

## SECOND DIVISION

**[ G.R. No. 204117, July 01, 2015 ]**

### CHINA BANKING CORPORATION PETITIONER, VS. CITY TREASURER OF MANILA, RESPONDENT.

#### DECISION

#### **MENDOZA, J.:**

Before this Court is a petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by petitioner China Banking Corporation (CBC), assailing the April 17, 2012 Decision<sup>[2]</sup> and the October 18, 2012 Resolution<sup>[3]</sup> of the Court of Tax Appeals En Banc (CTA *En Banc*), in CTA EB Case No. 738, which affirmed the October 1, 2010 Decision<sup>[4]</sup> and the February 22, 2011 Resolution<sup>[5]</sup> of the Third Division of the Court of Tax Appeals (CTA *Division*) in CTA AC No. 66. Through the assailed rulings, the claim by petitioner CBC for the refund of P154,398.50 collected by respondent City

Treasurer of Manila (*City Treasurer*) under Section 21<sup>[6]</sup> of Ordinance Nos. 7988<sup>[7]</sup> and 8011<sup>[8]</sup> was dismissed.

The facts, as chronicled by the CTA Division, are undisputed:

On January 2007, on the basis of the reported income of respondent CBC's Sto. Cristo Branch, Binondo, Manila, amounting to P34,310,777.34 for the year ending December 31, 2006, respondent CBC was assessed the amount of P267,128.70 by petitioner City Treasurer of Manila, consisting of local business tax, business permits, and other fees for taxable year 2007, broken down as follows:

Particulars	Amount of Taxes and Fees	Discount	Amount Due
Tax on Coml Bank	P102,932.33	P10,293.33	P92,639.10
Tax on Rentals of Equipt	54.00	5.40	48.60
Business Permit Fee (0801)	3,215.00	-	3,215.00
Business Permit Fee (079926)	1,200.00	-	1,200.00
Business Permit Fee	3,000.00	-	3,000.00

(0802)			
Sanitary Inspection Fee	400.00	-	400.00
Garbage Svcs Charges	3,500.00	-	3,500.00
Occupational Tax	2,880.00	-	2,880.00
OCC/PC/HC	5,640.00	-	5,640.00
Plumbing Insp Fee	7.50	-	7.50
Electrical Insp Fee	50.00	-	50.00
Building Insp Fee	50.00	-	50.00
Signboard Insp Fee	40.00	-	40.00
SEC 21	171,553.89	17,155.39	154,398.50
Business Registration Stick	60.00	-	60.00
<b>TOTAL</b>	<b>P294,582.72</b>	<b>P27,454.02</b>	<b>P267,128.70</b>

On January 15, 2007, respondent CBC paid the amount of P267,128.70 and protested, thru a Letter dated January 12, 2007, the imposition of business tax under Section 21 of the Manila Revenue Code in the amount of P154,398.50, on the ground that it is not liable of said additional business tax and the same constitutes double taxation.

On February 8, 2007, petitioner acknowledged receipt of respondent CBC's payment under protest of the assessed amount and further informed respondent that she will await for respondent's formal protest.

On March 27, 2007, respondent CBC wrote a letter-reply to [respondent's] petitioner's Letter dated February 8, 2007, reiterating that respondent already protested the additional assessment under Section 21 of the Manila Revenue Code in its Letter dated January 12, 2007. In the same Letter, respondent averred that pursuant to Section 195 of the Local Government Code ("LGC"), petitioner had until March 16, 2007 within which to decide the protest, and considering that respondent received the Letter dated February 8, 2007, four days after the deadline to decide and petitioner did not even resolve the protest, respondent formally demanded the refund of the amount of P154,398.50, representing the business tax collected under Section 21 of the Manila Revenue Code.

On April 17, 2007, respondent CBC filed a Petition for Review with the RTC of Manila, Branch 173, entitled "China Banking Corporation vs. Hon. Liberty M. Toledo in her capacity as City Treasurer of Manila," docketed as Civil Case No. 07-117075, raising the sole issue of whether or not respondent is subject to the local business tax imposed under Section 21 of the Manila Revenue Code.

### *Decision of the Regional Trial Court*

On August 28, 2008, the Regional Trial Court, Branch 173, Manila (RTC), rendered its decision<sup>[9]</sup> granting the petition filed by CBC and ordered the City Treasurer to refund the amount of P154,398.50, representing the assessment paid by it under Section 21 of Manila Ordinance No. 7988,<sup>[10]</sup> as amended by Tax Ordinance No. 8011.<sup>[11]</sup>

The RTC found that the City Treasurer had no basis to collect the amount of P154,398.50 because the Department of Justice (DOJ) was of the opinion that Ordinance Nos. 7988 and 8011 were unconstitutional. It also considered the decision in the case of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila*,<sup>[12]</sup> (Coca-Cola) and the Memorandum of Rafaelito M. Garayblas,<sup>[13]</sup> Secretary of the then Mayor of Manila, noting the unconstitutionality of Ordinance Nos. 7988 and 8011 and directing the City Treasurer to cease and desist from assessing and collecting the imposed taxes under Section 21 of the said ordinances.

On March 29, 2010, the RTC resolved to deny the motion for reconsideration filed by the City Treasurer.<sup>[14]</sup>

### *Decision of the CTA Division*

On October 1, 2010, the CTA Division<sup>[15]</sup> *reversed* the decision of the RTC, effectively dismissing CBC's protest against the disputed assessment. Although the CTA Division dismissed the City Treasurer's contention that CBC's petition for review should have been filed with the Metropolitan Trial Court (*MeTC*), nevertheless it found that the RTC did not have jurisdiction over the said petition for because it was filed out of time. The CTA Division noted that the petition for review was filed one (1) day beyond the reglementary period allowed by Section 195 of the Local Government Code<sup>[16]</sup> (*LGC*) to taxpayers who wished to appeal a denial of a protest due to the inaction of the City Treasurer. Consequently, the CTA Division ruled that the City Treasurer's assessment against CBC had attained finality.

CBC sought reconsideration of the decision, but its motion was denied by the CTA Division.<sup>[17]</sup>

Aggrieved, CBC elevated the matter to the CTA *En Banc*.

### *Decision of the CTA En Banc*

On appeal, the CTA *En Banc* *affirmed* the ruling of the CTA Division *in toto*, reiterating that the petition for review was filed out of time. It explained that from January 15, 2007, the date when CBC filed its protest, it had sixty (60) days or until March 16, 2007 to await the decision of the City Treasurer. Considering that no action was taken by the City Treasurer, CBC had until April 16, 2007 or 30 days from March 16, 2007, (April 15, 2007 being a Sunday), within which to appeal the inaction of the City Treasurer with the RTC, pursuant to Section 195 of the LGC. Upon examination, however, the CTA *En Banc* found that when CBC filed its petition for review before the RTC, it was already one day late. Thus, it lost its right to appeal and the assessment, dated January 11, 2007, became conclusive and

unappealable. The CTA *En Banc* then concluded that CBC was precluded from interposing the defense of legality or validity of the assessment.

CBC filed its motion for reconsideration of the said decision but the CTA *En Banc* denied the same.

On January 30, 2013, the Court denied the petition.<sup>[18]</sup> Upon motion for reconsideration by CBC, the Court reinstated the petition.<sup>[19]</sup> Eventually, it was given due course and the parties were directed to file their respective memoranda.<sup>[20]</sup>

Hence, this petition.

## ISSUE

**THE HONORABLE COURT OF TAX APPEALS GRAVELY ERRED IN DISREGARDING THE LAW AND INTEREST OF SUBSTANTIAL JUSTICE BY REVERSING THE RULING OF THE TRIAL COURT SOLELY BECAUSE OF ITS ASSUMED PRONOUNCEMENT THAT THE ORIGINAL PETITION WAS FILED ONE (1) DAY BEYOND THE REGLEMENTARY PERIOD?**<sup>[21]</sup>

CBC asserts that it filed the proper written protest but for lack of any action from the City Treasurer, it was prompted to file its petition for review with the RTC.<sup>[22]</sup> The petitioner insists on the invalidity of the City Treasurer's assessment. It pointed out that the basis of the assessment, Ordinance Nos. 7988 and 8011, had been declared unconstitutional by the Court in *Coca-Cola*, and that the Office of the Mayor of Manila even directed the City Treasurer to cease and desist from assessing and imposing Section 21 of the said ordinances.<sup>[23]</sup>

For CBC, its one (1) day delay in filing its appeal with the RTC should have been excused by the CTA because the delay was "not much of a heavy harm and was due to [the] honest mistake and excusable negligence"<sup>[24]</sup> of its former counsel.

In its Memorandum,<sup>[25]</sup> CBC insisted on the invalidity of the City Treasurer's assessment, **this time, claiming that its petition for review filed with the RTC was timely filed**. It explained that the 60-day period within which the City Treasurer should have acted on the protest, and the consequent 30-day period within which it had to appeal the inaction of the City Treasurer should have been reckoned *not* from January 15, 2007, when it filed its letter questioning the imposition and paid the assessed amount, but from March 27, 2007, the day it filed the letter reiterating its objection to the City Treasurer imposition of P154,398.50 and demanding the return of the said amount. With the reckoning point being March 27, 2007, CBC argued that the petition for review was filed well within the reglementary period because it had until June 25, 2007 to file the said appeal.

CBC then reiterated its contention that even if it was guilty of delay, the same should have been excused because the basis of the City Treasurer's assessment, Ordinance Nos. 7988 and 8011, had been declared unconstitutional by the Court in its decision in *Coca-Cola*.

For her part, the City Treasurer filed her Memorandum for the Respondent<sup>[26]</sup> where she contended that CBC never filed a formal letter of protest to state the grounds for its objection while admitting that it had paid the assessed amount under protest. She claimed that CBC simply filed a petition for review with the RTC without filing a formal letter of protest. Without a formal letter of protest, the City Treasurer argued that its claim for refund should be dismissed because Section 195 of the Local Government Code stated that "No case or proceeding shall be maintained in any court for recovery of any tax, fee or charged erroneously or illegally collected until a written claim for refund has been filed with the local treasurer."

The City Treasurer also questioned the jurisdiction of the RTC in entertaining the petition for review filed before it as well as the timeliness of the filing of the petitioner's appeal.

### **The Court's Ruling**

#### *Protest validly filed*

The petition lacks merit.

Under the current state of law, there can be no doubt that the law does not prescribe any formal requirement to constitute a valid protest. To constitute a valid protest, it is sufficient if what has been filed contains the spontaneous declaration made to acquire or keep some right or to prevent an impending damage.<sup>[27]</sup> Accordingly, a protest is valid so long as it states the taxpayer's objection to the assessment and the reasons therefor.

In this case, the Court finds that the City Treasurer's contention that CBC was not able to properly protest the assessment to be without merit. The Court is of the view that CBC was able to properly file its protest against the assessment of the City Treasurer when it filed its letter on January 15, 2007, questioning the imposition while paying the assessed amount. In the said letter, the petitioner was unequivocal in its objection, stating that it took exception to the assessment made by the City Treasurer under Section 21 of the city's revenue code, arguing that it was not liable to pay the additional tax imposed under the subject ordinance and that the imposition "constitute[d] double taxation" and, for said reason, invalid. Despite its objection, it remitted the total amount of P267,128.70 under protest "to avoid penalties/surcharges and any threat of closure."<sup>[28]</sup>

The Court, however, is of the view that the period within which the City Treasurer must act on the protest, and the consequent period to appeal a "denial due to inaction," should be reckoned from January 15, 2007, the date CBC filed its protest, and not March 27, 2007. Consequently, the Court finds that the CTA *En Banc* did not err in ruling that CBC had lost its right to challenge the City Treasurer's "denial due to inaction." On this matter, Section 195 of the LGC is clear:

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