REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

JOLLIBEE FOODS CORPORATION,	**CTA AC NO. 265**
Petitioner,	Members: **RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, *and* **FERRER-FLORES**, *JJ.*
-*versus*-	
CITY OF PARAÑAQUE AND DR. ANTHONY L. PULMANO, in his capacity as City Treasurer, *Respondent.*	Promulgated: MAR 26 2025 7:08 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before Us is a *Petition for Review*,[1] filed on July 24, 2022, pursuant to *Section 7(a)(3) of Republic Act (R.A.) No. 1125*,[2] *as amended by R.A. No. 9282*,[3] praying for the Court to render judgment: (i) reversing and setting aside the Order, dated April 8, 2022,[4] and the Order, dated May 17, 2022,[5] both rendered by the Regional Trial Court (RTC) of Parañaque City Branch 195, in Civil Case No. 2021-131; and (ii) granting petitioner's claim for refund amounting to Php2,294,450.95, representing alleged erroneously paid local business taxes for the first taxable quarter of 2021.

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[1] Docket, pp. 5-36, with annexes.
[2] An Act Creating the Court of Tax Appeals, June 16, 1954.
[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes; March 30, 2004.
[4] *Id.*, pp. 32-34.
[5] *Id.*, p. 35.

The Parties

Petitioner Jollibee Foods Corporation ("petitioner"), is a domestic corporation existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 10/F Jollibee Plaza Building, 10 F. Ortigas Jr. Ave., Ortigas Center, Pasig City. It is primarily engaged in establishing, operating and maintaining, restaurants, coffee shops and refreshment parlors; and in serving, arranging and catering foods, drinks, refreshments and other foods or commodities.[6]

Respondent City of Parañaque ("respondent LGU"), is a local government unit created by law. It may be served summons, notices, orders and other processes of this Court through the Office of the City Mayor, City of Parañaque.[7]

Respondent Dr. Anthony L. Pulmano ("respondent City Treasurer") is the duly appointed City Treasurer of Parañaque, empowered to perform the duties of said office, including inter alia, the refund of all local taxes, fees, and charges. He may be served summons, notices, orders, and other processes of this Court at the Office of the City Treasurer, City of Parañaque.[8]

The Facts

In January 2021, petitioner applied for the renewal of the business permits of its branches for the calendar year (CY) 2021 with respondent LGU. In support of its application, petitioner submitted to the Business Permit and Licensing Office (BPLO) of the City of Parañaque its Sales Certificates[9] for CY 2020 for purposes of computing its local business tax (LBT). The Sales Certificates show petitioner's total gross sales of Php522,503,595.20.

From January 14, 2021 to January 18, 2021, respondent LGU issued the Statements of Account (SOAs)[10] to petitioner with LBT payable in the aggregate amount of Php4,906,968.93.

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6 See Certificate of filing Amended Articles of Incorporation, with attached Amended Articles of Incorporation, Exhibit "A", RTC Docket (Civil Case No. 2021-131), p. 41.

7 See Petition for Review, II. Parties, par. 3, Docket, p. 6, See also Answer, par. 8, RTC Docket (Civil Case No. 2021-131), p. 143, wherein respondents admitted the allegations under paragraphs 3 and 4 of the Complaint filed on June 24, 2021.

8 See Petition for Review, II. Parties, par. 4, Docket, p. 7.

9 Exhibits "B-1" to "B-12", RTC Docket (Civil Case No. 2021-131), pp. 59-70.

10 Exhibits "C-1" to "C-12", *id.*, pp. 71-83; See also Answer, pars. 10 and 12, RTC Docket (Civil Case No. 2021-131), pp. 143-144, wherein the respondents admitted the issuance of the SOAs attached to petitioner's Complaint, dated June 21, 2021, *id.*, pp. 143-144.

On January 21, 2021, petitioner paid the first installment for the renewal of business permits and was issued official receipts[11] for each branch.

On March 19, 2021, petitioner wrote respondent City Treasurer a letter[12] requesting a refund of alleged erroneously paid LBT on the ground that the basis for computing its LBT appeared to be higher than the sales presented on the Sales Certificates it submitted. Petitioner thus requested the refund of the amount of Php2,294,450.95 representing alleged excess LBT computed at the rate of 2%, broken down as follows:

Store Name	**Gross Sales per Sales Certificate (A)**	**Gross Sales per LGU**	**LBT per Sales Certificate (B) = (A) x 2% tax / 4 quarters**	**LBT per LGU (C)**	**Excess LBT paid (subject for refund) (D) = (C) - (B)**
Unioil	73,497,031.46		367,485.16	591,765.33	224,280.17
SM Sucat	36,946,425.43		184,732.13	486,135.94	301,403.81
SM City Bicutan-Main	37,548,323.31		187,741.62	470,611.44	282,869.82
SM City Bicutan-Annex	30,366,060.04		151,830.30	414,790.34	262,960.04
Baclaran Supermall	14,840,660.66		74,203.30	210,486.83	136,283.53
Redemptorist Roxas Blvd.	20,399,907.66		101,999.54	306,534.85	204,535.31
Quirino Medina	63,961,686.76		319,808.43	485,325.37	165,516.94
Parañaque City Hall	48,834,093.02		244,170.47	326,990.75	82,820.28
Olivarez Sucat	62,625,084.50		313,125.42	416,163.00	103,037.58
Waltermart Bicutan	70,401,121.81		352,005.61	533,035.97	181,030.36
SM BF Homes Parañaque	28,676,203.67		143,381.02	282,105.65	138,724.63
JB Roxas Blvd. MMPR	34,406,996.88		172,034.98	383,023.46	210,988.48
TOTAL	**522,503,595.20**	-	**2,612,517.98**	**4,906,968.93**	**2,294,450.95**

[11] Exhibits "D-1" to "D-12", *id.*, 84-96; See also Answer, par. 13, RTC Docket (Civil Case No. 2021-131), p. 144, wherein respondent admitted the plaintiff's payment of the LBT and local fees and charges.

[12] Exhibit "E", *id.*, pp. 97-102, See also Answer, par. 14, RTC Docket (Civil Case No. 2021-131), p. 144, wherein respondent admitted the plaintiff's filing of Letter with the Office of the respondent City Treasurer to protest the assessment.

Respondent City Treasurer, however, denied the request for refund in his letter, dated May 12, 2021.[13]

Aggrieved, petitioner filed a Complaint[14] with the RTC, on June 24, 2021, primarily arguing that respondents' use of the Presumptive Income Level Assessment Approach (PILAA) to compute petitioner's LBT had no legal basis. Respondents, on the other hand, filed their Answer (with Special and Affirmative Defenses)[15] on November 5, 2021.

After the initial pre-marking of documentary evidence, and before the continuation of the same set on May 23, 2022,[16] the RTC promulgated the assailed Order, dated April 8, 2022,[17] dismissing the Complaint due to lack of jurisdiction on the ground of prescription of action, to wit:

> In view of the foregoing, this court holds that it does not have jurisdiction over the complaint on the ground of prescription of action.
>
> **WHEREFORE**, the instant complaint is **DISMISSED**, for the reasons afore-stated.

On May 4, 2022, petitioner filed a Motion for Reconsideration[18] which was likewise denied in the RTC's Order, dated May 17, 2022.[19]

Undeterred, petitioner elevated its refund claim before this Court through the instant Petition for Review[20] filed on June 24, 2022. Respondents posted their Comment[21] on September 25, 2023.

Meanwhile, in compliance with the Court's Resolution,[22] dated October 25, 2023, the RTC transmitted to the Court its records of Civil Case No. 2021-131 on January 19, 2024.[23]

Petitioner and respondents thereafter submitted their respective memoranda on March 6, 2024[24] and March 20, 2024,[25] prompting the submission of the instant Petition for Review for decision.

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13 Exhibit "F", *id.*, pp. 127-128.
14 Complaint, *id.*, pp. 5-128, with exhibits.
15 Answer (with Special and Affirmative Defenses), *id.*, pp. 142-169.
16 See Minutes of Pre-Marking of Documentary Evidence, RTC Docket (Civil Case No. 2021-131), p. 254.
17 *Supra* note 4.
18 Motion for Reconsideration (Re: Order dated April 8, 2022), RTC Docket (Civil Case No. 2021-131), pp. 290-298.
19 *Supra* note 5.
20 *Supra* note 1.
21 Docket, pp. 46-62.
22 Resolution, dated October 25, 2023, *id.*, pp. 65-66.
23 See Transmittal Letter, dated January 16, 2024, signed by Atty. Ma. Criselda D. Ilagan-Yson, Branch Clerk of Court, *id.*, p. 67.
24 Memorandum for Petitioner, *id.*, pp. 69-97.
25 Memorandum for Respondents, *id.*, pp. 100-112.

The Issues

Petitioner submits the following issues for this Court's resolution:

I. WHETHER THE SOA ISSUED BY THE BPLO OF RESPONDENT LGU IS NOT THE ASSESSMENT CONTEMPLATED IN SECTION 195 OF THE LOCAL GOVERNMENT CODE (LGC);

II. WHETHER THE REMEDY UNDER SECTION 196 OF THE LGC WAS CORRECTLY AND TIMELY AVAILED; AND

III. WHETHER PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF ALLEGED ERRONEOUSLY PAID LBT IN THE AGGREGATE AMOUNT OF PHP2,294,450.95 FOR THE FIRST TAXABLE QUARTER OF 2021.[26]

Arguments of the Parties

Petitioner's Arguments[27]

Petitioner argues that the SOA issued by the BPLO of respondent LGU is not the assessment contemplated by *Section 195 of the LGC.* It advances that there was no "assessment" issued in this case since respondent City Treasurer did not conduct any examination of petitioner's books of account. Consequently, according to petitioner, there was no post-audit assessment issued to petitioner. Thus, there was no "assessment" to speak of that had become final and executory.

Petitioner also submits that it correctly and timely availed of the remedy under the LGC for the refund of erroneously paid LBT. Specifically, petitioner highlights that it complied with the two essential procedural requisites in claims for LBT refund: (i) the written claim for refund was filed with the respondents on March 19, 2021; and (ii) the Complaint filed with the RTC on June 24, 2021 was well within the two-year period under *Section 196 of the LGC.*

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[26] See Assignment of Errors and Summary of Arguments in Support of the Petition for Review, Petition for Review, *id.,* p. 10.

[27] See Memorandum for Petitioner, *id.*, pp.74-95.

Finally, petitioner insists that it is entitled to its claim for refund of LBT in the amount of Php2,294,450.95 for the first quarter of 2021. It argues that PILAA is only a tool of last resort and that LGUs should not be quick to use the same just to collect additional funds, especially from taxpayers such as petitioner, who claims to have suffered through the pandemic.

Respondents' Counter-Arguments[28]

On the other hand, respondents maintain that the BPLO was clearly acting on behalf of respondent City Treasurer when the former issued the SOAs which are the assessments being assailed by petitioner. Thus, according to respondents, *Section 195 of the LGC* should be held applicable, as opposed to petitioner's insistence on the application of *Section 196* thereof.

Respondents likewise argue that the RTC correctly dismissed the claim due to lack of jurisdiction on the ground of prescription. They argue that the periods to file a protest of the assessment and to file the appeal before the RTC, as provided by the law, were not complied with.

Lastly, according to respondents, the assessment issued has basis in law. Respondents raise that petitioner merely submitted certifications of gross sales or gross receipts which were not even subscribed or sworn to and were thus merely self-serving and unsubscribed. Hence, they claim that respondent City Treasurer was constrained to use PILAA due to such failure of petitioner to submit the documents required for business tax assessment purposes.

The Ruling of the Court

Section 195 of the LGC is applicable only when an "assessment" is issued

The *LGC* provides for the remedies available to a taxpayer in disputes arising from assessments and payments of local taxes, in *Sections 195 and 196* thereof, which state:

> **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

[28] See Memorandum for Respondents, *id.*, pp. 432-440.

> 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.
>
> **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.

Notably, in the April 18, 2022, and the May 17, 2022, Orders, the RTC held that petitioner's Complaint were filed beyond the 30-day period to initiate judicial action after the respondent City Treasurer's adverse decision, citing S*ection 195 of the LGC* cited above.

In reaching its conclusion, the court *a quo* extensively cited the case of *City Treasurer of Manila vs. Philippine Beverage Partners, Inc. (PBPI case),*[29] quoting the case of *City of Manila vs. Cosmos Bottling Corporation (Cosmos case).*[30] In these cases, the Supreme Court discussed the remedies of protesting an assessment and shed light on the interplay between the periods prescribed in *Section 195 and 196* of the LGC.

It is, however, clear from the High Court's discussions that the remedy under *Section 195 of the LGC*, along with the required periods therein, shall be triggered ***only when an assessment is issued*** to the protesting taxpayer, to wit:

> [A] taxpayer who had protested and paid an assessment is not precluded from later on instituting an action for refund or credit.
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> The taxpayers' remedies of protesting an assessment and refund of taxes are stated in Sections 195 and 196 of the LGC, to wit:
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> . . . .
>
> The first provides the procedure for contesting an assessment issued by the local treasurer; whereas, the second provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes

[29] G.R. No. 233556, September 11, 2019.
[30] G.R. No. 196681, June 27, 2018.

the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.

Obviously, ***the application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges.*** Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.

On the other hand, Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.

Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended inaction by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription.

Additionally, ***Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place.*** This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal. Thus, under such circumstance, the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC.

. . . .

Equally important is the institution of the judicial action for refund within thirty (30) days from the denial of or inaction on the letter-protest or claim, not any time later, even if within two (2) years from the date of payment (as expressly stated in Section 196). Notice that the filing of such judicial claim for refund after questioning the assessment is within the two-year prescriptive period specified in Section 196. Note too that the filing date of such judicial action necessarily falls on the beginning portion of the two-year period from the date of payment. ***Even though the suit is seemingly grounded on Section 196, the taxpayer could not avail of the full extent of the two-year period within which to initiate the action in court.***

The reason is obvious. This is because an assessment was made, and if not appealed in court within thirty (30) days from decision or inaction on the protest, it becomes conclusive and unappealable. Even if the action in court is one of claim for refund, the taxpayer cannot escape assailing the assessment, invalidity or incorrectness, the very foundation of his theory that the taxes were paid erroneously or otherwise collected from him illegally. Perforce, the subsequent judicial action, after the local treasurer's decision or inaction, must be initiated within thirty (30) days later. It cannot be anytime thereafter because the lapse of 30 days from decision or inaction results in the assessment becoming conclusive and unappealable. In short, the scenario wherein the administrative claim for refund falls on the early stage of the two-year period but the judicial claim on the last day or late stage of such two-year period does not apply in this specific instance where an assessment is issued.

To stress, where an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' within 60 days from receipt of the notice of assessment, and thereafter bring suit in court within 30 days from either decision or inaction by the local treasurer.
(Emphasis and italics supplied)

Gleaning from the foregoing, it is clear that where the claim for refund, under *Section 196 of the LGC,* was precipitated by an assessment which was eventually paid by the taxpayer, the judicial action must be filed within 30 days from the denial of or inaction on the letter-protest filed at the administrative level, pursuant to *Section 195 of the LGC*. Stated differently, *Section 195* should be read together with *Section 196* when an assessment is issued against the concerned taxpayer.

On the other hand, when there was no assessment issued, the Supreme Court directly applied *Section 196* and recognized that the taxpayer may proceed straight to the claim for refund even without a prior protest, required by *Section 195*, against an assessment that was not issued in the first place.

Consistent therewith, the Supreme Court, in *International Container Terminal Services, Inc. vs. City of Manila (ICTS case)*,[31] held as follows:

[31] G.R. No. 185622, October 17, 2018.

> ***If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the Local Government Code.*** Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal.
>
> ***If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer.*** In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. 'Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.'
>
> On the other hand, ***if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.***
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> . . . .
>
> What determines the appropriate remedy is the local government's basis for the collection of the tax. ***It is explicitly stated in Section 195 that it is a remedy against a notice of assessment*** issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid.
>
> . . . .
>
> ***No such precondition is necessary for a claim for refund pursuant to Section 196.***
> (Emphasis and italics supplied)

Accordingly, while claims for refund of LBT are generally anchored on *Section 196*, the mandated 60 and 30-day periods under *Section 195* shall be observed together with the two-year prescriptive period for refund, prescribed under the former section, only if an assessment is issued against the taxpayer.

If, on the other hand, no assessment is issued, the remedy under *Section 196* shall be applied independently of the periods provided under *Section 195*.

The subject Statements of Account do not constitute as the "assessment" contemplated under Section 195 of the LGC

Anchoring on the previous discussions, the issue on the propriety of the RTC's application of *Section 195* would depend on whether an "assessment" was issued by the respondents. It thus becomes necessary to determine whether the SOAs issued to petitioner partake of the nature of an assessment contemplated under *Section 195 of the LGC.*

We find in the negative.

In ascertaining whether the SOAs are in the nature of notice of assessment, the Court finds relevant the ruling in the recent case of *Jose vs. Tigerway Facilities and Resources, Inc.*,[32] wherein it was held that:

> Pertinently, Section 195 explicitly states that the notice of assessment must indicate the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests, and penalties. In *Yamane v. BA Lepanto Condominium Corporation*, this Court clarified this requirement:
>
> > ***Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties.*** In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. There may have been prima facie compliance with the requirement under Section 195. However in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax. Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the sanggunian, and not by the Local Government Code alone. What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body.
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> (Emphasis and italics supplied)

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[32] G.R. No. 247331, February 26, 2024.

Moreover, in the case of *National Power Corporation vs. The Province of Pampanga and Pia Magdalena D. Quibal*,[33] the Supreme Court emphasized the details that must be contained in a notice of assessment, to wit:

> ***Verily, taxpayers must be informed of the nature of the deficiency tax, fee, or charge, as well as the amount of deficiency, surcharge, interest, and penalty. Failure of the taxing authority to sufficiently inform the taxpayer of the facts and law used as bases for the assessment will render the assessment void.*** In Commissioner of Internal Revenue v. Fitness by Design, Inc., albeit involving national internal revenue taxes, the Court explained the importance of the notice requirement with due regard to the taxpayers' constitutional rights, to wit:
>
> > The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.
> >
> > The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. Merely notifying the taxpayer of his or her tax liabilities without details or particulars is not enough.
> >
> > Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc. held that a final assessment notice that only contained a table of taxes with no other details was insufficient; . . .
> >
> > Any deficiency to the mandated content of the assessment or its process will not be tolerated.
> >
> > . . . .
> >
> > A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations 'that taxpayers should be able to present their case and adduce supporting evidence.
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> (Emphasis and italics supplied)

Relatedly, in the *ICTS case*, the Supreme Court further held that the documents issued by the LGU therein cannot be considered the 'notice of assessment' required under *Section 195 of the LGC*, to wit:

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[33] G.R. No. 230648, October 6, 2021.

It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state 'the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties.' In Yamane v. BA Lepanto Condominium Corp.:

. . . .

No such precondition is necessary for a claim for refund pursuant to Section 196.

Here, no notice of assessment for deficiency taxes was issued by respondent City Treasurer to petitioner for the taxes collected after the first three (3) quarters of 1999. As observed by Court of Tax Appeals Justice Casanova in his Concurring and Dissenting Opinion to the September 5, 2008 Decision:

> In order to apply Section 195 of the LGC, there is a need for the issuance of a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. It is only upon receipt of this notice of assessment that a taxpayer is required to file a protest within sixty (60) days from receipt thereof.
>
> Given the nature of a notice of assessment, it is my opinion that no notice pertaining to deficiency taxes for the periods subsequent to the 3rd Quarter of 1999 up to the present were ever issued or sent by respondents to ICTSI.
>
> In ICTSI's case, as correctly found by the Second Division, viz.:
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> > 'Records disclose in the instant case that petitioner filed a protest pursuant to Section 195 of the LGC only with respect to the assessment of the amount of P6,224,250.00, which covers the [first three quarters] of 1999. Petitioner protested the said assessment on July 15, 1999 and paid the same amount under protest. This is not controverted by the respondents.'
>
> Hence, Section 195 of the LGC cannot apply to the period subsequent to the 3rd Quarter of 1999 because ICTSI did not receive any notice of assessment thereafter that states the nature of the tax[,] amount of deficiency[,] and charges.

The 'assessments' from the fourth quarter of 1999 onwards were Municipal License Receipts; Mayor's Permit, Business Taxes, Fees & Charges Receipts; and Official Receipts issued by the Office of the City Treasurer for local business taxes, which must be paid as prerequisites for the renewal of petitioner's business permit in respondent City of Manila. ***While these receipts state the amount and nature of the tax assessed, they do not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner. They cannot be considered the 'notice of assessment' required under Section 195 of the Local Government Code.*** (Emphasis and italics supplied)

Based on the foregoing, *Section 195 of the LGC* requires that the notice of assessment state the nature of the tax, fee, or charge and the amount of deficiency, surcharges, interests, and penalties intended to be collected from the taxpayer.

In this case, a perusal of the SOAs shows that the same were issued not as assessments of LBT but as prerequisites for the issuance/renewal of petitioner's business permit. The said SOAs do not contain information about the facts and law upon which the supposed assessment is based.

Moreover, there is no showing that the same SOAs were issued by respondent City Treasurer or his duly authorized representative pursuant to a prior finding that petitioner failed to pay correct taxes, fees or charges at the time required by law.

Accordingly, petitioner correctly argued that the subject SOAs issued to it were not notice of assessment under *Section 195 of the LGC*. Hence, *Section 196* finds application in the instant claim for refund.

Petitioner complied with the prescriptive period for filing claims for refund of LBT as provided in Section 196 of the LGC

As previously cited, *Section 196 of the LGC* provides that 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. It further prescribes that no case or proceeding shall be entertained in any court after the expiration of two years from the date of payment of such tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.

Thus, as held in the *ICTS case* the following must be done to successfully claim in court a refund of any local taxes, fees or charges, under *Section 196 of the LGC*:

1. File a written claim for refund or credit with the local treasurer; and,

2. File a judicial case for refund within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.

A review of the records reveals that petitioner complied with both requirements. Petitioner paid the LBT to respondents on January 21, 2021.[34] Counting two years from said date, petitioner had until January 21, 2023 to file its administrative and judicial claims for refund. Notably, petitioner's administrative claim for refund was filed on March 19, 2021, with the office of respondent City Treasurer.[35] Thereafter, its judicial claim for refund was filed before the court *a quo* on June 24, 2021.[36]

Having established that both administrative and judicial claims fell within the two-year prescriptive period, We hereby find error in the RTC's dismissal of the Complaint filed by petitioner on June 24, 2021, due to an alleged prescription of action.

Respondents erred in using the Presumptive Income Level Assessment Approach (PILAA) in calculating the LBT due from petitioner

Petitioner avers that the LBT for the year 2021 should be based on its gross sales or receipts for the year 2020, as reflected in Sales Certificates it submitted. For this purpose, petitioner invokes *Section 143*, in relation to *Section 151 of the LGC*, authorizing the collection of business taxes by cities, on the basis of the gross sales or receipts of the concerned taxpayer in the preceding year.

However, in its calculations, the BPLO used PILAA instead, thus resulting to higher LBT due.

In the *Bureau of Local Government Finance (BLGF) Memorandum Circular No. 001-20*,[37] the LGUs are reminded of the limited instances when PILAA shall be allowed:

> B. Assessment of LBT for Renewal of Business Permit
>
> 1. In the absence of audited Financial Statement, the LBT shall be based on the Sworn declaration of gross sales or receipts by the taxpayer or its Income Tax Returns (ITR). In case of suspected underdeclaration of gross sales/receipts, the application shall be tagged by the LGU, and the business may be subjected to the examination of books of accounts by the local treasurer, which shall be done after the business renewal period.

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[34] *Supra* note 11.
[35] *Supra* note 12.
[36] *Supra* note 14.
[37] Subject: Updated Reminders in the Assessment of the Local Business Tax (LBT), Registration and Renewal of Business Permits and Licenses and the Imposition of Local Taxes, Fees and Charges, dated January 2, 2020.

. . . .

3. *The Presumptive Income Level Assessment Approach (PILAA) may be used in computing the local business tax* ***ONLY if the taxpayer is unable to provide proof of its gross sales or receipts.*** The PILAA may be used in estimating the gross sales or receipts ***provided that the PILAA is in the local tax ordinance and has undergone public hearings and publications.*** This is to ensure that the taxpayers are properly informed of the factors used in determining the presumptive income and for the taxpayers to agree such level of presumptive income applicable to their industry. *Absent such ordinance authorizing the use of the PILAA and embodying the presumptive income levels to be used by the Local Treasurer, the collection of additional local business taxes based on such PILAA is illegal and the petitioner may properly claim the refund of the excess business taxes collected.*
(Emphasis and italics supplied)

From the foregoing, PILAA may be used to assess LBT when two conditions occur simultaneously: (1) the taxpayer is unable to provide proof of its gross sales or receipts; and (2) such use is permitted by the local tax ordinance.

We find that the second condition was not met in this case.

The Revenue Code of the City of Paranaque ("Revenue Code")[38] provides for the definition of Presumptive Income Level as follows:

58. PRESUMPTIVE INCOME LEVEL — is the presumed gross income of a taxpayer doing business. Factors such as fixed overhead expenses such as but not limited to rental, salaries of employees, light and water and other expenses applicable and subject taxpayer shall be considered in determining its gross income for tax purposes.

However, a careful scrutiny of the Revenue Code reveals that it does not contemplate the use of PILAA for the specific purpose of imputing gross income on a taxpayer. Instead, the Revenue Code expressly limits the use of the PILAA to the validation of the declared gross income, *viz.*:

Section 2H.02. Imposition of Tax. — There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the city a graduated business tax in the amounts hereafter prescribed.

The tax is payable for every distinct establishment and/or business and one line of business or activity does not become exempt by being conducted with some other business or activity for which a tax has been paid or whether such other business or activity is itself exempt.

[38] Parañaque City Ordinance No. 04-22, as amended by Parañaque City Ordinance No. 19-29, dated November 21, 2019.

. . . .

b) In the succeeding year, regardless of sales when the business started to operate, the tax shall be based on the gross sales or receipts for the preceding calendar year, or any fraction thereof as provided in the pertinent schedule.

c) ***Presumptive Income Level.*** For every tax period, the Business Permits and Licensing Office shall prepare a stratified schedule of ***"presumptive income level" to validate the declarations of gross sales/receipts of each business classification.***
(Emphasis and italics supplied)

In construing the practical meaning and the coverage of the term "validate", *Section 3A.16 of the Revenue Code* provides that the PILAA shall serve only as one of the reference figures for the determination of any manifest under-declaration of gross sales or receipts which would warrant a denial of a Mayor's Permit renewal or the cancellation of such permit, to wit:

Section 3A.16. Administrative Provisions. —

g. ***When Mayor's Permit application and renewal thereof shall be refused/denied and/or Mayor's Permit cancelled/revoked.*** The City Mayor, through the BPLO chief shall refuse/deny the application and/or order the cancellation and revocation of a Mayor's permit under the following grounds:

. . . .

3. When the applicant declares an amount of gross sales or receipts that are ***manifestly below the industry standards or the presumptive income level of gross sales or receipts*** as established in the city for the same or a closely similar type of activity or business;
(Emphasis and italics supplied)

The interpretation that the use of PILAA for purposes of calculating LBT due is not contemplated under the Revenue Code is further bolstered in *Section 2J.04 (d)* which states:

(d) *Sworn Statement of Gross Receipts or Sales.* Operators of business subject to the taxes on business operations shall submit a sworn statement of the capital investment before the start of their business operations and upon application for a Mayor's permit to operate the business. Upon payment of the tax levied in this Chapter, any person engaged in business subject to the business tax paid based on gross sales and/or receipts shall submit a sworn statement of his gross sales/receipts for the preceding calendar year or quarter in such manner and form as may be prescribed by tile City Treasurer. *Should the taxpayer* ***fail to submit a sworn statement of gross sales or receipts, due among others to his failure to have a book of accounts, records or subsidiaries for his business,*** *the City Treasurer or his authorized representatives may verify or assess the gross sales or receipts of the taxpayer under* **the best available evidence** *upon which the tax may be based.*

Clearly, the Revenue Code mandates that if the taxpayer fails to submit sworn statement of gross sales or receipts due to, among others, his failure to have books of accounts, records or subsidiaries for his business, the LBT shall be based on the ***best available evidence***. Nowhere is it mentioned that resort to PILAA, for purposes of calculating the LBT due, shall be authorized.

Thus, We agree with petitioner that respondent's use of PILAA was erroneous due to lack of legal basis.

In view of the reversal of the Order of the court a quo in dismissing the case without trial on the merits, the case must be remanded for further proceedings

Despite the foregoing findings, the Court cannot proceed to rule on the propriety of petitioner's claim for refund.

Considering that the proceedings in the court a quo have not yet concluded its pre-trial stage, and the Orders were issued after the initial pre-marking of documentary evidence presented, the remand of the case for the continuance of the pre-marking (initially set on March 23, 2022)[39] and further proceedings to thoroughly examine the claims, defenses and evidence of the parties is in order.

To be sure, the issue of whether petitioner is entitled to a refund or tax credit in the aggregate amount of Php2,294,450.95 representing its alleged excess LBT payments for the years 2021 must be resolved by the court *a quo.*

ACCORDINGLY, in light of the foregoing considerations, the Petition for Review is PARTIALLY GRANTED. The assailed Order, dated April 8, 2022, and Order, dated May 17, 2022, both issued by the Regional Trial Court of Parañaque City Branch 195, in Civil Case No. 2021-131, are hereby **REVERSED** and **SET ASIDE**. Let this case be **REMANDED** to RTC-Branch 195, Parañaque City, for further proceedings on the merits of the refund claim.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[39] See Minutes of Pre-Marking of Documentary Evidence, RTC Docket (Civil Case No. 2021-131), p. 254.

WE CONCUR:

On leave
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice