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ACCORDINGLY, the petition is **PARTIALLY GRANTED**. The Decision dated September 24, 2013 and Resolution dated March 26, 2014 in CA G.R. SP. No. 03459-MIN are **MODIFIED** and the Executive Labor Arbiter's Order dated February 19, 2009, **REINSTATED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 215801. January 15, 2020]

IN THE MATTER OF DECLARATORY RELIEF ON THE VALIDITY OF BIR REVENUE MEMORANDUM CIRCULAR NO. 65-2012 "CLARIFYING THE TAXABILITY OF ASSOCIATION DUES, MEMBERSHIP FEES AND OTHER ASSESSMENTS/ CHARGES COLLECTED BY CONDOMINIUM CORPORATIONS"

BUREAU OF INTERNAL REVENUE (BIR), as herein represented by its COMMISSIONER KIM S. JACINTO-HENARES and REVENUE DISTRICT OFFICER (RDO) RICARDO B. ESPIRITU, *petitioner, vs.* **FIRST E-BANK TOWER CONDOMINIUM CORP.,** *respondent.*

[G.R. No. 218924. January 15, 2020]

IN THE MATTER OF DECLARATORY RELIEF ON THE VALIDITY OF BIR REVENUE MEMORANDUM CIRCULAR NO. 65-2012 "CLARIFYING THE

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TAXABILITY OF ASSOCIATION DUES, MEMBERSHIP FEES AND OTHER ASSESSMENTS/ CHARGES COLLECTED BY CONDOMINIUM CORPORATIONS"

FIRST E-BANK TOWER CONDOMINIUM CORP., *petitioner, vs.* **BUREAU OF INTERNAL REVENUE (BIR), as herein represented by its COMMISSIONER KIM S. JACINTO-HENARES,*** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; ELEMENTS; NOT THE PROPER REMEDY TO ASSAIL THE VALIDITY OR CONSTITUTIONALITY OF EXECUTIVE ISSUANCES.— An action for declaratory relief is governed by Section 1, Rule 63 of the Revised Rules of Court. x x x Declaratory relief requires the following elements: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding. The Court rules that *certiorari* or prohibition, not declaratory relief, is the proper remedy to assail the validity or constitutionality of executive issuances.

2. ID.; ID.; ID.; A PETITION FOR DECLARATORY RELIEF MAY BE TREATED AS ONE FOR PROHIBITION IF THE CASE HAS FAR-REACHING IMPLICATIONS AND RAISE QUESTIONS THAT NEED TO BE RESOLVED FOR

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* Petitioner First E-Bank Tower Condominium Corp. sought to change the caption of its petition in order to include the Court of Appeals as public respondent but its motion to amend the title was denied under Resolution dated October 12, 2015 in G.R. No. 218924.

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THE PUBLIC GOOD; CASE AT BAR.— In ***Diaz v. The Secretary of Finance, et al***., the Court, nonetheless, held that a petition for declaratory relief may be treated as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good; or if the assailed act or acts of executive officials are alleged to have usurped legislative authority. x x x Here, RMC No. 65-2012 has far-reaching ramifications among condominium corporations which have proliferated throughout the country. For numerous Filipino families, professionals, and students have, for quite sometime now, opted for condominium living as their new way of life. The matter of whether indeed the contributions of unit owners solely intended for maintenance and upkeep of the common areas of the condominium building are taxable is imbued with public interest. Suffice it to state that taxes, being the lifeblood of the government, occupy a high place in the hierarchy of State priorities, hence, all questions pertaining to their validity must be promptly addressed with the least procedural obstruction.

3. ID.; ID.; *CERTIORARI*; INSTANCES WHEN A PETITION FOR *CERTIORARI* MAY BE ALLOWED TO PROSPER NOTWITHSTANDING THE AVAILABILITY OF APPEAL; CASE AT BAR.— A petition for *certiorari* is proper where the impugned dispositions, as in this case, are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. More so where a petition for review on *certiorari* does not appear to be a plain, speedy, and adequate remedy to address the First E-Bank's urgent concerns on its accumulated supposed tax liabilities which will never get halted until the validity of RMC No. 65-2012 is finally resolved, and considerations of public welfare and public policy compel the speedy resolution of the cases through the extraordinary remedy of *certiorari*. The Court, in some instances, allowed a petition for *certiorari* to prosper notwithstanding the availability of appeal. ***Mallari v. Banco Filipino Savings & Mortgage Bank*** enumerates these instances, *viz.:* Indeed, the Court in some instances has allowed a petition for *certiorari* to prosper notwithstanding the availability of an appeal, such as, (a) when public welfare and the advancement of public policy dictate it; (b) when the broader interest of justice so requires; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority.

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4. ID.; CIVIL PROCEDURE; JURISDICTION; COURT OF TAX APPEALS (CTA); POSSESSES ALL SUCH IMPLIED, INHERENT, AND INCIDENTAL POWERS NECESSARY TO THE FULL AND EFFECTIVE EXERCISE OF ITS APPELLATE JURISDICTION OVER TAX CASES.— On February 4, 2014, the Court *en banc* recognized that the Court of Tax Appeals possessed all such implied, inherent, and incidental powers necessary to the full and effective exercise of its appellate jurisdiction over tax cases. ***City of Manila v. Judge Grecia-Cuerdo*** is relevant, thus: A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it. x x x Consequently, the Court held that the authority of the Court of Tax Appeals to take cognizance of petitions for *certiorari* against interlocutory orders of the RTC in local tax cases was deemed included in the authority or jurisdiction granted it by law. The Court underscored that the grant of appellate jurisdiction to the Court of Tax Appeals included such power necessary to exercise it effectively. Besides, a split-jurisdiction between the Court of Tax Appeals and the Court of Appeals is anathema to the orderly administration of justice. *"The Court cannot accept that such was the legislative motive, especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power."*

5. ID.; ID.; ID.; ID.; CTA HAS JURISDICTION TO RULE ON THE CONSTITUTIONALITY OR VALIDITY OF A TAX LAW OR REGULATION OR ADMINISTRATIVE ISSUANCE, WHETHER RAISED BY THE TAXPAYER DIRECTLY OR AS A DEFENSE.— On August 16, 2016, in ***Banco de Oro v. Republic of the Phils., et al.,*** the Court *en*

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banc pronounced in no uncertain terms that the Court of Tax Appeals had jurisdiction to rule on the constitutionality or validity of a tax law or regulation or administrative issuance. x x x ***Banco de Oro*** further stressed that such undoubted jurisdiction is exclusively vested in the Court of Tax Appeals whether it is raised by the taxpayer directly or as a defense.

6. MERCANTILE LAW; REPUBLIC ACT NO. 4726 (CONDOMINIUM ACT); CONDOMINIUM, DEFINED; A CORPORATION CONDOMINIUM IS NOT DESIGNED TO ENGAGE IN ACTIVITIES THAT GENERATE INCOME OR PROFIT BUT IS AUTHORIZED TO COLLECT ASSOCIATION DUES, MEMBERSHIP FEES AND OTHER ASSESSMENT/CHARGES PURELY FOR THE BENEFIT OF THE CONDOMINIUM OWNERS.— ***Yamane*** did emphasize that a corporation condominium is not designed to engage in activities that generate income or profit. A discussion on the nature of a condominium corporation is, indubitably, in order. The creation of the condominium corporation is sanctioned by Republic Act No. 4726 (RA 4726) (The Condominium Act). Under the law, a condominium is an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. To enable the orderly administration over these common areas which the unit owners jointly own, RA 4726 permits the creation of a condominium corporation for the purpose of holding title to the common areas. The unit owners shall in proportion to the appurtenant interests of their respective units automatically be members or shareholders of the condominium corporation to the exclusion of others. x x x Further, Section 9 allows a condominium corporation to provide for the means by which it should be managed. Specifically, it authorizes a condominium corporation to collect association dues, membership fees, and other assessments/charges for: a) maintenance of insurance policies; b) maintenance, utility, gardening and other services benefiting the common areas, for the employment of personnel necessary for the operation of the building, and legal, accounting and other professional and technical services; c) purchase of materials, supplies and the like needed by the common areas; d) reconstruction of any portion or portions of any damage to or destruction of the project; and

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e) reasonable assessments to meet authorized expenditures. In fine, the collection of association dues, membership fees, and other assessments/charges is purely for the benefit of the condominium owners. It is a necessary incident to the purpose to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance. As held in ***Yamane*** *"[t]he profit motive in such cases is hardly the driving factor behind such improvements, if it were contemplated at all. Any profit that would be derived under such circumstances would merely be incidental, if not accidental."* More, a condominium corporation is especially formed for the purpose of holding title to the common area and exists only for the benefit of the condominium owners. Nothing more.

7. TAXATION; INCOME TAXATION; BIR REVENUE MEMORANDUM CIRCULAR (RMC) NO. 65-2012; INVALIDLY DECLARES THAT THE AMOUNTS PAID AS DUES OR FEES BY MEMBERS AND TENANTS OF A CONDOMINIUM CORPORATION FORM PART OF THE GROSS INCOME OF THE LATTER, THUS SUBJECT TO INCOME TAX, VALUE ADDED TAX, AND WITHHOLDING TAX; RMC NO. 65-2012 IS INVALID.— RMC No. 65-2012, sharply departs from ***Yamane*** and the law on condominium corporations. It invalidly declares that the amounts paid as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter, thus, subject to income tax, value-added tax, and withholding tax. The reason given — a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments, consequently, these payments constitute taxable income or compensation for beneficial services it provides to its members and tenants, hence, subject to income tax, value-added tax, and withholding tax.

8. ID.; REPUBLIC ACT NO. 8424 (TAX REFORM ACT OF 1997); TAXABLE INCOME; GROSS INCOME, DEFINED; ASSOCIATION DUES, MEMBERSHIP FEES AND OTHER ASSESSMENTS COLLECTED BY CONDOMINIUM CORPORATION ARE NOT SOURCES OF GROSS INCOME.— Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time. Income is gain derived and severed from capital. Republic Act No. 8424 (RA 8424) or the Tax Reform

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Act of 1997 was in effect when RMC No. 65-2012 was issued on October 31, 2012. In defining taxable income, Section 31 of RA 8424 states: Section 31. Taxable Income Defined. - The term taxable income means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws. Gross income means income derived from whatever source, including compensation for services; the conduct of trade or business or the exercise of a profession; dealings in property; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership, among others. x x x Section 32 of RA 8424 does not include association dues, membership fees, and other assessments/charges collected by condominium corporations as sources of gross income. The subsequent amendment under the TRAIN Law substantially replicates the old Section 32. Clearly, RMC No. 65-2012 expanded, if not altered, the list of taxable items in the law. RMC No. 65-2012, therefore, is void. Besides, where the basic law and a rule or regulation are in conflict, the basic law prevails.

9. ID.; ID.; VALUE-ADDED TAX; DEFINED; ASSOCIATION DUES, MEMBERSHIP FEES, AND OTHER ASSESSMENTS DO NOT ARISE FROM TRANSACTIONS INVOLVING SALE, BARTER, OR EXCHANGE OF GOODS OR PROPERTY AND ARE NOT GENERATED BY THE PERFORMANCE OF SERVICES.— Association dues, membership fees, and other assessments/charges do not arise from transactions involving the sale, barter, or exchange of goods or property. Nor are they generated by the performance of services. As such, they are not subject to value-added tax per Section 105 of RA 8424. x x x The value-added tax is a burden on transactions imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto, so much so that even a non-stock, non-profit organization or government entity, is liable to pay value-added tax on the sale of goods or services.

10. ID.; ID.; WITHHOLDING TAX; INTENDED TO FACILITATE THE COLLECTION OF INCOME TAX; IF THERE IS NO INCOME TAX, WITHHOLDING TAX

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CANNOT BE COLLECTED.— The withholding tax system was devised for three (3) primary reasons, *i.e.* — (1) to provide taxpayers a convenient manner to meet their probable income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies. Succinctly put, withholding tax is intended to facilitate the collection of income tax. And if there is no income tax, withholding tax cannot be collected. Section 57 of RA 8424 directs that only income, be it active or passive, earned by a payor-corporation can be subject to withholding tax.

11. ID.; ID.; COMMISSIONER OF INTERNAL REVENUE; IN THE EXERCISE OF ITS POWER TO INTERPRET TAX LAWS AND DECIDE TAX CASES, IT CANNOT ISSUE ADMINISTRATIVE RULINGS OR CIRCULARS INCONSISTENT WITH THE LAW TO BE IMPLEMENTED; GRAVE ABUSE OF DISCRETION, COMMITTED IN CASE AT BAR.— Section 4 of RA 8424 empowers the BIR Commissioner to interpret tax laws and to decide tax cases. x x x But the BIR Commissioner cannot, in the exercise of such power, issue administrative rulings or circulars inconsistent with the law to be implemented. Administrative issuances must not override, supplant, or modify the law, they must remain consistent with the law intended to carry out. Surely, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement. As shown, the BIR Commissioner expanded or modified the law when she declared that association dues, membership fees, and other assessments/charges are subject to income tax, value-added tax, and withholding tax. In doing so, she committed grave abuse of discretion amounting to lack or excess of jurisdiction. As to what constitutes 'grave abuse of discretion' and when a government branch, agency, or instrumentality is deemed to have committed it, ***Kilusang Mayo Uno v. Aquino III*** instructs: Grave abuse of discretion denotes a "capricious, arbitrary[,] and whimsical exercise of power. The abuse of discretion must

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be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as not to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility." x x x In sum, the BIR Commissioner is empowered to interpret our tax laws but not expand or alter them. In the case of RMC No. 65-2012, however, the BIR Commissioner went beyond, if not, gravely abused such authority.

12. CIVIL LAW; OBLIGATIONS AND CONTRACTS; JUDICIAL CONSIGNATION; REQUISITES; CASE AT BAR.— Petitioner resorted to judicial consignation of its alleged tax payments in the court, thus, reckons with the requirements of judicial consignation, *viz.:* (1) a debt due; (2) the creditor to whom tender of payment was made refused without just cause to accept the payment, or the creditor was absent, unknown or incapacitated, or several persons claimed the same right to collect, or the title of the obligation was lost; (3) the person interested in the performance of the obligation was given notice before consignation was made; (4) the amount was placed at the disposal of the court; and (5) the person interested in the performance of the obligation was given notice after the consignation was made. Here, it is imperative to determine whether the First E-Bank actually complied with the requirements for judicial consignation. This is a question of fact which by this Court, not being a trial court cannot pass upon. The trial court, therefore, thus correctly held that the First E-Bank may initiate the appropriate motion for the release of the consignated funds, upon finality of the judicial determination on the validity of RMC No. 65-2012 and only after it has determined the presence of the requirements for judicial consignation.

APPEARANCES OF COUNSEL

The Solicitor General for Bureau of Internal Revenue.
Jose D. Melgarejo for First E-Bank Tower Condo Corporation.

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D E C I S I O N

LAZARO-JAVIER, *J.*:

The Cases

These twin cases refer to the: 1) Petition for Review filed by the Bureau of Intemal Revenue (BIR) (G.R. No. 215801); and 2) Special Civil Action for *Certiorari* initiated by the First E-Bank Tower Condominium Corp. (First E-Bank) (G.R. No. 218924). Both cases assail the following dispositions of the Court of Appeals in CA-G.R. CV No. 102266 entitled "*In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 'Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/ Charges Collected by Condominium Corporations,' First E-Bank Tower Condominium Corp. v. Bureau of Internal Revenue (BIR) represented by its Commissioner Kim S. Jacinto-Henares, et al.:*"

1) Resolution[1] dated June 26, 2014 dismissing for alleged lack of jurisdiction the respective appeals of the First E-Bank and the BIR, *et al*., *viz.:*

It appearing from the records that the subject matter of the instant appeal is the Resolution dated 05 September 2013 of the RTC-Branch 146, Makati City, declaring "to have been invalidly issued" BIR Revenue Memorandum Circular No. 65-2012 dated 31 October 2012 which imposed 12% value added tax and 32% income tax on association dues/membership fees and other charges collected by condominium corporation from its members and tenants, taking into account Section 7 (a) of Republic Act No. 9282 (which took effect on 23 April 2004) which expressly provides that the Court of Tax Appeals has exclusive appellate jurisdiction over "Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved

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[1] Penned by Associate Justice Ramon M. Bato, Jr., with the concurrence of Associate Justices Rodil V. Zalameda (now a member of this Court) and Agnes Reyes-Carpio, all members of the Special Seventeenth Division, G.R. No. 218924, *rollo*, pp. 37-38.

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by them in the exercise of their original or appellate jurisdiction," considering that the Court of Tax Appeals is a highly specialized body specifically created for the purpose of reviewing tax cases and resolving tax problems, the instant appeal is hereby ***DISMISSED*** outright for lack of jurisdiction over the nature and subject matter of the action.

The Compliance/Manifestation dated 16 May 2014 of RTC Judge Encarnacion Jaja G. Moya and Branch Clerk of Court Therese Lynn R. Bandong, Manifestations dated 29 May 2014 and 30 May 2014 of First E-Bank Tower Condominium Corporation and the Manifestation dated 02 June 2014 of the Republic of the Philippines are ***NOTED***.

Let the instant appeal be considered ***CLOSED*** and ***TERMINATED***.

Let the original records be returned to the trial court.

SO ORDERED.

2) Resolution[2] dated November 27, 2014 denying the parties' respective motions for reconsideration.

The Facts

The First E-Bank filed the petition below for declaratory relief seeking to declare as invalid Revenue Memorandum Circular No. 65-2012 (RMC No. 65-2012) dated October 31, 2012.[3] The case was raffled to the Regional Trial Court, Branch 146, Makati City.

RMC No. 65-2012 entitled "*Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/ Charges Collected by Condominium Corporations*" relevantly reads:

x x x x x x x x x

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[2] Penned by Associate Justice Ramon M. Bato, Jr. with the concurrence of Associate Justices Rodil V. Zalameda (now a member of this Court) and Agnes Reyes-Carpio, all members of the Former Special Seventeenth Division, *id.* at 12-16.

[3] *Id.* at 50-51.

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CLARIFICATION

The taxability of association dues, membership fees, and other assessments/charges collected by a condominium corporation from its members, tenants and other entities are discussed hereunder.

I. Income Tax — The amounts paid in as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter subject to income tax. This is because a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments. For tax purposes, the association dues, membership fees, and other assessments/charges collected by a condominium corporation constitute income payments or compensation for beneficial services it provides to its members and tenants. The previous interpretation that the assessment dues are funds which are merely held in trust by a condominium corporation lacks legal basis and is hereby abandoned.

Moreover, since a condominium corporation is subject to income tax, income payments made to it are subject to applicable withholding taxes under existing regulations.

II. Value-Added Tax (VAT) — Association dues, membership fees, and other assessments/charges collected by a condominium corporation are subject to VAT since they constitute income payment or compensation for the beneficial services it provides to its members and tenants.

Section 105 of the National Internal Revenue Code of 1997, as amended, provides:

"SECTION 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

x x x x x x x x x

The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, **by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells**

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exclusively to members or their guests), or government entity." (Emphasis supplied)

The above provision is clear — even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services. This conclusion was affirmed by the Supreme Court in Commissioner of Internal Revenue v. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355, March 30, 2000. In this case, the Supreme Court held:

> "(E)ven a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto." The term "in the course of trade or business" requires the regular conduct or pursuit of a commercial or an economic activity, regardless of whether or not the entity is profit-oriented.
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> The definition of the term "in the course of trade or business" incorporated in the present law applies to all transactions even to those made prior to its enactment. Executive Order No. 273 stated that any person who, in the course of trade or business, sells, barters or exchanges goods and services, was already liable to pay VAT. The present law merely stresses that even a nonstock, nonprofit organization or government entity is liable to pay VAT for the sale of goods and services.
>
> Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." It includes "the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking or project."
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> On February 5, 1998, the Commissioner of Internal Revenue issued BIR Ruling No. 010-98 emphasizing that a domestic corporation that provided technical, research, management and technical assistance to its affiliated companies and received payments on a reimbursement-of-cost basis, without any intention of realizing profit, was subject to VAT on services rendered.

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In fact, even if such corporation was organized without any intention of realizing profit, any income or profit generated by the entity in the conduct of its activities was subject to income tax.

Hence, **it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT**."

Accordingly, the gross receipts of condominium corporations including association dues, membership fees, and other assessments/ charges are subject to VAT, income tax and income payments made to it are subject to applicable withholding taxes under existing regulations.[4]

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The First E-Bank's Allegations

In its Petition dated December 20, 2012, the First E-Bank essentially alleged: It was a non-stock non-profit condominium corporation. It owned and possessed, through its members, a condominium office building. RMC No. 65-2012 imposed on it two (2) tax liabilities: 1) value-added tax (VAT) of ₱118,971. 53 to be paid on December 2012 and every month thereafter; and b) income tax of ₱665,904.12 to be paid on or before April 15, 2013 and every year thereafter.[5]

RMC No. 65-2012 burdened the owners of the condominium units with income tax and VAT on their own money which they exclusively used for the maintenance and preservation of the building and its premises. RMC No. 65-2012 was oppressive and confiscatory because it required condominium unit owners to produce additional amounts for the thirty-two percent (32%) income tax and twelve percent (12%) VAT.[6]

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[4] Bureau of Internal Revenue, Revenue Memorandum Circular No. 65-2012 https://www.bir.gov.ph/images/bir_files/old_files/pdf/66019RMC%20No% 2065-2012.pdf (Accessed on July 24, 2019).

[5] G.R. No. 218924, *rollo*, p. 51.

[6] *Id.*

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Through the Makati Commercial Estate Association, Inc., it sent a Letter dated December 5, 2012 to the BIR Commissioner requesting deferment of RMC No. 65-2012. A Letter dated December 19, 2012 was likewise sent to Makati City Revenue District Officer Ricardo B. Espiritu informing him of the continuous judicial consignation of the income tax and VAT payments due under RMC No. 65-2012.[7]

The BIR, et al.'s Comments

Under Comment dated February 11, 2013, the BIR and RDO Espiritu through the Office of the Solicitor General (OSG) riposted that declaratory relief was no longer proper here considering that RMC No. 65-2012 already took effect on October 31, 2012. The alleged injury which the First E-Bank sought to prevent had already arisen as of that date.[8]

By its separate comment,[*] the BIR's Litigation Division argued that the petition should be dismissed for violation of the principle of primary jurisdiction. Several condominium corporations had already referred the issue to the BIR Law Division for further clarification. Ultimately, only the Secretary of Finance had primary jurisdiction over the issue raised here. Too, a petition for declaratory relief will not prosper if the questioned statute had already been breached, as in this case. RMC No. 65-2012 was only a clarificatory issuance on pertinent laws, specifically the National Internal Revenue Code (NIRC). It was merely a restatement of the BIR's prevailing position on the issue of taxation.[9]

The First E-Bank's Reply

The First E-Bank replied that judicial consignation of its tax payments under protest was necessary.[10]

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[7] *Id.*

[8] *Id.* at 52.

[*] date unknown.

[9] *Id.*

[10] *Id.* at 54.

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The Trial Court's Ruling

By Resolution[11] dated September 5, 2013, the trial court ruled that the First E-Bank correctly resorted to a petition for declaratory relief for the purpose of invalidating RMC No. 65-2012. On this score, the trial court declared as invalid RMC No. 65-2012 for it purportedly expanded the law, created an additional tax burden on condominium corporations, and was issued without the requisite notice and hearing, thus:

> As to the validity of the Memorandum Circular issued, it is respondent's contention that it merely clarified and was simply issued to restate and clarify the prevailing position and ruling of the BIR. It was a mere interpretation of an existing law which has already been in effect and which was not set to be amended. However, the same appears to be not true as it goes beyond its objective to clarify the existing statute. The assailed Revenue Memorandum Circular not merely interpreted or clarified the existing BIR Ruling but in fact legislated or introduced a new legislation under the mantle of its quasi-legislative authority. The BIR Commissioner, under the guise of clarifying income tax on association dues, made Revenue Memorandum Circular effective immediately. In so doing, the passage contravenes the constitutional mandate of due process of law.[12]
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> x x x x x x x x x
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> The above cited portion of the Memorandum Circular failed to show what particular law it clarified. Instead it shows that it merely departed from the several rulings of the Bureau exempting from income tax the assessments/charges collected by condominium corporations from its members, on the ground that the collection of association dues and other assessments/charges are merely held in trust to be used solely for administrative expenses in implementing its purpose. The new circular in effect made its own legislation abandoning the previous rulings of the BIR which became the practice of the condominium corporations including herein petitioner. The Revenue Circular changed and departed from the long standing ruling of the BIR that association dues and other fees and charges collected from members are tax exempt. In so doing, it abruptly charges from taxpayer

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[11] *Id.* at 50-63.

[12] *Id.* at 57-58.

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an imposition which was then not existing, and worse made it immediately effective which is prejudicial to the rights of the petitioner. It did not merely interpret or clarify but changed altogether the long standing rules of the Bureau of Internal Revenue.[13]

x x x x x x x x x

Moreover, it is already the common business practice of petitioner that the association dues, membership fees and the like are not included as part of its income and therefore of the VAT. The advent of the Memorandum Circular 65-2012 issued by the Commissioner changes the tax liability of petitioner in the sense that it is now subject to tax. It created a new tax burden upon petitioner. Petitioner then could not be faulted to consign judicially as they claim, the (VAT) amount pending resolution of the petition for declaratory relief herein filed. Respondent BIR Commissioner should have accorded petitioner the opportunity to be heard, which was the bone of contention of the letter sent to the Honorable Commissioner which was not acted upon.

The Revenue Memorandum Circular did not only clarify an existing law, but changes its import and interpretation that in so doing it prejudices the right of the petitioner as a tax payer.[14]

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Since the BIR in passing the subject memorandum circular failed to accord respondent or those similarly situated as a tax payer due notice and opportunity to be heard, before issuing said circular it is this court's opinion that the issuance was arbitrarily and in violation of the due process clause of the constitution. The respondent in imposing additional tax burden on petitioner violated the latter's constitutional right to due notice and hearing.[15]

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In another vein, the trial court noted the absence of proof that the First E-Bank actually made a judicial consignation of its purported tax payments.[16]

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[13] *Id.* at 59.

[14] *Id.* at 60-61.

[15] *Id.* at 62.

[16] G.R. No. 218924, *Id.* at 62.

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The BIR, *et al*. moved for reconsideration. It argued that the petition was premature, RMC No. 65-2012 was valid, and the petition for declaratory relief should be dismissed for violating the principle of primary jurisdiction. For its part, the First E-Bank moved for partial reconsideration, praying that the consignated funds be released.[17]

By Order[18] dated December 18, 2013, the trial court denied the parties' respective motions for reconsideration. It reiterated that the First E-Bank properly resorted to a petition for declaratory relief for the purpose of invalidating RMC No. 65-2012. It also noted that the First E-Bank appeared to have judicially consignated the funds only on November 17, 2013, following the resolution of the case on September 5, 2013. For sure, this judicial consignation, which was belatedly done, cannot justify a modification of the aforesaid resolution. The trial court, nonetheless, pronounced that the First E-Bank was not precluded from filing the proper motion to withdraw the consignated amounts upon the finality of the ruling on the validity of RMC 65-2012.

The Proceedings before the Court of Appeals

Aggrieved, both parties appealed to the Court of Appeals. On one hand, the BIR, *et al*. challenged the trial court's ruling insofar as it: a) decreed that the First E-Bank correctly availed of the petition for declaratory relief when it sought to nullify RMC No. 65-2012; and b) declared the same as invalid. On the other hand, the First E-Bank assailed the trial court's ruling insofar as it declined to order the release of the judicially consignated amounts.

The Court of Appeals' Dispositions

By its first assailed Resolution dated June 26, 2014, the Court of Appeals dismissed the appeal of the First E-Bank and the joint appeal of the BIR, *et al*. on ground of lack of jurisdiction. It emphasized that jurisdiction over the case was exclusively

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[17] *Id.* at 45-46.

[18] *Id.* at 45-48.

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vested in the Court of Tax Appeals since the trial court's impugned resolution involved a tax matter.

Both the First E-Bank and the BIR, *et al*., moved for reconsideration. They commonly asserted that the Court of Appeals had appellate jurisdiction over their respective appeals emanating from a petition for declaratory relief which sought to invalidate RMC No. 65-2012.[19]

By its second assailed Resolution[20] dated November 27, 2014, the Court of Appeals denied the motions for reconsideration and stressed anew that the Court of Tax Appeals had exclusive jurisdiction over the appeals.

The Present Petitions

In G.R. No. 218924, the First E-Bank initiated, on alleged ground of grave abuse of discretion, a Special Civil Action for *Certiorari*[21] to nullify the assailed dispositions of the Court of Appeals. According to the First E-Bank, the Court of Appeals, not the Court of Tax Appeals, has jurisdiction over its appeal since the subject matter of the case is not local tax or taxes *per se* but a petition to declare as invalid RMC No. 65-2012. The Court of Appeals purportedly based its rulings on conjectures and surmises, not on established facts and law.

In G.R. No. 215801,[22] the BIR, *et al*. availed of Ru1e 45 of the Revised Rules of Court. They plead the same legal issue pertaining to which court has jurisdiction over the trial court's decision.

Issues

First: Is a petition for declaratory relief proper for the purpose of invalidating RMC No. 65-2012?

Second: Did the Court of Appeals validly dismiss the twin appeals on ground of lack of jurisdiction?

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[19] *Id.* at 12-16.

[20] *Id.* at 16.

[21] *Id.* at 2-11.

[22] G.R. No. 21580l, *rollo,* pp. 23-39.

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Third: Is RMC No. 65-2012 valid?

a) Is a condominium corporation engaged in trade or business?

b) Are association dues, membership fees, and other assessments/charges subject to income tax, value-added tax, and withholding tax?

Fourth: Is the First E-Bank entitled to the release of its judicially consignated tax payments?

Ruling

A petition for declaratory relief is not the proper remedy to seek the invalidation of RMC No. 65-2012

An action for declaratory relief is governed by Section 1, Rule 63 of the Revised Rules of Court, thus:

> Section l. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

Declaratory relief requires the following elements: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding.[23]

[23] *CIR v. Standard Insurance Co., Inc.*, G.R. No. 219340, November 7, 2018.

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The Court rules that *certiorari* or prohibition, not declaratory relief, is the proper remedy to assail the validity or constitutionality of executive issuances. ***DOTR v. PPSTA***[24] is apropos:

The Petition for Declaratory Relief is not the proper remedy

One of the requisites for an action for declaratory relief is that it must be filed before any breach or violation of an obligation. Section 1, Rule 63 of the Rules of Court states, thus:

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Thus, there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.

It is elementary that before this Court can rule on a constitutional issue, there must first be a justiciable controversy. A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. As We emphasized in Angara v. Electoral Commission, any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.

To question the constitutionality of the subject issuances, respondents should have invoked the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution. The adverted section defines judicial power as the power not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

There is a grave abuse of discretion when there is patent violation of the Constitution, the law, or existing jurisprudence. On this score, it has been ruled that "the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed

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[24] G.R. No. 230107, July 24, 2018.

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not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions." **Thus, petitions for *certiorari* and prohibition are the proper remedies where an action of the legislative branch is seriously alleged to have infringed the Constitution**. (Emphasis supplied)

In ***Diaz v. The Secretary of Finance, et al***.,[25] the Court, nonetheless, held that a petition for declaratory relief may be treated as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good; or if the assailed act or acts of executive officials are alleged to have usurped legislative authority, thus:

On August 24, 2010 the Court issued a resolution, treating the petition as one for prohibition rather than one for declaratory relief, the characterization that petitioners Diaz and Timbol gave their action. The government has sought reconsideration of the Court's resolution, however, arguing that petitioners' allegations clearly made out a case for declaratory relief, an action over which the Court has no original jurisdiction. The government adds, moreover, that the petition does not meet the requirements of Rule 65 for actions for prohibition since the BIR did not exercise judicial, quasi-judicial, or ministerial functions when it sought to impose VAT on toll fees. Besides, petitioners Diaz and Timbol has a plain, speedy, and adequate remedy in the ordinary course of law against the BIR action in the form of an appeal to the Secretary of Finance.

But there are precedents for treating a petition for declaratory relief as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good. The Court has also held that a petition for prohibition is a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority.

Here, the imposition of VAT on toll fees has far-reaching implications. Its imposition would impact, not only on the more than

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[25] G.R. No. 193007, 669 Phil. 371, 382-383 (2011).

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half a million motorists who use the tollways everyday, but more so on the government's effort to raise revenue for funding various projects and for reducing budgetary deficits. (Emphasis supplied)

Here, RMC No. 65-2012 has far-reaching ramifications among condominium corporations which have proliferated throughout the country. For numerous Filipino families, professionals, and students have, for quite sometime now, opted for condominium living as their new way of life. The matter of whether indeed the contributions of unit owners solely intended for maintenance and upkeep of the common areas of the condominium building are taxable is imbued with public interest. Suffice it to state that taxes, being the lifeblood of the government, occupy a high place in the hierarchy of State priorities, hence, all questions pertaining to their validity must be promptly addressed with the least procedural obstruction.

Notably, the issue at hand has already pended for six (6) years now, first with the trial court, then with the Court of Appeals, and now with this Court. Hence, to forestall any further delay, instead of remanding the cases to the Court of Appeals, we here and now write *finis* to these cases once and for all, ***Diaz*** enunciated:

> To dismiss the petition and resolve the issues later, after the challenged VAT has been imposed, could cause more mischief both to the tax-paying public and the government. A belated declaration of nullity of the BIR action would make any attempt to refund to the motorists what they paid an administrative nightmare with no solution. Consequently, it is not only the right, but the duty of the Court to take cognizance of and resolve the issues that the petition raises.
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> Although the petition does not strictly comply with the requirements of Rule 65, the Court has ample power to waive such technical requirements when the legal questions to be resolved are of great importance to the public. The same may be said of the requirement of *locus standi* which is a mere procedural requisite.

G.R. No. 218924

The First E-Bank faults the Court of Appeals with grave abuse of discretion amounting to lack or excess of jurisdiction

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when the latter dismissed the former's appeal from the trial court's Resolution dated September 5, 2013 and Order dated December 18, 2013.

A petition for *certiorari* is proper where the impugned dispositions, as in this case, are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[26] More so where a petition for review on *certiorari* does not appear to be a plain, speedy, and adequate remedy to address the First E- Bank's urgent concerns on its accumulated supposed tax liabilities which will never get halted until the validity of RMC No. 65-2012 is finally resolved, and considerations of public welfare and public policy compel the speedy resolution of the cases through the extraordinary remedy of *certiorari*.

The Court, in some instances, allowed a petition for *certiorari* to prosper notwithstanding the availability of appeal. ***Mallari v. Banco Filipino Savings & Mortgage Bank***[27] enumerates these instances, *viz.:*

> Indeed, the Court in some instances has allowed a petition for *certiorari* to prosper notwithstanding the availability of an appeal, such as, (a) when public welfare and the advancement of public policy dictate it; (b) when the broader interest of justice so requires; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority.

So must it be.

G.R. No. 215801

On the part of the BIR, *et al*., they opted to pursue the regular route under Rule 45 of the Revised Rules of Court. Surely, being the beneficiary of the taxes paid by the First E-Bank, the State has no compelling need to avail of the extraordinary remedy under Rule 65. At any rate, Rule 45 is undoubtedly an available remedy in the ordinary course of law.

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[26] See *Rural Bank of Calinog (Iloilo), Inc. v. Court of Appeals*, G.R. No. 146519, August 8, 2005.

[27] G.R. No. 157660, 585 Phil. 657, 662 (2008).

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The parties' resort to the Court of Appeals was proper in light of the then prevailing jurisprudence

We now resolve the issue of jurisdiction.

Section 7 of Republic Act No. 9282 (RA 9282)[28] outlines the appellate jurisdiction of the Court of Tax Appeals, *viz.:*

Sec. 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 of internal revenue taxes, fees or other charges, penalties in relations 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;

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

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[28] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

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5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7. Decisions of the Secretary of Trade and Industry, in the case of non-agricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

On August 30, 2008, the Court *en banc* decreed in ***British American Tobacco v. Camacho, et al.*** [29] that the Court of Tax Appeals did not have jurisdiction to pass upon the constitutionality or validity of a law or rule, thus:

While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. **Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts**. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the

[29] 584 Phil. 489, 511 (2008).

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acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

The prevailing *dictum* then was only regular courts had jurisdiction to pass upon the constitutionality or validity of tax laws and regulations.

On February 4, 2014, the Court *en banc* recognized that the Court of Tax Appeals possessed all such implied, inherent, and incidental powers necessary to the full and effective exercise of its appellate jurisdiction over tax cases. ***City of Manila v. Judge Grecia-Cuerdo***[30] is relevant, thus:

A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

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[30] 726 Phil. 9, 26-27 (2014).

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Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance. (Emphasis supplied)

Consequently, the Court held that the authority of the Court of Tax Appeals to take cognizance of petitions for *certiorari* against interlocutory orders of the RTC in local tax cases was deemed included in the authority or jurisdiction granted it by law.

The Court underscored that the grant of appellate jurisdiction to the Court of Tax Appeals included such power necessary to exercise it effectively. Besides, a split-jurisdiction between the Court of Tax Appeals and the Court of Appeals is anathema to the orderly administration of justice. *"The Court cannot accept that such was the legislative motive, especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role*

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of judicial review over local tax cases without mention of any other court that may exercise such power."[31]

On August 16, 2016, in ***Banco de Oro v. Republic of the Phils., et al.,***[32] the Court *en banc* pronounced in no uncertain terms that the Court of Tax Appeals had jurisdiction to rule on the constitutionality or validity of a tax law or regulation or administrative issuance, *viz.*:

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all maters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality

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[31] *Id.*

[32] 793 Phil. 97, 124-125 (2016).

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or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7 (1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424. (Emphasis supplied)

Banco de Oro further stressed that such undoubted jurisdiction is exclusively vested in the Court of Tax Appeals whether it is raised by the taxpayer directly or as a defense.

Here, following the trial court's denial of their respective motions for reconsideration, the parties appealed to the Court of Appeals. On June 26, 2014, the Court of Appeals dismissed the appeals, and on November 27, 2014, denied the parties' motions for reconsideration.[33]

Based on this sequence of events, the whole time the case was ongoing below, the prevailing doctrine had been *British American Tobacco* ordaining that the Court of Tax Appeals did not have jurisdiction to decide the validity or constitutionality of laws or rules. Consequently, the parties correctly elevated the trial court's resolution to the Court of Appeals, which should have taken cognizance of, and resolved, the appeals on the merits.

RMC No. 65-2012 is invalid

We now turn to the substantive issue: Is RMC No. 65-2012 valid?

a) A condominium corporation is not engaged in trade or business

[33] G.R. No. 215801, *rollo,* pp. 26-27.

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The issue on whether association dues, membership fees, and other assessments/charges collected by a condominium corporation in the usual course of trade or business is not novel. ***Yamane v. BA Lepanto Condominium Corp.***[34] positively resolved it, *viz.:*

Obviously, none of these stated corporate purposes are geared towards maintaining a livelihood or the obtention of profit. Even though the Corporation is empowered to levy assessments or dues from the unit owners, these amounts collected are not intended for the incurrence of profit by the Corporation or its members, but to shoulder the multitude of necessary expenses that arise from the maintenance of the Condominium Project. Just as much is confirmed by Section 1, Article V of the Amended By-Laws, which enumerate the particular expenses to be defrayed by the regular assessments collected from the unit owners. These would include the salaries of the employees of the Corporation, and the cost of maintenance and ordinary repairs of the common areas.

The City Treasurer nonetheless contends that the collection of these assessments and dues are "with the end view of getting full appreciative living values" for the condominium units, and as a result, profit is obtained once these units are sold at higher prices. The Court cites with approval the two counterpoints raised by the Court of Appeals in rejecting this contention. First, if any profit is obtained by the sale of the units, it accrues not to the corporation but to the unit owner. Second, if the unit owner does obtain profit from the sale of the corporation, the owner is already required to pay capital gains tax on the appreciated value of the condominium unit.

Moreover, the logic on this point of the City Treasurer is baffling. By this rationale, every Makati City car owner may be considered as being engaged in business, since the repairs or improvements on the car may be deemed oriented towards appreciating the value of the car upon resale. **There is an evident distinction between persons who spend on repairs and improvements on their personal and real property for the purpose of increasing its resale value, and those who defray such expenses for the purpose of preserving the property. The vast majority of persons fall under the second category, and it would be highly specious to subject these persons to local business taxes. The profit motive in such cases is hardly**

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[34] 510 Phil. 750, 775-777 (2005).

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the driving factor behind such improvements, if it were contemplated at all. Any profit that would be derived under such circumstances would merely be incidental, if not accidental.

Besides, we shudder at the thought of upholding tax liability on the basis of the standard of "full appreciative living values," a phrase that defies statutory explication, commonsensical meaning, the English language, or even definition from Google." **The exercise of the power of taxation constitutes a deprivation of property under the due process clause, and the taxpayer's right to due process is violated when arbitrary or oppressive methods are used in assessing and collecting taxes. The fact that the Corporation did not fall within the enumerated classes of taxable businesses under either the Local Government Code or the Makati Revenue Code already forewarns that a clear demonstration is essential on the part of the City Treasurer on why the Corporation should be taxed anyway.** "Full appreciative living values" is nothing but blather in search of meaning, and to impose a tax hinged on that standard is both arbitrary and oppressive.

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Again, whatever capacity the Corporation may have pursuant to its power to exercise acts of ownership over personal and real property is limited by its stated corporate purposes, which are by themselves further limited by the Condominium Act. A condominium corporation, while enjoying such powers of ownership, is prohibited by law from transacting its properties for the purpose of gainful profit. (Emphasis supplied)

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Yamane did emphasize that a corporation condominium is not designed to engage in activities that generate income or profit. A discussion on the nature of a condominium corporation is, indubitably, in order.

The creation of the condominium corporation is sanctioned by Republic Act No. 4726 (RA 4726)[35] (The Condominium Act). Under the law, a condominium is an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common,

[35] AN ACT TO DEFINE CONDOMINIUM, ESTABLISH REQUIREMENTS FOR ITS CREATION, AND GOVERN ITS INCIDENTS.

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directly or indirectly, in the land on which it is located and in other common areas of the building. To enable the orderly administration over these common areas which the unit owners jointly own, RA 4726 permits the creation of a condominium corporation for the purpose of holding title to the common areas. The unit owners shall in proportion to the appurtenant interests of their respective units automatically be members or shareholders of the condominium corporation to the exclusion of others.[36]

Sections 10 and 22 of RA 4726 focus on the non-profit purpose of a condominium corporation. Under Section 10,[37] the corporate purposes of a condominium corporation are limited to holding the common areas, either in ownership or any other interest in real property recognized by law; management of the project; and to such other purposes necessary, incidental, or convenient to the accomplishment of these purposes. Additionally, Section 10 prohibits the articles of incorporation or by-laws of the condominium corporation from containing any provisions contrary to the provisions of RA 4726, the enabling or master deed, or the declaration of restrictions of the condominium project.[38]

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[36] Section 2, RA 8424 (The Condominium Act).

[37] Sec. 10. Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purposes of such a corporation shall be limited to the holding of the common areas, either in ownership or any other interest in real property recognized by law, to the management of the project, and to such other purposes as may be necessary, incidental or convenient to the accomplishment of said purposes. The articles of incorporation or by-laws of the corporation shall not contain any provision contrary to or inconsistent with the provisions of this Act, the enabling or master deed, or the declaration of restrictions of the project. Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation.

[38] *Yamane v. BA Lepanto Condominium Corp.*, 510 Phil. 750, 773-774 (2005).

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Also, under Section 22,[39] the condominium corporation, as the management body, may only act for the benefit of the condominium owners in disposing tangible and intangible personal property by sale or otherwise in proportion to the condominium owners' respective interests in the common areas.

Further, Section 9[40] allows a condominium corporation to provide for the means by which it should be managed.

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[39] Sec. 22. Unless otherwise provided for by the declaration of restrictions, the management body, provided for herein, may acquire and hold, for the benefit of the condominium owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the condominium owners in the same proportion as their respective interests in the common areas. A transfer of a condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

[40] Sec. 9. The owner of a project shall, prior to the conveyance of any condominium therein, register a declaration of restrictions relating to such project, which restrictions shall constitute a lien upon each condominium in the project, and shall insure to and bind all condominium owners in the project. Such liens, unless otherwise provided, may be enforced by any condominium owner in the project or by the management body of such project. The Register of Deeds shall enter and annotate the declaration of restrictions upon the certificate of title covering the land included within the project, if the land is patented or registered under the Land Registration or Cadastral Acts.

The declaration of restrictions shall provide for the management of the project by anyone of the following management bodies: a condominium corporation, an association of the condominium owners, a board of governors elected by condominium owners, or a management agent elected by the owners or by the board named in the declaration. It shall also provide for voting majorities quorums, notices, meeting date, and other rules governing such body or bodies. Such declaration of restrictions, among other things, may also provide:

(a) As to any such management body;

(1) For the powers thereof, including power to enforce the provisions of the declarations of restrictions;

(2) For maintenance of insurance policies, insuring condominium owners against loss by fire, casualty, liability, workmen's compensation and other insurable risks, and for bonding of the members of any management body;

(3) Provisions for maintenance, utility, gardening and other services benefiting the common areas, for the employment of personnel necessary

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Specifically, it authorizes a condominium corporation to collect association dues, membership fees, and other assessments/ charges for: a) maintenance of insurance policies; b) maintenance, utility, gardening and other services benefiting the common areas, for the employment of personnel necessary for the operation of the building, and legal, accounting and

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for the operation of the building, and legal, accounting and other professional and technical services;

(4) For purchase of materials, supplies and the like needed by the common areas;

(5) For payment of taxes and special assessments which would be a lien upon the entire project or common areas, and for discharge of any lien or encumbrance levied against the entire project or the common areas;

(6) For reconstruction of any portion or portions of any damage to or destruction of the project;

(7) The manner for delegation of its powers;

(8) For entry by its officers and agents into any unit when necessary in connection with the maintenance or construction for which such body is responsible;

(9) For a power of attorney to the management body to sell the entire project for the benefit of all of the owners thereof when partition of the project may be authorized under Section 8 of this Act, which said power shall be binding upon all of the condominium owners regardless of whether they assume the obligations of the restrictions or not.

(b) The manner and procedure for amending such restrictions: Provided, That the vote of not less than a majority in interest of the owners is obtained.

(c) For independent audit of the accounts of the management body;

(d) For reasonable assessments to meet authorized expenditures, each condominium unit to be assessed separately for its share of such expenses in proportion (unless otherwise provided) to its owners fractional interest in any common areas;

(e) For the subordination of the liens securing such assessments to other liens either generally or specifically described;

(f) For conditions, other than those provided for in Sections eight and thirteen of this Act, upon which partition of the project and dissolution of the condominium corporation may be made. Such right to partition or dissolution may be conditioned upon failure of the condominium owners to rebuild within a certain period or upon specified inadequacy of insurance proceeds, or upon specified percentage of damage to the building, or upon a decision of an arbitrator, or upon any other reasonable condition.

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other professional and technical services; c) purchase of materials, supplies and the like needed by the common areas; d) reconstruction of any portion or portions of any damage to or destruction of the project; and e) reasonable assessments to meet authorized expenditures.

In fine, the collection of association dues, membership fees, and other assessments/charges is purely for the benefit of the condominium owners. It is a necessary incident to the purpose to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance.

As held in ***Yamane*** *"[t]he profit motive in such cases is hardly the driving factor behind such improvements, if it were contemplated at all. Any profit that would be derived under such circumstances would merely be incidental, if not accidental."* More, a condominium corporation is especially formed for the purpose of holding title to the common area and exists only for the benefit of the condominium owners. Nothing more.

RMC No. 65-2012, sharply departs from ***Yamane*** and the law on condominium corporations. It invalidly declares that the amounts paid as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter, thus, subject to income tax, value-added tax, and withholding tax. The reason given — a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments, consequently, these payments constitute taxable income or compensation for beneficial services it provides to its members and tenants, hence, subject to income tax, value-added tax, and withholding tax.

We cannot agree.

b) Association dues, membership fees, and other assessments/charges are not subject to income tax, value-added tax and withholding tax

First. Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a

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definite period of time. Income is gain derived and severed from capital.[41] Republic Act No. 8424 (RA 8424)[42] or the Tax Reform Act of 1997 was in effect when RMC No. 65-2012 was issued on October 31, 2012. In defining taxable income, Section 31 of RA 8424 states:

> Section 31. Taxable Income Defined.— The term taxable income means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws.

Gross income means income derived from whatever source, including compensation for services; the conduct of trade or business or the exercise of a profession; dealings in propetiy; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership,[43] among others.

On December 19, 2017, Section 31 was amended by Republic Act No. 10963 (RA 10963)[44] (The TRAIN Law). The provision now reads:

> Sec. 31. Taxable Income Defined. — The term "taxable income" means the pertinent items of gross income specified in this Code, less deductions if any, authorized for such types of income by this Code or other special laws.

There is no substantial difference between the original definition under RA 8424 and the subsequent definition under the TRAIN Law. The only difference is that the phrase *"and/or personal and additional exemptions"* was deleted. Still, both the former and current definitions are consistent— 'taxable income' refers to *"the pertinent items of gross income specified*

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[41] *Chamber of Real Estate and Builders' Assn., Inc. v. Hon. Executive Sec. Romulo, et al.*, 562 Phil. 508, 530 (2010).

[42] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

[43] See *CIR v. PAL*, 535 Phil. 95, 106 (2006).

[44] Tax Reform for Acceleration and Inclusion (TRAIN) Act.

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in this Code." A comparison of RA 8424 and the TRAIN Law shows the items under gross income insofar as they are relevant to the present case, *viz.:*

RA 8424[45] **(the law in effect when RMC No. 65- 2012 was issued on October 31, 2012)**	**RA 10963 (signed into law on December 19, 2017 and took effect on January 1, 2018)**
Section 32. *Gross Income.* —	**Section 32.** *Gross Income.*—
(A) *General Definition.* — Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:	(A) *General Definition.* — Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;	(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
(2) Gross income derived from the conduct of trade or business or the exercise of a profession;	(2) Gross income derived from the conduct of trade or business or the exercise of a profession;
x x x	x x x

Section 32 of RA 8424 does not include association dues, membership fees, and other assessments/charges collected by condominium corporations as sources of gross income. The subsequent amendment under the TRAIN Law substantially replicates the old Section 32.

Clearly, RMC No. 65-2012 expanded, if not altered, the list of taxable items in the law. RMC No. 65-2012, therefore, is void. Besides, where the basic law and a rule or regulation are in conflict, the basic law prevails.[46]

As established in ***Yamane,*** the expenditures incurred by condominium corporations on behalf of the condominium owners

[45] As amended by Republic Act Nos. 8424, 9337, 9442, and 9504.

[46] *PAGCOR v. BIR,* 660 Phil. 636, 664 (2011).

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are not intended to generate revenue nor equate to the cost of doing business.

In the very recent case of ***ANPC v. BIR,***[47] the Court pronounced that membership fees, assessment dues, and other fees collected by recreational clubs are not subject to income tax, thus:

> As corectly argued by ANPC, **membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members. They represent funds "held in trust" by these clubs to defray their operating and general costs and hence, only constitute infusion of capital.**
>
> Case law provides that in order to constitute "income," there must be realized "gain." Clearly, because of the nature of membership fees and assessment dues as funds inherently dedicated for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, nothing is to be gained from their collection. This stands in contrast to the tees received by recreational clubs coming from their income-generating facilities, such as bars, restaurants, and food concessionaires, or from income-generating activities, like the renting out of sports equipment, services, and other accommodations: In these latter examples, regardless of the purpose of the fees' eventual use, gain is already realized from the moment they are collected because capital maintenance, preservation. or upkeep is not their pre-determined purpose. As such, recreational clubs are generally free to use these fees for whatever purpose they desire and thus, considered as unencumbered "fruits" coming from a business transaction.
>
> **Further, given these recreational clubs' non-profit nature, membership fees and assessment dues cannot be considered as funds that would represent these clubs' interest or profit from any investment. In fact, these fees are paid by the clubs' members without any expectation of any yield or gain (unlike in stock subscriptions), but only for the above-stated purposes and in order to retain their membership therein.**
>
> **In fine, for as long as these membership fees, assessment dues, and the like are treated as collections by recreational clubs from**

[47] G.R. No. 228539, June 26, 2019.

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their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as "the income of recreational clubs from whatever source" that are "subject to income tax. Instead, they only form part of capital from which no income tax may be collected or imposed. (Emphasis supplied)

Similarly, therefore, association dues, membership fees, and other assessments/charges are not subject to income tax because they do not constitute profit or gain. To repeat, they are collected purely for the benefit of the condominium owners and are the incidental consequence of a condominium corporation's responsibility to effectively oversee, maintain, or even Improve the common areas of the condominium as well as its governance.

Second. Association dues, membership fees, and other assessments/charges do not arise from transactions involving the sale, barter, or exchange of goods or property. Nor are they generated by the performance of services. As such, they are not subject to value-added tax per Section 105 of RA 8424, *viz.*:

Section 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

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The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being course of trade or business. (Emphasis supplied)

The value-added tax is a burden on transactions imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto, so much so that even a non-stock, non-profit organization or government entity, is liable to pay value-added tax on the sale of goods or services.[48]

Section 106 of RA 8424 imposes value-added tax on the sale of goods and properties. The term 'goods' or 'properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation. These 'goods' or 'properties' include real property, intellectual property, equipment, and rights over motion picture films.[49] Section 106 of RA 8424 likewise imposes value-added tax on transactions such as transfer of goods, properties, profits, or inventories.[50]

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[48] *CIR v. Negros Consolidated Farmers Multi-Purpose Cooperative*, G.R. No. 212735, December 5, 2018.

[49] The term 'goods' or 'properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include: a) real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; b) the right or the privilege to use patent, copyright, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right; c) the right or the privilege to use in the Philippines of any industrial, commercial or scientific equipment; d) the right or the privilege to use motion picture films, tapes and discs; and e) radio, television, satellite transmission and cable television time.

[50] Section 106 of RA 8424 likewise imposes VAT on the following transactions: 1) transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business; 2) distribution or transfer to shareholders or investors as share in the profits of the VAT-registered persons; 3) distribution or transfer of profits of VAT-registered persons to creditors in payment of debt; 4) consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and 5) retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

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Section 108 of RA 8424 further imposes value-added tax on sale of services and use or lease of properties. It defines "sale or exchange of services," as follows:

The phrase **'sale or exchange of services'**[51] means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest-houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise

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[51] The phrase 'sale or exchange of services' shall likewise include: a) the lease or the use of or the right or privilege to use any copyright, patent, design or model, plan secret formula or process, goodwill, trademark, trade brand or other like property or right; 2) the lease of the use of, or the right to use of any industrial, commercial or scientific equipment; 3) the supply of scientific, technical, industrial or commercial knowledge or information; 4) the supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right or any such knowledge or information; 5) the supply of services by a non-resident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such non-resident person; 6) the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; 7) the lease of motion picture films, films, tapes and discs; and 8) the lease or the use of or the right to use radio, television, satellite transmission and cable television time.

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grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. x x x

The phrase 'sale or exchange of services' shall include the use of intellectual property, use of certain types of equipment, supplying certain types of knowledge or information, lease of motion picture films, and use of transmission or air time.

Both under RA 8424 (Sections 106, 107,[52] and 108) and the TRAIN Law, there, too, is no mention of association dues, membership fees, and other assessments/charges collected by condominium corporations being subject to VAT. And rightly so. For when a condominium corporation manages, maintains, and preserves the common areas in the building, it does so only for the benefit of the condominium owners. It cannot be said to be engaged in trade or business, thus, the collection of association dues, membership fees, and other assessments/ charges is not a result of the regular conduct or pursuit of a commercial or an economic activity, or any transactions incidental thereto.

Neither can it be said that a condominium corporation is rendering services to the unit owners for a fee, remuneration or consideration. Association dues, membership fees, and other assessments/charges form part of a pool from which a condominium corporation must draw funds in order to bear the costs for maintenance, repair, improvement, reconstruction expenses and other administrative expenses.

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[52] x x x There shall be levied, assessed and collected on every importation of goods a value-added tax x x x based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: Provided, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any, x x x

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Indisputably, the nature and purpose of a condominium corporation negates the *carte blanche* application of our value-added tax provisions on its transactions and activities. ***CIR v. Magsaysay Lines, Inc.,***[53] stated:

> Yet VAT is not a singular-minded tax on every transactional level. Its assessment bears direct relevance to the taxpayer's role or link in the production chain. Hence, as affirmed by Section 99 of the Tax Code and its subsequent incarnations, **the tax is levied only on the sale, barter or exchange of goods or services by persons who engage in such activities, in the course of trade or business. These transactions outside the course of trade or business may invariably contribute to the production chain, but they do so only as a matter of accident or incident. As the sales of goods or services do not occur within the course of trade or business, the providers of such goods or services would hardly, if at all, have the opportunity to appropriately credit any VAT liability as against their own accumulated VAT collections since the accumulation of output VAT arises in the first place only through the ordinary course of trade or business**. (Emphasis supplied)

Too, ***ANPC***[54] held that membership fees, assessment dues, and the like collected by recreational clubs are not subject to value-added tax *"because in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/maintenance of the facilities of the organization. As such, there could be no 'sale, barter or exchange of goods or properties, or sale of a service' to speak of, which would then be subject to VAT under the 1997 NIRC."* This principle equally applies to condominium corporations which are similarly situated with recreational clubs insofar as membership fees, assessment dues, and other fees of similar nature collected from condominium owners are devoted to the operations and maintenance of the facilities of the condominium. In sum, RMC No. 65-2012 illegally imposes

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[53] 529 Phil. 64, 73 (2006).

[54] *Id.*

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value-added tax on association dues, membership fees, and other assessments/charges collected and received by condominium corporations.

Third. The withholding tax system was devised for three (3) primary reasons, *i.e.* — (1) to provide taxpayers a convenient manner to meet their probable income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.[55] Succinctly put, withholding tax is intended to facilitate the collection of income tax. And if there is no income tax, withholding tax cannot be collected.

Section 57 of RA 8424 directs that only income, be it active or passive, earned by a payor-corporation can be subject to withholding tax, *viz.*:

> Section 57. Withholding of Tax at Source.—
>
> (A) Withholding of Final Tax on Certain Incomes.— Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(l); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E), 27(D)(l), 27(D)(2), 27(D)(3), 27(D)(5), 28 (A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7) (c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.
>
> (B) Withholding of Creditable Tax at Source.— The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/

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[55] *COURAGE v. Commissioner, Bureau of Internal Revenue*, G.R. No. 213446, July 3, 2018.

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persons as provided for by law, at the rate of not less than one percent (l%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

x x x x x x x x x

Although Section 57 (B) was later amended by the TRAIN Law, it still decrees that the withholding of tax covers only the income payable to natural or juridical persons, thus:

Sec. 57. Withholding of Tax at Source.—

(A) x x x —

(B) Withholding of Creditable Tax at Source. — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/ persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year: Provided, That, beginning January 1, 2019, the rate of withholding shall not be less than one percent (1%) but not more than fifteen percent (15%) of the income payment.

x x x x x x x x x

Yamane aptly stated "*[e]ven though the Corporation is empowered to levy assessments or dues from the unit owners, these amounts collected are not intended for the incurrence of profit by the Corporation or its members, but to shoulder the multitude of necessary expenses that arise from the maintenance of the Condominium Project.*"

Fourth. Section 4 of RA 8424 empowers the BIR Commissioner to interpret tax laws and to decide tax cases:

SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

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The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

But the BIR Commissioner cannot, in the exercise of such power, issue administrative rulings or circulars inconsistent with the law to be implemented. Administrative issuances must not override, supplant, or modify the law, they must remain consistent with the law intended to carry out. Surely, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.[56]

As shown, the BIR Commissioner expanded or modified the law when she declared that association dues, membership fees, and other assessments/charges are subject to income tax, value-added tax, and withholding tax. In doing so, she committed grave abuse of discretion amounting to lack or excess of jurisdiction. As to what constitutes 'grave abuse of discretion' and when a government branch, agency, or instrumentality is deemed to have committed it, ***Kilusang Mayo Uno v. Aquino III***[57] instructs:

> Grave abuse of discretion denotes a "capricious, arbitrary[,] and whimsical exercise of power. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as not to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."
>
> Any act of a government branch, agency, or instrumentality that violates a statute or a treaty is grave abuse of discretion. However, **grave abuse of discretion pertains to acts of discretion exercised in areas outside an agency's granted authority and, thus, abusing the power granted to it**. Moreover, it is the agency's exercise of its

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[56] *Id.*

[57] G.R. No. 210500, April 2, 2019.

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power that is examined and adjudged, not whether its application of the law is correct. (Emphasis supplied)

In sum, the BIR Commissioner is empowered to interpret our tax laws but not expand or alter them. In the case of RMC No. 65-2012, however, the BIR Commissioner went beyond, if not, gravely abused such authority.

If proper, the First E-Bank may recover the consignated amounts, through a separate action or proceeding

The general rule is that a void law or administrative act cannot be the source of legal rights or duties. Article 7 of the Civil Code enunciates this general rule, as well as its exception: "*Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary. When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.*"[58] Jurisprudence is replete with instances when this Court had directed the refund of taxes that were paid under invalid tax measures, thus:

1) In ***Icard v. The City Council of Baguio,***[59] this Court held that the City of Baguio's ordinances, namely, Ordinance No. 6 -V (which imposed an amusement tax of 0.20 for each person entering a night club) and Ordinance No. 11 -V (which provides for a property tax on motor vehicles) were *ultra vires.* As a consequence, this Court ordered the City of Baguio to refund to petitioner-appellee in that case the sum of ₱254.80 which he paid as amusement tax.

2) In ***Matalin Coconut Co., Inc. v. The Municipal Council of Malabang***[60] the Court agreed with the trial court's finding that the Municipality of Malabang's Municipal

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[58] *CIR v. San Roque Power Corporation,* 719 Phil. 137, 157 (2013).

[59] 83 Phil. 870 (1949).

[60] 227 Phil. 370 (1986).

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Ordinance No. 45-66, imposing a "police inspection fee" of ₱0.30 per sack of cassava starch or flour was an invalid act of taxation. The trial court's directive to the municipal treasurer *"to refund to the petitioner the payments it made under the said ordinance from September 27, 1966 to May 2, 1967, amounting to ₱25,500.00, as well as all payments made subsequently thereafter"* was likewise affirmed by this Court.

3) In *Cagayan Electric Power and Light, Co. Inc. v. City of Cagayan de Oro,*[61] this Court directed the City of Cagayan de Oro to refund to CEPALCO the tax payments made by the latter *"on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at ten percent (10%) of the annual rental income derived from such lease or rental"* after the city's tax Ordinance No. 9503-2005 was declared invalid.

Petitioner resorted to judicial consignation of its alleged tax payments in the court, thus, reckons with the requirements of judicial consignation, *viz.:* (1) a debt due; (2) the creditor to whom tender of payment was made refused without just cause to accept the payment, or the creditor was absent, unknown or incapacitated, or several persons claimed the same right to collect, or the title of the obligation was lost; (3) the person interested in the performance of the obligation was given notice before consignation was made; (4) the amount was placed at the disposal of the court; and (5) the person interested in the performance of the obligation was given notice after the consignation was made.[62]

Here, it is imperative to determine whether the First E-Bank actually complied with the requirements for judicial consignation. This is a question of fact which by this Court, not being a trial court cannot pass upon. The trial court, therefore, thus correctly held that the First E-Bank may initiate the appropriate motion for the release of the consignated funds, upon finality of the judicial determination on the validity of RMC No. 65-2012

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[61] 698 Phil. 788, 793 (2012).

[62] *Dalton v. FGR Realty and Dev't. Corp.,* 655 Phil. 93, 97-98 (2011).

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and only after it has determined the presence of the requirements for judicial consignation.

A final word

RMC No. 65-2012 is invalid for ordaining that *"gross receipts of condominium corporations including association dues, membership fees, and other assessments/charges are subject to VAT, income tax and income payments made to it are subject to applicable withholding taxes."* A law will not be construed as imposing a tax unless it does so clearly and expressly. In case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.[63] Taxes, as burdens that must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares.[64]

ACCORDINGLY, the Court **RESOLVES:**

1) To **REVERSE** and **SET ASIDE** the assailed Resolutions dated June 26, 2014 and November 27, 2014 of the Court of Appeals in CA-G.R. CV No. 102266;

2) To **DENY** the Petition for Review dated February 17, 2015 in G.R. No. 215801 and the Special Civil Action for *Certiorari* dated February 12, 2015 in G.R. No. 218924; and

3) To **AFFIRM** the Resolution dated September 5, 2013 and Order dated December 18, 2013 of the Regional Trial Court, Branch 146, Makati City in Special Civil Action No. 12-1236.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.,* concur.

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[63] See *CIR v. SM Prime Holdings, Inc.*, 627 Phil. 581 (2010).

[64] *Philacor Credit Corporation v. CIR*, 703 Phil. 26, 46 (2013).