the CA Case and may transgress the rule on the strict observance of the hierarchy of courts.

Nonetheless, respondents submitted the following arguments for the consideration of this Court:

(a) The new tax rates for retailers under Section 69(d) of Ordinance 158-05 does not violate Sections 191 and 130 of RA 7160.

The enactment of the *New Tax Ordinance* brought about the reclassification of *retailers* as distinct taxpayers pursuant to Section 143 of RA 7160, and thus, duly rectified the standing error in the *Old Tax Ordinance.*

Further, under Section 151 of RA 7160, cities are allowed to exceed the maximum rates allowed for the province and municipality, provided under Section 143 of RA 7160, by not more than fifty percent (50%), except the rates of professional and amusement taxes. The maximum tax rate allowed to be imposed against retailers under RA 7160 is 1.5%, particularly those with gross receipts of more than P400,000.00, whereas, the current imposition under the *New Tax Ordinance* as amended by Ordinance No. 0253 for the same tax base is 1.25%. Obviously the current tax rate levied under the assailed ordinance is lower by 0.25% than the allowable maximum tax rate under Section 143(d) of RA 7160. Even assuming that Ordinance No. 0253 is not effective by reason of alleged non-publication, the unamended rate of 1.5% is still well within the allowable limits of the LGC.

(b) The *New Tax Ordinance* is rendered effective by subsequent publication. While it is conceded that RA 7160 requires the immediate publication within a period of ten (10) days from approval of any revenue measure, respondents submit that non-compliance with such requirement within the period specified will only affect or delay the effectivity of the measure but will not go into the validity thereof especially so that the measure is subsequently published in accordance with the mandate of the law.

THE RULING OF THE COURT

After a painstaking and thorough analysis of the records at hand, this Court holds that the judgment of the trial court dismissing the complaint of petitioners against defendants Davao City and Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, is fully justified in law, jurisprudence, and reason.

The RTC did not err in ruling that the RTC Case is a repetition of the CA Case or that the elements of litis pendentia are extant in the RTC Case.

Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.[33]

Litis pendentia is predicated on the principle that a party should not be allowed to vex another more than once regarding the same subject matter and for the same cause of action. This principle in turn is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the

[33] *Dotmatrix Trading as represented by its proprietos, namely Romy Yap Chua. Renato Rollan and Rolando D. Cadiz vs. Rommel B. Legaspi under the name and style of BIG J Farms and RBL Farm*, G.R. No. 155622, October 26, 2009.

stability of the rights and status of persons, and also to avoid the costs and expenses incident to numerous suits.[34]

The rule echoed and re-echoed in our jurisprudence is that, to set up *litis pendentia* as a ground for dismissal of actions, the following requisites must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity with respect to the two (2) preceding particulars in the two (2) cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.

To the Court's mind, these requisites are present in the instant case.

On the first requisite, well-settled is the rule that *litis pendentia* requires only substantial, and not absolute, identity of parties. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case.[35]

This Court is convinced that the trial court correctly appreciated the identity of the parties in the *RTC Case* and the *CA Case*. These cases involve the same principal parties, *i.e.*, the *SM Group of Companies* and *Davao City*, while the other parties were merely impleaded as nominal parties. As aptly stated by respondents in their Memorandum[36], the city offices and officials in both cases were impleaded as mere

[34] *Subic Telecommunications Company, Inc. vs. Subic Bay Metropolitan Authority and Innove Communications, Inc.*, G.R. No. 185159. October 12, 2009

[35] Agilent Technologies Singapore (PTE) LTD., vs. Integrated Silicon Technology Philippines Corporation, et. al., G.R. No. 154618 citing Santos v. Court of Appeals, G.R. No. 101818, 21 September 1993, 226 SCRA 630, 637.

[36] *Rollo*, pp. 361-381

representatives acting for and in behalf of Davao City as part of the officialdom thereof, they will not gain or be made to answer in their personal capacity or official positions.

As oft repeated, there is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case. The community of interest of petitioners in the *RTC Case* and *CA Case* is quite evident; in both cases, the petitioners assail the constitutionality, legality or validity of the *New Tax Ordinance* in order to be relieved from the operation of the new tax rate for retailers under the *New Tax Ordinance*. For the respondents, this Court is of the well-considered view that the City of Davao has a community of interest in the two cases, even though the City of Davao was not impleaded in the *CA Case*, by reason of the fact that it will ultimately bear with the effects of the decisions and enforce the same within its jurisdiction, which enforcement might result into a possible gain or loss of revenues depending on the outcome of both cases.

Anent the second requisite, this Court notes the principle enunciated by the Supreme Court in the case of *City of Caloocan vs. Court of Appeals, et al.*[37] which states that, there is identity of causes of action if the **<u>same evidence</u>** will sustain the second action. The principle applies **<u>even if the relief sought in the two cases may be different</u>**.[38]

In the *CA Case*, filed by petitioners, the issue is whether the *New Tax Ordinance* is constitutional and/or illegal. The issue in the *RTC Case*, also filed by petitioners, is whether petitioners are entitled to a refund or the issuance of tax credit

[37] G.R. No. 145004, May 3, 2006
[38] *Supra.*

certificates for the local business taxes paid pursuant to the *New Tax Ordinance* and *Amendatory Ordinances* on the ground that said issuances are purportedly ineffective and illegal. Petitioner's claim for refund is predicated on the alleged unconstitutionality and/or illegality of the *New Tax Ordinance*, thus, the claim for refund is contingent on the resolution of the *CA Case* as the allegation of unconstitutionality, upon which the claim for refund is founded, is disputed and would have to be settled first before the trial court can proceed with the claim for refund. Bearing in mind that the question on constitutionality and/or legality of the *New Tax Ordinance* is the principal issue that needs to be resolved for the proper adjudication of both cases, **the same set of evidence and arguments** will have to be presented to support the causes of action in the two cases or rule on the constitutionality of the *New Tax Ordinance*. The cause of action in the *RTC Case,* being similarly subject of judicial inquiry in the *CA Case,* is dismissible on the ground of *litis pendentia*.

In the case of *City of Caloocan vs. Court of Appeals, et. al.*[39] the Supreme Court held as follows:

> "The Court finds that the cases involve the same principal parties, to wit: the City of Caloocan and Gotesco Investments, Inc., while the other parties were merely impleaded as nominal parties. As this Court has previously held, absolute identity of parties is not required. It is enough that there is substantial identity of parties.
>
> There is identity of causes of action if the **same evidence** will sustain the second action. The principle applies even if the relief sought in the two cases may be different. Civil Cases Nos. C-18337 and C-18308 are based on the same set of facts, that is, the failure to execute an Amended Deed of Sale pursuant to City Ordinance No. 068. On the other hand, Civil Cases Nos. 18308 and 18274 question the nature of, and the procedure undertaken in the transfer of ownership of the subject land. Basically, the same set of evidence will have to be presented to support the causes of action in the three (3) cases, which as indicated earlier is characterized by singularity. Thus, a finding in one will sustain a finding in the other. The causes of action

[39] *Supra Note 37*

in Civil Case No. C-18337 being similarly subject of judicial inquiry in Civil Cases Nos. C-18274 and C-18337, Civil Case No. C-18337 is dismissible on the ground of *litis pendentia*. Moreover, the aforesaid cases are intimately related and/or intertwined with one another such that the judgment that may be rendered in one, regardless of which party would be successful, would amount to *res judicata* in the other.

Litigants are reminded that parties are not allowed to pursue simultaneous remedies in two different fora. Filing multiple petitions or complaints constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts. Litigants, no matter how noble their intentions for filing such suits, and no matter their zeal in pursuing their suits, are not excused from the coverage of the rule on forum-shopping.

One last note. The adjudication of this case is without prejudice to the resolution of the issues in the consignation case, Civil Case No. C-18274, if not yet resolved already."

The last requisite of *litis pendentia* mandates that the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.

The explanation made by the Supreme Court in *Santos vs. CA*[40] concerning the meaning of *res judicata* is very enlightening, *viz*:

"*Res judicata*, according to Black, refers to "*the rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.*" It embraces **two concepts**: a) the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action; this is designated as ***"bar by former judgment"***; and, b) precludes the relitigation of a particular fact or issues in another action between the same parties on a different claim or cause of action. This is the rule on ***"conclusiveness of judgment"***.

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[40] G.R. No. 134787, November 15, 2005 citing Black's Law Dictionary, 6th Ed., p. 1305, cited in Gutierrez vs. Court of Appeals, 193 SCRA 437 [1991]; *Calalang vs. Register of Deeds*, 231 SCRA 88 (1994); *Allied Bank vs. CA*, 229 SCRA 252 (1994); Sec. 1, Rule 9, Rules of Court.

Contrary to petitioner's understanding of the doctrine, *res judicata*, assuming its applicability on a given situation, is not a nullifying factor, such that the final judgment in the former action works to nullify the proceedings in the subsequent action where the doctrine is invoked. In context, *res judicata* is a rule of preclusion to the end that facts or issues settled by final judgment should not be tried anew. Section 1, Rule 16 of the Rules of Courts lists *res judicata* as among the grounds for a motion to dismiss or as a defense to defeat a claim, but the same must be pleaded at the earliest opportunity, either in a motion to dismiss or in the answer. Else, the defense or objection on that ground is deemed waived."

The requisites of the rule were enumerated in *Bardillon vs. Barangay Masili of Calamba, Laguna*[41]:

"*Res judicata* literally means a matter adjudged, judicially acted upon or decided, or settled by judgment. It provides that a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies; and constitutes an absolute bar to subsequent actions involving the same claim, demand or cause of action.

The following are the requisites of *res judicata*: (1) the former judgment must be final; (2) the court that rendered it had jurisdiction over the subject matter and the parties; (3) it is a judgment on the merits; and (4) there is — between the first and the second actions — an identity of parties, subject matter and cause of action."

A perusal of the above definition and requisites instantly shows that the prevailing circumstances in this case aptly call for the application of the rule on *res*

[41] G.R. No. 146886, April 30, 2003 citing *Mirpuri v. Court of Appeals*, 318 SCRA 116, November 19, 1999; citing 46 Am Jur 2d, "Judgments" Sec. 394 (1969 ed.); *Republic of the Philippines v. Court of Appeals*, 324 SCRA 560, February 3, 2000; *Firestone Ceramics, Inc. v. Court of Appeals*, 313 SCRA 522, September 2, 1999; *Lee Bun Ting v. Aligaen*, 76 SCRA 416, April 22, 1977; *Philippine National Bank v. Barretto*, 52 Phil. 818, February 21, 1929; *Quezon Province v. Marte*, 368 SCRA 145, October 23, 2001; *Avisado v. Rumbaua*, 354 SCRA 245, March 12, 2001; *Vda. de Salanga v. Alagar*, 335 SCRA 728, July 14, 2000;*Siapian v. Court of Appeals*, 327 SCRA 11, March 1, 2000; *Ocampo v. Buenaventura*, 154 Phil. 253, January 24, 1974.

judicata. As earlier discussed, pending for resolution in the *CA Case* is the constitutionality and/or legality of the *New Tax Ordinance*; on the other hand, petitioner's claim for refund in the *RTC Case* is hinged principally on the alleged unconstitutionality and invalidity of the *New Tax Ordinance*, thus, contingent on the resolution of the *CA Case*. If the *RTC Case* is permitted to proceed, then the trial court would be constrained to decide or rule on the issue of constitutionality and/or legality of the *New Tax Ordinance*, the ruling on that particular issue is tantamount to relitigation of a particular fact or issue between the same parties on a different claim as the RTC would be touching/deciding on an issue that is already pending for determination by the CA. The relitigation of a particular fact or issue in another action between the same parties on a different claim or cause of action is the very act precluded on the second concept of *res judicata, i.e.*, the rule on *conclusiveness of judgment*.

The doctrine of *res judicata* was well expressed by the Supreme Court in these words: *"The doctrine of res judicata is an old axiom of the law, dictated by wisdom and sanctified by age, and is founded on the broad principle that it is to the interest of the public that there should be an end to litigation by the same parties over a subject once fully and fairly adjudicated"*.[42]

In *Sherwin Development Corporation vs. Sitio Sto. Niño Residents Association, Inc. et.al.*[43] the Supreme Court explained, thus:

> "Indeed, the underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in court more than once in order that

[42] *Filipinas Investment and Financing Corp. vs. ICA*, 179 SCRA 728
[43] G.R. No. 158455, June 28, 2005 citing *Tirona v. Alejo*, G.R. No. 129313, 10 October 2001, 367 SCRA 17

> possible conflicting judgments may be avoided, for the sake of the stability of the rights and status of persons.[31] The RTC of Muntinlupa City, Branch 205, recognized this doctrine when it dismissed SP Civil Action No. 02-237 to avoid the possibility of two contradictory decisions on the question of the validity of the subject titles."

Clearly, any judgment that may be rendered in the *CA Case*, regardless of which party is successful, would amount to *res judicata* in the *RTC Case*, being that the question on constitutionality and/or legality of the *New Tax Ordinance* is the principal issue that needs to be resolved for the proper adjudication of both cases.

As eloquently stated in the case of *Alejo Abes, et. al. vs. Tomas Rodil and Catalina Cruz*[44], "*In the end, we say that abhorrence to embarrassing conflict of judicial findings and a healthy respect for final judgments are enough justification for the doctrine of res judicata, which is clearly operative in the case at bar.*"

Hence, the court a quo correctly ruled that petitioner's action was barred by the pendency of the proceedings before the CA.

The RTC did not err in ruling that the RTC Case was "premature" and that petitioners should have first awaited the outcome of the CA Case before filing the RTC Case.

Petitioners argue that a taxpayer should not wait the finality of the decision of a court declaring a tax measure void before filing a claim for refund and that the RTC's dismissal of the *RTC Case* was not only inconsistent with the LGC and the ruling of this Court in the cases of *Jardine Davies Insurance Brokers, Inc. v. Aliposa,*[45] *et. al., Swedish Match Philippines, Inc. v. The Treasurer of Manila,*[46] and *Alabang Supermarket Corporation v. City Government of Muntinlupa, et.*

[44] G.R. No. L-20996, July 30, 1966
[45] G.R. No. 118900, February 27, 2003
[46] CTA AC No. 15, July 21, 2006

al.("Alabang")[47]; worse, it also effectively countermanded and negated remedies which the LGC itself provides. Petitioners hang on to the ruling in the case of *Alabang* where the CTA *En Banc* argued that the Supreme Court's decision in *Allied Banking Corp. vs. Quezon City Government, et. al.*[48], which states that a claim for refund with the local government may be reckoned from the date the taxpayer is entitled to refund or credit, is *pro hac vice* and that it is not the intention of the taxpayers to grant judicial relief on business tax refunds beyond two (2) years from the time of payment.

Respondents submit that the RTC was correct in ruling that the *RTC Case* was "*premature*" and that petitioners should have first awaited the outcome of the *CA Case* before filing the *RTC Case*. Petitioner's argument that the *RTC Case* was filed so as to beat the two (2) year prescriptive period under the LGC for filing claims for refund or credit does not lie.

After a careful examination of the pertinent provisions of the LGC, cases interposed, arguments of the parties, the Court upholds the ruling of the court a quo dismissing the complaint on the ground of prematurity.

It is beyond cavil that the claim for refund lodged with the RTC is primarily hinged on the alleged unconstitutionality and invalidity of the *New Tax Ordinance*, which is the very same issue pending for determination by the CA. What claim for refund would there be to speak about if in case CA sustains the constitutionality and/or validity of the tax ordinance? Evidently, the claim for refund is afflicted with the vice of prematurity.

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[47] CTA EB No. 386, February 12, 2009.
[48] G.R. No. 154126, September 15, 2006

The persistence of the petitioners in their claim for refund is due to their argument that the two (2) year prescriptive period under Section 196 of the Local Government Code is about to lapse.

Section 196 of the Local Government Code provides as follows:

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> SECTION 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.**

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From the above-cited provision, it may be fairly inferred that taxpayers judicially claiming for refund of any local tax, fee, or charge must satisfy two essential requirements:

1. A written claim for refund or credit must be filed with the local treasurer; and
2. The case or proceeding must be filed within two (2) years [i] from the **date of payment** of tax, fee, or charge or [ii] from the **date the taxpayer is entitled to a refund or credit.**

Above provision plainly declares, therefore, that prescription is not reckoned only from the date of payment, but also from the "**date the taxpayer is entitled to a refund or credit.**"

This Court is well-aware of the ruling enunciated by the CTA *En Banc* in the case of *Alabang* where it declared that it could not have been the intention of the taxpayers to grant judicial relief on business tax refunds beyond two (2) years from the time of payment, and that the phrase "**from the date the taxpayer is entitled to a**

refund or credit" provided under Section 196 should not be interpreted to mean the finality of the decision declaring the tax measure void. However, in view of the clear provision of the LGC and after a conscientious study of the circumstances in this case, this forum deems it prudent to veer off the stern interpretation of the phrase "**from the date the taxpayer is entitled to a refund or credit**" under Section 196,

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[49]

Inasmuch as the law states in unequivocal terms that a case or proceeding shall be entertained in any court if filed within 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**, We venture to say now that petitioners' judicial claim for refund or credit may still be pursued within two (2) years from the time the assailed ordinance is nullified or from the time the decision nullifying the ordinance becomes final and executory, because it is only at such time when the petitioners become entitled to a refund or credit or their claim for refund is ripened for administrative and judicial determination.

Whether petitioners are entitled to a refund or tax credit.

Petitioners contend that they are entitled to a refund or the issuance of a tax credit because the increase in the local business tax rate imposed against retailers set forth in the *New Tax Ordinance* is contrary to Sections 191 and 130 of the LGC. The

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[49] *Milagros E. Amores vs. House of Representatives Electoral Tribunal and Emmanuel Joel J. Villanueva*, G.R. No. 189600, June 29, 2010 citing Twin Ace Holdings Corporation v. Rufina and Company, G.R. No. 160191, June 8, 2006, 490 SCRA 368, 376.

said increase labelled as a "reclassification" or an "error correction" by the respondents is misleading because they conveniently conceal that Section 143 of the LGC does not require respondent City to classify retailers separately from wholesalers, distributors, and dealers; neither does Section 143 require respondent City to tax retailers at the rate of 1½%. Also, petitioners interposed that the *New Tax Ordinance* is ineffective and without any force and effect whatsoever because it was not published within ten (10) days from approval thereof in accordance with the mandatory provisions of Section 188 of the LGC. The *New Tax Ordinance* was approved on December 2, 2007, it was published only on December 23, 24, and 25, 2007 or more than 21 days after the date of its approval.

On the other hand, respondents aver that all the issues raised in relation to this issue should not be ruled upon for the issues raised herein to support petitioners' contention are the same issues raised in the *CA Case*, except as to the issue on ineffectivity of the *New Tax Ordinance* in view of the alleged failure of respondents to publish the said ordinance within ten (10) days from approval thereof, which petitioners failed to raise in the much earlier *CA Case*.

We have not overlooked the fact that this Court is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction provided under Section 7 of Republic Act (R.A.) No. 9282, amending R.A. No. 1125, otherwise known as the *Law Creating the Court of Tax Appeals.*[50] Hence, this forum is of the view that it would be judicious to not rule on the constitutionality, validity, and/or effectivity of the subject ordinance.

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[50] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.

The ruling of the Second Division of this Court in *Synovate, Inc. vs. Pasig City, et. al*,[51] is worth mentioning:

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> This Court will not be hasty in declaring a tax ordinance invalid or illegal, as it is mindful of the well-etched dictum by the Supreme Court in People vs. Vera that: "A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation." Especially so, the power to determine any question on the legality of tax ordinances, such as the Pasig Revenue Code of 1992, is not within the province of this Court, but is primarily lodged on the Secretary of Justice, pursuant to Section 187 of the LGC of 1991, and under certain conditions, is vested with the courts of general jurisdiction or the Regional Trial Courts. It must be emphasized that this Court is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.
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> The Pasig Revenue Code of 1992, including Section 77 (d) thereof, enjoys the presumption of validity, unless declared otherwise. There being no contrary declaration, respondent Mayor has the duty, inter alia, to "(e)nsure that all taxes and other revenues of the city are collected" and "(i)ssue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance".

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Furthermore, emphasis must be given to a well-entrenched rule which states that in this jurisdiction, an ordinance is presumed to be valid unless declared otherwise by a Court in an appropriate proceeding where the validity of the ordinance is directly put in issue.[52] The wisdom behind the above-stated rule was clearly explained in *Social Justice Society, et. al. vs. Hon. Jose L. Atienza, Jr., et. al.*[53]:

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> Statutes and ordinances are presumed valid unless and until the courts declare the contrary in clear and unequivocal terms. The mere fact

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[51] CTA AC No. 53, January 8, 2010.
[52] *Rural Bank of Makati, et. al. vs. Municipality of Makati, et. al.*, G.R. No. 150763, July 2, 2004.
[53] G.R. No. 156052, February 13, 2008.

that the ordinance is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined. The presumption is all in favor of validity. The reason for this is obvious:

> The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well being of the people . . . The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation.
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> ...[Courts] accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary[,] in the determination of actual cases and controversies[,] must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.
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> The oil companies argue that this presumption must be set aside when the invalidity or unreasonableness appears on the face of the ordinance itself. We see no reason to set aside the presumption. The ordinance, on its face, does not at all appear to be unconstitutional. It reclassified the subject area from industrial to commercial. *Prima facie*, this power is within the power of municipal corporations:

The power of municipal corporations to divide their territory into industrial, commercial and residential zones is recognized in almost all jurisdictions inasmuch as it is derived from the police power itself and is exercised for the protection and benefit of their inhabitants.

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There can be no doubt that the City of Manila has the power to divide its territory into residential and industrial zones, and to prescribe that offensive and unwholesome trades and occupations are to be established exclusively in the latter zone.

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Likewise, it cannot be denied that the City of Manila has the authority, derived from the police power, of forbidding the appellant to continue

the manufacture of toyo in the zone where it is now situated, which has been declared residential....
Courts will not invalidate an ordinance unless it clearly appears that it is unconstitutional. There is no such showing here. Therefore, the injunctive writs issued in the Manila RTCs May 19, 2003 order had no leg to stand on.

The court first acquiring jurisdiction over a particular issue, excludes all the other courts of concurrent jurisdiction from acquiring jurisdiction over the same issue.

In *Rebecco Panlilio, et. al. vs. Hon. Josefina G. Salonga, et. al.*[54] the following oft-repeated truisms were re-echoed

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It has been held that "even in cases of concurrent jurisdiction, it is, also, axiomatic that the court first acquiring jurisdiction excludes the other courts" (Laquian vs. Baltazar, 31 SCRA 552, 556 [1970], please see cases cited therein).

In addition, it is a familiar principle that when a court of competent jurisdiction acquires jurisdiction over the subject matter of a case, its authority continues, subject only to the appellate authority, until the matter is finally and completely disposed of, and that no court of co-ordinate authority is at liberty to interfere with its action. This doctrine is applicable to civil cases, to criminal prosecutions, and to courts-martial. The principle is essential to the proper and orderly administration of the laws; and while its observance might be required on the grounds of judicial comity and courtesy, it does not rest upon such considerations exclusively, but is enforced to prevent unseemly, expensive, and dangerous conflicts of jurisdiction and of the process. (14 Am, Jr. 435-436, cited in Francisco, Vicente, Revised Rules of Court, pp. 57-58, Vol. I, 1965 ed.).

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The attention of the Court has been called to the filing of multiple petitions and the complaints involving the same issues in the Supreme Court, the Court of

[54] G.R. No. 113087, June 27, 1994 citing *Lee vs. Presiding Judge, MTC of Legaspi City, Branch I*, 145 SCRA 408 (1986).

Appeals other tribunals or agencies, with the result that said courts, tribunals or agencies have to resolve the same issues.[55] Said rule was expressed in the Revised Circular No. 28-91 issued on February 4, 1994 and was subsequently incorporated as Section 5 Rule 7 of the 1997 Rules of Court.

In view of the foregoing, it is clear that when the case involving the issue of constitutionality and/or validity of an ordinance was lodged with the CA and jurisdiction over the said issue was acquired by the said court, it excluded the RTC and all other courts of concurrent jurisdiction from acquiring jurisdiction over the issue of constitutionality and/or validity of an ordinance. To hold otherwise would be to risk instances where courts of concurrent jurisdiction might have conflicting orders. This will create havoc and result in an extremely disordered administration of justice.[56]

In the case of *Viva Productions, Inc. vs. CA, et. al, a* substantially similar controversy was resolved by the Supreme Court, in this wise:

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> Significantly, the primordial issue involved in the *Makati court* and the *Parañaque court* is one and the same whether or not the showing of the movie "The Jessica Alfaro Story" violates the *sub-judice* rule. Should the *Parañaque court* find so, it would have no alternative but to enjoin petitioner from proceeding with the intended contumacious act lest it may be cited for contempt. In the case of the *Makati court*, if it finds such violation, it will have to enjoin petitioner from proceeding with the prejudicial act lest it may be held liable for damages.
>
> The query posed before respondent court, simply stated, is whether or not the Parañaque court and the Makati court, obviously having concurrent jurisdiction over the subject matter, can both take cognizance of the two actions and resolve the same identical issue on the alleged violation of the *sub judice* rule. Respondent court erred in

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[55] Revised Circular No. 28-91, February 8, 1994; Section 5 Rule 7 of the Rules of Court.
[56] *Viva Productions, Inc. vs. CA, et. al.*, G.R. No. 123881, March 13, 1997.

ruling in the affirmative. This is the very evil sought to be avoided by this Court in issuing Circular No. 28-91 which pertinently reads:

The attention of the Court has been called to the filing of multiple petitions and complaints involving the same issues in the Supreme Court, the Court of Appeals or different Divisions thereof, or any other tribunal or agency, **with the result that said tribunals or agency have to resolve the same issues.** (Emphasis supplied.)

On February 8, 1994, this was magnified through Administrative Circular No. 04-94, effective on April 1, 1994, to include all courts and agencies other than the Supreme Court and the Court of Appeals, to prevent forum shopping or the multiple filing of such pleadings even at that level. Sanctions for violation thereof are expressly stated as follows:

(2) Any violation of this Circular shall be a cause for the dismissal of the complaint, petition, application or other initiatory pleading, upon motion and after hearing. However, any clearly willful and deliberate forum shopping by any party and his counsel through the filing of multiple complaints or other initiatory pleadings to obtain favorable action shall be a ground for summary dismissal thereof and shall constitute direct contempt of court. Furthermore, the submission of a false certification or non-compliance with the undertaking therein, as provided in Paragraph 1 hereof, shall constitute indirect contempt of court, without prejudice to disciplinary proceedings against counsel and the filing of a criminal action against the guilty party.

Private respondent's **intention** to engage in forum shopping becomes manifest with undoubted clarity upon the following considerations. Notably, if not only to ensure the issuance of an injunctive relief, the significance of the action for damages before the *Makati court* would be nil. What damages against private respondent would there be to speak about if the *Parañaque court* already enjoins the performance of the very same act complained of in the *Makati court*? Evidently, the action for damages is premature if not for the preliminary injunctive relief sought. Thus, we find grave abuse of discretion on the part of the *Makati court*, being a mere co-equal of the *Parañaque court*, in not giving due deference to the latter before which the issue of the alleged violation of the *sub-judice* rule had already been raised and submitted. In such instance, the Makati court, if it was wary of dismissing the action outrightly under Administrative Circular No. 04-94, should have, at least, ordered the consolidation of its case with that of the Parañaque court, which had first acquired jurisdiction over the related case in accordance with Rule 31 of the Revised Rules of Court

(Superlines Trans. Co. *vs.* Victor, *et al.*, 124 SCRA 939 [1983]; Vallacar Transit Inc. *vs.* Yap, 126 SCRA 500 [1983]), or it should have suspended the proceedings until the Parañaque court may have ruled on the issue (Salazar *vs.* CFI of Laguna, 64 Phil. 785 [1937]).

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In view of our foregoing disquisitions, the Court no longer deems it necessary to resolve the other issues posed by petitioners.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED.**

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA R. PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

ERNESTO D. ACOSTA
Presiding Justice