Taxation Law 2

Case Digest

UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

LIST OF CASES
Taxation 2

I. ESTATE TAX under RA 10963 (Tax Reform for Acceleration and Inclusion Law); Revenue Regulations 2-2003

1. Basic principles
2. Definition
3. Nature
4. Purpose or object
5. Time and transfer of properties
6. Classification of decedent
7. Gross estate vis-à-vis net estate
8. Determination of gross estate and net estate
9. Composition of gross estate
    Cases:
    1. Vitug v. CA (183 SCRA 755)
    2. Roces v. Posadas (58 Phil 108)
    3. Dizon v. Posadas (57 Phil 465)
10. Items to be included in gross estate
11. Deductions from gross estate
12. Exclusions from estate
13. Tax credit for estate taxes paid in a foreign country
14. Exemption of certain acquisitions and transmissions
15. Filing of notice of death
16. Estate tax return

II. DONOR'S TAX (Tax Reform for Acceleration and Inclusion Law); Revenue Regulations 2-2003

1. Basic principles
2. Definition
3. Nature
4. Purpose or object
5. Requisites of valid donation
6. Transfers which may be constituted as donation
    a) Sale/exchange/transfer of property for insufficient consideration
      Case: Philam Life v. Secretary of Finance (741 SCRA 578)
    b) Condonation/remission of debt
    c) Renunciation of inheritance
7. Transfer for less than adequate and full consideration
8. Classification of donor
9. Determination of gross gift
10. Composition of gross gift
11. Valuation of gifts made in property
12. Tax credit for donor's taxes paid in a foreign country
13. Exemptions of gifts from donor's tax
14. Person liable
15. Tax basis

III. VALUE-ADDED TAX (VAT)

1. Concept/Definition
   RR 5-87
   Case: CIR v. PLDT (478 SCRA 61)
2. Characteristics/Elements of a Vatable transaction
   Case: Mindoro II Geothermal Partnership v. CIR (693 SCRA 49)
3. Impact of tax
4. Incidence of tax
5. Tax credit method
6. Destination principle/Cross Border Doctrine
   Case: ACMDC v. CIR (524 SCRA 73)
7. Persons liable
8. VAT on sale of goods or properties
   a) Requisites of taxability of sale of goods or properties
9. Zero-rated sales of goods or properties, and effectively zero-rated sales of goods or properties
10. Transactions deemed sale
    a) Transfer, use or consumption not in the course of business of goods/properties originally intended for sale or use in the course of business
    b) Distribution or transfer to shareholders, investors or creditors
    c) Consignment of goods if actual sale not made within 60 days from date of consignment
    d) Retirement from or cessation of business with respect to inventories on hand
11. Change or cessation of status as VAT-registered person
    a) Subject to VAT
       (i) Change of business activity from VAT taxable status to VAT-exempt status
       (ii) Approval of request for cancellation of a registration due to reversion to exempt status
       (iii) Approval of request for cancellation of registration due to desire to revert to exempt status after lapse of 3 consecutive years
    b) Not subject to VAT
       (i) Change of control of a corporation
       (ii) Change in the trade or corporate name
       (iii) Merger or consolidation of corporations
12. VAT on importation of goods
    a) Transfer of goods by tax exempt persons
13. VAT on sale of service and use or lease of properties
    a) Requisites for taxability
       Cases:
       1. CIR v. SM Prime Holdings, Inc. (613 SCRA 774)
       2. Diaz v. Secretary of Finance (654 SCRA 96)
14. Zero-rated sale of services
    Case: CIR v. Acesite Hotel (516 SCRA 93)
15. VAT exempt transactions
    a) VAT exempt transactions, in general
    b) Exempt transaction, enumerated
       Case: PAGCOR v. CIR (645 SCRA 338)
16. Input tax and output tax, defined

17. Sources of input tax
    a) Purchase or importation of goods
    b) Purchase of real properties for which a VAT has actually been paid
    c) Purchase of services in which VAT has actually been paid
    d) Transactions deemed sale
    e) Presumptive input
    f) Transitional input
        Case: FBDC v. CIR (583 SCRA 168)
18. Persons who can avail of input tax credit
19. Determination of output/input tax; VAT payable; excess input tax credits
    a) Determination of output tax
    b) Determination of input tax creditable
    c) Allocation of input tax on mixed transactions
    d) Determination of the output tax and VAT payable and computation of VAT payable or excess tax credits
20. Substantiation of input tax credits
21. Refund or tax credit of excess input tax
    a) Who may claim for refund/apply for issuance of tax credit certificate
    b) Period to file claim/apply for issuance of tax credit certificate
    c) Manner of giving refund
        Cases:
        1. CIR v. AICHI Forging Company of Asia (632 SCRA 422)
        2. CIR v. San Roque Power Corp. (690 SCRA 336)
        3. CIR v. Mindanao II Geothermal Partnership (713 SCRA 645)
        4. CIR v. Team Sual Corp. (715 SCRA 478)
        5. CIR v. Burmeistar (739 SCRA 147)
        6. CIR v. Toledo Power Company (765 SCRA 511)
22. Invoicing requirements
    a) Invoicing requirements in general
    b) Invoicing and recording deemed sale transactions
    c) Consequences of issuing erroneous VAT invoice or VAT official receipt
23. Filing of return and payment
24. Withholding of final VAT on sales to government

IV. TAX REMEDIES UNDER THE NIRC

1. Taxpayer's remedies
    a) Assessment
        Case: Adamson v. CA (588 SCRA 27)
        (i) Concept of assessment
            Case:
            1. ACMDC v. CIR (242 SCRA 289)
            2. RP v. CA (149 SCRA 351)
            (a) Requisites for valid assessment
                Case: CIR v. Pascor (309 SCRA 402)
            (b) Constructive methods of income determination
            (c) Inventory method for income determination
                Case: Perez v. CTA (103 Phil 167)
            (d) Jeopardy assessment
                Revenue Regulations 7-2001

(e) Tax delinquency and tax deficiency

(ii) Power of the Commissioner to make assessments and prescribe additional requirements for tax administration and enforcement

(a) Power of the Commissioner to obtain information, and to summon/examine, and take testimony of persons

(iii) When assessment is made

Case: CIR v. Pascor (309 SCRA 402)

(a) Prescriptive period for assessment

Case: CIR v. Phoenix Assurance Co., Ltd. (14 SCRA 52)

(1) False, fraudulent, and non-filing of returns

(b) Suspension of running of statute of limitations

Cases:

CIR v. Kudos Metal Corporation, (620 SCRA 232)

Fernandez Hermanos, Inc. v. CIR (29 SCRA 552)

(iv) General provisions on additions to the tax

(a) Civil penalties

(b) Interest

(c) Compromise penalties

(v) Assessment process (Revenue Regulations No. 18-2013)

(a) Tax audit

(b) Notice of informal conference

(c) Issuance of preliminary assessment notice

(d) Issuance of preliminary assessment notice

(e) Exceptions to issuance of preliminary assessment notice

(f) Reply to preliminary assessment notice

(g) Issuance of formal letter of demand and final assessment notice (FLD/FAN)

(h) Disputed assessment

(i) Administrative decision on a disputed assessment

(vi) Protesting assessment

(a) Protest of assessment by taxpayer

(1) Protested assessment

(2) When to file a protest

(3) Forms of protest

(4) Content and validity of protest

(b) Submission of documents within 60 days from filing of protest

(c) Effect of failure to protest

(d) Period provided for the protest to be acted upon

Cases:

1. Samar-I Electric Cooperative v. CIR (744 SCRA 459)
2. Lascona Land Co., Inc. v. CIR (667 SCRA 455)

(vii) Rendition of decision by Commissioner

(a) Denial of protest

(1) Commissioner's actions equivalent to denial of protest

Cases:

1. CIR v. Isabela Cultural Corp. (361 SCRA 71)
2. Republic v. Lim (16 SCRA 584)

(a) Filing of criminal action against taxpayer

(b) Issuing a warrant of distraint and levy
(2) Inaction by Commissioner
(viii) Remedies of taxpayer to action by Commissioner
(a) In case of denial of protest
(b) In case of inaction by Commissioner within 180 days from submission of documents
Cases:
1. RCBC v. CIR (522 SCRA 144)
2. Lascona Land Co., Inc. v. CIR (667 SCRA 455)
(c) Effect of failure to appeal
b) Collection
(i) Requisites
(ii) Prescriptive periods
(iii) Distraint of personal property including garnishment
(a) Summary remedy of distraint of personal property
(1) Purchase by the government at sale upon distraint
(2) Report of sale to the Bureau of Internal Revenue (BIR)
(3) Constructive distraint to protect the interest of the government
(iv) Summary remedy of levy on real property
(a) Advertisement and sale
(b) Redemption of property sold
(c) Final deed of purchaser
(v) Forfeiture to government for want of bidder
(a) Remedy of enforcement of forfeitures
(1) Action to contest forfeiture of chattel
(b) Resale of real estate taken for taxes
(c) When property to be sold or destroyed
(d) Disposition of funds recovered in legal proceedings or obtained from forfeiture
(vi) Further distraint or levy
(vii) Tax lien
(viii) Compromise
(a) Authority of the Commissioner to compromise and abate taxes
(ix) Civil and criminal actions
(a) Suit to recover tax based on false or fraudulent returns
c) Refund
(i) Grounds and requisites for refund
Case: Andrea Vda de Aguinaldo v. CIR (13 SCRA 269)
(ii) Requirements for refund as laid down by cases
(a) Necessity of written claim for refund
(b) Claim containing a categorical demand for reimbursement
(c) Filing of administrative claim for refund and the suit/proceeding before the CTA within 2 years from date of payment regardless of any supervening cause
Cases:
1. CIR v. TMX Sales, Inc. (205 SCRA 184)
2. CIR v. CA (301 SCRA 435)
3. BPI v. CIR (363 SCRA 840)
4. CIR v. Philamlife (244 SCRA 446)

5. CIR v. PNB (474 SCRA 303)
6. CIR v. Primetown Property Group (531 SCRA 436)
7. CIR v. Goodyear Philippines, Inc. (799 SCRA 489)

(iii) Legal basis of tax refunds
(iv) Statutory basis for tax refund under the tax code
(a) Scope of claims for refund
(b) Necessity of proof for claim or refund
(c) Burden of proof for claim of refund
(d) Nature of erroneously-paid tax/illegally assessed collected
(e) Tax refund vis-à-vis tax credit
(f) Essential requisites for claim of refund
(v) Who may claim/apply for tax refund/tax credit
Cases:
1. Procter and Gamble Phils. (204 SCRA 377)
2. Silkair Singapore (571 SCRA 141)

(a) Taxpayer/withholding agents of non-resident foreign corporation
(vi) Prescriptive period for recovery of tax erroneously or illegally collected
(vii) Irrevocability rule
Cases:
1. Rhombus Energy, Inc. v. CIR, G.R. No. 206362, 1 August 2018
2. University Physicians Services, Inc. v. CIR, G.R. No. 205955, 7 March 2018
3. Belle Corporation v. CIR (644 SCRA 433)
4. CIR v. DERF Realty (557 SCRA 165)
5. Philam Asset Management v. CIR (447 SCRA 772)

2. Government remedies
a) Administrative remedies
(i) Tax lien
(ii) Levy and sale of real property
(iii) Forfeiture of real property to the government for want of bidder
(iv) Further distraint and levy
(v) Suspension of business operation
(vi) Non-availability of injunction to restrain collection of tax
b) Judicial remedies

3. Statutory offenses and penalties
a) Civil penalties
(i) Surcharge
(ii) Interest
(a) In general
(b) Deficiency interest
(c) Delinquency interest
(d) Interest on extended payment

4. Compromise and abatement of taxes
a) Compromise
b) Abatement

F. Organization and Function of the Bureau of Internal Revenue

1. Rule-making authority of the Secretary of Finance
    a) Authority of Secretary of Finance to promulgate rules and regulations
    b) Specific provisions to be contained in rules and regulations
    c) Non-retroactivity of rulings
2. Power of the Commissioner to suspend the business operation of a taxpayer

V. Local Government Code of 1991 (RA 7160)

A. LOCAL GOVERNMENT TAXATION

1. Fundamental principles
    Cases:
    1. Matalin Coconut Company v. Malabang (143 SCRA 404)
    2. Villanueva v. Iloilo (26 SCRA 578)
    3. Ormoc Sugar Company v. Ormoc City (20 SCRA 739)
2. Nature and source of taxing power
    a) Grant of local taxing power under the local government code
    b) Authority to prescribe penalties for tax violations
    c)Authority to grant local tax exemptions
    d) Withdrawal of exemptions
    e) Authority to adjust local tax rates
    f) Residual taxing power of local governments
    g) Authority to issue local tax ordinances
3. Local taxing authority
    a) Power to create revenues exercised through Local Government Units
    b) Procedure for approval and effectivity of tax ordinances
4. Scope of taxing power
5. Specific taxing power of Local Government Units
    a) Taxing powers of provinces
        (i) Tax on transfer of real property ownership
        (ii)Tax on business of printing and publication
        (iii) Franchise tax
            Cases:
            1. NPC v. City of Cabanatuan (401 SCRA 259)
            2. San Pablo v. Reyes (305 SCRA 353)
            3. Meralco v. Lagura (306 SCRA 750)
            4. PLDT v. City of Davao (363 SCRA 522)
        (iv) Tax on sand, gravel and other quarry services
        (v) Professional tax
        (vi) Amusement tax
        (vii) Tax on delivery truck/van
    b) Taxing powers of cities
    c) Taxing powers of municipalities
        (i) Tax on various types of businesses
        (ii) Ceiling on business tax impossible on municipalities within Metro Manila
        (iii) Tax on retirement on business
        (iv) Rules on payment of business tax
        (v) Fees and charges for regulation & licensing
        (vi) Situs of tax collected

d) Taxing powers of barangays
e) Common revenue raising powers
(i) Service fees and charges
(ii) Public utility charges
(iii) Toll fees or charges
f) Community tax

6. Common limitations on the taxing powers of LGUs

Cases:
1. Phil. Petroleum Corporation v. Municipality of Pililia (198 SCRA 82)
2. LTO v. City of Butuan (322 SCRA 805)
3. MIAA v. Parañaqe (495 SCRA 591)

7. Collection of business tax
a) Tax period and manner of payment
b) Accrual of tax
c) Time of payment
d) Penalties on unpaid taxes, fees or charges
e) Authority of treasurer in collection and inspection of books

8. Taxpayer's remedies
a) Periods of assessment and collection of local taxes, fees or charges
b) Protest of assessment
c) Claim for refund of tax credit for erroneously or illegally collected tax, fee or charge

9. Civil remedies by the LGU for collection of revenues
a) Local government's lien for delinquent taxes, fees or charges
b) Civil remedies, in general
(i) Administrative action
(ii) Judicial action

B. REAL PROPERTY TAXATION

1. Fundamental principles

Cases:
1. Army & Navy Club v. Trinidad (44 Phil 383)
2. Reyes v. Almanzor (196 SCRA 322)
3. Allied Banking Corp. v. Quezon City (472 SCRA 303)

2. Nature of real property tax
3. Imposition of real property tax

Cases:
1. Meralco v. CBAA (114 SCRA 260)
2. Caltex v. CBAA (114 SCRA 296)
3. Mindoro Bus Company v. City Assessor (6 SCRA 197)

a) Power to levy real property tax
b) Exemption from real property tax

Cases:
1. MIAA v. Parañaque (495 SCRA 591)
2. GSIS v. Iloilo City (493 SCRA 169)
3. Republic v. Kidapawan (477 SCRA 324)
4. Lung Center v. Quezon City (433 SCRA 119)

4. Appraisal and assessment of real property tax
a) Rule on appraisal of real property at fair market value

- b) Declaration of real property
- c) Listing of real property in assessment rolls
- d) Preparation of schedules of fair market value
  - (i) Authority of assessor to take evidence
  - (ii) Amendment of schedule of fair market value
- e) Classes of real property
- f) Actual use of property as basis of assessment
- g) Assessment of real property
  - (i) Assessment levels
  - (ii) General revisions of assessments and property classification
  - (iii) Date of effectivity of assessment or reassessment
  - (iv) Assessment of property subject to back taxes
  - (v) Notification of new or revised assessment
- h) Appraisal and assessment of machinery

5. Collection of real property tax
   - a) Date of accrual of real property tax and special levies
   - b) Collection of tax
     - (i) Collecting authority
     - (ii) Duty of assessor to furnish local treasurer with assessment rolls
     - (iii) Notice of time for collection of tax
   - c) Periods within which to collect real property tax
   - d) Special rules on payment
     - (i) Payment of real property tax in installments
     - (ii) Interests on unpaid real property tax
     - (iii) Condonation of real property tax
   - e) Remedies of LGUs for collection of real property tax
     - (i) Issuance of notice of delinquency for real property tax payment
       - Cases:
         1. Serfino v. CA (164 SCRA 19)
         2. Estate of the Late Jacob v. CA (283 SCRA 474)
         3. Talusan v. Tayag (356 SCRA 263)
         4. Tan v. Bantegui (473 SCRA 663)
     - (ii) Local government's lien
     - (iii) Remedies in general
     - (iv) Resale of real estate taken for taxes, fees or charges
     - (v) Further levy until full payment of amount due
6. Refund or credit of real property tax
   - a) Payment under protest
   - b) Repayment of excessive collections
7. Taxpayer's remedies
   - a) Contesting an assessment of value of real property
     - (i) Appeal to the Local Board of Assessment Appeals
     - (ii) Appeal to the Central Board of Assessment Appeals
     - (iii) Effect of payment of tax
   - b) Payment of real property tax under protest
     - (i) File protest with local treasurer
     - (ii) Appeal to the Local Board of Assessment Appeals
     - (iii) Appeal to the Central Board of Assessment Appeals
     - (iv) Appeal to the CTA

(v) Appeal to the Supreme Court

VI. Tariff and Customs Code of the Philippines (P.D. No. 1464), as amended by the Customs Modernization and Tariff Act (Republic Act No. 10863)

A. Tariff and duties
1. Definitions
2. Purpose for Imposition
3. Kinds or Classification of Duties
a) Ordinary/regular duties
(1) *Ad valorem*
(2) Specific
b) Special duties
(1) Dumping duties
(2) Countervailing duties
(3) Marking duties
(4) Retaliatory/discriminatory duties
(5) Safeguard Measures
4. Flexible tariff clause

B. Accrual and Payment of Tax and Duties
1. General Rule: Except as otherwise provided, all goods imported into the Philippines shall be subject to duty upon importation, including goods previously exported from the Philippines.
a) Taxable Importations
Case: Commissioner of Customs v. Capistrano (G.R. No. L-11075, June 30, 1960)
b) Prohibited Importations
Cases:
1. Kurst Nilsen v. Commissioner of Customs (89 SCRA 43)
2. C.F. Stamp v. Commissioner of Customs (22 SCRA 760)
3. Llamado v. Commissionerof Customs (G.R. No. L-28809, May 16, 1983)
c) *De Minimis* Importations (Small Value Importations)
d) Conditionally-Free and Duty-Exempt Importations
(1) Returning residents
(2) Conditions for exemption from tax and duties
(3) *Balikbayan* boxes
2. Goods Declaration
a) Formal entry distinguished from Informal entry
b) Filing of Goods Declaration
c) Assessment and Payment of Duties and Taxes, Interest and Surcharge
d) Provisional Goods Declaration
e) Relief Consignments
f) Misdeclaration, Misclassification, and Undervaluation in Goods Declarations
(1) Definition and distinction
(2) Imposition of Surcharges
C. Unlawful Importation or Exportation
1. Technical smuggling and Outright smuggling

2. Other fraudulent practices
D. Remedies
1. Government
a) Administrative/extrajudicial
(1) Search, seizure, forfeiture, arrest
Cases:
1. Commissioner of Customs v. Pascual (138 SCRA 581)
2. Gako v. Commissioner of Customs (344 SCRA 178)
(2) Authority of the Commissioner to make compromise
b) Judicial
(1) Rules on appeal including jurisdiction
c) Automatic Review in Forfeiture Cases
(2) Taxpayer
a) Protest
b) Refund
c) Abandonment

VII. Judicial Remedies (R.A. No. 1125, as amended, and the Revised Rules of the Court of Tax Appeals)

A. Jurisdiction of the Court of Tax Appeals
1. Exclusive appellate jurisdiction over civil tax cases
a) Cases within the jurisdiction of the court en banc
b) Cases within the jurisdiction of the court in divisions
Cases:
- Yaokasin v. Commissioner of Customs (180 SCRA 591)
- CIR v. Ayala Securities (70 SCRA 204)
- Surigao Electric Company v. CTA (57 SCRA 523)
- Oceanic Wireless Network v. CIR (477 SCRA 205)
- Allied Banking Corporation v. CIR (611 SCRA 692)
- Fishwealth Canning Corporation v. CIR (610 SCRA 524)

2. Criminal cases
a) Exclusive original jurisdiction
b) Exclusive appellate jurisdiction in criminal cases
3. Petition for Certiorari
Case: City of Manila v. Grecia-Cuerdo (715 SCRA 182)
4. Other matters/cases
Cases:
- Philamlife v. Secretary of Finance (741 SCRA 578)
- Banco De Oro v. Secretary of Financce (800 SCRA 392)
- Pacquiao v. CTA (789 SCRA 19)
- PSALM v. CIR (835 SCRA 235)
- Philippine Ports Authority v. City of Davao, G.R. No. 190324, 6 June 2018
- CIR v. Kepeo Ilijan Corporation (794 SCRA 193)
- CIR v. Leal (392 SCRA 9)

B. Judicial procedures

1. Judicial action for collection of taxes
    a) Internal revenue taxes
    b) Local taxes
        (i) Prescriptive period
2. Civil cases
    a) Who may appeal, mode of appeal, effect of appeal
        (i) Suspension of collection of tax
            a) Injunction not available to restrain collection
                (ii) Taking of evidence
                (iii) Motion for reconsideration or new trial
                    Cases:
                    - Commissioner of Customs v. Marina Sales, Inc. (635 SCRA 606)
                    - Asia Trust Development Bank v. CIR (823 SCRA 648)
    b) Appeal to the CTA, en banc
    c) Petition for review on certiorari to the Supreme Court
3. Criminal cases
    a) Institution and prosecution of criminal actions
        (i) Institution of civil action in criminal action
    b) Appeal and period to appeal
        (i) Solicitor General as counsel for the people and government officials sued in their official capacity
    c) Petition for review on certiorari to the Supreme Court

C. Taxpayer's suit impugning the validity of tax measures or acts of taxing authorities
1. Taxpayer's suit, defined
    Cases:
    1. Gonzales v. Marcos (65 SCRA 624)
    2. Maceda v. Macaraeg, Jr. (197 SCRA 771)
    3. Abaya v. Ebdane (515 SCRA 720)
    4. Dela Llana v. COA (665 SCRA 176)
2. Distinguished from citizen's suit
3. Requisites for challenging the constitutionality of a tax measure or act of taxing authority
    a) Concept of locus standi as applied in taxation
    b) Doctrine of transcendental importance
    c) Ripeness for judicial determination

ROMARICO G. VITUG, *petitioner*, *vs.* THE HONORABLE COURT OF APPEALS and ROWENA FAUSTINO-CORONA, *respondents*.
G.R. No. 82027. March 29, 1990. SECOND DIVISION SARMIENTO, *J:*

In the case at bar, when the spouses Vitug opened savings account, they merely put what rightfully belonged to them in a money-making venture. They did not dispose of it in favor of the other, which would have arguably been sanctionable as a prohibited donation. And since the funds were conjugal, it cannot be said that one spouse could have pressured the other in placing his or her deposits in the money pool. The conclusion is accordingly unavoidable that Mrs. Vitug having predeceased her husband, the latter has acquired upon her death a vested right over the amounts under savings account of the Bank of America. Insofar as the respondent court ordered their inclusion in the inventory of assets left by Mrs. Vitug, we hold that the court was in error. Being the separate property of petitioner, it forms no more part of the estate of the deceased.

FACTS
This case involves the probate of the two wills of the late Dolores Luchangco Vitug, who died in New York, U.S.A., naming private respondent Rowena Faustino-Corona executrix. In a previous decision, we upheld the appointment of Nenita Alonte as co-special administrator of Mrs. Vitug's estate with her (Mrs. Vitug's) widower, petitioner Romarico G. Vitug, pending probate.

Romarico G. Vitug filed a motion asking for authority from the probate court to sell certain shares of stock and real properties belonging to the estate to cover allegedly his advances to the estate in the sum of P667,731.66, plus interests, which he claimed were personal funds. As found by the CA, the alleged advances consisted of P58,147.40 spent for the payment of estate tax, P518,834.27 as deficiency estate tax, and P90,749.99 as "increment thereto." According to Mr. Vitug, he withdrew the sums of P518,834.27 and P90,749.99 from savings account in the Bank of America, Makati, Metro Manila.
Later, Rowena Corona opposed the motion to sell on the ground that the same funds withdrawn from savings account in the Bank of America were conjugal partnership properties and part of the estate, and hence, there was allegedly no ground for reimbursement. She also sought his ouster for failure to include the sums in question for inventory and for "concealment of funds belonging to the estate."

Vitug insists that the said funds are his exclusive property having acquired the same through a survivorship agreement executed with his late wife and the bank on June 19, 1970, which states that; xxx all money now or hereafter deposited by us or any or either of us with the BANK in our joint savings current account shall be the property of all or both of us and shall be payable to and collectible or withdrawable by either or any of us during our lifetime, and after the death of either or any of us shall belong to and be the sole property of the survivor or survivors, and shall be payable to and collectible or withdrawable by such survivor or survivors. xxx

ISSUE
Whether or not the above-quoted survivorship agreement constitutes a conveyance *mortis causa* which did not comply with the formalities of a valid will as prescribed by Article 805 of the Civil Code? (NO)
RULING
The conveyance in question is not, first of all, one of *mortis causa,* which should be embodied in a will. A will has been defined as "a personal, solemn, revocable and free act by which a capacitated person disposes of his property and rights and declares or complies with duties to take effect after his death." In other words, the bequest or device must pertain to the testator. In this case, the monies

subject of savings account were in the nature of conjugal funds. In the case relied on, *Rivera v. People's Bank and Trust Co.,* we rejected claims that a survivorship agreement purports to deliver one party's separate properties in favor of the other, but simply, their joint holdings. There is no showing that the funds exclusively belonged to one party, and hence it must be presumed to be conjugal, having been acquired during the existence of the marital relations.

Neither is the survivorship agreement a donation *inter vivos*, for obvious reasons, because it was to take effect after the death of one party. Secondly, it is not a donation between the spouses because it involved no conveyance of a spouse's own properties to the other.

It is also our opinion that the agreement involves no modification of the conjugal partnership, as held by the Court of Appeals, by "mere stipulation," and that it is no "cloak" to circumvent the law on conjugal property relations. Certainly, the spouses are not prohibited by law to invest conjugal property, say, by way of a joint and several bank account, more commonly denominated in banking parlance as an "and/or" account. In the case at bar, when the spouses Vitug opened savings account, they merely put what rightfully belonged to them in a money-making venture. They did not dispose of it in favor of the other, which would have arguably been sanctionable as a prohibited donation. And since the funds were conjugal, it cannot be said that one spouse could have pressured the other in placing his or her deposits in the money pool.

The validity of the contract seems debatable by reason of its "survivor-take-all" feature, but in reality, that contract imposed a mere obligation with a term, the term being death. Such agreements are permitted by the Civil Code.

The fulfillment of an aleatory contract depends on either the happening of an event which is (1) "uncertain," (2) "which is to occur at an indeterminate time." A survivorship agreement, the sale of a sweepstake ticket, a transaction stipulating on the value of currency, and insurance have been held to fall under the first category, while a contract for life annuity or pension under Article 2021, *et sequentia*, has been categorized under the second. In either case, the element of risk is present. In the case at bar, the risk was the death of one party and survivorship of the other.
However, as we have warned:

xxx xxx xxx

But although the survivorship agreement is *per se* not contrary to law its operation or effect may be violative of the law. For instance, if it be shown in a given case that such agreement is a mere cloak to hide an inofficious donation, to transfer property in fraud of creditors, or to defeat the legitime ofa forced heir, it may be assailed and annulled upon such grounds. No such vice has been imputed and established against the agreement involved in this case.

xxx xxx xxx

There is no demonstration here that the survivorship agreement had been executed for such unlawful purposes, or, as held by the respondent court, in order to frustrate our laws on wills, donations, and conjugal partnership.

The conclusion is accordingly unavoidable that Mrs. Vitug having predeceased her husband, the latter has acquired upon her death a vested right over the amounts under savings account of the Bank of America. Insofar as the respondent court ordered their inclusion in the inventory of assets left by Mrs. Vitug, we hold that the court was in error. Being the separate property of petitioner, it forms no more part of the estate of the deceased.

CONCEPCION VIDAL DE ROCES and her husband, MARCOS ROCES, and ELVIRA VIDAL DE RICHARDS, *plaintiffs-appellants*, *vs.* JUAN POSADAS, JR., *Collector of Internal Revenue*, *defendant-appellee*.
G.R. No. 34937. March 13, 1933. EN BANC IMPERIAL, *J*

The gifts referred to in section 1540 of the Revised Administrative Code are, obviously, those donations inter vivos that take effect immediately or during the lifetime of the donor, but are made in consideration of his death. Gifts inter vivos, the transmission of which is not made in consideration of the donor's death, should not be understood as included within the said legal provision for the reason that it would be equivalent to levying a direct tax on property and not on the transmission thereof, which act is not within the scope of the provisions contained in Article XI of Chapter 40 of the Administrative Code referring expressly to tax on inheritances, legacies and other acquisitions mortis causa.

FACTS

On March 1o and 12, 1925, Esperanza Tuazon, by means of public documents, donated certain parcel of lands situated in Manila to the plaintiffs herein who with their respective husbands accepted them in the same public documents which were duly recorded in the registry of deeds. By virtue of said donations, the plaintiffs took possession of the said lands, received the fruits thereof and obtained the corresponding transfer certificate of title. On January 25, 1926, the donor died in the city of Manila leaving the forced heir and her will which was admitted to probate, she bequeathed to each of the donees the sum of Php5,000. After the estate had been distributed among the instituted legatees and before the delivery of their respective shares, the appellee herein, as collector of internal revenue, ruled that the appellant as donees and legatees should pay as inheritance taxes the sums of Php16,673 and Php13,951.45 respectively. At first, the appellants refused to pay the aforementioned taxes but, at the insistence of the appellee in order not to delay the adjudication of the legacies, they agreed at last to pay them under protest. Hence, plaintiff-appellants filed an action to recover the taxes paid under protest.

ISSUE

Whether or not inheritance tax should be imposed on donations inter vivos. (YES)

RULING

The tax collected by the appellee on the properties donated in 1925 really constitutes an inheritance tax imposed on the transmission of said properties in contemplation or in consideration of the donor's death and under circumstance that the donees were later instituted as the former's legatees. For this reason, the law considers such transmission in the form of gifts inter vivos, as advances on the inheritance and nothing therein violates any constitutional provision, in as much as said legislation is within the power of the legislature.

Property subject to inheritance tax – the inheritance tax ordinarily applies to all property within the power of the state to reach passing by will or the laws regulating intestate succession or by gifts inter vivos in the manner designated by statute, whether such property be real or personal, tangible or intangible, corporeal or incorporeal.

While a donee inter vivos, who after the predecessor's death proved to be an heir, legatee or donee mortis causa, would have to pay the tax, another donee inter vivos who did not prove to be an heir, a legatee or a donee mortis causa of the predecessor, would be exempt from such tax.

It may be inferred from the allegations contained in par 2 and 7 thereof that said donations inter vivos were made in consideration of the donor's death. We refer to the allegations that such transmissions were effected in the month of March 1925, that the donor died in January 1926, and that the donees were instituted legatees in the donor's will which was admitted in probate. It is from these allegations, especially the last, that we infer a presumption juris tantum that said donations were made mortis causa and, as such are subject to payment of inheritance tax.

LUIS W. DISON, plaintiff-appellant, vs. JUAN POSADAS, Jr., Collector of Internal Revenue, defendant-appellant.
G.R. No. 36770. November 4, 1932. EN BANC BUTTE, J

Section 1540 of the Administrative Code subjects the plaintiff and appellant to the payment of the inheritance tax upon the gift inter vivos he received from his father and which really was an advancement upon the inheritance he would be entitled to receive upon the death of the donor. Section 1540 of the Administrative Code does not tax gifts per se, but only when those gifts are made to those who shall prove to be the heirs, devises, legatees or donees mortis causa of the donor.
The expression in section 1540 of the Administrative Code "those who, after his death, shall prove to be his heirs" includes those who are given the status and rights of heirs, regardless of the quantity of property they may receive as such heirs.

FACTS
Don Felix Dizon died on April 21, 1928. Before his death, he made a gift inter vivos in favor of the plaintiff Luis W. Dizon of all his property according to a deed of a gift of which includes all the property of Don Felix Dizon. The plaintiff did not receive the property of any kind of Don Felix upon the death of the latter. Don Luis is the legitimate and only son of Don Felix. The defendant, collector of internal revenue assess an inheritance tax of Php2,808.73 which Don Luis paid under protest and later filed an action to recover sum of money thus paid. Plaintiff alleged that the inheritance tax is illegal because he received the property, which is the basis of the tax from his father before his death by a deed of gift inter vivos which was duly accepted and registered before the death of his father.

ISSUE
Whether or not the gift inter vivos is subject to inheritance tax. (YES)

RULING
Yes. Section 1540 of the administrative code plainly does not tax gifts per se but only when those gifts are made to those who shall prove to be the heirs, devisees, legatees or donees mortis cause of the donor.

In this case, the scanty facts before us may not warrant the inference that the conveyance, acknowledged by the donor 5 days before his death and accepted by the donee one day before the donor's death, was fraudulently made for the purpose of evading the inheritance tax. But the facts, in our opinion, do not warrant the inference that the transfer was an advancement upon the inheritance which the donee as the sole and forced heir of the donor, would be entitled to receive upon the death of the donor.

THE PHILIPPINE AMERICAN LIFE AND GENERAL INSURANCE COMPANY *vs.* SECRETARY OF FINANCE and COMMISSIONER OF INTERNAL REVENUE
G.R. No. 210987, November 24, 2014, J. Velasco Jr.

Philamlife sold its shares through a public bidding. However, the selling price was below the book value of the shares. Hence, the BIR imposed donor's tax on the price difference. Philamlife appealed to the Secretary of Finance. Due to the adverse ruling, Philamlife appealed with the CA. CA alleged that it does not have jurisdiction for jurisdiction lies with the CTA. The Court ruled that, the CTA can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.

FACTS
The Philippine American Life and General Insurance Company (Philamlife) used to own 498,590 Class A shares in Philam Care Health Systems, Inc. (PhilamCare), representing 49.89% of the latter's outstanding capital stock. In 2009, Philamlife offered to sell its shareholdings in PhilamCare through competitive bidding. Thus, on September 24, 2009, petitioner's Class A shares were sold for USD 2, 190,000, or PhP 104,259,330 to STI Investments, the highest bidder.

Philamlife filed an application for a certificate authorizing registration/tax clearance with the Bureau of Internal Revenue (BIR) to facilitate the transfer of the shares. Months later, petitioner was informed that it needed to secure a BIR ruling in connection with its application due to potential donor's tax liability. In compliance, Philamlife, requested a ruling to confirm that the sale was not subject to donor's tax. However, the Commissioner on Internal Revenue (Commissioner) denied Philamlife's request through a BIR Ruling. The CIR stated that donor's tax is imposable on the price difference of the book value and the selling price.

Philamlife then requested the Secretary of Finance to review the BIR Ruling issued by the CIR. However, the Secretary affirmed the BIR Ruling. Philamlife then elevated the case to the Court of Appeals via a petition for review. The CA dismissed the case for lack of jurisdiction stating that the case should have been filed with the Court of Tax Appeals.

ISSUES
1. Whether or not the CA has jurisdiction over contested decisions of the Secretary of Finance
2. Whether or not the appellate power of the CTA includes certiorari
3. Whether or not the subject transaction is a taxable donation

RULING
1. The CTA not the CA has jurisdiction over the matter.

Indeed, to leave undetermined the mode of appeal from the Secretary of Finance would be an injustice to taxpayers prejudiced by his adverse rulings. To remedy this situation, the Court implies from the purpose of RA 1125 and its amendatory laws that the CTA is the proper forum with which to institute the appeal. This is not, and should not, in any way, be taken as a derogation of the power of the Office of President but merely as recognition that matters calling for technical knowledge should be handled by the agency or quasi-judicial body with specialization over the controversy. As the specialized quasi-judicial agency mandated to adjudicate tax, customs, and assessment cases, there can be no other court of appellate jurisdiction that can decide the issues raised in the CA petition, which involves the tax treatment of the shares of stocks sold.

2. The appellate power of the CTA includes certiorari.

The respective teachings in British American Tobacco and Asia International Auctioneers, at first blush, appear to bear no conflict––that when the validity or constitutionality of an administrative rule or regulation is assailed, the regular courts have jurisdiction; and if what is assailed are rulings or opinions of the Commissioner on tax treatments, jurisdiction over the controversy is lodged with the CTA. The problem with the above postulates, however, is that they failed to take into consideration one crucial point––a taxpayer can raise both issues simultaneously.

Evidently, City of Manila can be considered as a departure from Ursal in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, City of Manila diametrically opposes British American Tobacco to the effect that it is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.

3. The price difference between the selling price and the book value is subject to donor's tax.
The absence of donative intent, if that be the case, does not exempt the sales of stock transaction from donor's tax since Sec. 100 of the NIRC categorically states that the amount by which the fair market value of the property exceeded the value of the consideration shall be deemed a gift. Thus, even if there is no actual donation, the difference in price is considered a donation by fiction of law.

COMMISSIONER OF INTERNAL REVENUE, Petitioner, vs. PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, Respondent.
G.R. No. 140230 December 15, 2005 THIRD DIVISIONGARCIA, *J.*:

The NIRC classifies VAT as "an indirect tax … the amount of which may be shifted or passed on to the buyer, transferee or lessee of the goods". The 10% VAT on importation of goods is in the nature of an excise tax levied on the privilege of importing articles. It is imposed on all taxpayers who import goods. It is not a tax on the franchise of a business enterprise or on its earnings, as stated in Section 2 of RA 7082.

FACTS

PLDT is a grantee of a franchise under Republic Act (R.A.) No. 7082 to install, operate and maintain a telecom system throughout the Philippines.It imports various equipment, machineries and spare parts for its business on different occasion from 1992 to 1994.PLDT paid the BIR the amount of P164, 510,953.00, broken down as follows: (a) compensating tax of P126,713,037.00; advance sales tax of P12,460,219.00 and other internal revenue taxes of P25,337,697.00.

For similar importations made between March to May 1994, PLDT paid P116, 041,333.00 value-added tax (VAT).
On March 15, 1994, PLDT addressed a letter to the BIR seeking a confirmatory ruling on its tax exemption privilege under Section 12 of R.A. 7082, with a provision that: the grantee, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee, its successors or assigns, and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof.
When its claim was not acted upon by the BIR, PLDT went to the CTA.

The CTA ruled for PLDT, but punctuated by a dissenting opinion of Associate Judge Saga who maintained that the phrase in lieu of all taxes found in Section 12 of R.A. No. 7082, supra, refers to exemption from direct taxes only and does not cover indirect taxes, such as VAT, compensating tax and advance sales tax.The CIR appealed to the CA. The CA affirmed the CTA's decision. Hence, the SC addressed the main issue tendered herein.

ISSUE

Whether or Not the 3% franchise tax exempts the PLDT from paying all other taxes, including indirect taxes. (NO)

RULING

Direct taxes are those exacted from the very person who, it is intended or desired, should pay them. They are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in.

Indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it.

The NIRC classifies VAT as "an indirect tax … the amount of [which] may be shifted or passed on to the buyer, transferee or lessee of the goods". The 10% VAT on importation of goods partakes of an excise tax levied on the privilege of importing articles. It is not a tax on the franchise of a business enterprise or on its earnings. It is imposed on all taxpayers who import goods (unless such importation falls under the category of an exempt transaction under Sec. 109 of the Revenue Code) whether or not the goods will eventually be sold, bartered, exchanged or utilized for personal consumption. The VAT on importation replaces the advance sales tax payable by regular importers who import articles for sale or as raw materials in the manufacture of finished articles for sale.

Advance sales tax has the attributes of an indirect tax because the tax-paying importer of goods for sale or of raw materials to be processed into merchandise can shift the tax or lay the "economic burden of the tax" on the purchaser by subsequently adding the tax to the selling price of the imported article or finished product.

Compensating tax also partakes of the nature of an excise tax payable by all persons who import articles, whether in the course of business or not.

The liability for the payment of the indirect taxes lies with the seller of the goods or services, not in the buyer thereof. Thus, one cannot invoke one's exemption privilege to avoid the passing on or the shifting of the VAT to him by the manufacturers/suppliers of the goods he purchased. Hence, it is important to determine if the tax exemption granted to a taxpayer specifically includes the indirect tax which is shifted to him as part of the purchase price, otherwise it is presumed that the tax exemption embraces only those taxes for which the buyer is directly liable. Since RA 7082 did not specifically include indirect taxes in the exemption granted to PLDT, the latter cannot claim exemption from VAT, advance sales tax and compensating tax.

The clause "in lieu of all taxes" in Section 12 of RA 7082 is immediately followed by the qualifying clause "on this franchise or earnings thereof", suggesting that the exemption is limited to taxes imposed directly on PLDT since taxes pertaining to PLDT's franchise or earnings are its direct liability. Accordingly, indirect taxes, not being taxes on PLDT's franchise or earnings, are not included in the exemption provision.

PLDT's allegation that the Bureau of Customs assessed the company for advance sales tax and compensating tax for importations entered between October 1, 1992 and May 31, 1994 when the value-added tax system already replaced, if not totally eliminated, advance sales and compensating taxes, is with merit. Pursuant to Executive Order No. 273, a multi-stage value-added tax was put into place to replace the tax on original and subsequent sales tax. Therefore, compensating tax and advance sales tax were no longer collectible internal revenue taxes under the NIRC when the Bureau of Customs made the assessments in question and collected the corresponding tax. Stated a bit differently, PLDT was no longer under legal obligation to pay compensating tax and advance sales tax on its importation from 1992 to 1994. A refund of the amounts paid as such taxes is thus proper.

P87,257,031.00 of compensating tax + P7,416,391.00 advanced sales tax = P94,673,422.00 total refund.

MINDANAO II GEOTHERMAL PARTNERSHIP vs. COMMISIIONER OF INTERNAL REVENUE/ MINDANAO GEOTHERMAL PARTNERSHIP I vs. COMMISSIONER OF INTERNAL REVENUE
G.R. No. 193301 & G.R. No. 194637, March 11, 2013, J. Carpio

Mindanao II's sale of the Nissan Patrol is said to be an isolated transaction. However, it does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability. Indeed, a reading of Section 105 of the 1997 Tax Code would show that a transaction "in the course of trade or business" includes "transactions incidental thereto."
Mindanao II's business is to convert the steam supplied to it by PNOC-EDC into electricity and to deliver the electricity to NPC. In the course of its business, Mindanao II bought and eventually sold a Nissan Patrol. Prior to the sale, the Nissan Patrol was part of Mindanao II's property, plant, and equipment. Therefore, the sale of the Nissan Patrol is an incidental transaction made in the course of Mindanao II's business which should be liable for VAT.

FACTS
On March 11, 1997, [Mindanao II] allegedly entered into a Built (sic)-Operate-Transfer (BOT) contract with the Philippine National Oil Corporation – Energy Development Company (PNOC-EDC) for finance, engineering, supply, installation, testing, commissioning, operation, and maintenance of a 48.25 megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to Mindanao II at no cost. In turn, Mindanao II shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and in behalf of PNOC-EDC. Mindanao II alleges that its sale of generated power and delivery of electric capacity and energy of Mindanao II to NPC for and in behalf of PNOC-EDC is its only revenue-generating activity which is in the ambit of VAT zero-rated sales under the EPIRA Law,

Hence, the amendment of the NIRC of 1997 modified the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent.

In the course of its operation, Mindanao II makes domestic purchases of goods and services and accumulates therefrom creditable input taxes. Pursuant to the provisions of the National Internal Revenue Code (NIRC), Mindanao II alleges that it can use its accumulated input tax credits to offset

its output tax liability. Considering, however that its only revenue-generating activity is VAT zero-rated under RA No. 9136, Mindanao II's input tax credits remain unutilized.
Thus, on the belief that its sales qualify for VAT zero-rating, Mindanao II adopted the VAT zero-rating of the EPIRA in computing for its VAT payable when it filed its Quarterly VAT Returns

Considering that it has accumulated unutilized creditable input taxes from its only income-generating activity, Mindanao II filed an application for refund and/or issuance of tax credit certificate with the BIR's Revenue District Office at Kidapawan City on April 13, 2005 for the four quarters of 2003.

To date (September 22, 2008), the application for refund by Mindanao II remains unacted upon by the CIR. Hence, these three petitions filed and were consolidated

The CTA First Division found that Mindanao II is entitled to a refund in the modified amount of ₱7,703,957.79, after disallowing ₱522,059.91 from input VAT and deducting ₱18,181.82 from Mindanao II's sale of a fully depreciated ₱200,000.00 Nissan Patrol. The input taxes amounting to ₱522,059.91 were disallowed for failure to meet invoicing requirements, while the input VAT on the sale of the Nissan Patrol was reduced by ₱18,181.82 because the output VAT for the sale was not included in the VAT declarations.

Mindanao II filed a motion for partial reconsideration. It stated that the sale of the fully depreciated Nissan Patrol is a one-time transaction and is not incidental to its VAT zero-rated operations. Moreover, the disallowed input taxes substantially complied with the requirements for refund or tax credit.

ISSUE
Whether or not the transaction is governed by VAT? (YES)

RULING
The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business. (Emphasis supplied)
Mindanao II relies on Commissioner of Internal Revenue v. Magsaysay Lines, Inc. (Magsaysay) and Imperial v. Collector of Internal Revenue (Imperial) to justify its position. Magsaysay, decided under the NIRC of 1986, involved the sale of vessels of the National Development Company (NDC) to Magsaysay Lines, Inc. We ruled that the sale of vessels was not in the course of NDC's trade or business as it was involuntary and made pursuant to the Government's policy for privatization. Magsaysay, in quoting from the CTA's decision, imputed upon Imperial the definition of "carrying on

business." Imperial, however, is an unreported case that merely stated that "'to engage' is to embark in a business or to employ oneself therein."

Mindanao II's sale of the Nissan Patrol is said to be an isolated transaction. However, it does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability. Indeed, a reading of Section 105 of the 1997 Tax Code would show that a transaction "in the course of trade or business" includes "transactions incidental thereto."

Mindanao II's business is to convert the steam supplied to it by PNOC-EDC into electricity and to deliver the electricity to NPC. In the course of its business, Mindanao II bought and eventually sold a Nissan Patrol. Prior to the sale, the Nissan Patrol was part of Mindanao II's property, plant, and equipment. Therefore, the sale of the Nissan Patrol is an incidental transaction made in the course of Mindanao II's business which should be liable for VAT.

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, respondent.
G.R. Nos. 141104 & 148763 June 8, 2007 THIRD DIVISION CHICO-NAZARIO, *J.*:

As has been extensively discussed herein, Section 106(b)(2), in relation to Section 100(a)(2) of the Tax Code of 1977, as amended, allowed the refund/credit of input VAT on export sales to enterprises operating within export processing zones and registered with the EPZA, since such export sales were deemed to be effectively zero-rated sales. The fact that PASAR and PHILPHOS, to whom petitioner corporation sold its products, were operating inside an export processing zone and duly registered with EPZA, was never raised as an issue herein. Moreover, the same fact was already judicially recognized in the case Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue. Section 106(c) of the same Code likewise permitted a VAT-registered taxpayer to apply for refund/credit of the input VAT paid on capital goods imported or locally purchased to the extent that such input VAT has not been applied against its output VAT.

FACTS

Before this Court are the consolidated cases involving the unsuccessful claims of herein petitioner Atlas Consolidated Mining and Development Corporation (petitioner corporation) for the refund/credit of the input Value Added Tax (VAT) on its purchases of capital goods and on its zero-rated sales in the taxable quarters of the years 1990 and 1992, the denial of which by the Court of Tax Appeals (CTA), was affirmed by the Court of Appeals.

G.R. No. 141104: Petitioner Corporation filed with the BIR its VAT Return for the first quarter of 1992. It alleged that it likewise filed with the BIR the corresponding application for the refund/credit of its input VAT on its purchases of capital goods and on its zero-rated sales in the amount of ₱26,030,460.00. When its application for refund/credit remained unresolved by the BIR. Asserting that it was a "zero-rated VAT person," it prayed that the CTA order herein respondent Commissioner of Internal Revenue (respondent Commissioner) to refund/credit petitioner corporation with the amount of ₱26,030,460.00, representing the input VAT it had paid for the first quarter of 1992. The respondent Commissioner opposed and sought the dismissal of the petition for review of Petitioner Corporation for failure to state a cause of action. After due trial, the CTA promulgated its Decision**, DENIED** on the ground of prescription, insufficiency of evidence and failure to comply with Section 230 of the Tax Code, as amended. Accordingly, the petition at bar is hereby **DISMISSED** for lack of merit. Hence, it's appeal.

G.R. No. 148763: It involves almost the same set of facts as in G.R. No. 141104 presented above, except that it relates to the claims of petitioner corporation for refund/credit of input VAT on its purchases of capital goods and on its zero-rated sales made in the last three taxable quarters of 1990.

ISSUE

The validity and applicability of Revenue Regulations No. 2-88 imposing upon Petitioner Corporation, as a requirement for the VAT zero-rating of its sales, the burden of proving that the buyer companies were not just BOI-registered but also exporting 70% of their total annual production.

RULING

Under Section 100(a) of the Tax Code of 1977, as amended, a 10% VAT was imposed on the gross selling price or gross value in money of goods sold, bartered or exchanged. Yet, the same provision subjected the following sales made by VAT-registered persons to 0% VAT –(1) Export sales; and (2) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero-rate. These are termed zero-rated sales. A zero-rated sale is still considered a taxable transaction for VAT purposes, although the VAT rate applied is 0%. A sale by a VAT-registered taxpayer of goods and/or services taxed at 0% shall not result in any output VAT, while the input VAT on its purchases of goods or services related to such zero-rated sale shall be available as tax credit or refund. Petitioner corporation questions the validity of Revenue Regulations No. 2-88 averring that the said regulations imposed additional requirements, not found in the law itself, for the zero-rating of its sales to Philippine Smelting and Refining Corporation (PASAR) and Philippine Phosphate, Inc. (PHILPHOS), both of which are registered not only with the BOI, but also with the then Export Processing Zone Authority (EPZA). It is the position of the respondent Commissioner, affirmed by the CTA and the Court of Appeals, that Section 2 of Revenue Regulations No. 2-88 should be applied in the cases at bar; and to be entitled to the zero-rating of its sales to PASAR and PHILPHOS, petitioner corporation, as a VAT-registered seller, must be able to prove not only that PASAR and PHILPHOS are BOI-registered corporations, but also that more than 70% of the total annual production of these corporations are actually exported. Revenue Regulations No. 2-88 merely echoed the requirement imposed by the BOI on export-oriented corporations registered with it.

While this Court is not prepared to strike down the validity of Revenue Regulations No. 2-88, it finds that its application must be limited and placed in the proper context. Note that Section 2 of Revenue Regulations No. 2-88 referred only to the zero-rated sales of raw materials to export-oriented BOI-registered enterprises whose export sales, under BOI rules and regulations, should exceed seventy percent (70%) of their total annual production. The Tax Code of 1977, as amended, gave a limited definition of **export sales**, to wit: "The sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales." The Omnibus Investments Code of 1987 recognizes as export sales the sales of export products to another producer or to an export trader, provided that the export products are actually exported. For purposes of VAT zero-rating, such producer or export trader must be registered with the BOI and is required to actually export more than 70% of its annual production. Without actual exportation, Article 23 of the Omnibus Investments Code of 1987 also considers **constructive exportation as export sales**. Among other types of constructive exportation specifically identified by the said provision are sales to export processing zones. Sales to export processing zones are subjected to special tax treatment. Article 77 of the same Code establishes the tax treatment of goods or merchandise brought into the export processing zones. Of particular relevance herein is paragraph 2, which provides that "Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction." This Court then reiterates its conclusion that Section 2 of Revenue Regulations No. 2-88, which applied to zero-rated export sales to export-oriented BOI-registered enterprises, should not be applied to the applications for refund/credit of input VAT filed by petitioner corporation since it based its applications on the zero-rating of export sales to enterprises registered with the EPZA and located within export processing zones.

Hence, although this Court agreed with the petitioner corporation that sales to EPZA-registered enterprises operating within economic processing zones were effectively zero-rated and were not covered by Revenue Regulations No. 2-88, it still denies the claims of petitioner corporation for refund of its input VAT on its purchases of capital goods and effectively zero-rated sales during the second, third, and fourth quarters of 1990 and the first quarter of 1992, for not being established and substantiated by appropriate and sufficient evidence.

COMMISSIONER OF INTERNAL REVENUE, Petitioner, vs. SM PRIME HOLDINGS, INC. and FIRST ASIA REALTY DEVELOPMENT CORPORATION, Respondents.
G.R. No. 183505 February 26, 2010 SECOND DIVISIONDEL CASTILLO, *J.:*

The Local Tax Code, in transferring the power to tax gross receipts derived by cinema/theater operators or proprietor from admission tickets to the local government, did not intend to treat cinema/theater houses as a separate class. No distinction must, therefore, be made between the places of amusement taxed by the national government and those taxed by the local government. Considering that there is no provision of law imposing VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets, RMC No. 28-2001 which imposes VAT on the gross receipts from admission to cinema houses must be struck down. The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. The reason is obvious: it is both illogical and impractical to determine who are exempted without first determining who are covered by the provision. Thus, unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. In fact, in case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.

FACTS

Respondents SM Prime Holdings, Inc. (SM Prime) and First Asia Realty Development Corporation (First Asia) are domestic corporations duly organized and existing under the laws of the Republic of the Philippines. Both are engaged in the business of operating cinema houses

On September 26, 2003, the Bureau of Internal Revenue (BIR) sent SM Prime a Preliminary Assessment Notice (PAN) for value added tax (VAT) deficiency on cinema ticket sales in the amount of ₱119,276,047.40 for taxable year 2000. In response, SM Prime filed a letter-protest

Petitioner argues that the enumeration of services subject to VAT in Section 108 of the NIRC is not exhaustive because it covers all sales of services unless exempted by law. He claims that the CTA erred in applying the rules on statutory construction and in using extrinsic aids in interpreting

Section 108 because the provision is clear and unambiguous. Thus, he maintains that the exhibition of movies by cinema operators or proprietors to the paying public, being a sale of service, is subject to VAT.

Respondents, on the other hand, argue that a plain reading of Section 108 of the NIRC of 1997 shows that the gross receipts of proprietors or operators of cinemas/theaters derived from public admission are not among the services subject to VAT. Respondents insist that gross receipts from cinema/theater admission tickets were never intended to be subject to any tax imposed by the national government. According to them, the absence of gross receipts from cinema/theater admission tickets from the list of services which are subject to the national amusement tax under Section 125 of the NIRC of 1997 reinforces this legislative intent. Respondents also highlight the fact that RMC No. 28-2001 on which the deficiency assessments were based is an unpublished administrative ruling.

ISSUE
Whether the gross receipts derived by operators or proprietors of cinema/theater houses from admission tickets are subject to VAT? (NO)

RULING
A cursory reading of the foregoing provision clearly shows that the enumeration of the "sale or exchange of services" subject to VAT is not exhaustive. The words, "including," "similar services," and "shall likewise include," indicate that the enumeration is by way of example only.

Among those included in the enumeration is the "lease of motion picture films, films, tapes and discs." This, however, is not the same as the showing or exhibition of motion pictures or films. As pointed out by the CTA En Banc:

"Exhibition" in Black's Law Dictionary is defined as "To show or display. x x x To produce anything in public so that it may be taken into possession" (6th ed., p. 573). While the word "lease" is defined as "a contract by which one owning such property grants to another the right to possess, use and enjoy it on specified period of time in exchange for periodic payment of a stipulated price, referred to as rent (Black's Law Dictionary, 6th ed., p. 889). x x x

Since the activity of showing motion pictures, films or movies by cinema/ theater operators or proprietors is not included in the enumeration, it is incumbent upon the court to the determine whether such activity falls under the phrase "similar services." The intent of the legislature must therefore be ascertained.

The following facts can be established:

(1) Historically, the activity of showing motion pictures, films or movies by cinema/theater operators or proprietors has always been considered as a form of entertainment subject to amusement tax.
(2) Prior to the Local Tax Code, all forms of amusement tax were imposed by the national government.
(3) When the Local Tax Code was enacted, amusement tax on admission tickets from theaters, cinematographs, concert halls, circuses and other places of amusements were transferred to the local government.
(4) Under the NIRC of 1977, the national government imposed amusement tax only on proprietors, lessees or operators of cabarets, day and night clubs, Jai-Alai and race tracks.

(5) The VAT law was enacted to replace the tax on original and subsequent sales tax and percentage tax on certain services.
(6) When the VAT law was implemented, it exempted persons subject to amusement tax under the NIRC from the coverage of VAT.*1auuphil*
(7) When the Local Tax Code was repealed by the LGC of 1991, the local government continued to impose amusement tax on admission tickets from theaters, cinematographs, concert halls, circuses and other places of amusements.
(8) Amendments to the VAT law have been consistent in exempting persons subject to amusement tax under the NIRC from the coverage of VAT.
(9) Only lessors or distributors of cinematographic films are included in the coverage of VAT.

These reveal the legislative intent not to impose VAT on persons already covered by the amusement tax. This holds true even in the case of cinema/theater operators taxed under the LGC of 1991 precisely because the VAT law was intended to replace the percentage tax on certain services. The mere fact that they are taxed by the local government unit and not by the national government is immaterial. The Local Tax Code, in transferring the power to tax gross receipts derived by cinema/theater operators or proprietor from admission tickets to the local government, did not intend to treat cinema/theater houses as a separate class. No distinction must, therefore, be made between the places of amusement taxed by the national government and those taxed by the local government.

To hold otherwise would impose an unreasonable burden on cinema/theater houses operators or proprietors, who would be paying an additional 10%VAT on top of the 30% amusement tax imposed by Section 140 of the LGC of 1991, or a total of 40% tax. Such imposition would result in injustice, as persons taxed under the NIRC of 1997 would be in a better position than those taxed under the LGC of 1991. We need not belabor that a literal application of a law must be rejected if it will operate unjustly or lead to absurd results. Thus, we are convinced that the legislature never intended to include cinema/theater operators or proprietors in the coverage of VAT.

Considering that there is no provision of law imposing VAT on the gross receipts of cinema/theater operators or proprietors derived from admission tickets, RMC No. 28-2001 which imposes VAT on the gross receipts from admission to cinema houses must be struck down. We cannot overemphasize that RMCs must not override, supplant, or modify the law, but must remain consistent and in harmony with, the law they seek to apply and implement.

Moreover, contrary to the view of petitioner, respondents need not prove their entitlement to an exemption from the coverage of VAT. The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. The reason is obvious: it is both illogical and impractical to determine who are exempted without first determining who are covered by the provision. Thus, unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. In fact, in case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.

RENATO V. DIAZ and AURORA MA. F. TIMBOL *v.* THE SECRETARY OF FINANCE AND THE COMMISSION OF INTERNAL REVENUE
G.R. No. 193007, 19 JULY 2011, EN BANC (Abad, *J.*)

The law imposes VAT on all kinds of services rendered in the Philippines for a fee, including those specified in the list. The enumeration of affected services is not exclusive. By qualifying services with the words all kinds, Congress has given the term services an all-encompassing meaning.

FACTS
Petitioners Renato V. Diaz and Aurora Ma. F. Timbol (petitioners) filed this petition for declaratory relief assailing the validity of the impending imposition of value-added tax (VAT) by the Bureau of Internal Revenue (BIR) on the collections of tollway operators.

Petitioners hold the view that Congress did not, when it enacted the NIRC, intend to include toll fees within the meaning of sale of services that are subject to VAT; that a toll fee is a users tax, not a sale of services; that to impose VAT on toll fees would amount to a tax on public service; and that, since VAT was never factored into the formula for computing toll fees, its imposition would violate the non-impairment clause of the constitution.

The government avers that the NIRC imposes VAT on all kinds of services of franchise grantees, including tollway operations, except where the law provides otherwise; that the Court should seek the meaning and intent of the law from the words used in the statute; and that the imposition of VAT on tollway operations has been the subject as early as 2003 of several BIR rulings and circulars.

ISSUE
Whether or not toll fees collected by tollway operators may subjected to value- added tax.

RULING
YES. The law imposes VAT on all kinds of services rendered in the Philippines for a fee, including those specified in the list. The enumeration of affected services is not exclusive. By qualifying services with the words all kinds, Congress has given the term services an all- encompassing meaning. The listing of specific services are intended to illustrate how pervasive and broad is the VATs reach rather than establish concrete limits to its application. Thus, every activity that can be imagined as a form of service rendered for a fee should be deemed included unless some provision of law especially excludes it.

Presidential Decree (P.D.) 1112 or the Toll Operation Decree establishes the legal basis for the services that tollway operators render. Essentially, tollway operators construct, maintain, and operate expressways, also called tollways, at the operators' expense. Tollways serve as alternatives to regular public highways that meander through populated areas and branch out to local roads. Traffic in the regular public highways is for this reason slow-moving. In consideration for constructing tollways at their expense, the operators are allowed to collect government-approved fees from motorists using the tollways until such operators could fully recover their expenses and earn reasonable returns from their investments.

When a tollway operator takes a toll fee from a motorist, the fee is in effect for the latter's use of the tollway facilities over which the operator enjoys private proprietary rights that its contract and the law recognize. In this sense, the tollway operator is no different from the following service providers under Section 108 of the NIRC who allow others to use their properties or facilities for a fee.

It does not help petitioners' cause that Section 108 subjects to VAT all kinds of services rendered for a fee regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. This means that services to be subject to VAT need not fall under the traditional concept of services, the personal or professional kinds that require the use of human knowledge and skills.

Furthermore, tollway operators not only come under the broad term all kinds of services, they also come under the specific class described in Section 108 as all other franchise grantees who are subject to VAT, except those under Section 119 of this Code.

THE COMMISIONER OF INTERNAL REVENUE, Petitioner, vs. ACESITE (PHILIPPINES) HOTEL CORPORATION, Respondent.
G.R. No. 147295 February 16, 2007 SECOND DIVISION VELASCO, JR., *J.:*

A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. Under the above provision [Section 13 (2) (b) of P.D. 1869], the term "Corporation" or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations. Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes.

FACTS
Respondent Acesite is the owner and operator of the Holiday Inn Manila Pavilion Hotel. It leases some of the hotel's premises to Philippine Amusement and Gaming Corporation (PAGCOR) for casino operations and it also caters food and beverages to the patrons through the hotel's restaurant. From the said operations, respondent incurred output VAT amounting to Php 30,152,892.02. Respondent tried to shift the said taxes to PAGCOR by incorporating it in the amount billed; however, PAGCOR refused to pay the taxes on account of its tax exempt status. But when PAGCOR paid the amount due to Acesite, it deducted the supposed to be VAT portion payable, for fear of the legal consequences of the non-payment of the tax. Respondent then filed an administrative claim for refund with the Bureau of Internal Revenue (BIR), but the latter failed to resolve the same. Then respondent filed a judicial claim with the Court of Tax Appeals (CTA), contending that its transaction with PAGCOR was subject to zero rate as it was rendered to a tax-exempt entity.

The CTA and the Court of Appeals ruled in favor of Acesite.

ISSUE

(1) Whether or not PACGOR's tax exemption includes exemption from indirect tax
(2) Whether or not the zero percent rate for VAT under the Tax Code applies to respondent

RULING

PAGCOR's tax exemption includes exemption from indirect tax. Section 13 of P.D. 1869, the charter creating PAGCOR, provides that: "No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation." Also, "exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, <u>shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations</u> of the casino(s) authorized to be conducted under this Franchise." Said provision clearly gives PAGCOR a blanket exemption from taxes with no distinction as to whether the taxes are direct or indirect. Thus, while it was proper for PAGCOR not to pay the 10% VAT charged by the respondent, the latter is not liable for the payment of it as it is exempt in this particular transaction by operation of law to pay the indirect tax. Such exemption falls within Section 108 [b] [3] of R.A. 8424, which provides that: "Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero (0%) rate."

Considering the foregoing discussion, there are undoubtedly erroneous payments of the VAT pertaining to the effectively zero-rated transactions between the respondent and PAGCOR. Verily, the respondent has clearly shown that it paid the subject taxes under a mistake of fact, that is, when it was not aware that the transactions it had with PAGCOR been zero-rated at the time it made the payments. Such payment is held to be not voluntary and, therefore, can be recovered or refunded.

Tax refunds are based on the principle of quasi-contract or solutio indebiti and the pertinent laws governing this principle are found in Arts. 2142 and 2154 of the Civil Code. When money is paid to another under the influence of a mistake of fact, that is to say, on the mistaken supposition of the existence of a specific fact, where it would not have been known that the fact was otherwise, it may be recovered. The ground upon which the right of recovery rests is that money paid through misapprehension of facts belongs in equity and in good conscience to the person who paid it.

Since an action for a tax refund partakes of the nature of an exemption, which cannot be allowed unless granted in the most explicit and categorical language, it is strictly construed against the claimant who must discharge such burden convincingly. In the instant case, respondent had discharged this burden as found by the CTA and the CA. Indeed, the records show that respondent proved its actual VAT payments subject to refund, as attested to by an independent Certified Public Accountant who was duly commissioned by the CTA. On the other hand, petitioner never disputed nor contested respondent's testimonial and documentary evidence. In fact, petitioner never presented any evidence on its behalf. Petition is therefore denied.

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), Petitioner, vs. THE BUREAU OF INTERNAL REVENUE (BIR), represented herein by HON. JOSE MARIO BUÑAG, in his official capacity as COMMISSIONER OF INTERNAL REVENUE, Public Respondent, JOHN DOE and JANE DOE, who are persons acting for, in behalf, or under the authority of Respondent.Public and Private Respondents.
G.R. No. 172087 March 15, 2011 EN BANCPERALTA, *J.:*

With the amendment by R.A. No. 9337 of Section 27 (c) of the National Internal Revenue Code of 1997 by omitting PAGCOR from the list of government corporations exempt for income tax, the legislative intent is to require PAGCOR to pay corporate income tax. However, nowhere in R.A. No. 9337 is it provided that PAGCOR can be subjected to VAT. Thus, the provision of RR No. 16-2005, which the *respondent BIR issued to implement the VAT law, subjecting PAGCOR to 10% VAT is invalid for being contrary to R.A. No. 9337.*

FACTS
Petitioner further seeks to prohibit the implementation of Bureau of Internal Revenue (BIR) Revenue Regulations No. 16-2005 for being contrary to law.

With the enactment of R.A. No. 9337[10] on May 24, 2005, certain sections of the National Internal Revenue Code of 1997 were amended.

Different groups came to this Court via petitions for certiorari and prohibition[11] assailing the validity and constitutionality of R.A. No. 9337

10% Value Added Tax (VAT) on sale of goods and properties
10% VAT on importation of goods
10% VAT on sale of services and use or lease of properties... the Court dismissed all the petitions and upheld the constitutionality of R.A. No. 9337.

On the same date, respondent BIR issued Revenue Regulations (RR) No. 16-2005,[13] specifically identifying PAGCOR as one of the franchisees subject to 10% VAT imposed under Section 108 of the National Internal Revenue Code of 1997, as amended by R.A.No. 9337.

Furthermore, according to the OSG,... public respondent BIR exceeded its statutory authority when it enacted RR No. 16-2005, because the latter's provisions are contrary to the mandates of P.D. No. 1869 in relation to R.A. No. 9337.

ISSUES
hether or not PAGCOR is still exempt... hether or not PAGCOR is still exempt from
VAT with the enactment of R.A. No. 9337.

RULING
Anent the validity of RR No. 16-2005, the Court holds that the provision subjecting PAGCOR to 10% VAT is invalid for being contrary to R.A. No. 9337. Nowhere in R.A. No. 9337 is it provided that petitioner can be subjected to VAT. R.A. No. 9337 is clear only as to... the removal of petitioner's exemption from the payment of corporate income tax, which was already addressed above by this Court.

As pointed out by the OSG, R.A. No. 9337 itself exempts petitioner from VAT pursuant to Section 7 (k) thereof... the following transactions shall be exempt from the value-added tax:
Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws

Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.

Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337

The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;

Services rendered to persons or entities whose exemption under special laws... subjects the supply of such services to zero percent (0%) rate... although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate.

FORT BONIFACIO DEVELOPMENT CORPORATION, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE and REVENUE DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG and PATEROS, BUREAU OF INTERNAL REVENUE, Respondents.
G.R. No. 173425 September 4, 2012 EN BANC DEL CASTILLO, *J.*

Tax credit is not synonymous to tax refund. Tax refund is defined as the money that a taxpayer overpaid and is thus returned by the taxing authority. Tax credit, on the other hand, is an amount subtracted directly from one's total tax liability. It is any amount given to a taxpayer as a subsidy, a refund, or an incentive to encourage investment. Thus, unlike a tax refund, prior payment of taxes is not a prerequisite to avail of a tax credit.

FACTS
In 1995, Fort Bonifacio Development Corporation purchased from the national government a portion of the Fort Bonifacio reservation. On January 1, 1996, the enactment of RA 7716 extended the coverage of VAT to real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business. Thus, FBDC sought to register by submitting to BIR an inventory of all its real properties, the book value of which aggregated to about P71 B.

In October 1996, FBDC started selling Global City lots to interested buyers. For the first quarter of 1997, it paid the output VAT by making cash payments to the BIR and credited its unutilized input tax credit on purchases of goods and services. Realizing that its 8% transitional input tax credit was not applied in computing its output VAT for the first quarter of 1997, FBDC filed with the BIR a claim for refund of the amount erroneously paid as output VAT for the said period.

The CTA denied refund on the ground that "the benefit of transitional input tax credit comes with the condition that business taxes should have been paid first." It contends that since FBDC acquired the Global City property under a VAT-free sale transaction, it cannot avail of the transitional input tax credit. The CTA likewise pointed out that under RR 7-95, implementing Section 105 of the old NIRC, the 8% transitional input tax credit should be based on the value of the improvements on land such as buildings, roads, drainage system and other similar structures, constructed on or after January 1, 1998, and not on the book value of the real property.

ISSUES
1.Whether or Not the prior payment of taxes is required in availing of the transitional input tax credit
2. the transitional input tax credit applies only to the value of improvements
3. Whether or Not the Tax Code allows either a cash refund or a tax credit for input VAT

RULING
1. No. First, nothing in Sec 105 of the NIRC indicates that prior payment of taxes is necessary to avail of the transitional input tax credit. Clearly, all it requires is for the taxpayer to file a beginning inventory with the BIR. Courts cannot limit the application or coverage of a law nor can it impose conditions not provided therein because to do so constitutes judicial legislation.

Second, prior payment of taxes is not required to avail of the transitional input tax credit because it is not a tax refund per se but a tax credit. Tax credit is not synonymous to tax refund. Tax refund is defined as the money that a taxpayer overpaid and is thus returned by the taxing authority. Tax credit, on the other hand, is an amount subtracted directly from one's total tax liability. It is any amount given to a taxpayer as a subsidy, a refund, or an incentive to encourage investment. Thus, unlike a tax refund, prior payment of taxes is not a prerequisite to avail of a tax credit.

Lastly, the fact that FBDC acquired the Global City property under a tax-free transaction makes no difference as prior payment of taxes is not a pre-requisite.

2. No. Section 4.105-1 of RR 7-95, insofar as it limits the transitional input tax credit to the value of the improvement of the real properties, is a nullity. The 8% transitional input tax credit should not be limited to the value of the improvements on the real properties but should include the value of the real properties as well.

Hence, since FBDC is entitled to the 8% transitional input tax credit which is more than sufficient to cover its output tax for the first taxable quarter, the amount of VAT output taxes erroneously paid must be refunded.

3. Yes. First, a careful reading of Section 112 of the Tax Code shows that it does not prohibit cash refund or tax credit of transitional input tax in the case of zero-rated or effectively zero-rated VAT registered taxpayers, who do not have any output VAT.

The phrase "except transitional input tax" in Section 112 of the Tax Code was inserted to distinguish creditable input tax from transitional input tax credit. Transitional input tax credits are input taxes on a taxpayer's beginning inventory of goods, materials, and supplies equivalent to 8% (then 2%) or the actual VAT paid on such goods, materials and supplies, whichever is higher. It may only be availed of once by first-time VAT taxpayers. Creditable input taxes, on the other hand, are input taxes of VAT taxpayers in the course of their trade or business, which should be applied within two years after the close of the taxable quarter when the sales were made.

As regards Section 110, while the law only provides for a tax credit, a taxpayer who erroneously or excessively pays his output tax is still entitled to recover the payments he made either as a tax credit or a tax refund.

Here, since FBDC still has available transitional input tax credit, it filed a claim for refund to recover the output VAT it erroneously or excessively paid for the 1st quarter of 1997. Thus, there is no reason for denying its claim for tax refund/credit.

COMMISSIONER OF INTERNAL REVENUE V. AICHI FORGING COMPANY OF ASIA, INC., G.R. NO. 184823, 06 OCTOBER 2010 DEL CASTILLO, J.

The Court had interpreted the 120-day period as both mandatory and jurisdictional such that the taxpayer is forced to await the expiration of the period before initiating an appeal before the CTA. This must be so because prior to the expiration of the period, the CIR still has the statutory authority to render a decision. If there is no decision and the period has not yet expired, there is no reason to complain of in *the meantime. Otherwise stated, there is no cause of action yet as would justify a resort to the court.*

A premature invocation of the court's jurisdiction is fatally defective and is susceptible to dismissal for want of jurisdiction. Such is the very essence of the doctrine of exhaustion of administrative remedies under which the court cannot take cognizance of a case unless all available remedies in the administrative level are first utilized. Whenever granted by law a specific period of time to act, an administrative officer must be given the full benefit of such period. Administrative remedies are exhausted upon the full expiration of the period without any action.

FACTS
Respondent Aichi filed a claim for refund/credit of input VAT for the period July 1, 2002 to September 30, 2002, with the petitioner Commissioner of Internal Revenue (CIR), through the Department of Finance (DOF) One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center. On even date, respondent filed a Petition for Review with the CTA for the refund/credit of the same input VAT. The CTA partially granted the petition. In a Motion for Reconsideration, petitioner argued that the simultaneous filing of the administrative and the judicial claims contravenes Sections 112 and 229 of the NIRC and a prior filing of an administrative claim is a "condition precedent" before a judicial claim can be filed. The CTA En Banc affirmed the division ruling.

ISSUE
Whether the respondent's judicial and administrative claims for tax refund/credit were filed within the two-year prescriptive period as provided in Sections 112(A) and 229 of the NIRC.

RULING
NO.

The two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on September 30, 2004. Hence, respondent's administrative claim was timely filed.The filing of the judicial claim was premature. However, notwithstanding the timely filing of the administrative claim, [the Supreme Court is] constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D). Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature. The premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

COMMISSIONER OF INTERNAL REVENUE, Petitioner, vs. SAN ROQUE POWER CORPORATION, Respondent.
G.R. No. 187485 February 12, 2013 EN BANC CARPIO,J

Compliance with the 120-day waiting period is mandatory and jurisdictional, under RA 8424 or the Tax Reform Act of 1997. Failure to comply renders the petition void.

FACTS
On October 11, 1997, San Roque Power Corporation (San Roque) entered into a Power Purchase Agreement (PPA) with the National Power Corporation (NPC) by building the San Roque Multi-Purpose Project in San Manuel, Pangasinan.
The San Roque Multi-Purpose Project allegedly incurred, excess input VAT in the amount of P559,709,337.54 for taxable year 2001 which it declared in its Quarterly VAT Returns filed for the same year.

San Roque duly filed with the BIR separate claims for refund, amounting to P559,709,337.54, representing unutilized input taxes as declared in its VAT returns for taxable year 2001.

However, on March 28, 2003, San Roque filed amended Quarterly VAT Returns for the year 2001 since it increased its unutilized input VAT To the amount of P560,200,283.14. San Roque filed with the BIR on the same date, separate amended claims for refund in the aggregate amount of P560,200,283.14.

On April 10, 2003, a mere 13 days after it filed its amended administrative claim with the CIR on March 28, 2003, San Roque filed a Petition for Review with the CTA.

CIR alleged that the claim by San Roque was prematurely filed with the CTA.

ISSUE
Whether or Not San Roque is entitled to tax refund? – NO.

RULING
No. San Roque is not entitled to a tax refund because it failed to comply with the mandatory and jurisdictional requirement of waiting 120 days before filing its judicial claim.

On April 10, 2003, a mere 13 days after it filed its amended administrative claim with the CIR on March 28, 2003, San Roque filed a Petition for Review with the CTA, which showed that San Roque did not wait for the 120-day period to lapse before filing its judicial claim.

Compliance with the 120-day waiting period is mandatory and jurisdictional, under RA 8424 or the Tax Reform Act of 1997. Failure to comply renders the petition void.

It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition.

Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."

Thus, San Roque's petition with the CTA is a mere scrap of paper.

Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.

Whether the *Atlas* doctrine or the *Mirant* doctrine is applied to San Roque is immaterial because what is at issue in the present case is San Roque's non-compliance with the 120-day mandatory and jurisdictional period, which is counted from the date it filed its administrative claim with the CIR. The 120-day period may extend beyond the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period. However, San Roque's fatal mistake is that it did not wait for the CIR to decide within the 120-day period, a mandatory period whether the *Atlas* or the *Mirant* doctrine is applied.

Section 112(D) of the 1997 Tax Code is clear, unequivocal, and categorical that the CIR has 120 days to act on an administrative claim. The taxpayer can file the judicial claim

(1) Only within 30 days after the CIR partially or fully denies the claim within the 120- day period, or (2) only within 30 days from the expiration of the 120- day period if the CIR does not act within the 120-day period.

Even if, contrary to all principles of statutory construction as well as plain common sense, we gratuitously apply now Section 4.106-2(c) of Revenue Regulations No. 7-95, still San Roque cannot recover any refund or credit because San Roque did not wait for the 60-day period to lapse, contrary to the express requirement in Section 4.106-2(c).
SC granted the petition of CIR to deny the tax refund or credit claim of San Roque.

COMMISSIONER OF INTERNAL REVENUE, Petitioner, vs. MINDANAO II GEOTHERMAL PARTNERSHIP, Respondent.
G.R. No. 191498 January 15, 2014 FIRST DIVISIONSERENO, *CJ:*

FACTS:

Mindanao II, a power generation partnership, filed its Quarterly VAT Returns for the second, third and fourth quarters of taxable year 2004 on the following dates:

Date filed		Quarter	Taxable Year
Original	Amended		
26 July 2004	12 July 2005	2nd	2004
22 October 2004	12 July 2005	3rd	2004
25 January 2005	12 July 2005	4th	2004

On 6 October 2005, Mindanao II filed with the BIR an application for the refund accumulated unutilized creditable input taxes. In support of the administrative claim for refund or credit, Mindanao II alleged, among others, that it is registered with the BIR as a value-added taxpayer and all its sales are zero-rated under the EPIRA law. It further stated that for the second, third, and fourth quarters of taxable year 2004, it paid input VAT, which were directly attributable to the zero-rated sales. The input taxes had not been applied against output tax.

The Commissioner of Internal Revenue (CIR) (under S. 112 d) had a period of 120 days, or until 3 February 2006, to act on the claim. The administrative claim, however, remained unresolved on 3 February 2006.

Under the same provision, Mindanao II could treat the inaction of the CIR as a denial of its claim, in which case, the former would have 30 days to file an appeal to the CTA, that is, on 5 March 2006. Mindanao II, however, did not file an appeal within the 30-day period.

Apparently, Mindanao II believed that a judicial claim must be filed within the two-year prescriptive period provided under Section 112(A) and that such time frame was to be reckoned from the filing of its Quarterly VAT Returns (the original dates). Thus, on 21 July 2006, Mindanao II, claiming inaction on the part of the CIR and that the two-year prescriptive period was about to expire, filed a Petition for Review with the CTA.

While the application for refund was pending, the SC promulgated the Atlas case. Atlas held that the two-year prescriptive period for the filing of a claim for an input VAT refund or credit is to be reckoned from the date of filing of the corresponding quarterly VAT return and payment of the tax.

On 12 August 2008, the CTA Second Division rendered a Decision ordering the CIR to grant a refund.

On 1 September 2008, the CIR filed a Motion for Partial Reconsideration, pointing out that prescription had already set in, since the appeal to the CTA was filed only on 21 July 2006, which was way beyond the last day to appeal – 5 March 2006 under S . 112(D) of the Tax Code.

Meanwhile, on 12 September 2008, this Court promulgated Mirant. Mirant fixed the reckoning date of the two-year prescriptive period for the application for refund or credit of unutilized input VAT at the close of the taxable quarter when the relevant sales were made, as stated in Section 112(A).

On 3 December 2008, the CTA Second Division denied the CIR's Motion for Partial Reconsideration. On 7 January 2009, the CIR elevated the matter to the CTA En Banc via a Petition for Review. The CTA denied it by holding that Atlas remained to be the controlling doctrine. Mirant was a new doctrine and, as such, the latter should not apply retroactively to Mindanao II who had relied on the old doctrine of Atlas and had acted on the faith thereof.

As to the issue of compliance with the 30-day period for appeal to the CTA, the CTA En Banc held that this was a requirement only when the CIR actually denies the taxpayer's claim. But in cases of CIR inaction, the 30-day period is not a mandatory requirement; the judicial claim is seasonably filed as long as it is filed after the lapse of the 120-day waiting period but within two years from the date of filing of the return.
The CIR filed a Motion for Partial Reconsideration of the Decision, but it was denied for lack of merit. Dissatisfied, the CIR filed this Rule 45 Petition.

ISSUES
1. WON the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT included judicial claims? No. Only administrative claims.
2. WON Mindanao complied with the 120+30 day period for filing an appeal with the CTA. No.
3. WON its administrative and judicial claims were timely filed. Only the administrative claims.

RULING
Petition granted. We deny Mindanao II's claim for refund or credit of unutilized input VAT on the ground that its judicial claims were filed out of time, even as we hold that its application for refund was filed on time.
The CT A lost jurisdiction over Mindanao Il's claims for refund or credit.

I.MINDANAO II'S APPLICATION FOR
REFUND WAS FILED ON TIME
We find no error in the conclusion of the tax courts that the application for refund or credit of unutilized input VAT was timely filed. The problem lies with their bases for the conclusion as to: (1) what should be filed within the prescriptive period; and (2) the date from which to reckon the prescriptive period.

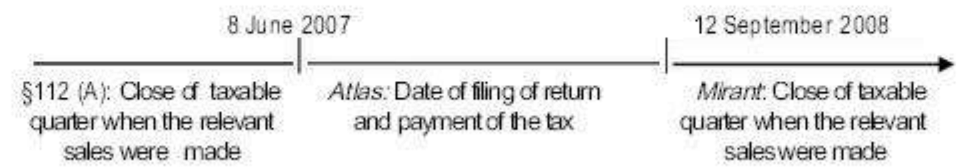
A. The Judicial Claim Need Not Be Filed Within the Two-Year Prescriptive Period
Section 112(A) provides that — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales…

In Aichi, it is only the administrative claim that must be filed within the two-year prescriptive period; the judicial claim need not fall within the two-year prescriptive period.

B. Reckoning Date is the Close of the Taxable Quarter When the Relevant Sales Were Made.
The other flaw in the reasoning of the tax courts is their reliance on the Atlas ruling, which fixed the reckoning point to the date of filing the return and payment of the tax. The issue posed is not novel.

In the recent case of San Roque, this Court resolved the threshold question of when to reckon the two-year prescriptive period for filing an administrative claim for refund or credit of unutilized input VAT under the 1997 Tax Code in view of our pronouncements in Atlas and Mirant.

Two things are clear from San Roque. First, when it comes to recovery of unutilized input VAT, Section 112, and not Section 229 of the 1997 Tax Code, is the governing law. Second, prior to 8 June 2007, the applicable rule is neither Atlas nor Mirant, but Section 112(A).
We present the rules laid down by San Roque in determining the proper reckoning date of the two-year prescriptive period through the following timeline:



Thus, the task at hand is to determine the applicable period for this case.

In this case, Mindanao II filed its administrative claims for refund or credit for the second, third and fourth quarters of 2004 on 6 October 2005. The case thus falls within the first period as indicated in the above timeline. In other words, it is covered by the rule prior to the advent of either Atlas or Mirant.
Accordingly, the proper reckoning date in this case, as provided by Section 112(A) of the 1997 Tax Code, is the close of the taxable quarter when the relevant sales were made.

C. The Administrative Claims Were Timely Filed
We sum up our conclusions so far: (1) it is only the administrative claim that must be filed within the two-year prescriptive period; and (2) the two-year prescriptive period begins to run from the close of the taxable quarter when the relevant sales were made.

Bearing these in mind, we now proceed to determine whether Mindanao II's administrative claims for the second, third, and fourth quarters of 2004 were timely filed. The court held that Mindanao's admin claims were all filed within the 2 year prescriptive period from the close of the taxable quarter.

II.
MINDANAO II'S JUDICIAL CLAIMS WERE FILED OUT OF TIME
Notwithstanding the timely filing of the administrative claims, we find that the CTA En Banc erred in holding that Mindanao II's judicial claims were timely filed.

A. 30-Day Period Also Applies to Appeals from Inaction
Section 112(D) of the 1997 Tax Code states the time requirements for filing a judicial claim for refund or tax credit of input VAT. It speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund or credit, and the period of 30 days, which refers to the period for interposing an appeal with the CTA. It is with the 30-day period that there is an issue in this case.

The 30-day period applies not only to instances of actual denial by the CIR of the claim for refund or tax credit, but to cases of inaction by the CIR as well. This is the correct interpretation of the law, as held in San Roque: Section 112(C)48 also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner.

The San Roque pronouncement is clear. The taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

B. The Judicial Claim Was Belatedly Filed
In this case, the facts are not up for debate. Mindanao II filed its administrative claim for refund or credit for the second, third, and fourth quarters of 2004 on 6 October 2005. The CIR, therefore, had a period of 120 days, or until 3 February 2006, to act on the claim. The CIR, however, failed to do so. Mindanao II then could treat the inaction as a denial and appeal it to the CTA within 30 days from 3 February 2006, or until 5 March 2006.
Mindanao II, however, filed a Petition for Review only on 21 July 2006, 138 days after the lapse of the 30-day period on 5 March 2006. The judicial claim was therefore filed late.

C. The 30-Day Period to Appeal is Mandatory and Jurisdictional
However, what is up for debate is the nature of the 30-day time requirement. The CIR posits that it is mandatory. Mindanao II contends that the requirement of judicial recourse within 30 days is only directory and permissive, as indicated by the use of the word "may" in Section 112(D).

The answer is found in San Roque. There, we declared that the 30-day period to appeal is both mandatory and jurisdictional.

D. Exception to the mandatory and jurisdictional nature of the 120+30 day period not applicable
Nevertheless, San Roque provides an exception to the mandatory and jurisdictional nature of the 120+30 day period — BIR Ruling No. DA-489-03 dated 10 December 2003. The BIR ruling declares that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."

As mentioned above, Mindanao II filed its judicial claim with the CTA on 21 July 2006. This was after the issuance of BIR Ruling No. DA-489-03 on 10 December 2003, but before its reversal on 5 October 2010. However, while the BIR ruling was in effect when Mindanao II filed its judicial claim, the rule cannot be properly invoked. The BIR ruling, as discussed earlier, contemplates premature filing. The situation of Mindanao II is one of late filing. To repeat, its judicial claim was filed on 21 July 2006 – long after 5 March 2006, the last day of the 30-day period for appeal. In fact, it filed its judicial claim 138 days after the lapse of the 30-day period.

SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:
A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (Aichi). The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (San Roque)

3. The only other rule is the Atlas ruling, which applied only from 8 June 2007 to 12 September 2008. Atlas states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. (San Roque)

B. 120+30 Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.
2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
3. As a general rule, the 3 0-day period to appeal is both mandatory and jurisdictional. (Aichi and San Roque)
4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (San Roque)
5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force.

COMMISSIONER OF INTERNAL REVENUE, Petitioner, vs. TEAM SUAL CORPORATION (formerly MIRANT SUAL CORPORATION), Respondent.
G.R. No. 194105 February 5, 2014 FIRST DIVISIONREYES, *J.*

The Taxpayer's failure to comply with the 120-day mandatory period under Section 112(C) of the NIRC renders its petition for review with the CTA void. It is a mere scrap of paper from which the taxpayer cannot derive or acquire any right notwithstanding the supposed failure on the part of the CIR to raise the issue of the taxpayer's non-compliance with the 120-day period in the proceedings before the CTA Division. Furthermore, a taxpayer can only rely on BIR Ruling No. DA-489-03 for the filing of its claim from the time of its issuance on December 10, 2003 up to its reversal by the Aichi Doctrine on October 6, 2010, where it was held that the 120-day period under Section 112(C) of the NIRC is mandatory and jurisdictional.

FACTS
Team Sual Corporation (TSC) filed its VAT returns for the first, second, third, and fourth quarters of the taxable year 2000 on April 24, 2000, July 25, 2000, October 25, 2000, and January 25, 2001, respectively. On March 11, 2002, TSC filed with the BIR an administrative claim for refund claiming that it is entitled to the unutilized input VAT arising from its zero-rated sales to NPC for the taxable year 2000.

Without awaiting for CIR's decision, on April 1, 2002, TSC filed a petition for review with the CTA seeking the refund or the issuance of a tax credit certificate for its unutilized input VAT. On January 26, 2009, the CTA Division rendered a Decision in favor of TSC. The CIR filed a motion for reconsideration and claimed that TSC's petition for review was prematurely filed, alleging that under Section 112(C) of the NIRC, the CIR is given 120 days from the submission of complete documents within which to either grant or deny TSC's application for refund/tax credit of its unutilized input VAT. CIR pointed out that TSC filed its petition for review with the CTA without any decision on its claim and without waiting for the 120-day period to lapse.

Subsequently, the CTA Division rendered a decision denying CIR's motion. It ruled that, pursuant to Section 112(A) of the NIRC, claims for refund/tax credit of unutilized input VAT should be filed within two years after the close of the taxable quarter when the sales were made; that the 120-day period under Section 112(C) of the NIRC is also covered by the two-year prescriptive period within which to claim the refund/tax credit of unutilized input VAT. The CIR filed a Petition for Review with the CTA En Banc, which was denied. Hence, the petition.

ISSUE
Whether or not the taxpayer's petition for review was prematurely filed.

RULING
Petition Granted. Under Section 112(C) of the NIRC, the CIR is given 120 days from the submission of complete documents in support of the application for refund/tax credit within which to either grant or deny the claim. In case of (1) full or partial denial of the claim or (2) the failure of the CIR to act on the claim within 120 days from the submission of complete documents, the taxpayer-claimant may, within 30 days from receipt of the CIR decision denying the claim or after the lapse of the 120-day period, file a petition for review with the CTA.

The pivotal question of whether the imminent lapse of the two-year period under Section 112(A) of the NIRC justifies the filing of a judicial claim with the CTA without awaiting the lapse of the 120- day period given to the CIR to decide the administrative claim for refund/tax credit had already been settled by the Court. In Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., the Court held that:

> Section 112([C]) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>
> Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA.
>
> This is apparent in the first paragraph of subsection (C) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.
>
> In fact, applying the two-year period to judicial claims would render nugatory Section 112(C) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(C) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120- day period. In

both instances, the taxpayer has 30 days within which to file an appeal with the CT A. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

Further, in Commissioner of Internal Revenue v. San Roque Power Corporation, the Court emphasized that the 120-day period that is given to the CIR within which to decide claims for refund/tax credit of unutilized input VAT is mandatory and jurisdictional. The Court categorically held that the taxpayer-claimant must wait for the 120-day period to lapse, should there be no decision fully or partially denying the claim, before a petition for review may be filed with the CTA. Otherwise, the petition would be rendered premature and without a cause of action. Consequently, the CTA does not have the jurisdiction to take cognizance of a petition for review filed by the taxpayer-claimant should there be no decision by the CIR on the claim for refund/tax credit or the 120-day period had not yet lapsed.

It is undisputed that TSC filed its administrative claim for refund/tax credit with the BIR on March 11, 2002, which is still within the two-year prescriptive period under Section 112(A) of the NIRC. However, without waiting for the CIR decision or the lapse of the 120-day period from the time it submitted its complete documents in support of its claim, TSC filed a petition for review with the CTA on April 1, 2002 - a mere 21 days after it filed its administrative claim with the BIR. Clearly, TSC's petition for review with the CTA was prematurely filed; the CTA had no jurisdiction to take cognizance of TSC's petition since there was no decision as yet by the CIR denying TSC's claim, fully or partially, and the 120-day period under Section 112(C) of the NIRC had not yet lapsed.

In San Roque, the Court opined that a petition for review that is filed with the CTA without waiting for the 120-day mandatory period renders the same void. Accordingly, TSC's failure to comply with the 120-day mandatory period under Section 112(C) of the NIRC renders its petition for review with the CT A void. It is a mere scrap of paper from which TSC cannot derive or acquire any right notwithstanding the supposed failure on the part of the CIR to raise the issue of TSC' s non-compliance with the 120-day period in the proceedings before the CTA First Division. In any case, the Court finds that the CIR raised the issue of TSC's non-compliance with the 120-days mandatory period in the motion for reconsideration that was filed with the CT A First Division. Further, the CIR likewise raised the same issue in the petition for review that was filed with the CTA en banc.

In insisting that the 120-day period under Section 112(C) of the NIRC is not mandatory, TSC further points out that the BIR, under BIR Ruling No. DA-489-03 dated December 10, 2003 and Revenue Memorandum Circular No. 49-03 (RMC No. 49-03) dated April 15, 2003, had already laid down the rule that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA. As such, the TSC claims, its failure to comply with the 120-day mandatory period is not cause to deny its judicial claim for refund/tax credit.

TSC's assertion is untenable. In San Roque, the Court had already clarified that nowhere in RMC No. 49-03 was it stated that a taxpayer-claimant need not wait for the lapse of the 120-day mandatory period before it can file its judicial claim with the CTA. RMC No. 49-03 only authorized the BIR to continue the processing of a claim for refund/tax credit notwithstanding that the same had been appealed to the CTA.

The Court clarified that taxpayers can only rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in Aichi on October 6, 2010, where it was held that the 120-day period under Section 112(C) of the NIRC is mandatory and jurisdictional.

TSC filed its judicial claim for refund/tax credit of its unutilized input VAT with the CT A on April 1, 2002 - more than a year before the issuance of BIR Ruling No. DA-489-03. Accordingly, TSC cannot benefit from the declaration laid down in BIR Ruling No. DA-489-03. As stressed by the Court in San Roque, prior to the issuance of BIR Ruling No. DA-489-03, the BIR held that the 120- day period was mandatory and jurisdictional, which is the correct interpretation of the law

COMMISSIONER OF INTERNAL REVENUE, Petitioner, vs. BURMEISTER AND WAIN SCANDINAVIAN CONTRACTOR MINDANAO, INC., Respondent.
G.R. No. 153205 January 22, 2007 SECOND DIVISION CARPIO, *J.*

Nevertheless, in seeking a refund of its excess output tax, respondent relied on VAT Ruling No. 003-99, which reconfirmed BIR Ruling No. 023-95"insofar as it held that the services being rendered by BWSCMI is subject to VAT at zero percent (0%)." Respondent's reliance on these BIR rulings binds petitioner.

Petitioner's filing of his Answer before the CTA challenging respondent's claim for refund effectively serves as a revocation of VAT Ruling No. 003-99 and BIR Ruling No. 023-95. However, such revocation cannot be given retroactive effect since it will prejudice respondent. Changing respondent's status will deprive respondent of a refund of a substantial amount representing excess output tax. Section 246 of the Tax Code provides that any revocation of a ruling by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation will prejudice the taxpayer.

FACTS
Respondent] is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal address located at Davao City. It is represented that a foreign consortium composed of Burmeister and Wain Scandinavian Contractor for the operation and maintenance of [NAPOCOR's] two power barges. NAPOCOR paid capacity and energy fees to the Consortium in a mixture of currencies (Mark, Yen, and Peso). On the other hand, the Consortium pays [respondent] in foreign currency inwardly remitted to the Philippines through the banking system.

In order to ascertain the tax implications of the above transactions, [respondent] sought a ruling from the BIR which responded with BIR Ruling No. 023-95 dated February 14, 1995, declaring therein that if [respondent] chooses to register as a VAT person and the consideration for its services is paid for in acceptable foreign currency shall be subject to VAT at zero-rate. Respondent chose to register as a VAT taxpayer. On December 29, 1997, [respondent] availed of the Voluntary Assessment Program (VAP) of the BIR. In [conformity] with the aforecited Revenue Regulations, [respondent] subjected its sale of services to the Consortium to the 10% VAT On the strength of the aforementioned rulings, [respondent] on April 22,1999, filed a claim for the issuance of a tax credit certificate with Revenue District No. 113 of the BIR. [Respondent] believed that it erroneously paid the output VAT for 1996 due to its availment of the Voluntary Assessment Program (VAP) of the BIR. Respondent filed a petition for review with the CTA in order to toll the running of the two-year prescriptive period under the Tax Code. CTA ordered petitioner to issue a tax credit certificate in favor of respondent. Petitioner filed a petition for review with the Court of Appeals, which dismissed the petition for lack of merit and affirmed the CTA decision
The Court of Appeals found untenable petitioner's contention that under VAT Ruling No. 040-98, respondent's services should be destined for consumption abroad to enjoy zero-rating.

ISSUE

Whether or Not the respondent is entitled to the refund because of erroneously paid output VAT for the year 1996?

RULING

No. At the outset, the Court declares that the denial of the instant petition is not on the ground that respondent's services are subject to 0% VAT. Rather, it is based on the non-retroactivity of the prejudicial revocation of BIR Ruling No. 023-9517 and VAT Ruling No. 003-99,18 which held that respondent's services are subject to 0% VAT and which respondent invoked in applying for refund of the output VAT.

The Tax Code not only requires that the services be other than "processing, manufacturing or repacking of goods" and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that the recipient of such services is doing business outside the Philippines. While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be "for other persons doing business outside the Philippines." The phrase "for other persons doing business outside the Philippines" not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term "services" appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines.

This can only be the logical interpretation of Section 102(b)(2). If the provider and recipient of the "other services" are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102(b)(2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.

When Section 102(b)(2) stipulates payment in "acceptable foreign currency" under BSP rules, the law clearly envisions the payer-recipient of services to be doing business outside the Philippines. Only those not doing business in the Philippines can be required under BSP rules to pay in acceptable foreign currency for their purchase of goods or services from the Philippines. In a domestic transaction, where the provider and recipient of services are both doing business in the Philippines, the BSP cannot require any party to make payment in foreign currency.

Services covered by Section 102(b) (1) and (2) are in the nature of export sales since the payer-recipient of services is doing business outside the Philippines. Under BSP rules, the proceeds of export sales must be reported to the BSP. Thus, there is reason to require the provider of services under Section 102(b) (1) and (2) to account for the foreign currency proceeds to the BSP. The same rationale does not apply if the provider and recipient of the services are both doing business in the Philippines since their transaction is not in the nature of an export sale even if payment is denominated in foreign currency.

Further, when the provider and recipient of services are both doing business in the Philippines, their transaction falls squarely under Section 102(a) governing domestic sale or exchange of services. Indeed, this is a purely local sale or exchange of services subject to the regular VAT, unless of course the transaction falls under the other provisions of Section 102(b).

Thus, when Section 102(b)(2) speaks of "**[s]ervices other than those mentioned in the preceding subparagraph,"** the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating, including the essential condition that the recipient of services is doing business outside the Philippines, remain the same under both subparagraphs.

Significantly, the amended Section 108(b) of the present Tax Code clarifies this legislative intent. Expressly included among the transactions subject to 0% VAT are "**[s**]ervices other than those mentioned in the [first] paragraph [of Section 108(b)] rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP."

In this case, the payer-recipient of respondent's services is the Consortium which is a joint-venture doing business in the Philippines. While the Consortium's principal members are non-resident foreign corporations, the Consortium itself is doing business in the Philippines. This is shown clearly in BIR Ruling No. 023-95 which states that the contract between the Consortium and NAPOCOR is for a 15-year term. Considering this length of time, the Consortium's operation and maintenance of NAPOCOR's power barges cannot be classified as a single or isolated transaction. The Consortium does not fall under Section 102(b)(2) which requires that the recipient of the services must be a person doing business outside the Philippines. Therefore, respondent's services to the Consortium, not being supplied to a person doing business outside the Philippines, cannot legally qualify for 0% VAT.

Respondent, as subcontractor of the Consortium, operates and maintains NAPOCOR's power barges in the Philippines. NAPOCOR pays the Consortium, through its non-resident partners, partly in foreign currency outwardly remitted. In turn, the Consortium pays respondent also in foreign currency inwardly remitted and accounted for in accordance with BSP rules. This payment scheme does not entitle respondent to 0% VAT. As the Court held in Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch), the place of payment is immaterial, much less is the place where the output of the service is ultimately used. An essential condition for entitlement to 0% VAT under Section 102(b)(1) and (2) is that the recipient of the services is a person doing business outside the Philippines. In this case, the recipient of the services is the Consortium, which is doing business not outside, but within the Philippines because it has a 15-year contract to operate and maintain NAPOCOR's two 100-megawatt power barges in Mindanao.

The Court recognizes the rule that the VAT system generally follows the "destination principle" (exports are zero-rated whereas imports are taxed). However, as the Court stated in American Express, there is an exception to this rule. This exception refers to the 0% VAT on services enumerated in Section 102 and performed in the Philippines. For services covered by Section 102(b)(1) and (2), the recipient of the services must be a person doing business outside the Philippines. Thus, to be exempt from the destination principle under Section 102(b)(1) and (2), the services must be (a) performed in the Philippines; (b) for a person doing business outside the Philippines; and (c) paid in acceptable foreign currency accounted for in accordance with BSP rules.

Nevertheless, in seeking a refund of its excess output tax, respondent relied on VAT Ruling No. 003-99, which reconfirmed BIR Ruling No. 023-95"insofar as it held that the services being rendered by BWSCMI is subject to VAT at zero percent (0%)." Respondent's reliance on these BIR rulings binds petitioner.

Petitioner's filing of his Answer before the CTA challenging respondent's claim for refund effectively serves as a revocation of VAT Ruling No. 003-99 and BIR Ruling No. 023-95. However, such revocation cannot be given retroactive effect since it will prejudice respondent. Changing respondent's status will deprive respondent of a refund of a substantial amount representing excess output tax. Section 246 of the Tax Code provides that any revocation of a ruling by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation will prejudice the taxpayer. Further, there is no showing of the existence of any of the exceptions enumerated in Section 246 of the Tax Code for the retroactive application of such revocation.

However, upon the filing of petitioner's Answer dated 2 March 2000 before the CTA contesting respondent's claim for refund, respondent's services shall be subject to the regular 10% VAT. Such filing is deemed a revocation of VAT Ruling No. 003-99 and BIR Ruling No. 023-95.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *v.* **TOLEDO POWER COMPANY**, *Respondent.*
G.R. No. 196415, December 02, 2015 SECOND DIVISION DEL CASTILLO, *J.*

Strict compliance with the 120+30 day mandatory and jurisdictional periods can be dispensed with when the judicial claims are filed between December 10, 2003 (issuance of BIR Ruling No. DA-489-03 which states that the taxpayer need not wait for the 120-day period to expire before it could seek judicial relief) to October 6, 2010 (promulgation of the Aichi doctrine).

FACTS

Toledo Power, Inc. is registered with the BIR as a VAT tax payer in accordance with Section 236 of the NIRC. On October 25, 2001, Toledo filed with BIR its quarterly VAT return for the third quarter of 2001. Subsequently an amended Quarterly VAT Return for the same quarter of 2001 was filed on November 22, 2001 showing unutilized input VAT credits of P5,909.96. On January 25, 2002, Toledo again filed with the BIR its Quarterly VAT Return for the fourth quarter of 2001 alleging therein that it had an excess input VAT credits of P3,219,781,31 which remained unutilized against output VAT liability in said period or even in the subsequent quarters.

On September 30, 2003, Toledo filed an administrative claim for refund the unutilized input VAT for the third and fourth quarter of 2001. On October 24, 2003, by reason of CIR's inaction, Toledo filed a Petition for Review for the refund or issuance of a tax credit certificate for the 3rd quarter of 2001 and, on January 22, 2004, filed another Petition for Review for the refund or issuance of tax credit certificate for the fourth quarter of 2001.

Acting on the petition, CTA Division issued a Decision partially granting Toledo's refund claim or issuance of tax credit certificate. Thereafter, the CIR filed a Motion for Reconsideration against the Decision, but was denied. On appeal to the CTA En Banc, the CIR challenged the jurisdiction of the CTA Division to entertain Toledo's petition for review for failure on its part to comply with the provisions of Section 112 (C) of the Tax Code. In a Decision, CTA En Banc affirmed with modification the Division's assailed decision. The CIR filed a motion for reconsideration, but was denied. Hence, the petition. CIR argues that Toledo did not comply with the 120+30 day rule under Section 112(C) of the Tax Code.

ISSUE
Whether or not the taxpayer complied with the mandatory 120+30 day ruled under Section 112 of the Tax Code.

RULING
Section 112 decrees that a VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit or refund creditable input tax due or paid attributable to such sales within two years after the close of the taxable quarter when the sales were made. From the date of submission of complete documents in support of its application, the CIR has 120 days to decide whether or not to grant the claim for refund or issuance of tax credit certificate. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the CIR to act on the application within the given period, the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal with the CTA the decision or inaction of the CIR.

Recently, in the consolidated cases of Commissioner of Internal Revenue v. San Roque Power Corporation, (San Roque), the Court confirmed the mandatory and jurisdictional nature of the 120+30 day rule.

In a nutshell, the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT, as provided in Section 112 of the Tax Code, are as follows:

(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two- year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.

Here, TPI filed its third and fourth quarterly VAT returns for 2001 on October 25, 2001 and January 25, 2002, respectively. It then filed an administrative claim for refund of its unutilized input VAT for the third and fourth quarters of 2001 on September 30, 2003. Thus, the CIR had 120 days or until January 28, 2004, after the submission of TPI's administrative claim and complete documents in support of its application, within which to decide on its claim. Then, it is only after the expiration of the 120-day period, if there is inaction on the part of the CIR, where TPI may elevate its claim with the CTA within 30 days.

In the present case, however, it appears that TPI's judicial claims for refund of its unutilized input VAT covering the third and fourth quarters of 2001 were prematurely filed on October 24, 2003 and January 22, 2004, respectively.

However, although TPI's judicial claim for the fourth quarter of 2001 has been filed prematurely, the most recent pronouncements of the Court provide for a window wherein the same may be entertained.

As held in the San Roque ponencia, strict compliance with the 120+30 day mandatory and jurisdictional periods is not necessary when the judicial claims are filed between December 10, 2003 (issuance of BIR Ruling No. DA-489-03 which states that the taxpayer need not wait for the 120-day period to expire before it could seek judicial relief) to October 6, 2010 (promulgation of the Aichi doctrine).

Clearly, therefore, TPI's refund claim of unutilized input VAT for the third quarter of 2001 was denied for being prematurely filed with the CTA, while its refund claim of unutilized input VAT for the fourth quarter of 2001 may be entertained since it falls within the exception provided in the Court's most recent rulings.

COMMISSIONER OF INTERNAL REVENUE, petitioner, vs. COURT OF APPEALS, ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION and COURT OF TAX APPEALS, respondents.
G.R. No. 104151 March 10, 1995 SECOND DIVISION REGALADO, *J.*

Assessments are prima facie presumed correct and made in good faith. So that, in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

FACTS
The Commissioner of Internal Revenue served two notices and demand for payment of the respective deficiency ad valorem and buiness taxes for taxable years 1975 and 1976 against the respondent Atlas Consolidated Mining and Development Corporation (ACMDC). The latter protested both assessments but the same were denied, hence it filed two separate petitions for review in the Court of Tax Appeals. The CTA rendered a consolidated decision holding, inter alia, that ACMDC was not liable for deficiency ad valorem taxes on copper and silver for 1975 and 1976 thereby effectively sustaining the theory of ACMDC that in computing the ad valorem tax on copper mineral, the refining and smelting charges should be deducted, in addition to freight and insurance charges.

However, the tax court held ACMDC liable for the amount consisting of 25% surcharge for late payment of the ad valorem tax and late filing of notice of removal of silver, gold and pyrite extracted during certain periods, and for alleged deficiency manufacturer's sales tax and such contractor's tax for leasing out of its personal properties. ACDMC elevated the matter to the Supreme Court claiming that the leasing out was a mere isolated transaction, hence should not be subjected to contractor's tax.

ISSUE
Is the claim of the private respondent, with respect to the contractor's tax, impressed with merit?

RULING
No. It is being held that ACMDC was not a manufacturer subject to the percentage tax imposed by Section 186 of the tax code. However such conclusion cannot be made with respect to the contractor's tax being imposed on ACMDC. It cannot validly claim that the leasing out of its personal properties was merely an isolated transaction. Its book of accounts shows that several distinct payments were made for the use of its personal properties such as its plane, motor boat and dump truck. The series of transactions engaged in by ACMDC for the lease of its aforesaid properties could also be deduced from the fact that during the period there were profits earned and reported therefor. The allegation of ACMDC that it did not realize any profit from the leasing out of its said personal properties, since its income therefrom covered only the costs of operation such as salaries and fuel, is not supported by any documentary or substantial evidence.

Assessments are prima facie presumed correct and made in good faith. Contrary to the theory of ACMDC, it is the taxpayer and not the BIR who has the duty of proving otherwise. It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Verily, failure to present proof of error in assessments will justify judicial affirmance of said assessment.

REPUBLIC OF THE PHILIPPINES, petitioner, vs. THE COURT OF APPEALS, and NIELSON & COMPANY, INC., respondents.
G.R. No. L-38540 April 30, 1987 SECOND DIVISION PADILLA, *J*

The follow-up letter reiterating demand for payment could be considered a notice of assessment in itself if duly received by the taxpayer.

FACTS
The petitioner sought the review on certiorari of the decision of the respondent Court of Appeals reversing the decision of the then Court of First Instance of Manila which ordered private respondent Nielson & Co., Inc. to pay the Government the amount of P11,496.00 as ad valorem tax, occupation fees, additional residence tax and 25% surcharge for late payment, for the years 1949 to 1952. Petitioner claims that the demand letter of 16 July 1955 showed an imprint indicating that the original thereof was released and mailed on 4 August 1955 by the Chief, Records Section of the Bureau of Internal Revenue, and that the original letter was not returned to said Bureau; thus, said demand letter must be considered to have been received by the private respondent. According to petitioner, if service is made by ordinary mail, unless the actual date of receipt is shown, service is deemed complete and effective upon the expiration of five (5) days after mailing. As the letter of demand dated 16 July 1955 was actually mailed to private respondent, there arises the presumption that the letter was received by private respondent in the absence of evidence to the contrary. More so, where private respondent did not offer any evidence, except the self-serving testimony of its witness, that it had not received the original copy of the demand letter dated 16 July 1955.

ISSUE
Was notice of assessment or demand properly served to the respondent? Should the receipt by the respondent of the succeeding follow-up demand notices be construed as receipt of the original demand?

RULING

As to the first issue, no. As correctly observed by the respondent court in its appealed decision, while the contention of petitioner is correct that a mailed letter is deemed received by the addressee in the ordinary course of mail, still this is merely a disputable presumption, subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. Since petitioner has not adduced proof that private respondent had in fact received the demand letter of 16 July 1955, it can not be assumed that private respondent received said letter.

As to the second issue, Yes. Records show that petitioner wrote private respondent a follow-up letter dated 19 September 1956, reiterating its demand for the payment of taxes as originally demanded in petitioner's letter dated 16 July 1955. This follow-up letter is considered a notice of assessment in itself which was duly received by private respondent in accordance with its own admission. And consequently, under Section 7 of Republic Act No. 1125, the assessment is appealable to the Court of Tax Appeals within thirty (30) days from receipt of the letter. The taxpayer's failure to appeal in due time, as in the case at bar, makes the assessment in question final, executory and demandable. Thus, private respondent is now barred from disputing the correctness of the assessment or from invoking any defense that would reopen the question of its liability on the merits.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner* –versus- PASCOR REALTY AND DEVELOPMENT CORPORATION, *Respondent*

G.R. No. 128315, June 29, 1999, THIRD DIVISION, Panganiban, J.

True, as pointed out by the private respondents, an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments.

To start with, an assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.

FACTS:

In this case, then BIR Commissioner Jose U. Ong authorized revenue officers to examine the books of accounts and other accounting records of Pascor Realty and Development Corporation (PRDC) for 1986, 1987 and 1988. This resulted in a recommendation for the issuance of an assessment in the amounts of P7,498,434.65 and P3,015,236.35 for the years 1986 and 1987, respectively.

On March 1, 1995, the Commissioner filed a criminal complaint before the DOJ against PRDC, its President Rogelio A. Dio, and its Treasurer Virginia S. Dio, alleging evasion of taxes in the total amount of P10,513,671.00. Private respondents filed an Urgent Request for Reconsideration/Reinvestigation disputing the tax assessment and tax liability.

The Commissioner denied the urgent request for reconsideration/reinvestigation because she had not yet issued a formal assessment.

Private respondents then elevated the Decision of the Commissioner to the CTA on a petition for review. The Commissioner filed a Motion to Dismiss the petition on the ground that the CTA has no jurisdiction over the subject matter of the petition, as there was yet no formal assessment issued against the petitioners. The CTA denied the said motion to dismiss and ordered the Commissioner to file an answer within thirty (30) days. The Commissioner did not file an answer nor did she move to reconsider the resolution. Instead, the Commissioner filed a petition for review of the CTA decision with the Court of Appeals. The Court of Appeals upheld the CTA order. However, this Court reversed the Court of Appeals decision and the CTA order, and ordered the dismissal of the petition.

ISSUE:
Whether or not an assessment is necessary before criminal charges for tax evasion may be instituted.

RULING:
The Court ruled in the negative. An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. Accordingly, an affidavit, which was executed by revenue officers stating the tax liabilities of a taxpayer and attached to a criminal complaint for tax evasion, cannot be deemed an assessment that can be questioned before the Court of Tax Appeals.

Neither the NIRC nor the revenue regulations governing the protest of assessments provide a specific definition or form of an assessment. However, the NIRC defines the specific functions and effects of an assessment. To consider the affidavit attached to the Complaint as a proper assessment is to subvert the nature of an assessment and to set a bad precedent that will prejudice innocent taxpayers.

True, as pointed out by the private respondents, an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments.

To start with, an assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.

The issuance of an assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it. Section 203 of the NIRC provides that internal revenue taxes must be assessed within three years from the last day within which to file the return. Section 222, on the other hand, specifies a period of ten years in case a fraudulent return with intent to evade was submitted or in case of failure to file a return. Also, Section 228 of the same law states that said assessment may be protested only within thirty days from receipt thereof. Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.

It should also be stressed that the said document is a notice duly sent to the taxpayer. Indeed, an assessment is deemed made only when the collector of internal revenue releases, mails or sends such notice to the taxpayer.

In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. It did not state a demand or a period for payment. Worse, it was addressed to the justice secretary, not to the taxpayers.

Respondents maintain that an assessment, in relation to taxation, is simply understood to mean:
"A notice to the effect that the amount therein stated is due as tax and a demand for payment thereof."
"Fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper presentation of tax rolls."

Even these definitions fail to advance private respondents' case. That the BIR examiners' Joint Affidavit attached to the Criminal Complaint contained some details of the tax liabilities of private respondents does not *ipso facto* make it an assessment. The purpose of the Joint Affidavit was merely to support and substantiate the Criminal Complaint for tax evasion. Clearly, it was not meant to be a notice of the tax due and a demand to the private respondents for payment thereof.

The fact that the Complaint itself was specifically directed and sent to the Department of Justice and not to private respondents shows that the intent of the commissioner was to file a criminal complaint for tax evasion, not to issue an assessment. Although the revenue officers recommended the issuance of an assessment, the commissioner opted instead to file a criminal case for tax evasion. What private respondents received was a notice from the DOJ that a criminal case for tax evasion had been filed against them, not a notice that the Bureau of Internal Revenue had made an assessment.

Private respondents maintain that the filing of a criminal complaint must be preceded by an assessment. This is incorrect, because Section 222 of the NIRC specifically states that in cases where a false or fraudulent return is submitted or in cases of failure to file a return such as this case, proceedings in court may be commenced *without an assessment*. Furthermore, Section 205 of the same Code clearly mandates that the civil and criminal aspects of the case may be pursued simultaneously. In *Ungab v. Cusi,* petitioner therein sought the dismissal of the criminal Complaints for being premature, since his protest to the CTA had not yet been resolved. The Court held that such protests could not stop or suspend the criminal action which was independent of the resolution of the protest in the CTA. This was because the commissioner of internal revenue had, in such tax evasion cases, discretion on whether to issue an assessment or to file a criminal case against the taxpayer or to do both.

Private respondents insist that Section 222 should be read in relation to Section 255 of the NIRC, which penalizes failure to file a return. They add that a tax assessment should precede a criminal indictment. We disagree. To reiterate, said Section 222 states that an assessment is not necessary before a criminal charge can be filed. This is the general rule. Private respondents failed to show that they are entitled to an exception. Moreover, the criminal charge need only be supported by a *prima facie* showing of failure to file a required return. This fact need not be proven by an assessment.

The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commissioner has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.

EUGENIO PEREZ, *Petitioner,* -versus- COURT OF TAX APPEALS, and J. ANTONIO ARANETA, Acting Collector of Internal Revenue, *Respondents.*

G.R. No. L-9193, May 29, 1957, EN BANC, Felix, J.

The three-year prescriptive period under section 51 (d) of the National Internal Revenue Code constituted a limitation to the right of the government to enforce the collection of income taxes by summary proceedings of distraint and levy, though, it could proceed to recover the taxes due by the institution of the corresponding civil action. Nevertheless, the appeal of the taxpayer vested jurisdiction on the Court of Tax Appeals to review and determine his tax liability for the aforesaid period.

FACTS:

Petitioner was assessed by the Collector with deficiency tax due to its increase in net worth. In making the deficiency assessments, the Collector employed what is known as the "net worth" technique and started by determining the opening net worth of petitioner at the start of the year 1947 which he fixed at P936.72. The Court of Tax Appeals declared the "net worth" method of determining understated income to have been validly and properly applied; found that the consistent under declaration of income, unexplained acquisition of properties, and the fact of petitioner's having claimed fictitious losses evidenced fraudulent intent, and ordered him to pay deficiency income taxes and surcharges in the sum of P241,547.77.

ISSUES:

1. Whether the Collector of Internal Revenue is empowered by law to investigate appellant's (petitioner) income tax returns for 1947, 1948, and1949 and to enforce collection of the alleged deficiency income taxes for said years by summary proceedings of distraint and levy more than three years after the income tax returns covering them were filed
2. Whether the use of the "net worth" method by the respondent in computing appellant's net income is valid

RULING:

1. **NO**. Reiterating a long line of decisions to the effect that the three-year prescriptive period under section 51 (d) of the National Internal Revenue Code constituted a limitation to the right of the government to enforce the collection of income taxes by summary proceedings of distraint and levy, though, it could proceed to recover the taxes due by the institution of the corresponding civil action. Nevertheless, the appeal of the taxpayer vested jurisdiction on the Court of Tax Appeals to review and determine his tax liability for the aforesaid period.

2. **YES.** This method of proving unreported income, according to the Court of Tax Appeals, is based upon the general theory that money and other assets in excess of liabilities of a taxpayer (after an accurate and proper adjustment of non- deductible items) not accounted for by his income tax returns, leads tothe inference that part of his income has not been reported (p. 6, B.T.A. 189).There is no question that the application of the "net worth" method of determining the taxable income of a taxpayer has been an accepted practice. In fine, we hold:

That section 38 of our National Internal Revenue Code authorizes the application of the Net Worth Method in this jurisdiction (Baiter, Fraud Under Fed.Tax Law, sec. 224; Vol. 2, 1951 CCH 386. Oil, Byer Net Worth Technique for Determining Income, supra: Holland vs. U.S., supra; Estate of Bartley, 22 U.S.Tax Ct. lep. 1230; Hurley, 22 U. S. Tax Ct. Rep. 1264; S B.T.A. 169).

That no civil cases, the Government need not prove the specific source of income (this is reasonable on the basic assumption that most assets are derived from a taxable source and that when this is not true the taxpayer is in a position to explain the discrepancy, {see Holland case, supra);

That the determination of the tax deficiency by the Government has prima facie validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct (Archer vs. Commissioner, supra; Thomas vs. Commissioner, supra; Laughing house vs. Commissioner, sutra: William Lias, 24 T.C. No. 23,May 26, 1955, Virginia Law Review, 41 p. 7; Halle, 7 T.C. 245, aff'd 175 F. 2d 500, 339 U.S. 949; Byer, "Net Worth Technique for Determining Income").

And finally, that no sufficient grounds exist to warrant a reversal of the findings of fraud of the lower court as being "clearly erroneous"; on the contrary, we find them supported by reason.

COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- PHOENIX ASSURANCE CO., LTD.,Respondent
No. L-19727. May 20, 1965, EN BANC, Bengzon, J.P., J.

Considering that the deficiency assessment was based on the amended return which, as aforestated, is substantially different from the original return, the period of limitation of the right to issue the same should be counted from the filing of the amended income tax return. From August 30, 1955, when the amended return was filed, to July 24, 1958, when the deficiency assessment was issued, less than five years elapsed. The right of the Commissioner to assess the deficiency tax on such amended return has not prescribed.

FACTS:
Phoenix Assurance Co., Ltd., a foreign insurance corporation organized under the laws of Great Britain, is licensed to do business in the Philippines with head office in London. Through its head

office, it entered in London into worldwide reinsurance treaties with various foreign insurance companies. It agree to cede a portion of premiums received on original insurances underwritten by its head office, subsidiaries, and branch offices throughout the world, in consideration for assumption by the foreign insurance companies of an equivalent portion of the liability from such original insurances.

On August 1, 1958 the Bureau of Internal Revenue deficiency assessment on income tax for the years 1952 and 1954 against Phoenix Assurance Co, Ltd. The assessment resulted from the disallowance of a portion of the deduction claimed by Phoenix Assurance Co., Ltd. as head office expenses allocable to its business in the Philippines fixed by the Commissioner at 5% of the net Philippine income instead of 5% of the gross Philippine income as claimed in the returns.

Phoenix Assurance Co., Ltd. protested against the aforesaid assessments for withholding tax and deficiency income tax. However, the Commissioner of Internal Revenue denied such protest. Subsequently, Phoenix Assurance Co., Ltd. appealed to the Court of Tax Appeals. In a decision dated February 14, 1962, the Court of Tax Appeals allowed in full the decision claimed by Phoenix Assurance Co., Ltd. for 1950 as net addition to marine insurance reserve; determined the allowable head office expenses allocable to Philippine business to be 5% of the net income in the Philippines; declared the right of the Commissioner of Internal Revenue to assess deficiency income tax for 1952 to have prescribed; absolved Phoenix Assurance Co., Ltd. from payment of the statutory penalties for non-filing of withholding tax return.

ISSUES:

(1) Whether or not reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines pursuant to reinsurance contracts executed abroad are subject to withholding tax;
(2) Whether or not the right of the Commissioner of Internal Revenue to assess deficiency income tax for the year 1952 against Phoenix Assurance Co., Ltd. has prescribed;

RULING:

The question of whether or not reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines pursuant to contracts executed abroad are income from sources within the Philippines subject to withholding tax under Sections 53 and 54 of the Tax Code has already been resolved in the affirmative in British Traders' Insurance Co., Ltd. v. Commissioner of Internal Revenue, L-20501, April 30, 1965.1

The question is. Should the running of the prescriptive period commence from the filing of the original or amended return?

'xxx the deficiency income tax in question could not possibly be determined, or assessed, on the basis of the original return filed on April 1, 1953, for considering that the declared loss amounted to P199,583.93, the mere disallowance of part of the head office expenses could not possibly result in said loss being completely wiped out and Phoenix being liable to deficiency tax. Not until the amended return was filed on August 30, 1955 could the Commissioner assess the deficiency income tax in question."

Accordingly, he would wish to press for the counting of the prescriptive period from the filing of the amended return.

Considering that the deficiency assessment was based on the amended return which, as aforestated, is substantially different from the original return, the period of limitation of the right to issue the same should be counted from the filing of the amended income tax return. From August 30, 1955, when the amended return was filed, to July 24, 1958, when the deficiency assessment was issued, less than five years elapsed. The right of the Commissioner to assess the deficiency tax on such amended return has not prescribed.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*- VERSUS- KUDOS METAL CORPORATION, *Respondent,*
G.R. No. 178087. May 5, 2010, Del Castillo, J.

The waivers executed by respondent's accountant did not extend the period within which the assessment can be made. Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are void.

FACTS:

On April 15, 1999, respondent Kudos Metal Corporation filed its Annual Income Tax Return (ITR) for the taxable year 1998.

Pursuant to a Letter of Authority dated September 7, 1999, the Bureau of Internal Revenue (BIR) served upon respondent three Notices of Presentation of Records. Respondent failed to comply with these notices, hence, the BIR issued a Subpoena Duces Tecum dated September 21, 2006, receipt of which was acknowledged by respondent's President, Mr. Chan Ching Bio, in a letter dated October 20, 2000.

On December 10, 2001, Nelia Pasco (Pasco), respondent's accountant, executed a Waiver of the Defense of Prescription, which was notarized on January 22, 2002, received by the BIR Enforcement Service on January 31, 2002 and by the BIR Tax Fraud Division on February 4, 2002, and accepted by the Assistant Commissioner of the Enforcement Service, Percival T. Salazar (Salazar). This was followed by a second Waiver of Defense of Prescription5 executed by Pasco on February 18, 2003, notarized on February 19, 2003, received by the BIR Tax Fraud Division on February 28, 2003 and accepted by Assistant Commissioner Salazar.

A Preliminary Assessment Notice for the taxable year 1998 against the respondent. This was followed by a Formal Letter of Demand with Assess-ment Notices for taxable year 1998, dated September 26, 2003 which was received by respondent on November 12, 2003.
Respondent challenged the assessments by filing its "Protest on Various Tax Assessments" on December 3, 2003 and its "Legal Arguments and Documents in Support of Protests against Various Assessments" on February 2, 2004.

Believing that the government's right to assess taxes had prescribed, respondent filed on August 27, 2004 a Petition for Review7 with the CTA. On October 4, 2005, the CTA Second Division issued a Resolution canceling the assessment notices issued against respondent for having been issued beyond the prescriptive period. CTA en banc affirmed the decision of the CTA Second Division. Hence, the present petition.

ISSUE:
Whether or not the government's right to assess unpaid taxes of respondent has prescribed

RULING:

The Government is barred by prescription. The waivers executed by respondent's accountant did not extend the period within which the assessment can be made. Petitioner does not deny that the assessment notices were issued beyond the three-year prescriptive period, but claims that the period was extended by the two waivers executed by respondent's accountant.

Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are void.
In this case, the assessments were issued beyond the prescribed period. Also, there is no showing that respondent made any request to persuade the BIR to postpone the issuance of the assessments. The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow.

Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.

As to the alleged delay of the respondent to furnish the BIR of the required documents, this cannot be taken against respondent. Neither can the BIR use this as an excuse for issuing the assessments beyond the three-year period because with or without the required documents, the CIR has the power to make assessments based on the best evidence obtainable.

FERNANDEZ HERMANOS, INC, *Petitioner*, -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent*

G.R. No. L-21551, No. L-21557, No. L-24972 No. L-24978, September 30, 1969, Teehankee, J.

A judicial action for the collection of a tax is begun by the filing of a complaint with the proper court of first instance, or where the assessment is appealed to the Court of Tax Appeals, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for

FACTS:

The taxpayer, Fernandez Hermanos, Inc., is a domestic corporation organized for the principal purpose of engaging in business as an "investment company" with main office at Manila. Upon verification of the taxpayer's income tax returns for the period in question, the Commissioner of Internal Revenue assessed against the taxpayer the sums of P13,414.00, P119,613.00, P11,698.00, P6,887.00 and P14,451.00 as alleged deficiency income taxes for the years 1950, 1951, 1952, 1953 and 1954, respectively. Said assessments were the result of alleged discrepancies found upon the examination and verification of the taxpayer's income tax returns for the said years.

The Tax Court modified the deficiency assessments accordingly, found the total deficiency income taxes due from the taxpayer for the years under review to amount to P123,436.00 instead of P166,063.00 as originally assessed by the Commissioner.

Both parties have appealed from the respective adverse rulings against them in the Tax Court's decision.

ISSUE

Whether or not the government's right to collect the deficiency income taxes in question has already prescribed.

RULING:

It has not prescribed. On the second issue of prescription, the taxpayer's contention that the Commissioner's action to recover its tax liability should be deemed to have prescribed for failure on the part of the Commissioner to file a complaint for collection against it in an appropriate civil action, as contradistinguished from the answer filed by the Commissioner to its petition for review of the questioned assessments in the case *a quo* has long been rejected by this Court.

This Court has consistently held that ***"a judicial action for the collection of a tax is begun by the filing of a complaint with the proper court of first instance, or where the assessment is appealed to the Court of Tax Appeals, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for."*** This is but logical for where the taxpayer avails of the right to appeal the tax assessment to the Court of Tax Appeals, the said Court is vested with the authority to pronounce judgment as to the taxpayer's liability to the exclusion of any other court. In the present case, regardless of whether the assessments were made on February 24 and 27, 1956, as claimed by the Commissioner, or on December 27, 1955 as claimed by the taxpayer, the government's right to collect the taxes due has clearly not prescribed, as the taxpayer's appeal or petition for review was filed with the Tax Court on May 4, 1960, with the Commissioner filing on May 20, 1960 his Answer with a prayer for payment of the taxes due, long before the expiration of the five-year period to effect collection by judicial action counted from the date of assessment.;

SAMAR-I ELECTRIC COOPERATIVE (SIEC), *Petitioner*, -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent*

GR 193100, December 10, 2014, THIRD DIVISION, Villarama,J.

In the case at bar, it was petitioner's substantial underdeclaration of withholding taxes in the amount of P2,690,850.91 which constituted the "falsity" in the subject returns — giving respondent the benefit of the period under Section 222 of the NIRC of 1997 to assess the correct amount of tax "at any time within ten (10) years after the discovery of the falsity, fraud or omission."

FACTS:

Samar-I Electric Cooperative, Inc. (Petitioner) is an electric cooperative, with principal office at Barangay Carayman, Calbayog City.

On July 13, 1999 and April 17, 2000, petitioner filed its 1998 and 1999 income tax returns, respectively. Petitioner filed its 1997, 1998, and 1999 Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes on February 17, 1998, February 1, 1999, and February 4, 2000, in that order.

On November 13, 2000, respondent issued a duly signed Letter of Authority (LOA) covering the examination of petitioner's books of account and other accounting records for income and withholding taxes for the period 1997 to 1999. Petitioner cooperated in the audit and investigation conducted by the Special Investigation Division of the BIR by submitting the required documents on December 5, 2000. On October 19, 2001, respondent sent a Notice for Informal Conference which was received by petitioner in November 2001; indicating the allegedly income and withholding tax liabilities of petitioner for 1997 to 1999. Attached to the letter is a summary of the report, with an explanation of the findings of the investigators. In response, petitioner sent a letter dated November 26, 2001 to respondent maintaining its indifference to the latter's findings and requesting details of the assessment.On December 13, 2001, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations, good until March 29, 2002. Consequently, on September 15, 2002, petitioner received a demand letter and assessments notices (Final Assessment Notices) for the alleged 1997, 1998, and 1999 deficiency withholding tax in the amount of [P]3,760,225.69, as well as deficiency income tax covering the years 1998 to 1999 in the amount of [P]440,545.71, or in the aggregate amount of [P]4,200,771.40.

CTA ruled that SAMELCO-I is exempted in the payment of the Minimum Corporate Income Tax (MCIT); that due process was observed in the issuance of the assessments in accordance with Section 228 of the Tax Code; and that the 1997 and 1998 assessments on deficiency withholding tax on compensation have not prescribed.

Petitioner moved for reconsideration. In a Resolution dated July 28, 2010, the CTA EB denied the motion.

Petitioner contends that the subject 1997 and 1998 withholding tax assessments on compensation were issued beyond the prescriptive period of three years under Section 203 of the NIRC of 1997. Under this section, the government is allowed a period of only three years to assess the correct tax liability of a taxpayer, *viz.*:

SEC. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

Relying on Section 203, petitioner argues that the subject deficiency tax assessments issued by respondent on September 15, 2002 was issued beyond the three-year prescriptive period. Petitioner filed its *Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes* on the following dates: on February 17, 1998 for the taxable year 1997; and on February 1, 1999 for the year taxable 1998. Thus, if the period prescribed under Section 203 of the NIRC of 1997 is to be followed, the three-year prescriptive period to assess for the taxable years 1997 and 1998 should have ended on February 16, 2001 and January 31, 2002, respectively.

ISSUE:

Whether or not the 1997 and 1998 assessments on withholding tax on compensation were issued within the prescriptive period provided by law;

RULING:

YES. While petitioner is correct that Section 203 sets the three-year prescriptive period to assess, the following exceptions are provided under Section 222 of the NIRC of 1997, *viz.*:

SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

(a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided,*That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

In the case at bar, it was petitioner's substantial underdeclaration of withholding taxes in the amount of P2,690,850.91 which constituted the "falsity" in the subject returns — giving respondent the benefit of the period under Section 222 of the NIRC of 1997 to assess the correct amount of tax "at any time within ten (10) years after the discovery of the falsity, fraud or omission."

The case of *Aznar v. Court of Tax Appeals* discusses what acts or omissions may constitute falsity, *viz.*:

Petitioner argues that Sec. 332 of the NIRC does not apply because the taxpayer did not file false and fraudulent returns with intent to evade tax, while respondent Commissioner of Internal Revenue insists contrariwise, with respondent Court of Tax Appeals concluding that the very "substantial underdeclarations of income for six consecutive years eloquently demonstrate the falsity or fraudulence of the income tax returns with an intent to evade the payment of tax."

To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely "falsity," "fraud" and "omission." That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.

A careful examination of the evidence on record yields to no other conclusion but that petitioner failed to withhold taxes from its employees' 13th month pay and other benefits in excess of thirty thousand pesos (P30,000.00) amounting to P2,690,850.91 for the taxable years 1997 to 1999 — resulting to its filing of the subject false returns. Petitioner failed to refute this finding, both in fact and in law, before the courts *a quo.*

LASCONA LAND CO. INC. *Petitioner*, -versus- COMMISSION OF INTERNAL REVENUE, *Respondent*

G.R. No. 171251, March 5, 2012, Peralta, J.

In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.

FACTS:

On March 27, 1998, the Commissioner of Internal Revenue (CIR) issued Assessment Notice No. 0000047-93-407against Lascona Land Co., Inc. (Lascona) informing the latter of its alleged deficiency income tax for the year 1993 in the amount of P753,266.56.

Consequently, on April 20, 1998, Lascona filed a letter protest, but was denied by Norberto R. Odulio, Officer-in-Charge (OIC), Regional Director, Bureau of Internal Revenue, Revenue Region No. 8, Makati City, in his Letter[dated March 3, 1999. Said letter denied the protest for the reason that the case was not appealed to the CTA after the lapsed of 180 days from day of filing the said protests.

On April 12, 1999, Lascona appealed the decision before the CTA and was docketed as C.T.A. Case No. 5777. Lascona alleged that the Regional Director erred in ruling that the failure to appeal to the CTA within thirty (30) days from the lapse of the 180-day period rendered the assessment final and executory.

The CIR, however, maintained that Lascona's failure to timely file an appeal with the CTA after the lapse of the 180-day reglementary period provided under Section 228 of the National Internal Revenue Code (NIRC) resulted to the finality of the assessment. On January 4, 2000, the CTA, in its Decision, nullified the subject assessment.

On March 3, 2000, the CTA denied the CIR's motion for reconsideration for lack of merit. The CIR filed an appeal before the CA. The Court of Appeals granted the CIR's petition and set aside the Decision dated January 4, 2000 of the CTA and its Resolution dated March 3, 2000. It further declared that the subject Assessment Notice No. 0000047-93-407 dated March 27, 1998 as final, executory and demandable.

ISSUE:
Whether the subject assessment has become final, executory and demandable due to the failure of petitioner to file an appeal before the CTA within thirty (30) days from the lapse of the One Hundred Eighty (180)-day period pursuant to Section 228 of the NIRC.

RULING:
The Court decided in favor of Lascona. In *RCBC v. CIR*, the Court has held that in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.

Therefore, as in Section 228, when the law provided for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing of an appeal after the lapse of the 180-day prescribed period. Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. More so, because the law and jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment.

Accordingly, considering that Lascona opted to await the final decision of the Commissioner on the protested assessment, it then has the right to appeal such final decision to the Court by filing a petition for review within thirty days after receipt of a copy of such decision or ruling, even after the expiration of the 180-day period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. Thus, Lascona, when it filed an appeal on April 12, 1999 before the CTA, after its receipt of the Letter dated March 3, 1999 on March 12, 1999, the appeal was timely made as it was filed within 30 days after receipt of the copy of the decision.

Finally, the CIR should be reminded that taxpayers cannot be left in quandary by its inaction on the protested assessment. It is imperative that the taxpayers are informed of its action in order that the taxpayer should then at least be able to take recourse to the tax court at the opportune time.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- Isabela Cultural Corporation, *Respondent*
G.R. No. 135210, July 11, 2001, Panganiban, J.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise the decision shall become final, executory and demandable."

In this case, the said period of 180 days had already lapsed when Isabela filed its request for reconsideration on March 23, 1990, without any action on the part of the CIR.

FACTS:

In an investigation conducted in the 1986 books of account of Isabela, it preliminarily incurred a tax deficiency of P9,985,392.15, inclusive of increments. Upon protest by Isabela's counsel, the said preliminary assessment was reduced to the amount of P325,869.44.

On February 23, 1990, Isabela received from CIR an assessment letter demanding payment of the amounts of P333,196.86 and P4,897.79 as deficiency income tax and expanded withholding tax inclusive of surcharge and interest, respectively, for the taxable period from January 1, 1986 to December 31, 1986. Isabela then filed a letter to CIR asking for reconsideration on the subject assessment. It even attached certain documents supporting its protest.

On February 9, 1995, Isabela received from CIR a Final Notice Before Seizure. In said letter, CIR demanded payment of the subject assessment within ten (10) days from receipt thereof. Otherwise, failure on its part would constrain CIR to collect the subject assessment through summary remedies. Isabela considered said final notice of seizure as [petitioner's] final decision. Hence, the instant petition for review filed with this Court on March 9, 1995.

The CTA having rendered judgment dismissing the petition, Isabela filed the instant petition anchored on the argument that CIR's issuance of the Final Notice Before Seizure constitutes its decision on Isabela's request for reinvestigation, which Isabela may appeal to the CTA. CA reversed CTA's decision.

CIR asserts that the Final Notice was a mere reiteration of the delinquent taxpayer's obligation to pay the taxes due. It was supposedly a mere demand that should not have been mistaken for a decision on a protested assessment. Such decision, the commissioner contends, must unequivocably indicate that it is the resolution of the taxpayer's request for reconsideration and must likewise state the reason therefor.

On the part of Isabela, Final Notice Before Seizure should be considered as a denial of its request for reconsideration of the disputed assessment. The Notice should be deemed as petitioner's last act, since failure to comply with it would lead to the distraint and levy of respondent's properties, as indicated therein.

ISSUE:

Whether or not the Final Notice Before Seizure dated February 9, 1995 signed by Acting Chief Revenue Collection Officer Milagros Acevedo against ICC constitutes the final decision of the CIR appealable to the CTA.

RULING:

NO. In the normal course, the revenue district officer sends the taxpayer a notice of delinquent taxes, indicating the period covered, the amount due including interest, and the reason for the delinquency. If the taxpayer disagrees with or wishes to protest the assessment, it sends a letter to the BIR indicating its protest, stating the reasons therefore, and submitting such proof as may be necessary. That letter is considered as the taxpayer's request for reconsideration of the delinquent assessment. After the request is filed and received by the BIR, the assessment becomes a disputed assessment on which it must render a decision. That decision is appealable to the Court of Tax Appeals for review.

Prior to the decision on a disputed assessment, there may still be exchanges between the commissioner of internal revenue (CIR) and the taxpayer. The former may ask clarificatory questions or require the latter to submit additional evidence. However, the CIR's position regarding the disputed assessment must be indicated in the final decision. It is this decision that is properly appealable to the CTA for review.

In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a *final* notice prior to seizure of property. The letter itself clearly stated that respondent was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy.

Furthermore, Section 228 of the National Internal Revenue Code states that a delinquent taxpayer may nevertheless *directly appeal* a disputed assessment, if its request for reconsideration remains unacted upon 180 days after submission thereof.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise the decision shall become final, executory and demandable."

In this case, the said period of 180 days had already lapsed when Isabela filed its request for reconsideration on March 23, 1990, without any action on the part of the CIR.

In the instant case, the second notice received by Isabela verily indicated its nature – that it was *final*. Unequivocably, therefore, it was tantamount to a rejection of the request for reconsideration.

REPUBLIC, *Petitioner*, -versus- LIM TIAN TENG SONS & CO., INC., *Respondent*
G.R. No. L-21731, March 31, 1966, Bengzon J.P., J.

Nowhere in the Tax Code is the Collector of Internal Revenue required to rule first on a taxpayer's request for reinvestigation before he can go to court for the purpose of collecting the tax assessed. On the contrary, Section 305 of the same Code withholds from all courts, except the Court of Tax Appeals under Section 11 of Republic Act 1125, the authority to restrain the collection of any national internal-revenue tax, fee or charge, thereby indicating the legislative policy to allow the Collector of Internal Revenue much latitude in the speedy and prompt collection of taxes.

FACTS:

Lim Tian Teng Sons & Co., a domestic corporation with principal office in Cebu City, engaged in 1951 and 1952, among others, in the exportation of copra. The copra was weighted before shipment in the port of departure and upon arrival in the port of destination. The weight before shipment was called copra outturn. To allow for loss in weight due to shrinkage said exporter collected only 95% of the amount appearing in the letter of credit covering every copra outturn. The 5% balance remained outstanding until final liquidation and adjustment.

On March 30, 1953 Lim Tian Teng Sons & Co. filed its income tax return for 1952 based on accrued income and expenses. Its return showed a loss of P55, 109.98. It took up as part of the beginning inventory for 1952 the copra outturn shipped in 1951 in the sum of P95,500.00 already partially collected, as part of its outstanding stock as of December 31, 1951.

In the audit and examination of taxpayer's 1952 income tax return, the CIR eliminated the P95,500.00 outturn from the beginning inventory for 1952 and considered it as accrued income for 1951. This increased taxpayer's 1952 net taxable income. Accordingly, in a letter dated January 16, 1957 received by Lim Tian. On January 30, 1957, the CIR assessed a deficiency income tax of P10,074.00 and 50% surcharge them amounting to 5,037.00 and demanded payment thereof not later than February 15, 1954.

On January 31, 1957 Lim Tian requested for reinvestigation of its 1952 income tax liability. The CIR did not reply; instead he referred the case to the solicitor general for collection by judicial action.
On September 20, 1957 the solicitor general demanded from Lim Tian the payment of P15,111.50 within five days, stating that otherwise judicial action would be instituted without further notice.
Thereupon, the Deputy Collector of Internal Revenue, by his letter dated October 15, 1957 informed the taxpayer that its request for reinvestigation would be granted provided it executed within 10 days a waiver of the statute of limitations. As him Tian failed to file a waiver of the statute of limitations, the collector of I.R. instituted 8 months after, or on September 2, 1958 an action in the CFI for the collection of deficiency income tax. The CFI rendered decision ordering the defendant to pay the plaintiff as the assessment is valid.

Both parties appealed, raising only question of law.

ISSUE:

Whether or not the Commissioner is required to rule first on the taxpayer's request for reinvestigation before he can go to court for collecting the tax assessed.

RULING:

Nowhere in the Tax Code is the Collector of Internal Revenue required to rule first on a taxpayer's request for reinvestigation before he can go to court for the purpose of collecting the tax assessed. On the contrary, Section 305 of the same Code withholds from all courts, except the Court of Tax Appeals under Section 11 of Republic Act 1125, the authority to restrain the collection of any national internal-revenue tax, fee or charge, thereby indicating the legislative policy to allow the Collector of Internal Revenue much latitude in the speedy and prompt collection of taxes. The reason is obvious. It is upon taxation that the government chiefly relies to obtain the means the carry on its operations, and it is of the utmost importance that the modes adopted to enforce collection of taxes levied should be summary and interfered with as little as possible. No government could exist if all litigants were permitted to delay the collection of its taxes.

When the commissioner did not reply to the tax payer's request for reinvestigation/reconsideration and instead referred the case to the solicitor general for judicial collection, this was indicative of his decision against reinvestigation.

RIZAL COMMERCIAL BANKING CORPORATION, *Petitioner*, -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 168498, April 24, 2007, THIRD DIVISION, Ynares- Santiago, J.

The jurisdiction of the CTA has been expanded to include not only decisions or rulings but inaction as well of the CIR. The decisions, rulings, or inaction of the CIR are subject to appeal with the CIR provided such appeal is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction. Such period is not merely directory but mandatory. Tax Remedies – In case the Commissioner fails to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (options mutually exclusive) 1) file a petition for review with the CTA w/in 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision

FACTS:

In 2001, RCBC received a demand letter from the CIR for its tax liabilities -- Gross Onshore Tax and Documentary Stamp Tax – for its Special Savings Placements for the taxable year 1997. It then filed on July 20, 2001, a letter/request for reconsideration/reinvestigation pursuant to Section 228 of the NIRC. When this was not acted upon, RCBC filed on April 30, 2002 a petition for review with the CTA for the cancellation of the assessments. The issue of CTA's jurisdiction was decided upon in a Resolution dated Sep 10, 2003 but RCBC's petition for review was dismissed because it was filed beyond the 30-day period following the lapse of 180 days from petitioner's submission of documents in support of its protest. RCBC did not file a motion for reconsideration or appeal. The Resolution became final and executor on October 1, 2003 and Entry of Judgment was made on December 1, 2003.

ISSUE:

Whether or not petitioner was denied the opportunity to be heard

RULING:
NO. Petitioner's action for the cancellation of its assessments had already prescribed. As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. After availing the first option (filing a petition for review which was however filed out of time) petitioner cannot successfully resort to the second option (awaiting the final decision of the Commissioner and appealing the same to CTA) on the pretext that there is yet no final decision on the disputed assessment because of the Commissioner's inaction. RCBC's failure to comply with the 30-day statutory period would bar the appeal and deprive the CTA of its jurisdiction to entertain and determine the correctness of the assessment. RCBC is precluded from disputing the correctness of the assessment.

ANDREA R. VDA. DE AGUINALDO, *Petitioner,* -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent*
G.R. No. L-19927, February 26, 1965, EN BANC, Bengzon, J.

The authority of the Commissioner of Internal Revenue under Section 309 can only be exercised if a claim for credit is made in writing and filed with him within two years from the payment of the tax. The third paragraph of Section 309, clearly requires the filing by the taxpayer of a written claim for credit or refund within two years after payment of the tax, before the Commissioner of Internal Revenue can exercise his authority to grant the credit or refund.

FACTS:

In 1952, Leopoldo R. Aguinaldo and his wife received cash dividends in the sum of P10,000.00. The spouses did not declare said dividends in their joint income tax return for 1952, but declared P5,000.00 thereof in their income tax return for 1953.

One year after, the BIR re-examined the 1952 and 1953 their joint income tax returns and readjusted the returns, increasing the declared income for 1952 by P10,000.00 and eliminating from the 1953 income tax return P5,000.00. The result was a deficiency income tax of P3,840.00 for 1952 and an overpayment of tax in the amount of P1,600.00 for 1953. The BIR then recommended that the overpayment for 1953 in the amount of P1,600.00 be credited against the deficiency tax for 1952.

The Collector of Internal Revenue, however assessed against Leopoldo the amount of P3,840.00 as deficiency income tax for 1952, without crediting the overpayment in 1953. Aguinaldo's counsel protested against the assessment and requested that the overpayment for 1953 be credited. However, it was denied stating that the amount of P1,600.00 cannot be credited against the tax for 1952 since the claim for tax credit was filed beyond the two-year period provided for in Section 309 of the NIRC. Subsequently, Leopoldo R. Aguinaldo died, but petitioner Andrea Vda. de Aguinaldo, his surviving spouse and administratrix appealed to the CTA which was denied for lack of cause of action. Thus, the appeal to the SC.

ISSUE
Whether or not the period for filing the petition for tax credit has prescribed.

RULING

YES. The authority of the Commissioner of Internal Revenue under Section 309 can only be exercised if a claim for credit is made in writing and filed with him within two years from the payment of the tax. The third paragraph of Section 309, clearly requires the filing by the taxpayer of a written claim for credit or refund within two years after payment of the tax, before the Commissioner of Internal Revenue can exercise his authority to grant the credit or refund. Such requirement is therefore a condition precedent and non-compliance precludes the Commissioner of Internal Revenue from exercising the authority given. As noted, the Aguinaldos paid the income tax for 1953 on 1952. From both dates to January 13, 1958, the claim for tax credit was filed beyond the two years required period. Evidently, petitioner's claim for tax credit has prescribed.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus- TMX SALES, INC., *Respondent*

G.R. No. 83736, January 15, 1992, Gutierrez, J.

The most reasonable and logical application of the law would be to compute the 2-year prescriptive period at the time of the filing of the Final Adjustment Return or the Annual Income Tax Return, where it can finally be ascertained if the tax payer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax. Since TMX filed the suit on March 14, 1984, it is within the 2-year prescriptive period starting from April 15, 1982 when they filed their Annual Income Tax Return.

FACTS:

TMX Sales Inc. filed its quarterly income tax for the 1st quarter of 1981. It declared P571,174.31 and paying an income tax of P247,019 on May 13, 1981. However, during the subsequent quarters, TMX suffered losses. On April 15, 1982, when TMX filed its Annual Income Tax Return for the year ended in December 31, 1981, it declared a net loss of P6,156,525. On July 9, 1982, TMX filed with the Appellate Division of BIR for refund in the amount of P247,010 representing overpaid income tax. His claim was not acted upon by the Commissioner of Internal Revenue. On May 14, 1984, TMX Sales filed a petition for review before the Court of Tax Appeals against CIR, praying that the CIR be ordered to refund to TMX the amount of P247,010. The CIR averred that TMX is already barred for claiming the refund since more than 2 years has elapsed between the payment (May 15, 1981) and the filing of the claim in court (March 14, 1984). The Court of Tax Appeals rendered a decision granting the petition of TMX Sales and ordered CIR to refund the amount mentioned. Hence, this appeal of CIR.

ISSUE:

Whether or not TMX Sales Inc. is entitled to a refund considering that two years has already elapsed since the payment of the tax

HELD:

YES. Sec. 292, par. 2 of the National Internal Revenue Code stated that "in any case, no such suit or proceeding shall be begun after the expiration of two years from the date of the payment of the tax or penalty regardless of any supervening cause that may arise after payment." This should be interpreted in relation to the other provisions of the Tax Code. The most reasonable and logical application of the law would be to compute the 2-year prescriptive period at the time of the filing of the Final Adjustment Return or the Annual Income Tax Return, where it can finally be ascertained if the tax payer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax. Since TMX filed the suit on March 14, 1984, it is within the 2-year prescriptive period starting from April 15, 1982 when they filed their Annual Income Tax Return. The intention of the legislature must be ascertained from the whole text of the law and every part of the act is taken into view.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- THE COURT OF APPEALS, COURT OF TAX APPEALS and A. SORIANO CORP., *Respondents.*
G.R. No. 108576, January 20, 1999, FIRST DIVISION, Martinez, J.

FACTS:

Don Andres Soriano (American), founder of A. Soriano Corp. (ASC) had a total shareholdings of 185,154 shares. Broken down, the shares comprise of 50,495 shares which were of original issue when the corporation was founded and 134,659 shares as stock dividend declarations. So in 1964 when Soriano died, half of the shares he held went to his wife as her conjugal share (wife's "legitime") and the other half (92,577 shares, which is further broken down to 25,247.5 original issue shares and 82,752.5 stock dividend shares) went to the estate. For sometime after his death, his estate still continued to receive stock dividends from ASC until it grew to at least 108,000 shares.

In 1968, ASC through its Board issued a resolution for the redemption of shares from Soriano's estate purportedly for the planned "Filipinization" of ASC. Eventually, 108,000 shares were redeemed from the Soriano Estate. In 1973, a tax audit was conducted. Eventually, the Commissioner of Internal Revenue (CIR) issued an assessment against ASC for deficiency withholding tax-at-source. The CIR explained that when the redemption was made, the estate profited (because ASC would have to pay the estate to redeem), and so ASC would have withheld tax payments from the Soriano Estate yet it remitted no such withheld tax to the government.

ASC averred that it is not duty bound to withhold tax from the estate because it redeemed the said shares for purposes of "Filipinization" of ASC and also to reduce its remittance abroad.

ISSUE:
Whether or not ASC's arguments are tenable.

RULING:
NO. The reason behind the redemption is not material. The proceeds from a redemption is taxable and ASC is duty bound to withhold the tax at source. The Soriano Estate definitely profited from the redemption and such profit is taxable, and again, ASC had the duty to withhold the tax. There was a total of 108,000 shares redeemed from the estate. 25,247.5 of that was original issue from the capital of ASC. The rest (82,752.5) of the shares are deemed to have been from stock dividend shares. Sale of stock dividends is taxable. It is also to be noted that in the absence of evidence to the contrary, the Tax Code presumes that every distribution of corporate property, in whole or in part, is made out of corporate profits such as stock dividends.
It cannot be argued that all the 108,000 shares were distributed from the capital of ASC and that the latter is merely redeeming them as such. The capital cannot be distributed in the form of redemption of stock dividends without violating the trust fund doctrine — wherein the capital stock, property

and other assets of the corporation are regarded as equity in trust for the payment of the corporate creditors. Once capital, it is always capital. That doctrine was intended for the protection of corporate creditors.

BANK OF THE PHILIPPINE ISLANDS, *Petitioner,* -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondents.*
G.R. No. 144653, August 28, 2001, MENDOZA, *J.*:

FACTS:

Prior to its merger with petitioner Bank of the Philippine Islands (BPI) on July 1985, The Family Bank and Trust Co. (FBTC) earned income consisting of rentals from its leased properties and interest from its treasury notes for the period January 1 to June 30, 1985. As required by the Expanded Withholding Tax Regulation, the lessees of FBTC withheld 5 percent of the rental income, in the amount of P118,609.17, while the Central Bank, from which the treasury notes were purchased by FBTC, withheld P55,456.60 from the interest earned thereon. Creditable withholding taxes in the total amount of P174,065.77 were remitted to respondent Commissioner of Internal Revenue.

FBTC, however, suffered a new loss of about P64,000,000.00 during the period in question. It also had an excess credit of P2,146,072.57 from the previous year. Thus, upon its dissolution in 1985, FBTC had a refundable of P2,320,138.34, representing that year's tax credit of P174,065.77 and the previous year's excess credit of P2,146,072.57.

As FBTC's successor-in-interest, petitioner BPI claimed this amount as tax refund, but respondent Commissioner of Internal Revenue refunded only the amount of P2,146,072.57, leaving a balance of P174,065.77. Accordingly, petitioner filed a petition for review in the Court of Tax Appeals on December 29, 1987, seeking the refund of the aforesaid amount. However, in its decision rendered on July 19, 1994, the Court of Tax Appeals dismissed petitioner's petition for review and denied its claim for refund on the ground that the claim had already prescribed. In its resolution, dated August 4, 1995, the Court of Tax Appeals denied petitioner's motion for reconsideration.

Petitioner appealed to the Court of Appeals, but, in its decision rendered on April 14, 2000, the appeals court affirmed the decision of the CTA. The appeals court subsequently denied petitioner's motion for reconsideration. Hence this petition.

ISSUE:
Whether petitioner's claim is barred by prescription.

RULING:
After due consideration of the parties' arguments, we are of the opinion that, in case of the dissolution of a corporation, the period of prescription should be reckoned from the date of filing of the return required by §78 of the Tax Code. Accordingly, we hold that petitioner's claim for refund is barred by prescription.
This Court finds that the petition for review is filed out of time. FBTC, after the end of its corporate life on June 30, 1985, should have filed its income tax return within thirty days after the cessation of its business or thirty days after the approval of the Articles of Merger. This is bolstered by Sec. 78 of the tax Code and under Sec. 244 of Revenue Regulation No. 2…

As the FBTC did not file its quarterly income tax returns for the year 1985, there was no need for it to file a Final adjustment Return because there was nothing for it to adjust or to audit. After it ceased operations on June 30, 1985, its taxable year was shortened to six months, from January 1, 1985 to June 30, 1985 The situation of FBTC is precisely what was contemplated under §78 of the Tax Code. It thus became necessary for FBTC to file its income tax return within 30 days after approval by the SEC of its plan or resolution of dissolution. Indeed, it would be absurd for FBTC to wait until the fifteenth day of April, or almost 10 months after it ceased its operations, before filing its income tax return.

Thus, §46(a) of the Tax Code applies only to instances in which the corporation remains subsisting and its business operations are continuing. In instances in which the corporation is contemplating dissolution, §78 of the Tax Code applies. It is a rule of statutory construction that "[w]here there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.

Petitioner argues that to hold, as the Court of Tax Appeals and the Court of Appeals do, that §78 applies in case a corporation contemplates dissolution would lead to absurd results. It contends that it is not feasible for the certified public accountants to complete their report and audited financial statements, which are required to be submitted together with the plan of dissolution to the SEC, within the period contemplated by §78. It maintains that, in turn, the SEC would not have sufficient time to process the papers considering that §78 also requires the submission of a tax clearance certificate before the SEC can approve the plan of dissolution.

Considering that §78 of the Tax Code, in relation to §244 of Revenue Regulation No. 2 applies to FBTC, the two-year prescriptive period should be counted from July 30, 1985, i.e., 30 days after the approval by the SEC of its plan for dissolution. In accordance with §292 of the Tax Code, July 30, 1985 should be considered the date of payment by FBTC of the taxes withheld on the earned income. Consequently, the two-year period of prescription ended on July 30, 1987. As petitioner's claim for tax refund before the Court of Tax Appeals was filed only on December 29, 1987, it is clear that the claim is barred by prescription.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- THE PHILIPPINE AMERICAN LIFE INSURANCE CO., THE COURT OF TAX APPEALS and THE COURT OF APPEALS*, Respondents.*

G.R. No. 105208, May 29, 1995, THIRD DIVISION, Romero, J.

Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished.

FACTS:

On May 30, 1983, private respondent Philamlife paid to the Bureau of Internal Revenue (BIR) its first quarterly corporate income tax for Calendar Year (CY) 1983. On August 29, 1983, it paid for the Second Quarter of 1983. However, for its Fourth and final quarter, private respondent suffered a loss and thereby had no income tax liability.

On September 26, 1984, private respondent filed a claim for its 1982 income tax refund. Petitioner states that the phrase "regardless of supervening cause that may arise after payment" means that the reckoning period of prescription under Section 292 (now Section 230) is from the date of payment of tax regardless of financial loss (the "supervening cause"). Thus, the claim for refund of the amounts of P3,246,141.00 and P396,874.00 paid on May 30, 1983 and August 29, 1983, respectively, has prescribed.

ISSUES:

Whether or not the two-year prescriptive period has expired.

RULING:

Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986. The record shows that the claim for refund was filed on December 10, 1985 and the petition for review was brought before the CTA on January 2, 1986. Both dates are within the two-year reglementary period. Private respondent being a corporation, Section 292 (now Section 230) cannot serve as the sole basis for determining the two-year prescriptive period for refunds. As we have earlier said in the TMX Sales case, Sections 68, 69, and 70 on Quarterly Corporate Income Tax Payment and Section 321 should... be considered in conjunction with it.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus- PHILIPPINE NATIONAL BANK, *Respondent*

G.R. No. 161997, October 25, 2005, Garcia, J.

The instant case ought to be distinguished from a situation where, owing to net losses suffered during a taxable year, a corporation was also unable to apply to its income tax liability taxes which the law requires to be withheld and remitted. In the latter instance, such creditable withholding taxes, albeit also legally collected, are in the nature of "erroneously collected taxes" which entitled the corporate taxpayer to a refund under Section 230 of the Tax Code.

FACTS:

PNB requested the BIR to issue a tax credit certificate (TCC) on the remaining balance of the advance income tax payment it made in 1991. It should be noted that the request was made considering that, while PNB carried over such credit balance to the succeeding taxable years, i. e., 1992 to 1996, its negative tax position during said tax period prevented it from actually applying the credit balance of P73,298,892.60.

Petitioner first scores the CA for concluding that "the amount of advance income tax payment voluntarily remitted to the BIR by the respondent was not a consequence of a prior tax assessment or computation by the taxpayer based on business income" and, therefore, it cannot " be treated as similar to those national revenue taxes erroneously, illegally or wrongfully paid as to be automatically covered by the two (2) year limitation under section 230 of the NIRC for the right to its recovery." Petitioner invokes the all too-familiar principle that the collection of taxes, being the lifeblood of the nation.

ISSUE:
Whether PNB is entitled to a tax refund

RULING:
YES. It is fairly correct to say that the claim for tax credit was specifically pursued to enable the respondent bank to utilize the same for future tax liabilities.

In the strict legal viewpoint, therefore, PNB's claim for tax credit did not proceed from, or is a consequence of overpayment of tax erroneously or illegally collected. It is beyond cavil that respondent PNB issued to the BIR the check for P180 Million in the concept of tax payment in advance, thus eschewing the notion that there was error or illegality in the payment. What in effect transpired when PNB wrote its July 28, 1997 letter was that respondent sought the application of amounts advanced to the BIR to future annual income tax liabilities, in view of its inability to carry-over the remaining amount of such advance payment to the four (4) succeeding taxable years, not having incurred income tax liability during that period.

The instant case ought to be distinguished from a situation where, owing to net losses suffered during a taxable year, a corporation was also unable to apply to its income tax liability taxes which the law requires to be withheld and remitted. In the latter instance, such creditable withholding taxes, albeit also legally collected, are in the nature of "erroneously collected taxes" which entitled the corporate taxpayer to a refund under Section 230 of the Tax Code.

Analyzing the underlying reason behind the advance payment made by respondent PNB in 1991, the CA held that it would be improper to treat the same as erroneous, wrongful or illegal payment of tax within the meaning of Section 230 of the Tax Code. So that even if the respondent's inability to carry-over the remaining amount of its advance payment to taxable years 1992 to 1996 resulted in excess credit, it would be inequitable to impose the two (2)-year prescriptive period in Section 230 as to bar PNB's claim for tax credit to utilize the same for future tax liabilities.

It bears stressing that respondent PNB remitted the P180 Million in question as a measure of goodwill and patriotism, a gesture noblesse oblige, so to speak, to help the cash-strapped national government. It would thus indeed, be unfair, as the CA correctly observed, to leave respondent PNB to suffer losing millions of pesos advanced by it for future tax liabilities. The cut becomes all the more painful when it is considered that PNB's failure to apply the balance of such advance income tax payment from 1992 to 1996 was, to repeat, due to business downturn experienced by the bank so that it incurred no tax liability for the period.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus PRIMETOWN PROPERTY GROUP, INC., *Respondent*

G.R. No. 162155, August 28, 2007, Corona, J.

There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, *Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. Lex posteriori derogat priori.*

We therefore hold that respondent's petition (filed on April 14, 2000) was filed on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period.

FACTS:

Gilbert Yap, Vice Chair of Primetown applied on March 11, 1999 for a refund or credit of income tax which Primetown paid in 1997. He claimed that they are entitled for a refund because they suffered losses that year due to the increase of cost of labor and materials, etc. However, despite the losses, they still paid their quarterly income tax and remitted creditable withholding tax from real estate sales to BIR. Hence, they were claiming for a refund. On May 13, 1999, revenue officer Elizabeth Santos required Primetown to submit additional documents to which Primetown complied with.

However, its claim was not acted upon which prompted it to file a petition for review in CTA on April 14, 2000. CTA dismissed the petition as it was filed beyonf the 2-year prescriptive period for filing a judicial claim for tax refund according to Sec 229 of NIRC. According to CTA, the two-year period is equivalent to 730 days pursuant to Art 13 of NCC. Since Primetown filed its final adjustment return on April 14, 1998 and that year 2000 was a leap year, the petition was filed 731 days after Primetown filed its final adjusted return. Hence, beyond the reglementary period. Primetown appealed to CA. CA reversed the decision of CTA. Hence, this appeal.

ISSUES:

(1) How should the two-year prescriptive period be computed?
(2) Whether or not the claim for tax refund was filed within the two-year period?

RULING:

Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter—the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.

There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. Lex posteriori derogat priori.

We therefore hold that respondent's petition (filed on April 14, 2000) was filed on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *-versus-* GOODYEAR PHILIPPINES, INC., *Respondent*
G.R. No. 216130, August 03, 2016, FIRST DIVISION, Perlas-Bernabe, J.

In the case at bar, records show that both the administrative and judicial claims for refund of respondent for its erroneous withholding and remittance of FWT were indubitably filed within the two-year prescriptive period. Notably, Section 229 of the Tax Code, as worded, only required that an administrative claim should first be filed. It bears stressing that respondent could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had respondent awaited the action of petitioner knowing fully well that the prescriptive period was about to lapse, it would have resultantly forfeited its right to seek a judicial review of its claim, thereby suffering irreparable damage.

FACTS:

Respondent is a domestic corporation duly organized and existing under the laws of the Philippines, and registered with the Bureau of Internal Revenue (BIR) as a large taxpayer with Taxpayer Identification Number 000-409-561-000.6 On August 19, 2003, the authorized capital stock of respondent was increased from P400,000,000.00 divided into 4,000,000 shares with a par value of P100.00 each, to P1,731,863,000.00 divided into 4,000,000 common shares and 13,318,630 preferred shares with a par value of P100.00 each. Consequently, all the preferred shares were solely and exclusively subscribed by Goodyear Tire and Rubber Company (GTRC), which was a foreign company organized and existing under the laws of the State of Ohio, United States of America (US) and is unregistered in the Philippines.7chanrobleslaw

On May 30, 2008, the Board of Directors of respondent authorized the redemption of GTRC's 3,729,216 preferred shares on October 15, 2008 at the redemption price of P470,653,914.00, broken down as follows: P372,921,600.00 representing the aggregate par value and P97,732,314.00, representing accrued and unpaid dividends.8chanrobleslaw

On October 15, 2008, respondent filed an application for relief from double taxation before the International Tax Affairs Division of the BIR to confirm that the redemption was not subject to Philippine income tax, pursuant to the Republic of the Philippines (RP) - US Tax Treaty.9 This notwithstanding, respondent still took the conservative approach, and thus, withheld and remitted the sum of P14,659,847.10 to the BIR on November 3, 2008, representing fifteen percent (15%) FWT, computed based on the difference of the redemption price and aggregate par value of the shares.10chanrobleslaw

On October 21, 2010, respondent filed an administrative claim for refund or issuance of TCC, representing 15% FWT in the sum of P14,659,847.10 before the BIR. Thereafter, or on November 3, 2010, it filed a judicial claim, by way of petition for review, before the CTA, docketed as C.T.A. Case No. 8188.11chanrobleslaw

For her part, petitioner maintained that respondent's claim must be denied, considering that: (a) it failed to exhaust administrative remedies by prematurely filing its petition before the CTA; and (b) it failed to submit complete supporting documents before the BIR.

ISSUE:
Whether or not the judicial claim of respondent should be dismissed for non-exhaustion of administrative remedies.

RULING:

NO. Section 229 of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue (CIR), viz.:
SEC. 229. Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment x x x. (Emphases and underscoring supplied)

Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code – [then Section 306 of the old Tax Code] – however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed. In CBK Power Company, Ltd. v. CIR,36 the Court enunciated:

In the foregoing instances, attention must be drawn to the Court's ruling in P.J. Kiener Co., Ltd. v. David (Kiener), wherein it was held that in no wise does the law, i.e., Section 306 of the old Tax Code (now, Section 229 of the NIRC), imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action. In Kiener, the Court went on to say that the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow x x x.37 (Emphases and underscoring supplied)

In the case at bar, records show that both the administrative and judicial claims for refund of respondent for its erroneous withholding and remittance of FWT were indubitably filed within the two-year prescriptive period. Notably, Section 229 of the Tax Code, as worded, only required that an administrative claim should first be filed. It bears stressing that respondent could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had respondent awaited the action of petitioner knowing fully well that the prescriptive period was about to lapse, it would have resultantly forfeited its right to seek a judicial review of its claim, thereby suffering irreparable damage.

Thus, in view of the aforesaid circumstances, respondent correctly and timely sought judicial redress, notwithstanding that its administrative and judicial claims were filed only 13 days apart.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, -versus- PROCTER & GAMBLE PHILIPPINE MANUFACTURING CORPORATION, *Respondent*

G.R. No. 66838. December 2, 1991, Feliciano, J.

Sec 24 (b) (1) of the NIRC states that an ordinary 35% tax rate will be applied to dividend remittances to non-resident corporate stockholders of a Philippine corporation. This rate goes down to 15% ONLY IF he country of domicile of the foreign stockholder corporation "shall allow" such foreign corporation a tax credit for "taxes deemed paid in the Philippines," applicable against the tax payable to the domiciliary country by the foreign stockholder corporation

FACTS:

Procter and Gamble Philippines declared dividends payable to its parent company and sole stockholder, P&G USA. Such dividends amounted to Php 24.1M. P&G Phil paid a 35% dividend withholding tax to the BIR which amounted to Php 8.3M It subsequently filed a claim with the Commissioner of Internal Revenue for a refund or tax credit, claiming that pursuant to Section 24(b)(1) of the National Internal Revenue Code, as amended by Presidential Decree No. 369, the applicable rate of withholding tax on the dividends remitted was only 15%**.**

ISSUE:
Whether or not P&G Philippines is entitled to the refund or tax credit.

RULING:
YES. P&G Philippines is entitled.

Sec 24 (b) (1) of the NIRC states that an ordinary 35% tax rate will be applied to dividend remittances to non-resident corporate stockholders of a Philippine corporation. This rate goes down to 15% ONLY IF he country of domicile of the foreign stockholder corporation "shall allow" such foreign corporation a tax credit for "taxes deemed paid in the Philippines," applicable against the tax payable to the domiciliary country by the foreign stockholder corporation. However, such tax credit for "taxes deemed paid in the Philippines" MUST, as a minimum, reach an amount equivalent to 20 percentage points which represents the difference between the regular 35% dividend tax rate and the reduced 15% tax rate. Thus, the test is if USA "shall allow" P&G USA a tax credit for "taxes deemed paid in the Philippines" applicable against the US taxes of P&G USA, and such tax credit must reach at least 20 percentage points. Requirements were met.

SILKAIR (SINGAPORE) PTE, LTD., Petitioner, -versus- COMMISSIONER OF INTERNAL REVENUE, Respondent.
G.R. No. 173594, February 6, 2008, SECOND DIVISION, Carpio-Morales, J.

The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another. Section 130 (A) (2) of the NIRC provides that "unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production."

FACTS:

Petitioner, Silkair (Singapore) Pte. Ltd. (Silkair), a corporation organized under the laws of Singapore which has a Philippine representative office, is an online international air carrier operating the Singapore-Cebu-Davao-Singapore, Singapore-Davao-Cebu-Singapore, and Singapore-Cebu-Singapore routes.

On December 19, 2001, Silkair filed with the Bureau of Internal Revenue (BIR) a written application for the refund of ₱4,567,450.79 excise taxes it claimed to have paid on its purchases of jet fuel from Petron Corporation from January to June 2000.

CTA denied Silkair's petition on the ground that as the excise tax was imposed on Petron Corporation as the manufacturer of petroleum products, any claim for refund should be filed by the latter; and where the burden of tax is shifted to the purchaser, the amount passed on to it is no longer a tax but becomes an added cost of the goods purchased.

The liability for excise tax on petroleum products that are being removed from its refinery is imposed on the manufacturer/producer *(Section 130 of the NIRC of 1997.*

The right to claim for the refund of excise taxes paid on petroleum products lies with Petron Corporation who paid and remitted the excise tax to the BIR. Respondent, on the other hand, may only claim from Petron Corporation the reimbursement of the tax burden shifted to the former by the latter. The excise tax partaking the nature of an indirect tax, is clearly the liability of the manufacturer or seller who has the option whether or not to shift the burden of the tax to the purchaser. Where the burden of the tax is shifted to the [purchaser], the amount passed on to it is no longer a tax but becomes an added cost on the goods purchased which constitutes a part of the purchase price.

ISSUE:

Whether or not the petitioner is the proper party to claim for refund or tax credit.

RULING:

NO. The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another. Section 130 (A) (2) of the NIRC provides that "unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production." Thus, Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.

Silkair bases its claim for refund or tax credit on Section 135 (b) of the NIRC of 1997 which reads

Sec. 135. Petroleum Products sold to International Carriers and Exempt Entities of Agencies. – Petroleum products sold to the following are exempt from excise tax:

(b) Exempt entities or agencies covered by tax treaties, conventions, and other international agreements for their use and consumption: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies;

and Article 4(2) of the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore (Air Transport Agreement between RP and Singapore)

The exemption granted under Section 135 (b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore cannot, without a clear showing of legislative intent, be construed as including indirect taxes. Statutes granting tax exemptions must be construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, and if an exemption is found to exist, it must not be enlarged by construction.

RHOMBUS ENERGY, INC. *Petitioner*, -versus- Commissioner of Internal Revenue, *Respondent*
G.R. No. 206362, 1 August 2018, THIRD DIVISION, Bersamin

The irrevocability rule is enunciated m Section 76 of the National Internal Revenue Code (NIRC), viz.: Once the option to carry over and apply the excess quarterly income tax against income tax due for the taxable years of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

FACTS:

On April 17, 2006, Rhombus filed its Annual Income Tax Return ("ITR") for taxable year 200 In said Annual ITR for taxable year 2005, Rhombus indicated that its excess creditable withholding tax ("CWT") for the year 2005 was "To be refunded".

On May 29, 2006, Rhombus filed its Quarterly Income Tax Return for the first quarter of taxable year 2006 showing prior year's excess credits of P1,500.653.00.

On August 25, 2006, Rhombus filed its Quarterly Income Tax Return for the second quarter of taxable year 2006 showing prior year's excess credits of P1,500,653.00.

On November 27, 2006, Rhombus filed its Quarterly Income Tax Return for the third quarter of taxable year 2006 showing prior year's excess credits of P1,500,653.00.

On December 29, 2006, Rhombus filed with the Revenue Region No. 8 an administrative claim for refund of its alleged excess/unutilized CWT for the year 2005 in the amount of P1,500,653.00.

On April 2, 2007, Rhombus filed its Annual Income Tax Return for taxable year 2006 showing prior year's excess credits of P0.00.

On December 7, 2007, pending CIR's action on Rhombus's claim for refund or issuance of a tax credit certificate of its excess/unutilized CWT for the year 2005 and before the lapse of the period for filing an appeal, Rhombus filed a Petition for Review to the CTA, whose First Division granted such petition.

ISSUES:
Whether or not Rhombus has proved its entitlement to the refund

RULING:
YES. The CTA *En Banc* thereby misappreciated the fact that Rhombus had already exercised the option for its unutilized creditable withholding tax for the year 2005 *to be refunded* when it filed its annual ITR for the taxable year ending December 31, 2005. The irrevocability rule took effect when

the option was exercised. In the case of Rhombus, therefore, its marking of the box "To be refunded" in its 2005 annual ITR constituted its exercise of the option, and from then onwards Rhombus became precluded from carrying-over the excess creditable withholding tax. The fact that the prior year's excess credits were reported in its 2006 quarterly ITRs did not reverse the option to be refunded exercised in its 2005 annual ITR. As such, the CTA *En Banc* erred in applying the irrevocability rule against Rhombus.

UNIVERSITY PHYSICIANS SERVICES INC. - MANAGEMENT, INC., *Petitioner* –versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 205955, March 7, 2018

When a corporation overpays its income tax liability as adjusted at the close of the taxable year, it has two options: (1) to be refunded or issued a tax credit certificate, or (2) to carry over such overpayment to the succeeding taxable quarters to be applied as tax credit against income tax due. Once the carry-over option is taken, it becomes irrevocable such that the taxpayer cannot later on change its mind in order to claim a cash refund or the issuance of a tax credit certificate of the very same amount of overpayment or excess m. come tax credit.

FACTS:
UPSI-MI had, as of 31 December 2005, an outstanding amount of ₱2,331, 102.00 in excess and unutilized creditable withholding taxes.

For the subsequent taxable year ending 31 December 2006, the total sum of creditable taxes withheld on the management fees of UPSI-MI was ₱2,927,834.00. Per its 2006 Annual Income Tax Return (ITR), UPSI-MI's income tax due amounted to ₱99,105.00. UPSI-MI applied its "Prior Year's Excess Credits" of ₱2,331, 102.00 as tax credit against such 2006 Income Tax due, leaving a balance of ₱2,231,507.00 of still unutilized excess creditable tax. Meanwhile, the creditable taxes withheld for the year 2006 (₱2,927,834.00) remained intact and unutilized. In said 2006 Annual ITR, UPSI-MI chose the option "To be issued a tax credit certificate" with respect to the amount ₱2,927,834.00, representing unutilized excess creditable taxes for the taxable year ending 31 December 2006.

In the following year, UPSI-MI changed its taxable period from calendar year to fiscal year ending on the last day of March. Thus, it filed on 14 November 2007 an Annual ITR covering the short period from January 1 to March 31 of 2007. In the original 2007 Annual ITR, UPSI-MI opted to carry over as "Prior Year's Excess Credits" the total amount of ₱5,159,341.00 which included the 2006 unutilized creditable withholding tax of ₱2,927,834.00. UPSI-MI amended the return by excluding the sum of ₱2,927,834.00 under the line "Prior Year's Excess Credits" which amount is the subject of the refund claim.

ISSUE:
May UPSI-MI still be entitled to the refund of its 2006 excess tax credits in the amount of ₱2,927,834.00 when it thereafter filed its income tax return (for the short period ending 31 March 2007) indicating the option of carry-over.

RULING:

Under Philippine tax laws, there are two options available to a corporation whenever it overpays its income tax for the taxable year: (1) to carry over and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as **automatic tax credit**) until fully utilized (meaning, there is **no prescriptive period**); and (2) to apply for a **cash refund or issuance of a tax credit certificate** within the prescribed period. Such overpayment of income tax is usually occasioned by the over-withholding of taxes on the income payments to the corporate taxpayer.

The law does not prevent a taxpayer who originally opted for a refund or tax credit certificate from shifting to the carry-over of the excess creditable taxes to the taxable quarters of the succeeding taxable years. However, in case the taxpayer decides to shift its option to carryover, it may **no longer revert to its original choice** due to the irrevocability rule. As Section 76 unequivocally provides, once the option to carry over has been made, it shall be irrevocable. Furthermore, the provision seems to suggest that there are no qualifications or conditions attached to the rule on irrevocability.

Law and jurisprudence unequivocally support the view that only the option of carry-over is irrevocable.

Applying the foregoing precepts to the given case, UPSI-MI is barred from recovering its excess creditable tax through refund or TCC. It is undisputed that despite its initial option to refund its 2006 excess creditable tax, UPSI-MI subsequently indicated in its 2007 short-period FAR that it carried over the 2006 excess creditable tax and applied the same against its 2007 income tax due. The CTA was correct in considering UPSI-MI to have constructively chosen the option of carry-over, for which reason, the irrevocability rule forbade it to revert to its initial choice. It does not matter that UPSI-Ml had not actually benefited from the carry-over on the ground that it did not have a tax due in its 2007 short period. Neither may it insist that the insertion of the carry-over in the 2007 FAR was by mere mistake or inadvertence. As we previously laid down, the irrevocability rule admits of no qualifications or conditions.

In sum, the UPSI-MI is clearly mistaken in its view that the irrevocability rule also applies to the option of refund or tax credit certificate. In view of the court's finding that it constructively chose the option of carry-over, it is already barred from recovering its 2006 excess creditable tax through refund or TCC even if it was its initial choice.

BELLE CORPORATION, *Petitioner*, -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent*

G.R. No. 181298, March 2, 2011, FIRST DIVISION, Del Castillo, J.

Section 76 of NIRC provides that a taxpayer has the option to file a claim for refund or to carry-over its excess income tax payments. The option to carry-over is irrevocable. Thus, once a taxpayer opted to carry-over its excess income tax payments, it can no longer seek refund of the unutilized excess income tax payments. The taxpayer, however, may apply the unutilized excess income tax payments as a tax credit to the succeeding taxable years until such has been fully applied.

FACTS:

Belle Corp. filed with BIR its ITR for the first quarter of 1997. Subsequently, it filed its second quarter ITR, declaring overpayment of taxes. In view thereof, no taxes were paid for the second and third quarters. Instead of claiming tax refund, Belle apply it as tax credit to the succeeding taxable year, and marked the tax credit option in its ITR. However, in 2000, Belle filed with BIR an administrative claim for refund of unutilized excess income tax payments for 1997. Notwithstanding the administrative claim for refund, Belle carried over the excess amount to taxable year 1999. Due to inaction of CIR, Belle filed petition for review with CTA, which denied the same.

ISSUE:
Whether or not Belle is entitled to refund.

RULING:

NO. Section 76 of NIRC provides that a taxpayer has the option to file a claim for refund or to carry-over its excess income tax payments. The option to carry-over is irrevocable. Thus, once a taxpayer opted to carry-over its excess income tax payments, it can no longer seek refund of the unutilized excess income tax payments. The taxpayer, however, may apply the unutilized excess income tax payments as a tax credit to the succeeding taxable years until such has been fully applied.

Belle Corp. has earlier opted to carry over its 1997 excess income tax payments by marking the tax credit option box in its 1997 income tax return. However, while Belle may no longer file a claim for refund, it properly carried over its 1997 excess income tax payments by applying portions thereof to its 1998 and 1999 Minimum Corporate Income Tax. Thus, as of the taxable year 1999, Belle still has unutilized excess income tax payments of ₱92,261,444 which may be carried over to the succeeding taxable years until fully utilized.

COMMISSIONER OF INTERNAL REVENUE, *Petitioners*, *-versus-* PERF REALTY CORPORATION, *Respondent.*
G.R. NO. 163345, July 4, 2008, THIRD DIVISION, Reyes, J.

PERF attached its 1998 ITR to its motion for reconsideration. The 1998 ITR is a part of the records of the case and clearly showed that income taxes in the amount of P1,280,504.00 were not claimed as tax credit in 1998. Further, the Supreme Court sustain the rule of the CA that there is no need to rule on the issue of the admissibility of the 1998 ITR since the CTA ruled that PERF already complied with the requisites of applying for a tax refund. The verification process is not incumbent on PERF; it is the duty of the CIR to verify whether or not PERF had carried over the 1997 excess income taxes.

FACTS:

Petitioner Commissioner is the head of the Bureau of Internal Revenue (BIR) whose principal duty is to assess collect internal revenue taxes. Respondent PERF is a domestic corporation engaged in the business of leasing properties to various clients including the Philippine American Life and General Insurance Company (Philamlife) and Read-Rite Philippines (Read-Rite).

On April 14, 1998, PERF filed its Annual Income Tax Return (ITR) for the year 1997showing a net taxable income in the amount of P6, 430,345.00 and income tax due of P2,250,621.00.For the year 1997, its tenants, Philamlife and Read-Rite, withheld and subsequently remitted creditable withholding taxes in the total amount of P3,531,125.00.

After deducting creditable amount withholding taxes in the total amount of P3,531,125.00 from its total income tax due of P2,250,621.00, PERF showed in its 1997 ITR an overpayment of income taxes in the amount of P1,280,504.00.

On November 3,1999, PERF filed an administrative claim with the appellate division of the BIR for refund of overpaid income taxes in the amount of P1,280,504.00. On December 3, 1999, due to the inaction of the BIR, PERF filed a petition for review with the Court of Tax Appeals (CTA) seeking for the refund of the overpaid income taxes. The CTA denied the petition on the ground of insufficiency of evidence. That PERF did not indicate in its 1997 ITR the option to either claim the excess income tax as a refund or tax credit pursuant to Section 76 0f the NIRC.

Further the CTA likewise found that PERF failed to present in evidence its 1998 annual ITR which left the court with no way to determine with certainty whether or not PERF has applied or credited the refundable amount sought for in its administrative and judicial claims for refund.

PERF move for reconsideration attaching to its motion its 1998 ITR but it was denied by the CTA. Aggrieved by the decision of the CTA, PERF filed a petition for review with the CA under Rule 43 of the Rules of Court which ruled in favor of the PERF. The CIR filed a motion for reconsideration which was subsequently denied by the CA. Thus, the CIR appealed to the Supreme Court under rule 45.

ISSUES:
Whether or not the Court of Appeals erred in granting respondent's tax refund considering the latter's failure to substantially establish its claim for refund

RULING:

PERF filed its administrative and judicial claim for refund on November 3, 1999 and December 3, 1999, respectively, which are within the two-year prescriptive period under section230 (now 229) of the National Internal Tax Code.

The CTA noted that based on the records, PERF presented certificates of creditable withholding tax at source reflecting creditable withholding taxes in the amount of P4,153,604.18 withheld from PERF's rental income of P83,072,076.81. In addition, it submitted in evidence the Monthly Remittance Returns of its withholding agents to prove the fact of remittance of said taxes to BIR. Although the certificates of creditable withholding tax at source for 1997 reflected a total amount of P4,153,604.18 corresponding to the total income of P83,072,076.81, PERF is claiming only the amount of P3,531,125.00 pertaining to a rental income of P70,813,079.00.

The amount of P3,531,125.00 less the income tax due of PERF of P2,250,621.00 leaves the refundable amount of P1,280,504.00. It is settled that the finding of fact of the CTA are entitled to great weight and will not be disturbed on appeal unless it is shown that the lower courts committed gross error in the appreciation of facts. The Supreme see no cogent reason not to apply the same principle here.

PERF attached its 1998 ITR to its motion for reconsideration. The 1998 ITR is a part of the records of the case and clearly showed that income taxes in the amount of P1,280,504.00 were not claimed as tax credit in 1998. Further, the Supreme Court sustain the rule of the CA that there is no need to rule on the issue of the admissibility of the 1998 ITR since the CTA ruled that PERF already complied with the requisites of applying for a tax refund. The verification process is not incumbent on PERF; it is the duty of the CIR to verify whether or not PERF had carried over the 1997 excess income taxes.

MATALIN COCONUT CO., INC., *Petitioner*, -versus- **THE MUNICIPAL COUNCIL OF MALABANG, LANAO DEL SUR, AMIR M. BALINDONG and HADJI PANGILAMUN MANALOCON, MUNICIPAL MAYOR and MUNICIPAL TREASURER OF MALABANG, LANAO DEL SUR**, **PURAKAN PLANTATION COMPANY**, *Respondent*.
G.R. No. L-28138**,** FIRST DIVISION**,** August 13, 1986**,** YAP, *J.*

Sec. 6 of Rule 64 of the Rules of Court says that an action for declaratory relief may be converted into an ordinary action and the parties are allowed to file such pleadings as may be necessary or proper if, before the termination of the case, "a breach or violation of an ordinance, should take place." While no breach occurred, as the petitioner decided to pay "under protest," such payment did not affect the case. The action for declaratory relief was still proper because the applicability of the ordinance to future transactions still remained to be resolved.

FACTS:

The Municipal Council of Malabang, on the basis of the Local Autonomy Act, imposed an ordinance making it unlawful for any person, company or group of persons "to ship out of the Municipality of Malabang, cassava starch or flour without paying to the Municipal Treasurer or his authorized representatives the corresponding fee fixed by (the) ordinance." It imposed a "police inspection fee" of P.30 per sack of cassava starch or flour, which shall be paid by the shipper before the same is transported or shipped outside the municipality.

The ordinance was challenged by Matalin Coconut, alleging that not was it *ultra vires*, being violative of the Local Autonomy Act, but also because of its being unreasonable, oppressive and confiscatory. Matalin prayed for the ordinance to be declared null and void *ab initio*, and that the Council be ordered to refund the amounts paid by Matalin, as well as for a preliminary injunction. The trial court denied the application for preliminary injunction.

Purakan Plantation, on account of the supposed adverse effects the ordinance had on their business, was allowed to intervene in the action.

The court *a quo*, after trial, declared the ordinance null and void, and ordered the Municipal Treasurer to make the refunds, as well as to enjoin and prohibit the Council, its agents and its deputies from collecting taxes on the products belonging to intervenor Purakan. The TC subsequently issued a writ of preliminary mandatory injunction, requiring the Municipal Treasurer to deposit with the PNB whatever amounts the petitioner had already paid or shall pay pursuant to the ordinance in question up to and until final termination of the case. Upon motion for reconsideration, the writ was modified, to require the deposit only of amounts paid from the effectivity of the writ up to and until the final termination of the suit.

The Municipal Council appealed to the SC. Matalin's motion to dismiss was denied, as well as the Council's motion to dissolve the writ.

ISSUE:

1) Whether or not the trial court erred in adjudicating the money claim of the petitioner in an action for declaratory relief? (NO)
2) Whether or not the trial court erred in declaring the ordinance in question null and void? (NO)

RULING:

Sec. 6 of Rule 64 of the Rules of Court says that an action for declaratory relief may be converted into an ordinary action and the parties are allowed to file such pleadings as may be necessary or proper if, before the termination of the case, "a breach or violation of an… ordinance, should take place." While no breach occurred, as the petitioner decided to pay "under protest," such payment did not affect the case. The action for declaratory relief was still proper because the applicability of the ordinance to future transactions still remained to be resolved.

Since the enactment of the Local Autonomy Act, a liberal rule has been followed by this Court in construing municipal ordinances enacted pursuant to the taxing power granted under Section 2 of said law. The SC has construed the grant of power to tax under the mentioned provision as sufficiently plenary to cover "everything, excepting those which are mentioned" therein, subject only to the limitation that the tax so levied is for *public purposes*, *just* and *uniform*.

While the SC agrees with the finding of the TC that the ordinance in question partakes of the nature of a tax for its purpose was to raise revenue, it does not agree with the TC's finding that it is a percentage tax on sales which is beyond the scope of the municipality's authority to levy under the Local Autonomy Act. It was not a percentage tax for it was a fixed tax.

However, the tax can be stricken down on the basis of its being unjust and unreasonable. The reasons given for the imposition of such a fee could not be given credence for (a) the police was not competent enough to determine whether the starch or flour was fit for human consumption and (b) that Matalin has never requested for police protection as it has never been molested by undesirable elements.

Furthermore, the tax is excessive and confiscatory. Matalin only realizes a marginal profit of P0.40 per bag. The imposition of a P.30 tax would, therefore, force the petitioner to close or stop its cassava flour starch milling business.

EUSEBIO VILLANUEVA, ET AL., *Petitioner*, -versus- **CITY OF ILOILO,** *Respondent*.
G.R. No. L-26521**,** EN BANC**,** December 28, 1968**,** CASTRO, *J.*

By the title and the terms of the ordinance, the tax is a municipal tax which means an imposition or exaction on the right to use or dispose of property, to pursue a business, occupation or calling, or to exercise a privilege. Tenement houses being offered for rent or lease constitute a distinct form of business or calling and as such, the imposition of municipal tax finds support in Section 2 of RA 2264.

FACTS:

Relying on the passage of RA 2264 or the Local Autonomy Act, Iloilo enacted Ordinance 11 Series of 1960, imposing a municipal license tax on tenement houses in accordance with the schedule of payment provided by therein. Villanueva and the other appellees are apartment owners from whom the city collected license taxes by virtue of Ordinance 11. Appellees aver that the said ordinance is unconstitutional for RA 2264 does not empower cities to impose apartment taxes; that the same is oppressive and unreasonable for it penalizes those who fail to pay the apartment taxes; that it constitutes not only double taxation but treble taxation; and, that it violates uniformity of taxation.

ISSUE:

1) Whether or not the ordinance imposes double taxation? (NO)
2) Whether or not Iloilo city empowered by RA 2264 to impose tenement taxes? (NO)

RULING:

While it is true that appellees are taxable under the NIRC as real estate dealers, and taxable under Ordinance 11, double taxation may not be invoked. This is because the same tax may be imposed by the national government as well as by the local government. The contention that appellees are doubly taxed because they are paying real estate taxes and the tenement tax is also devoid of merit. A license tax may be levied upon a business or occupation although the land or property used in connection therewith is subject to property tax. In order to constitute double taxation, both taxes must be the same kind or character. Real estate taxes and tenement taxes are not of the same character.

RA 2264 confers local governments broad taxing powers. The imposition of the tenement taxes does not fall within the exceptions mentioned by the same law. It is argued however that the said taxes are real estate taxes and thus, the imposition of more the 1 per centum real estate tax which is the limit provided by CA 158, makes the said ordinance ultra vires. The court ruled that the tax in question is not a real estate tax. It does not have the attributes of a real estate tax. By the title and the terms of the ordinance, the tax is a municipal tax which means an imposition or exaction on the right to use or dispose of property, to pursue a business, occupation or calling, or to exercise a privilege. Tenement houses being offered for rent or lease constitute a distinct form of business or calling and as such, the imposition of municipal tax finds support in Section 2 of RA 2264.

ORMOC SUGAR COMPANY, INC., *Petitioner*, -versus- **THE TREASURER OF ORMOC CITY, THE MUNICIPAL BOARD OF ORMOC CITY, HON. ESTEBAN C. CONEJOS as Mayor of Ormoc City and ORMOC CITY**, *Respondent*.
G.R. No. L-23794, EN BANC, February 17, 1968, BENGZON, J.P., *J.*

The taxing ordinance should not be singular and exclusive as to exclude any subsequently established sugar central, of the same class as petitioner, for the coverage of the tax.

FACTS:

The Municipal Board of Ormoc City passed Ordinance No. 4, imposing "on any and all productions of sugar milled at petitioner's, municipal tax of 1% per export sale. Petitioner paid but were under protest.

Petitioner filed before the CFI contending that the ordinance is unconstitutional for being in violation of the equal protection clause and the rule of uniformity of taxation, aside from being an export tax forbidden under Section 2287 of the Revised Administrative Code. It further alleged that the tax is neither a production nor a license tax which Ormoc City its charter and under Section 2 of Republic Act 2264, or the Local Autonomy Act, is authorized to impose; that it also violates RA 2264 because the tax is on both the sale and export of sugar.

ISSUE:

Whether or not the ordinance is valid? (NO)

RULING:

The SC held that it violates the equal protection clause for it taxes only sugar produced and exported by petitioner and none other. Even though petitioner, at the time of the enactment of the ordinance, was the only sugar central in Ormoc, the classification should have been in terms applicable to future conditions as well. The taxing ordinance should not be singular and exclusive as to exclude any subsequently established sugar central, of the same class as petitioner, for the coverage of the tax.

Though, petitioner can be refunded, they are not entitled to interest because the taxes were not arbitrarily collected as the ordinance provided a sufficient basis to preclude arbitrariness, the same being then presumed constitutional until declared otherwise.

NATIONAL POWER CORPORATION, *Petitioner*, -versus- **CITY OF CABANATUAN**, *Respondent*.
G.R. No. 149110**,** THIRD DIVISION**,** April 9, 2003**,** PUNO, *J.*

Section 193 buttresses the withdrawal of extant tax exemption privileges. By stating that unless otherwise provided in this Code, tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations except (1) local water districts, (2) cooperatives duly registered under R.A. 6938, (3) non-stock and non-profit hospitals and educational institutions, are withdrawn upon the effectivity of this code, the obvious import is to limit the exemptions to the three enumerated entities. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim expressio unius est exclusio alterius. In the absence of any provision of the Code to the contrary, and we find no other provision in point, any existing tax exemption or incentive enjoyed by MERALCO under existing law was clearly intended to be withdrawn.

FACTS:

Petitioner is a government-owned and controlled corporation created under Commonwealth Act No. 120, as amended.

For many years now, petitioner sells electric power to the residents of Cabanatuan City, posting a gross income of P107,814,187.96 in 1992.7 Pursuant to section 37 of Ordinance No. 165-92,8 the respondent assessed the petitioner a franchise tax amounting to P808,606.41, representing 75% of 1% of the latter's gross receipts for the preceding year.

Petitioner refused to pay the tax assessment arguing that the respondent has no authority to impose tax on government entities. Petitioner also contended that as a non-profit organization, it is exempted from the payment of all forms of taxes, charges, duties or fees in accordance with sec. 13 of Rep. Act No. 6395, as amended.

The respondent filed a collection suit in the RTC, demanding that petitioner pay the assessed tax due, plus surcharge. Respondent alleged that petitioner's exemption from local taxes has been repealed by section 193 of the LGC, which reads as follows:

"Sec. 193. *Withdrawal of Tax Exemption Privileges.-* Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."
RTC upheld NPC's tax exemption. On appeal the CA reversed the trial court's Order on the ground that section 193, in relation to sections 137 and 151 of the LGC, expressly withdrew the exemptions granted to the petitioner.

ISSUE:

Whether or not the respondent city government has the authority to issue Ordinance No. 165-92 and impose an annual tax on "businesses enjoying a franchise? (YES)

RULING:

Taxes are the lifeblood of the government, for without taxes, the government can neither exist nor endure. A principal attribute of sovereignty, the exercise of taxing power derives its source from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good. The theory behind the exercise of the power to tax emanates from necessity;32 without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.

Section 137 of the LGC clearly states that the LGUs can impose franchise tax "*notwithstanding any exemption granted by any law or other special law*." This particular provision of the LGC does not admit any exception. In *City Government of San Pablo, Laguna v. Reyes*, MERALCO's exemption from the payment of franchise taxes was brought as an issue before this Court. The same issue was involved in the subsequent case of *Manila Electric Company v. Province of Laguna*. Ruling in favor of the local government in both instances, we ruled that the franchise tax in question is imposable despite any exemption enjoyed by MERALCO under special laws, *viz*:

"It is our view that petitioners correctly rely on provisions of Sections 137 and 193 of the LGC to support their position that MERALCO's tax exemption has been withdrawn. The explicit language of section 137 which authorizes the province to impose franchise tax 'notwithstanding any exemption granted by any law or other special law' is all-encompassing and clear. *The franchise tax is imposable despite any exemption enjoyed under special laws*.

Section 193 buttresses the withdrawal of extant tax exemption privileges. By stating that unless otherwise provided in this Code, tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations except (1) local water districts, (2) cooperatives duly registered under R.A. 6938, (3) non-stock and non-profit hospitals and educational institutions, are withdrawn upon the effectivity of this code, the obvious import is to limit the exemptions to the three enumerated entities. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. In the absence of any provision of the Code to the contrary, and we find no other provision in point, any existing tax exemption or incentive enjoyed by MERALCO under existing law was clearly intended to be withdrawn.

Reading together sections 137 and 193 of the LGC, we conclude that under the LGC the local government unit may now impose a local tax at a rate not exceeding 50% of 1% of the gross annual receipts for the preceding calendar based on the incoming receipts realized within its territorial jurisdiction. The legislative purpose to withdraw tax privileges enjoyed under existing law or charter is clearly manifested by the language used on (sic) Sections 137 and 193 categorically withdrawing such exemption subject only to the exceptions enumerated. Since it would be not only tedious and impractical to attempt to enumerate all the existing statutes providing for special tax exemptions or privileges, the LGC provided for an express, albeit general, withdrawal of such exemptions or privileges. No more unequivocal language could have been used."

Doubtless, the power to tax is the most effective instrument to raise needed revenues to finance and support myriad activities of the local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people. As this Court observed in the Mactan case, "the original reasons for the withdrawal of tax exemption privileges granted to government-owned or controlled corporations and all other units of government were that such privilege resulted in serious tax base erosion and distortions in the tax treatment of similarly situated enterprises." With the added burden of devolution, it is even more imperative for government entities to share in the requirements of development, fiscal or otherwise, by paying taxes or other charges due from them.

CITY GOVERNMENT OF SAN PABLO, LAGUNA, CITY TREASURER OF SAN PABLO, LAGUNA, and THE SANGGUNIANG PANGLUNSOD OF SAN PABLO, LAGUNA, *Petitioner*, -versus- **HONORABLE BIENVENIDO V. REYES, in his capacity as Presiding Judge, Regional Trial Court, Branch 29, San Pablo City and the MANILA ELECTRIC COMPANY**, *Respondent*.
G.R. No. 127708**,** THIRD DIVISION**,** March 25, 1999**,** GONZAGA-REYES, *J.*

The phrase in lieu of all taxes have to give way to the peremptory language of the Local Government Code specifically providing for the withdrawal of such exemptions, privileges, and that upon the effectivity of the Local Government Code all exemptions except only as provided therein can no longer be invoked by MERALCO to disclaim liability for the local tax.

FACTS:

After the Escudero franchise under Act No. 3648 was transferred to MERALCO, PD. 551 was enacted and provides that the franchise tax shall be 2% of the gross receipts in lieu of all taxes and assessments of whatever nature imposed by any national or local authority on earnings, receipts, income and privilege of generation, distribution and sale of electric current

Pursuant to the enactment of the Local Government Code, the Sangguniang Panglunsod of San Pablo City enacted Ordinance No. 56, otherwise known as the Revenue Code of the City of San Pablo imposing a tax on business enjoying a franchise, at a rate of 50% of 1% of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within the city.

ISSUE:

Whether or not there was violation of non-impairment clause when the City of San Pablo imposed a local franchise tax pursuant to the LGC upon MERALCO considering that under PD 551 the tax paid is in lieu of all taxes and assessments of whatever nature imposed by any national or local authority on savings or income? (NO)

RULING:

The phrase in lieu of all taxes have to give way to the peremptory language of the Local Government Code specifically providing for the withdrawal of such exemptions, privileges, and that upon the effectivity of the Local Government Code all exemptions except only as provided therein can no longer be invoked by MERALCO to disclaim liability for the local tax.

There is further basis for the conclusion that the non-impairment of contract clause cannot be invoked to uphold Meralco's exemption from the local tax. Legislative franchise under Act No. 3648 provided that the franchise is granted upon the condition that it shall be subject to amendment, or repeal by the Congress of the United States. Also, under the 1935, the 1973 and the 1987 Constitutions, no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration or repeal by the National Assembly when the public interest so requires. With or without the reservation clause, franchises are subject to alterations through a reasonable exercise of the police power; they are also subject to alteration by the power to tax, which like police power cannot be contracted away.

MANILA ELECTRIC COMPANY, *Petitioner*, -versus- **PROVINCE OF LAGUNA AND BENITO R. BALAZO, IN HIS CAPACITY AS PROVINCIAL TREASURER OF LAGUNA**, *Respondent*.
G.R. No. 131359**,** THIRD DIVISION**,** May 5, 1999**,** VITUG, *J.*

The 1991 Code explicitly authorizes provincial governments, notwithstanding "any exemption granted by any law or other special law, . . . (to) impose a tax on businesses enjoying a franchise." A franchise partakes the nature of a grant which is beyond the purview of the non-impairment clause of the Constitution.

FACTS:

MERALCO was granted a franchise by several municipal councils and the National Electrification Administration to operate an electric light and power service in the Laguna. Upon enactment of Local Government Code, the provincial government issued ordinance imposing franchise tax. MERALCO paid under protest and later claims for refund because of the duplicity with Section 1 of P.D. No. 551. This was denied by the governor (Joey Lina) relying on a more recent law (LGC). MERALCO filed with the RTC a complaint for refund, but was dismissed. Hence, this petition.

ISSUE:

Whether or not the imposition of franchise tax under the provincial ordinance is violative of the non-impairment clause of the Constitution and of P.D. 551.? (NO)

RULING:

The Local Government Code of 1991 has incorporated and adopted, by and large, the provisions of the now repealed Local Tax Code. The 1991 Code explicitly authorizes provincial governments, notwithstanding "any exemption granted by any law or other special law, . . . (to) impose a tax on businesses enjoying a franchise." A franchise partakes the nature of a grant which is beyond the purview of the non-impairment clause of the Constitution. Article XII, Section 11, of the 1987 Constitution, like its precursor provisions in the 1935 and the 1973 Constitutions, is explicit that no franchise for the operation of a public utility shall be granted except under the condition that such privilege shall be subject to amendment, alteration or repeal by Congress as and when the common good so requires.

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, *Petitioner*, -versus- **CITY OF DAVAO and the PUBLIC SERVICE COMMISSION**, *Respondent*.
G.R. No. L-23080**,** EN BANC**,** September 20, 1965**,** BENGZON, J.P., *J.*

In this case, the word exemption in 23 of R.A. No. 7925 could contemplate exemption from certain regulatory or reporting requirements, bearing in mind the policy of the law.

FACTS:

Petitioner Philippine Long Distance Telephone Co., Inc. (PLDT) applied for a Mayors Permit to operate its Davao Metro Exchange. Respondent City of Davao withheld action on the application pending payment by petitioner of the local franchise tax in the amount of P3,681,985.72 for the first to the fourth quarter of 1999. Petitioner protested. Petitioner justifies its claim of tax exemption under R.A. No. 7925, otherwise known as the Public Telecommunications Policy Act of the Philippines, 23 of which reads:

SEC. 23*. Equality of Treatment in the Telecommunications Industry.* Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall *ipso facto* become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises: *Provided, however,* That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise.

ISSUE:

Whether or not PLDT is exempted from franchise tax imposed by City of Davao? (NO)

RULING:

PLDT is not exempt from franchise tax imposed by City of Davao.

R.A. No. 7925 is a legislative enactment designed to set the national policy on telecommunications and provide the structures to implement it to keep up with the technological advances in the industry and the needs of the public. The thrust of the law is to promote gradually the deregulation of the entry, pricing, and operations of all public telecommunications entities and thus promote a level playing field in the telecommunications industry. There is nothing in the language of 23 nor in the proceedings of both the House of Representatives and the Senate in enacting R.A. No. 7925 which shows that it contemplates the grant of tax exemptions to all telecommunications entities, including those whose exemptions had been withdrawn by the LGC.

The tax exemption must be expressed in the statute in clear language that leaves no doubt of the intention of the legislature to grant such exemption. And, even if it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

In this case, the word exemption in 23 of R.A. No. 7925 could contemplate exemption from certain regulatory or reporting requirements, bearing in mind the policy of the law.

PHILIPPINE PETROLEUM CORPORATION**,** *Petitioner*, -versus- **MUNICIPALITY OF PILILLA, RIZAL, Represented by MAYOR NICOMEDES F. PATENIA**, *Respondent*.
G.R. No. 90776, SECOND DIVISION**,** June 3, 1991**,** PARAS, *J.*

While Section 2 of P.D. 436 prohibits the imposition of local taxes on petroleum products, said decree did not amend Sections 19 and 19 (a) of P.D. 231 as amended by P.D. 426, wherein the municipality is granted the right to levy taxes on business of manufacturers, importers, producers of any article of commerce of whatever kind or nature.

FACTS:

Philippine Petroleum Corporation (PPC for short) is a business enterprise engaged in the manufacture of a petroleum product, with its refinery plant situated at Malaya, Pililla, Rizal, conducting its business activities within the territorial jurisdiction of the Municipality of Pililla, Rizal. Under Section 142 of the National Internal Revenue Code of 1939, manufactured oils and other fuels are subject to specific tax.

Respondent Municipality of Pililla, Rizal, through Municipal Council Resolution No. 25, S-1974 enacted Municipal Tax Ordinance No. 1, S-1974 otherwise known as "The Pililla Tax Code of 1974". Sections 9 and 10 of the said ordinance imposed a tax on business, except for those for which fixed taxes are provided in the Local Tax Code.

The respondents then filed a complaint for the collection of business tax, storage permit fees, mayor's permit and sanitary inspection fees.

ISSUE:

1) Whether or not PPC whose oil products are subject to specific tax under the NIRC, is still liable to pay tax on business unto the respondent Municipality of Pililla, Rizal? (YES)
2) Whether or not PPC whose oil products are subject to specific tax under the NIRC, is still liable to pay the storage fee unto the respondent Municipality of Pililla, Rizal? (NO)

RULING:

While Section 2 of P.D. 436 prohibits the imposition of local taxes on petroleum products, said decree did not amend Sections 19 and 19 (a) of P.D. 231 as amended by P.D. 426, wherein the municipality is granted the right to levy taxes on business of manufacturers, importers, producers of any article of commerce of whatever kind or nature.

The exercise by local governments of the power to tax is ordained by the present Constitution. *T*o allow the continuous effectivity of the prohibition set forth in PC No. 26-73 (1) would be tantamount to restricting their power to tax by mere administrative issuances. Under Section 5, Article X of the

1987 Constitution, only guidelines and limitations that may be established by Congress can define and limit such power of local governments.

Provincial Circular No. 6-77 enjoining all city and municipal treasurers to refrain from collecting the so-called storage fee on flammable or combustible materials imposed in the local tax ordinance of their respective locality frees petitioner PPC from the payment of storage permit fee.
The storage permit fee being imposed by Pililla's tax ordinance is a fee for the installation and keeping in storage of any flammable, combustible or explosive substances. Inasmuch as said storage makes use of tanks owned not by the municipality of Pililla, but by petitioner PPC, same is obviously not a charge for any service rendered by the municipality as what is envisioned in Section 37 of the same Code.
Section 10 (z) (13) of Pililla's Municipal Tax Ordinance No. 1 prescribing a permit fee is a permit fee allowed under Section 36 of the amended Code.

The trial court did not err in holding that "since the power to tax includes the power to exempt thereof which is essentially a legislative prerogative, it follows that a municipal mayor who is an executive officer may not unilaterally withdraw such an expression of a policy thru the enactment of a tax."

In the absence of a clear and express exemption from the payment of said fees, the waiver cannot be recognized. Under Section 36 of the Code, a permit fee like the mayor's permit, shall be required before any individual or juridical entity shall engage in any business or occupation under the provisions of the Code.

LAND TRANSPORTATION OFFICE [LTO], represented by Assistant Secretary Manuel F. Bruan, LTO Regional Office, Region X represented by its Regional Director, Timoteo A. Garcia; and LTO Butuan represented by Rosita G. Sadiaga, its Registrar, *Petitioner*, -versus- **CITY OF BUTUAN, represented in this case by Democrito D. Plaza II, City Mayor**, *Respondent*.
G.R. No. 131512, THIRD DIVISION**,** January 20, 2000**,** VITUG, *J.*

It may not be amiss to state nevertheless, that under article 458 (a) [3-VI] of the local government code, the power of the LGUs to regulate the operation of tricycles and to grant franchises for the operation thereof is still subject to the guidelines prescribed by the DOTC. In compliance therewith, the Department of Transportation and Communications (DOTC) issued guidelines to implement the devolution of LTFRBs franchising authority over tricycles-for-hire to local government units pursuant to the local government code.

FACTS:

Relying on the fiscal autonomy granted to LGU's by the Constittuion and the provisons of the Local Government Code, the Sangguniang Panglunsod of the City of Butuan enacted an ordinance "Regulating the Operation of Tricycles-for-Hire, providing mechanism for the issuance of Franchise, Registration and Permit, and Imposing Penalties for Violations thereof and for other Purposes." The ordinance provided for, among other things, the payment of franchise fees for the grant of the franchise of tricycles-for-hire, fees for the registration of the vehicle, and fees for the issuance of a permit for the driving thereof.

Petitioner LTO explains that one of the functions of the national government that, indeed, has been transferred to local government units is the franchising authority over tricycles-for-hire of the Land

Transportation Franchising and Regulatory Board ("LTFRB") but not, it asseverates, the authority of LTO to register all motor vehicles and to issue to qualified persons of licenses to drive such vehicles.

The RTC and CA ruled that the power to give registration and license for driving tricycles has been devolved to LGU's.

ISSUE:

Whether or not respondent city of Butuan may issue license and permit and collect fees for the operation of tricycle? (NO)

RULING:

LGUs indubitably now have the power to regulate the operation of tricycles-for-hire and to grant franchises for the operation thereof. "To regulate" means to fix, establish or control; to adjust by rule, method or established made; to direct by rule or restriction; or to subject to governing principles of law. A franchise is defined to be a special privilege to do certain things conferred by government on an individual or corporation and which does not belong to citizens generally of common right. On the other hand, to register means to record formally and exactly, to enroll, or to enter precisely in a list or the like, and a driver's license is the certificate or license issued by the government which authorizes a person to operate a motor vehicle. The devolution of the functions of the DOTC, performed by the LTFRB, to the LGUs, as so aptly observed by the solicitor general is aimed at curbing the alarming in on case of accidents in national highways involving tricycles. It has been the perception that local governments are in good position to achieve the end desired by the law making body because of their proximity to the situation that can enable them to address that serious concern better than the national government.

It may not be amiss to state nevertheless, that under article 458 (a) [3-VI] of the local government code, the power of the LGUs to regulate the operation of tricycles and to grant franchises for the operation thereof is still subject to the guidelines prescribed by the DOTC. In compliance therewith, the Department of Transportation and Communications (DOTC) issued guidelines to implement the devolution of LTFRBs franchising authority over tricycles-for-hire to local government units pursuant to the local government code.

The reliance made by the respondents on the broad taxing power of local government units, specifically under section 133 of the local government code, is tangential. Police power and taxation, along with eminent domain, are inherent powers of sovereignty which the state might share with local government units by delegation or given under a constitutional or a statutory fiat. All these inherent powers are for a public purpose and legislative in nature but the similarities just about end there. The basic aim of police power is public good and welfare. Taxation, in its case, focuses on the power of government to raise revenue in order to support its existence and carry out its legitimate objectives. Although correlative to each other in many respects, the grant of one does not necessarily carry with it the grant of the other. The two powers are by tradition and jurisprudence separate and distinct powers, varying in their respecting concepts, character, scopes, and limitations. To construe the tax provisions of section 133 (1) indistinctively would result in the repeal to that extent of LTOs regulatory power which evidently has not been intended. If it were otherwise, the law could have just said so in section 447 and 458 of Book III of the local government code in the same manner that the specific devolution of LTFRBs power on franchising of tricycles has been provided. Repeal by implication is not favored. The power over tricycles granted under section 458 (8) (3) (VI) of the local government code to LGUs is the power to regulate their operation and to grant franchises for the operation thereof. The government's exclusionary clause contained in the tax provisions of section 133 (1) of the local government code must be held to have had the effect of withdrawing the express powers of LTO to cause the registration of all motor vehicles and the issuance of license for the driving thereof. These functions of the LTO are essentially regulatory in nature, exercised pursuant to the police power of the state, whose basic objectives are to achieve road safety by insuring the road worthiness of these motor vehicles and the competence of drivers prescribed by RA 4136. Not insignificant is the rule that a statute must not be construed in isolation but must be taken in harmony with the extent body of laws.

MANILA INTERNATIONAL AIRPORT AUTHORITY, *Petitioner*, -versus- **COURT OF APPEALS, CITY OF PARAÑAQUE, CITY MAYOR OF PARAÑAQUE, SANGGUNIANG PANGLUNGSOD NG PARAÑAQUE, CITY ASSESSOR OF PARAÑAQUE, and CITY TREASURER OF PARAÑAQUE**, *Respondent*.
G.R. No. 155650, EN BANC, July 20, 2006, CARPIO, *J.*

Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the surging of fees and charges. At the same time, MIAA exercises all the powers of a corporation under the corporation law, in so far as these powers are not inconsistent with the provisions of this executive order.

FACTS:

Petitioner Manila International Airport Authority (MIAA) operates the Ninoy Aquino International Airport (NAIA) complex in Parañaque City under Executive Order No. 9303, otherwise known as the revised charter of the MIAA. EO 903 was issued on July 21, 1983 by then President Ferdinand E. Marcos. Subsequently EO 909 and 298 amended the MIAA charter as operator of the international operator, MIAA administers the land, improvements, and equipments within the NAIA complex. The MIAA charter transferred to MIAA approximately 600 hectares of land, including the runways and buildings then under the Bureau of Air Transportation. The MIAA charter provides that no portion of the land transferred to MIAA shall be disposed of through sale or any other mode unless specifically approved by the President of the Philippines. On March 21, 1997, the Office of the Government Corporate Counsel issued opinion no. 061. The OGCC opined that the local government code of 1991 withdraw the exemption from real estate tax granted to MIAA under section 21 of the MIAA charter. Thus, MIAA negotiated with respondent city of Parañaque to pay the real estate tax imposed by the city. MIAA then paid some of the real estate tax already due. On July 17, 2001, the City of Parañaque, through its city treasurer issued notices of levy and warrants of levy on the airport lands and buildings. The mayor of the city of Parañaque threatened to sell at public auction the airport lands and buildings should MIAA fail to pay the real estate tax deliquency. MIAA thus sought clarification of OGCC opinion no. 061. On August 9, 2001, the OGCC issued opinion no. 147 clarifying OGCC opinion no. 061. The OGCC pointed out that section 206 of the local government code requires persons exempt from real estate tax to show proof of exemption. The OGCC opined that section 21 of the MIAA charter is the proof that MIAA is exempt from real estate tax.

ISSUE:

Whether or not the airport lands and buildings are exempt from real estate tax? (YES)

RULING:

MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 21 (10) of the introductory provisions of the administrative code defines a government instrumentality as follows:

> ***Sec 2 General terms defined***
>
> *10.) Instrumentality refers to any agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter.*

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the surging of fees and charges. At the same time, MIAA exercises all the powers of a corporation under the corporation law, in so far as these powers are not inconsistent with the provisions of this executive order.

A government instrumentality like MIAA falls under section 133 (o) of the local government code, which states:

> ***Sec 133 Common limitations on the taxing powers of the local government units*** *– Unless otherwise provided herein, the exercise of the taxing power of the provinces, cities, municipalities and barangays shall not extend to the levy of the following:*
> *xxx*
> *o.) Taxes, fees or charges of any kind on the national government, its agencies and instrumentalities and local government units.*

Section 133 (0) recognizes the basic principles that local governments cannot tax the national government, which historically, merely delegated to the local governments the power to tax. While the 1987 constitution now includes taxation as one of the powers of the local governments, local governments may only exercise such powers subject to such guidelines and limitations as the congress may provide.

ARMY & NAVY CLUB, MANILA, *Petitioner*, -versus- **WENCESLAO TRINIDAD, Collector of Internal Revenue**, *Respondent*.
G.R. No. 19297, FIRST DIVISION**,** January 26, 1923**,** MALCOLM, *J.*

Real estate is to be valued for purposes of taxation at its fair market value or, as it is called in the Charter of the City of Manila, its "cash value."

By "fair market value" or "cash value" is meant the amount of money which a purchaser willing but not obliged to but the property would pay to an owner willing but not obliged to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied. The criterion established by the statute and by the decisions contemplates a hypothetical sale. Hence, the buyers need not be actual and existing purchasers.

What a thing has cost is no infallible criterion of its market value.

Assessors, in fixing the value of property, have to consider all the circumstances and elements of value, and must exercise a prudent discretion in reaching conclusions. Courts, therefore, will not presume to interfere with the intelligent exercise of the judgment of men specially trained in appraising property. Where the judicial mind is left in doubt, it is a sound rule to leave the assessment undisturbed.

That the action of the city assessor of Manila in assessing the land on which the Army and Navy Club of Manila is situated at P20 a square the club paid the city for the land, will not be interfered with.

FACTS:

By a contract entered into on December 29, 1908, the City of Manila sold to the Army and Navy Club of Manila 12,665.46 square meters and land located in the New Luneta, recently filled, for P4.04 a square meter. It was agreed between the parties "that the above described premises, together with the improvements which may be made there upon, shall be exempt from taxation for a period of ten years following the date when the city engineer of the City of Manila shall make his certificate declaring that said premises are ready for building purposes." It was further agreed, "that the party of the first part shall have that right at its option to repurchase said described premises for public purposes only, at any time after fifty years from the fulfilling of the terms of this contract and the conveyance of said described premises by the first party or its successors to the second party or its successors, upon the payment to the second party or its successors of the purchase price herein before set forth, plus the then value of the improvements thereon, and when such value shall be ascertained and the whole amount paid to the party of the second part or its successors, the second party agrees to reconvey the said described premises with all the appurtenances thereunto belonging to the first party."

The final deed from the City of Manila was executed on September 20, 1918. It called for 12,705.30 square meters, and contained, among others, the clauses in the original document above quoted.

Taxes on the property, according to the aforesaid instruments, became payable for the first time in the year 1920. The city assessor and collector thereupon assessed the land at P20 per square meter. The Army and Navy Club paid the tax under protest. Subsequently, there followed the instant action. In the lower court, after trial, judgment was rendered dismissing the complaint.

ISSUE:

Whether or not the land on which the Army and Navy Club of Manila is situated should be assessed at P4.04 a square meter, the amount which the club paid the City of Manila for the land? (YES)

RULING:

It is a general rule that real estate is to be valued for purpose of taxation at its fair market value or, as it is called in the Charter of the City of Manila, its" cash value." By "fair market value" or" cash value: is meant the amount of money which a purchaser willing but not obliged the property would pay to an owner willing but not obliged to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied. The criterion established by the statute and by the decisions contemplates a hypothetical sale. Hence, the buyers need not be actual and existing purchasers. What a thing has cost is no infallible criterion of its market value.

Where evidence of values is not readily obtainable, the actual profits made on the property may be considered. But in the case of exceptional property, not designed to yield a rental or income or to be used for commercial purpose, but wholly or mainly for personal use, benefit, and gratification, the rule that the rental or income of property is a proper criterion in ascertaining its value for taxation does not apply. In fact, there exists no rigid rule for the valuation of property, which is affected by a multitude of circumstances which no rule could foresee or provide for.

Up to this point, we stated facts and law to which both parties would agree. But having followed the road thus far, the plaintiff and the defendant part company.

The principal thesis of the appellant is this: The land of the Army and Navy Club here in question has no sales value other than P4.04 per square meter. In fact the land cannot be sold, in view of the clauses in the deed giving the City of Manila the right to repurchase at P4.04, and restricting the use of the land to club purposes. This is undeniably a strong position.
The principal basis for the decision of the trial judge, now taken over to support the contention of the Government, is this: It cannot be deduced from the stipulation, authorizing the City of Manila to purchase the land on which the Army and Club is located after the expiration of fifty years at the price which the club paid for the land, that the value of the land was to remain stationary and invariable throughout the fifty years. This, likewise, is a strong position.

To what has been said by counsel for the appellant and by the city fiscal, little can be added. The authorities are not helpful. Deductive reasoning leads either to the bald proposition announced by the appellant or to the bald proposition announced by the appellee.

After thoughtful consideration of the case, the members of the court have come to agree with the judgment rendered by the trial court. They are the opinion that the views announced by the trial judge and again advanced by the Government, are the more reasonable, everything considered. They cannot believe that it was the intention to permit the Army and Navy Club to pay taxes on its land at the purchase value throughout all the fifty years, while surrounding property in Ermita and on the Cavite Boulevard must pay much more.

In addition, there are two other factors of some importance which can be mentioned. In the first place, it cannot be presumed that the Government, in this instance, the City of Manila, would set up one standard of taxation for one person and another standard for other persons. The city authorities must have had in mind that conceding to the Army and Navy Club exemption from taxation for ten years was the limit of municipal consideration.

In the next place, assessors, in fixing the value of property, have consider all the circumstances and elements of value, and must exercise a prudent discretion in reaching conclusions. Courts, therefore, will not presume to interfere with the intelligent exercise of the judgment of men specially trained in appraising property. Where. as the Supreme Court of Louisiana says, the judicial mind is left in doubt, it is a sound rule to leave the assessment undisturbed.

JOSE B. L. REYES and EDMUNDO A. REYES, *Petitioner*, -versus- **PEDRO ALMANZOR, VICENTE ABAD SANTOS, JOSE ROÑO, in their capacities as appointed and Acting Members of the CENTRAL BOARD OF ASSESSMENT APPEALS; TERESITA H. NOBLEJAS, ROMULO M. DEL ROSARIO, RAUL C. FLORES, in their capacities as appointed and Acting Members of the**

BOARD OF ASSESSMENT APPEALS of Manila; and NICOLAS CATIIL in his capacity as City Assessor of Manila, *Respondent*.
G.R. No. L-49839-46, EN BANC**,** April 26, 1991**,** PARAS, *J.*

The taxing power has the authority to make a reasonable and natural classification for purposes of taxation but the government's act must not be prompted by a spirit of hostility, or at the very least discrimination that finds no support in reason. It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different both in the privileges conferred and the liabilities imposed.

FACTS:

Petitioners JBL Reyes et al. owned a parcel of land in Tondo which are leased and occupied as dwelling units by tenants who were paying monthly rentals of not exceeding P300. Sometimes in 1971 the Rental Freezing Law was passed prohibiting for one year from its effectivity, an increase in monthly rentals of dwelling units where rentals do not exceed three hundred pesos (P300.00), so that the Reyeses were precluded from raising the rents and from ejecting the tenants. In 1973, respondent City Assessor of Manila re-classified and reassessed the value of the subject properties based on the schedule of market values, which entailed an increase in the corresponding tax rates prompting petitioners to file a Memorandum of Disagreement averring that the reassessments made were "excessive, unwarranted, inequitable, confiscatory and unconstitutional" considering that the taxes imposed upon them greatly exceeded the annual income derived from their properties. They argued that the income approach should have been used in determining the land values instead of the comparable sales approach which the City Assessor adopted.

ISSUE:

Whether or not the approach on tax assessment used by the City Assessor reasonable? (NO)

RULING:

The taxing power has the authority to make a reasonable and natural classification for purposes of taxation but the government's act must not be prompted by a spirit of hostility, or at the very least discrimination that finds no support in reason. It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different both in the privileges conferred and the liabilities imposed.

Consequently, it stands to reason that petitioners who are burdened by the government by its Rental Freezing Laws (then R.A. No. 6359 and P.D. 20) under the principle of social justice should not now be penalized by the same government by the imposition of excessive taxes petitioners can ill afford and eventually result in the forfeiture of their properties.

ALLIED BANKING CORPORATION as Trustee for the Trust Fund of College Assurance Plan Philippines, Inc. (CAP), *Petitioner*, -versus- **THE QUEZON CITY GOVERNMENT, the Quezon City Treasurer, the Quezon City Assessor and the City Mayor of Quezon City**, *Respondent*.
G.R. No**.** 154126, EN BANC**,** September 15, 2006**,** CARPIO MORALES, *J.*

FACTS:

On December 1995, the Quezon City government enacted Ordinance No. 357. The second sentence of Section 3 of the ordinance for a general revision of real property assessments. It also provided that parcels of land conveyed for remuneratory consideration after the effectivity of said revision shall be subject to real estate tax based on the actual amount reflected in the deed of conveyance or the current approved zonal valuation of the BIR prevailing at the time of conveyance, whichever is higher. On 1998, Allied Bank purchased from Natividad et al. a parcel of land on Quezon City worth P38,000,000.00. Prior to the sale, Natividad et al. had been paying the annual real property tax based on the property's fair market value of P4,500,000.00. Allied Bank was then later required to pay P102,600.00 as quarterly real estate tax which pegged the market value of the property at P38,000,000.00. It paid the quarterly real estate tax for the property from the 1st quarter of 1999 up to the 3rd quarter of 2000 with some payments made under protest. It then sent a demand letter to the Quezon City Treasurer's Office seeking a refund of the real estate taxes which was denied. Allied Bank then filed a petition for prohibition and declaratory relief before the RTC for the declaration of nullity of Section 3 of the ordinance as it is an invalid classification of real properties which are conveyed and those which are not, the latter remaining to be valued and assessed in accordance with the general revisions of assessments of real properties. Quezon City later enacted Ordinance No. SP-1032 which repealed the assailed proviso in Section 3 of the 1995 Ordinance as it violated the uniformity rule of taxation which is guaranteed by the Constitution. Petitioner subsequently moved to declare respondents in default but respondents moved to dismiss the petition, averring that the passage of the repealing ordinance had rendered the petition moot and academic. Petitioner opposed the motion claiming its claim for refund and attorney's fees had not been mooted, and the trial court still had to determine if Section 3 of the ordinance is null and void ab initio. The trial court granted respondents' motion to dismiss saying that there is no need to resolve whether the ordinance is null and void as the same was already declared violative of the "uniformity rule" on taxation by the Quezon City Council itself and as for the claim for refund, the RTC did not take cognizance of the case as an administrative remedy was still available. Allied Bank filed a Motion for Reconsideration which was denied so it went to the Supreme Court on appeal by certiorari under Rule 45.

ISSUE:

Whether or not Section 3, Quezon City Ordinance No. 357, Series of 1995, which was abrogated for being unconstitutional can be the basis of collecting real estate taxes prior to its repeal? (NO)

RULING:

The second sentence of Section 3 of the Ordinance is null and void ab initio for being ultra vires and for contravening the provisions of the Local Government Code. It acquired no legal effect and conferred no rights from its inception. Under the Local Government Code, real properties shall be appraised at the current and fair market value prevailing in the locality where the property is situated and classified for assessment purposes on the basis of its actual use. It further held that the proviso directing that the real property tax be based on the actual amount reflected in the deed of conveyance or the prevailing BIR zonal value is invalid not only because it mandates an exclusive rule in determining the fair market value but more so because it departs from the established procedures stated in the Local Assessment Regulations No. 1-92 and unduly interferes with the duties statutorily placed upon the local assessor by completely dispensing with his analysis and discretion which the Code and the regulations require to be exercised. An ordinance that contravenes any statute is ultra vires and void.

MERALCO SECURITIES INDUSTRIAL CORPORATION, *Petitioner*, -versus- **CENTRAL BOARD OF ASSESSMENT APPEALS, BOARD OF ASSESSMENT APPEALS OF LAGUNA and PROVINCIAL ASSESSOR OF LAGUNA**, *Respondent*.
G.R. No**.** L-46245**,** SECOND DIVISION**,** May 31, 1982**,** AQUINO, *J.*

Section 2 of the Assessment Law provides that the realty tax is due "on real property, including land, buildings, machinery, and other improvements." This provision is reproduced with some modification in Section 38, Real Property Tax Code, which provides that "there shall be levied, assessed, and collected xxx annual ad valorem tax on real property such as land, buildings, machinery, and other improvements affixed or attached to real property xxx."

FACTS:

Pursuant to a pipeline concession issued under the Petroleum Act of 1949, Republic Act No. 387, Meralco Securities installed from Batangas to Manila a pipeline system consisting of cylindrical steel pipes joined together and buried not less than one meter below the surface along the shoulder of the public highway. The pipes are embedded in the soil and are firmly and solidly welded together so as to preclude breakage or damage thereto and prevent leakage or seepage of the oil. The valves are welded to the pipes so as to make the pipeline system one single piece of property from end to end.

In order to repair, replace, remove or transfer segments of the pipeline, the pipes have to be cold-cut by means of a rotary hard-metal pipe-cutter after digging or excavating them out of the ground where they are buried. In points where the pipeline traversed rivers or creeks, the pipes were laid beneath the bed thereof. Hence, the pipes are permanently attached to the land.

Pursuant to the Assessment Law, Commonwealth Act No. 470, the provincial assessor of Laguna treated the pipeline as real property and issued tax declarations, containing the assessed values of portions of the pipeline.

Meralco appealed the assessments to the defendants, but the latter ruled that pipeline is subject to realty tax. The defendants argued that the pipeline is subject to realty tax because they are contemplated in Assessment Law and Real Property Tax Code; that they do not fall within the category of property exempt from realty tax under those laws; that Articles 415 & 416 of the Civil Code, defining real and personal property have no applications to this case because these pipes are constructions adhered to soil and things attached to the land in a fixed manner, and that Meralco Securities is not exempt from realty tax under petroleum law.

Meralco insists that its pipeline is not subject to realty tax because it is not real property within the meaning of Art. 415.

ISSUE:

Whether or not the aforementioned pipelines are subject to realty tax? (YES)

RULING:

Section 2 of the Assessment Law provides that the realty tax is due "on real property, including land, buildings, machinery, and other improvements." This provision is reproduced with some modification in Section 38, Real Property Tax Code, which provides that "there shall be levied, assessed, and collected xxx annual ad valorem tax on real property such as land, buildings, machinery, and other improvements affixed or attached to real property xxx."

It is incontestable that the pipeline of Meralco Securities does not fall within any of the classes of exempt real property enumerated in section 3 of the Assessment Law and section 40 of the Real Property Tax Code.

Pipeline means a line of pipe connected to pumps, valves and control devices for conveying liquids, gases or finely divided solids. It is a line of pipe running upon or in the earth, carrying with it the right to the use of the soil in which it is placed.

Article 415[l] and [3] provides that real property may consist of constructions of all kinds adhered to the soil and everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object.
The pipeline system in question is indubitably a construction adhering to the soil. It is attached to the land in such a way that it cannot be separated therefrom without dismantling the steel pipes which were welded to form the pipeline.

CALTEX (PHILIPPINES) INC., *Petitioner*, -versus- **CENTRAL BOARD OF ASSESSMENT APPEALS and CITY ASSESSOR OF PASAY**, *Respondent*.
G.R. No**.** L-50466, SECOND DIVISION**,** May 31, 1982**,** AQUINO, *J.*

The equipment and machinery, are considered as appurtenances to the gas station building or shed owned by Caltex (as to which it is subject to realty tax) and which fixtures are necessary to the operation of the gas station, for without them the gas station would be useless, and which have been attached or affixed permanently to the gas station site or embedded therein, are taxable improvements and machinery within the meaning of the Assessment Law and the Real Property Tax Code.

FACTS:

This case is about the realty tax on machinery and equipment installed by Caltex (Philippines) Inc. in its gas stations located on leased land. The machines and equipment consists of underground tanks, elevated tank, elevated water tanks, water tanks, gasoline pumps, computing pumps, water pumps, car washer, car hoists, truck hoists, air compressors and tireflators. The city assessor of Pasay City characterized the said items of gas station equipment and machinery as taxable realty. The realty tax on said equipment amounts to P4,541.10 annually (p. 52, Rollo). The city board of tax appeals ruled that they are personalty. The assessor appealed to the Central Board of Assessment Appeals. The Board, which was in its decision of June 3, 1977 that the said machines and equipment are real property under the Real Property Tax Code, Presidential Decree No. 464, which took effect on June 1, 1974. The decision was reiterated by the Board in its resolution of January 12, 1978, denying Caltex's motion for reconsideration, a copy of which was received by its lawyer on April 2, 1979.On May 2, 1979 Caltex filed this certiorari petition wherein it prayed for the setting aside of the Board's decision and for a declaration that t he said machines and equipment are personal property not subject to realty tax. We hold that the said equipment and machinery, as appurtenances to the gas station building or shed owned by Caltex (as to which it is subject to realty tax) and which fixtures are necessary to the operation of the gas station, for without them the gas station would be useless, and which have been attached or affixed permanently to the gas station site or embedded therein, are taxable improvements and machinery within the meaning of the Assessment Law and the Real Property Tax Code. Caltex invokes the rule that machinery which is movable in its nature only becomes immobilized when placed in a plant by the owner of the property or plant but not when so placed by a tenant, a usufructuary, or any person having only a temporary right, unless such person acted as the agent of the owner

ISSUE:

Whether the pieces of gas station equipment and machinery already enumerated are subject to realty tax? (YES)

RULING:

This issue has to be resolved primarily under the provisions of the Assessment Law and the Real Property Tax Code. Under, Sec. 38 of the said law: "Machinery shall embrace machines, mechanical contrivances, instruments, appliances and apparatus attached to the real estate. It includes the physical facilities available for production, as well as the installations and appurtenant service facilities, together with all other equipment designed for or essential to its manufacturing, industrial or agricultural purposes."

The equipment and machinery, are considered as appurtenances to the gas station building or shed owned by Caltex (as to which it is subject to realty tax) and which fixtures are necessary to the operation of the gas station, for without them the gas station would be useless, and which have been attached or affixed permanently to the gas station site or embedded therein, are taxable improvements and machinery within the meaning of the Assessment Law and the Real Property Tax Code. Improvements on land are commonly taxed as realty even though for some purposes they might be considered personalty. "It is a familiar phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property"

MINDANAO BUS COMPANY, *Petitioner*, -versus- **THE CITY ASSESSOR & TREASURER and the BOARD OF TAX APPEALS of Cagayan de Oro City**, *Respondent*.
G.R. No. L-17870, EN BANC, September 29, 1962, LABRADOR, *J.*

Movable equipment to be immobilized in contemplation of the law must first be "essential and principal elements" of an industry or works without which such industry or works would be "unable to function or carry on the industrial purpose for which it was established."

FACTS:

Petitioner is a public utility solely engaged in transporting passengers and cargoes by motor trucks. It owns a land where it maintains and operates a garage for its TPU motor trucks; a repair shop; blacksmith and carpentry shops, and with machineries placed therein, its TPU trucks are made; body constructed; and same are repaired in a condition to be serviceable in the TPU land transportation business it operates.

The machineries have never been or were never used as industrial equipment to produce finished products for sale, nor to repair machineries, parts and the like offered to the general public indiscriminately for business or commercial purposes.

Respondent City Assessor of Cagayan de Oro City assessed at P4,400 petitioner's above-mentioned equipment. Petitioner appealed the assessment to the respondent Board of Tax Appeals on the ground that the same are not realty. The Board of Tax Appeals of the City sustained the city assessor, so petitioner herein filed with the Court of Tax Appeals a petition for the review of the assessment. The CTA held the petitioner liable to the payment of the realty tax on its maintenance and repair equipment mentioned above. Hence, this petition.

ISSUE:

Whether or not the tools and equipment in the petitioner company's repair shop be considered immovable taxable real properties? (NO)

RULING:

Movable equipment to be immobilized in contemplation of the law must first be "essential and principal elements" of an industry or works without which such industry or works would be "unable to function or carry on the industrial purpose for which it was established." The tools and equipment are not essential and principle municipal elements of petitioner's business of transporting passengers and cargoes by motor trucks. They are merely incidentals — acquired as movables and used only for expediency to facilitate and/or improve its service. The transportation business could be carried on without the repair or service shop if its rolling equipment is repaired or serviced in another shop belonging to another.

MANILA INTERNATIONAL AIRPORT AUTHORITY, *Petitioner*, -versus- **COURT OF APPEALS, CITY OF PARAÑAQUE, CITY MAYOR OF PARAÑAQUE, SANGGUNIANG PANGLUNGSOD NG PARAÑAQUE, CITY ASSESSOR OF PARAÑAQUE, and CITY TREASURER OF PARAÑAQUE**, *Respondent*.
G.R. No. 155650, EN BANC**,** July 20, 2006**,** CARPIO, *J.*

Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the surging of fees and charges. At the same time, MIAA exercises all the powers of a corporation under the corporation law, in so far as these powers are not inconsistent with the provisions of this executive order.

FACTS:

Petitioner Manila International Airport Authority (MIAA) operates the Ninoy Aquino International Airport (NAIA) complex in Parañaque City under Executive Order No. 9303, otherwise known as the revised charter of the MIAA. EO 903 was issued on July 21, 1983 by then President Ferdinand E. Marcos. Subsequently EO 909 and 298 amended the MIAA charter as operator of the international operator, MIAA administers the land, improvements, and equipments within the NAIA complex. The MIAA charter transferred to MIAA approximately 600 hectares of land, including the runways and buildings then under the Bureau of Air Transportation. The MIAA charter provides that no portion of the land transferred to MIAA shall be disposed of through sale or any other mode unless specifically approved by the President of the Philippines. On March 21, 1997, the Office of the Government Corporate Counsel issued opinion no. 061. The OGCC opined that the local government code of 1991 withdraw the exemption from real estate tax granted to MIAA under section 21 of the MIAA charter. Thus, MIAA negotiated with respondent city of Parañaque to pay the real estate tax imposed by the city. MIAA then paid some of the real estate tax already due. On July 17, 2001, the City of Parañaque, through its city treasurer issued notices of levy and warrants of levy on the airport lands and buildings. The mayor of the city of Parañaque threatened to sell at public auction the airport lands and buildings should MIAA fail to pay the real estate tax deliquency. MIAA thus sought clarification of OGCC opinion no. 061. On August 9, 2001, the OGCC issued opinion no. 147 clarifying OGCC opinion no. 061. The OGCC pointed out that section 206 of the local government code requires persons exempt from real estate tax to show proof of exemption. The OGCC opined that section 21 of the MIAA charter is the proof that MIAA is exempt from real estate tax.

ISSUE:

Whether or not the airport lands and buildings are exempt from real estate tax? (YES)

RULING:

MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 21 (10) of the introductory provisions of the administrative code defines a government instrumentality as follows:

> ***Sec 2 General terms defined***
>
> *10.) Instrumentality refers to any agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter.*

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the surging of fees and charges. At the same time, MIAA exercises all the powers of a corporation under the corporation law, in so far as these powers are not inconsistent with the provisions of this executive order.

A government instrumentality like MIAA falls under section 133 (o) of the local government code, which states:

> ***Sec 133 Common limitations on the taxing powers of the local government units** – Unless otherwise provided herein, the exercise of the taxing power of the provinces, cities, municipalities and barangays shall not extend to the levy of the following:*
> *xxx*
> *o.) Taxes, fees or charges of any kind on the national government, its agencies and instrumentalities and local government units.*

Section 133 (0) recognizes the basic principles that local governments cannot tax the national government, which historically, merely delegated to the local governments the power to tax. While the 1987 constitution now includes taxation as one of the powers of the local governments, local governments may only exercise such powers subject to such guidelines and limitations as the congress may provide.

GOVERNMENT SERVICE INSURANCE SYSTEM, *Petitioner*, -versus- **THE CITY ASSESSOR OF ILOILO CITY, THE REGISTER OF DEEDS OF ILOILO CITY and ROSALINA FRANCISCO, represented by her attorney-in-fact, SALVADOR PAJA I**, *Respondent*.
G.R. No. 147192, SECOND DIVISION**,** June 27, 2006**,** CORONA, *J.*

The tax-exempt status of the GSIS could not prevent the accrual of the real estate tax liability on properties transferred by it to a private buyer through a contract to sell. In the present case, GSIS had already conveyed the properties to private persons thus making them subject to assessment and payment of real property taxes. The alienation of the properties sold by GSIS was the proximate cause and necessary consequence of the delinquent taxes due.

FACTS:

Petitioners spouses Eduardo and Leticia Montaño established that on April 13, 1977, they executed a Deed of Conditional Sale with the Government Service Insurance System (GSIS) covering a parcel of land situated at Block 2, Lot 6, Maharlika Homes, Jaro, Iloilo City, together with the house and improvements thereon. The lot was covered by TCT No. T-41681. The Montaños started paying the amortization in January 1979, and occupied the house and lot in 1980. However, in the summer of 1994, one Atty. Salvador Paja I went to their house and claimed that the lot was already owned by respondent Rosalina Francisco.

Leticia Montaño made inquiries regarding the alleged sale of the lot. She went to the Register of Deeds and discovered an annotation at the back of TCT No. T-41681, under Entry No. 170334 dated July 17, 1991, stating that a Certificate of Sale of Delinquent Real Property dated June 28, 1991 was executed by the City Treasurer's Office in favor of Rosalina Francisco covering the parcel of land for the sum of ₱2,225.19 representing taxes, penalties and cost of sale pursuant to the provision of Section 76 of Presidential Decree (P.D.) No. 464. It also appeared at the back of the same title, under Entry No. 201610 dated July 16, 1993, that Judge Quirico Defensor of the RTC of Iloilo City, Branch 36 issued an Order dated April 29, 1993, directing the Register of Deeds of Iloilo City to issue a new owner's duplicate copy of the said certificate of title in the name of GSIS and declaring the lost copy as null and void.

On June 13, 1994, Leticia Montaño requested the Register of Deeds of Iloilo City to annotate a Notice of Adverse Claim on TCT No. T-41681 to protect her right and interest in the subject property by virtue of the Deed of Conditional Sale executed by GSIS in her favor.

Leticia Montaño also went to the Office of the City Treasurer where she learned that respondent Francisco purchased the subject property in a public auction sale of delinquent real property conducted by public respondents on June 27, 1991. Petitioners averred that they were neither given any notice of tax delinquency nor informed of the schedule of the public auction sale. They were also not furnished a copy of the sale certificate. Moreover, they did not receive any notice of their right to redeem the subject property.

On July 11, 1994, the Montaños filed before the RTC of Iloilo City, Branch 23, an action for declaration of nullity of sale and damages against Rosalina Francisco, the City Government of Iloilo, the City Treasurer and the Head of the Treasurer's Enforcement Group. They caused a Notice of Lis Pendens to be recorded, and paid the tax due by consignation, pursuant to Section 267 of the Local Government Code of 1991.

Benson Chin of the City Treasurer's Office, in compliance with the subpoena and subpoena duces tecum issued by the trial court, brought the record folder of the subject property in the name of Baldomero Dagdag. The property's records presented before the trial court consisted of the Notice of Sale of Delinquent Real Property; the Certificate of Posting; the Certification on the conduct of auction sale by crier held on June 10, 1991 at the terminal market, on June 11, 1991 at the La Paz Public Market and on June 14, 1991 at the Central Market; proof of service; the Certificate of Sale of Delinquent Property to the City; the Report of Sale of Delinquent Property dated July 2, 1991; the Notice of Right to Redeem addressed to GSIS c/o Baldomero Dagdag dated July 12, 1991; and the Final Deed of Sale dated July 17, 1992.

Public respondents City Treasurer of Iloilo City Romeo Manikan and Head of the Treasurer's Enforcement Group Erlinda Zarandin filed their Answer with Counterclaim, alleging that petitioners were not notified because they had no right to be notified since the property was owned by the GSIS under the care of Baldomero Dagdag, who were notified in accordance with law. Moreover, petitioners had no cause of action insofar as they were concerned, and that they had no personality to sue.

The evidence for private respondent Rosalina Francisco showed that Atty. Salvador Paja I, in whose favor respondent Francisco executed a Special Power of Attorney, bought at a public auction sale held on June 27, 1991, a parcel of land known as Lot 6, Block 2, Phase 2144-B, located in Barangay Balabago, Jaro, Iloilo City, registered in the name of the GSIS, and covered by TCT No. T-41681. The Certificate of Sale of Delinquent Real Property executed by the City Treasurer's Office in favor of respondent Francisco was annotated at the back of TCT No. T-41681 under Entry No. 170334. Since no redemption had been made within the one year period, a Final Deed of Sale was executed.

On November 17, 1992, respondent Francisco, represented by Atty. Paja, filed a petition for the entry of new Certificate of Title in her favor with the RTC of Iloilo City, Branch 36. She sought the issuance of a new Owner's Duplicate Copy of Certificate of Title in the name of GSIS c/o Baldomero Dagdag to effect registration of the Final Deed of Sale. Absent any opposition, the RTC issued an Order dated April 29, 1993 directing the Register of Deeds of Iloilo City "to issue a new owner's duplicate copy of Transfer Certificate of Title No. T-41681 in the name of GSIS c/o Baldomero Dagdag" and declaring the lost copy as null and void. The dispositive portion of the Order was annotated at the back of the Certificate of Title under Entry No. 201610

ISSUE:

Whether or not the tax delinquency proceedings made on the subject lot was regular and legal?
(NO)

RULING:

Even if the charter of the GSIS generally exempts it from tax liabilities, the prescription is not so encompassing as to make the tax exemption applicable to the properties in dispute here. In the early case of *City of Baguio v. Busuego*, 100 SCRA 116 (1980), we held that the tax-exempt status of the GSIS could not prevent the accrual of the real estate tax liability on properties transferred by it to a private buyer through a contract to sell. In the present case, GSIS had already conveyed the properties to private persons thus making them subject to assessment and payment of real property taxes. The alienation of the properties sold by GSIS was the proximate cause and necessary consequence of the delinquent taxes due.

Even if we were to construe that RA 8291 abrogated Section 234(a) of the LGC, still it cannot be made to apply retroactively without impairing the vested rights of private respondent. The appellate court thus correctly stated: x x x it has been the courts' consistent ruling that a repealing statute must not interfere with vested rights or impair the obligation of contracts; that if any other construction is possible, the act should not be construed so as to affect rights which have vested under the old law. Private respondent[s], we reiterate, have become the private owner[s] of the properties in question in the regular course of proceedings established by law, and after the decisions granting such rights have become final and executory. The enactment of the new GSIS Charter cannot be applied in a retroactive manner as to divest the private respondent[s] of [their] ownership.

REPUBLIC OF THE PHILIPPINES (represented by the DEPARTMENT OF ENERGY [DOE] and the PHILIPPINE NATIONAL OIL COMPANY-ENERGY DEVELOPMENT CORPORATION [PNOC-EDC]), *Petitioner*, -versus- **CITY OF KIDAPAWAN, KIDAPAWAN CITY ASSESSOR and KIDAPAWAN CITY TREASURER**, *Respondent*.
G.R. No. 166651, FIRST DIVISION, December 9, 2005, YNARES-SANTIAGO, *J.*

We agree with PNOC-EDC that its machineries, equipment, buildings and other infrastructures found in MAGRA cannot be levied upon and sold at public auction to satisfy the alleged tax delinquency because the warrant of levy shows that MAGRA is the only delinquent real property subject to tax. Respondents have two remedies for the collection of real property tax: (1) by administrative action through levy on real property; and (2) by judicial action. Under Sections 257 and 258 of the LGC, the basic real property tax constitutes as a lien on the property subject to the tax which may be levied upon through the issuance of a warrant. The local government unit concerned may also enforce the collection of the basic real property tax by civil action in any court of competent jurisdiction.

FACTS:

In order to reduce the country's dependence on imported energy supplies and accelerate the development of geothermal resources, then President Ferdinand E. Marcos issued Presidential Decree (PD) No. 1442 which allowed the government to enter into service contracts for financial, technical, management or other forms of assistance with qualified domestic and foreign entities, for the exploration, development, exploitation, or utilization of the country's geothermal resources.

On January 30, 1992, then President Corazon C. Aquino issued Proclamation No. 853 which excluded certain portions of the land embraced in the Mt. Apo National Park and declared the same as geothermal reservation under the administration of the PNOC, now referred to as the MAGRA.

On March 24, 1992, the government through the Office of Energy Affairs (now Department of Energy, DOE) entered into a service contractwith PNOC-EDC, a government owned or controlled corporation created and existing under the Corporation Code, to exclusively conduct geothermal operations within the MAGRA. Under the contract, the PNOC-EDC would furnish the necessary services, technology and financing for the geothermal operations subject to the direct supervision of the DOE. Thereafter, PNOC-EDC built a 104-megawatt power plant within the MAGRA which produces electricity through turbines using steam extracted from the MAGRA as fuel.

Subsequently, the City Treasurer of Kidapawan, Cotabato notified PNOC-EDC of its tax delinquency after which, he issued a warrant of levy on the 701-hectare MAGRA for failure to pay real property taxes, covering the tax period from 1993-2002. Thereafter, he sent a notice of sale of delinquent real property to PNOC-EDC declaring that delinquent real property will be sold through public auction.

PNOC-EDC thus filed a petition for prohibition with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order which sought to enjoin the respondents from issuing assessments or notice of delinquency and from proceeding with the public auction of the Geothermal Reservation Area.
On May 14, 2003, the Regional Trial Court of Kidapawan City, Branch 23, issued an Order directing respondents to desist from proceeding with the public auction on the ground that the same is part of the public domain and thus inalienable. The order was reiterated on June 3, 2003, and the respondents were again directed to desist from enforcing the warrant of levy and from selling at public auction the subject property until the case is finally resolved or upon further order.
The trial court found that PNOC-EDC is not exempt from paying the real property taxes and that the MAGRA is part of the Mt. Apo National Park which has not been re-classified as alienable agricultural land. Thus, it could not be sold at public auction. However, the trial court ordered that the improvements on the subject land, not being in the nature of public dominion, may be validly levied and sold at public auction to satisfy the payment of realty tax delinquencies.

ISSUE:

Whether or not PNOC-EDC is liable to pay the real property taxes, whether the machineries, equipment, buildings and other infrastructures found in MAGRA may be levied? (YES)

RULING:

PNOC-EDC is a government owned or controlled corporation conferred by law with corporate powers. Under its charter, no tax exemptions were granted. Even if PNOC-EDC was awarded exemptions in its charter, the same were withdrawn by the LGC. Thus, there is no need to deliberate on whether PNOC-EDC is a taxable entity but on whether it is an entity exempt from paying real property tax.

The exemption claimed by PNOC-EDC hinges on Section 234, paragraph (a) of trie LGC which reads: SECTION 234. *Exemptions from Real Property Tax.*—The following are exempted from payment of the real property tax: (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person. The above provision exempts from real property taxation properties of the government, provided the beneficial use of the property was not transferred to a taxable person. Conversely, if the beneficial use has been transferred to a taxable entity, such as PNOC-EDC, then the real property owned by the government, which in this case is the MAGRA, is subject to real property tax. At this point, it is well to note that in real estate taxation, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner

The power to tax and to grant tax exemptions is vested in the Congress and, to a certain extent, in the local legislative bodies. Under Section 28(4), Article VI of the Constitution, no law granting any tax exemption shall be passed without the concurrence of a majority of all Members of Congress. Thus the exemption provided in the service contract cannot be given effect because the DOE, representing the government in the execution of the contract, has no authority to grant the same. Moreover, the

Local Government Code specifically enumerates the entities exempt from real property taxation and PNOC-EDC is not one of them.

Taxes are what we pay for civilized society, or are the lifeblood of the nation. The law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. PNOC-EDC has not proven that it is entitled to exemption from the payment of real property tax.

We agree with PNOC-EDC that its machineries, equipment, buildings and other infrastructures found in MAGRA cannot be levied upon and sold at public auction to satisfy the alleged tax delinquency because the warrant of levy shows that MAGRA is the only delinquent real property subject to tax. Respondents have two remedies for the collection of real property tax: (1) by administrative action through levy on real property; and (2) by judicial action. Under Sections 257 and 258 of the LGC, the basic real property tax constitutes as a lien on the property subject to the tax which may be levied upon through the issuance of a warrant. The local government unit concerned may also enforce the collection of the basic real property tax by civil action in any court of competent jurisdiction.

The personal liability for the tax delinquency, is generally on whoever is the owner of the real property at the time the tax accrues; where, however, the tax liability is imposed on the beneficial use of the real property such as those owned but leased to private persons or entities by the government, or when the assessment is made on the basis of the actual use thereof, the personal liability is on any person who has such beneficial or actual use at the time of the accrual of the tax. In the case at bar, PNOC-EDC is the beneficial user, however, since respondents cannot avail of the administrative remedy through levy, they can only enforce the collection of real property tax through civil action.

LUNG CENTER OF THE PHILIPPINES, *Petitioner*, -versus- **QUEZON CITY and CONSTANTINO P. ROSAS, in his capacity as City Assessor of Quezon City**, *Respondent.*
G.R. No. 144104**,** EN BANC**,** June 29, 2004**,** CALLEJO, SR., *J.*

The exemption claimed by PNOC-EDC hinges on Section 234, paragraph (a) of the LGC. The above provision exempts from real property taxation properties of the government, provided the beneficial use of the property was not transferred to a taxable person. Conversely, if the beneficial use has been transferred to a taxable entity, such as PNOC-EDC, then the real property owned by the government, which in this case is the MAGRA, is subject to real property tax.

FACTS:

President Corazon C. Aquino issued Proclamation No. 853 which excluded certain portions of the land embraced in the Mt. Apo National Park and declared the same as geothermal reservation under the administration of the PNOC, now referred to as the MAGRA. Thereafter, PNOC-EDC built a 104-megawatt power plant within the MAGRA which produces electricity through turbines using steam extracted from the MAGRA as fuel.

Subsequently, the City Treasurer of Kidapawan, Cotabato notified PNOC-EDC of its tax delinquency after which, he issued a warrant of levy on the 701-hectare MAGRA for failure to pay real property taxes, covering the tax period from 1993-2002. He sent a notice of sale of delinquent real property to PNOC-EDC declaring that delinquent real property will be sold through public auction.

PNOC-EDC claimed that it was exempt from real property tax under Section 234, paragraph (a) of the Local Government Code which reads:

> SECTION 234. *Exemptions from Real Property Tax*. " The following are exempted from payment of the real property tax:
>
> (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;"

The trial court found that PNOC-EDC is not exempt from paying the real property taxes and that the MAGRA is part of the Mt. Apo National Park which has not been re-classified as alienable agricultural land. Thus, it could not be sold at public auction. However, the trial court ordered that the improvements on the subject land, not being in the nature of public dominion, may be validly levied and sold at public auction to satisfy the payment of realty tax delinquencies.

ISSUE:

Whether or not PNOC liable to pay real property taxes? (YES)

RULING:

The exemption claimed by PNOC-EDC hinges on Section 234, paragraph (a) of the LGC. The above provision exempts from real property taxation properties of the government, provided the beneficial use of the property was not transferred to a taxable person. Conversely, if the beneficial use has been transferred to a taxable entity, such as PNOC-EDC, then the real property owned by the government, which in this case is the MAGRA, is subject to real property tax.

PNOC-EDC exclusively conducts geothermal operations in the area for commercial utilization. It retains a profit in the amount of 40% of the net value of the amount realized from the sale of geothermal resources. It is even allowed to charge its operating expenses from the gross value of the sales. The provisions of the service contract also show that it is the PNOC-EDC which actually utilizes the MAGRA. Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof. In fact, under the provisions of the service contract, PNOC-EDC must surrender possession of 25% of the MAGRA to the government after the 3rd year and another 25% on the 5th year, if the contract is extended. Thus the PNOC-EDC is the beneficial user of the MAGRA and is liable to pay the real property tax assessments.

SPOUSES FEDERICO SERFINO and LORNA BACHAR, *Petitioner*, -versus- **THE COURT OF APPEALS and LOPEZ SUGAR CENTRAL MILL CO., INC.**, *Respondent*.
G.R. No. L-40858**,** SECOND DIVISION**,** September 15, 1987**,** PARAS, *J.*

Strict adherence to the statutes governing tax sales is imperative not only for the protection of the tax payers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce such laws. Notice of sale to the delinquent land owners and to the public in *general is an essential and indispensable requirement of law, the non-fulfillment of which vitiates the sale.*

FACTS:

On 25 August 1937, a parcel of land was patented in the name of Pacifico Casamayor (OCT 1839). On 14 December 1945, he sold said land in favor of Nemesia D. Balatazar (TCT No. 57-N, 18 January 1946). OCT 1839 was lost during the war and upon petition of Nemesia Baltazar, the Court of First Instance of Negros Occidental ordered the reconstitution thereof. Pursuant thereto, OCT 14-R (1839) was issued on 18 January 1946 in the name of Pacifico Casamayor. On that same day, TCT 57-N was issued in the name of Nemesia Baltazar but after the cancellation of OCT 14-R (1839). On 15 August 1951, Nemesia Baltazar, sold said property to Lopez Sugar Central Mill Co., and the latter did not present the documents for registration until 17 December 1964 to the Office of the Registry of Deeds. Said office refused registration upon its discovery that the same property was covered by another certificate of title, TCT 38985, in the name of Federico Serfino. On 19 November 1964, the spouses Serfinos mortgaged the land to the Philippine National Bank (PNB) to secure a loan in the amount of P5,000.00; which was inscribed in TCT No. 38985.

The Lopez Sugar Central instituted an action to recover said land; and the lower court rendered a decision ordering the cancellation of TCT No. 38985; issuance of a new TCT in the name of plaintiff; and the payment of the plaintiff PNB the loan of spouses Serfinos secured by said land. Both parties appealed from this decision of the trial court. Ruling on the assignment of errors, the appellate court affirmed the judgment of the trial court with modification in its decision setting aside the decision of the trial court declaring plaintiff liable to PNB for payment, however, ordering the plaintiff to reimburse the Serfino spouses of the sum P1,839.49, representing the unpaid taxes and penalties paid by the latter when they repurchased the property. Hence, the appeal by the spouses Serfino and PNB to the Supreme Court.

ISSUE:

Whether or not the auction sale of the disputed property was null and void? (YES)

RULING:

They argue that since private respondent is a corporation, it is barred from owning land granted under the free patent if the aforementioned requisites are not present. Such contentions do not merit our approval. It is not disputed that the original grantee was Pacifico Casamayor who obtained a Homestead Patent and later an original certificate of title in his name. Later it was this original grantee who sold the land in question to Nemesia Baltazar on December 14, 1945 or more than eight (8) years after he obtained his homestead patent on August 25, 1937. On these facts, We now apply Sec. 118 of Commonwealth Act No. 141 which prohibits the alienation of homestead lots to private individual within five (5) years from the date of the issuance of the patent and not Sec, 121 which governs sale to corporations. Since the grant was more than five (5) years before, the transfer to Nemesia Baltazar was valid and legal. Nemesia Baltazar who became the titled or registered owner as evidenced by TCT No. 57-N, could exercise acts of ownership over the land such as disposing of it to private respondent by a deed of sale.

The assailed decision of the appellate court declares that the prescribed procedure in auction sales of property for tax delinquency being in derogation of property rights should be followed punctiliously. Strict adherence to the statutes governing tax sales is imperative not only for the protection of the tax payers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce such laws. Notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfillment of which vitiates the sale. We give our stamp of approval on the aforementioned ruling of the respondent court. In the case at bar, there is no evidence that Nemesia Baltazar, who had obtained a transfer certificate of title in her name on January 18, 1946, was notified of the auction sale which was scheduled on October 30, 1956. Neither was she furnished as the owner of the delinquent real property with the certificate of sale as prescribed by Sec. 37 of Commonwealth Act No. 470. These infirmities are fatal.

A purchaser of real estate at the tax sale obtains only such title as that held by the taxpayer, the principle of *caveat emptor* applies. Where land is sold for delinquency taxes under the provisions of the Provincial Assessment Law, rights of registered but undeclared owners of the land are not affected by the proceedings and the sale conveys only such interest as the person who has declared the property for taxation has therein;

Petitioner Philippine National Bank relied on TCT No. 38985, the genuineness of which is not in issue as it was really issued by the Register of Deeds of Negros Occidental. Philippine National Bank had every right to rely on TCT No. 38985 as it was a sufficient evidence of ownership of the mortgagor. The Philippine National Bank at that time had no way of knowing of the existence of another genuine title covering the same land in question.

The fact that the public auction sale of the disputed property was not valid (for lack of notice of the auction sale to the actual owner) can not m any way be attributed to the mortgagee's (PNB's) fault. The fact remains that in spite of the lack of notice to the actual registered owner at that time (who was Nemesia Baltazar) the Register of Deeds issued a TCT in the name of Federico Serfino married to Lorna Bachar which title was relied upon by petitioner Philippine National Bank. The Register of Deeds disowned liability and negligence or connivance claiming that existence of TCT No. 57-N in the name of Nemesia Baltazar was not found in the records of the Register of Deeds for the reason that it did not exist in the index card as the land was not designated by cadastral lot number. Thus the discrepancy was due to the faulty system of indexing the parcels of land. Be it noted that the inability of the Register of Deeds to notify the actual owner or Lopez Sugar Central of the scheduled public auction sale was partly due to the failure of Lopez Sugar Central to declare the land in its name for a number of years and to pay the complete taxes thereon. Petitioner Philippine National Bank is therefore entitled to the payment of the mortgage loan as ruled by the trial court and exempted from the payment of costs.

ESTATE OF THE LATE MERCEDES JACOB represented by MERCEDITA JACOB, DONATO JACOB, JR., ERENEO JACOB and LILIAN JACOB QUINTO, *Petitioner*, -versus- **COURT OF APPEALS, SPOUSES RAMON R. TUGBANG and VIRGINIA S. TUGBANG, REGISTER OF DEEDS OF QUEZON CITY and CITY TREASURER OF QUEZON CITY Estate of the Late Mercedes Jacob vs. Court of Appeals**, *Respondent*.
G.R. No. 120435 & 120974**,** SECOND DIVISION**,** December 22, 1997**,** BELLOSILLO, *J.*

In ascertaining the identity of the delinquent taxpayer, for purposes of notifying him of his tax delinquency and the prospect of a distraint and auction of his delinquent property, the City or Provincial Treasurer should not have simply rely on the tax declaration—he should verify from the Office of the

Register of Deeds as to who the registered owner is to determine the real delinquent taxpayer; One who is no longer the owner of the property cannot be considered the delinquent taxpayer.

FACTS:

Alberto Sta. Maria owned a parcel of land covered by TCT No. 68818 which he sold in 1964 to Teresa L. Valencia who, as a consequence, had the title canceled and TCT No. 79818 issued in her name. She however failed to have the tax declaration transferred in her name. Thus she paid the real estate taxes from 1964 to 1978 in the name of its previous owner Alberto Sta. Maria.

In the auction sale on 29 February 1984 the spouses Romeo and Verna Chua bought the land in question, which was already covered by TCT No. 79818 in the name of Teresa L. Valencia. On 5 March 1984 a certificate of sale was issued to the Chua spouses but it showed on its face that the land was still covered by TCT No. 68818 and not TCT No. 79818. Apparently, the Office of the City Treasurer was unaware that TCT No. 68818 had already been canceled by TCT No. 79818. However, in the Final Bill of Sale issued to the Chua spouses on 15 May 1985 TCT No. 79818 still appeared in the name of Alberto Sta. Maria, the former owner,so that the vendee spouses lost no time in filing a petition with the Regional Trial Court of Quezon City for the cancellation of TCT No. 79818 and the issuance of a new title in their name.

On 4 February 1987 the court granted their petition and TCT No. 357727 was issued in the name of the spouses Romeo and Verna Chua.

On 20 December 1973 Valencia entered into a contract of sale of the property on installment with a mortgage in favor of respondent Bernardita C. Tolentino. However, from 1979 to 1983 Valencia failed to pay the real estate taxes due on the land. As a result, notices of tax delinquency and intent to sell the property were sent to Alberto Sta.

Still, Bernardita C. Tolentino paid in full the purchase price of the property so that Teresa L. Valencia executed a deed of absolute sale in her favor. On 2 August 1988, in view of the fire that gutted the Office of the Register of Deeds of Quezon City, Tolentino filed a petition for reconstitution of TCT No. 79818.

Sometime in April 1989, as purchasers of the property in the auction sale, the Chuas demanded delivery of possession from Bernardita C. Tolentino and Teresa L. Valencia.

Tolentino sued for annulment of the auction sale in the Regional Trial Court of Quezon City. Finding the action to be well taken, the trial court granted the petition. The Court of Appeals affirmed the court *a quo.*

ISSUE:

Whether or not the auction sale is valid? (NO)

RULING:

In ascertaining the identity of the delinquent taxpayer, for purposes of notifying him of his tax delinquency and the prospect of a distraint and auction of his delinquent property, petitioner City Treasurer should not have simply relied on the tax declaration. The property being covered by the

Torrens system, it would have been more prudent for him, which was not difficult to do, to verify from the Office of the Register of Deeds of Quezon City where the property is situated and as to who the registered owner was at the time the auction sale was to take place, to determine who the *real delinquent taxpayer was* within the purview of the third paragraph of Sec. 73. For one who is no longer the lawful owner of the land cannot be considered the "present registered owner" because, apparently, he has already lost interest in the property, hence is not expected to defend the property from the sale at auction. The purpose of PD No. 464 is to collect taxes from the *delinquent taxpayer* and, logically, one who is no longer the owner of the property cannot be considered the *delinquent taxpayer.*

While we understand the earnestness and initiative of local governments to collect taxes, the same must be collected from the rightful debtors and not from those who may only appear to be the registered owners in the official files. Certainly, properties change hands as fast as their owners can, and to deprive the present owners of their properties by notifying only the previous owners who no longer have any interest in them will amount not only to inequity and injustice but even to a violation of their constitutional rights to property and due process. This interpretation as well as its ratiocination was explained as early as 1946 in *Cabrera v. The Provincial Treasurer of Tayabas* where the parties therein seemed to be in the same predicament as the parties herein.

The fact that the pertinent phrase, *"failure to do so shall make the assessment in the name of the previous owner valid and binding on all persons interested, and for all purposes, as though the same had been assessed in the name of its actual owner,"* found in both RA No. 537 and RA No. 409 was not incorporated in PD No. 464 implies that the assessment of the subject property in 1983 in the name of Sta. Maria would not bind, much less adversely affect, Valencia. This, in spite of the non declaration by Valencia of the property in her name as required by the law, for there is no longer any statutory waiver of the right to contest assessment by the actual owner due to mere non-declaration. We can infer from the omission that the assessment in the name of the previous owner is no longer deemed an assessment in the name of the actual owner. It is therefore clear that the delinquent taxpayer referred to under Sec. 72 of PD No. 464 is the actual owner of the property at the time of the delinquency and mere compliance by the provincial or city treasurer with Sec. 65 of the decree is no longer enough. The notification to the right person, *i.e.*, the real owner, is an essential and indispensable requirement of the law, noncompliance with which renders the auction sale void.

ANTONIO TALUSAN and CELIA TALUSAN, *Petitioner*, -versus- **HERMINIGILDO TAYAG and JUAN HERNANDEZ**, *Respondent*.
G.R. No. 133698**,** THIRD DIVISION**,** April 4, 2001**,** PANGANIBAN, *J.*

For purposes of real property taxation, the registered owner of a property is deemed the taxpayer and, hence, the only one entitled to a notice of tax delinquency and the resultant proceedings relative to an auction sale. Petitioners, who allegedly acquired the property through an unregistered deed of sale, are not entitled to such notice, because they are not the registered owners. Moral lessons: real property buyers must register their purchases as soon as possible and, equally important, they must pay their taxes on time.

FACTS:

The case involves auction sale of a condominium unit, covered by Condominium Certificate of Title No. 651 and located in Building IV, Europa Condominium Villas, Baguio City.

Elias imperial, the former owner, sold his condominium unit to Antonio Talusan and Celia Talusan, as evidenced by an Absolute Deed of Sale.

Juan Hernandez, the City Treasurer of Baguio City, wrote a letter to Imperial informing him that the property would be sold at public auction if Imperial failed to satisfy the delinquent real estate taxes, penalties and cost of sale, amounting to Php4,039.80. Unbeknownst to Hernandez, Imperial and his family had already migrated to Australia.

The property was sold through auction sale to Hermenegildo Tayag for Php4,400.00 and a final bill of sale was issued in his favor.

The Talusans, who were still in possession of the property, offered to pay the same to Tayag were rejected. They filed for writ of preliminary injunction.

RTC of Baguio, Branch 6, ruled in favor of Tayag, finding that Tayag is not bound to the Deed of Sale between Imperial and the Talusans because such was never registered with the Register of Deeds.

The Talusans sought for the annulment of the auction sale, but the legality of the sale was upheld. The CA affirmed.

ISSUE:

Whether the auction sale was not valid because of non-publication of delinquent real estate taxes? (NO)

RULING:

Cases involving an auction sale of land for the collection of delinquent taxes are *in personam*, unlike land registration proceedings. Thus, notice by publication, though sufficient in proceedings in rem, does not as a rule satisfy the requirement of proceedings in personam. Mere publication of the notice of delinquency would not suffice, considering that the procedure in tax sales is in personam. It was, therefore, still incumbent upon the city treasurer to send the notice of tax delinquency directly to the taxpayer in order to protect the interests of the latter.

In the present case, the notice of delinquency was sent by registered mail to the permanent address of the registered owner in Manila. In that notice, the city treasurer of Baguio City directed him to settle the charges immediately and to protect his interest in the property. Under the circumstances, we hold that the notice sent by registered mail adequately protected the rights of the taxpayer, who was the registered owner of the condominium unit.

For purposes of the real property tax, the registered owner of the property is deemed the taxpayer. Hence, only the registered owner is entitled to a notice of tax delinquency and other proceedings relative to the tax sale. Not being registered owners of the property, petitioners cannot claim to have been deprived of such notice. In fact, they were not entitled to it.

Spouses RAMON and ROSITA TAN, *Petitioner*, -versus- **GORGONIA BANTEGUI, Represented by GUADALUPE B. BAUTISTA; and Spouses FLORANTE and FLORENCIA B. CAEDO**, *Respondent*.
G.R. No. 154027**,** THIRD DIVISION**,** October 24, 2005**,** PANGANIBAN, *J.*

The auction sale of real property for the collection of delinquent taxes is in personam, not in rem. Although sufficient in proceedings in rem like land registration, mere notice by publication will not satisfy the requirements of proceedings in personam. "[P]ublication of the notice of delinquency [will] not suffice, considering that the procedure in tax sales is in personam."

FACTS:

In 1954 Gorgonia Bantegui (married to Jesus Bayot) acquired a parcel of land located in Quezon City under TCT no. 28458. The property was rented to spouses Florante B. Caedo and Florencia B. Caedo who resided in said property until 1994.

In 1970 Bantequi left for the US, returned to the Phil in 1988 to execute a special power of attorney, making Guadalupe B. Bautista her representative before going back to the US.
Taxes were paid until 1977 but the real property taxes from the year 1978 to 1983 inclusive of penalties were not paid.

Due to no payment of taxes, the city treasurer of Quezon City sold said property at public auction on November 21,1984 to Spouses Edilberto and Josefina Capistrano for the sum of P10,000. The Certificate of Sale of Delinquent Property was issued on Nov. 26,1984.

The property was not redeemed within one year, title to said property was consolidated to the Capistranos and TCT No. 361851 was issued in their names on July 4,1987. The Capistranos , however, did not take possession of the land nor inform the Caedos about the sale or collected any rent form them. They did not pay any real property taxes thereon.

On June 20,1998, The property was later sold by the Capistranos to spouses Evelyn (daughter of the Caedos) and Jesse Pereyra for P60,000. Their TCT was cancelled and a new TCT was issued on Jan. 10,1989 to Pereyra who also did not take possession of the property in question but instead mortgaged the property to Rural Bank of Imus, Cavite. Said mortgage was annotated on the title.

Bantegui and Caedos were not informed of the transactions, all the while Caedos paid rent to Bantegui until December 1993.

Bantegui on her part, applied for administrative reconstitution of her title as it was lost in a fire. Reconstituted Title no. 28458 was subsequently issued in her name. She paid the realty taxes on the said property for the years 1987 to 1989 but the city treasurer did not accept the payment for the year 1990.

On May 3,1990, the same property was sold by the Pereyras to the spouses Ramon and Rosita Tan for P350,000 with the latter paying the amount of P300,000 to the Rural Bank of Imus, Cavite for the release of the mortgage per agreement by the parties. The Tans likewise paid the overdue taxes and other expenses incurred by the Pereyras pertaining to said mortgage. The Tan's did not immediately take possession of the property nor inform the occupants (Caedos).
But in the latter part of 1990 the Tan's through their lawyer informed the Caedos of their ownership and demanded that they vacate the property. They later filed an action for ejectment against the Caedos before the MTC of Quezon City on Jan. 18,1991.

On Oct. 31,1991 the court ruled in favor of Tans. The Caedos interposed an appeal but failed to appear during the hearing of the case and was declared in default and later ejected from the property on Feb. 20,1994 when the house was demolished.

On Feb 11,1992, Bantegui, through her sister Guadalupe Bautista filed a complaint for the annulment of sale , quieting of title, injunction and damages with the RTC of Quezon . spouses Caedo enjoined the complaint.

The complaint was later amended on May 14, 1992, impleading the spouses Capistrano and the City Treasurer of Quezon City as co-defendants, and deleting 'quieting of title' from the prayer and inserting 'reconveyance.'

RTC decided in favor of respondents, petitioners appealed to the CA.

CA decided in favor of respondent. Declaring that petitioners were not purchasers in good faith and had no better right to the subject property than that of any of their predecessor-in-interest, that the auction was tainted with irregularities such as: no notice of delinquency and of sale were sent to the owner.

ISSUE:

Whether or not the Auction sale was valid? (NO)

RULING:

The auction sale of real property for the collection of delinquent taxes is *in personam*, not *in rem*. Although sufficient in proceedings *in rem* like land registration, mere notice by publication will not satisfy the requirements of proceedings *in personam*. "[P]ublication of the notice of delinquency [will] not suffice, considering that the procedure in tax sales is *in personam*." It is still incumbent upon the city treasurer to send the notice directly to the taxpayer—the registered owner of the property—in order to protect the latter's interests. Although preceded by proper advertisement and publication, an auction sale is void absent an actual notice to a delinquent taxpayer.

With greater significance is the categorical and unrefuted statement in it that the "[s]ealed envelope containing a copy of the petition addressed to Gorgonia Bantegui x x x was returned to sender unclaimed x x x." That statement definitely confirms the lack of notices, without which the subsequent proceeding to sell the property produces no legal effect. "Notice of sale to the delinquent landowners and to the public[,] in general[,] is an essential and indispensable requirement of law, the non-fulfillment of which vitiates the sale."

COMMISSIONER OF CUSTOMS, *Petitioner*, -versus- **CARIDAD CAPISTRANO**, *Respondent*.
G.R. No. L-11075 **,** EN BANC**,** June 30, 1960**,** PARAS, *J.*

Section 1363 (f) of the Revised Administrative Code relied upon by the appellant reads as follows:
"Any merchandise of prohibited importation or exportation, the importation or exportation of "which is effected or attempted contrary to law, and all other merchandise which, in the opinion of the collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former."

FACTS:

On March 31, 1955, Caridad Capistrano was booked as an outgoing passenger of a plane bound for Hongkong. When she was subjected to the customary search by a woman agent of the Bureau of Customs immediately before the plane she was to board took off, there were found in her person one hundred and fifty six (156) pieces of Philippine 50-peso bills, seventeen (17) pieces of U.S. 20-dollar bills and one (1) piece of U.S. 10-dollar bill, although her license from the Central Bank allowed her to carry only $200, broken down into $50.00 in cash and $150.00 in traveler's check. Consequently, the bills were seized for alleged violation of Central Bank Circulars Nos. 42 and 55, in relation to Section 1363 (f) of the Revised Administrative Code.

In the seizure and forfeiture proceedings correspondingly instituted, the Collector of Customs rendered on May 5, 1955, a decision ordering the forfeiture in favor of the Government of the bills in question. This decision was affirmed by the Commissioner of Customs on July 29, 1955. Dissatisfied, Caridad Capistrano brought the matter to the Court of Tax Appeals (CTA Case No. 174).
In its decision of June 4, 1956, the Court of Tax Appeals ruled that while Circulars Nos. 37, 20, 42 and 55 were promulgated by the Monetary Board pursuant to the provisions of Republic Act No. 265, said circulars did not, however, authorize the seizure and forfeiture of the Philippine peso bills carried by herein petitioner in excess of that allowed by the Central Bank regulations. The Tax Court further said that neither could Section 1363 (f) of the Revised Administrative Code be invoked because said section referred merely to "merchandise or prohibited importation or exportation."

Taking judicial notice of the fact that the United States dollar has already ceased to be legal tender in the Philippines and that it could be bought and sold in the country, the Tax Court held that the U. S. dollar falls within the term "merchandise". However, the same thing was not said of the Philippine peso. Hence, the decision of the Commissioner of Customs, insofar as the one hundred and fifty six (156) pieces of Philippine 50-peso bills were concerned, was reversed, and said bills were ordered to be returned to petitioner Caridad Capistrano. From that portion of the decision, the Commissioner of Customs has appealed to this Court.

ISSUE:

Whether or not the Court of Tax Appeals erred in revoking the order of forfeiture of the Philippine peso bills and ordering their release to the appellee? (YES)

RULING:

Section 1363 (f) of the Revised Administrative Code relied upon by the appellant reads as follows:
"Any merchandise of prohibited importation or exportation, the importation or exportation of "which is effected or attempted contrary to law, and all other merchandise which, in the opinion of the collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former."

There can scarcely be any doubt that Philippine money may be exported or brought out of the country. Indeed, the Court of Tax Appeals recognized this fact in the decision appealed from. That such exportation ultimately affects the stability of the peso cannot be denied. As clearly explained by the Tax Court, it was in the light of compelling economic reasons and necessities that Central Bank

Circulars Nos. 37 and 42, prohibiting the exportation of Philippine bills and coins, subject to certain exceptions, were conceived and promulgated.

We believe that Philippine peso bills come within the concept of "merchandise," as this term is understood in Section 1363 (f) of the Revised Administrative Code. As defined by the same Code, merchandise, when used with reference to importations or exportations, includes goods, wares, and in general anything that may be the subject of importation or exportation. (Sec. 1419.) It cannot be gainsaid that money may be a commodity an object of trade.

"Money in the country where it is current, is both a measure of value and a medium of exchange, while in other countries it is a commodity bought and sold in the market, and its value fluctuates in the market like that of other commodities."

In the same manner that in the Philippines the United States dollar bills which have ceased to be legal tender, are considered merchandise, the Philippine peso bills when attempted to be exported, as in the present case, may be deemed to have been taken out of domestic circulation as legal tender and treated as commodity. Hence, they may be forfeited pursuant to Central Bank Circular No. 37 in relation to Section 1363 (f) of the Revised Administrative Code.

KURT NILSEN, DAGPIN LUNOGREN, HELGE HELGSESEN, in their capacity as crew members of the S/S "FERNSIDE" and MACONDRAY & COMPANY, INC., in its capacity agent of the S/S "FERNSIDE", *Petitioners*, -*versus*- COMMISSIONER OF CUSTOMS, *Respondent*
G.R. No. L-27149, SECOND DIVISION, March 14, 1979, FERNANDO, *J.*

Where the cigarettes were not found in the slope chest where generally they are kept but in the crew's cabin, apparently concealed, and were not in the list of sea stores, they are in fact unmanifested cargoes as they did not appear in the sea stores list, and no claims have been made that they were in the passenger baggage manifest or crew's declaration.

FACTS:

On July 10, 1962, 108 cartons of cigarettes were discovered inside the cabin of three crew members of S/S FERNSIDE, a foreign vessel, during a search conducted by a team of customs agent in the Port of Manila. Seizure proceedings were conducted for violation of Section 2530 (g) of the Tariff and Customs Code and after due hearing the Acting Collector of Customs rendered a decision decreeing the forfeiture of the seized cigarettes, which decision, on appeal to the Commissioner of Customs and to the Court of Tax Appeals was affirmed.

Upon review, the Supreme Court affirmed the Tax Court's decision holding that its finding that the cigarettes were unmanifested cargo subject to forfeiture cannot be disturbed.

ISSUE:

Whether the articles in question are subject to forfeiture for violation of Section 2530(g) of the Tariff and Customs Code.

RULING:

The well-written decision of the late *Associate Judge Ramon L. Avanceña* of respondent Court then proceeded to set forth the contention of petitioners: "Petitioners maintain that under the above-quoted law the cigarettes in question are not subject to forfeiture inasmuch as they do not constitute cargo of the vessel but are part of the sea stores or provision of the ship that need no manifest. We are in accord with the petitioners that sea stores need no manifest for the consistent ruling of the Supreme Court is that it is enough that they are contained in 'a complete list of all ship's stores.' . . . However, it is not correct to say that said cigarettes were part of the sea stores because in point of fact they were not. The cigarettes were not found in the slope chest where generally they are kept but in the crew's cabin, apparently concealed, and were not in the list of sea stores." 4

Why the decision reached necessarily had to be adverse to petitioners was explained in a clear and logical manner: "In fine, the cigarettes in question did not appear in the manifest, did not appear in the sea stores list, and no claim has been made that they were in the passenger baggage manifest or crew's declaration. The only reasonable inference is that they were unmanifested cargoes. Cargo has been construed by our Supreme Court to include all goods, wares, and merchandise aboard ship which do not form part of the ship's stores (U.S. v. Islas Filipinas, supra). It has also been said that the word 'cargo' refers to the 'entire lading of the ship which carries it' and includes all goods, wares and merchandise, effects, and indeed everything of every kind or description, found on board, except such things as are used or intended for use in connection with the management or direction of the vessel, and are not intended for delivery at any port of call, and except also, perhaps, 'passengers or immigrants and their baggage.' (U.S. v. S.S. Rubi, 32 Phil. 228). This broad definition of cargo obviously embraces the cigarettes in question.

JULIO LLAMADO, petitioner-appellant, ***-versus-*** **COMMISSIONER OF CUSTOMS,** respondent-appellee.
G.R. No. L-28809, FIRST DIVISION, May 16, 1983, PLANA, *J.*

Note that "importation", by law, commences when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload; and it is "deemed terminated (only) upon payment of the duties, taxes and other charges due upon the articles, or (the same has been) secured to be paid and the legal permit for withdrawal shall have been granted."

FACTS:

Petitioner's plane was involved in a smuggling operation when it was used to bring lamps for the transportation of blue seal cigarettes.

A warrant of seizure and detention of the plane was issued and after the hearing it was forfeited by the government applying Section 2530 of the Tariff and Customs Code (Code). On appeal, the CTA affirmed the decision of the Collector of Customs

Petitioner contends that the plane cannot be forfeited under the Code for it did not come from a foreign country nor did it carry or unload cigarettes in any place in the Philippines. It was not actually used in transporting the cigarettes but was merely used to bring the lamps to the airstrip and as such, it is not subject to forfeiture under Philippine laws.

ISSUE:

Whether the plane was used in the unlawful importation of cigarettes within the meaning of the Code.

RULING:

Smuggling or illegal importation; Proof that plane was used for smuggling operation deemed to have been used unlawfully in importation or smuggling of blue seal cigarettes; Interpretation; When "importation" by law commences and is deemed terminated; Case at bar. - In our view, this complementary, if collateral, use of the Cessna for smuggling operation is sufficient for it to be deemed to have been used unlawfully in the importation or smuggling of blue seal cigarettes. Note that "importation", by law, commences when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload; and it is "deemed terminated (only) upon payment of the duties, taxes and other charges due upon the articles, or (the same has been) secured to be paid and the legal permit for withdrawal shall have been granted." (Tariff and Customs Code, Section 1202.) The participation of the Cessna, as above described, was legally an active involvement of the said plane in, and constituted an unlawful use thereof for, smuggling or illegal importation within the meaning of Section 2530 (a) of the Tariff and Customs Code.

COMMISSIONER OF CUSTOMS, petitioner, ***-versus-*** **COURT OF TAX APPEALS and JOSE PASCUAL,** respondents
G.R. No. L-31733, SECOND DIVISION, September 20, 1985, MAKASIAR, *J.*

SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Law.- Any vehicle, vessel or aircraft, cargo, article and other objects shall under the following conditions be subject to forfeiture

a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and or transporting contraband, or smuggled article in commercial quantities into or from any Philippine port or place, and any vessel which, being of less than thirty tons capacity shall be used in the importation of articles into any Philippine Port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel vehicle, aircraft or any other craft to forfeiture: Provided, That the vessel, vehicle, aircraft or any other craft is not used as a duly authorized common carrier and as such a carrier it is not chartered or leased;

b. Any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported.

Pursuant to the aforesaid provision, the vessel is clearly subject to forfeiture in favor of the Government. Forfeiture proceedings are in the nature of proceedings in rem (Vierneza vs. Commissioner of Customs, 24 SCRA 394) and are directed against the res. The fact that private respondent has allegedly no actual knowledge that M/B "Maria Victoria-P" was used illegally does not render the vessel immune from forfeiture. This is so because the forfeiture proceedings in this case was instituted against the vessel itself. Private respondent's defense that he has no actual knowledge that the vessel was used illegally is personal to him but cannot absolve the vessel from liability of forfeiture.

FACTS:

Private respondent Jose Pascual is the registered owner of the M/B "Maria Victoria-P", a motor boat of 63.25 gross tonnage duly licensed by the Bureau of Customs to engage in coastwise trade. On December 16, 1963, the said vessel was apprehended by the elements of the Philippine Navy five miles off the coast of Naic, Cavite for carrying untaxed 105 cases and 90 parks of Salem cigarettes and 414 cases of Union cigarettes. The authorities turned over the vessel, its crew and its cargo of blue seal cigarettes to the Small Craft Unit of the Philippine Navy for disposition. Thereafter, Seizure Identification Case Nos. 8006 and 8006-A against the vessel and the cargo of blue seal cigarettes, respectively, were instituted before the Collector of Customs.

For failure of anybody to claim ownership over the cigarettes, the same were forfeited in favor of the Government.

On July 3, 1964, the Collector of Customs rendered a decision declaring the vessel forfeited in favor of the Government. The Collector of Customs ruled that since it was established that the vessel was hired for a fee of P20,000.00 thru its captain, to ferry the untaxed cigarettes, there was a contract of carriage entered into between Jose Joloc and the owner of the cigarettes; that Jose Pascual, owner of the vessel is bound by the acts of his agent.

On appeal by herein private respondent, the decision was affirmed by the Commissioner of Customs. Private respondent appealed before the Court of Tax Appeals and on September 30, 1969, the said Court, as already stated, modified the decision of the Commissioner of Customs and ordered private respondent to pay a fine of P5,000.00 instead of the forfeiture of the vessel.

Respondent Court stated that there is no question that the vessel was used in the illegal importation of blue seal cigarettes; hence, subject to penalty imposed by Section 2530 of the Tariff and Customs Code. However, the penalty of forfeiture appears to be excessive since herein private respondent took all the necessary action to prevent the vessel from being used illegally by notifying the Philippine Navy of the disappearance of the vessel.

From the aforesaid decision, petitioner instituted the present petition.

ISSUE:

Whether or not the motor boat M/B "Maria Victoria-P" is subject to forfeiture under the Tariff and Customs Code, particularly paragraphs (a) and (b) of Section 2530.

RULING:

M/B "Maria Victoria-P" was a vessel duly authorized to engage in coastwise trade. It is undisputed and, in fact, established that it was used in the illegal importation of blue seal cigarettes. Thus, the law applicable is paragraphs (a) and (b), Section 2530 of the Tariff and Customs Code which states:

SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Law.- Any vehicle, vessel or aircraft, cargo, article and other objects shall under the following conditions be subject to forfeiture

a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and or transporting contraband, or smuggled article in commercial quantities into or from any Philippine port or place, and any vessel which, being of less than thirty tons capacity shall be used in the importation of articles into any Philippine Port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel vehicle, aircraft or any other craft to forfeiture: Provided, That the vessel, vehicle, aircraft or any other craft is not used as a duly authorized common carrier and as such a carrier it is not chartered or leased;

b. Any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported.

Pursuant to the aforesaid provision, the vessel is clearly subject to forfeiture in favor of the Government. Forfeiture proceedings are in the nature of proceedings *in rem* (Vierneza vs. Commissioner of Customs, 24 SCRA 394) and are directed against the *res*. The fact that private respondent has allegedly no actual knowledge that M/B "Maria Victoria-P" was used illegally does not render the vessel immune from forfeiture. This is so because the forfeiture proceedings in this case was instituted against the vessel itself. Private respondent's defense that he has no actual knowledge that the vessel was used illegally is personal to him but cannot absolve the vessel from liability of forfeiture.

Moreover, the aforequoted provision prescribes in an unequivocal term the imposition of the penalty of forfeiture in cases of unlawful importation of foreign articles regardless of whether such importation occurred with or without the knowledge of the owner of the vessel.

The claim of private respondent that while the crew members of the vessel were fishing, all the fishing nets were destroyed and that he was even notified in this regard is hardly convincing. It may be possible that while in the course of catching fish, one or two fishing nets may be destroyed. But the destruction of all the fishing nets at the same time is highly improbable. Furthermore, private respondent reported to the Philippine Navy instead of the Coast Guard that his vessel was missing, only after a lapse of six (6) days from the time he was informed of the alleged destruction of all the fishing nets. Could it be that all those notification of destruction of fishing nets and eventually of the loss of vessel are just a part of a scheme to prevent the vessel from any liability should, as it happened in this case, it be intercepted by the authorities?

The insistence of Jose Joloc, captain of the vessel that the boat could not be brought back to Manila due to bad weather is not supported by evidence. No weather report in Mindoro was ever presented during the hearing of the case. His insistence becomes even more dubious by the fact that he agreed with Fructuoso Maniego to load the latter's fishes on board M/B "Maria Victoria-P" when the alleged fishes were even out at sea aboard an alleged disabled boat. It is unbelievable that he could risk going out to sea to load the fish cargo of Maniego in the midst of the storm, but could not sail back to Manila.

JIMMY O. YAOKASIN, petitioner, ***-versus-*** **THE COMMISSIONER OF CUSTOMS, SALVADOR M. MISON and the DISTRICT COLLECTOR OF THE PORT OF TACLOBAN, VICENTE D. YUTANGCO,** respondents.
G.R. No. 84111, EN BANC, December 22, 1989, **GRIÑO-AQUINO, *J.***

Article 2 of the Civil Code, which requires laws to be published in the Official Gazette, does not apply to CMO No. 20-87 which is only an administrative order of the Commissioner of Customs addressed to his subordinates, the customs collectors. Commonwealth Act No. 638 (an Act to Provide for the Uniform

Publication and Distribution of the Official Gazette) enumerates what shall be published in the Official Gazette besides legislative acts and resolutions of a public nature of the Congress of the Philippines. Executive and Administrative orders and proclamations, shall also be published in the Official Gazette, "except such as have no general applicability." CMO No. 20-87 requiring collectors of customs to comply strictly with Section 12 of the Plan, is an issuance which is addressed only to particular persons or a class of persons(the customs collectors). "It need not be published, on the assumption that it has been circularized to all concerned" (Tañada vs. Tuvera, 136 SCRA 27).

FACTS:

The Philippine Coast Guard seized 9000 sacks of refined sugar owned by petitioner Yaokasin, which were then being unloaded from the M/V Tacloban, and turned them over to the custody of the Bureau of Customs. On June 7, 1988, the District Collector of Customs ordered the release of the cargo to the petitioner but this order was subsequently reversed on June 15, 1988. The reversal was by virtue of *Customs Memorandum Order (CMO) 20-87* in implementation of the Integrated Reorganization Plan under P.D. 1, which provides that in protest and seizure cases where the decision is adverse to the government, the Commissioner of Customs has the power of automatic review.

Petitioner objected to the enforcement of Sec. 12 of the Plan and CMO 20-87 contending that these were not published in the *Official Gazette*. The Plan which was part of P.D. 1 was however published in the *Official Gazette*.

ISSUE:

Whether or not circular orders such as CMO 20-87 need to be published in the *Official Gazette* to take effect

RULING:

Section 12 of the Plan applies to petitioner's shipment of 9,000 bags of sugar. Taxes being the lifeblood of the Government, Section 12, which the Commissioner of Customs in his Customs Memorandum Order No. 20-87, enjoined all collectors to follow strictly, is intended to protect the interest of the Government in the collection of taxes and customs duties in those seizure and protest cases which, without the automatic review provided therein, neither the Commissioner of Customs nor the Secretary of Finance would probably ever know about. Without the automatic review by the Commissioner of Customs and the Secretary of Finance, a collector in any of our country's far-flung ports, would have absolute and unbridled discretion to determine whether goods seized by him are locally produced, hence, not dutiable, or of foreign origin, and therefore subject to payment of customs duties and taxes. His decision, unless appealed by the aggrieved party (the owner of the goods), would become final with no one the wiser except himself arid the owner of the goods. The owner of the goods cannot be expected to appeal the collector's decision when it is favorable to him. A decision that is favorable to the taxpayer would correspondingly be unfavorable to the Government, but who will appeal the collector's decision in that case? Certainly not the collector.

Section 12 of the Plan and Section 2313 of the Tariff and Customs Code do not conflict with each other. They may co-exist. Section 2313 of the Code provides for the procedure for the review of the decision of a collector in seizure and protest cases upon appeal by the aggrieved party, i.e., the importer or owner of the goods. On the other hand, Section 12 of the Plan refers to the general procedure in appeals in seizure and protest cases with a special proviso on automatic review when the collector's decision is adverse to the government. Section 2313 and the proviso in Section 12, although they both relate to the review of seizure and protest cases, refer to two different situations—when the collector's decision is adverse to the importer or owner of the goods, and when the decision is adverse to the government.

Article 2 of the Civil Code, which requires laws to be published in the Official Gazette, does not apply to CMO No. 20-87 which is only an administrative order of the Commissioner of Customs addressed to his subordinates, the customs collectors. Commonwealth Act No. 638 (an Act to Provide for the Uniform Publication and Distribution of the Official Gazette) enumerates what shall be published in the Official Gazette besides legislative acts and resolutions *of a public nature* of the Congress of the Philippines. Executive and Administrative orders and proclamations, shall also be published in the Official Gazette, *"except such as have no general applicability."* CMO No. 20-87 requiring collectors of customs to comply strictly with Section 12 of the Plan, is an issuance which is addressed only to *particular persons or a class of persons*(the customs collectors). "It need not be published, on the assumption that it has been circularized to all concerned" (Tañada vs. Tuvera, 136 SCRA 27).

COMMISSIONER OF INTERNAL REVENUE, petitioner, ***-versus-*** **AYALA SECURITIES CORPORATION and THE HONORABLE COURT OF TAX APPEALS,** respondents.
G.R. No. L-29485, FIRST DIVISION, November 21, 1980, TEEHANKEE, *J.*

The assessment by the Commissioner of Internal Revenue shall be made within five (5) years from January 15, 1956, or not later than January 15, 1961, in accordance with Section 331 of the National Internal Revenue Code herein abovequoted. As the assessment issued on February 21, 1961, which was received by the Ayala Securities Corporation on March 22, 1961, was made beyond the five-year period prescribed under Section 331 of said Code, the same was made after the prescriptive period had expired and, therefore, was no longer binding on the Ayala Securities Corporation.

FACTS:
Ayala Securities Corp. (Ayala) failed to file returns of their accumulated surplus so Ayala was charged with 25% surtax by the Commissioner of internal Revenue. The CTA (Court of Tax Appeals) reversed the Commissioner's decision and held that the assessment made against Ayala was beyond the 5-yr prescriptive period as provided in section 331 of the National Internal Revenue Code. Commissioner now files a motion for reconsideration of this decision. Ayala invokes the defense of prescription against the right of the Commissioner to assess the surtax.

ISSUE:

Whether or not the right to assess and collect 25% surtax has prescribed after five years.

RULING:

Under Section 46(d) of the National Internal Revenue Code, the Ayala Securities Corporation designated September 30, 1955, as the last day of the closing of its fiscal year, and under Section 46(b) the income tax returns for the said corporation shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the close of its fiscal year. The Ayala Securities Corporation could, therefore, file its income tax returns on or before January 15, 1956. The assessment by the

Commissioner of Internal Revenue shall be made within five (5) years from January 15, 1956, or not later than January 15, 1961, in accordance with Section 331 of the National Internal Revenue Code herein abovequoted. As the assessment issued on February 21, 1961, which was received by the Ayala Securities Corporation on March 22, 1961, was made beyond the five-year period prescribed under Section 331 of said Code, the same was made after the prescriptive period had expired and, therefore, was no longer binding on the Ayala Securities Corporation.

SURIGAO ELECTRIC CO., INC., petitioner, ***-versus-*** **THE HONORABLE COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE,** respondents.

To sustain the petitioner's contention that the Commissioner's letter of June 28, 1963 denying its request for further amendment of the revised assessment constitutes the ruling appealable to the tax court and that the thirty-day period should, therefore, be counted from July 16, 1963, the day it received the June 28, 1963 letter, would, in effect, leave solely to the petitioner's will the determination of the commencement of the statutory thirty-day period, and place the petitioner — and for that matter, any taxpayer — in a position, to delay at will and on convenience the finality of a tax assessment.

FACTS:

Petitioner Surigao Electric Co., grantee of a legislative electric franchise, contested a warrant of distraint and levy to enforce the collection from "Mainit Electric" of a deficiency franchise tax plus surcharge. Thereafter the Commissioner, by letter dated April 2, 1961, advised the petitioner to take up the matter with the General Auditing Office, enclosing a copy of the 4th Indorsement of the Auditor General dated November 23, 1960. This indorsement indicated that the petitioner's liability for deficiency franchise tax for the period from September 1947 to June 1959 was P21,156.06, excluding surcharge. Subsequently, in a letter to the Auditor General dated August 2, 1962, the petitioner asked for reconsideration of the assessment, admitting liability only for the 2% franchise tax in accordance with its legislative franchise and not at the higher rate of 5% imposed by Sec. 259 of the NIRC, which latter rate the Auditor General used as basis in computing the petitioner's deficiency franchise tax. An exchange of correspondence between the petitioner, on the one hand, and the Commissioner and the Auditor General, on the other, ensued, all on the matter of the petitioner's liability for deficiency franchise tax. The controversy culminated in a revised assessment dated April 29, 1963 in the amount of P11,533.53, representing the petitioner's deficiency franchise-tax and surcharges thereon for the period from April 1, 1956 to June 30, 1959. The petitioner then requested a recomputation of the revised assessment in a letter to the Commissioner dated June 6, 1963. The Commissioner, however, in a letter dated June 28, 1963 denied the request for recomputation.

Petitioner appealed to the CTA which was subsequently dismised on the ground that the appeal was filed beyond the thirty-day period of appeal provided by Sec. 11 of Republic Act 1125.

ISSUE:

Whether or not petitioner's appeal to the CTA was time-barred.

RULING:

Yes. To sustain the petitioner's contention that the Commissioner's letter of June 28, 1963 denying its request for further amendment of the revised assessment constitutes the ruling appealable to the tax court and that the thirty-day period should, therefore, be counted from July 16, 1963, the day it received the June 28, 1963 letter, would, in effect, leave solely to the petitioner's will the determination of the commencement of the statutory thirty-day period, and place the petitioner — and for that matter, any taxpayer — in a position, to delay at will and on convenience the finality of a tax assessment. This absurd interpretation espoused by the petitioner would result in grave detriment to the interests of the Government, considering that taxes constitute its life-blood and their prompt and certain availability is an imperative need.

OCEANIC WIRELESS NETWORK,INC., petitioner ***-versus-*** **COMMISSIONER OF INTERNAL REVENUE, THE COURT OF TAX APPEALS, and THE COURT OF APPEALS,** respondents.
G.R. No. 14838, FIRST DIVISION, December 9, 2005, AZCUNA, *J.*

The general rule is that the Commissioner of Internal Revenue may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank. He cannot, however, delegate the four powers granted to him under the National Internal Revenue Code (NIRC) enumerated in Section 7.

As amended by Republic Act No. 8424, Section 7 of the Code authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher.

FACTS:

Petitioner Oceanic Wireless Network, Inc. challenges the authority of the Chief of the Accounts Receivable and Billing Division of BIR National Office to decide and/or act with finality on behalf of the CIR on protests against disputed tax deficiency assessments.

On March 1988 petitioner received from the Bureau of Internal Revenue (BIR) deficiency tax assessments for the taxable year 1984 in the total amount of P8,644,998.71.

Petitioner filed its protest against the tax assessments and requested a reconsideration or cancellation of the same in a letter to the BIR Commissioner dated April 12, 1988.

Acting in behalf of the BIR Commissioner, then Chief of BIR, reiterated the tax assessments while denying petitioner's request for reinvestigation in a letter dated January 24, 1991

Upon petitioner's failure to pay the subject tax assessments within the prescribed period, the Assistant Commissioner for Collection, acting for the Commissioner of Internal Revenue, issued the corresponding warrants of distraint and/or levy and garnishment.

On November 8, 1991, petitioner filed a Petition for Review with the Court of Tax Appeals (CTA) to contest the issuance of the warrants to enforce the collection of the tax assessments. This was docketed as CTA Case No. 4668.

The CTA dismissed the petition for lack of jurisdiction in a decision dated September 16, 1994, declaring that said petition was filed beyond the thirty (30)-day period reckoned from the time when the demand letter of January 24, 1991 by the Chief of the BIR Accounts Receivable and Billing Division was presumably received by petitioner.

Petitioner filed a Motion for Reconsideration arguing that the demand letter of January 24, 1991 cannot be considered as the final decision of the Commissioner of Internal Revenue on its protest because the same was signed by a mere subordinate and not by the Commissioner himself.

ISSUE:

Whether or not a demand letter for tax deficiency assessments issued and signed by a subordinate officer who was acting in behalf of the Commissioner of Internal Revenue, is deemed final and executory and subject to an appeal to the Court of Tax Appeals.

RULING:

Yes. The general rule is that the Commissioner of Internal Revenue may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank. He cannot, however, delegate the four powers granted to him under the National Internal Revenue Code (NIRC) enumerated in Section 7.

As amended by Republic Act No. 8424, Section 7 of the Code authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher.

Moreover, A request for reconsideration must be made within thirty (30) days from the taxpayer's receipt of the tax deficiency assessment, otherwise, the decision becomes final, unappealable and therefore, demandable. A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 can no longer be contested

Here, petitioner failed to avail of its right to bring the matter before the Court of Tax Appeals within the reglementary period upon the receipt of the demand letter reiterating the assessed delinquent taxes and denying its request for reconsideration which constituted the final determination by the Bureau of Internal Revenue on petitioner's protest. Being a final disposition by said agency, the same would have been a proper subject for appeal to the Court of Tax Appeals.

The rule is that for the Court of Tax Appeals to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof.

ALLIED BANKING CORPORATION, petitioner, *-versus-* COMMISSIONER OF INTERNAL REVENUE, respondent.

G.R. No. 175097, SECOND DIVISION, February 5, 2010, DEL CASTILLO, *J.*

The tenor of the demand letter is clear that the CIR had already made a final decision and that the remedy of the Petitioner was to appeal the same within 30 days of receipt. This can be gleaned from the use of the terms "final decision" and "appeal" which were deemed unequivocal language pointing to the finality of the decision. While the Court cited the rules relative to (a) protesting the FAN and not the PAN and (b) counting the 30 day period to appeal to the CTA from receipt of the decision of the CIR and not *issuance of the assessment, this particular case was deemed a clear exception in view of the CIR's own actions.*

FACTS:
Allied Banking Corporation received a PAN from the BIR which it timely disputed. In response, the BIR issued a Formal Letter of Demand with Assessment Notices. Instead of protesting the FAN, the petitioner filed a Petition for Review with the CTA. The CTA dismissed the Petition stating that it is neither the assessment nor the formal demand letter itself that is appealable before it but instead it should be the decision of the CIR on the disputed assessment

ISSUE:
Whether or not the Formal Letter of Demand be construed as the final decision of the CIR appealable to the CTA under Republic Act 9282.

RULING:

YES. This is considered an exception to the general rule on exhaustion of administrative remedies since the CIR is considered estopped from claiming the same principle applies in its case. The tenor of the demand letter is clear that the CIR had already made a final decision and that the remedy of the Petitioner was to appeal the same within 30 days of receipt. This can be gleaned from the use of the terms "final decision" and "appeal" which were deemed unequivocal language pointing to the finality of the decision. While the Court cited the rules relative to (a) protesting the FAN and not the PAN and (b) counting the 30 day period to appeal to the CTA from receipt of the decision of the CIR and not issuance of the assessment, this particular case was deemed a clear exception in view of the CIR's own actions.

FISHWEALTH CANNING CORPORATION, petitioner, ***-versus-*** **COMMISSIONER OF INTERNAL REVENUE, respondent.**
G.R. No. 179343, FIRST DIVISION, January 21, 2010, CARPIO-MORALES, *J.*

A Motion for Reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the Court of Tax Appeals.

FACTS:

Petitioner was assessed for income tax, Value Added Tax and withholding tax. After Court of Tax Appeals issued a Final Decision on Disputed Assessment, Petitioner filed a Letter of Reconsideration with the CIR instead of appealing the same to the Court of Tax Appeals within 30 days. The CIR then issued a Preliminary Collection Letter which prompted the Petitioner to file its Petition with the Court of Tax Appeals. CIR argued that the Petition with the Court of Tax Appeals was filed out of time.

ISSUE:

Whether or not the filing of a Motion for Reconsideration tolls the running of the 30-day period to appeal to the Court of Tax Appeals.

RULING:

In the case at bar, petitioner's administrative protest was denied by Final Decision on Disputed Assessment dated August 2, 2005 issued by respondent and which petitioner received on August 4, 2005. Under the above-quoted Section 228 of the 1997 Tax Code, petitioner had 30 days to appeal respondent's denial of its protest to the CTA. Since petitioner received the denial of its administrative protest on August 4, 2005, it had until September 3, 2005 to file a petition for review before the CTA Division. It filed one, however, on October 20, 2005, hence, it was filed out of time. For a motion for reconsideration of the denial of the administrative protest does not toll the 30-day period to appeal to the CTA.

THE CITY OF MANILA, represented by MAYOR JOSE L. ATIENZA, JR., and MS. LIBERTY M. TOLEDO, in her capacity as the City Treasurer of Manila, petitioners, -*versus*- HON. CARIDAD H. GRECIA-CUERDO, in her capacity as Presiding Judge of the Regional Trial Court, Branch 112, Pasay City; SM MART, INC.; SM PRIME HOLDINGS, INC.; STAR APPLIANCES CENTER; SUPERVALUE, INC.; ACE HARDWARE PHILIPPINES, INC.; WATSON PERSONAL CARE STORES, PHILS., INC.; JOLLIMART PHILS., CORP.; SURPLUS MARKETING CORPORATION and SIGNATURE LINES, respondents.

G.R. No. 175723, EN BANC, February 4, 2014, PERALTA, *J.*

On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases.

FACTS:

Petitioner City of Manila, through its treasurer, assessed taxes against private respondents SM Mart, Inc., SM Prime Holdings, Inc., Star Appliances Center, Supervalue, Inc., Ace Hardware Philippines, Inc., Watsons Personal Care Stores Phils., Inc., Jollimart Philippines Corp., Surplus Marketing Corp. and Signature Lines. In addition to the taxes purportedly due from private respondents pursuant to Section 14, 15, 16, 17 of the Revised Revenue Code of Manila (RRCM), said assessment covered the local business taxes petitioners were authorized to collect under Section 21 of the same Code. Because payment of the taxes assessed was a precondition for the issuance of their business permits, private respondents were constrained to pay the ₱19,316,458.77 assessment under protest.
Private respondents filed a complaint for "Refund or Recovery of Illegally and/or Erroneously-Collected Local Business Tax, Prohibition with Prayer to Issue TRO and Writ of Preliminary Injunction" alleging inter alia that, in relation to Section 21 thereof, Sections 14, 15, 16, 17, 18, 19 and 20 of the RRCM were violative of the limitations and guidelines under Section 143 (h) of Republic Act. No. 7160 [Local Government Code] on double taxation.

The RTC granted private respondents' application for a writ of preliminary injunction, and denied petitioner's Motion for Reconsideration.

Petitioners then filed a special civil action for certiorari with the CA. The CA dismissed the petition holding that it has no jurisdiction over the said petition since the appellate jurisdiction over private respondents' complaint for tax refund, which was filed with the RTC, is vested in the Court of Tax Appeals (CTA).

ISSUE:

Whether or not the CTA has jurisdiction over a special civil action for certiorari assailing an interlocutory order issued by the RTC in a local tax case.

RULING:

This Court rules in the affirmative.

RA 1125 is the law creating the CTA and giving to the said court jurisdiction over tax cases.

Later, Republic Act No. 9282 amended RA 1125 by expanding the jurisdiction of the CTA, enlarging its membership and elevating its rank to the level of a collegiate court with special jurisdiction. Section 7 of which provides:

Sec. 7. Jurisdiction. – The CTA shall exercise:

Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx

Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respected territorial jurisdiction.

Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

xxx

Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: Provides, however, that collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.

xxx

Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.

Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the Exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction.

The prevailing doctrine is that the authority to issue writs of certiorari involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law and cannot be implied from the mere existence of appellate jurisdiction.

With respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases.

It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases filed in and decided by the RTC carries with it the power to issue a writ of certiorari when necessary in aid of such appellate jurisdiction. The supervisory power or jurisdiction of the CTA to issue a writ of certiorari in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC.

Based on the foregoing disquisitions, it can be reasonably concluded that the authority of the CTA to take cognizance of petitions for certiorari questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction.

THE PHILIPPINE AMERICAN LIFE AND GENERAL INSURANCE COMPANY, petitioner, vs. THE SECRETARY OF FINANCE and THE COMMISSIONER OF INTERNAL REVENUE, respondents.

CTA, through its power of certiorari, can rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.

FACTS:

Philam Life sold its shares in Philam Care Health Systems to STI Investments Inc., the highest bidder. After the sale was completed, Philam life applied for a tax clearance and was informed by BIR that there is a need to secure a BIR Ruling due to a potential donor's tax liability on the sold shares.

Petitioner contends that the transaction cannot attract donor's tax liability since there was no donative intent and, ergo, no taxable donation, citing BIR Ruling [DA-(DT-065) 715-09] dated November 27, 2009; <u>that the shares were sold at their actual fair market value</u> and at arm's length;

that as long as the transaction conducted is at arm's length––such that a bonafide business arrangement of the dealings is done in the ordinary course of business––a sale for less than an adequate consideration is not subject to donor's tax; and that donor's tax does not apply to sale of shares sold in an open bidding process.

Through BIR Ruling No. 015-12. As determined by the Commissioner, the selling price of the shares thus sold was lower than their book value based on the financial statements of Philam Care as of the end of 2008. The Commissioner held donor's tax became imposable on the price difference pursuant to Sec. 100 of the National Internal Revenue Code (NIRC):

SEC. 100. **Transfer for Less Than Adequate and full Consideration**. **-** Where property, other than real property referred to in Section 24(D), is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this Chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

ISSUE:

Where does one seek immediate recourse from the adverse ruling of the Secretary of Finance in its exercise of its power of review under Sec. 4?

RULING:

Petitioner essentially questions the CIR's ruling that Petitioner's sale of shares is a taxable donation under Sec. 100 of the NIRC. The validity of Sec. 100 of the NIRC, Sec. 7 (C.2.2) and RMC 25-11 is merely questioned incidentally since it was used by the CIR as bases for its unfavourable opinion. Clearly, the Petition involves an issue on the taxability of the transaction rather than a direct attack on the constitutionality of Sec. 100, Sec.7 (c.2.2.) of RR 06-08 and RMC 25-11. Thus, the instant Petition properly pertains to the CTA under Sec. 7 of RA 9282.

As a result of the seemingly conflicting pronouncements, petitioner submits that taxpayers are now at a quandary on what mode of appeal should be taken, to which court or agency it should be filed, and which case law should be followed.

Petitioner's above submission is specious (erroneous).

CTA, through its power of certiorari, can rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.

Guided by the doctrinal teaching in resolving the case at bar, the fact that the CA petition not only contested the applicability of Sec. 100 of the NIRC over the sales transaction but likewise questioned the validity of Sec. 7(c.2.2) of RR 06-08 and RMC 25-11 does not divest the CTA of its jurisdiction over the controversy, contrary to petitioner's arguments.

BANCO DE ORO, BANK OF COMMERCE, CHINA BANKING CORPORATION, METROPOLITAN BANK & TRUST COMPANY, PHILIPPINE BANK OF COMMUNICATIONS, PHILIPPINE NATIONAL

BANK, PHILIPPINE VETERANS BANK, and PLANTERS DEVELOPMENT BANK, petitioners, RIZAL COMMERCIAL BANKING CORPORATION and RCBC CAPITAL CORPORATION, petitioners-intervenors, CAUCUS OF DEVELOPMENT NGO NETWORKS, petitioner-intervenor, -*versus*- REPUBLIC OF THE PHILIPPINES, COMMISSIONER OF INTERNAL REVENUE, BUREAU OF INTERNAL REVENUE, SECRETARY OF FINANCE, DEPARTMENT OF FINANCE, THE NATIONAL TREASURER, and BUREAU OF TREASURY, respondents.

G.R. No. 198756, EN BANC, August 16, 2016, LEONEN, J.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

FACTS:

This is a petition for certiorari, prohibition and/or mandamus filed by petitioners under Rule 65 of the Rules of Court.

The case involves the proper tax treatment of the discount or interest income arising from the P35 billion worth of 10-year zero-coupon treasury bonds issued by the Bureau of Treasury. The Commissioner of Internal Revenue issued **BIR Ruling No. 370-2011** (2011 BIR Ruling), declaring that the PEACe Bonds being deposit substitutes are subject to the 20% final withholding tax. Pursuant to this ruling, the Secretary of Finance directed the Bureau of Treasury to withhold a 20% final tax from the face value of the PEACe Bonds upon their payment at maturity on October 18, 2011.

Petitioners contend that the retroactive application of the 2011 BIR Ruling without prior notice to them was in violation of their property rights, right to due process, as well as Sec 246 of the 197 NIRC. And that Commissioner of Internal Revenue gravely and seriously abused her discretion in the exercise of her rule making power.

Respondents argue that petitioners' direct resort to this court to challenge the 2011 BIR Ruling violates the doctrines of exhaustion of administrative remedies and hierarchy of courts, resulting in a lack of cause of action that justifies the dismissal of the petition.

ISSUE:

Whether or not doctrine of hierarchy of courts was violated by the BIR and acted outside its jurisdiction in connection with the 2011 BIR Ruling.

RULING:

Yes. The Court agreed with the respondents that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals.||| In exceptional cases, however, this court entertained direct recourse to it when "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

Non-compliance with the rules on exhaustion of administrative remedies and hierarchy of courts had been rendered moot by this court's issuance of the temporary restraining order enjoining the implementation of the 2011 BIR Ruling. The temporary restraining order effectively recognized the urgency and necessity of direct resort to this court.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

Republic Act No. 9282, a special and later law than *Batas Pambansa Blg*. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

SPOUSES EMMANUEL D. PACQUIAO and JINKEE J. PACQUIAO, petitioners, vs. THE COURT OF TAX APPEALS, FIRST DIVISION and the COMMISSIONER OF INTERNAL REVENUE, respondents.

G.R. No. 213394, April 6, 2016, MENDOZA, *J*.

Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, embodies the rule that an appeal to the CTA from the decision of the CIR will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. When, in the view of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond.

FACTS:

Prior to their election as public officers, the petitioners relied heavily on Emmanuel "Manny" Pacquiao's claim to fame as a world-class professional boxer. His success able to amass income from both the Philippines and the United States of America (US). His income from the US came primarily from the purses he received for the boxing matches he took part under Top Rank, Inc. On the other hand, his income from the Philippines consisted of talent fees received from various Philippine corporations for product endorsements, advertising commercials and television appearances. In compliance with his duty to his home country, Pacquiao filed his 2008 income tax return on April 15, 2009 reporting his Philippine-sourced income and was subsequently amended to include his US-sourced income.

The controversy began on March 25, 2010, when Pacquiao received a Letter of Authority (March LA) from the Regional District Office No. 43 (RDO) of the Bureau of Internal Revenue (BIR) for the examination of his books of accounts and other accounting records for the period covering January 1, 2008 to December 31, 2008.

On April 15, 2010, Pacquiao filed his 2009 income tax return, which although reflecting his Philippines-sourced income, failed to include his income derived from his earnings in the US. He also failed to file his Value Added Tax (VAT) returns for the years 2008 and 2009.

To determine his tax liabilities, CIR issued a July LA, authorizing BIR's National Investigating Division to examine the books of accounts and other accounting records of both Pacquiao and Jinkee for the last 15 years, from 1995 to 2009. On September 21, 2010 and September 22, 2010, the CIR replaced the July LA by issuing to both Pacquiao and Jinkee separate electronic versions of the July LA pursuant to Revenue Memorandum Circular (RMC) No. 56-2010.

Petitioner, through counsel, wrote a letter questioning the propriety of the CIR Investigation. According to the petitioners, they were already subjected to an earlier investigation by the BIR for the years prior to 2007, and no fraud was ever found to have been committed. They added that pursuant to the March LA issued by the RDO, they were already being investigated for the year 2008. NID informed the counsel of the petitioners that the July LA issued by the CIR had effectively cancelled and superseded the March LA issued by its RDO and it stated: "Although fraud had been established in the instant case as determined by the Commissioner, your clients would still be given the opportunity to present documents as part of their procedural rights to due process with regard to the civil aspect thereof. Moreover, any tax credits and/or payments from the taxable year 2007 & prior years will be properly considered and credited in the current investigation."

The CIR informed the petitioners that its reinvestigation of years prior to 2007 was justified because the assessment thereof was pursuant to a "fraud investigation" against the petitioners under the "Run After Tax Evaders" (RATE) program of the BIR.

On January 5 and 21, 2011, the petitioners submitted various income tax related documents for the years 2007-2009. As for the years 1995 to 2006, the petitioners explained that they could not furnish the bureau with the books of accounts and other, tax related documents as they had already been disposed in accordance with Section 235 of the Tax Code.

On June 21; 2011 petitioners made their last compliance in submitting their tax-related documents. CIR made its initial assessment finding that the petitioners were unable to fully settle their tax liabilities. Thus, the CIR issued its Notice of Initial Assessment-Informal Conference (NIC), dated January 31, 2012, directly addressed to the petitioners, informing them that based on the best evidence obtainable, they were liable for deficiency income taxes in the amount of P714,061,116.30 for 2008 and P1,446,245,864.33 for 2009, inclusive of interests and surcharges.

On February 20, 2012, the CIR issued the Preliminary Assessment Notice (PAN), informing the petitioners that based on third-party information allowed under Section 5(B) and 6 of the NIRC, petitioners liable not only for deficiency income taxes in the amount of P714,061,116.30 for 2008 and P1,446;245,864.33 for 2009, but aiso for their non-payment of their VAT liabilities in the amount P4,104,360.01 for 2008 and P 24,901,276.77 for 2009.

The petitioners filed their protest against the PAN.
After denying the protest, the BIR issued its Formal Letter Demand(FLD), dated May 2, 2012, finding the petitioners liable for deficiency income tax and VAT amounting to P766,899,530.62 for taxable years 2008 and P1,433,421,214.61 for 2009, inclusive of interests and surcharges. Again, the petitioners questioned the findings of the CIR.

On May 14, 2013, the BIR issued its Final Decision on Disputed Assessment (FDDA) addressed to Pacquiao only, informing him that the CIR found him liable for deficiency income tax and VAT for taxable years 2008 and 2009 which, inclusive of interests and surcharges, amounted to a total of P2,261,217,439.92. The Accounts Receivable Monitoring Division of the BIR (BIR-ARMD), issued the

Preliminary Collection Letter (PCL) dated July 19, 2013, demanding that both Pacquiao and Jinkee pay the said amount.

On August 7, 2013, the BIR-ARMD sent Pacquiao and Jinkee the Final Notice Before Seizure (FNBS), informing the petitioners of their last opportunity to make the necessary settlement of deficiency income and VAT liabilities before the bureau would proceed against their property.

Although they no longer questioned the BIR's assessment of their deficiency VAT liability, the petitioners requested that they be allowed to pay the same in four (4) quarterly installments. Eventually, through a series of installments, Pacquiao and Jinkee paid a total P32,196,534.40 in satisfaction of their liability for deficiency VAT.

The petitioners filed a petition for review with the CTA, contending that the assessment were defective as it is based on allegations that they were guilty of fraud. They also questioned the validity of the attempt by the CIR to collect deficiency taxes from Jinkee, arguing that she was denied due process, alleging that although all correspondence were addressed to both of them, the FDDA was void for it was only addressed to Manny Pacquiao. Consequently, PCL and FNBS should also be declared void as it was based on the FDDA. Pacquiao contended that the CIR assessment was only based on their best possible sources and that the same did not consider the taxes paid by Pacquiao to the US authorities for his fights, but also deduction claimed by him for his expenses.

Pending the CTA resolution, petitioners sought the suspension of the issuance of warrants of distraint and/or levy and warrants of garnishment.

On October 14, 2013, the BIR-ARMD informed the petitioners that they were denying their request to defer the collection enforcement action for lack of legal basis. The same letter also informed the petitioners that despite their initial payment, the amount to be collected from both of them still amounted to P3,259,643,792.24, for deficiency income tax for taxable years 2008 and 2009, and P46,920,235.74 for deficiency VAT for the same period. A warrant of distraint and/or levy against Pacquiao and Jinkee was included in the letter.

Petitioners filed the subject Urgent Motion for the CTA to lift the warrants of distraint, levy and garnishments issued by the CIR against their .assets and to enjoin the CIR from collecting the assessed deficiency taxes pending the resolution of their appeal.

On April 22, 2014, the CTA issued the first assailed resolution granting the petitioner's Urgent Motion, ordering the CIR to desist from collecting on the deficiency tax assessments against the petitioners. CTA noted that the amount sought to be collected was way beyond the petitioners' net worth, which, based on Pacquiao's Statement of Assets, Liabilities and Net Worth (SALN), only amounted to P1,185,984,697.00. Considering that the petitioners still needed to cover the costs of their daily subsistence, the CTA opined that the collection of the total amount of P3,298,514,894.35 from the petitioners would be highly prejudicial to their interests and should, thus, be suspended pursuant to Section 11 of R.A. No. 1125, as amended.

The CTA, however, saw no justification that the petitioners should deposit less than the disputed amount. They were, thus, required to deposit the amount of P3,298,514,894.35 or post a bond in the amount of P4,947,772,341.53. The petitioners sought partial reconsideration of the April 22, 2014 CTA resolution, praying for the reduction of the amount of the bond required or an extension of 30 days to file the same.

On July 11, 2014, the CTA issued the second assailed resolution denying the petitioner's motion to reduce the required cash deposit or bond, but allowed them an extension of thirty (30) days within which to file the same. Hence, this petition.

ISSUE:

Whether or not petitioners' appeal to CTA will suspend the collection of tax

RULING:

The Petition is PARTIALLY GRANTED. The Writ of Preliminary is issued to enjoin CTA from implementing its April 22, 2014 and July 11, 2014 Resolution. The petitioners were ordered to deposit a cash bond in the amount of P3,298,514,894.35 or post a bond of P4,947,772,341.53, as a condition to restrain the collection of the deficiency taxes assessed against them. The case is REMANDED to the CTA which is ordered to conduct preliminary hearings to determine whether the dispensation or reduction of the required cash deposit or bond provided under Section 11, Republic Act No. 1125 is proper to restrain the collection of deficiency taxes assessed against the petitioners. CTA shall compute the amount of the bond in accordance with A.M. No. 15-02-01-CTA and should also take into account the amounts already paid by the petitioners.

Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, embodies the rule that an appeal to the CTA from the decision of the CIR will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. When, in the view of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond.

The application of the exception to the rule is the crux of the subject controversy. Specifically, Section 11 provides:

SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

x x x x

No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law:

Provided, however, That **when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer, the Court at any stage of the proceeding may suspend the said collection and require the taxpayer**

either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

The Court said, "Section 11 of Republic Act No. 1125 is therefore premised on the assumption that the collection by summary proceedings is by itself in accordance with existing laws; and then what is suspended is the act of collecting, whereas, in the case at bar what the respondent Court suspended was the use of the method employed to verify the collection which was evidently illegal after the lapse of the three-year limitation period. The respondent Court issued the injunction in question on the basis of its findings that the means intended to be used by petitioner in the collection of the alleged deficiency taxes were in violation of law. **It would certainly be an absurdity on the part of the Court of Tax Appeals to declare that the collection by the summary methods of distraint and levy was violative of the law, and then, on the same breath require the petitioner to deposit or file a bond as a prerequisite of the issuance of a writ of injunction.** Let us suppose, for the sake of argument, that the Court a quo would have required the petitioner to post the bond in question and that the taxpayer would refuse or fail to furnish said bond, would the Court a quo be obliged to authorize or allow the Collector of Internal Revenue to proceed with the collection from the petitioner of the taxes due by a means it previously declared to be contrary to law?"

Thus, despite the amendments to the law, the Court still holds that the CTA has ample authority to issue injunctive writs to restrain the collection of tax and to even dispense with the deposit of the amount claimed or the filing of the required bond, whenever the method employed by the CIR in the collection of. tax jeopardizes the interests of a taxpayer for being patently in violation of the law. Such authority emanates from the jurisdiction conferred to it not only by Section 11 of R.A. No. 1125, but also by Section 7 of the same law, which provides:

Sec. 7. Jurisdiction. - The Court of Tax Appeals shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
l. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

x x x x

From all the foregoing, it is clear that the authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond is not simply confined to cases where prescription has set in. As explained by the Court in those cases, whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law, the bond requirement under Section 11 of R.A. No. 1125 should be dispensed with. The purpose of the rule is not only to prevent jeopardizing the interest of the taxpayer, but more importantly, to prevent the absurd situation wherein the court would declare "that the collection by the summary methods of distraint and levy was violative of law, and then, in the same breath require the petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction."

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, respondent.

Under R.A. No. 9337, the VAT exemption of NPC has been repealed. Crucially, however, PSALM is not a successor-in-interest of NPC.

Under its charter, NPC is mandated to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis. With the passage of the EPIRA law, which restructured the electric power industry into generation, transmission distribution, supply sectors, the NPC is now primarily mandated to perform missionary electrification function through the Small Power Utilities Group (SPUG) and is responsible for providing power generation and associated power delivery systems in areas that are not connected to the transmission system.

FACTS:

Petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) is a GOCC created under RA 9136, also known as the Electric Power Industry Reform Act of 2001 (EPIRA). Section 50 of RA 9136 states that the principal purpose of PSALM is to manage the orderly sale, disposition and privatization of the National Power Corporation generation assets, real estate and other disposable assets, and Independent Power Producer contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optional manner.

First Gen Hydropower Corporation with its $126 Million bid and SN Aboitiz Power Corporation with its $530 Million bid were the winning bidders for the Pantabangan-Masiway Plant and Magat Plant, respectively.

NPC received letter from BIR demanding immediate payment of P3,813,080,472 deficiency value-added tax for the sale of the Pantabangan-Masiway Plant and Magat Plant. NPC indorsed BIR's letter to PSALM.
The BIR, NPC and PSALM executed a Memorandum of Agreement. In compliance with the MOA, PSALM remitted under protest to the BIR the amount of P3,813,080,472, representing the total basic VAT due. PSALM filed with the Department of Justice (DOJ) a petition for the adjudication of the dispute with the BIR to resolve the issue of whether the sale of the power plants should be subject to VAT. The DOJ ruled in favor of PSALM.

The DOJ denied BIR's Motion for Reconsideration. The BIR Commissioner filed with the Court of Appeals a petition for certiorari. The Court of Appeals dismissed the petition. Upon motion for reconsideration, the Court of Appeals reinstated the petition. PSALM paid under protest to the BIR and moved for reconsideration, which the Court of Appeals denied. Hence, this petition.

ISSUE:

Whether the sale of the Pantabangan-Masiway and Magat Power Plants by petitioner PSALM to private entities is subject to VAT.

RULING:

Under R.A. No. 9337, the VAT exemption of NPC has been repealed. Crucially, however, PSALM is not a successor-in-interest of NPC.

Under its charter, NPC is mandated to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis. With the passage of the EPIRA law, which restructured the electric power industry into generation, transmission distribution, supply sectors, the NPC is now primarily mandated to perform missionary electrification function through the Small Power Utilities Group (SPUG) and is responsible for providing power generation and associated power delivery systems in areas that are not connected to the transmission system.

Meanwhile, under EPIRA, PSALM is mandated to sell the assets of NPC and assume its liabilities. NPC is retained but will perform missionary electrification. Clearly, they have different functions.

Assuming that PSALM is a successor-in-interest of NPC, the sale of the two hydroelectric plants cannot be considered "in the course of trade or business" under Sec. 105 of the NIRC.

The function of PSALM is limited to selling the assets of NPC. It is for the purpose of privatizing NPC assets to liquidate the financial obligation of NPC. Hence, the sale of the power plants was an exercise of governmental function mandated by EPIRA.

PSALM is not a mere trustee of NPC's power assets. Sec. 49 of EPIRA vested ownership to PSALM. As owner of the assets, PSALM sold them pursuant to the mandate of EPIRA.

The sale of power plants is not an *incidental transaction* subject to VAT. Precisely, the law mandates PSALM to sell those assets.

PHILIPPINE PORTS AUTHORITY, Petitioner, ***-versus-*** **THE CITY OF DAVAO, SANGGUNIANG PANGLUNGSOD NG DAVAO CITY, CITY MAYOR OF DAVAO CITY, CITY TREASURER OF DAVAO CITY, CITY ASSESSOR OF DAVAO CITY, AND CENTRAL BOARD OF ASSESSMENT APPEALS (CBAA),** Respondents.
G.R. No. 190324, June 06, 2018

In City of Manila v. Grecia-Cuerdo, SC expressly recognized the Court of Tax Appeals' power to determine whether or not there has been grave abuse of discretion in cases falling within its exclusive appellate jurisdiction and its power to issue writs of certiorari.

In this case, the Court of Tax Appeals had jurisdiction over petitioner's appeal to resolve the question of whether or not it was liable for real property tax. *To recall, the real property tax liability was the very reason for the acts which petitioner wanted to have enjoined.* ***It was, thus, the Court of Tax Appeals, and not the Court of Appeals, that had the power to preserve the subject of the appeal, to give effect to its final determination, and, when necessary, to control auxiliary and incidental matters and to prohibit or restrain acts which might interfere with its exercise of jurisdiction over petitioner's appeal.*** *Thus, respondents' acts carried out pursuant to the imposition of the real property tax were also within the jurisdiction of the Court of Tax Appeals.*

FACTS:

On June 17, 2004, the Philippine Ports Authority received a letter from the City Assessor of Davao for the **assessment and collection of real property taxes** against its administered properties. It appealed the assessment to the Local Board of Assessment Appeals, who received it on September 6,

2004. While the case was pending, the **City of Davao posted a notice of sale of delinquent real properties, including the three (3) properties subject of this case,** namely, 1) the quay covered by Tax Declaration No. E-04-09-063842; 2) the parcel of land with Tax Declaration No. E-04-09-092572; and 3) the administrative building under Tax Declaration No. E-04-09-090803.6

The Local Board of Assessment Appeals dismissed the Philippine Ports Authority's appeal for having been filed out of time, and for its lack of jurisdiction on the latter's tax exemption. The Philippine Ports Authority appealed before the Central Board of Assessment Appeals, but this appeal was denied. **Thus, it filed an appeal with the Court of Tax Appeals.**

The Philippine Ports Authority claimed that it did not receive any warrant of levy for the three (3) properties which were sold to respondent City of Davao, or any notice that they were going to be auctioned. It was informed that it had one (1) year from the date of registration of the sale within which to redeem the properties by paying the taxes, penalties, and incidental expenses, plus interest at the rate of 2% per month on the purchase price.

Thus, it filed a **petition for certiorari with the Court of Appeals,** arguing that the City of Davao's taxation of its properties and their subsequent auction and sale to satisfy the alleged tax liabilities were without or in excess of its jurisdiction and contrary to law. It argued that it had no other speedy and adequate remedy except to file a petition for certiorari with the Court of Appeals.

While the petition was pending with the Court of Appeals, the Court of Tax Appeals promulgated a decision, granting the Philippine Ports Authority's appeal, ordering that its properties and buildings in the site are EXEMPT from real estate tax imposed by Davao City, and voiding all the real estate tax assessments issued by Davao City on such properties.

Thereafter, the Court of Appeals dismissed the petition, and held that the Court of Tax Appeals had exclusive jurisdiction to determine the matter and said that the Philippine Ports Authority "should have applied for the issuance of writ of injunction or prohibition before the Court of Tax Appeals." It further found the petition dismissible on the ground that the Philippine Ports Authority committed forum shopping, as the petition raised the same facts and issues as in its appeal before the Court of Tax Appeals. Hence, CA upheld the authority of Davao City in taxing, auctioning, and selling PPA's properties to satisfy the latter's real property tax liabilities.

Thus, PPA filed a petition for review under Rule 45 before the SC, assailing CA's decision.

Petitioner argues that it did not commit **forum shopping**, asserting that the only element of forum shopping present as between the appeals filed before the Court of Tax Appeals and the Court of Appeals is identity of parties. Its arguments regarding the jurisdiction of the Court of Appeals are inscrutable but appear to maintain that the Court of Appeals has jurisdiction on the basis of urgency. It also avers that **the Court of Appeals erred when it "ruled, declared and upheld the authority" of respondent City of Davao to tax, auction, and sell its properties. It points out that the Supreme Court has held that as a government instrumentality, its properties cannot be taxed by local government.**

Respondents insist that forum shopping exists, considering that the elements of litis pendentia were present when the case was filed with the Court of Appeals. On the question of the propriety of the imposition of tax on petitioner's properties, respondents claim that there was an error in the Court of Tax Appeals Decision. Thus, while they maintain that this case is not the proper case to rectify the error of the Court of Tax Appeals, they ask that this Court lay down a jurisprudential pronouncement on the real property tax treatment of petitioner's properties.

ISSUE:

Whether or not the Court of Appeals had jurisdiction to issue the injunctive relief prayed for by PPA

RULING:

1. NO. CA had no jurisdiction to issue the injunctive relief prayed for by PPA.

In real property tax cases such as this, the remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to impose real property taxes. Moreover, as jurisdiction is conferred by law, reference must be made to the law when determining which court has jurisdiction over a case, in relation to its factual and procedural antecedents.

Petitioner has failed to cite any law supporting its contention that the Court of Appeals has jurisdiction over this case. On the other hand, **Section 7, paragraph (a)(5) of Republic Act No. 1125, as amended by Republic Act No. 9282, provides that the Court of Tax Appeals has exclusive appellate jurisdiction over:**

Section 7. Jurisdiction. – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

.
(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals[.]

The Central Board of Assessment Appeals Decision assailed by PPA before the Court of Appeals was rendered in the exercise of its appellate jurisdiction over the real property tax assessment of its properties. Clearly, this falls within the above-cited provision. Indeed, **there is no dispute that this Central Board of Assessment Appeals decision constitutes one of the cases covered by the Court of Tax Appeals' exclusive jurisdiction.**

It is wrong for PPA to conclude that the CA could have issued the relief prayed for **despite the provisions of Republic Act No. 9282, considering its urgent need for injunctive relief. Urgency does not remove the Central Board of Assessment Appeals decision from the exclusive appellate jurisdiction of the Court of Tax Appeals.** This is particularly true since, as properly recognized by the Court of Appeals, PPA could have, and should have, applied for injunctive relief with the Court of Tax Appeals, which has the power to issue the preliminary injunction prayed for.

In City of Manila v. Grecia-Cuerdo, SC expressly recognized the Court of Tax Appeals' power to determine whether or not there has been grave abuse of discretion in cases falling within its exclusive appellate jurisdiction and its power to issue writs of certiorari.

In this case, the Court of Tax Appeals had jurisdiction over petitioner's appeal to resolve the question of whether or not it was liable for real property tax. To recall, the real property tax liability was the very reason for the acts which petitioner wanted to have enjoined. **It was, thus, the**

Court of Tax Appeals, and not the Court of Appeals, that had the power to preserve the subject of the appeal, to give effect to its final determination, and, when necessary, to control auxiliary and incidental matters and to prohibit or restrain acts which might interfere with its exercise of jurisdiction over petitioner's appeal. Thus, respondents' acts carried out pursuant to the imposition of the real property tax were also within the jurisdiction of the Court of Tax Appeals.

Even if the law had vested the Court of Appeals with jurisdiction to issue injunctive relief in real property tax cases such as this, the **Court of Appeals was still correct in dismissing the petition before it. Once a court acquires jurisdiction over a case, it also has the power to issue all auxiliary writs necessary to maintain and exercise its jurisdiction, to the exclusion of all other courts. Thus, once the Court of Tax Appeals acquired jurisdiction over petitioner's appeal, the Court of Appeals would have been precluded from taking cognizance of the case.**

COMMISSIONER OF INTERNAL REVENUE -*versus-* KEPCO ILIJAN CORPORATION
G.R. No.199422, 21 June 2016, PERALTA, *J.*

The Revised Rules of the CTA and even the Rules of Court which apply suppletorily thereto provide for no instance in which the en banc may reverse, annul or void a final decision of a division. Verily, the Revised Rules of the CTA provide(s) for no instance of an annulment of judgment at all. On the other hand, the Rules of Court, through Rule 47, provides, with certain conditions, for annulment of judgment done by a superior court, like the Court of Appeals, against the final judgment, decision or ruling of an inferior court, which is the Regional Trial Court, based on the grounds of extrinsic fraud and lack of jurisdiction.

FACTS:

Respondent KEPCO ILIJAN Corporation filed with the Bureau of Internal Revenue (BIR) its claim for refund for input tax incurred for the first and second quarters of the calendar year 2000 from its importation and domestic purchases of capital goods and services preparatory to its production and sales of electricity to the National Power Corporation.

For failure of petitioner BIR to act upon respondent's claim for refund or issuance of tax credit certificate, respondent filed a Petition for Review. Thereafter, respondent filed its Memorandum, but petitioner failed to file its Memorandum despite notice, thus, the case was submitted for decision.
Subsequently, Court of Tax Appeals (CTA) First Division rendered a Decision, holding that respondent is entitled to a refund for its unutilized input VAT paid. There being no motion for reconsideration filed by the petitioner, the said decision became final and executory.

Aggrieved, petitioner filed a petition for annulment of judgment with the CTA *en banc* but the same was dismissed, and its motion for reconsideration was likewise denied. Petitioner elevated the case to the Supreme Court via petition for review.

ISSUE:

Whether or not the Court of Tax Appeals *En Banc* has jurisdiction to take cognizance of the Petition for Annulment of Judgment filed by petitioner.

RULING:

The Revised Rules of the CTA and even the Rules of Court which apply suppletorily thereto provide for no instance in which the en banc may reverse, annul or void a final decision of a division. Verily, the Revised Rules of the CTA provide(s) for no instance of an annulment of judgment at all. On the other hand, the Rules of Court, through Rule 47, provides, with certain conditions, for annulment of judgment done by a superior court, like the Court of Appeals, against the final judgment, decision or ruling of an inferior court, which is the Regional Trial Court, based on the grounds of extrinsic fraud and lack of jurisdiction. The Regional Trial Court, in turn, also is empowered to, upon a similar action, annul a judgment or ruling of the Metropolitan or Municipal Trial Courts within its territorial jurisdiction. But, again, the said Rules are silent as to whether a collegial court sitting *en banc* may annul a final judgment of its own division. *As earlier explained, the silence of the Rules may be attributed to the need to preserve the principles that there can be no hierarchy within a collegial court between its divisions and the en banc, and that a court's judgment, once final, is immutable.*

A direct petition for annulment of a judgment of the CTA to the Supreme Court, meanwhile, is likewise unavailing, for the same reason that there is no identical remedy with the High Court to annul a final and executory judgment of the Court of Appeals. RA No. 9282, Section 1 puts the CTA on the same level as the Court of Appeals, so that if the latter's final judgments may not be annulled before the Supreme Court, then the CTA's own decisions similarly may not be so annulled. And more importantly, it has been previously discussed that annulment of judgment is an original action, yet, it is not among the cases enumerated in the Constitution, Article VIII, Section 5, over which the Supreme Court exercises original jurisdiction. Annulment of judgment also often requires an adjudication of facts, a task that the Court loathes to perform, as it is not a trier of facts.

Instead, what remained as a remedy for the petitioner was to file a petition for certiorari under Rule 65, which could have been filed as an original action before this Court and not before the CTA en banc. xxx In any event, petitioner's failure to avail of this remedy and mistake in filing of the wrong action are fatal to its case and renders and leaves the CTA First Division's decision as indeed final and executory. By the time the instant petition for review was filed by petitioner with this Court, more than sixty (60) days have passed since petitioner's alleged discovery of its loss in the case as brought about by the alleged negligence or fraud of its counsel.

COMMISSIONER OF INTERNAL REVENUE -*versus*- JOSEFINA LEAL
GR. No. 113459, November 18, 2002

The jurisdiction to review rulings of the Commissioner pertains to the Court of Tax Appeals and NOT to the RTC. The questioned RMO and RMC are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of the Pawnshops.

FACTS:

Pursuant to Sec. 116 of the Tax Code which imposes percentage tax on dealers in securities and lending investors, the Commissioner of Internal Revenue issued Memorandum Order (RMO) No. 15-91 dated March 11, 1991, imposing five percent (5%) lending investor's tax on pawnshops based on their gross income and requiring all investigating units of the Bureau to investigate and assess the lending investor's tax due from them. The issuance of RMO No. 15-91 was an offshoot of petitioner's evaluation that the nature of pawnshop business is akin to that of lending investors. Subsequently, petitioner issued Revenue Memorandum Circular No. 43-91 dated May 27, 1992, subjecting the pawn ticket to the documentary stamp tax as prescribed in Title VII of the Tax Code. Adversely affected by those revenue orders, herein respondent Josefina Leal, owner and operator of

Josefina Pawnshop in San Mateo, Rizal, asked for a reconsideration of both RMO No. 15-91 and RMC No. 43-91 but the same was denied with finality by petitioner in October 30, 1991. Consequently, on March 18, 1992, respondent filed with the RTC a petition for prohibition seeking to prohibit petitioner from implementing the revenue orders.

Petitioner, through the Office of the Solicitor-General, filed a motion to dismiss the petition on the ground that the RTC has no jurisdiction to review the questioned revenue orders and to enjoin their implementation. Petitioner contends that the subject revenue orders were issued pursuant to his power "to make rulings or opinions in connection with the Implementation of the provisions of internal revenue laws." Thus, the case falls within the exclusive appellate jurisdiction of the Court of Tax Appeals, citing Sec. 7(1) of RA 1125.

The RTC issued an order denying the motion to dismiss holding that the revenue orders are not assessments to implement a Tax Code provision, but are "in effect new taxes (against pawnshops) which are not provided for under the Code," and which only Congress is empowered to impose. The Court of Appeals affirmed the order issued by the RTC.

ISSUE:

Whether or not the Court of Tax Appeals has jurisdiction to review rulings of the Commissioner implementing the Tax Code.

RULING:

The jurisdiction to review rulings of the Commissioner pertains to the Court of Tax Appeals and NOT to the RTC. The questioned RMO and RMC are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of the Pawnshops.

Under RA 1125, An Act Creating the Court of Tax Appeals, such rulings of the Commissioner of Internal Revenue are appealable to that court:

Sec. 7 Jurisdiction – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided—

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue.

COMMISSIONER OF CUSTOMS, petitioner-*versus*- MARINA SALES, INC., respondent.
G.R. No. 183868, SECOND DIVISION, November 22, 2010, MENDOZA, *J.*

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 non-compliance 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.*

FACTS:

Respondent Marina Sales, Inc. (Marina) is engaged in the manufacture of Sunquick juice concentrates. in the Philippines.

As such, Marina usually imports raw materials into the country for the purpose.

In the past, the Bureau of Customs (BOC) assessed said type of importation... with a 1% import duty rate. Marina's importation arrived at the Manila International Container Port (MICP) on board the vessel supported by documents

Marina computed and paid the duties at 1% import duty rate. However, the BOC examiners contested the tariff classification of Marina's Import Entry. BOC examiners recommended to the Collector of Customs to reclassify Marina's importation as covering composite concentrates for simple dilution with water to make beverages) with a corresponding 7% import duty rate.

Marina requested the District Collector of the BOC to release Import Entry under its Tentative Release System. Marina undertook to pay the reclassified rate of duty should it be finally determined that such reclassification was correct.

The District Collector granted the request another importation of Marina arrived at the MICP accompanied following documents

Again, the BOC examiners disputed the tariff classification and recommended to that the importation be classified with the corresponding 7% duty rate. To be released, Marina once again signed an undertaking under the Tentative Release System. Attended the VCRC deliberation and submitted its explanation in support of its claim that the imported goods should not be reclassified until the VCRC reclassified Import Entry at 7% import duty rate.

Marina appealed VCRC's reclassification Marina interposed a petition for review before the CTA. The CTA Second Division ruled that its classification under Tariff Heading H.S. 2106.90 10 was the most appropriate and descriptive of the disputed importations
Marina's importations were raw materials used for the manufacture of its Sunquick products, not ready-to-drink juice concentrates as argued by the Commissioner

Commissioner elevated the case to the *CTA-En Banc* via a petition for review the CTA En Banc dismissed the petition. Petitioner failed to file before the Second Division the required Motion for Reconsideration before elevating his case to the CTA En Banc.

ISSUE:

Whether or not the CTA En Banc has jurisdiction over the case.

RULING:

On the procedure, the Court agrees with the CTA *En Banc* that the Commissioner failed to comply with the mandatory provisions of Rule 8, Section 1 of the Revised Rules of the Court of Tax Appeals requiring that "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." The word "must" clearly indicates the mandatory—not merely directory—nature of a requirement."

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 non-compliance 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.

ASIATRUST DEVELOPMENT BANK -*versus*- COMMISSIONER ON INTERNAL REVENUE
G.R. Nos. 201530 & 201680-81, April 19, 2017, DEL CASTILLO, *J.*

FACTS:

Petitioner Asiatrust Dev't Bank, Inc. received 3 Formal Letters of Demand (FLD) with Assessment Notices for deficiency revenue taxes in amounts of 131.9M, 83M and 144M for the years 1996-1998 in 2000.

Asiatrust protested the assessment notices. Due to the inaction of the CIR on the protest, Asiatrust filed before the CTA a Petition for Review[7] docketed as CTA Case No. 6209 praying for the cancellation of the tax assessments for deficiency income tax, documentary stamp tax (DST) - regular, DST - industry issue, final withholding tax, expanded withholding tax, and fringe benefits tax issued against it by the CIR.

In 2001, new assessment notices for deficiency taxes in the amounts of 112M, 53M, 133M covering the same years were issued. On the same day, Asiatrust partially paid said deficiency tax assessments thus leaving the balances of 110M, 49M, and 124M.

CIR approved Asiatrust's offer of compromise of DST and manifested during trial, that Asiatrust availed of a tax abatement program fro its deficiency final withholding tax- trust assessments for fiscal years ending '96 and '98 and that it paid 4.1M and 6M for the fiscal years respectively. It availed of the provisions of the Tax Amnesty Law of 2007.

CTA division partially granted the petition declaring void the '96 assessment for having been issued beyond the 3year prescriptive period but affirmed the DST deficiency due to failure of Asiatrust to present evidence. Total tax deficiency remained at 142M. On MR, CTA Division rendered an Amended Decision finding that Asiatrust is entitled to the immunities and privileges granted in the Tax Amnesty Law. However, it reiterated its ruling that in the absence of a termination letter from the BIR, it cannot consider Asiatrust's availment of the Tax Abatement Program. Partial reconsideration and MR was denied. CTA En Banc denied appeal of the BIR for failure to file a prior MR.

ISSUE:

Whether or not the CTA En Banc correctly denied appeal?

RULING:
Section 1, Rule 8 of the Revised Rules of the CTA states:

"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."

Thus, in order for the CTA *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. 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.

RAMON A. GONZALES, petitioner, -***versus***- **IMELDA R. MARCOS, as Chairman of the Cultural Center of the Philippines, Father HORACIO DE LA COSTA, I. P. SOLIONGCO, ERNESTO RUFINO, ANTONIO MADRIGAL, and ANDRES SORIANO, as Members thereof,** respondents.
G.R. No. L-31685, EN BANC, July 31, 1975, FERNANDO, *J.*

Taxpayer has no legal standing to question executive acts that do not involve the use of public funds

FACTS:
The petitioner questioned the validity of EO No. 30 creating the Cultural Center of the Philippines, having as its estate the real and personal property vested in it as well as donations received, financial commitments that could thereafter be collected, and gifts that may be forthcoming in the future. It was likewise alleged that the Board of Trustees did accept donations from the private sector and did secure from the Chemical Bank of New York a loan of $5 million guaranteed by the National Investment & Development Corporation as well as $3.5 million received from President Johnson of the United States in the concept of war damage funds, all intended for the construction of the Cultural Center building estimated to cost P48 million. The petition was denied by the trial court arguing that with not a single centavo raised by taxation, and the absence of any pecuniary or monetary interest of petitioner that could in any wise be prejudiced distinct from those of the general public.

ISSUE:

Whether or not a taxpayer the capacity to question the validity of the issuance in this case

RULING:

Taxpayer has no legal standing to question executive acts that do not involve the use of public funds. It may not be amiss though to consider briefly both the procedural and substantive grounds that led to the lower court's order of dismissal. It was therein pointed out as "one more valid reason" why such an outcome was unavoidable that "the funds administered by the President of the Philippines came from donations [and] contributions [not] by taxation." Accordingly, there was that absence of the "requisite pecuniary or monetary interest." The stand of the lower court finds support in judicial precedents. This is not to retreat from the liberal approach followed in Pascual vs. Secretary of Public Works, foreshadowed by People v. Vera, where the doctrine of standing was first fully 'discussed. It is only to make clear that petitioner, judged by orthodox legal learning, has not satisfied the elemental requisite for a taxpayer's suit.

ERNESTO M. MACEDA, petitioner, -***versus***- .**HON. CATALINO MACARAIG, JR., in his capacity as Executive Secretary, Office of the President; HON. VICENTE R. JAYME, in his capacity as Secretary of the Department of Finance; HON. SALVADOR MISON, in his capacity as Commissioner, Bureau of Customs; HON. JOSE U. ONG, in his capacity as Commissioner of Internal Revenue; NATIONAL POWER CORPORATION; the FISCAL INCENTIVES REVIEW BOARD; Caltex (Phils.) Inc.; Pilipinas Shell Petroleum Corporation; Philippine National Oil Corporation; and Petrophil Corporation,** respondents.
G.R. No. 88291. May 31, 1991, GANCAYCO, *J.*

The petitioner as a taxpayer may file the instant petition following the ruling in Lozada when it involves illegal expenditure of public money.

FACTS:

On November 3, 1986, Commonwealth Act No. 120 created the NPC as a public corporation to undertake the development of hydraulic power and the production of power from other sources.

On June 4, 1949, Republic Act No. 358 granted NPC tax and duty exemption privileges - exempt from all taxes, duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities and municipalities.

On January 22, 1974, Presidential Decree No. 380 amended it - the exemption of NPC from such taxes, duties, fees, imposts and other charges imposed "directly or indirectly," on all petroleum products used by NPC in its operation.

On June 11, 1984, Presidential Decree No. 1931 withdrew all tax exemption privileges granted in favor of government-owned or controlled corporations including their subsidiaries. However, said law empowered the President and/or the then Minister of Finance, upon recommendation of the FIRB to restore, partially or totally, the exemption withdrawn, or otherwise revise the scope and coverage of any applicable tax and duty.

On January 7, 1986, the FIRB issued resolution No. 1-86 indefinitely restoring the NPC tax and duty exemption privileges effective July 1, 1985.

However, effective March 10, 1987, Executive Order No. 93 once again withdrew all tax and duty incentives granted to government and private entities which had been restored under Presidential Decree Nos. 1931 and 1955 but it gave the authority to FIRB to restore, revise the scope and prescribe the date of effectivity of such tax and/or duty exemptions.
On June 24, 1987 the FIRB issued Resolution No. 17-87 restoring NPC's tax and duty exemption privileges effective March 10, 1987.

ISSUE:

Whether or not the petitioner has the personality to file the instant petition.

RULING:

Petitioner, as a taxpayer, has the personality to file the instant petition, as the issue involved herein, pertains to illegal expenditure of public money.

In the petition it is alleged that petitioner is "instituting this suit in his capacity as a taxpayer and a duly-elected Senator of the Philippines." Public respondent argues that petitioner must show he has sustained direct injury as a result of the action and that it is not sufficient for him to have a mere general interest common to all members of the public. The Court however agrees with the petitioner that as a taxpayer he may file the instant petition following the ruling in *Lozada* when it involves illegal expenditure of public money. The petition questions the legality of the tax refund to NPC by way of tax credit certificates and the use of said assigned tax credits by respondent oil companies to pay for their tax and duty liabilities to the BIR and Bureau of Customs.

PLARIDEL M. ABAYA, COMMODORE PLARIDEL C. GARCIA (retired) and PMA '59 FOUNDATION, INC., rep. by its President, COMMODORE CARLOS L. AGUSTIN (retired), petitioners, ***-versus-*** **HON. SECRETARY HERMOGENES E. EBDANE, JR., in his capacity as Secretary of the DEPARTMENT OF PUBLIC WORKS and HIGHWAYS, HON. SECRETARY EMILIA T. BONCODIN, in her capacity as Secretary of the DEPARTMENT OF BUDGET and MANAGEMENT, HON. SECRETARY CESAR V. PURISIMA, in his capacity as Secretary of the DEPARTMENT OF FINANCE, HON. TREASURER NORMA L. LASALA, in her capacity as Treasurer of the Bureau of Treasury, and CHINA ROAD and BRIDGE CORPORATION,** respondents.
G.R. No. 167919, THIRD DIVISION, February 14, 2007, CALLEJO, SR., *J.*

Locus standi is "a right of appearance in a court of justice on a given question"—a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged; The rationale for requiring a party who challenges the constitutionality of a statute to allege such a personal stake in the outcome of the controversy is "to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."

FACTS:

Based on the Exchange of Notes dated December 27, 1999,[1] the Government of Japan and the Government of the Philippines, through their respective representatives, namely, Mr. Yoshihisa Ara, Ambassador Extraordinary and Plenipotentiary of Japan to the Republic of the Philippines, and then Secretary of Foreign Affairs Domingo L. Siazon, have reached an understanding concerning Japanese loans to be extended to the Philippines. These loans were aimed at promoting our country's economic stabilization and development efforts.

In accordance with the established prequalification criteria, eight (8) contractors were evaluated or considered eligible to bid as concurred by the JBIC. Prior to the opening of the respective bid proposals, it was announced that the Approved Budget for the Contract (ABC) was in the amount of P738,563,821.71.

Consequently, the bid goes to private respondent in the amount of P952,564,821.71 (with a variance of 25.98% from the ABC). Hence, this petition on the contention that the award of the contract to private respondent China Road & Bridge Corporation violates RA 9184, particularly Section 31 thereof which reads:

SEC. 31. Ceiling for Bid Prices. – The ABC shall be the upper limit or ceiling for the Bid prices. Bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. There shall be no lower limit to the amount of the award.

The petitioner further contends that the Loan Agreement between Japan and the Philippines is neither an international nor an executive agreement that would bar the application of RA 9184. They pointed out that to be considered as such, the parties must be two (2) sovereigns or states whereas in this loan agreement, the parties were the Philippine government and the JBIC, a banking agency of Japan, which has a separate juridical personality from the Japanese government.

ISSUE:

Whether or not Petitioners have standing to file the instant Petition.

RULING:

Petitioners, as taxpayers, possess locus standi to file the present suit.

Locus standi is "a right of appearance in a court of justice on a given question"—a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged; The rationale for requiring a party who challenges the constitutionality of a statute to allege such a personal stake in the outcome of the controversy is "to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."

Briefly stated, locus standi is "a right of appearance in a court of justice on a given question." More particularly, it is a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged. It calls for more than just a generalized grievance. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. Standing or locus standi is a peculiar concept in constitutional law and the rationale for requiring a party who challenges the constitutionality of a statute to allege such a personal take in the outcome of the controversy is "to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."

Locus standi, however, is merely a matter of procedure and it has been recognized that in some cases, suits are not brought by parties who have been personally injured by the operation of a law or any other government act but by concerned citizens, taxpayers or voters who actually sue in the public interest. Consequently, the Court, in a catena of cases, has invariably adopted a liberal stance on locus standi, including those cases involving taxpayers. The prevailing doctrine in taxpayer's suits is to allow taxpayers to question contracts entered into by the national government or government-owned or controlled corporations allegedly in contravention of law. A taxpayer is allowed to sue where there is a claim that public funds are illegally disbursed, or that public money is being deflected to any improper purpose, or that there is a wastage of public funds through the enforcement of an invalid or unconstitutional law. Significantly, a taxpayer need not be a party to the contract to challenge its validity.

GUALBERTO J. DELA LLANA, petitioner, ***-versus-*** **THE CHAIRPERSON, COMMISSION ON AUDIT, THE EXECUTIVE SECRETARY and THE NATIONAL TREASURER,** respondents.
G.R. No. 180989, February 7, 2012

A taxpayer is deemed to have the standing to raise a constitutional issue when it is established that public funds from taxation have been disbursed in alleged contravention of the law or the Constitution.

FACTS:

Petitioner dela Llana (a taxpayer) wrote to the Commission on Audit (COA) regarding the recommendation of the Senate Committee on Agriculture and Food that the Department of Agriculture set up an internal pre-audit service. The COA replied informing him of the prior issuance of Circular No. 89-299, which provides that whenever the circumstances permits, the COA may reinstitute pre-audit or adopt such other control measures as necessary and appropriate to protect the funds and property of an agency. The petitioner filed the petition for Certiorari. He alleges that the pre-audit is a constitutional mandate enshrined in Section 2 of Article IX-D of the 1987 Constitution. He further claimed that the lack of pre-audit by COA, serious irregularities in government transactions have been committed.

Respondents filed their Comment on the petition and argued that the petition must be dismissed because it is not proper for a petition for certiorari because: 1. there is no allegation showing that COA exercised judicial or quasi- judicial functions when it promulgated Circular No. 89-299 2.

There is no convincing explanation showing the promulgation of the circular was done with grave abuse of discretion. Respondents claim that the circular is valid, as COA has the power under the 1987 Constitution.

ISSUE:

Whether or not petitioner dela Llana has a legal standing in the case.

RULING:

A taxpayer is deemed to have the standing to raise a constitutional issue when it is established that public funds from taxation have been disbursed in alleged contravention of the law or the Constitution.

A taxpayer is deemed to have the standing to raise a constitutional issue when it is established that public funds from taxation have been disbursed in alleged contravention of the law or the Constitution. Petitioner claims that the issuance of Circular No. 89-299 has led to the dissipation of public funds through numerous irregularities in government financial transactions. These transactions have allegedly been left unchecked by the lifting of the pre-audit pe formed by COA, which, petitioner argues, is its Constitutional duty. Thus, petitioner has standing to file this suit as a taxpayer, since he would be adversely affected by the illegal use of public money.