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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 23 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CITY OF MANILA and OFFICE OF THE CITY TREASURER OF MANILA,
Petitioners,

-versus-

COSMOS BOTTLING CORPORATION,
Respondent.

G.R. No. 196681

Present:

VELASCO, *J.*,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

June 27, 2018

x -- x

DECISION

MARTIRES, *J.*:

The filing of a motion for reconsideration or new trial to question the decision of a division of the Court of Tax Appeals *(CTA)* is mandatory. An appeal brought directly to the CTA En Banc is dismissible for lack of jurisdiction.

In local taxation, an assessment for deficiency taxes made by the local government unit may be protested before the local treasurer without necessity of payment under protest. But if payment is made simultaneous with or following a protest against an assessment, the taxpayer may subsequently maintain an action in court, whether as an appeal from assessment or a claim for refund, so long as it is initiated within thirty (30) days from either decision or inaction of the local treasurer on the protest.

THE CASE

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the 16 February 2011[1] and 20 April 2011[2] Resolutions of the CTA En Banc. The 16 February 2011 Resolution dismissed the petition for review of the petitioners for failure to file a motion for reconsideration or new trial before the CTA Third Division *(CTA Division)*; while the 20 April 2011 Resolution denied the motion for reconsideration of the first assailed resolution. The CTA Division's 9 November 2010 Decision[3] ruled in favor of respondent Cosmos Bottling Corporation *(Cosmos)* by partially granting its appeal from the decision of the Regional Trial Court, Branch 49, Manila *(RTC)*, in Civil Case No. 01-116881 entitled *Cosmos Bottling Corporation v. City of Manila and Liberty Toledo (City Treasurer of Manila)*.

THE FACTS

Antecedents

The CTA Division, narrates the antecedents as follows:

> For the first quarter of 2007, the City of Manila assessed [Cosmos] local business taxes and regulatory fees in the total amount of P1,226,781.05, as contained in the Statement of Account dated January 15, 2007. [Cosmos] protested the assessment through a letter dated January 18, 2007, arguing that Tax Ordinance Nos. 7988 and 8011, amending the Revenue Code of Manila (RCM), have been declared null and void. [Cosmos] also argued that the collection of local business tax under Section 21 of the RCM in addition to Section 14 of the same code constitutes double taxation.
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> [Cosmos] also tendered payment of only P131,994.23 which they posit is the correct computation of their local business tax for the first quarter of 2007. This payment was refused by the City Treasurer. [Cosmos] also received a letter from the City Treasurer denying their protest, stating as follows:
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> > In view thereof, this Office, much to our regret, has to deny your protest and that any action taken thereon will be sub-judice. Rest assured, however, that once we receive a final ruling on the matter, we will act in accordance therewith.
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> [Cosmos] was thus constrained to pay the assessment of

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1 *Rollo*, pp. 29-36; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

2 Id. at 38-41.

3 Id. at 43-51; penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justice Lovell R. Bautista.

> P1,226,781.05 as evidenced by Official Receipt No. BAJ-005340 dated February 13, 2007. On March 1, 2007, [Cosmos] filed a claim for refund of P1,094,786.82 with the Office of the City Treasurer raising the same grounds as discussed in their protest.
>
> On March 8, 2007, [Cosmos] filed its complaint with the RTC of Manila praying for the refund or issuance of a tax credit certificate in the amount of P1,094,786.82. The RTC in its decision ruled in favor of [Cosmos] but denied the claim for refund. The dispositive portion of the assailed Decision reads:
>
> > WHEREFORE, premises considered, judgment is hereby rendered enjoining the respondent Treasurer of the City of Manila to refrain henceforth from imposing tax under Section 21 of the Revenue Code of Manila if it had already imposed tax on manufacturers under Section 14 of the same Code. As to the prayer in the petition for refund, the same is denied.
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> [Cosmos'] motion for partial reconsideration was also denied, hence, [the] Petition for Review [before the CTA].[4]

The petition for review was raffled to the CTA Division and docketed as CTA A.C. No. 60.

The Ruling of the CTA Division

The CTA Division essentially ruled that the collection by the City Treasurer of Manila of local business tax under both Section 21 and Section 14 of the Revenue Code of Manila constituted double taxation.[5] It also ruled that the City Treasurer cannot validly assess local business tax based on the increased rates under Tax Ordinance Nos. 7988 and 8011 after the same have been declared null and void.[6] Finally, the court held that Cosmos Bottling Corporation's *(Cosmos)* local business tax liability for the calendar year 2007 shall be computed based on the gross sales or receipts for the year 2006.[7]

The dispositive portion of the decision of the CTA Division reads:

> WHEREFORE, finding merit in the instant Petition for Review, the same is hereby granted. The assailed Decision dated April 14, 2009 of the Regional Trial Court of Manila, Branch 49 in Civil Case No. 07-116881 is hereby PARTIALLY REVERSED. Accordingly, respondent is ENJOINED from imposing the business tax under Section 21 of the Revenue Code of Manila if it had already imposed tax on manufacturers

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4 Id. at 44-45.
5 Id. at 46-47.
6 Id. at 47.
7 Id. at 47-48.

> under Section 14 of the same Code. Respondent, furthermore, is ORDERED to REFUND or to issue a TAX CREDIT CERTIFICATE to petitioner the amount of P1,094,786.82, representing excess business taxes collected for the first quarter of year 2007.[8]

Instead of filing a motion for reconsideration or new trial, the petitioners directly filed with the CTA En Banc a petition for review[9] praying that the decision of the CTA Division be reversed or set aside.

The Ruling of the CTA En Banc

In its Resolution of 16 February 2011, the CTA En Banc ruled that the direct resort to it without a prior motion for reconsideration or new trial before the CTA Division violated Section 18 of Republic Act *(R.A.)* No. 1125,[10] as amended by R.A. No. 9282 and R.A. No. 9503, and Section 1, Rule 8 of the Revised Rules of the CTA *(CTA Rules)*.[11]

The petitioners sought reconsideration, but their motion was denied by the CTA En Banc. Hence, the appeal before this Court.

The Present Petition for Review

The petitioners assigned the following errors allegedly committed by the CTA En Banc:

> 1. The Honorable CTA En Banc erred in not reconsidering its Order dismissing the case on procedural grounds.
>
> 2. The 3rd Division of the CTA committed reversible error when it ruled in favor of respondent Cosmos despite its failure to appeal the assessment within 30 days from receipt of the denial by the City Treasurer.

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8 Id. at 50.

9 The petitioners previously filed a Motion for Extension of Time to File a Petition for Review, id. at 29.

10 Section 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of this Act.

A party adversely affected by a resolution of a Division of the CTA on motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*. (underlining supplied)

11 Section 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (underscoring supplied)

3. The 3rd Division of the CTA committed grave error when it failed to consider that the assessment subject of this case has already become final and executory and no longer appealable.

4. The 3rd Division of the CTA gravely erred in granting Cosmos' claim despite erroneously filing the instant case under the provision of Section 196 of the LGC.[12]

On the first ground, the petitioners essentially invoke excusable mistake on the part of their handling lawyer in asking the Court to resolve the case on the merits. They argue that the Court had on many occasions set aside the rules of procedure in order to afford substantial justice.

On the second, third, and fourth grounds, the petitioners claim that Cosmos' remedy was one of protest against assessment as demonstrated by its letter dated 18 January 2007. Being so, Cosmos' adopted remedy should be governed by Section 195 of the Local Government Code *(LGC)*. Pursuant to such provision, Cosmos had only thirty (30) days from receipt of denial of the protest within which to file an appeal before a court of competent jurisdiction. However, Cosmos failed to comply with the period of appeal, conveniently shifting its theory from tax protest to tax refund under Section 196 of the LGC when it later on filed a "claim for refund/tax credit of illegally/erroneously paid taxes" on 1 March 2007. The petitioners, thus, argue that Cosmos had already lost its right to appeal and is already precluded from questioning the denial of its protest.

In its comment,[13] Cosmos counters that the rules should not be lightly disregarded by harping on substantial justice and the policy of liberal construction. It also insists that it is not Section 195 of the LGC that is applicable to it but Section 196 of the same code.

ISSUES

Whether the CTA En Banc correctly dismissed the petition for review before it for failure of the petitioners to file a motion for reconsideration or new trial with the CTA Division.

Whether a taxpayer who had initially protested and paid the assessment may shift its remedy to one of refund.

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[12] Id. at 13-14.
[13] Id. at 55-59.

OUR RULING

We rule for Cosmos.

I.

The filing of a motion for reconsideration or new trial before the CTA Division is an indispensable requirement for filing an appeal before the CTA En Banc.

The CTA En Banc was correct in interpreting Section 18 of R.A. No. 1125, as amended by R.A. 9282 and R.A. No. 9503, which states –

> Section 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of this Act.
>
> A party adversely affected by a resolution of a Division of the CTA on motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*. (underlining supplied)

as requiring a prior motion for reconsideration or new trial before the same division of the CTA that rendered the assailed decision before filing a petition for review with the CTA En Banc. Failure to file such motion for reconsideration or new trial is cause for dismissal of the appeal before the CTA En Banc.

Corollarily, Section 1, Rule 8 of the CTA Rules provides:

> Section 1. *Review of cases in the Court en banc.* — In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division **must** be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (emphasis supplied)

Clear it is from the cited rule that the filing of a motion for reconsideration or new trial is mandatory – not merely directory – as indicated by the word "must."

Thus, in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue (Asiatrust),*[14] we declared that a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution in order for the CTA En Banc to take cognizance of an appeal via a petition for review. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.[15] In *Commissioner of Customs v. Marina Sales, Inc. (Marina Sales),*[16] which was cited in *Asiatrust,* we held:

> The rules are clear. Before the CTA En Banc could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division. Procedural rules are not to be trifled with or be excused simply because their noncompliance may have resulted in prejudicing a party's substantive rights. Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules.[17] (citations omitted)

The rules are to be relaxed only in the interest of justice and to benefit the deserving.[18]

We cannot lend to the petitioners the benefit of liberal application of the rules. As in *Marina Sales,* the rules may be relaxed when to do so would afford a litigant substantial justice. After a cursory examination of the records of the case, we find that the petitioners, as determined by the CTA Division, erroneously assessed and collected from Cosmos local business taxes for the first quarter of 2007; thus, a refund is warranted.

The ruling of the CTA Division is anchored on the following findings:

(1) the assessment against Cosmos was based on Ordinance Nos. 7988 and 8011 (Revenue Code of Manila);

(2) the assessment against Cosmos included taxes imposed under Section 21, in addition to Section 14, of the Revenue Code of Manila; and

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[14] G.R. Nos. 201530 & 201680-81, 19 April 2017.
[15] Id.
[16] 650 Phil. 143 (2010).
[17] Id. at 152.
[18] *Magsino v. De Ocampo,* 741 Phil. 394, 410 (2014).

(3) the local taxes collected from Cosmos for the first quarter of 2007 was based on its gross receipts in 2005.

We cannot help but sustain the ruling of the CTA Division that the City of Manila cannot validly assess local business taxes under Ordinance Nos. 7988 and 8011 because they are void and of no legal effect; the collection of local business taxes under Section 21 in addition to Section 14 of the Revenue Code of Manila constitutes double taxation; and the 2007 local business tax assessed against Cosmos should be computed based on the latter's gross receipts in 2006.

1. Ordinance Nos. 7988 and 8011 have been declared null and void, hence, invalid bases for the imposition of business taxes.

At the time the CTA Division rendered the assailed decision, the cases of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila (2006)*,[19] *The City of Manila v. Coca-Cola Bottlers, Inc. (2009)*[20] and *City of Manila v. Coca-Cola Bottlers, Inc. (2010)*[21] had already settled the matter concerning the validity of Ordinance Nos. 7988 and 8011. The said cases clarified that Ordinance Nos. 7988 and 8011, which amended Ordinance No. 7794, were null and void for failure to comply with the required publication for three (3) consecutive days and thus cannot be the basis for the collection of business taxes.

It is not disputed that Cosmos was assessed with the tax on manufacturers under Section 14 and the tax on other businesses under Section 21 of Ordinance No. 7988, as amended by Ordinance No. 8011. Consistent with the settled jurisprudence above, the taxes assessed in this case, insofar as they are based on such void ordinances, must perforce be nullified. Thus, what remains enforceable is the old Ordinance No. 7794. Accordingly, the business tax assessable against Cosmos should be based on the rates provided by this Ordinance.

2. The collection of taxes under both Sections 14 and 21 of the Revenue Code of Manila constitutes double taxation.

While the City of Manila could impose against Cosmos a manufacturer's tax under Section 14 of Ordinance No. 7794, or the Revenue

[19] 526 Phil. 249 (2006).
[20] 612 Phil. 609 (2009).
[21] G.R. No. 167283, 10 February 2010.

Code of Manila, it cannot at the same time impose the tax under Section 21 of the same code; otherwise, an obnoxious double taxation would set in. The petitioners erroneously argue that double taxation is wanting for the reason that the tax imposed under Section 21 is imposed on a different object and of a different nature as that in Section 14. The argument is not novel. In *The City of Manila v. Coca-Cola Bottlers, Inc. (2009),*[22] the Court explained –

> [T]here is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter — the privilege of doing business in the City of Manila; (2) for the same purpose — to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority — petitioner City of Manila; (4) within the same taxing jurisdiction — within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods — per calendar year; and (6) of the same kind or character — a local business tax imposed on gross sales or receipts of the business.
>
> The distinction petitioners attempt to make between the taxes under Sections 14 and 21 of Tax Ordinance No. 7794 is specious. The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that ***when a municipality or city has already imposed a business tax on manufacturers***, etc. of liquors, distilled spirits, wines, and any other article of commerce, ***pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, etc. to a business tax under Section 143(h)*** of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentage tax under the NIRC, and that are "not otherwise specified in preceding paragraphs." In the same way, ***businesses such as respondent's, already subject to a local business tax under Section 14*** of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], ***can no longer be made liable for local business tax under Section 21*** of the same Tax Ordinance [which is based on Section 143(h) of the LGC].[23] (emphases supplied)

In reality, Cosmos, being a manufacturer of beverages,[24] is similarly situated with Coca-Cola Bottlers, Inc. in the cited cases, with the difference only in the taxable periods of assessment. Thus, given that Cosmos is already paying taxes under Section 14 (just like Coca-Cola), it is not totally misplaced to consider the additional imposition of a tax under Section 21 as constituting double taxation, therefore excessive, warranting its refund to Cosmos as the CTA Division has correctly ordered.

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22 *The City of Manila v. Coca-Cola Bottlers, Inc.*, supra note 17.
23 Id. at 632-633.
24 *Rollo*, pp. 86-87, 90 and 126-127.

Computation of Business Tax Under Section 14

We consider next the proper basis for the computation of the business tax under Section 14 that is imposable against Cosmos.

3. The computation of local business tax is based on gross sales or receipts of the preceding calendar year.

It is undisputed that Section 14 of the Revenue Code of Manila is derived from Section 143(a) of the LGC which provides:

> Section 143. T*ax on Business*. – The municipality may impose taxes on the following businesses:
>
> (a) On ***manufacturers***, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders x x x in accordance with the following schedule: With gross sales or receipts for the ***preceding calendar year*** in the amount of:
>
> x x x x (emphasis supplied)

Consistent with the above provision, an assessment for business tax under Section 14 of Ordinance No. 7794 for the taxable year 2007 should be computed based on the taxpayer's gross sales or receipts of the ***preceding calendar year*** 2006. In this case, however, the petitioners based the computation of manufacturer's tax on Cosmos' gross sales for the calendar year 2005. The CTA Division was therefore correct in adjusting the computation of the business tax on the basis of Cosmos' gross sales in 2006 which amount, incidentally, was lower than Cosmos' gross sales in 2005. The business tax paid corresponding to the difference is consequently refundable to Cosmos.

II.

A taxpayer who had protested and paid an assessment may later on institute an action for refund.

The petitioners submit that the assessment against Cosmos became final and executory when the latter effectively abandoned its protest and instead sued in court for the refund of the assessed taxes and charges.

We cannot agree mainly for two reasons.

First, even a cursory glance at the complaint filed by Cosmos would readily reveal that the action is not just for the refund of its paid taxes but also one assailing the assessment in question. Cosmos captioned its petition before the RTC as *"For: The Revision of Statement of Account (**Preliminary Assessment**) and For Refund or Credit of Local Business Tax Erroneously/Illegally Collected."*[25] The allegations in said complaint[26] likewise confirm that Cosmos did not agree with the assessment prepared by Liberty M. Toledo *(Toledo)* who was the City Treasurer of the City of Manila at the time. In asking the court to refund the assessed taxes it had paid, Cosmos essentially alleged that the basis of the payment, which is the assessment issued by Toledo, is erroneous or illegal.

It is, thus, totally misplaced to consider Cosmos as having abandoned its protest against the assessment. By seasonably instituting the petition before the RTC, the assessment had not attained finality.

Second, a taxpayer who had protested ***and*** paid an assessment is not precluded from later on instituting an action for refund or credit.

The taxpayers' remedies of protesting an assessment and refund of taxes are stated in Sections 195 and 196 of the LGC, to wit:

> Section 195. *Protest of Assessment.* – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. 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.
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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

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25 Id. at 89.

26 Id. at 90-93; paragraphs 5 to 10 of the complaint.

> 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.

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 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*[27] 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

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[27] In *Yamane v. BA Lepanto Condominium Corporation,* 510 Phil. 750, 763-764 (2005), the Court explained that even though Section 195 utilized the term 'appeal', the law did not vest appellate jurisdiction on the regional trial courts over the denial by the local treasurer of a tax protest. The Court described the court's jurisdiction in this instance as original in character, *viz:*

> "[S]ignificantly, the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer. On the other hand, Section 22 of B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts. Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities."

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.***

Clearly, when a taxpayer is assessed a deficiency local tax, fee or charge, he may protest it under Section 195 even without making payment of such assessed tax, fee or charge. This is because the law on local government taxation, save in the case of real property tax,[28] does not expressly require *"payment under protest"* as a procedure prior to instituting the appropriate proceeding in court. This implies that the success of a judicial action questioning the validity or correctness of the assessment is not necessarily hinged on the previous payment of the tax under protest.

Needless to say, there is nothing to prevent the taxpayer from paying the tax under protest or simultaneous to a protest. There are compelling reasons why a taxpayer would prefer to pay while maintaining a protest against the assessment. For instance, a taxpayer who is engaged in business would be hard-pressed to secure a business permit unless he pays an assessment for business tax and/or regulatory fees. Also, a taxpayer may

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[28] Section 252 of the LGC requires payment under protest of an assessment for real property tax, to wit:

> Section 252. *Payment Under Protest.* – (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

pay the assessment in order to avoid further penalties, or save his properties from levy and distraint proceedings.

The foregoing clearly shows that a taxpayer facing an assessment may protest it and alternatively: *(1)* appeal the assessment in court, or *(2)* pay the tax and thereafter seek a refund.[29] Such procedure may find jurisprudential mooring in *San Juan v. Castro*[30] wherein the Court described for the first and only time the alternative remedies for a taxpayer protesting an assessment – either appeal the assessment before the court of competent jurisdiction, or pay the tax and then seek a refund.[31] The Court, however, did not elucidate on the relation of the second mentioned alternative option, i.e., pay the tax and then seek a refund, to the remedy stated in Section 196.

As this has a direct bearing on the arguments raised in the petition, we thus clarify.

Where an assessment is to be protested or disputed, the taxpayer may proceed *(a)* without payment, or *(b)* with payment[32] of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; **otherwise, the assessment becomes conclusive and unappealable.**

(a) Where no payment is made, the taxpayer's procedural remedy is governed strictly by **Section 195**. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment.

(b) Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of

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29 See *San Juan v. Castro,* 565 Phil. 810, 816-817 (2007) citing Ernesto D. Acosta and Jose C. Vitug, TAX LAW AND JURISPRUDENCE, 2nd edition. Rex Book Store: Manila, Philippines, 2000, pp. 463-464.

30 Id. at 817.

31 Id.; the pertinent text of the decision in *San Juan v. Castro* reads:

> "That petitioner protested in writing against the assessment of tax due and the basis thereof is on record as in fact it was on that account that respondent sent him the above-quoted July 15, 2005 letter which operated as a denial of petitioner's written protest.
>
> Petitioner should thus have, following the earlier above-quoted Section 195 of the Local Government Code, either appealed the assessment before the court of competent jurisdiction or paid the tax and then sought a refund." (citations omitted)

32 Whether payment was made before, on, or after the date of filing the formal protest.

the assessment (**Section 195**, LGC) and at the same time seeking a refund of the taxes. In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. 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.

The same implication should ensue even if the taxpayer were to style his suit in court as an action for refund or recovery of erroneously paid or illegally collected tax as pursued under **Section 196** of the LGC. In such a suit for refund, the taxpayer cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes without necessarily **assailing the validity or correctness of the assessment** he had administratively protested.

It must be understood, however, that in such latter case, the suit for refund is conditioned on the prior filing of a written claim for refund or credit with the local treasurer. In this instance, what may be considered as the administrative claim for refund is the letter-protest submitted to the treasurer. Where the taxpayer had paid the assessment, it can be expected that in the same letter-protest, he would also pray that the taxes paid should be refunded to him.[33] As previously mentioned, there is really no particular form or style necessary for the protest of an assessment or claim of refund of taxes. What is material is the substance of the letter submitted to the local treasurer.

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

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[33] Where protest against assessment was first made, then later payment of the assessed tax, substantial justice or procedural economy, at the very least, demands that the prior letter-protest be treated as having the same effect and import as a written claim for refund for purposes of satisfying the requirement of exhaustion of administrative remedies.

> 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.

Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One,* pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two,* bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax.

In this case, after Cosmos received the assessment of Toledo on 15 January 2007, it forthwith protested such assessment through a letter dated 18 January 2007.[34] Constrained to pay the assessed taxes and charges, Cosmos subsequently wrote the Office of the City Treasurer another letter asking for the refund and reiterating the grounds raised in the previous submitted protest letter.[35] In the meantime, Cosmos received on 6 February 2007 the letter of Toledo denying its protest.[36] Thus, on 8 March 2007, or exactly thirty (30) days from its receipt of the denial, Cosmos brought the action before the RTC of Manila.

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[34] *Rollo*, p. 44.

[35] Id. at 44-45.

[36] The Complaint alleged 6 February 2007 as the date Cosmos received Toledo's letter denying the protest. The petitioners failed to controvert this allegation. Thus, the RTC proceeded to render its decision operating under the premise that Cosmos seasonably filed the action on 8 March 2007, or within the 30-day period to appeal. The CTA Division likewise affirmed such finding of the lower court in its decision in C.T.A AC No. 60.

Under the circumstances, it is evident that Cosmos was fully justified in asking for the refund of the assailed taxes after protesting the same before the local treasurer. Consistent with the discussion in the premises, Cosmos may resort to, as it actually did, the alternative procedure of seeking a refund after timely protesting *and* paying the assessment. Considering that Cosmos initiated the judicial claim for refund within 30 days from receipt of the denial of its protest, it stands to reason that the assessment which was validly protested had not yet attained finality.

To reiterate, Cosmos, after it had protested and paid the assessed tax, is permitted by law to seek a refund having fully satisfied the twin conditions for prosecuting an action for refund before the court.

Consequently, the CTA did not commit a reversible error when it allowed the refund in favor of Cosmos.

WHEREFORE, the petition is **DENIED** for lack of merit. The 16 February 2011 and 20 April 2011 Resolutions of the Court of Tax Appeals En Banc in C.T.A. E.B. No. 702 are hereby **AFFIRMED**.

The 9 November 2010 Decision of the Court of Tax Appeals Third Division in C.T.A. AC No. 60 is likewise **AFFIRMED.**

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

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

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 23 2018