

# FIRST DIVISION

[ G.R. No. 244602, July 14, 2021 ]

**MACTEL CORPORATION, PETITIONER, VS. 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.**

## DECISION

### CARANDANG, J.:

Before us is a Petition for Review on *Certiorari*<sup>[1]</sup> assailing the Amended Decision<sup>[2]</sup> dated October 9, 2018 and the Resolution<sup>[3]</sup> 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 Decision<sup>[4]</sup> dated February 14, 2018 affirming the Decision<sup>[5]</sup> dated February 9, 2016 and the Resolution<sup>[6]</sup> 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.<sup>[7]</sup>

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.<sup>[8]</sup>

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 P30,799,127.21 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.<sup>[9]</sup>

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.<sup>[10]</sup>

On November 13, 2007, the RTC-Branch 148, Makati City rendered a Decision<sup>[11]</sup> 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

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.**<sup>[12]</sup> (Emphasis supplied)

Respondents sought reconsideration but the motion was denied in an Order dated March 17, 2008.<sup>[13]</sup> 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.<sup>[14]</sup>

However, the City Treasurer suddenly changed its position and issued a Notice of Assessment<sup>[15]</sup> 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 P157,200,855.92, 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 P24,693,707.82, including surcharges and deficiency. Thereafter, respondent City Administrator issued a Billing Statement dated January 22, 2015.<sup>[16]</sup>

On February 6, 2015, petitioner filed its protest to the Notice of Assessment dated January 14, 2015.<sup>[17]</sup> Also, in its Letter<sup>[18]</sup> dated February 10, 2015, petitioner tried to protest its Billing Statement but respondent City Administrator refused to receive the letter.<sup>[19]</sup>

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 injunction<sup>[20]</sup> 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 P24,693,707.82. 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 P5,440,772.41, 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 P157,200,855.92 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.<sup>[21]</sup>

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 (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.<sup>[22]</sup>

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.<sup>[23]</sup>

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.<sup>[24]</sup>

Thereafter, respondents filed a Petition for *Certiorari*<sup>[25]</sup> 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.<sup>[26]</sup> 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 taxes<sup>[27]</sup> 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."<sup>[28]</sup>

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.<sup>[29]</sup> Petitioner further asserted that without injunctive relief, it will suffer grave and irreparable injury since respondents ordered petitioner to pay the aggregate amount of P164,135,159.85 as business tax, or 16,400% of what it actually earned that taxable year.<sup>[30]</sup>

### **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.<sup>[31]</sup> 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.<sup>[32]</sup> 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.<sup>[33]</sup>

Respondents filed a motion for reconsideration but the same was denied by the CTA Second Division in a Resolution<sup>[34]</sup> 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.<sup>[35]</sup>

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

In a Decision<sup>[36]</sup> 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 Division<sup>[37]</sup> 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.<sup>[38]</sup> 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 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.<sup>[39]</sup>

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.<sup>[40]</sup>

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

On October 9, 2018, the CTA *En Banc* issued an Amended Decision<sup>[41]</sup> 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.<sup>[42]</sup>

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*<sup>[43]</sup> (*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.<sup>[44]</sup>

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 Casecnan* case, the case at bar relied on a final and executory judgment dated