

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MACTEL CORPORATION,
Petitioner,

G.R. No. 244602

Present:
GESMUNDO, C.J.,
Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA,
GAERLAN, JJ

- versus -

THE CITY GOVERNMENT OF
MAKATI, THE CITY TREASURER
OF MAKATI CITY AND THE
OFFICER-IN-CHARGE OF THE
OFFICE OF THE CITY
ADMINISTRATOR AND HEAD OF
BUSINESS PERMITS OFFICE,
Respondents.

Promulgated:

JUL 14 2021

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DECISION

CARANDANG, J.:

Before us is a Petition for Review on *Certiorari*¹ assailing the Amended Decision² dated October 9, 2018 and the Resolution³ dated January 29, 2019 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1465, which reversed and set aside the earlier Decision⁴ dated February

¹ *Rollo*, pp. 3-16.

² Penned by Court of Tax Appeals Associate Justice Cielito N. Mindaro-Grulla with Justices Roman G. Del Rosario, Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan; id. at 23-35.

³ Id. at 42-47.

⁴ Penned by Court of Tax Appeals Associate Justice Cielito N. Mindaro-Grulla, with Justices Roman G. Del Rosario, Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan; id. at 233-247.

14, 2018 affirming the Decision⁵ dated February 9, 2016 and the Resolution⁶ dated May 18, 2016 of the CTA Second Division in CTA AC No. 147. The CTA Second Division earlier dismissed the petition for *certiorari* filed by respondents assailing the interlocutory orders issued by the Regional Trial Court (RTC) of Makati City, Branch 59, in Civil Case No. 15-177 for lack of jurisdiction. The RTC directed respondents to desist and refrain from proceeding with the assessment of local taxes of petitioner until the resolution of the main case and ordered respondents to issue a temporary business permit in favor of Mactel Corporation (petitioner).

Facts of the Case

Petitioner is engaged in the business of trading all kinds of goods, particularly in the distribution of products and services of telecommunication companies, such as electronic load, sim cards, and prepaid call and text cards.⁷

Respondent City Government of Makati is a local government unit created under Republic Act No. 7854, headed by its City Mayor and acting through the other public respondents herein. Respondent Nelia A. Barlis was the City Treasurer of Makati City (City Treasurer) and the local government official in charge of the collection of all local taxes, fees and charges in Makati City. Respondent Eleno M. Mendoza, Jr. was the Officer in Charge of the Office of the City Administrator and Head of the Business Permits Office (City Administrator), and as such, he was the local government official in charge of the collection of all local taxes, fees and charges in Makati City. All the foregoing respondents held office at the Makati City Hall in Makati City.⁸

On August 1, 2005, the City Treasurer of Makati issued a Notice of Assessment of petitioner's deficiency taxes, fees, and charges in the total amount of ₱30,799,127.21 for the years 2001 to 2004. On October 13, 2005, petitioner filed a protest claiming that there was a gross discrepancy in the amount used as basis in the said assessment. According to petitioner, the correct tax base should be the 10% discount of the face value of the call cards from which petitioner derives its profit and not the gross sales/receipts of the face value of the call cards itself. Moreover, petitioner asserted that the call cards should be classified not as goods but as pre-paid service because once the face value of the card is exhausted, the plastic card is virtually useless.⁹

⁵ Penned by Court of Tax Appeals Associate Justice Caesar A. Casanova, with Justices Juanito C. Castañeda, Jr and Amelia R. Cotangco-Manalastas, concurring.

⁶ Id. at 225-231.

⁷ Id. at 235.

⁸ Id. at 3-4.

⁹ Id. at 235-236.

On October 19, 2005, petitioner's protest was denied, prompting it to appeal the case to the RTC of Makati City. The case was raffled to the RTC of Makati, Branch 148, and was docketed as Civil Case No. 05-1040. Thereafter, trial ensued.¹⁰

On November 13, 2007, the RTC-Branch 148, Makati City rendered a Decision¹¹ in Civil Case No. 05-1040 ruling that the assessment should only cover the actual income derived by petitioner and directed respondents to "compute petitioner's tax on the 10% discount given by the telecom operators as discount." The RTC explained its decision in this wise:

In this case, the assessment was based on the gross-sales or receipts because the respondents believe that the petitioner is a wholesaler, dealer, distributor or service contractor. From this reason, the Court believes that the allegation of the petitioner that it gets and purchased the cards for P270.00 and sells the same at P273.00 each or P3.00 income per card is acceptable to all parties. Hence the same is established that the assessment is based on the gross sales or gross profits of transaction and it will necessarily cover the P270.00. If this practice will be allowed, then taxation or the power to tax by the respondents will contradict the guidelines set forth in our existing laws x x x

If the P270.00 purchase price will be subjected to the local tax, then it is tantamount to the unjust confiscation of the property of the petitioner or taxpayer. The P270.00 is a capital or investment on the part of the petitioner, the said amount is therefore being taxed because the assessment is based on the gross receipts or sales of the petitioner. It is very clear that when the petitioner sells its cell card, the receipt issued will necessarily include the principal which is P270.00 and the mark [up] of 10% which only amount to Three Pesos (Php 3.00). Hence, the whole amount was used as the basis of the local tax instead of the actual income derived. Also, the Court opines that when the Telecommunication companies sell their cell card to their distributors, such transaction were already subjected to tax. **The Court then believes that the assessment order should only cover the actual income derived by the petitioner.**¹² (Emphasis supplied)

Respondents sought reconsideration but the motion was denied in an Order dated March 17, 2008.¹³ Respondents did not appeal the said decision. Hence, it became final and executory. For several years, respondents followed the ruling in the Decision dated November 13, 2007 and accepted petitioner's tax submissions based on the discounts.¹⁴

¹⁰ Id. at 236.

¹¹ Penned by Judge Oscar B. Pimentel.; id. at 66-70.

¹² Id. at 69-70.

¹³ Id. at 71-72.

¹⁴ Id. at 51.

However, the City Treasurer suddenly changed its position and issued a Notice of Assessment¹⁵ dated January 14, 2015 under Letter of Authority No. 2014-0345, assessing petitioner for deficiency taxes, fees, and charges covering the taxable period from 2010-2013 in the amount of ₱157,200,855.92, based again on the face value of the prepaid cards. On even date, petitioner tried to apply for the renewal of its business permit via Business Permit Application Form of Makati City, but the latter refused to issue the business permit due to an alleged business tax deficiency for taxable year 2014 in the total amount of ₱24,693,707.82, including surcharges and deficiency. Thereafter, respondent City Administrator issued a Billing Statement dated January 22, 2015.¹⁶

On February 6, 2015, petitioner filed its protest to the Notice of Assessment dated January 14, 2015.¹⁷ Also, in its Letter¹⁸ dated February 10, 2015, petitioner tried to protest its Billing Statement but respondent City Administrator refused to receive the letter.¹⁹

While its protest to the notice of assessment was pending, on March 4, 2015, petitioner filed a Petition for Declaratory Relief with application for Temporary Restraining Order and/or preliminary injunction²⁰ to the RTC of Makati City, Branch 59, docketed as Civil Case No. 15-177. Petitioner assailed respondents' refusal to issue petitioner's business permit and/or the denial of its application for renewal because of the alleged business tax deficiency for the year 2014 in the amount of ₱24,693,707.82. Petitioner sought to compel respondents to apply the doctrine of conclusiveness of judgment arising from a previous protest case that was resolved with finality by the RTC, which ruled that the assessment should only cover the actual income derived by petitioner. Petitioner insisted that respondents should compute its business tax liabilities based on the 10% discount given by the telecom companies. Petitioner questioned respondents' use of the gross value of the products as tax base instead of the commission that petitioner earns as previously ruled by the trial court. Petitioner claimed that it only generated a total income of ₱5,440,772.41, for taxable years 2010 to 2013 and the Notice of Assessment dated January 14, 2015 assessing petitioner deficiency taxes, fees, and charges in the amount of ₱157,200,855.92 is contrary to the final and executory Decision dated November 13, 2007. Lastly, petitioner argued that respondent committed grave abuse of discretion when it refused to issue any business permit because of an alleged tax deficit for the business tax for the year 2014.²¹

On April 28, 2015, the RTC of Makati City, Branch 59 issued an Order that: (1) enjoins respondents from further proceeding with the assessment of local taxes of petitioner until the resolution of the case; and

¹⁵ Id. at 74.
¹⁶ Id. at 236.
¹⁷ Id. at 76-77.
¹⁸ Id. at 78-79.
¹⁹ Id.
²⁰ Id. at 48-65.
²¹ Id. at 51-52.

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(2) orders respondents to issue a temporary business permit in favor of petitioner. The dispositive portion of the order reads as follows:

WHEREFORE, premises considered, let Writs of Preliminary Injunction and Mandatory Injunction be issued upon the filing of a bond of P500,000.00 ordering [respondents], their successors, agents, assignees and any and all person or entities acting on their behalf, under their authority or in coordination to DESIST and REFRAIN from further proceeding with the assessment of local taxes of [petitioner] until the resolution of this case.

Furthermore, [respondents] are hereby ordered to issue a temporary business permit in favor of [petitioner].

SO ORDERED.²²

After posting of the required bond, the trial court issued a Writ of Preliminary Injunction on May 11, 2015, enjoining respondents from assessing and collecting excessive taxes and to issue a temporary business permit until the issue on deficiency taxes has been resolved by respondent City Treasurer.²³

On May 13, 2015, respondents filed a Motion for Reconsideration of the Order dated 28 April 2015, which was denied by the trial court in an Order dated August 6, 2015. The trial court proceeded to set the main case for pre-trial conference.²⁴

Thereafter, respondents filed a Petition for *Certiorari*²⁵ under Rule 65 of the Rules of Court before the CTA assailing the Orders dated April 28, 2015 and August 6, 2015 of the RTC of Makati City, Branch 59.²⁶ Respondents asserted that the RTC committed grave abuse of discretion in issuing the said orders. Respondents argued that even if the Decision dated November 13, 2007 is applicable in this case, petitioner should have been made liable to pay the correct local taxes²⁷ and that the writ of preliminary mandatory injunction should have been denied because petitioner has not shown that it has suffered "grave and irreparable injury."²⁸

In its Comment, petitioner countered that the CTA has no jurisdiction over the case since the proceedings before the trial court is not a tax case.²⁹ Petitioner further asserted that without injunctive relief, it will suffer grave and irreparable injury since respondents ordered petitioner to pay the

²² Id. at 237-238.

²³ Id.

²⁴ Id. at 238.

²⁵ Id. at 150-184.

²⁶ Id. at 156-157.

²⁷ Id. at 159.

²⁸ Id. at 174.

²⁹ Id. at 189-190.

aggregate amount of ₱164,135,159.85 as business tax, or 16,400% of what it actually earned that taxable year.³⁰

Ruling of the Court of Tax Appeals Second Division

On February 9, 2016, the CTA Second Division rendered a Decision dismissing the petition filed by respondents for lack of jurisdiction.³¹ The CTA Second Division held that while it has the jurisdiction to take cognizance of a special civil action for *certiorari* assailing an interlocutory order issued by the RTC, the said case must be a local tax case.³² However here, the CTA Second Division ruled that this case is not a local tax case because the Petition for Declaratory Relief was filed by petitioner to set aside respondents' refusal to grant business permit and to compel them to apply the doctrine of conclusiveness of judgment rendered in a previous case.³³

Respondents filed a motion for reconsideration but the same was denied by the CTA Second Division in a Resolution³⁴ dated May 18, 2016.

Respondents then filed a Petition for Review to the CTA *En Banc* assailing the Decision of the CTA Second Division. Respondents claim that the CTA Second Division gravely erred in dismissing the petition and in not declaring that the present case involves a local tax issue.³⁵

Decision of the Court of Tax Appeals *En Banc*

In a Decision³⁶ dated February 14, 2018, the CTA *En Banc* denied the Petition for Review filed by respondents for lack of merit. The CTA *En Banc* affirmed the decision of the CTA Second Division³⁷ and ruled that while the CTA has authority to take cognizance of petitions for certiorari questioning interlocutory orders issued by the RTC in a local tax case, the petition filed by petitioner before the RTC is not a local tax case under Section 195 or 196 of the Local Government Code.³⁸ The petition filed is neither an appeal to the denial of the protest nor a claim for refund. The CTA succinctly explained, thus:

While it is true that the case involves two local taxes specifically, the Billing Assessment dated 22 January 2015 and the Notice of Assessment dated 22 January 2015 which petitioner reiterates, it is not automatic that it is a local tax case within the original or appellate jurisdiction of the Regional Trial Courts and thereafter within the

³⁰ Id. at 196-197.

³¹ Id. at 222.

³² Id. at 216.

³³ Id. at 218-219.

³⁴ Id. at 225-231.

³⁵ Id. at 24.

³⁶ *Supra* note 4.

³⁷ *Rollo*, pp. 246-247.

³⁸ Id. at 242-243.

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exclusive appellate jurisdiction of this Court. Otherwise stated, involvement of local tax in a case does not mean that it is a local tax case appealable to this Court.

An examination of [petitioner] taxpayer's arguments and reliefs sought in the petition before the Regional Trial Court of Makati City, Branch 59 reveals that it is a petition for certiorari and mandamus and not an appeal to the denial of the protest nor a claim for refund pursuant to Section 195 and 196 of the local Government Code. [Petitioner] based its cause of action on the implications of the Decision dated 13 November 2007, which was a final and executory judgment. Thus, [respondents]'s arguments must fail.³⁹

Unrelenting, respondents filed a motion for reconsideration questioning the Decision of the CTA *En Banc* which affirmed the ruling of the CTA Second Division. Respondents reiterate their previous argument that the present case involves two local tax issues.⁴⁰

Amended Decision of the Court of Tax Appeals *En Banc*

On October 9, 2018, the CTA *En Banc* issued an Amended Decision⁴¹ reversing and setting aside its earlier decision and ruled that the case involves two local tax cases, as evidenced by: (1) the Billing Assessment dated January 22, 2015 for the deficiency business tax; and (2) the Notice of Assessment dated January 14, 2015 for the 2010-2013 deficiency business tax.⁴²

In overturning its earlier decision, the CTA *En Banc* relied on the case of *CE Casecnan Water and Energy Company, Inc. v. Province of Nueva Ecija*⁴³ (*CE Casecnan case*), where the Court held that it is the CTA which has the power to rule on a Petition for *Certiorari* assailing the interlocutory order of the RTC relating to a local tax case. The Court likewise pronounced in the *CE Casecnan* case that an injunction, with prayer to restrain collection of real property tax, challenges the validity of the real property tax (RPT) assessment, and is thus, a local tax case. Applying the *CE Casecnan* case, the CTA *En Banc* held that petitioner's declaratory relief petition to the RTC is a local tax case because in seeking to restrain the collection of business taxes, petitioner also implicitly questioned the propriety of such assessment. The CTA *En Banc* then proceeded to rule that the CTA Second Division has jurisdiction over the petition for *certiorari* filed by respondents assailing the interlocutory orders of the RTC.⁴⁴

³⁹ Id. at 245.

⁴⁰ Id. at 23-24.

⁴¹ *Supra* note 2.

⁴² *Rollo*, pp. 23-30.

⁴³ 760 Phil. 835 (2015).

⁴⁴ *Rollo*, pp. 31-33.

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Hence, petitioner filed this petition insisting that the complaint for declaratory relief it filed before the RTC is not a tax case. Petitioner argues that unlike in the *CE Casecan* case, the case at bar relied on a final and executory judgment dated November 13, 2007 rendered in Civil Case No. 05-1040 as basis for its Declaratory Relief petition.⁴⁵ Further, petitioner contends that the tax assessment is still in the preliminary stage, yet respondents refused to issue petitioner any business permit.⁴⁶

In their Comment, respondents maintain that the present case involves not just one local tax case but two local tax issues which is under the jurisdiction of the CTA. Respondents assert that the CTA *En Banc* correctly ruled in its Amended Decision that the present case involves tax issues and therefore within the jurisdiction of the CTA. The Order dated April 28, 2015 rendered by the RTC involves two writs: (a) Writ of Preliminary Injunction against the Notice of Assessment dated 14 January 2015 for 2010-2013 issued by the City Treasurer of Makati; and (b) Writ of Preliminary Mandatory Injunction directed against the Billing Statement dated 22 January 2015 for Deficiency Taxes for 2014 and for the issuance of a temporary business permit in favor of Mactel Corporation.⁴⁷

Ruling of the Court

The petition is meritorious.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.⁴⁸ In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter.⁴⁹ What determines the jurisdiction of the court is the nature of the action pleaded as appearing in the allegations of the complaint and the character of the relief sought.⁵⁰

The jurisdiction of the CTA, as provided under Republic Act No. (R.A.) 1125, as amended by R.A. 9282 provides:

Section 7. Jurisdiction – The CTA shall exercise:

a. 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 in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal

⁴⁵ Id. at 8-9.

⁴⁶ Id. at 10-12.

⁴⁷ Id. at 259-260.

⁴⁸ *Mitsubishi Motors Philippines Corp. v. Bureau of Customs*, 760 Phil. 954, 960 (2015).

⁴⁹ Id.

⁵⁰ See *Padlan v. Dinglasan*, 707 Phil. 83 (2013).

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revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

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 (Emphasis supplied)

Corollarily, Rule 4, Section 3(a)(3) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), provides that the Court in Division has jurisdiction over decisions, resolutions, or orders of the regional trial courts in local tax cases decided or resolved in the exercise of their original jurisdiction. Thus, 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 case.⁵¹ Evidently, the CTA's appellate jurisdiction over decisions, orders or resolutions of the RTC becomes operative only when the RTC has ruled on a local tax case.

Additionally, the Court acknowledged in the case of *City of Manila v. Judge Grecia-Cuerdo*,⁵² that the CTA also has jurisdiction over a special civil action for *certiorari* assailing an interlocutory order issued by the RTC in a local tax case. Again, for the CTA to take cognizance of a petition for *certiorari*, the interlocutory order must have been issued by the RTC on a local tax case.

Before a local tax case may be elevated to the court of competent jurisdiction, it is mandatory for the taxpayer to protest first the deficiency assessment by contesting its legality in accordance with Section 195 of the Local Government Code of 1991. The said Section provides that:

Section 195. Protest of Assessment. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall **issue a notice of assessment** stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. **Within sixty (60) days from the receipt** of the notice of assessment, the **taxpayer may file a written protest** with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall **decide the protest within sixty (60) days from the time of its filing**. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the

⁵¹ *Ignacio v. Office of the City Treasurer of Quezon City*, 817 Phil. 1133, 1144 (2017).
⁵² 726 Phil. 4 (2014).

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.

At this point, it is important to highlight the chronology of events subsequent to the issuance of two notices to petitioner by the respondents, namely: (1) Deficiency Assessment for 2010-2013 through a Notice of Assessment dated January 14, 2015 issued by the City Treasurer; and (2) the Deficiency Business Tax for 2014 through a Billing Statement dated January 22, 2015 issued by the City Administrator.

On January 14, 2015, the City Treasurer issued the Deficiency Assessment for 2010-2013 against petitioner. On the same day, petitioner applied for the renewal of its business permit, taking into account that the deadline for the renewal of business permit is every 20th of January. However, petitioner's renewal of its business permit was denied. On January 22, 2015, the City Administrator issued a Billing Statement against petitioner for deficiency business tax for 2014. On February 10, 2015, within the 60-day period given to petitioner to file a protest of the City Treasurer's assessment, petitioner filed a Letter of protest against the Notice of Assessment as well as a Letter of protest against the Billing Statement issued by the City Administrator. However, in the latter, the City Administrator refused to receive the same. Since petitioner was not able to obtain its business permit to enable it to continue doing business, on March 4, 2015, petitioner filed the Petition for Declaratory Relief with a prayer for mandatory and prohibitory injunction with the trial court. At that time, petitioner's protest of the deficiency business tax assessment for taxable years 2010-2013 is still an ongoing process because the City Treasurer, in accordance with the above-quoted Section 195 of the LGC, had 60 days from the receipt of the Letter of Protest, or until April 10, 2015, to decide the same.⁵³

What can be gleaned from here is that, the filing of the Petition for Declaratory Relief with a prayer for the issuance of a writ of mandatory injunction (to compel respondent to issue a business permit) and the issuance of a writ of prohibitory injunction (to stop respondent from using an incorrect tax base in collecting local taxes pursuant to a previous final and executory judgment) before the RTC, is petitioner's only recourse for the unjustifiable refusal of the City Government of Makati to issue its business permit. It must be noted that while the protest filed by petitioner to the City Treasurer is still pending, it had no choice but to wait for either the City Treasurer's denial of the protest, or for the lapse of the 60-day period from the City Treasurer's receipt of the protest, to appeal the case to the court of competent jurisdiction. In the interim, petitioner could not have continued with its business without a business permit. Hence, it had no other choice but to file the petition for declaratory relief to the RTC and ask for the interim reliefs to survive as a business entity.

⁵³ *Rollo*, pp. 236-237.

To further substantiate its position, petitioner prayed for the trial court to apply the principle of conclusiveness of judgment and order respondents to use as basis for computation of petitioner's business taxes the discount given to it by the telecom companies and not the entire selling price of the cellphone cards as this has already been laid down in the decision in Civil Case No. 05-1040 dated November 13, 2007, which has long attained finality. Petitioner merely asked the trial court to define its rights and obligations under the final and executory decision in Civil Case No. 05-1040 dated November 13, 2007.

Hence, while the case may be related to a tax case because the previous final and executory judgment sought to be enforced is a local tax case, the truth of the matter is that it is actually civil in nature.

As ruled by the CTA Second Division, 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.⁵⁴

Here, petitioner's argument in disputing the local tax assessment does not involve the application of tax laws because this issue has already been resolved with finality when petitioner secured a final and executory judgment embodied in the Decision dated November 13, 2007. What petitioner seeks instead is to enforce the said final and executory judgment.

Even the trial court, in its Order dated August 6, 2015, acknowledged this, and held that:

[Petitioner] herein did not directly protest the assessment which as of the moment, is the subject of proper proceedings with [respondent] City Treasurer. What it seeks to correct is the previous acts committed by [respondents], particularly the very basis of the assessments it issued and its relation to the effects of the Decision dated 13 November 2007. The issue shall be delved into deeply by this Court once it goes into the merits of the instant Petition. **At this point, this Court understands that [petitioner] does not seek to protest the amount of the assessment, but based upon its Petition, it merely seeks to define its rights under the Decision dated 13 November 2007.**

⁵⁴ *Herarc Realty Corp. v. Provincial Treasurer of Batangas*, G.R. No. 210736, September 5, 2018.

To reiterate, the local tax case that may be elevated to the trial court and eventually to the CTA is the deficiency business tax assessment for taxable years 2010-2013 which was still under administrative review at the time petitioner filed the petition for declaratory relief. Upon denial of petitioner's protest, it would inevitably elevate the same to the court of competent jurisdiction.

Whereas in this case, what are being questioned are the interlocutory orders issued by the RTC which did not rule on the validity of the assessments but merely ordered respondents to refrain from proceeding further with the assessments until the computation of petitioner's business taxes has been determined in accordance with the previous final and executory Decision. Likewise, the RTC's order for respondents to issue a temporary business permit to petitioner was merely to prevent grave and irreparable damage to petitioner while the main case before the trial court is still ongoing. Clearly, the assailed orders of the RTC are not issued in a local tax case contemplated under Section 7(a)(3) of the R.A. 9282.

The CTA *En Banc*'s reliance on the *CE Casecanan* case to reverse its previous ruling is erroneous. The principle of *stare decisis* cannot be applied here. The *CE Casecanan* case is not on all fours with this case.

The controversy in *CE Casecanan* arose from the reassessment notice covering arrearages in RPT for 2018 issued against CE Casecanan Water and Energy Co., Inc. CE Casecanan protested the assessment and elevated the case to the Local Board of Assessment Appeals. However, during the pendency of the appeal, CE Casecanan received a letter demanding payment of its alleged RPT deficiency. This prompted CE Casecanan to file a Complaint for Injunction and Damages with the trial court praying to restrain the collection of the 2008 RPT reassessment. The trial court denied CE Casecanan's prayer for preliminary injunction. Hence, CE Casecanan filed a petition for *certiorari* to the Court of Appeals questioning the trial court's action. The CA dismissed the case for lack of jurisdiction. On appeal to the Court, We affirmed the dismissal of the case for lack of jurisdiction. We held that:

x x x In praying to restrain the collection of RPT, petitioner also implicitly questions the propriety of the assessment of such RPT. This is because in ruling as to whether to restrain the collection, the RTC must first necessarily rule on the propriety of the assessment. In other words, in filing an action for injunction to restrain collection, petitioner was in effect also challenging the validity of the RPT assessment.

The issue in the *CE Casecanan* case is straightforward. In *CE Casecanan*, there was already a previous disputed assessment. In fact, the denial of CE Casecanan's protest prompted it to elevate the case to the LBAA. In this case however, as already mentioned, the protest to the deficiency tax assessment was still in the City Treasurer's Office. The City

Treasurer at the time the petition for declaratory relief was filed has not yet decided on the Letter of protest filed by petitioner. Further, in *CE Casecan*, there was no previous final and executory judgment which determined with finality the proper basis for the assessment of taxes. In this case, petitioner has in its favor a final and executory judgement establishing the proper basis for the assessment of its business taxes. Hence, *CE Casecan* is not the proper authority to conclude that the present case is likewise a local tax case.

In *Ignacio v. Office of the City Treasurer of Quezon City*⁵⁵ (*Ignacio*), petitioner Teresa Ignacio (Teresa) filed an action for annulment of warrant of levy and public auction sale against the City Treasurer of Quezon City. Teresa alleged that in 2009, the City Treasurer of Quezon City sold the subject property at a public auction to pay for Teresa's tax liabilities. However, there was no notice of the levy and auction sale proceedings, thereby depriving Teresa of her right to due process. The RTC dismissed the complaint for annulment. Teresa filed an appeal to the CA but the latter affirmed the decision of the RTC. Teresa then filed a petition for review on *certiorari* under Rule 45 to the Court. The first issue resolved by the Court is whether Teresa should have elevated the case to the CTA and not to the CA.

The Court, through Justice Estela M. Perlas-Bernabe, ruled that the CA properly assumed jurisdiction over Teresa's appeal. The Court explained that:

In this case, a reading of the Annulment Complaint shows that Teresa's action before the RTC-Br. is **essentially one for recovery of ownership and possession of the property, with damages, which is not anchored on a tax issue, but on due process considerations.** Particularly, she alleged that: (a) public respondents sent the Notice of Delinquency in July 2008, and the corresponding Warrant of Levy in May 2009, to a wrong address; (b) they knew her correct address as early as March 2007, or before they sent the Notice and Warrant; (c) she had in fact already filed an action against them involving a different property, for likewise sending the notice to a wrong address; and (d) their willful violation of her right to notice of the levy and auction sale deprived her of her right to take the necessary steps and action to prevent the sale of the property, participate in the auction sale, or otherwise redeem the property from Sps. Dimalanta. In other words, the Annulment Complaint's allegations do not contest the tax assessment on the property, as Teresa only bewails the alleged lack of due process which deprived her of the opportunity to participate in the delinquency sale proceedings. As such, the RTC-Br. 85's ruling thereon could not be characterized as a local tax case over which the CTA could have properly assumed jurisdiction on appeal. In fine, the case was correctly elevated to the CA.⁵⁶

⁵⁵ Supra note 51

⁵⁶ Supra note 51 at 1145.

In *Ignacio*, while the case is directly related to the collection of tax deficiencies, as there was already a notice of levy and sale at public action to pay for Teresa's deficiency taxes, the Court ruled that it was not a local tax case to which the CTA can take cognizance of because Teresa's prayer for recovery of ownership and possession of the property is not anchored on a tax issue but on due process considerations.

Similarly, in this case, since petitioner's argument in disputing the local tax assessment does not involve the application of tax laws but the enforcement of a final and executory judgment, the assailed orders of the RTC does not fall under the appellate jurisdiction of the CTA.

WHEREFORE, premises considered, the Amended Decision dated October 9, 2018 of the Court of Tax Appeals *En Banc* in CTA EB No. 1465 is **REVERSED** and **SET ASIDE**. The Decision dated February 14, 2018 of the CTA *En Banc* affirming the Decision dated February 9, 2016 of the CTA Second Division holding that the Court of Tax Appeals has no jurisdiction over the case is hereby **REINSTATED**.

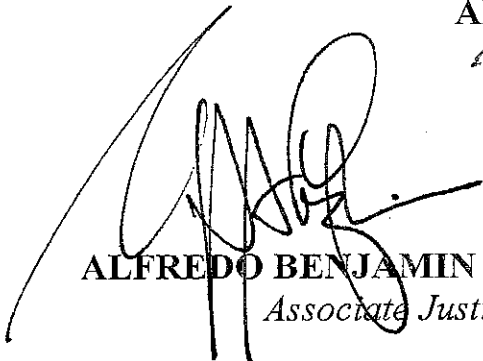
Accordingly, the Petition for *Certiorari* filed by respondents with the Court of Tax Appeals assailing the Orders dated April 28, 2015 and August 6, 2015 of the Regional Trial Court of Makati City, Branch 59 in Civil Case No. 15-177 is **DISMISSED** for lack of jurisdiction.

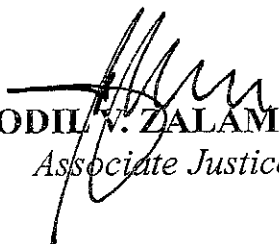
SO ORDERED.

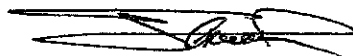

ROSMARIE D. CARANDANG
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

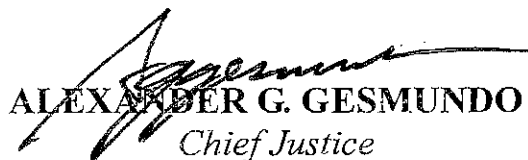

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RODIL N. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice