

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

**NLEX CORPORATION
(FORMERLY MANILA NORTH
TOLLWAYS CORPORATION,
AS THE SURVIVING
CORPORATION AND HAS
ABSORBED TOLLWAYS
MANAGEMENT
CORPORATION),**

Petitioner,

-versus-

**MUNICIPALITY OF
GUIGUINTO, BULACAN AND
HON. GUILLERMA DL.
GARRIDO, IN HER CAPACITY
AS THE OIC-MUNICIPAL
TREASURER OF GUIGUINTO,
BULACAN,**

Respondents.

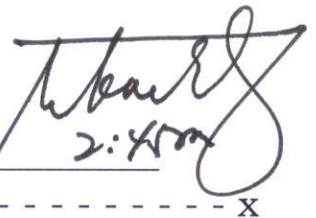
CTA EB NO. 2514
(CTA AC No. 217)

Present:

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.**

Promulgated:

JUL 19 2023



X- - - - - X

D E C I S I O N

MANAHAN, J.:

The Case

This is a Petition for Review¹ under **Section 3(b)², Rule 8 of the Revised Rules of the Court of Tax Appeals³ (RRCTA)**, without respondents' comment despite due notice, seeking for

¹ See Petition for Review; Rollo, pp. 18-42, with Annexes.

² "SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx

xxx

xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review."

³ A.M. No. 05-11-07-CTA, November 22, 2005. *an*

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the reconsideration of the *Decision* dated July 13, 2020 (Assailed Decision) and the *Resolution* dated June 30, 2021 (Assailed Resolution) rendered by the CTA Second Division in CTA AC No. 217. Petitioner is also asking this Court to rule on the following: (1) that it did not maintain a branch office, a sales office, or a project office within the Municipality during the taxable years (TY)s 2005 to 2007; (2) to cancel and annul the Notice of Assessments for Regulatory Fees; and, (3) to order respondents, their successors, agents, substitutes, representatives, and all persons acting under their direction or authority to permanently desist from imposing, assessing or collecting Local Business Tax (LBT) and regulatory fees for TYs 2005 to 2007 against petitioner.

The Parties

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at North Luzon Expressway (NLEX) Compound, Balintawak, Caloocan City.⁴

On the other hand, respondent Municipality of Guiguinto, Bulacan is a local government unit. Meanwhile, respondent Guillerma DL Garrido is impleaded in her capacity as the OIC-Municipal Treasurer of respondent municipality.⁵

The Facts

On April 1998, the Manila North Tollways Corporation (MNTC), the Philippine National Construction Corporation and the Republic of the Philippines through the Toll Regulatory Board, entered into as Supplemental Toll Operation Agreement. Said Agreement granted MNTC the concession to finance, design, rehabilitate, expand, operate and maintain the NLEX. Further, it granted MNTC the authority to appoint an Operation and Maintenance Contractor to undertake any aspect of defined operation and maintenance for a fixed service fee.⁶

⁴ *Rollo*, Decision dated July 13, 2020, p. 55.

⁵ *Id.*

⁶ *Id.* at pp. 55-56. 

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Pursuant thereto, MNTC entered into an Operation and Management Agreement with Tollways Management Corporation (TMC).⁷

On April 3, 2009, TMC received the subject local business tax (LBT) and regulatory fees assessments from respondents, requiring it to pay the total amount of Four Million One Hundred Sixty-Nine Thousand Six Hundred Ninety-Seven and 36/100 Pesos (Php4,169,697.36), among others.⁸

On May 28, 2009, TMC filed its written protest. On June 18, 2009, plaintiff received the denial of its protest.⁹

On July 29, 2009, TMC filed a complaint with the Regional Trial Court (RTC)-Branch 21 of the City of Malolos ("lower court") docketed as Civil Case No. 487-M-2009 for: Annulment of Assessment for Local Business Taxes and Regulatory Fees entitled "*Tollways Management Corporation v. Municipality of Guiguinto Province of Bulacan, et al.*".

Meanwhile, on November 29, 2018, the Securities and Exchange Commission (SEC) issued a Certificate of Filing of the Articles and Plan of Merger between petitioner NLEX Corporation and TMC with the NLEX Corporation as the surviving corporation.¹⁰

The lower court eventually ruled in favor of the respondents wherein the dispositive portion of its decision reads as follows:¹¹

"Wherefore, all premises considered, the complaint is hereby dismissed.

Plaintiff is directed to pay defendant Municipality of Guiguinto, Bulacan local business taxes in the amount of P4,169,697.36 and mayor's permit and other regulatory fees in the sum of P72,262.35 for the year 2005 to 2007 as contained in the Notice of Assessment dated April 3, 2009 plus surcharged (sic) penalties until fully paid.

SO ORDERED."

⁷ Rollo, at p. 56.

⁸ *Id.*

⁹ Rollo, Decision dated July 13, 2020, p. 56.

¹⁰ *Id.*

¹¹ Docket, CTA AC No. 217, RTC-Branch 21, Malolos, Bulacan Decision dated August 17, 2018, p. 45. 

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On January 8, 2019, petitioner received the assailed Decision.¹² Thus, on February 7, 2019, petitioner filed its petition for review in the Court in Division which was partially granted under the Assailed Decision, which reads as follows:¹³

“WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**, and the Decision of the Lower Court dated August 17, 2018 is **PARTIALLY REVERSED AND SET ASIDE**. Accordingly, the Local Business Tax Assessment in the amount of Four Million One Hundred Sixty Nine Thousand Six Hundred Ninety Seven and 36/100 (P4,169,697.36) is **CANCELLED**.

SO ORDERED”

Petitioner moved for the reconsideration of said decision but was denied anew under the Assailed Resolution which reads as follows:¹⁴

“WHEREFORE, the instant Motion for Partial Reconsideration (of the Decision dated 13 July 2020) is **DENIED**, for lack of merit.

SO ORDERED.”

Thus, the instant Petition for Review was posted on October 27, 2021 but received by this Court on November 5, 2021.

On February 15, 2022, respondents were directed to file their comment on petitioner’s Petition for Review. However, per Records Verification dated June 20, 2022, respondents failed to file their comment.

Hence, on July 19, 2022, the instant case was submitted for decision.¹⁵

Issue

Whether the Court in Division erred in ruling that petitioner has a branch or sales office in the Municipality and that this Court has no jurisdiction to rule upon the validity of the imposition of the Regulatory Fees.

¹² *Rollo*, Decision dated July 13, 2020, p. 56.

¹³ *Id.* at p. 64.

¹⁴ *Rollo*, CTA AC No. 217, Resolution dated June 30, 2021, p. 72.

¹⁵ *Id.*, Resolution dated July 19, 2022, pp. 121-122. 

Petitioner's Arguments

Petitioner insists that it had no branch office or a sales office in the municipality.

Petitioner also argues that this Court has jurisdiction to rule on the validity of the regulatory fees assessed by the respondent against petitioner.

The Ruling of the Court En Banc

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provide that:

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

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SEC. 3. *Who may appeal; period to file petition.*- (a) xxx
xxx xxx

(b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the assailed *Resolution* dated June 30, 2021.

Based on the records of the instant case, petitioner received the Assailed Resolution on July 15, 2021. In accordance with the abovementioned provisions of the RRCTA, 

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petitioner had until July 30, 2021 within which to file its petition.

Petitioner then filed a *Motion for Time to File Petition for Review*¹⁶ on July 29, 2021 which was granted under Minute Resolution dated July 31, 2021¹⁷ where petitioner was given a final and non-extendible period of fifteen (15) days from July 30, 2021, or until August 14, 2021 within which to file its Petition for Review.

However, under Supreme Court's (SC's) Administrative Circular No. 56-2021 dated July 30, 2021, all courts were physically closed from August 2, 2021 and the filing of pleadings was suspended. It was only under SC's Administrative Circular No. 83-2021 dated October 18, 2021 that the suspension of the filing of pleadings was lifted and gave the litigants seven (7) calendar days from October 20, 2021 to file their required pleadings. Thus, the filing of the instant petition on October 27, 2021 was on time.

Factual findings of the lower courts are accorded the highest degree of respect.

Petitioner argues that its Sta. Rita and Tabang Offices do not fall within the definition of either a branch or a sales office since they did not engage in transactions that generated and recorded sales or revenues in TYs 2005 to 2007. However, the Court in Division ruled otherwise.

It must be emphasized that such was the factual finding of the Court in Division, hence, it deserves the highest degree of respect as held in *Heirs of Teresita Villanueva, et al. v. Heirs of Petronila Syquia Mendoza, et al.*:¹⁸

“Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court

¹⁶ Rollo, pp. 1-6.

¹⁷ *Id.* at p. 17

¹⁸ G.R. No. 209132, June 05, 2017. 

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was in a much better position to determine which party was able to present evidence with greater weight.”

Further, it was established that the Sta. Rita and Tabang Offices are being used to perform the core functions of the petitioner relative to the relevant portions of the NLEX, hence, they are considered branch or sales offices subject to LBT.¹⁹

Absent any finding of grave abuse of discretion, there is no reason to disturb the abovementioned findings of the Court in Division.

The Court has no jurisdiction on regulatory fees but only on local taxes.

The Court of Tax Appeals (CTA) is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.²⁰ The jurisdiction of the CTA regarding local tax and real property tax (RPT) cases is provided under Section 7(a)(3) of RA No. 1125, as amended by Republic Act (RA) Nos. 9282 and 9503, which provides:

“SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx

xxx

xxx

(3) Decisions, orders or resolutions of the Regional Trial Courts **in local tax cases** originally decided or resolved by them in the exercise of their original or appellate jurisdiction;”

Similarly, Section 3(a)(3) of Rule 4 of RRCTA states:

“SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

xxx

xxx

xxx

(3) Decisions, resolutions or orders of the Regional Trial Courts **in local tax cases** decided

¹⁹ Rollo, Resolution dated June 30, 2021, p. 68.

²⁰ *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014. *On*

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or resolved by them in the exercise of their original jurisdiction;" (*Emphasis supplied*)

In *National Power Corporation v. Municipal Government of Navotas, et al.*²¹, the Supreme Court ruled that local tax cases consist of cases arising from local business tax (LBT) and RPT, to wit:

"Here, the context in which the word 'local taxes' is employed does not clearly indicate that the limited or restricted view was intended by the legislature. In addition, the specification of real property tax assessment under Paragraph (a)(5) of Section 7 of R.A. 9282, in relation to the decisions of the CBAA, is only proper given that the CBAA has no jurisdiction, either original or appellate, over cases involving local taxes other than real property taxes.

Based on the foregoing, the general meaning of 'local taxes' should be adopted in relation to Paragraph (a)(3) of Section 7 of R.A. 9282, which necessarily includes real property taxes."

Petitioner, in the instant petition, admitted that the subject matter of the assessment being appealed also include regulatory fees. Hence, not being local taxes, the Court in Division correctly ruled that this Court has no jurisdiction on regulatory fees assessed by respondents pursuant to Section 7(a)(3) of RA No. 1125, as amended.

In *Municipality of San Mateo, Isabela, represented by Municipal Mayor Crispina R. Agcaoili, M.D., and Atty. Alfredo S. Remigio, in his capacity as the Municipal Legal Officer v. Smart Communications, Inc.*,²² the Supreme Court differentiated the local taxes from regulatory fees, to wit:

"The term 'taxes' has been defined by case law as 'the enforced proportional contributions from persons and property levied by the state for the support of government and for all public needs.' While, under the LGC, a 'fee' is defined as 'any charge fixed by law or ordinance for the regulation or inspection of a business or activity.'

From the foregoing jurisprudential and statutory definitions, it can be gleaned that the purpose of an imposition will determine its nature as either a tax or a fee. If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is

²¹ G.R. No. 192300, November 24, 2014.

²² G.R. No. 219506, June 23, 2021. 

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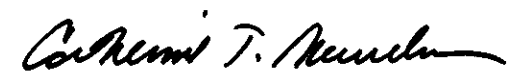
properly classified as an exercise of the power to tax. On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though revenue is incidentally generated. Simply stated, if generation of revenue is the primary purpose, the imposition is a tax, but if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee.”

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.²³

Thus, the Court is precluded from ruling on petitioner’s prayer relative to the regulatory fees assessed by respondents against it.

WHEREFORE, premises considered, petitioner’s *Petition for Review* is **DENIED**. Accordingly, the *Decision* dated July 13, 2020 and the *Resolution* dated June 30, 2021 are hereby **AFFIRMED**.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:


(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

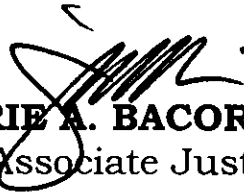
²³ *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.



(With Concurring Opinion)

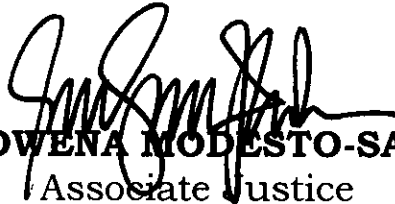
MA. BELEN M. RINGPIS-LIBAN

Associate Justice



JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice

(ON OFFICIAL BUSINESS)

MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANE S. CUI-DAVID

Associate Justice



CORAZON G. FERRER-FLORES

Associate Justice

CERTIFICATION

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



ROMAN G. DEL ROSARIO

Presiding Justice



REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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MUNICIPALITY OF GUIGUINTO,
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MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

Promulgated:

JUL 19 2023

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent on the *ponencia* which denies the Petition for Review.

I submit that it was proper for the Court in Division to assume jurisdiction on petitioner's liability for mayor's permit and other regulatory fees included in the same assessment for local business tax (LBT) issued against petitioner.

Upon perusal of the records, there is only a single cause of action involved, that is respondent's denial of petitioner's protest of the assessment ordering the latter to pay not only LBT, but also the regulatory fees included therein. This protest was denied by respondent Municipal Treasurer, which led to petitioner filing an appeal with the Regional Trial Court (RTC) of Malolos City.

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The RTC of Malolos City rendered a Decision on August 17, 2018, dismissing the appeal and ordering petitioner to pay the assessed amount of LBT and regulatory fees.

Indeed, this Court's jurisdiction is over decisions or judgments of RTCs in "local tax cases" as provided for under Section 7(a)(3) of Republic Act (RA) No. 1125, as amended by RA No. 9282, in relation to Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals (CTA), as amended.

In *Mactel Corporation vs. The City Government of Makati, et al.*,¹ the Supreme Court had the opportunity to define what a "local tax case" is relative to the CTA's special jurisdiction, *viz.*:

"[A] local tax case is understood to mean as a dispute between the local government unit (LGU) and a taxpayer involving the imposition of the LGU's power to levy tax, fees, or charges against the property or business of the taxpayer concerned. A local tax case may involve: the legality or validity of the real property tax assessment, **protests of assessments, **disputed assessments**, surcharges or penalties; the validity of a tax ordinance; claims for tax refund/credit; claims for tax exemption; actions to collect the tax due; and even prescription of assessments."**
(*Boldfacing and underscoring supplied*)

Evidently, a "local tax case" includes protests of assessments of "taxes, **fees**, or charges" imposed by a local government unit. **Considering that this case stemmed from the Municipal Treasurer's denial of petitioner's protest over the assessment which includes both LBT and regulatory fees, such is a "local tax case" within the purview of the jurisdiction of the CTA.**

To heed the *ponencia's* ruling that petitioner should have separated its appeal of the RTC Decision -- the LBT component to be filed with the CTA and the regulatory fee component with the Court of Appeals -- is a form of "**split jurisdiction**" denounced for being inimical to the effective and efficient functioning of the courts. The splitting of appeals encourages multiplicity of suits and invites possible conflict of dispositions between the reviewing courts which, needless to say, is not conducive to the orderly administration of justice.²

¹ G.R. No. 244602, July 14, 2021.

² *Lito Limpangog and Jerry Limpangog vs. Court of Appeals and People of the Philippines*, G.R. No. 134229, November 26, 1999



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In *The City of Manila, et al. vs. Hon. Caridad H. Grecia-Cuerdo, et al.*,³ the Supreme Court elucidated on the dangers of “split jurisdiction” between the CTA and the Court of Appeals, *viz.*:

“If this Court were to sustain petitioners’ contention that jurisdiction over their certiorari petition lies with the CA, **this Court would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter – precisely the split-jurisdiction situation which is anathema to the orderly administration of justice.** The Court cannot accept that such was the legislative motive, especially considering that **the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power.** Thus, the Court agrees with the ruling of the CA that since appellate jurisdiction over private respondents’ complaint for tax refund is vested in the CTA, it follows that a petition for certiorari seeking nullification of an interlocutory order issued in the said case should, likewise, be filed with the same court. To rule otherwise would lead to an absurd situation where one court decides an appeal in the main case while another court rules on an incident in the very same case.”
(*Boldfacing supplied*)

To allow an appeal of the regulatory fee aspect of the case to the Court of Appeals, separately from an appeal of the LBT to this Court, would present a scenario wherein a single decision of the RTC, arising from a single cause of action, *i.e.*, denial of petitioner’s protest of assessment, is appealed to two (2) different appellate courts, which on its own presents procedural and logistical problems. **Only one case was filed before the RTC, hence there was only one case docket from the RTC which may be elevated on appeal. To require separate appeals to the CTA and the Court of Appeals triggers administrative confusion as to which court the docket *a quo* should be elevated.**

Truth to tell, the Court has previously promulgated decisions which have tackled assessments containing demand for payment not only for local taxes but also the concomitant regulatory fees incorporated in such assessments.⁴ In these cases, the Court cancelled the assessments containing both local taxes and regulatory fees.

³ G.R. No. 175723, February 4, 2014.

⁴ See, *e.g.*, *Yamaha Motor Philippines, Inc. vs. City of Davao and Hon. Bella Linda N. Tanjili, in her official capacity as the City Treasurer of Davao City*, CTA AC No. 233, March 7, 2022; *The City Government of Cagayan de Oro vs. Cagayan Electric Power & Light Co., Inc. (CEPALCO)*, CTA AC No. 194, September 25, 2020; and, *South China Resources, Inc. (now known as “Socresources, Inc.”) vs. Office of the City Treasurer and/or Makati City*, CTA AC No. 196, October 17, 2018, among others. In *Taguig City Government, et al. vs. Serendra Condominium Corporation*, CTA AC Nos. 229 & 230, September 11, 2020, the Court in Division ordered the refund of regulatory fees to the taxpayer.



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The disquisition in *Roberto R. De Luzuriaga, Sr. vs. Hon. Midpantao L. Adil, et al. ("Luzuriaga")*,⁵ on the reason for the rule against splitting of action is enlightening:

"In the forcible entry case (Civil Case No. 21-33C), the dispute between petitioner Luzuriaga and respondent Young about the possession of Agho Island arose out of their conflicting claims of ownership over the said island. The issue of ownership is indispensably involved. In a long line of cases **We have ruled that a party may institute only one suit for a single cause of action.** (Section 3, Rule 2 of the Rules of Court; Laperal vs. Katigbak, 4 SCRA 582). **If two or more complaints are brought from different parts of a single cause of action, the filing of the first may be pleaded in abatement of the other or others, and a judgment upon the merits in anyone is available as a bar in the others.** (Section 4, Rule 2; Bacolod City vs. San Miguel, Inc., 29 SCRA 819). **The reason for the rule against the splitting of a cause of action is intended to prevent repeated litigation between the same parties in regard to the same subject of controversy; to protect the defendant from unnecessary vexation; and to avoid the costs incident to numerous suits.**

In the case at bar, Civil Case No. 13336 (an action to quiet title) was filed on April 21, 1980, whereas Civil Case No. 21-33C (the forcible entry case) was instituted before the Municipal Circuit Court of Estancia, Iloilo three (3) days thereafter, or on April 24, 1980. In his complaint for ejectment, petitioner Luzuriaga anchored his claim for rightful possession on his alleged ownership over the subject property. Thus, it is clear that the issue of possession is connected with that of ownership and, therefore, respondent CFI Judge Adil rightfully enjoined the Municipal Circuit Court of Estancia, Iloilo from proceeding with the trial of the ejectment controversy in Civil Case No. 21-33C. Besides, the respondent court could also grant the relief sought by petitioner by issuing a writ of preliminary mandatory injunction ousting private respondent from the property and placing him in possession thereof." (*Boldfacing supplied*)

In *Luzuriaga*, even though the Municipal Circuit Court has the exclusive jurisdiction over the forcible entry case, the Court of First Instance enjoined the Municipal Circuit Court from proceeding with the trial of the ejectment controversy considering that the issue of possession is connected with that of ownership, thus, there was only a single cause of action.

With the foregoing doctrine applied by analogy, I submit that the issue on whether petitioner is liable for LBT and the issue on whether it is liable for regulatory fees should in fact be resolved in one case by one court – such issues having arisen from one single assessment issued against petitioner. Thus, it was indeed judicious for the RTC to

⁵ *Roberto R. De Luzuriaga, Sr. vs. Hon. Midpantao L. Adil, et al.* G. R. No. L-58912, May 7, 1985.

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have taken cognizance of, and resolved, both issues in the case brought before it (**Civil Case No. 487-M-2009**) *sans* any disquisition on jurisdiction over the subject matter thereof. This Court should do no less, lest one single cause of action, that is – the validity of the assessment – will result in the filing of two (2) separate cases which is anathema to the procedural principle against splitting of a cause of action.

ALL TOLD, I *VOTE* to PARTIALLY GRANT the Petition for Review, and REMAND the case to the Court in Division for the determination of petitioner's liability for regulatory fees.


ROMAN G. DEL ROSARIO
Presiding Justice

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Ferrer-Flores, JJ.

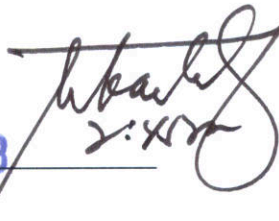
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HER CAPACITY AS THE OIC-
MUNICIPAL TREASURER OF
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Respondents.

Promulgated:

JUL 19 2023



X-----X

CONCURRING OPINION

RINGPIS-LIBAN, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Catherine T. Manahan, in denying the present Petition for Review and in affirming the Decision dated July 13, 2020 and Resolution dated June 30, 2021 both rendered by the Second Division of this Court in CTA AC No. 217.

I just wish to discuss a few points if only to establish the basis of my concurrence with the main opinion.



Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.¹ It is conferred by law.² Without a law that grants the power to hear, try, and decide a particular type of action, a court may not, regardless of what the parties do or fail to do, afford any sort of relief in any such action filed before it. It follows then that, in those cases, any judgment or order other than one of dismissal is void for lack of jurisdiction.³

Republic Act (RA) No. 1125, as amended,⁴ delineates the *special and limited* jurisdiction of the Court of Tax Appeals (CTA), in part, as follows:

“Sec. 7. Jurisdiction. — The CTA shall exercise:

- a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x

x x x

x x x

3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

x x x

x x x

x x x

As a specialized court, the CTA can take cognizance only of matters which are *clearly and specifically mentioned in the law conferring its jurisdiction* such as the decisions, orders, or resolutions of the Regional Trial Courts (RTC) in *local tax cases* originally decided or resolved by them in the exercise of either their original or appellate jurisdiction. Crucial to this is the full and proper appreciation of what constitute the term “*local tax cases*” given that the jurisdiction of the CTA over decisions, orders, or resolutions of the RTC becomes operative only when the latter has ruled on a local tax case.

In *Ignacio v. Office of the City Treasurer of Quezon City*,⁵ the Supreme Court held that before the case can be raised on appeal to the CTA, the action before the RTC must be in the nature of a tax case, **or one which primarily involves a tax issue.**

Accordingly, in *CE Casecanan Water and Energy Company, Inc. v. The Province of Nueva Ecija, et al.*,⁶ the Supreme Court had treated an injunction suit as a local tax case. The Supreme Court held that the prayer to restrain the collection of real property tax (RPT) amounts to an implicit challenge to the propriety of the RPT

¹ *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division and Citysuper, Incorporated*, G.R. No. 239464, May 10, 2021.

² *Victoria Manufacturing Corporation Employees Union v. Victoria Manufacturing Corporation*, G.R. No. 234446, July 24, 2019.

³ *Id.*

⁴ As amended by RA 9282 and RA 9503.

⁵ G.R. No. 221620, September 11, 2017.

⁶ G.R. No. 196278, June 17, 2015.

assessment because in ruling as to whether to restrain the collection, the RTC must first necessarily rule on the propriety of the assessment.

Moreover, in *Municipality of Villanueva, Misamis Oriental v. Steag State Power, Inc. and Municipality of Tagoloan, Misamis Oriental*,⁷ the Supreme Court treated as a local tax case an appeal questioning the ruling of the RTC in resolving the correct tax base for the local business taxes (LBT) to be imposed against the private respondent as well as in ordering the refund of excess LBT.

In *The City of Makati v. The Municipality of Bakun and Luzon Hydro Corporation*,⁸ the Supreme Court also treated as a local tax case a special civil action for interpleader involving the application of the rules on situs on the payment of LBT. That the case was in the mode of a special civil action for interpleader does not detract from its nature as a local tax case.

On the other hand, in *City of Iloilo v. Philippine Ports Authority*,⁹ the Supreme Court refused to characterize as a local tax case an appeal of the RTC decision dismissing a complaint for declaration of nullity of the notice of garnishment issued for the collection of RPT and LBT liabilities considering that the complaint did not challenge the validity or correctness of the tax liabilities *per se* but merely questions the propriety of the remedy adopted for the collection thereof.

It must be emphasized that in all of its rulings where the Supreme Court had characterized an action as a local tax case, the imposition or exaction involved are clearly in the nature of a *tax*, whether it be LBT,¹⁰ local franchise tax,¹¹ or RPT.¹² Logically, therefore, if the action before the RTC involves an exaction or imposition not in the nature of a tax, the same cannot be treated as a local tax case. Such was, in fact, the Supreme Court's holding in *Smart Communications, Inc. v. Municipality of Malvar, Batangas*,¹³ where it upheld the CTA's dismissal of Smart's Petition for Review for lack of jurisdiction. The Supreme Court found that the action before the RTC did not involve a local tax case and, as such, it did not fall within the ambit of CTA's appellate jurisdiction. In arriving at the said conclusion, the Supreme Court had determined that the "fees" imposed thereon are not taxes.

"On whether the CTA has jurisdiction over the present case



⁷ G.R. No. 214260, May 3, 2021.

⁸ G.R. No. 225226, July 7, 2020.

⁹ G.R. No. 233861, January 12, 2021.

¹⁰ *The City of Makati v. The Municipality of Bakun and Luzon Hydro Corporation*, G.R. No. 225226, July 7, 2020.

¹¹ *National Power Corporation v. Provincial Government of Bataan, et. al.*, G.R. No. 180654, March 6, 2017.

¹² *City of Lapu-Lapu v. Philippine Economic Zone Authority*, G.R. No. 184203, November 26, 2014; *CE Casecan Water and Energy Company, Inc. v. The Province of Nueva Ecija, et al.*, G.R. No. 196278, June 17, 2015; *Philippine Ports Authority v. The City of Davao, et. al.*, G.R. No. 190324, June 6, 2018; *Herarc Realty Corporation v. The Provincial Treasurer of Batangas, et. al.*, G.R. No. 210736, September 5, 2018.

¹³ G.R. No. 204429, February 18, 2014.

Smart contends that the CTA erred in dismissing the case for lack of jurisdiction. Smart maintains that the CTA has jurisdiction over the present case considering the ‘unique’ factual circumstances involved.

The CTA refuses to take cognizance of this case since it challenges the constitutionality of Ordinance No. 18, which is outside the province of the CTA.

Jurisdiction is conferred by law. Republic Act No. 1125, as amended by Republic Act No. 9282, created the Court of Tax Appeals. Section 7, paragraph (a), sub-paragraph (3) of the law vests the CTA with the exclusive appellate jurisdiction over ‘decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction.’

The question now is whether the trial court resolved a local tax case in order to fall within the ambit of the CTA’s appellate jurisdiction. This question, in turn, depends ultimately on whether the fees imposed under Ordinance No. 18 are in fact taxes.

Smart argues that the ‘fees’ in Ordinance No. 18 are actually taxes since they are not regulatory, but revenue-raising. Citing *Philippine Airlines, Inc. v. Edu*, Smart contends that the designation of ‘fees’ in Ordinance No. 18 is not controlling.

The Court finds that the fees imposed under Ordinance No. 18 are not taxes.

Section 5, Article X of the 1987 Constitution provides that ‘[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government.’

Consistent with this constitutional mandate, the LGC grants the taxing powers to each local government unit. Specifically, Section 142 of the LGC grants municipalities the power to levy taxes, fees, and charges not otherwise levied by provinces. Section 143 of the LGC provides for the scale of taxes on business that may be imposed by municipalities while Section 147 of the same law provides for the fees and charges that may be imposed by municipalities on business and occupation.

The LGC defines the term ‘charges’ as referring to pecuniary liability, as rents or fees against persons or property, while the term ‘fee’ means ‘a charge fixed by law or ordinance for the regulation or inspection of a business or activity.’

In this case, the Municipality issued Ordinance No. 18, which is entitled ‘An Ordinance Regulating the Establishment of Special Projects,’ to regulate the ‘placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus, and provide for the correction,



condemnation or removal of the same when found to be dangerous, defective or otherwise hazardous to the welfare of the inhabitant[s].’ It was also envisioned to address the foreseen ‘environmental depredation’ to be brought about by these ‘special projects’ to the Municipality. Pursuant to these objectives, the Municipality imposed fees on various structures, which included telecommunications towers.

As clearly stated in its whereas clauses, the primary purpose of Ordinance No. 18 is to regulate the ‘placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus’ listed therein, which included Smart’s telecommunications tower. Clearly, the purpose of the assailed Ordinance is to regulate the enumerated activities particularly related to the construction and maintenance of various structures. The fees in Ordinance No. 18 are not impositions on the building or structure itself; rather, they are impositions on the activity subject of government regulation, such as the installation and construction of the structures.

Since the main purpose of Ordinance No. 18 is to regulate certain construction activities of the identified special projects, which included ‘cell sites’ or telecommunications towers, the fees imposed in Ordinance No. 18 are primarily regulatory in nature, and not primarily revenue-raising. While the fees may contribute to the revenues of the Municipality, this effect is merely incidental. Thus, the fees imposed in Ordinance No. 18 are not taxes.

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Considering that the fees in Ordinance No. 18 are not in the nature of local taxes, and Smart is questioning the constitutionality of the ordinance, the CTA correctly dismissed the petition for lack of jurisdiction. Likewise, Section 187 of the LGC, which outlines the procedure for questioning the constitutionality of a tax ordinance, is inapplicable, rendering unnecessary the resolution of the issue on non-exhaustion of administrative remedies.” (*Emphasis supplied and citations omitted*)

Thus, the dismissal of the present appeal for lack of jurisdiction insofar as the regulatory fees are concerned is in congruence with the Supreme Court’s dictum in the above cited case.

In his Dissenting Opinion, Presiding Justice Roman G. Del Rosario submits that it was proper for the Court in Division to assume jurisdiction on respondent’s liability for mayor’s permit and other regulatory fees included in the same assessment for LBT issued against petitioner. He posits that there is only a single cause of action involved in the present case, *i.e.*, respondent’s denial of petitioner’s protest of the assessment ordering the latter to pay both the LBT and the regulatory fees. Citing the case of *Mactel Corporation v. The City Government*



of *Makati, et. al.*,¹⁴ PJ Del Rosario also asserts that a “local tax case” includes protests of assessments of “taxes, fees, or charges” imposed by the local government unit. He added that “[c]onsidering that this case stemmed from the Municipal Treasurer’s denial of petitioner’s protest over the assessment which includes both LBT and regulatory fees, such is a ‘local tax case’ within the purview of the jurisdiction of the CTA.” PJ Del Rosario likewise points out that to follow the ruling in the main opinion would result to split jurisdiction which is anathema to the orderly administration of justice.

With all due respect, I believe that the present case involves two (2) distinct causes of action but only one of which falls within the appellate jurisdiction of this Court. I also submit that the Supreme Court’s decision in *Mactel* does not support the view allowing this Court to take cognizance of appeals of cases arising from the denial of assessment protests involving exactions or imposition other than local taxes. I am also of the view that following the ruling in the main opinion would not result to splitting of jurisdiction.

In *The City of Bacolod v. San Miguel Brewery, Inc.*,¹⁵ the Supreme Court discussed the concept of a cause of action and its elements, as follows:

“The classical definition of a cause of action is that it is ‘a delict or wrong by which the rights of the plaintiff are violated by the defendant.’ Its elements may be generally stated to be (1) a right existing in favor of the plaintiff; (2) a corresponding obligation on the part of the defendant to respect such right; and (3) an act or omission of the plaintiff which constitutes a violation of the plaintiff’s right which defendant had the duty to respect. For purposes, however, of the rule against splitting up of a cause of action, a clearer understanding can be achieved, if together with these elements, the right to relief is considered.

In the last analysis, a cause of action is basically an act or an omission or several acts or omissions. A single act or omission can be violative of various rights at the same time, as when the act constitutes juridically a violation of several separate and distinct legal obligations. This happens, for example, when a passenger of a common carrier, such as a taxi, is injured in a collision thereof with another vehicle due to the negligence of the respective drivers of both vehicles. In such a case, several rights of the passenger are violated, *inter alia*, (1) the right to be safe from the negligent acts of either or both the drivers under the law on *culpa-acquiliiana* or quasi-delict; (2) the right to be safe from criminal negligence of the said drivers under the penal laws; and (3) the right to be safely conducted to his destination under the contract of carriage and the law covering the same, not counting anymore the provisions of Article 33 of the Civil Code. **The violation of each of these rights is a cause of action in itself.** Hence, such a

¹⁴ G.R. No. 244602, July 14, 2021 (“*Mactel*”).

¹⁵ G.R. No. L-25134, October 30, 1969.

passenger has at least three causes of action arising from the same act. **On the other hand, it can happen also that several acts or omissions may violate only one of right, in which case, there would be only one cause of action. Again the violation of a single right may give rise to more than one relief. In other words, for a single cause of action or violation of a right, the plaintiff may be entitled to several reliefs. It is the filing of separate complaints for these several reliefs that constitutes splitting up of the cause of action. This is what is prohibited by the rule.**”
(*Emphasis supplied*)

In the present case, the action before the RTC contains two (2) distinct causes of action corresponding to the two (2) items of assessment each of which, standing alone, could validly support the action and could entitle the petitioner with distinct reliefs. To put it differently, there are in this case two (2) wrongs simultaneously committed against the rights of the petitioner. These are: (1) allegedly incorrect and/or illegal imposition of LBT; and (2) allegedly incorrect and/or illegal imposition of regulatory fees. That the Notice of Assessment for the LBT was simultaneously issued with the Notice of Assessment for the regulatory fees does not necessarily mean that one item of assessment would assume the nature and character of the other and that they would be considered as a single assessment for purposes of filing of the administrative and/or judicial remedies against them.

It is also inaccurate to say that it is the denial by the municipal treasurer of petitioner’s protest of the assessment that constitutes the cause of action in this case. On this point, there may be some confusion regarding facts constituting the causes of action and the facts showing the accrual of the “right of action” *i.e.*, the right to commence and maintain an action.¹⁶ To reiterate, the causes of action in this case are the simultaneous issuances of Notices of Assessment containing the allegedly incorrect and/or illegal imposition of LBT and regulatory fees. On the other hand, the denial of petitioner’s protest merely constitutes the ultimate fact triggering the accrual of petitioner’s right of action as contemplated under Section 195 of the Local Government Code (LGC).¹⁷ At the time the Notices of Assessment were issued, the petitioner already had causes of action although its right to commence judicial action against the assessments have not yet accrued.

¹⁶ *Spouses Abelardo Borbe v. Calalo*, G.R. No. 152572, October 5, 2007.

¹⁷ Section 195 of the LGC states:

SEC. 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.** (*Emphasis supplied*)

It is only when the protest was denied by the municipal treasurer can the petitioner finally institute a judicial action to challenge the assessments before a court of competent jurisdiction.

I also submit that *Mactel* cannot be relied upon to support the assumption of jurisdiction by this Court over denial of protest of assessment involving regulatory fees. Notably, the said case does not in any way involve an appeal over the denial of protest of assessment of regulatory fees.

In *Mactel*, the Supreme Court was confronted with the issue of whether the petition for declaratory relief filed before the RTC assailing the Makati City Government's refusal to issue business permit to Mactel Corporation may be characterized as a *local tax case*, and hence, may be elevated to the CTA on appeal. The petition for declaratory relief sought to compel the Makati City Government to apply the doctrine of conclusiveness of judgment arising from a previous final and executory judgment rendered by the RTC involving a protest of an LBT assessment. The Supreme Court basically ruled that while the petition for declaratory relief may be related to a tax case because the previous final and executory judgment sought to be enforced is a local tax case, the same is actually civil in nature.

Nowhere in the above cited case was it mentioned that once an assessment for the payment of regulatory fees is lumped together with an assessment for any type of local tax, then the entirety thereof would assume the character of a *local tax case* within the meaning of Section 7(a)(3) of RA 1125, as amended.

Given that the action before the RTC involves different causes of action, the appeal for one of which is cognizable by this Court and the other one by the Court of Appeals (CA) pursuant to their respective jurisdictions, there will be no splitting of jurisdiction to speak of. On the contrary, the ruling in the main opinion is only but a judicious observance by this Court of the extent and limit of its jurisdiction as duly granted by law. While it may be true that the appeal of the RTC decision both to this Court (insofar as its LBT component) and to the CA (as regards the regulatory fee component) might possibly create certain procedural or logistical challenges, the same is not sufficient justification for this Court to rule on matters outside of its *special and limited* jurisdiction. Such concerns, if any, already pertain to the wisdom of the jurisdiction-conferring statutes which is clearly beyond the province of this Court to inquire.

In view of the foregoing, I vote to **DENY** the present Petition for Review.


MA. BELEN M. RINGPIS-LIBAN
Associate Justice