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SECOND DIVISION

[G.R. No. 154993. October 25, 2005]

LUZ R. YAMANE, in her capacity as the CITY TREASURER OF MAKATI CITY, *petitioner, vs.* **BA LEPANTO CONDOMINIUM CORPORATION,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; BATAS PAMBANSA BLG. 129; COURT OF APPEALS; APPELLATE JURISDICTION; ENCOMPASSES EVEN REVIEW OF DECISIONS OF OFFICERS IN THE EXECUTIVE BRANCHES OF GOVERNMENT. — The stringent concept of original jurisdiction may seemingly be neutered by Rule 43 of the 1997 Rules of Civil Procedure, Section 1 of which lists a slew of administrative agencies and quasi-judicial tribunals or their officers whose decisions may be reviewed by the Court of Appeals in the exercise of its appellate jurisdiction. However, the basic law of jurisdiction, Batas Pambansa Blg. 129 (B.P. 129), ineluctably confers appellate jurisdiction on the Court of Appeals over final rulings of quasi-judicial agencies, instrumentalities, boards or commission, by explicitly using the phrase "appellate jurisdiction." The power to create or characterize jurisdiction of courts belongs to the legislature. While the traditional notion of appellate jurisdiction connotes judicial review over lower court decisions, it has to yield to statutory redefinitions that clearly expand its breadth to encompass even review of decisions of officers in the executive branches of government.

2. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; DOES NOT EXPRESSLY CONFER APPELLATE JURISDICTION ON THE PART OF REGIONAL TRIAL COURTS FROM THE DENIAL OF A TAX PROTEST BY A LOCAL TREASURER. — Yet significantly, the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer. On the other hand, Section 22 of B.P. 129 expressly delineates

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the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts. Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities.

3. TAXATION; REPUBLIC ACT NO. 9282; COURT OF TAX APPEALS; EXERCISES EXCLUSIVE APPELLATE JURISDICTION TO REVIEW ON APPEAL DECISIONS, ORDERS OR RESOLUTIONS OF THE REGIONAL TRIAL COURTS IN LOCAL TAX CASES. — Republic Act No. 9282 definitively proves in its Section 7(a)(3) that the CTA exercises exclusive appellate jurisdiction to review on appeal 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. Moreover, the provision also states that the review is triggered "by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure."

4. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; SHOULD BE CLEARLY CONFERRED AND SHOULD NOT BE DEEMED TO EXIST ON MERE IMPLICATIONS. — Republic Act No. 9282, however, would not apply to this case simply because it arose prior to the effectivity of that law. To declare otherwise would be to institute a jurisdictional rule derived not from express statutory grant, but from implication. The jurisdiction of a court to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere implications, and this settled rule would be needlessly emasculated should we declare that the Corporation's position is correct in law.

5. ID.; STATUTORY CONSTRUCTION; ALL PROCEDURAL RULES SHOULD NOT BE ENFORCED BLINDLY, ESPECIALLY IF MECHANICAL APPLICATION WOULD DEFEAT THE HIGHER ENDS THAT ANIMATES OUR CIVIL PROCEDURE. — Be that as it may, characteristic of all procedural rules is adherence to the precept that they should not be enforced blindly, especially if mechanical application would defeat the higher ends that animates our civil procedure—the just, speedy and inexpensive disposition of every action and proceeding. Indeed, we have

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repeatedly upheld—and utilized ourselves—the discretion of courts to nonetheless take cognizance of petitions raised on an erroneous mode of appeal and instead treat these petitions in the manner as they should have appropriately been filed.

6. ID.; CIVIL PROCEDURE; THERE IS WIDER LATITUDE TO REFUSE COGNIZANCE OVER A PETITION FOR REVIEW UNDER RULE 42 THAN AN ORDINARY APPEAL UNDER RULE 41. — There is wider latitude on the part of the Court of Appeals to refuse cognizance over a petition for review under Rule 42 than it would have over an ordinary appeal under Rule 41. Under Section 13, Rule 41, the stated grounds for the dismissal of an ordinary appeal prior to the transmission of the case records are when the appeal was taken out of time or when the docket fees were not paid. On the other hand, Section 6, Rule 42 provides that in order that the Court of Appeals may allow due course to the petition for review, it must first make a *prima facie* finding that the lower court has committed an error that would warrant the reversal or modification of the decision under review. There is no similar requirement of a *prima facie* determination of error in the case of ordinary appeal, which is perfected upon the filing of the notice of appeal in due time.

7. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE OF 1991; PROVIDES FOR COMPREHENSIVE INSTANCES WHEN AND HOW LOCAL GOVERNMENT UNITS MAY IMPOSE TAXES. — The power of local government units to impose taxes within its territorial jurisdiction derives from the Constitution itself, which recognizes the power of these units "to create its own sources of revenue and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy." These guidelines and limitations as provided by Congress are in main contained in the Local Government Code of 1991 (the "Code"), which provides for comprehensive instances when and how local government units may impose taxes. The significant limitations are enumerated primarily in Section 133 of the Code, which include among others, a prohibition on the imposition of income taxes except when levied on banks and other financial institutions.

8. TAXATION; NOTICE OF ASSESSMENT; SHOULD BE SUFFICIENTLY INFORMATIVE TO APPRISE THE TAXPAYER

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THE LEGAL BASIS OF THE TAX. — Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. x x x Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local Government Code alone. What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body.

9. STATUTORY CONSTRUCTION; STATUTES; THE COURT CANNOT BE DISPOSED TO UPHOLD ANY TAX IMPOSITION THAT DERIVES ITS AUTHORITY FROM ENIGMATIC AND UNCERTAIN WORDS. — We do note our discomfort with the unlimited breadth and the dangerous uncertainty which are the twin hallmarks of the words "*et cetera.*" Certainly, we cannot be disposed to uphold any tax imposition that derives its authority from enigmatic and uncertain words such as "*et cetera.*" Yet we cannot even say with definiteness whether the tax imposed on the Corporation in this case is based on "*et cetera*," or on Section 3A.02(m), or on any other provision of the Revenue Code. Assuming that the assessment made on the Corporation is on a provision other than Section 3A.02(m), the main legal issue takes on a different complexion. For example, if it is based on "*et cetera*" under Section 3A.02(f), we would have to examine whether the Corporation faces analogous comparison with the other businesses listed under that provision.

10. TAXATION; BUSINESS TAXES; IN ORDER THAT THE CONDOMINIUM CORPORATION MAY BE SUBJECTED THERETO, ITS ACTIVITIES MUST FALL WITHIN THE DEFINITION OF BUSINESS. — As stated earlier, local tax on businesses is authorized under Section 143 of the Local Government Code. The word "business" itself is defined under Section 131(d) of the Code as "trade or commercial activity

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regularly engaged in as a means of livelihood or with a view to profit." This definition of "business" takes on importance, since Section 143 allows local government units to impose local taxes on businesses other than those specified under the provision. Moreover, even those business activities specifically named in Section 143 are themselves susceptible to broad interpretation. For example, Section 143(b) authorizes the imposition of business taxes on wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature. It is thus imperative that in order that the Corporation may be subjected to business taxes, its activities must fall within the defnition of business as provided in the Local Government Code.

11. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 4726 (CONDOMINIUM ACT); PERMITS THE CREATION OF A CONDOMINIUM CORPORATION. — The creation of the condominium corporation is sanctioned by Republic Act No. 4726, otherwise known as 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 are jointly owned by the various unit owners, the Condominium Act permits the creation of a condominium corporation, which is specially formed for the purpose of holding title to the common area, in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units. The necessity of a condominium corporation has not gained widespread acceptance, and even is merely permissible under the Condominium Act. Nonetheless, the condominium corporation has been resorted to by many condominium projects, such as the Corporation in this case.

12. ID.; ID.; ID.; CONDOMINIUM CORPORATION; NEITHER THE MAINTENANCE OF LIVELIHOOD NOR THE PROCUREMENT OF PROFIT, FALL WITHIN THE SCOPE OF PERMISSIBLE CORPORATE PURPOSES THEREOF. — We can elicit from the Condominium Act that a condominium corporation is precluded by statute from engaging in corporate activities other

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than the holding of the common areas, the administration of the condominium project, and other acts necessary, incidental or convenient to the accomplishment of such purposes. Neither the maintenance of livelihood, nor the procurement of profit, fall within the scope of permissible corporate purposes of a condominium corporation under the Condominium Act.

13. ID.; ID.; LOCAL GOVERNMENT CODE OF 1991; BUSINESS TAXES; TO IMPOSE A TAX HINGED ON THE STANDARD OF "FULL APPRECIATIVE LIVING VALUES" IS BOTH ARBITRARY AND OPPRESSIVE. — [W]e 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.

14. ID.; ID.; REPUBLIC ACT NO. 4726; CONDOMINIUM CORPORATION; WHILE ENJOYING THE POWERS OF OWNERSHIP IS PROHIBITED BY LAW FROM TRANSACTING ITS PROPERTIES FOR THE PURPOSES OF GAINFUL PROFIT. — [W]hatever 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.

15. ID.; ID.; ID.; ID.; GENERALLY EXEMPT FROM LOCAL BUSINESS TAXATION UNDER THE LOCAL GOVERNMENT CODE. — Accordingly, and with a significant degree of comfort, we hold that condominium corporations are generally exempt

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from local business taxation under the Local Government Code, irrespective of any local ordinance that seeks to declare otherwise.

16. ID.; ID.; ID.; ID.; ID.; EXCEPTION. — Still, we can note a possible exception to the rule. It is not unthinkable that the unit owners of a condominium would band together to engage in activities for profit under the shelter of the condominium corporation. Such activity would be prohibited under the Condominium Act, but if the fact is established, we see no reason why the condominium corporation may be made liable by the local government unit for business taxes. Even though such activities would be considered as *ultra vires*, since they are engaged in beyond the legal capacity of the condominium corporation, the principle of estoppel would preclude the corporation or its officers and members from invoking the void nature of its undertakings for profit as a means of acquitting itself of tax liability.

APPEARANCES OF COUNSEL

Office of the City Attorney for petitioner.

De Borja Medialdea Bello Guevarra & Gerodias for respondent.

D E C I S I O N

TINGA, *J.*:

Petitioner City Treasurer of Makati, Luz Yamane (City Treasurer), presents for resolution of this Court two novel questions: one procedural, the other substantive, yet both of obvious significance. The first pertains to the proper mode of judicial review undertaken from decisions of the regional trial courts resolving the denial of tax protests made by local government treasurers, pursuant to the Local Government Code. The second is whether a local government unit can, under the Local Government Code, impel a condominium corporation to pay business taxes.[1]

[1] The general authority for local government units to create their own sources of revenue through taxation is established under Section 5, Article X of the Constitution, as affirmed under Section 129 of Republic Act No. 7160 (Local Government Code).

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While we agree with the City Treasurer's position on the first issue, there ultimately is sufficient justification for the Court to overlook what is essentially a procedural error. We uphold respondents on the second issue. Indeed, there are disturbing aspects in both procedure and substance that attend the attempts by the City of Makati to flex its taxing muscle. Considering that the tax imposition now in question has utterly no basis in law, judicial relief is imperative. There are fewer indisputable causes for the exercise of judicial review over the exercise of the taxing power than when the tax is based on whim, and not on law.

The facts, as culled from the record, follow.

Respondent BA-Lepanto Condominium Corporation (the "Corporation") is a duly organized condominium corporation constituted in accordance with the Condominium Act,[2] which owns and holds title to the common and limited common areas of the BA-Lepanto Condominium (the "Condominium"), situated in Paseo de Roxas, Makati City. Its membership comprises the various unit owners of the Condominium. The Corporation is authorized, under Article V of its Amended By-Laws, to collect regular assessments from its members for operating expenses, capital expenditures on the common areas, and other special assessments as provided for in the Master Deed with Declaration of Restrictions of the Condominium.

On 15 December 1998, the Corporation received a Notice of Assessment dated 14 December 1998 signed by the City Treasurer. The Notice of Assessment stated that the Corporation is "liable to pay the correct city business taxes, fees and charges," computed as totaling ₱1,601,013.77 for the years 1995 to 1997.[3] The Notice of Assessment was silent as to the statutory basis of the business taxes assessed.

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[2] Republic Act No. 4726.

[3] Broken down as follows: Tax Deficiency from 1995 to 1997 — ₱800,855.66; 25% surcharge — ₱200,213.91; Interest — ₱601,944.20. *See* RTC Records, pp. 72-73.

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Through counsel, the Corporation responded with a written tax protest dated 12 February 1999, addressed to the City Treasurer. It was evident in the protest that the Corporation was perplexed on the statutory basis of the tax assessment.

> With due respect, we submit that the Assessment has no basis as the Corporation is not liable for business taxes and surcharges and interest thereon, under the Makati [Revenue] Code or even under the [Local Government] Code.
>
> The Makati [Revenue] Code and the [Local Government] Code do not contain any provisions on which the Assessment could be based. One might argue that Sec. 3A.02(m) of the Makati [Revenue] Code imposes business tax on owners or operators of any business not specified in the said code. We submit, however, that this is not applicable to the Corporation as the Corporation is not an owner or operator of any business in the contemplation of the Makati [Revenue] Code and even the [Local Government] Code.[4]

Proceeding from the premise that its tax liability arose from Section 3A.02(m) of the Makati Revenue Code, the Corporation proceeded to argue that under both the Makati Code and the Local Government Code, "business" is defined as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit." It was submitted that the Corporation, as a condominium corporation, was organized not for profit, but to hold title over the common areas of the Condominium, to manage the Condominium for the unit owners, and to hold title to the parcels of land on which the Condominium was located. Neither was the Corporation authorized, under its articles of incorporation or by-laws to engage in profit-making activities. The assessments it did collect from the unit owners were for capital expenditures and operating expenses.[5]

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[4] *Id*. at 74.

[5] Records, pp. 20-21.

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The protest was rejected by the City Treasurer in a letter dated 4 March 1999. She insisted that the collection of dues from the unit owners was effected primarily "to sustain and maintain the expenses of the common areas, with the end in view [sic] of getting full appreciative living values [sic] for the individual condominium occupants and to command better marketable [sic] prices for those occupants" who would in the future sell their respective units.[6] Thus, she concluded since the "chances of getting higher prices for well-managed common areas of any condominium are better and more effective that condominiums with poor [sic] managed common areas," the corporation activity "is a profit venture making [sic]."[7]

From the denial of the protest, the Corporation filed an *Appeal* with the Regional Trial Court (RTC) of Makati.[8] On 1 March 2000, the Makati RTC Branch 57 rendered a *Decision*[9] dismissing the appeal for lack of merit. Accepting the premise laid by the City Treasurer, the RTC acknowledged, in sadly risible language:

> Herein appellant, to defray the improvements and beautification of the common areas, collect [sic] assessments from its members. Its end view is to get appreciate living rules for the unit owners [sic], to give an impression to outsides [sic] of the quality of service the condominium offers, so as to allow present owners to command better prices in the event of sale.[10]

With this, the RTC concluded that the activities of the Corporation fell squarely under the definition of "business" under Section 13(b) of the Local Government Code, and thus subject to local business taxation.[11]

From this *Decision* of the RTC, the Corporation filed a *Petition for Review* under Rule 42 of the Rules of Civil Procedure with

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[6] RTC *Rollo*, p. 16.

[7] *Ibid*.

[8] Docketed as Civil Case No. 99-748.

[9] Penned by Judge Reinato G. Quilala.

[10] *Rollo*, p. 106.

[11] *Ibid*.

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the Court of Appeals. Initially, the petition was dismissed outright[12] on the ground that only decisions of the RTC brought on appeal from a first level court could be elevated for review under the mode of review prescribed under Rule 42.[13] However, the Corporation pointed out in its *Motion for Reconsideration* that under Section 195 of the Local Government Code, the remedy of the taxpayer on the denial of the protest filed with the local treasurer is to appeal the denial with the court of competent jurisdiction.[14] Persuaded by this contention, the Court of Appeals reinstated the petition.[15]

On 7 June 2002, the Court of Appeals Special Sixteenth Division rendered the *Decision*[16] now assailed before this Court. The appellate court reversed the RTC and declared that the Corporation was not liable to pay business taxes to the City of Makati.[17] In doing so, the Court of Appeals delved into jurisprudential definitions of profit,[18] and concluded that the Corporation was not engaged in profit. For one, it was held that the very statutory concept of a condominium corporation showed that it was not a juridical entity intended to make profit, as its sole purpose was to hold title to the common areas in the condominium and to maintain the condominium.[19]

The Court of Appeals likewise cited provisions from the Corporation's Amended Articles of Incorporation and Amended By-Laws that, to its estimation, established that the Corporation was not engaged in business and the assessment collected from unit owners limited to those necessary to defray the expenses

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[12] In a Resolution dated 18 May 2000.

[13] *Id*. at 64.

[14] *Id*. at 144.

[15] In a Resolution dated 25 July 2000.

[16] Penned by Justice H. Aquino, concurred in by Justices E. de los Santos and R. Maambong.

[17] *Id*. at 22.

[18] *Citing* among others, *Madrigal v. Rafferty*, 38 Phil. 414; and *Lynch v. Turrish*, 264 US 221.

[19] *Id*. at 21.

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in the maintenance of the common areas and management the condominium.[20]

Upon denial of her *Motion for Reconsideration,*[21] the City Treasurer elevated the present *Petition for Review* under Rule 45. It is argued that the Corporation is engaged in business, for the dues collected from the different unit owners is utilized towards the beautification and maintenance of the Condominium, resulting in "full appreciative living values" for the condominium units which would command better market prices should they be sold in the future. The City Treasurer likewise avers that the rationale for business taxes is not on the income received or profit earned by the business, but the privilege to engage in business. The fact that the Corporation is empowered "to acquire, own, hold, enjoy, lease, operate and maintain, and to convey sell, transfer or otherwise dispose of real or personal property" allegedly qualifies "as incident to the fact of [the Corporation's] act of engaging in business.[22]

The City Treasurer also claims that the Corporation had filed the wrong mode of appeal before the Court of Appeals when the latter filed its Petition for Review under Rule 42. It is reasoned that the decision of the Makati RTC was rendered in the exercise of original jurisdiction, it being the first court which took cognizance of the case. Accordingly, with the Corporation having pursued an erroneous mode of appeal, the RTC *Decision* is deemed to have become final and executory.

First, we dispose of the procedural issue, which essentially boils down to whether the RTC, in deciding an appeal taken from a denial of a protest by a local treasurer under Section 195 of the Local Government Code, exercises "original jurisdiction" or "appellate jurisdiction." The question assumes a measure of importance to this petition, for the adoption of the position of the City Treasurer that the mode of review of

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[20] *Ibid*.

[21] In a Resolution dated 28 August 2002.

[22] *Rollo*, p. 33.

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the decision taken by the RTC is governed by Rule 41 of the Rules of Civil Procedure means that the decision of the RTC would have long become final and executory by reason of the failure of the Corporation to file a notice of appeal.[23]

There are discernible conflicting views on the issue. The first, as expressed by the Court of Appeals, holds that the RTC, in reviewing denials of protests by local treasurers, exercises appellate jurisdiction. This position is anchored on the language of Section 195 of the Local Government Code which states that the remedy of the taxpayer whose protest is denied by the local treasurer is "*to appeal* with the court of competent jurisdiction."[24] Apparently though, the Local Government Code does not elaborate on how such "appeal" should be undertaken.

The other view, as maintained by the City Treasurer, is that the jurisdiction exercised by the RTC is original in character. This is the first time that the position has been presented to the court for adjudication. Still, this argument does find jurisprudential mooring in our ruling in *Garcia v. De Jesus*,[25] where the Court proffered the following distinction between original jurisdiction and appellate jurisdiction: "Original jurisdiction is the power of the Court to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law. Appellate jurisdiction is the authority of a Court higher in

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[23] "This Court has invariably ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirement of the rules. Failing to do so, the right to appeal is lost." See *Balgami v. Court of Appeals,* G.R. No. 131287, 9 December 2004, 445 SCRA 591.

[24] *See* Section 195, Rep. Act No. 7160 (1991).

[25] G.R. Nos. 88158 & 97108-09, 4 March 1992, 206 SCRA 779.

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rank to re-examine the final order or judgment of a lower Court which tried the case now elevated for judicial review."[26]

The quoted definitions were taken from the commentaries of the esteemed Justice Florenz Regalado. With the definitions as beacon, the review taken by the RTC over the denial of the protest by the local treasurer would fall within that court's original jurisdiction. In short, the review is the initial judicial cognizance of the matter. Moreover, labeling the said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment or order of a lower court, but of a local government official.

The stringent concept of original jurisdiction may seemingly be neutered by Rule 43 of the 1997 Rules of Civil Procedure, Section 1 of which lists a slew of administrative agencies and quasi-judicial tribunals or their officers whose decisions may be reviewed by the Court of Appeals in the exercise of its appellate jurisdiction. However, the basic law of jurisdiction, Batas Pambansa Blg. 129 (B.P. 129),[27] ineluctably confers appellate jurisdiction on the Court of Appeals over final rulings of quasi-judicial agencies, instrumentalities, boards or commission, by explicitly using the phrase "appellate jurisdiction."[28] The power to create or characterize jurisdiction of courts belongs to the legislature. While the traditional notion of appellate jurisdiction connotes judicial review over lower court decisions, it has to yield to statutory redefinitions that clearly expand its breadth to encompass even review of decisions of officers in the executive branches of government.

Yet significantly, the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer. On the other hand, Section

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[26] *Ibid*.

[27] Otherwise known as the Judiciary Reorganization Act of 1980 and since amended several times.

[28] *See* Section 9, B.P. 129.

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22 of B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts. Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities.

From these premises, it is evident that the stance of the City Treasurer is correct as a matter of law, and that the proper remedy of the Corporation from the RTC judgment is an ordinary appeal under Rule 41 to the Court of Appeals. However, we make this pronouncement subject to two important qualifications. First, in this particular case there are nonetheless significant reasons for the Court to overlook the procedural error and ultimately uphold the adjudication of the jurisdiction exercised by the Court of Appeals in this case. Second, the doctrinal weight of the pronouncement is confined to cases and controversies that emerged prior to the enactment of Republic Act No. 9282, the law which expanded the jurisdiction of the Court of Tax Appeals (CTA).

Republic Act No. 9282 definitively proves in its Section 7(a)(3) that the CTA exercises exclusive appellate jurisdiction to review on appeal 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. Moreover, the provision also states that the review is triggered "by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure."[29]

Republic Act No. 9282, however, would not apply to this case simply because it arose prior to the effectivity of that law. To declare otherwise would be to institute a jurisdictional rule derived not from express statutory grant, but from implication. The jurisdiction of a court to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere

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[29] *See* Section 9, Rep. Act No. 9282.

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implications,[30] and this settled rule would be needlessly emasculated should we declare that the Corporation's position is correct in law.

Be that as it may, characteristic of all procedural rules is adherence to the precept that they should not be enforced blindly, especially if mechanical application would defeat the higher ends that animates our civil procedure — the just, speedy and inexpensive disposition of every action and proceeding.[31] Indeed, we have repeatedly upheld — and utilized ourselves — the discretion of courts to nonetheless take cognizance of petitions raised on an erroneous mode of appeal and instead treat these petitions in the manner as they should have appropriately been filed.[32] The Court of Appeals could very well have treated the Corporation's petition for review as an ordinary appeal.

Moreover, we recognize that the Corporation's error in elevating the RTC decision for review via Rule 42 actually worked to the benefit of the City Treasurer. There is wider latitude on the part of the Court of Appeals to refuse cognizance over a petition for review under Rule 42 than it would have over an ordinary appeal under Rule 41. Under Section 13, Rule

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[30] *Philippine Ports Authority v. Fuentes*, G.R. No. 91259, 16 April 1991, 195 SCRA 790, 796, citing *Victorias Milling Co. v. CTA,* G.R. No. 66381, February 29, 1984.

[31] *See* Section 6, Rule 1, 1997 Rules of Civil Procedure.

[32] "The rules of procedure ought not to be applied in a very rigid technical sense, as they are used only to help secure, not override substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated. Consequently, in the interest of justice, the instant petition for review may be treated as a special civil action on *certiorari*. [A] petition which should have been brought under Rule 65 and not under Rule 45 of the Rules of Court, is not an inflexible rule. The strict application of procedural technicalities should not hinder the speedy disposition of the case on the merits." *Ramiscal v. Sandiganbayan*, G.R. Nos. 140576-99, 13 December 2004, 446 SCRA 166. *See* also *e.g.*, *Abcede v. Workman's Compensation Commission*, G.R. No. L-42400, August 7, 1985; *Lagua v. Cusi*, G.R. No. L-44649, April 15, 1988; *Longos Rural Waterworks v. Desierto*, G.R. No. 135496, July 30, 2002; *Rubenito v. Lagata,* G.R. No. 140959. December 21, 2004;

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41, the stated grounds for the dismissal of an ordinary appeal prior to the transmission of the case records are when the appeal was taken out of time or when the docket fees were not paid.[33] On the other hand, Section 6, Rule 42 provides that in order that the Court of Appeals may allow due course to the petition for review, it must first make a *prima facie* finding that the lower court has committed an error that would warrant the reversal or modification of the decision under review.[34] There is no similar requirement of a *prima facie* determination of error in the case of ordinary appeal, which is perfected upon the filing of the notice of appeal in due time.[35]

Evidently, by employing the Rule 42 mode of review, the Corporation faced a greater risk of having its petition rejected by the Court of Appeals as compared to having filed an ordinary appeal under Rule 41. This was not an error that worked to the prejudice of the City Treasurer.

We now proceed to the substantive issue, on whether the City of Makati may collect business taxes on condominium corporations.

We begin with an overview of the power of a local government unit to impose business taxes.

The power of local government units to impose taxes within its territorial jurisdiction derives from the Constitution itself, which recognizes the power of these units "to create its own sources of revenue and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy."[36] These guidelines and limitations as provided by Congress are in main contained in the Local Government Code of 1991 (the "Code"), which provides for comprehensive instances when and how local government units may impose taxes. The significant

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[33] *See* Section 13, Rule 41, 1997 Rules of Civil Procedure.

[34] *See* Section 6, Rule 42, 1997 Rules of Civil Procedure.

[35] *See* Section 9, Rule 41, 1997 Rules of Civil Procedure.

[36] *See* Section 5, Article X, Constitution.

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limitations are enumerated primarily in Section 133 of the Code, which include among others, a prohibition on the imposition of income taxes except when levied on banks and other financial institutions.[37] None of the other general limitations under Section 133 find application to the case at bar.

The most well-known mode of local government taxation is perhaps the real property tax, which is governed by Title II, Book II of the Code, and which bears no application in this case. A different set of provisions, found under Title I of Book II, governs other taxes imposable by local government units, including business taxes. Under Section 151 of the Code, cities such as Makati are authorized to levy the same taxes fees and charges as provinces and municipalities. It is in Article II, Title II, Book II of the Code, governing municipal taxes, where the provisions on business taxation relevant to this petition may be found.[38]

Section 143 of the Code specifically enumerates several types of business on which municipalities and cities may impose taxes. These include manufacturers, wholesalers, distributors, dealers of any article of commerce of whatever nature; those engaged in the export or commerce of essential commodities; contractors and other independent contractors; banks and financial institutions; and peddlers engaged in the sale of any merchandise or article of commerce. Moreover, the local *sanggunian* is also authorized to impose taxes on any other businesses not otherwise specified under Section 143 which the *sanggunian* concerned may deem proper to tax.

The coverage of business taxation particular to the City of Makati is provided by the Makati Revenue Code ("Revenue

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[37] *See* Section 133(a), Local Government Code.

[38] Article I, Book II, Title II, concerning provincial taxes, authorize the imposition of taxes on the business of printing and publication, on businesses enjoying a franchise, and on persons exercising a profession requiring government examination. While these are admittedly taxes imposed on businesses, they find no relevance to the present case.

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Code"), enacted through Municipal Ordinance No. 92-072. The Revenue Code remains in effect as of this writing. Article A, Chapter III of the Revenue Code governs business taxes in Makati, and it is quite specific as to the particular businesses which are covered by business taxes. To give a sample of the specified businesses under the Revenue Code which are not enumerated under the Local Government Code, we cite Section 3A.02(f) of the Code, which levies a gross receipt tax:

(f) On contractors and other independent contractors defined in Sec. 3A.01(q) of Chapter III of this Code, and on owners or operators of business establishments rendering or offering services such as: advertising agencies; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking officers for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; business management services; collecting agencies; escort services; feasibility studies; consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placement or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professional tax; medical and dental laboratories; mercantile agencies; messsengerial services; operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic, white/blue printing, Xerox, typing, and mimeographing services; rental of bicycles and/or tricycles, furniture, shoes, watches, household appliances, boats, typewriters, *etc.*; roasting of pigs, fowls, *etc.*; shipping agencies; shipyard for repairing ships for others; shops for shearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing schools/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education, Culture and Sports, (DECS), day care centers; *etc*.[39]

[39] *See* Section 3A.02(f), Makati Revenue Code.

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Other provisions of the Revenue Code likewise subject hotel and restaurant owners and operators,[40] real estate dealers, and lessors of real estate[41] to business taxes.

Should the comprehensive listing not prove encompassing enough, there is also a catch-all provision similar to that under the Local Government Code. This is found in Section 3A.02(m) of the Revenue Code, which provides:

> (m) On owners or operators of any business not specified above shall pay the tax at the rate of two percent (2%) for 1993, two and one-half percent (2 1/2%) for 1994 and 1995, and three percent (3%) for 1996 and the years thereafter of the gross receipts during the preceding year.[42]

The initial inquiry is what provision of the Makati Revenue Code does the City Treasurer rely on to make the Corporation liable for business taxes. Even at this point, there already stands a problem with the City Treasurer's cause of action.

Our careful examination of the record reveals a highly disconcerting fact. At no point has the City Treasurer been candid enough to inform the Corporation, the RTC, the Court of Appeals, or this Court for that matter, as to what exactly is the precise statutory basis under the Makati Revenue Code for the levying of the business tax on petitioner. We have examined all of the pleadings submitted by the City Treasurer in all the antecedent judicial proceedings, as well as in this present petition, and also the communications by the City Treasurer to the Corporation which form part of the record. Nowhere therein is there any citation made by the City Treasurer of any provision of the Revenue Code which would serve as the legal authority for the collection of business taxes from condominiums in Makati.

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[40] *See* Section 3A.02(h), Makati Revenue Code.

[41] *See* Section 3A.02(k), Makati Revenue Code.

[42] Section 3A.02(m), Makati Revenue Code.

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Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. There may have been *prima facie* compliance with the requirement under Section 195. However in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax.[43] Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian,* and not by the Local Government Code alone.[44] What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body.

Moreover, a careful examination of the Revenue Code shows that while Section 3A.02(m) seems designed as a catch-all provision, Section 3A.02(f), which provides for a different tax rate from that of the former provision, may be construed to be of similar import. While Section 3A.02(f) is quite exhaustive in enumerating the class of businesses taxed under the provision,

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[43] *Supra* note 4.

[44] *See* Section 132, Local Government Code. Indeed, even as the Local Government Code enumerates specific examples of local taxes, the provisions therein clarify that "the [local government unit] may impose a tax", thus characterizing local taxes as optional on the part of local government unit, and not mandatory according to the Code. Certainly, a local government unit may choose not to impose the local tax at all, even if it is authorized to do so under the Local Government Code.

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the listing, while it does not include condominium-related enterprises, ends with the abbreviation "*etc.*", or "*et cetera*".

We do note our discomfort with the unlimited breadth and the dangerous uncertainty which are the twin hallmarks of the words "*et cetera*." Certainly, we cannot be disposed to uphold any tax imposition that derives its authority from enigmatic and uncertain words such as "*et cetera*." Yet we cannot even say with definiteness whether the tax imposed on the Corporation in this case is based on "*et cetera*," or on Section 3A.02(m), or on any other provision of the Revenue Code. Assuming that the assessment made on the Corporation is on a provision other than Section 3A.02(m), the main legal issue takes on a different complexion. For example, if it is based on "*et cetera*" under Section 3A.02(f), we would have to examine whether the Corporation faces analogous comparison with the other businesses listed under that provision.

Certainly, the City Treasurer has not been helpful in that regard, as she has been silent all through out as to the exact basis for the tax imposition which she wishes that this Court uphold. Indeed, there is only one thing that prevents this Court from ruling that there has been a due process violation on account of the City Treasurer's failure to disclose on paper the statutory basis of the tax — that the Corporation itself does not allege injury arising from such failure on the part of the City Treasurer.

We do not know why the Corporation chose not to put this issue into litigation, though we can ultimately presume that no injury was sustained because the City Treasurer failed to cite the specific statutory basis of the tax. What is essential though is that the local treasurer be required to explain to the taxpayer with sufficient particularity the basis of the tax, so as to leave no doubt in the mind of the taxpayer as to the specific tax involved.

In this case, the Corporation seems confident enough in litigating despite the failure of the City Treasurer to admit on what exact provision of the Revenue Code the tax liability ensued. This is perhaps because the Corporation has anchored its central

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argument on the position that the Local Government Code itself does not sanction the imposition of business taxes against it. This position was sustained by the Court of Appeals, and now merits our analysis.

As stated earlier, local tax on businesses is authorized under Section 143 of the Local Government Code. The word "business" itself is defined under Section 131(d) of the Code as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit."[45] This definition of "business" takes on importance, since Section 143 allows local government units to impose local taxes on businesses other than those specified under the provision. Moreover, even those business activities specifically named in Section 143 are themselves susceptible to broad interpretation. For example, Section 143(b) authorizes the imposition of business taxes on wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature.

It is thus imperative that in order that the Corporation may be subjected to business taxes, its activities must fall within the definition of business as provided in the Local Government Code. And to hold that they do is to ignore the very statutory nature of a condominium corporation.

The creation of the condominium corporation is sanctioned by Republic Act No. 4726, otherwise known as 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.[46] To enable the orderly administration over these common areas which are jointly owned by the various unit owners, the Condominium Act permits the creation of a condominium corporation, which is specially formed for the purpose of holding title to the common area, in which the holders of separate interests shall automatically be members

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[45] *See* Section 131(e), Local Government Code.

[46] *See* Section 2, Rep. Act No. 4726.

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or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units.[47] The necessity of a condominium corporation has not gained widespread acceptance,[48] and even is merely permissible under the Condominium Act.[49] Nonetheless, the condominium corporation has been resorted to by many condominium projects, such as the Corporation in this case.

In line with the authority of the condominium corporation to manage the condominium project, it may be authorized, in the deed of restrictions, "to make 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 owner's fractional interest in any common areas."[50] It is the collection of these assessments from unit owners that form the basis of the City Treasurer's claim that the Corporation is doing business.

The Condominium Act imposes several limitations on the condominium corporation that prove crucial to the disposition of this case. Under Section 10 of the law, the corporate purposes of a condominium corporation are 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 such purpose.[51] Further, the same provision prohibits the articles of incorporation or by-laws of the condominium corporation from containing any provisions which are contrary to the provisions of the

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[47] *Ibid*.

[48] "The suggestion has been cautiously advanced that the unit owners might form a corporation to operate the condominium and in this way probably avoid unlimited personal liability." *See* §12, Alberto Ferrer and Karl Stecher, I *Law of Condominium* (1967 ed.)

[49] *See* Section 2, Rep. Act No. 4726.

[50] *See* Section 9(d), Rep. Act No. 4726.

[51] *See* Section 10, Rep. Act No. 4726.

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Condominium Act, the enabling or master deed, or the declaration of restrictions of the condominium project.[52]

We can elicit from the Condominium Act that a condominium corporation is precluded by statute from engaging in corporate activities other than the holding of the common areas, the administration of the condominium project, and other acts necessary, incidental or convenient to the accomplishment of such purposes. Neither the maintenance of livelihood, nor the procurement of profit, fall within the scope of permissible corporate purposes of a condominium corporation under the Condominium Act.

The Court has examined the particular Articles of Incorporation and By-Laws of the Corporation, and these documents unmistakably hew to the limitations contained in the Condominium Act. Per the Articles of Incorporation, the Corporation's corporate purposes are limited to: (a) owning and holding title to the common and limited common areas in the Condominium Project; (b) adopting such necessary measures for the protection and safeguard of the unit owners and their property, including the power to contract for security services and for insurance coverage on the entire project; (c) making and adopting needful rules and regulations concerning the use, enjoyment and occupancy of the units and common areas, including the power to fix penalties and assessments for violation of such rules; (d) to provide for the maintenance, repair, sanitation, and cleanliness of the common and limited common areas; (e) to provide and contract for public utilities and other services to the common areas; (f) to contract for the services of persons or firms to assist in the management and operation of the Condominium Project; (g) to discharge any lien or encumbrances upon the Condominium Project; (h) to enforce the terms contained in the Master Deed with Declaration of Restrictions of the Project; (i) to levy and collect those assessments as provided in the Master Deed, in order to defray the costs, expenses and losses of the condominium; (j) to acquire, own, hold, enjoy, lease operate and maintain, and

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[52] *Ibid*.

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to convey, sell transfer, mortgage or otherwise dispose of real or personal property in connection with the purposes and activities of the corporation; and (k) to exercise and perform such other powers reasonably necessary, incidental or convenient to accomplish the foregoing purposes.[53]

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.[54]

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.[55]

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

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[53] *See* RTC Records, pp. 44-46.

[54] *Id*. at 35-36.

[55] *Rollo*, p. 20.

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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 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,[56] and the taxpayer's right to due process is violated when arbitrary or oppressive methods are used in assessing and collecting taxes.[57] 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

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[56] "This is not to say though that the constitutional injunction against deprivation of property without due process of law may be passed over under the guise of the taxing power, except when the taking of the property is in the lawful exercise of the taxing power, as when (1) the tax is for a public purpose; (2) the rule on uniformity of taxation is observed; (3) either the person or property taxed is within the jurisdiction of the government levying the tax; and (4) in the assessment and collection of certain kinds of taxes notice and opportunity for hearing are provided." *Pepsi-Cola Bottling Company v. Municipality of Tanauan,* 161 Phil. 591.

[57] *Ibid*.

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to impose a tax hinged on that standard is both arbitrary and oppressive.

The City Treasurer also contends that the fact that the Corporation is engaged in business is evinced by the Articles of Incorporation, which specifically empowers the Corporation "to acquire, own, hold, enjoy, lease, operate and maintain, and to convey, sell, transfer mortgage or otherwise dispose of real or personal property."[58] What the City Treasurer fails to add is that every corporation organized under the Corporation Code[59] is so specifically empowered. Section 36(7) of the Corporation Code states that every corporation incorporated under the Code has the power and capacity "to purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property . . . as the transaction of the lawful business of the corporation may reasonably and necessarily require . . ."[60] Without this power, corporations, as juridical persons, would be deprived of the capacity to engage in most meaningful legal relations.

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.

Accordingly, and with a significant degree of comfort, we hold that condominium corporations are generally exempt from local business taxation under the Local Government Code, irrespective of any local ordinance that seeks to declare otherwise.

Still, we can note a possible exception to the rule. It is not unthinkable that the unit owners of a condominium would band together to engage in activities for profit under the shelter of

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[58] *Rollo*, p. 33.

[59] Batas Pambansa Blg. 68.

[60] *See* Section 36(7), Corporation Code.

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the condominium corporation.[61] Such activity would be prohibited under the Condominium Act, but if the fact is established, we see no reason why the condominium corporation may be made liable by the local government unit for business taxes. Even though such activities would be considered as *ultra vires*, since

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[61] Indeed, at least one commentator on American condominium law has offered the following explanation on how this may be accomplished:

> Under certain conditions it is possible for the owners of a condominium project to engage in a business, the income of which would be subject to the Federal income tax. . . . To meet these conditions, however, the owners of the condominium, acting through their association of owners, must generally fall into one of two general classifications insofar as the Internal Revenue Code is concerned, either as a partnership or as a corporation.
>
> The Federal income tax regulations define a partnership as including a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on and which is not a corporation, trust or estate within the meaning of the Internal Revenue Code.
>
> A corporation includes association, which are taxable as corporation, and joint-stock companies. . . . The individual apartment owners are generally tenants in common of the common areas and joint owners of the personal property of the organization. Almost invariably they are not partners and the mere fact that they agree to share expenses does not make the arrangement a partnership. The Federal regulations specifically prescribe that a joint undertaking merely to share expenses is not a partnership.
>
> Mere co-ownership or property which is maintained, kept in repair, and rented or leased does not constitute a partnership. . . . Tenants in common may, however, be partners if they actively carry on a trade, business, financial operation or venture and divide the profits thereof.
>
> Consequently a partnership may be created if the co-owners of an apartment building lease space and provide services to the occupants. The principal question is whether the owners are engaged in a business for profit. . . . Accordingly where portions of a condominium project are leased or rented as barber shops, drug stores, beauty shops, or other comer enterprises, the income therefrom will be subject to taxation.
>
> If the condominium owners are conducting a business for profit, it must also be determined whether the business is a partnership or a corporation. If it meets the tests prescribed for a corporate entity by the Revenue Service its income will be subject to taxation as a corporation, otherwise it will be considered as some other form of taxable entity.

See Ferrer and Stecher, *supra* note 48, at §454. Under Philippine law though, a condominium corporation may not adopt purposes other than those provided under the Condominium Act. *Infra*.

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they are engaged in beyond the legal capacity of the condominium corporation,[62] the principle of estoppel would preclude the corporation or its officers and members from invoking the void nature of its undertakings for profit as a means of acquitting itself of tax liability.

Still, the City Treasurer has not posited the claim that the Corporation is engaged in business activities beyond the statutory purposes of a condominium corporation. The assessment appears to be based solely on the Corporation's collection of assessments from unit owners, such assessments being utilized to defray the necessary expenses for the Condominium Project and the common areas. There is no contemplation of business, no orientation towards profit in this case. Hence, the assailed tax assessment has no basis under the Local Government Code or the Makati Revenue Code, and the insistence of the city in its collection of the void tax constitutes an attempt at deprivation of property without due process of law.

WHEREFORE, the petition is *DENIED*. No costs.

SO ORDERED.

Puno (Chairman), Austria-Martinez, and *Callejo, Sr., JJ.,* concur.

Chico-Nazario, J., on leave.

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[62] "The term *ultra vires* refers to an act outside or beyond corporate powers, including those that may ostensibly be within such powers but are, by general or special laws, prohibited or declared illegal." *Twin Towers Condominium Corp. v. Court of Appeals,* 446 Phil. 280 (2003).