REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF MAKATI and the OFFICE OF THE CITY TREASURER OF MAKATI through JESUSA E. CUNETA, Petitioners, - versus - **CASAS+ARCHITECTS,** Respondent.	**CTA EB NO. 2771** (CTA AC No. 259) *Present:* **DEL ROSARIO, *P.J.*,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.* Promulgated: JAN 27 2025 3:40

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DECISION

FERRER-FLORES, J.:

Before this Court is a **Petition for Review** filed by the **City of Makati and the Office of the City Treasurer of Makati through Jesusa E. Cuneta** on June 23, 2023,[1] assailing the Decision dated November 24, 2022 (assailed Decision)[2] and the Resolution dated May 29, 2023 (assailed Resolution),[3] whereby the Special Second Division partially granted the original *Petition for Review* of herein respondent **Casas+Architects** (**Casas**); reversed and set aside the *Order* dated November 4, 2021 of the Regional Trial Court of Makati City (RTC) – Branch 145; and, reinstated the *Decision* dated July 30, 2021 of the RTC. Accordingly, the Court in Division ordered herein petitioners to refund or credit in favor of herein respondent the amount of **₱835,151.26**,

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1 *Rollo* pp. 1 to 17.
2 *Id.* at 36 to 56. Penned by Associate Justice Lanee S. Cui-David and concurred by Associate Justice Jean Marie A. Bacorro-Villena.
3 *Id.* at 29 to 34.

representing its erroneously or illegally paid local business tax for the third and fourth quarters of taxable year (TY) 2015.

The dispositive portions of the assailed Decision and the assailed Resolution read as follows:

Assailed Decision:

> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **PARTIALLY GRANTED.** The assailed Order of the RTC Makati in Civil Case No. R-MKT-17-02275-CV dated 4 November 2021 is **REVERSED** and **SET ASIDE**, and its Decision dated 30 July 2021 is **REINSTATED**.
>
> Accordingly, respondents [herein petitioners] are **ORDERED** to refund or credit in favor of petitioner [herein respondent] Casas+Architects the reduced amount of ₱835,151.26 representing its erroneously or illegally paid local business tax for the 3rd and 4th quarters of the taxable year 2015.
>
> **SO ORDERED.**

Assailed Resolution:

> **WHEREFORE**, in light of the foregoing, respondents' [herein petitioners'] *Motion for Reconsideration (Re: Decision dated 24 November 2022)* is **DENIED**.
>
> **SO ORDERED.**

THE PARTIES[4]

Petitioner City of Makati is a local government unit created and existing pursuant to law. Petitioner Jesusa E. Cuneta is the duly appointed City Treasurer of Makati City, empowered to perform the duties of said officer, including, the collection of all local taxes, fees, and charges.

Respondent Casas is a professional partnership with principal office at Paseo Center, 8757 Paseo De Roxas, Bel-Air, Makati City.

THE ANTECEDENT FACTS

The facts, as stated in the Decision of the RTC and as restated in the assailed Decision, are as follows: [5]

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4 *Parties, Petition for Review, Rollo*, pp. 2 to 3.
5 *Rollo*, pp. 37 to 38.

The petitioner [herein respondent] alleges that it was established as a general professional partnership and registered with the Securities and Exchange Commission (SEC) under SEC Registration No. A1996-6511 dated 18 September 19986.[6] Its primary purpose as stated in Article V of its Articles of Partnership is:

To provide architectural services requiring application of the science, art or profession of planning sites, planning or designing buildings or architectural structures and their related facilities, interior design and decoration, landscaping, land development by and under the direct supervision of certified architects and other licensed personnel, and do any and all things which a partnership of this kind may lawfully do, including, without limitations, consultation, investigation, evaluation, planning, design, preparation of instruments of services such as drawings and specifications, and the supervision of construction insofar as customarily performed by architects.

It is licensed to undertake architectural services through its partners who are all duly licensed architects. Being licensed architects, the petitioner [herein respondent]'s partners are subject to professional tax and have been paying such tax to continue providing professional architectural services. As a [GPP], it is not liable for any income tax but its individual partners are the ones liable for income taxes. From 1998 to the present, respondent City of Makati [herein petitioner] has assessed the petitioner [herein respondent] for LBT as a "contractor" doing architectural services under Sec. 3A.02(g) of the Revised Makati Revenue Code ("RMRC"). From the second quarter of 2014 until the fourth quarter of 2015, the petitioner [herein respondent] was assessed for and paid local business taxes as a "contractor" in the total amount of P2,525,103.20, as follows:

Taxable Year	Quarter	Assessment Date	Date Paid	Amount Paid
2014	Second	March 5, 2014	April 21, 2014	₱ 284,933.56
	Third	June 3, 2014	July 21, 2014	284,933.56
	Fourth	September 3, 2014	October 20, 2014	284,933.56
2015	First	January 20, 2015	January 29, 2015	417.575.63
	Second	May 21, 2015	May 25, 2015	417.575.63
	Third	June 3, 2015	July 20, 2015	417.575.63
	Fourth	September 2, 2015	October 20, 2015	417.575.63
	Total			₱ 2,525,103.20

On 15 March 2016 or within two (2) years from the payment of the LBT for the second quarter of 2014 until the fourth quarter of 2015, the petitioner [herein respondent] filed its administrative claim for refund. The respondent City of Makati [herein petitioner] denied the petitioner [herein respondent]'s claim for refund. In a letter dated 29 May 2017, the City of Makati held that the petitioner [herein respondent]'s liability as "contractor" is pursuant to Sec. 143(e) of the Local Government Code ("LGC") and imposed under Sec. 3A.02(g) of the RMRC.

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6 *[sic]* as per RTC Decision, this should be 1996.

THE PROCEEDINGS BEFORE THE RTC

Also, as stated in the assailed Decision, the following are the proceedings before the RTC: [7]

> Petitioner [herein respondent] filed a *Petition for Review* before the RTC on 18 July 2017, pursuant to Section 196 of the LGC. The case was docketed as Civil Case No. R-MKT-02275-CV and was raffled to RTC Makati Branch 61.
>
> On 9 August 2017, respondents [herein petitioners] filed their *Answer with Affirmative Defenses*. Petitioner [herein respondent] filed its *Reply* on 25 August 2017. On 27 December 2017, petitioner [herein respondent] received a *Notice* setting the case for pre-trial on 13 March 2018 and ordering both parties to submit their respective pre-trial briefs.
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> Petitioner [herein respondent] filed a *Manifestation*, stating that it has filed its *Pre-Trial Brief* on 8 March 2018. Along with petitioner's *Pre-Trial Brief* are the *Judicial Affidavits* of witnesses Carlos Simon T. Casas and Bernadith Bersabe Nañaga. The RTC received respondents' [herein petitioners'] *Pre-Trial Brief* on 8 March 2018.
>
> On 13 March 2018, petitioner [herein respondent] filed a *Motion for Leave of Court to File Additional Judicial Affidavit and Supplemental Pre-Trial Brief*, together with the *Supplemental Pre-Trial Brief* and *Judicial Affidavit* of witness Barbra Anne C. del Castillo.
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> During the 13 March 2018 hearing, both parties were referred for mediation. The parties appeared before the Philippine Mediation Center for the mandatory court-annexed mediation, but they failed to arrive at an amicable settlement. Likewise, the Judicial Dispute Resolution was unsuccessful. Thereafter, the case was re-raffled to RTC Makati Branch 145.
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> The preliminary conference was conducted on 20 February 2019 and 22 March 2019.
>
> The pre-trial was held on 3 May 2019. The RTC then issued a *Pre-Trial Order*. Following petitioner's [herein respondent's] motion, the *Pre-Trial Order* was amended in an *Order* dated 4 June 2019.
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> Petitioner [herein respondent] presented its witnesses Mr. Carlos Simon T. Casas during the 4 June 2019 hearing, Ms. Bernadith B. Nañaga during the 13 September 2019 hearing, and Ms. Barbra Anne C. Del Castillo during the 27 September 2019 hearing.
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> Petitioner [herein respondent] filed its *Formal Officer [sic] of Evidence* dated 14 October 2019, to which respondents [herein petitioners]

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[7] *Rollo*, pp. 39 to 41.

filed their *Comment/Opposition to Formal Offer of Evidence* on 24 October 2019. The RTC then issued an Order dated 25 October 2019 admitting the documentary evidence of petitioner.

During the 15 November 2019 hearing, respondents [herein petitioners] presented their witness Mr. Felito A. Manrique. Petitioner [herein respondent] moved for the continuance of the presentation of witness, which was granted by the RTC and was scheduled on 20 February 2020, reset to 3 April 2020, 20 August 2020, and finally to 22 October 2020. During the 22 October 2020 videoconferencing hearing, petitioner [herein respondent] cross-examined respondents' [herein petitioners'] witness.

On 5 November 2020, petitioner [herein respondent] received respondents' [herein petitioners'] *Formal Offer of Evidence*; thus, petitioner [herein respondent] filed its *Comment/Objection* on 10 November 2020. On 11 November 2020, the RTC issued an *Order* admitting respondents' [herein petitioners'] documentary evidence. Petitioner [herein respondent] and respondents [herein petitioners] then filed their *Memorandum* on 18 December 2020 and 16 December 2020, respectively.

On 14 October 2021, petitioner [herein respondent] received the *Decision* granting the *Petition* and ordering the refund in the amount of P835,151.26. The dispositive portion reads:

> **CONSEQUENTLY**, this Court hereby renders judgment ordering the respondents [herein petitioners] to refund the petitioner [herein respondent] the amount of P835,151.26 representing the local business taxes that were erroneously collected from the petitioner [herein respondent] for the 3rd and 4th quarters of taxable year 2015.
>
> **SO ORDERED.**

Respondents [herein petitioners] then filed their *Motion for Reconsideration* on 17 September 2021, to which the petitioner [herein respondent] filed a *Comment/Opposition* on 22 October 2021.

On 23 November 2021, Petitioner [herein respondent] received the *Order* granting respondents' [herein petitioners'] *Motion for Reconsideration*. The dispositive portion is quoted below:

> **WHEREFORE**, in view of the foregoing, the defendants' Motion for Reconsideration dated 17 September 2021 is hereby **GRANTED**. The Decision of this Court dated 30 July 2021 is **SET ASIDE** and a new one issued **DENYING** the petition.
>
> **SO ORDERED.**

The RTC ratiocinated that assessments were issued by the Office of the City Treasurer for the second quarter of 2014 to the fourth quarter of 2015. As such, the RTC applied Section 195 of the LGC and stated that petitioner [herein respondent] failed to comply with the requirement of assailing the assessment by way of a letter-protest or claim for refund within

60 days from the assessment and to bring the action in court within 30 days from the local treasurer's denial of the claim.

THE PROCEEDINGS BEFORE THE COURT IN DIVISION

On January 4, 2022, respondent filed a *Petition for Review* before the Court in Division assailing the Order of the RTC.

In the Resolution dated February 16, 2022, this Court required petitioners to file their comment to the *Petition for Review* within five days from receipt of the said resolution. Petitioners failed to file their comment thereto.

The case before the Court was deemed submitted for decision on June 14, 2022.

On November 24, 2022, the Court in Division rendered the assailed Decision, which (1) partially granted respondent's *Petition for Review*; (2) reversed and set aside the Order of the RTC dated November 4, 2021; and, (3) reinstated the Decision of the RTC dated July 30, 2021.

In reversing the Order of the Court a quo, the Court in Division held that the RTC erred in setting aside its Decision dated July 30, 2021 and applying Section 195, instead of Section 196, of the Local Government Code of 1991 (LGC). The Court in Division ruled that the billing statements/assessments issued by respondents after petitioner's renewal of its business permit for TY 2014 and 2015 were issued for LBT and not for deficiency taxes. The Court in Division found that there was no prior investigation or examination of petitioner's books of accounts that resulted in a "finding" of deficiency taxes. Thus, petitioner properly applied Section 196 of the LGC in its claim for refund.

The Court in Division likewise held that petitioner is purely engaged in the practice of its profession and is entitled to the refund in the reduced amount of ₱835,151.26. Hence, the instant Petition.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On June 23, 2023, petitioners filed the *Petition for Review*.[8]

[8] *Rollo*, pp. 1 to 17.

The Court *En Banc* required respondent to file its comment on the *Petition for Review* within 10 days from notice.[9] The Judicial Records Division of this Court issued a Records Verification dated August 29, 2023 stating that respondent failed to file a comment on the *Petition for Review*.[10]

THE ISSUES

In the *Petition for Review*, petitioners submit the following issues for the resolution of the Court in Division:

1. Whether or not respondent is entitled to a refund of the LBT; and,

2. Whether or not respondent's failure to comply with Section 7B.14(b) and (c) of the Revised Makati Revenue Code (RMRC) is fatal to its case.

RULING OF THE COURT *EN BANC*

The *Petition for Review* is bereft of merit.

The instant Petition was timely filed.

Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals provides:

> Sec. 3. Who may appeal; period to file petition. — 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)*

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9 Minute Resolution dated July 5, 2023, *Id.* at 57.
10 *Id.* at. 58.

Based on the foregoing, petitioner had 15 days from receipt of the assailed Resolution within which to file its Petition.

Records show that the assailed Resolution of the Court in Division was received by petitioner on June 8, 2023.[11] Petitioners, thus, had 15 days from such receipt, or until June 23, 2023, to file their *Petition for Review*.

On June 23, 2023, petitioners timely filed the instant *Petition for Review*.

The Court shall now address the grounds raised by petitioner in its *Petition for Review*. For an orderly disposition of the case, the Court deems it proper to address the second issue before the first.

Respondent's remedy falls under Section 196 of the LGC, and not Section 195; thus, Section 7B.14(b) and (c) of the Revised Makati Revenue Code is not applicable.

Petitioners claim that paragraph (b), Section 7B.14 of the RMRC is the procedural law applicable to the instant case. Petitioners aver that the Quarterly Billing/Notice of Assessment (NOA) which were duly received by the respondent on certain dates constitutes as NOA which should have been protested within 60 days from its receipt. Petitioners insist that respondent failed to file a protest, pursuant to Section 195 of the LGC, and waited for almost two years to claim for refund.

Petitioners posit that failure of respondent to file a written protest within 60 days from receipt of the assessments renders the assessments conclusive and unappealable. According to petitioners, respondent cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes without necessarily assailing the validity or correctness of the assessment. Even if the action in Court is one of claim for refund, the taxpayer cannot escape assailing the assessment, as the claim for refund is founded on the theory that the taxes were paid erroneously or otherwise collected from him illegally.

Petitioners' arguments must fail.

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[11] *Rollo*, p. 28.

Sections 195 and 196 of the LGC expressly state:

> Section 195. **Protest of Assessment.** — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.
>
> Section 196. **Claim for Refund or Tax Credit.** — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

The Supreme Court, in the case of *City of Manila vs. Cosmos Bottling Corp.*,[12] already distinguished these two remedies, viz,:

> **The first provides the procedure for contesting an assessment issued by the local treasurer; whereas, the second provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge.** Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.
>
> **Obviously, the application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges.**

[12] G.R. No. 196681, June 27, 2018.

> **Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer** within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.
>
> **On the other hand, Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.**
>
> Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended inaction by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription.
>
> Additionally, **Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place**. This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal. Thus, under such circumstance, the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC. (*Emphasis ours, citation omitted*)

Based on the foregoing, if the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the LGC. Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the

lapse of the 60-day period within which the local treasurer must act on the protest.[13]

On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.[14]

There was no Notice of Assessment issued; thus, respondent is not required to file a Protest.

The Court cannot subscribe to petitioners' contention that, since an assessment was issued, respondent should have filed an administrative protest prior to a claim for refund. Petitioners argue that respondent had the opportunity to protest the billing assessment issued when respondent was renewing their business permit.

In the assailed Decision, the Court in Division had already emphasized that the billing statements/assessments issued by petitioner against respondent after its renewal of business permit for TYs 2014 and 2015 is not the Notice of Assessment contemplated in Section 195 of the LGC. Since there was no "finding" of deficiency taxes, there is no assessment to speak of, to which respondent should file a protest pursuant to Section 195 of the LGC.

In the instant case, as aptly held by the Court in Division, Section 196 of the LGC, which pertains to the claim for refund of erroneously paid or illegally collected taxes, shall govern.

Section 7B.14(b) and (c) of the RMRC are not applicable to the instant case.

Section 7B.14(b) and (c) provides:[15]

> (b) *Protest of Assessment.* — When the City Treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not

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13 *International Container Terminal Services, Inc. vs. The City of Manila, Liberty M. Toledo, in her capacity as Treasurer of Manila; Gabriel Espino, in his capacity as resident Auditor of Manila; and the City Council of Manila*, G.R. No. 185622, October 17, 2018.

14 *Id.*

15 Taxpayer's Remedies.

> been paid, he shall issue a notice of assessment stating the nature on 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 City Treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The City Treasurer shall decide the protest within sixty (60) days from the time of its filing. If the City Treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the City Treasurer finds 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-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.
>
> (c) *Payment under protest* — No protest, however, shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipt the words "paid under protest." A copy of the tax receipt shall be attached to the written protest contesting the assessment.

In sum, Section 195 of the LGC and Section 7B.14(b) and (c) provide that "when the City treasurer or his duly authorized representative finds that the correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment." Thereafter, upon receipt of a NOA stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties, the taxpayer should file a written protest with the City Treasurer contesting the assessment within 60 days; otherwise, the assessment shall become final and executory. The City Treasurer shall decide the protest within 60 days from the filing. Upon receipt of the decision of the City Treasurer, the taxpayer shall have 30 days within which to appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.

Clearly, the foregoing provisions speak of a deficiency tax assessment where protest thereto is required. In the instant case, no NOA was issued but only a billing of assessment. Thus, Section 7B.14 (b) and (c) is not applicable.

Respondent is entitled to a refund of the Local Business Taxes.

As the Court in Division already found that respondent is engaged in interior design and landscaping, which are encompassed by the practice of architecture, it ruled that respondent is purely engaged in the practice of profession. The Court in Division found no evidence which shows that respondent's business involves interior decorating.

Since respondent is not engaged in any activity other than the practice of architecture, the Court in Division concluded that it is entitled to its claim for refund.

Relative to Section 196 of the LGC, Section 7B.14(d) of the RMRC provides:

> (d) Claim for Refund of Tax Credit. — **No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim of refund or credit has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit**.
>
> The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of the City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year.
>
> Any question on the constitutionality or legality of this Code may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, that such appeal shall not have the effect of suspending the effectivity of this Code and the accrual and payment of the tax, fee, or charge levied herein. Provided, finally that within thirty (30) d s after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction. (*Emphasis ours*)

To be entitled to a refund under Section 196 of the LGC, the taxpayer must comply with the following procedural requirements: *first*, file a written claim for refund or credit with the local treasurer; and *second*, file a judicial case for refund within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.[16]

As found by the RTC, respondent filed its administrative claim for refund on March 15, 2016, which was well within the two-year period referred to in the foregoing provisions of the LGC and the RMRC.

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[16] *supra* note 12.

The Court in Division, however, noted respondent's payments:

Taxable Year	Quarter	Assessment Date	Date Paid	Amount Paid	Deadline for Judicial Claim
2014	Second	March 5, 2014	April 21, 2014	₱ 284,933.56	April 21, 2016
	Third	June 3, 2014	July 21, 2014	284,933.56	July 21, 2016
	Fourth	September 3, 2014	October 20, 2014	284,933.56	October 21, 2016
2015	First	January 20, 2015	January 29, 2015	417,575.63	January 29, 2017
	Second	May 21, 2015	May 25, 2015	417,575.63	May 25, 2017
	Third	June 3, 2015	July 20, 2015	417,575.63	July 20, 2017
	Fourth	September 2, 2015	October 20, 2015	417,575.63	October 20, 2017
	Total			₱ 2,525,103.20	

The *Petition for Review* was filed by respondent before the RTC only on July 18, 2017. Based on the foregoing findings of the Court in Division, only the payments made for the third and fourth quarters of TY 2015 were considered to have been appealed on time. Insofar as the second, third and fourth quarters of TY 2014 and the first and second quarters of TY 2015, the payments can no longer be refunded as the claim was already considered to have been filed out of time.

Accordingly, this Court agrees with the Court in Division that respondent is entitled to the grant of refund in the reduced amount of ₱835,151.26, representing the LBT erroneously collected from petitioner for the third and fourth quarters of TY 2015, to wit:

	Quarter	Assessment Date	Date Paid	Amount Paid	Deadline for Judicial Claim
2015	Third	June 3, 2015	July 20, 2015	417,575.63	July 20, 2017
	Fourth	September 2, 2015	October 20, 2015	417,575.63	October 20, 2017
	Total			**₱ 835,151.26**	

All told, the Court finds nothing in the arguments of petitioner that would warrant the reversal of the findings of the Court in Division.

WHEREFORE, premises considered, the instant **Petition for Review** is **DENIED** for lack of merit. The assailed *Decision* dated November 24, 2022 and the assailed *Resolution* dated May 29, 2023 rendered by the Special Second Division of this Court in CTA AC No. 259 are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Please see Concurring Opinion.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

With due respect, please see Dissenting Opinion.
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
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
QUEZON CITY

EN BANC

CITY OF MAKATI and the OFFICE OF THE CITY TREASURER OF MAKATI through JESUSA E. CUNETA, *Petitioners,*	**CTA EB NO. 2771** (CTA AC No. 259) Present: Del Rosario, *P.J.*, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, Cui-David, Ferrer-Flores, and Angeles, *JJ.*
- versus -	
CASAS + ARCHITECTS, *Respondent.*	Promulgated: JAN 27 2025 3:40pm

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CONCURRING OPINION

RINGPIS-LIBAN, *J.:*

I submit that this Court's Second Division properly took cognizance of the present case, and that its Assailed Decision dated November 24, 2022 and Resolution dated May 29, 2024 in CTA AC No. 259 must both be affirmed. Accordingly, I concur with the *ponencia* of my colleague, Associate Justice Corazon G. Ferrer-Flores denying the present Petition for Review for lack of merit. To support my concurrence with the main opinion, allow me state the following points on the matter of determining the nature of imposition by local governments.

It is not the name ascribed to an imposition that determines its true characterization; rather, it is its purpose.

In determining whether an imposition is in the nature of a tax or a fee, the Supreme Court has laid down the following rule: **"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 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."**[1] Corollarily, jurisprudence further provides that for a fee to be considered merely as a regulatory measure and not for revenue generation, the amount of the fee must be commensurate to the cost of regulation, inspection, and licensing.[2] Otherwise, the exaction is deemed as tax. In *Victorias Milling, Co., Inc. v. The Municipality of Victorias, Province of Negros Occidental*,[3] the Supreme Court also ordained a complementary test for finding out whether an exaction is in the nature of a regulatory fee or not, in addition to the "purpose and effect" test, thus:

> "We accordingly say that the designation given by the municipal authorities does not decide whether the imposition is properly a license tax or a license fee. The determining factors are the purpose and effect of the imposition as may be apparent from the provisions of the ordinance. Thus, '[w]hen no police inspection, supervision, or regulation is provided, nor any standard set for the applicant to establish, or that he agrees to attain or maintain, but **any and all persons engaged in the business designated, without qualification or hindrance, may come, and a license on payment of the stipulated sum will issue, to do business, subject to no prescribed rule of conduct and under no guardian eye, but according to the unrestrained judgment or fancy of the applicant and licensee**, *the presumption is strong that the power of taxation*, and not the police power, is being exercised.' *(Emphasis and underscoring supplied and citations omitted)*

In present case, the lack of any regulatory standard with respect to the subject LBT (as may be gathered from the provisions of the ordinance) engenders the presumption that it is a tax imposed for revenue-generation purposes.

In a number of cases where questions as to the nature of the imposition was directly raised, the Supreme Court had invariably examined the *whereas clauses* of the ordinance involved to identify the primary purpose of the imposition. In *Smart Communications, Inc. v. Municipality of Malvar, Batangas*,[4] the respondent enacted an ordinance entitled "An Ordinance Regulating the Establishment of Special Projects," under which the petitioner was assessed ₱389,950.00 in

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[1] *City of Cagayan De Oro v. Cagayan Electric Power & Light Co., Inc.*, G.R. No. 224825, October 17, 2018; *Municipality of San Mateo, Isabela v. Smart Communications, Inc.*, G.R. No. 219506, June 23, 2021; *Philippine Airlines, Inc. v. Edu*, G.R. No. L-41383, August 15, 1988, 247 Phil 283; *Progressive Development Corp. v. Quezon City*, G.R. No. L-36081, April 24, 1989, 254 Phil 635.

[2] *Progressive Development Corp. v. Quezon City*, G.R. No. L-36081, 24 April 1989, 254 Phil 635; *Ferrer, Jr. v. Bautista*, G.R. No. 210551, June 30, 2015, 762 Phil 233.

[3] G.R. No. L-21183. September 27, 1968, 134 Phil 181 ("*Victorias Milling*").

[4] G.R. No. 204429, February 18, 2014.

connection with telecommunications tower it erected within the municipality. Petitioner challenged the validity of the ordinance and the resulting assessment before the RTC. When the case reached the Supreme Court, one of the issues raised was whether the ordinance imposed a tax or a fee. In resolving said issue, the Supreme Court examined the ordinance's *whereas clauses* which revealed that the primary purpose of the ordinance was to regulate cell sites or telecommunications towers. From this, the Court found that the ordinance served a regulatory purpose, leading to its conclusion that the case involved a fee and not a tax. In *City of Cagayan De Oro v. Cagayan Electric Power & Light Co., Inc. (CEPALCO)*,[5] the Supreme Court likewise referred to the ordinance's *whereas clauses* to arrive at the conclusion that the imposition is a regulatory fee because the primary purpose of imposing a mayor's permit fee was to regulate the construction and maintenance of electric and telecommunications posts erected within Cagayan de Oro City.

In contrast, a different ruling was reached in *Victorias Milling* case, where the Supreme Court held that the exaction was in the nature of a tax given that the ordinance is not for regulatory purpose but more for revenue raising purposes.

In the present case, however, the Court cannot examine the *whereas clauses* of the subject ordinance because it did not have any. Nevertheless, other relevant parts of the revenue ordinance may be properly consulted for the Court to determine the nature and purpose of the subject imposition.

By and large, the provisions of the subject revenue ordinance failed to indicate any regulatory standard by which the all-important regulatory purpose of the subject exaction may be ascertained. This apparent lack of regulatory standard also deprives this Court of the opportunity to determine whether the amount of imposition is commensurate to the cost of the intended regulation – another qualifying factor for classifying a revenue ordinance as a license fee. The relevant provision of the ordinance unequivocally provides that any and all persons intending to do business within the City of Makati may secure a Mayor's permit and, upon issuance thereof, operate their businesses subject to no other condition or prescribed rule of conduct save for the payment of the prescribed fees, taxes, and other liabilities as demanded by the city government.

As regards the amount of the subject business tax imposed, the same cannot, by any stretch of imagination, be considered minimal. Unlike what was involved in *Bases Conversion Development Authority and John Hay Management Corporation v. City Government of Baguio*[6] where the rates of the regulatory fees involved therein are fixed and do not even exceed One Thousand Pesos (₱1,000.00) at the maximum, the business tax in the present case is to be computed based on the gross sales/receipts of the taxpayer with the maximum rate of Fifteen Thousand Pesos (₱15,000.00) for gross sales/receipts amounting

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[5] G.R. No. 224825, October 17, 2018.
[6] G.R. No. 192694. February 22, 2023 ("*BCDA*").

to Two Million Pesos (₱2,000,000.00) plus seventy-five percent (75%) of one percent (1%) for the amount of gross sales/receipts in excess of ₱2,000,000.00. Such manner of computation or rate scheme increases based on the gross sales/receipts of the taxpayer evidently demonstrates the revenue-generating character of the subject exaction.

The collective effect of the foregoing factors leads to no other conclusion than that the business tax involved in this case is in the nature of a tax.

All told, I vote to **DENY** the present Petition for Review for lack of merit.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF MAKATI and the OFFICE OF THE CITY TREASURER OF MAKATI through JESUSA E. CUNETA, *Petitioner[s],*	**CTA EB No. 2771** (CTA AC No. 259)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and, **ANGELES,** *JJ.*
CASAS+ARCHITECTS, *[Respondent].*	Promulgated: JAN 27 2025 3:40

x - x

DISSENTING OPINION

REYES-FAJARDO, *J.*:

With due respect, I submit that the Court in Division is devoid of jurisdiction to entertain CTA AC No. 259.

Section 7(a)(3) of Republic Act (RA) No. 1125, as amended by RA No. 9282 provides for the jurisdiction of the Court of Tax Appeals (CTA) on local tax cases:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

...

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;

Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals clarified that the CTA in Division has jurisdiction over the decisions, orders or resolutions of the Regional Trial Court (RTC) in local tax cases decided or resolved by them in the exercise of their original jurisdiction. [1] 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. 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.[2] In reverse, if the RTC ruling does *not* pertain to a local tax case, then the CTA is bereft of jurisdiction to entertain the same.

The Petition for Review in CTA AC No. 259 impugns the Order dated November 24, 2021, rendered by the RTC-Makati. True, said Order pertain to the propriety of the City of Makati's billings/ notices of assessment dated March 5, 2014, June 3, 2014, September 3, 2014, January 20, 2015, May 21, 2015, June 3, 2015 and September 2, 2015, finding respondent liable for LBT, covering the 2nd quarter of TY 2014 to the 4th quarter of TY 2015.[3] Also true is that LBT is designated by both Section 143 of the Local Government Code[4] and the Revised Makati Revenue Code (RMRC)[5] as a tax. Yet, the nomenclature in a statute given to an exaction is *not* indicative as to whether it is a tax or some other kind of imposition. Rather, it is the object of the charge which is the true test in the determination

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1 SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

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

...

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

2 See *Mactel Corporation v. The City Government of Makati, et al.*, G.R. No. 244602, July 14, 2021. *Mactel* for brevity.

3 See page 1, Decision dated November 24, 2022 in CTA AC No. 259.

4 Republic Act No. 7160.

5 Ordinance 2004-A-025.

thereof. *Bases Conversion and Development Authority and John Hay Management Corporation v. City Government of Baguio City, as represented by its Mayor, City Treasurer, and City Legal Officer (BCDA),*[6] citing *Calalang v. Lorenzo (Calalang)*[7] confirmed:

> This Court has likewise explained that the nomenclature in a statute given to an exaction is not necessarily indicative of whether it is a tax or a fee. In *Calalang v. Lorenzo*:
>
> > The charges prescribed by the Revised Motor Vehicle Law for the registration of motor vehicles are in Section 8 of that law called "fees." But the appellation is no impediment to their being considered taxes if taxes they really are. **For not the name but the object of the charge determines whether it is a tax or a fee. Generally speaking, taxes are for revenue, whereas fees are exactions for purposes of regulation and inspection and are for that reason limited in amount to what is necessary to cover the cost of the services rendered in that connection.** Hence, "a charge fixed by statute for the service to be performed by an officer, where the charge has no relation to the value of the services performed and where the amount collected eventually finds its way into the treasury of the branch of the government whose officer or officers collected the charge, is not a fee but a tax."
>
> ...[8]

Consistent with *BCDA* and *Calalang*, though designated as a tax in both the LGC and RMRC, the *object and nature* of the LBT imposed by petitioner Makati City on respondent is *really a license fee*, based on jurisprudence and the RMRC itself.

Allow me to elaborate.

City of Cagayan De Oro v. Cagayan Electric Power & Light Co., Inc. (CEPALCO)[9] defined the term "tax" and "fee," and provided the standard for the proper determination thereof:

> The term "taxes" has been defined by case law as "the enforced proportional contributions from persons and property

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6 G.R. No. 192694, February 22, 2023.
7 97 Phil. 212 (1955).
8 Boldfacing supplied.
9 G.R. No. 224825, October 17, 2018. Boldfacing in the original.

> levied by the state **for the support of government and for all public needs.**" While, under the Local Government Code, 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 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. **Stated otherwise, 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.**

CEPALCO ordained that 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. Measured against the standard provided in *CEPALCO,* the LBT imposed by the Makati City is one primarily imposed for regulation; hence it is a fee, and *not* a tax. Consider:

First. In *Mobil Philippines, Inc. v. The City Treasurer of Makati, et al., (Mobil),*[10] one which involves the refund of LBT collected by the Makati City on the taxpayer therein, the Supreme Court recognized that:

> **Business taxes imposed in the exercise of police power for regulatory purposes are paid for the privilege of carrying on a business in the year the tax was paid.** It is paid at the beginning of the year as a fee to allow the business to operate for the rest of the year. It is deemed a prerequisite to the conduct of business.[11]

Second. BCDA[12] reaffirmed the disquisition in *Mobil,* by pronouncing that:

> **Business "taxes," thus, are a species of license fees that may be imposed by the local government unit. While incidentally**

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10 G.R. No. 154092, July 14, 2005.
11 Boldfacing supplied.
12 *Supra* note 6.

> **revenue-earning, fees for a mayor-issued business permit are primarily regulatory,** since the local government is not precluded from imposing conditions other than the payment of business taxes before the permit is issued. Issuances of business permits are in the exercise of police power.[13]

Third. The dicta in *Mobil* and *BCDA*, attesting to the object and nature of LBT as a license fee; rather than a tax, are as well ingrained in the RMRC. To be precise, paragraph (a), Section 3A.10. thereof explicitly requires the payment of the LBT on persons who establishes, operates, or conducts any business, trade, and activity within Makati City:

> **SEC. 3A. 10. Administrative Provisions –**
>
> (a) *Requirement* – Any person who shall establish, operate or conduct any business, trade or activity mentioned in this Article in the City of Makati, Metro Manila, **shall first** obtain a Mayor's permit and **pay** the fee therefor and **the business tax imposed** under this Article.[14]

Should such persons fail to pay the LBT, despite demand, paragraph (a) of Section 4(A).15. of the RMRC declares that the issuance of the Mayor's Permit may be refused, or, if a Mayor's Permit was already issued, said permit may be revoked. In turn, the lack of a Mayor's Permit would lead to the eventual closure of a business establishment:

> **SEC. 4A. 15. Permit Refused; To Whom, Revocation and Closure.**
>
> a) Mayor's Permit may be **refused** to any person who has violated any ordinance or regulation relating to a license previously granted or **who has failed to pay the tax** or fee or a business being conducted but not licensed, or **fails to pay any** fine, penalty, **tax** or other debt or liability to the [COM] within thirty (30) days from the date of demand. The City Mayor shall close any business establishment operating without any Mayor's Permit or license. In the case of an existing license to any person, the same shall be

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13 Boldfacing supplied.
14 Boldfacing supplied.

> **revoked and closed** by the City Mayor upon his [or her] **refusal to pay such** indebtedness or **liability** to the former. ...[15]

Ergo, the LBT imposed by Makati City is primarily a license fee because it regulates the business establishments located within its territorial jurisdiction. In view thereof, Makati City's LBT assessment against respondent, covering the 2nd quarter of TY 2014 to 4th quarter of TY 2015, addressed by the RTC-Makati in its Order dated November 4, 2021, is a local *fee* case, and *not* a local tax case. *Ergo*, the CTA in Division is devoid of jurisdiction to hear CTA AC No. 259.

Accordingly, I **VOTE** to: (1) **REVERSE** and **SET ASIDE** the Decision dated November 24, 2022 and Resolution dated May 29, 2023, in CTA AC No. 259; and (2) **DISMISS** CTA AC No. 259, for lack of jurisdiction.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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15 Boldfacing supplied.