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in the face of documentary evidence consisting of the March 20, 2001 letter of petitioner to Sunwest where she expressly acknowledged receiving the March 14, 2001 notice of dishonor of the RCBC check.[39]

In fine, for deficiency in form and for lack of showing that her appeal to the CA was meritorious, the petition for review of petitioner was correctly dismissed by the CA.

WHEREFORE, the petition is *DENIED*.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 166006. March 14, 2008]

PLANTERS PRODUCTS, INC., *petitioner, vs.* **FERTIPHIL CORPORATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; REQUIREMENTS BEFORE A COURT MAY DECLARE A LAW UNCONSTITUTIONAL; CAPACITY TO SUE OR *LOCUS STANDI*; RESPONDENT HAS *LOCUS STANDI* BECAUSE IT SUFFERED DIRECT INJURY. — The doctrine of *locus standi* or the right of appearance in a court of justice has been adequately discussed by this Court in a catena of cases. Succinctly put, the doctrine requires a litigant to have a material interest in the outcome of a case. In private suits, *locus standi* requires a litigant to be a "real party in interest", which is defined

[39] *Supra* at 12

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as "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." In public suits, this Court recognizes the difficulty of applying the doctrine especially when plaintiff asserts a public right on behalf of the general public because of conflicting public policy issues. On one end, there is the right of the ordinary citizen to petition the courts to be freed from unlawful government intrusion and illegal official action. At the other end, there is the public policy precluding excessive judicial interference in official acts, which may unnecessarily hinder the delivery of basic public services. In this jurisdiction, We have adopted the "direct injury test" to determine *locus standi* in public suits. In *People v. Vera*, it was held that a person who impugns the validity of a statute must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result." The "direct injury test" in public suits is similar to the "real party in interest" rule for private suits under Section 2, Rule 3 of the 1997 Rules of Civil Procedure. Recognizing that a strict application of the "direct injury" test may hamper public interest, this Court relaxed the requirement in cases of "transcendental importance" or with "far reaching implications." Being a mere procedural technicality, it has also been held that *locus standi* may be waived in the public interest.

2. ID.; ID.; ID.; ID.; ID.; FACT OF PAYMENT OF LEVY IS SUFFICIENT INJURY FOR PURPOSES OF *LOCUST STANDI*; ENFORCEMENT OF LETTER OF INSTRUCTION (LOI) NO. 1465 COMPELLED RESPONDENT TO FACTOR THE LEVY IN ITS PRODUCT RENDERING THEIR FERTILIZER PRODUCTS MORE EXPENSIVE EVENTUALLY RESULTING NOT ONLY IN FEWER CLIENTS BUT ALSO IN ADOPTING CORPORATE STRATEGIES TO MEET THE DEMANDS OF LOI NO. 1465. — Whether or not the complaint for collection is characterized as a private or public suit, Fertiphil has *locus standi* to file it. Fertiphil suffered a direct injury from the enforcement of LOI No. 1465. It was required, and it did pay, the ₱10 levy imposed for every bag of fertilizer sold on the domestic market. It may be true that Fertiphil has passed some or all of the levy to the ultimate consumer, but that does not disqualify it from attacking the constitutionality of the LOI or from seeking a refund. As seller, it bore the ultimate burden of

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paying the levy. It faced the possibility of severe sanctions for failure to pay the levy. The fact of payment is sufficient injury to Fertiphil. Moreover, Fertiphil suffered harm from the enforcement of the LOI because it was compelled to factor in its product the levy. The levy certainly rendered the fertilizer products of Fertiphil and other domestic sellers much more expensive. The harm to their business consists not only in fewer clients because of the increased price, but also in adopting alternative corporate strategies to meet the demands of LOI No. 1465. Fertiphil and other fertilizer sellers may have shouldered all or part of the levy just to be competitive in the market. The harm occasioned on the business of Fertiphil is sufficient injury for purposes of *locus standi*.

3. ID.; ID.; ID.; ID.; ID.; DOCTRINE OF STANDING IS A MERE PROCEDURAL TECHNICALITY WHICH MAY BE WAIVED. — Even assuming *arguendo* that there is no direct injury, We find that the liberal policy consistently adopted by this Court on *locus standi* must apply. The issues raised by Fertiphil are of paramount public importance. It involves not only the constitutionality of a tax law but, more importantly, the use of taxes for public purpose. Former President Marcos issued LOI No. 1465 with the intention of rehabilitating an ailing private company. This is clear from the text of the LOI. PPI is expressly named in the LOI as the direct beneficiary of the levy. Worse, the levy was made dependent and conditional upon PPI becoming financially viable. The LOI provided that "*the capital contribution shall be collected until adequate capital is raised to make PPI viable*." The constitutionality of the levy is already in doubt on a plain reading of the statute. It is Our constitutional duty to squarely resolve the issue as the final arbiter of all justiciable controversies. The doctrine of standing, being a mere procedural technicality, should be waived, if at all, to adequately thresh out an important constitutional issue.

4. ID.; ID.; ID.; ID.; ID.; REGIONAL TRIAL COURTS MAY RESOLVE CONSTITUTIONAL ISSUES; THE CONSTITUTIONAL ISSUE WAS ADEQUATELY RAISED IN THE COMPLAINT; IT IS THE *LIS MOTA* OF THE CASE. — It is settled that the RTC has jurisdiction to resolve the constitutionality of a statute, presidential decree or an executive order. This is clear from Section 5, Article VIII of the 1987 Constitution. In *Mirasol v. Court of Appeals*, this Court

recognized the power of the RTC to resolve constitutional issues, thus: On the *first issue*. It is settled that Regional Trial Courts have the authority and jurisdiction to consider the constitutionality of a statute, presidential decree, or executive order. 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 not only in this Court, but in all Regional Trial Courts. In the recent case of *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*, this Court reiterated: There is no denying that regular courts have jurisdiction over cases involving the validity or constitutionality of a rule or regulation issued by administrative agencies. Such jurisdiction, however, is not limited to the Court of Appeals or to this Court alone for even the regional trial courts can take cognizance of actions assailing a specific rule or set of rules promulgated by administrative bodies. 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. Judicial review of official acts on the ground of unconstitutionality may be sought or availed of through any of the actions cognizable by courts of justice, not necessarily in a suit for declaratory relief. Such review may be had in criminal actions, as in *People v. Ferrer* involving the constitutionality of the now defunct Anti-Subversion law, or in ordinary actions, as in *Krivenko v. Register of Deeds* involving the constitutionality of laws prohibiting aliens from acquiring public lands. The constitutional issue, however, (a) must be properly raised and presented in the case, and (b) its resolution is necessary to a determination of the case, *i.e.*, the issue of constitutionality must be the very *lis mota* presented. Contrary to PPI's claim, the constitutionality of LOI No. 1465 was properly and adequately raised in the complaint for collection filed with the RTC. The constitutionality of LOI No. 1465 is also the very *lis mota* of the complaint for collection. Fertiphil filed the complaint to compel PPI to refund the levies paid under the statute on the ground that the law imposing the levy is unconstitutional. The thesis is that an unconstitutional law is void. It has no legal effect. Being void, Fertiphil had no legal obligation to pay the levy. Necessarily, all levies duly paid pursuant to an unconstitutional law should

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be refunded under the civil code principle against unjust enrichment. The refund is a mere consequence of the law being declared unconstitutional. The RTC surely cannot order PPI to refund Fertiphil if it does not declare the LOI unconstitutional. It is the unconstitutionality of the LOI which triggers the refund. The issue of constitutionality is the very *lis mota* of the complaint with the RTC.

5. ID.; STATE; INHERENT POWERS; TAXATION; THE ₱10 LEVY UNDER LETTER OF INSTRUCTION NO. 1465 IS AN EXERCISE OF THE POWER OF TAXATION. — Police power and the power of taxation are inherent powers of the State. These powers are distinct and have different tests for validity. Police power is the power of the State to enact legislation that may interfere with personal liberty or property in order to promote the general welfare, while the power of taxation is the power to levy taxes to be used for public purpose. The main purpose of police power is the regulation of a behavior or conduct, while taxation is revenue generation. The "lawful subjects" and "lawful means" tests are used to determine the validity of a law enacted under the police power. The power of taxation, on the other hand, is circumscribed by inherent and constitutional limitations. We agree with the RTC that the imposition of the levy was an exercise by the State of its taxation power. While it is true that the power of taxation can be used as an implement of police power, the primary purpose of the levy is revenue generation. If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax. In *Philippine Airlines, Inc. v. Edu,* it was held that the imposition of a vehicle registration fee is not an exercise by the State of its police power, but of its taxation power. The ₱10 levy under LOI No. 1465 is too excessive to serve a mere regulatory purpose. The levy, no doubt, was a big burden on the seller or the ultimate consumer. It increased the price of a bag of fertilizer by as much as five percent. A plain reading of the LOI also supports the conclusion that the levy was for revenue generation. The LOI expressly provided that the levy was imposed "*until adequate capital is raised to make PPI viable.*"

6. ID.; ID.; ID.; ID.; TAXES ARE EXACTED ONLY FOR A PUBLIC PURPOSE. — An inherent limitation on the power of taxation is public purpose. Taxes are exacted only for a public purpose. They cannot be used for purely private purposes or for the

exclusive benefit of private persons. The reason for this is simple. The power to tax exists for the general welfare; hence, implicit in its power is the limitation that it should be used only for a public purpose. It would be a robbery for the State to tax its citizens and use the funds generated for a private purpose. As an old United States case bluntly put it: "To lay with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is nonetheless a robbery because it is done under the forms of law and is called taxation." The term "public purpose" is not defined. It is an elastic concept that can be hammered to fit modern standards. Jurisprudence states that "public purpose" should be given a broad interpretation. It does not only pertain to those purposes which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services, but also includes those purposes designed to promote social justice. Thus, public money may now be used for the relocation of illegal settlers, low-cost housing and urban or agrarian reform. While the categories of what may constitute a public purpose are continually expanding in light of the expansion of government functions, the inherent requirement that taxes can only be exacted for a public purpose still stands. Public purpose is the heart of a tax law. When a tax law is only a mask to exact funds from the public when its true intent is to give undue benefit and advantage to a private enterprise, that law will not satisfy the requirement of "public purpose."

7. ID.; ID.; ID.; ID.; THE ₱10 LEVY IS UNCONSTITUTIONAL BECAUSE IT WAS NOT FOR A PUBLIC PURPOSE; THE LEVY WAS IMPOSED TO GIVE UNDUE BENEFIT TO A PRIVATE CORPORATION. — The purpose of a law is evident from its text or inferable from other secondary sources. Here, We agree with the RTC and the CA that the levy imposed under LOI No. 1465 was not for a public purpose. *First*, the LOI expressly provided that the levy be imposed to benefit PPI, a private company. The purpose is explicit from Clause 3 of the law, thus: 3. The Administrator of the Fertilizer Pesticide Authority to include in its fertilizer pricing formula a capital contribution component of not less than ₱10 per bag. This capital contribution shall be collected until adequate capital is raised to make PPI viable. Such capital contribution shall be applied

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by FPA to all domestic sales of fertilizers in the Philippines. It is a basic rule of statutory construction that the text of a statute should be given a literal meaning. In this case, the text of the LOI is plain that the levy was imposed in order to raise capital for PPI. The framers of the LOI did not even hide the insidious purpose of the law. They were cavalier enough to name PPI as the ultimate beneficiary of the taxes levied under the LOI. We find it utterly repulsive that a tax law would expressly name a private company as the ultimate beneficiary of the taxes to be levied from the public. This is a clear case of crony capitalism. *Second*, the LOI provides that the imposition of the ₱10 levy was conditional and dependent upon PPI becoming financially "viable." This suggests that the levy was actually imposed to benefit PPI. The LOI notably does not fix a maximum amount when PPI is deemed financially "viable." Worse, the liability of Fertiphil and other domestic sellers of fertilizer to pay the levy is made indefinite. They are required to continuously pay the levy until adequate capital is raised for PPI. *Third*, the RTC and the CA held that the levies paid under the LOI were directly remitted and deposited by FPA to Far East Bank and Trust Company, the depositary bank of PPI. This proves that PPI benefited from the LOI. It also proves that the main purpose of the law was to give undue benefit and advantage to PPI. *Fourth*, the levy was used to pay the corporate debts of PPI. A reading of the Letter of Understanding dated May 18, 1985 signed by then Prime Minister Cesar Virata reveals that PPI was in deep financial problem because of its huge corporate debts. There were pending petitions for rehabilitation against PPI before the Securities and Exchange Commission. The government guaranteed payment of PPI's debts to its foreign creditors. To fund the payment, President Marcos issued LOI No. 1465. It is clear from the Letter of Understanding that the levy was imposed precisely to pay the corporate debts of PPI. We cannot agree with PPI that the levy was imposed to ensure the stability of the fertilizer industry in the country. The letter of understanding and the plain text of the LOI clearly indicate that the levy was exacted for the benefit of a private corporation. All told, the RTC and the CA did not err in holding that the levy imposed under LOI No. 1465 was not for a public purpose. LOI No. 1465 failed to comply with the public purpose requirement for tax laws.

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8. ID.; ID.; ID.; ID.; LETTER OF INSTRUCTION NO. 1695 IS STILL UNCONSTITUTIONAL EVEN IF IT IS ENACTED UNDER THE POLICE POWER OF THE STATE; THE LAW DOES NOT PROMOTE PUBLIC INTEREST. — Even if We consider LOI No. 1695 enacted under the police power of the State, it would still be invalid for failing to comply with the test of "lawful subjects" and "lawful means." Jurisprudence states the test as follows: (1) the interest of the public generally, as distinguished from those of particular class, requires its exercise; and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. For the same reasons as discussed, LOI No. 1695 is invalid because it did not promote public interest. The law was enacted to give undue advantage to a private corporation.

9. CIVIL LAW; HUMAN RELATIONS; DOCTRINE OF OPERATIVE FACT; AN UNCONSTITUTIONAL LAW IS VOID, IT IS, IN LEGAL CONTEMPLATION INOPERATIVE AS IF IT HAS NOT BEEN PASSED; DOCTRINE OF OPERATIVE FACT IS INAPPLICABLE WHEN A DECLARATION OF UNCONSTITUTIONALITY WILL IMPOSE AN UNDUE BURDEN ON THOSE WHO HAVE RELIED ON THE INVALID LAW; CASE AT BAR. — The general rule is that an unconstitutional law is void. It produces no rights, imposes no duties and affords no protection. It has no legal effect. It is, in legal contemplation, inoperative as it if has not been passed. Being void, Fertiphil is not required to pay the levy. All levies paid should be refunded in accordance with the general civil code principle against unjust enrichment. The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the done by a municipality in rekliance upon a law creating it.

APPEARANCES OF COUNSEL

Malaya Sanchez Francisco Añover & Añover Law Offices for petitioner.

Madrid & Associates for respondent.

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D E C I S I O N

REYES, R.T., *J.*:

THE Regional Trial Courts (RTC) have the authority and jurisdiction to consider the constitutionality of statutes, executive orders, presidential decrees and other issuances. The Constitution vests that power not only in the Supreme Court but in all Regional Trial Courts.

The principle is relevant in this petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) affirming with modification that of the RTC in Makati City,[2] finding petitioner Planters Products, Inc. (PPI) liable to private respondent Fertiphil Corporation (Fertiphil) for the levies it paid under Letter of Instruction (LOI) No. 1465.

The Facts

Petitioner PPI and private respondent Fertiphil are private corporations incorporated under Philippine laws.[3] They are both engaged in the importation and distribution of fertilizers, pesticides and agricultural chemicals.

On June 3, 1985, then President Ferdinand Marcos, exercising his legislative powers, issued LOI No. 1465 which provided, among others, for the imposition of a capital recovery component (CRC) on the domestic sale of all grades of fertilizers in the Philippines.[4] The LOI provides:

> 3. The Administrator of the Fertilizer Pesticide Authority to include in its fertilizer pricing formula a capital contribution component of not less than ₱10 per bag. This capital

[1] *Rollo*, pp. 51-59. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Bienvenido L. Reyes and Arsenio L. Magpale, concurring.

[2] *Id.* at 75-77. Penned by Judge Teofilo L. Guadiz, Jr.

[3] *Id.* at 8.

[4] *Id.* at 75.

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> contribution shall be collected until adequate capital is raised to make PPI viable. Such capital contribution shall be applied by FPA to all domestic sales of fertilizers in the Philippines.[5] (Underscoring supplied)

Pursuant to the LOI, Fertiphil paid ₱10 for every bag of fertilizer it sold in the domestic market to the Fertilizer and Pesticide Authority (FPA). FPA then remitted the amount collected to the Far East Bank and Trust Company, the depositary bank of PPI. Fertiphil paid ₱6,689,144 to FPA from July 8, 1985 to January 24, 1986.[6]

After the 1986 Edsa Revolution, FPA voluntarily stopped the imposition of the ₱10 levy. With the return of democracy, Fertiphil demanded from PPI a refund of the amounts it paid under LOI No. 1465, but PPI refused to accede to the demand.[7]

Fertiphil filed a complaint for collection and damages[8] against FPA and PPI with the RTC in Makati. It questioned the constitutionality of LOI No. 1465 for being unjust, unreasonable, oppressive, invalid and an unlawful imposition that amounted to a denial of due process of law.[9] Fertiphil alleged that the LOI solely favored PPI, a privately owned corporation, which used the proceeds to maintain its monopoly of the fertilizer industry.

In its Answer,[10] FPA, through the Solicitor General, countered that the issuance of LOI No. 1465 was a valid exercise of the police power of the State in ensuring the stability of the fertilizer industry in the country. It also averred that Fertiphil did not sustain any damage from the LOI because the burden imposed by the levy fell on the ultimate consumer, not the seller.

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[5] *Id.* at 155.

[6] *Id.* at 76.

[7] *Id*.

[8] *Id.* at 195-202.

[9] *Id.* at 196.

[10] *Id.* at 66-73, 277.

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RTC Disposition

On November 20, 1991, the RTC rendered judgment in favor of Fertiphil, disposing as follows:

> WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of the plaintiff and against the defendant Planters Product, Inc., ordering the latter to pay the former:
>
> 1) the sum of ₱6,698,144.00 with interest at 12% from the time of judicial demand;
> 2) the sum of ₱100,000 as attorney's fees;
> 3) the cost of suit.
>
> SO ORDERED.[11]

Ruling that the imposition of the ₱10 CRC was an exercise of the State's inherent power of taxation, the RTC invalidated the levy for violating the basic principle that taxes can only be levied for public purpose, *viz.*:

> It is apparent that the imposition of ₱10 per fertilizer bag sold in the country by LOI 1465 is purportedly in the exercise of the power of taxation. It is a settled principle that the power of taxation by the state is plenary. Comprehensive and supreme, the principal check upon its abuse resting in the responsibility of the members of the legislature to their constituents. However, there are two kinds of limitations on the power of taxation: the inherent limitations and the constitutional limitations.
>
> One of the inherent limitations is that a tax may be levied only for public purposes:
>
> > The power to tax can be resorted to only for a constitutionally valid public purpose. By the same token, taxes may not be levied for purely private purposes, for building up of private fortunes, or for the redress of private wrongs. They cannot be levied for the improvement of private property, or for the benefit, and promotion of private enterprises, except where the aid is incident to the public benefit. It is well-settled principle of constitutional law that no general tax can be levied except for the purpose of raising money which is to be expended for public

[11] *Id.* at 77.

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> use. Funds cannot be exacted under the guise of taxation to promote a purpose that is not of public interest. Without such limitation, the power to tax could be exercised or employed as an authority to destroy the economy of the people. A tax, however, is not held void on the ground of want of public interest unless the want of such interest is clear. (71 Am. Jur. pp. 371-372)

In the case at bar, the plaintiff paid the amount of ₱6,698,144.00 to the Fertilizer and Pesticide Authority pursuant to the ₱10 per bag of fertilizer sold imposition under LOI 1465 which, in turn, remitted the amount to the defendant Planters Products, Inc. thru the latter's depository bank, Far East Bank and Trust Co. Thus, by virtue of LOI 1465 the plaintiff, Fertiphil Corporation, which is a private domestic corporation, became poorer by the amount of ₱6,698,144.00 and the defendant, Planters Product, Inc., another private domestic corporation, became richer by the amount of ₱6,698,144.00.

Tested by the standards of constitutionality as set forth in the afore-quoted jurisprudence, it is quite evident that LOI 1465 insofar as it imposes the amount of ₱10 per fertilizer bag sold in the country and orders that the said amount should go to the defendant Planters Product, Inc. is unlawful because it violates the mandate that a tax can be levied only for a public purpose and not to benefit, aid and promote a private enterprise such as Planters Product, Inc.[12]

PPI moved for reconsideration but its motion was denied.[13] PPI then filed a notice of appeal with the RTC but it failed to pay the requisite appeal docket fee. In a separate but related proceeding, this Court[14] allowed the appeal of PPI and remanded the case to the CA for proper disposition.

CA Decision

On November 28, 2003, the CA handed down its decision affirming with modification that of the RTC, with the following *fallo*:

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[12] *Id.* at 76-77.

[13] *Id*. at 14.

[14] *Id.* at 83-93. G.R. No. 156278, entitled "*Planters Products, Inc. v. Fertiphil Corporation.*"

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IN VIEW OF ALL THE FOREGOING, the decision appealed from is hereby **AFFIRMED,** subject to the **MODIFICATION** that the award of attorney's fees is hereby **DELETED**.[15]

In affirming the RTC decision, the CA ruled that the *lis mota* of the complaint for collection was the constitutionality of LOI No. 1465, thus:

The question then is whether it was proper for the trial court to exercise its power to judicially determine the constitutionality of the subject statute in the instant case.

As a rule, where the controversy can be settled on other grounds, the courts will not resolve the constitutionality of a law (*Lim v. Pacquing*, 240 SCRA 649 [1995]). The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of political departments are valid, absent a clear and unmistakable showing to the contrary.

However, the courts are not precluded from exercising such power when the following requisites are obtaining in a controversy before it: First, there must be before the court an actual case calling for the exercise of judicial review. Second, the question must be ripe for adjudication. Third, the person challenging the validity of the act must have standing to challenge. Fourth, the question of constitutionality must have been raised at the earliest opportunity; and lastly, the issue of constitutionality must be the very *lis mota* of the case (*Integrated Bar of the Philippines v. Zamora*, 338 SCRA 81 [2000]).

Indisputably, the present case was primarily instituted for collection and damages. However, a perusal of the complaint also reveals that the instant action is founded on the claim that the levy imposed was an unlawful and unconstitutional special assessment. Consequently, the requisite that the constitutionality of the law in question be the very *lis mota* of the case is present, making it proper for the trial court to rule on the constitutionality of LOI 1465.[16]

The CA held that even on the assumption that LOI No. 1465 was issued under the police power of the state, it is still

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[15] *Id.* at 59.

[16] *Id.* at 54-55.

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unconstitutional because it did not promote public welfare. The CA explained:

In declaring LOI 1465 unconstitutional, the trial court held that the levy imposed under the said law was an invalid exercise of the State's power of taxation inasmuch as it violated the inherent and constitutional prescription that taxes be levied only for public purposes. It reasoned out that the amount collected under the levy was remitted to the depository bank of *PPI*, which the latter used to advance its private interest.

On the other hand, appellant submits that the subject statute's passage was a valid exercise of police power. In addition, it disputes the court *a quo*'s findings arguing that the collections under LOI 1465 was for the benefit of Planters Foundation, Incorporated (PFI), a foundation created by law to hold in trust for millions of farmers, the stock ownership of PPI.

Of the three fundamental powers of the State, the exercise of police power has been characterized as the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs. It may be exercised as long as the activity or the property sought to be regulated has some relevance to public welfare (*Constitutional Law*, by Isagani A. Cruz, p. 38, 1995 Edition).

Vast as the power is, however, it must be exercised within the limits set by the Constitution, which requires the concurrence of a lawful subject and a lawful method. Thus, our courts have laid down the test to determine the validity of a police measure as follows: (1) the interests of the public generally, as distinguished from those of a particular class, requires its exercise; and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals (*National Development Company v. Philippine Veterans Bank*, 192 SCRA 257 [1990]).

It is upon applying this established tests that We sustain the trial court's holding LOI 1465 unconstitutional. To be sure, ensuring the continued supply and distribution of fertilizer in the country is an undertaking imbued with public interest. However, the method by which LOI 1465 sought to achieve this is by no means a measure that will promote the public welfare. The government's commitment to support the successful rehabilitation and continued viability of PPI, a private corporation, is an unmistakable attempt to mask the subject statute's impartiality. There is no way to treat the self-interest

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of a favored entity, like PPI, as identical with the general interest of the country's farmers or even the Filipino people in general. Well to stress, substantive due process exacts fairness and equal protection disallows distinction where none is needed. When a statute's public purpose is spoiled by private interest, the use of police power becomes a travesty which must be struck down for being an arbitrary exercise of government power. To rule in favor of appellant would contravene the general principle that revenues derived from taxes cannot be used for purely private purposes or for the exclusive benefit of private individuals.[17]

The CA did not accept PPI's claim that the levy imposed under LOI No. 1465 was for the benefit of Planters Foundation, Inc., a foundation created to hold in trust the stock ownership of PPI. The CA stated:

Appellant next claims that the collections under LOI 1465 was for the benefit of Planters Foundation, Incorporated (PFI), a foundation created by law to hold in trust for millions of farmers, the stock ownership of PFI on the strength of Letter of Undertaking (LOU) issued by then Prime Minister Cesar Virata on April 18, 1985 and affirmed by the Secretary of Justice in an Opinion dated October 12, 1987, to wit:

> "2. Upon the effective date of this Letter of Undertaking, the Republic shall cause FPA to include in its fertilizer pricing formula a capital recovery component, the proceeds of which will be used initially for the purpose of funding the unpaid portion of the outstanding capital stock of Planters presently held in trust by Planters Foundation, Inc. (Planters Foundation), which unpaid capital is estimated at approximately ₱206 million (subject to validation by Planters and Planters Foundation) (such unpaid portion of the outstanding capital stock of Planters being hereafter referred to as the 'Unpaid Capital'), and subsequently for such capital increases as may be required for the continuing viability of Planters.
>
> The capital recovery component shall be in the minimum amount of ₱10 per bag, which will be added to the price of all domestic sales of fertilizer in the Philippines by any importer

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[17] *Id*. at 129-130.

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> and/or fertilizer mother company. In this connection, the Republic hereby acknowledges that the advances by Planters to Planters Foundation which were applied to the payment of the Planters shares now held in trust by Planters Foundation, have been assigned to, among others, the Creditors. Accordingly, the Republic, through FPA, hereby agrees to deposit the proceeds of the capital recovery component in the special trust account designated in the notice dated April 2, 1985, addressed by counsel for the Creditors to Planters Foundation. Such proceeds shall be deposited by FPA on or before the 15th day of each month.
>
> The capital recovery component shall continue to be charged and collected until payment in full of (a) the Unpaid Capital and/or (b) any shortfall in the payment of the Subsidy Receivables, (c) any carrying cost accruing from the date hereof on the amounts which may be outstanding from time to time of the Unpaid Capital and/or the Subsidy Receivables and (d) the capital increases contemplated in paragraph 2 hereof. For the purpose of the foregoing clause (c), the 'carrying cost' shall be at such rate as will represent the full and reasonable cost to Planters of servicing its debts, taking into account both its peso and foreign currency-denominated obligations." (Records, pp. 42-43)

Appellant's proposition is open to question, to say the least. The LOU issued by then Prime Minister Virata taken together with the Justice Secretary's Opinion does not preponderantly demonstrate that the collections made were held in trust in favor of millions of farmers. Unfortunately for appellant, in the absence of sufficient evidence to establish its claims, this Court is constrained to rely on what is explicitly provided in LOI 1465 – that one of the primary aims in imposing the levy is to support the successful rehabilitation and continued viability of PPI.[18]

PPI moved for reconsideration but its motion was denied.[19] It then filed the present petition with this Court.

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[18] *Id.* at 55-58.

[19] *Id.* at 61-62.

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Issues

Petitioner PPI raises four issues for Our consideration, *viz.*:

I

THE CONSTITUTIONALITY OF LOI 1465 CANNOT BE COLLATERALLY ATTACKED AND BE DECREED VIA A DEFAULT JUDGMENT IN A CASE FILED FOR COLLECTION AND DAMAGES WHERE THE ISSUE OF CONSTITUTIONALITY IS NOT THE VERY *LIS MOTA* OF THE CASE. NEITHER CAN LOI 1465 BE CHALLENGED BY ANY PERSON OR ENTITY WHICH HAS NO STANDING TO DO SO.

II

LOI 1465, BEING A LAW IMPLEMENTED FOR THE PURPOSE OF ASSURING THE FERTILIZER SUPPLY AND DISTRIBUTION IN THE COUNTRY, AND FOR BENEFITING A FOUNDATION CREATED BY LAW TO HOLD IN TRUST FOR MILLIONS OF FARMERS THEIR STOCK OWNERSHIP IN PPI CONSTITUTES A VALID LEGISLATION PURSUANT TO THE EXERCISE OF TAXATION AND POLICE POWER FOR PUBLIC PURPOSES.

III

THE AMOUNT COLLECTED UNDER THE CAPITAL RECOVERY COMPONENT WAS REMITTED TO THE GOVERNMENT, AND BECAME GOVERNMENT FUNDS PURSUANT TO AN EFFECTIVE AND VALIDLY ENACTED LAW WHICH IMPOSED DUTIES AND CONFERRED RIGHTS BY VIRTUE OF THE PRINCIPLE OF "OPERATIVE FACT" PRIOR TO ANY DECLARATION OF UNCONSTITUTIONALITY OF LOI 1465.

IV

THE PRINCIPLE OF UNJUST VEXATION (SHOULD BE ENRICHMENT) FINDS NO APPLICATION IN THE INSTANT CASE.[20] (Underscoring supplied)

Our Ruling

We shall first tackle the procedural issues of *locus standi* and the jurisdiction of the RTC to resolve constitutional issues.

[20] *Id.* at 15.

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Fertiphil has locus standi because it suffered direct injury; doctrine of standing is a mere procedural technicality which may be waived.

PPI argues that Fertiphil has no *locus standi* to question the constitutionality of LOI No. 1465 because it does not have a "personal and substantial interest in the case or will sustain direct injury as a result of its enforcement."[21] It asserts that Fertiphil did not suffer any damage from the CRC imposition because "incidence of the levy fell on the ultimate consumer or the farmers themselves, not on the seller fertilizer company."[22]

We cannot agree. The doctrine of *locus standi* or the right of appearance in a court of justice has been adequately discussed by this Court in a catena of cases. Succinctly put, the doctrine requires a litigant to have a material interest in the outcome of a case. In private suits, *locus standi* requires a litigant to be a "real party in interest," which is defined as "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit."[23]

In public suits, this Court recognizes the difficulty of applying the doctrine especially when plaintiff asserts a public right on behalf of the general public because of conflicting public policy issues.[24] On one end, there is the right of the ordinary citizen to petition the courts to be freed from unlawful government intrusion and illegal official action. At the other end, there is the public policy precluding excessive judicial interference in

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[21] *Id.* at 21.

[22] *Id*.

[23] Rules of Civil Procedure (1997), Rule 3, Sec. 2 provides:

"A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law of these Rules, every action must be prosecuted or defended in the name of the real party-in-interest."

[24] *David v. Macapagal-Arroyo,* G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160.

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official acts, which may unnecessarily hinder the delivery of basic public services.

In this jurisdiction, We have adopted the "direct injury test" to determine *locus standi* in public suits. In *People v. Vera*,[25] it was held that a person who impugns the validity of a statute must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result." The "direct injury test" in public suits is similar to the "real party in interest" rule for private suits under Section 2, Rule 3 of the 1997 Rules of Civil Procedure.[26]

Recognizing that a strict application of the "direct injury" test may hamper public interest, this Court relaxed the requirement in cases of "transcendental importance" or with "far reaching implications." Being a mere procedural technicality, it has also been held that *locus standi* may be waived in the public interest.[27]

Whether or not the complaint for collection is characterized as a private or public suit, Fertiphil has *locus standi* to file it. Fertiphil suffered a direct injury from the enforcement of LOI No. 1465. It was required, and it did pay, the ₱10 levy imposed for every bag of fertilizer sold on the domestic market. It may be true that Fertiphil has passed some or all of the levy to the ultimate consumer, but that does not disqualify it from attacking the constitutionality of the LOI or from seeking a refund. As seller, it bore the ultimate burden of paying the levy. It faced the possibility of severe sanctions for failure to pay the levy. The fact of payment is sufficient injury to Fertiphil.

Moreover, Fertiphil suffered harm from the enforcement of the LOI because it was compelled to factor in its product the levy. The levy certainly rendered the fertilizer products of Fertiphil and other domestic sellers much more expensive. The harm to their business consists not only in fewer clients because of the increased price, but also in adopting alternative corporate

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[25] 65 Phil. 56 (1937).

[26] See note 23.

[27] See note 24.

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strategies to meet the demands of LOI No. 1465. Fertiphil and other fertilizer sellers may have shouldered all or part of the levy just to be competitive in the market. The harm occasioned on the business of Fertiphil is sufficient injury for purposes of *locus standi*.

Even assuming *arguendo* that there is no direct injury, We find that the liberal policy consistently adopted by this Court on *locus standi* must apply. The issues raised by Fertiphil are of paramount public importance. It involves not only the constitutionality of a tax law but, more importantly, the use of taxes for public purpose. Former President Marcos issued LOI No. 1465 with the intention of rehabilitating an ailing private company. This is clear from the text of the LOI. PPI is expressly named in the LOI as the direct beneficiary of the levy. Worse, the levy was made dependent and conditional upon PPI becoming financially viable. The LOI provided that "*the capital contribution shall be collected until adequate capital is raised to make PPI viable*."

The constitutionality of the levy is already in doubt on a plain reading of the statute. It is Our constitutional duty to squarely resolve the issue as the final arbiter of all justiciable controversies. The doctrine of standing, being a mere procedural technicality, should be waived, if at all, to adequately thresh out an important constitutional issue.

RTC may resolve constitutional issues; the constitutional issue was adequately raised in the complaint; it is the lis mota of the case.

PPI insists that the RTC and the CA erred in ruling on the constitutionality of the LOI. It asserts that the constitutionality of the LOI cannot be collaterally attacked in a complaint for collection.[28] Alternatively, the resolution of the constitutional issue is not necessary for a determination of the complaint for collection.[29]

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[28] *Rollo,* p. 17.

[29] *Id.* at 18.

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Fertiphil counters that the constitutionality of the LOI was adequately pleaded in its complaint. It claims that the constitutionality of LOI No. 1465 is the very *lis mota* of the case because the trial court cannot determine its claim without resolving the issue.[30]

It is settled that the RTC has jurisdiction to resolve the constitutionality of a statute, presidential decree or an executive order. This is clear from Section 5, Article VIII of the 1987 Constitution, which provides:

> SECTION 5. The Supreme Court shall have the following powers:
>
> x x x x x x x x x
>
> (2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question. (Underscoring supplied)

In *Mirasol v. Court of Appeals*,[31] this Court recognized the power of the RTC to resolve constitutional issues, thus:

> On the *first issue*. It is settled that Regional Trial Courts have the authority and jurisdiction to consider the constitutionality of a statute, presidential decree, or executive order. 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 not only in this Court, but in all Regional Trial Courts.[32]

In the recent case of *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*,[33] this Court reiterated:

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[30] *Id.* at 290.

[31] G.R. No. 128448, February 1, 2001, 351 SCRA 44.

[32] *Mirasol v. Court of Appeals, id.* at 51.

[33] G.R. No. 152214, September 19, 2006, 502 SCRA 295.

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There is no denying that regular courts have jurisdiction over cases involving the validity or constitutionality of a rule or regulation issued by administrative agencies. Such jurisdiction, however, is not limited to the Court of Appeals or to this Court alone for even the regional trial courts can take cognizance of actions assailing a specific rule or set of rules promulgated by administrative bodies. 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.[34]

Judicial review of official acts on the ground of unconstitutionality may be sought or availed of through any of the actions cognizable by courts of justice, not necessarily in a suit for declaratory relief. Such review may be had in criminal actions, as in *People v. Ferrer*[35] involving the constitutionality of the now defunct Anti-Subversion law, or in ordinary actions, as in *Krivenko v. Register of Deeds*[36] involving the constitutionality of laws prohibiting aliens from acquiring public lands. The constitutional issue, however, (a) must be properly raised and presented in the case, and (b) its resolution is necessary to a determination of the case, *i.e.*, the issue of constitutionality must be the very *lis mota* presented.[37]

Contrary to PPI's claim, the constitutionality of LOI No. 1465 was properly and adequately raised in the complaint for collection filed with the RTC. The pertinent portions of the complaint allege:

6. The CRC of ₱10 per bag levied under LOI 1465 on domestic sales of all grades of fertilizer in the Philippines, is unlawful, unjust, uncalled for, unreasonable, inequitable and oppressive because:

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[34] *Equi-Asia Placement, Inc. v. Department of Foreign Affairs, id*. at 309.

[35] G.R. Nos. L-32613-14, December 27, 1972, 48 SCRA 382.

[36] 79 Phil. 461 (1947).

[37] *Tropical Homes, Inc. v. National Housing Authority*, G.R. No. L-48672, July 31, 1987, 152 SCRA 540.

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(c) It favors only one private domestic corporation, *i.e.*, defendant PPPI, and imposed at the expense and disadvantage of the other fertilizer importers/distributors who were themselves in tight business situation and were then exerting all efforts and maximizing management and marketing skills to remain viable;

xxx xxx xxx

(e) It was a glaring example of crony capitalism, a forced program through which the PPI, having been presumptuously masqueraded as "the" fertilizer industry itself, was the sole and anointed beneficiary;

7. The CRC was an unlawful; and unconstitutional special assessment and its imposition is tantamount to illegal exaction amounting to a denial of due process since the persons of entities which had to bear the burden of paying the CRC derived no benefit therefrom; that on the contrary it was used by PPI in trying to regain its former despicable monopoly of the fertilizer industry to the detriment of other distributors and importers.[38] (Underscoring supplied)

The constitutionality of LOI No. 1465 is also the very *lis mota* of the complaint for collection. Fertiphil filed the complaint to compel PPI to refund the levies paid under the statute on the ground that the law imposing the levy is unconstitutional. The thesis is that an unconstitutional law is void. It has no legal effect. Being void, Fertiphil had no legal obligation to pay the levy. Necessarily, all levies duly paid pursuant to an unconstitutional law should be refunded under the civil code principle against unjust enrichment. The refund is a mere consequence of the law being declared unconstitutional. The RTC surely cannot order PPI to refund Fertiphil if it does not declare the LOI unconstitutional. It is the unconstitutionality of the LOI which triggers the refund. The issue of constitutionality is the very *lis mota* of the complaint with the RTC.

[38] *Rollo,* pp. 197-198.

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The ₱10 levy under LOI No. 1465 is an exercise of the power of taxation.

At any rate, the Court holds that the RTC and the CA did not err in ruling against the constitutionality of the LOI.

PPI insists that LOI No. 1465 is a valid exercise either of the police power or the power of taxation. It claims that the LOI was implemented for the purpose of assuring the fertilizer supply and distribution in the country and for benefiting a foundation created by law to hold in trust for millions of farmers their stock ownership in PPI.

Fertiphil counters that the LOI is unconstitutional because it was enacted to give benefit to a private company. The levy was imposed to pay the corporate debt of PPI. Fertiphil also argues that, even if the LOI is enacted under the police power, it is still unconstitutional because it did not promote the general welfare of the people or public interest.

Police power and the power of taxation are inherent powers of the State. These powers are distinct and have different tests for validity. Police power is the power of the State to enact legislation that may interfere with personal liberty or property in order to promote the general welfare,[39] while the power of taxation is the power to levy taxes to be used for public purpose. The main purpose of police power is the regulation of a behavior or conduct, while taxation is revenue generation. The "lawful subjects" and "lawful means" tests are used to determine the validity of a law enacted under the police power.[40] The power of taxation, on the other hand, is circumscribed by inherent and constitutional limitations.

We agree with the RTC that the imposition of the levy was an exercise by the State of its taxation power. While it is true that the power of taxation can be used as an implement of police

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[39] *Edu v. Ericta,* G.R. No. L-32096, October 24, 1970, 35 SCRA 481.

[40] *Lim v. Pacquing,* G.R. Nos. 115044 & 117263, January 27, 1995, 240 SCRA 649.

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power,[41] the primary purpose of the levy is revenue generation. If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax.[42]

In *Philippine Airlines, Inc. v. Edu*,[43] it was held that the imposition of a vehicle registration fee is not an exercise by the State of its police power, but of its taxation power, thus:

> It is clear from the provisions of Section 73 of Commonwealth Act 123 and Section 61 of the Land Transportation and Traffic Code that the legislative intent and purpose behind the law requiring owners of vehicles to pay for their registration is mainly to raise funds for the construction and maintenance of highways and to a much lesser degree, pay for the operating expenses of the administering agency. x x x Fees may be properly regarded as taxes even though they also serve as an instrument of regulation.
>
> Taxation may be made the implement of the state's police power (*Lutz v. Araneta*, 98 Phil. 148). If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax. Such is the case of motor vehicle registration fees. The same provision appears as Section 59(b) in the Land Transportation Code. It is patent therefrom that the legislators had in mind a regulatory tax as the law refers to the imposition on the registration, operation or ownership of a motor vehicle as a "tax or fee." x x x Simply put, if the exaction under Rep. Act 4136 were merely a regulatory fee, the imposition in Rep. Act 5448 need not be an "additional" tax. Rep. Act 4136 also speaks of other "fees" such as the special permit fees for certain types of motor vehicles (Sec. 10) and additional fees for change of registration (Sec. 11). These are not to be understood as taxes because such fees are very minimal to be revenue-raising. Thus, they are not mentioned by Sec. 59(b) of the Code as taxes like the motor vehicle registration fee and chauffeurs' license fee. Such fees are to go into the expenditures

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[41] *Lutz v. Araneta*, 98 Phil. 148 (1966).

[42] *Philippine Airlines, Inc. v. Edu*, G.R. No. L-41383, August 15, 1988, 164 SCRA 320.

[43] *Supra*.

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of the Land Transportation Commission as provided for in the last proviso of Sec. 61.[44] (Underscoring supplied)

The ₱10 levy under LOI No. 1465 is too excessive to serve a mere regulatory purpose. The levy, no doubt, was a big burden on the seller or the ultimate consumer. It increased the price of a bag of fertilizer by as much as five percent.[45] A plain reading of the LOI also supports the conclusion that the levy was for revenue generation. The LOI expressly provided that the levy was imposed "*until adequate capital is raised to make PPI viable*."

Taxes are exacted only for a public purpose. The ₱10 levy is unconstitutional because it was not for a public purpose. The levy was imposed to give undue benefit to PPI.

An inherent limitation on the power of taxation is public purpose. Taxes are exacted only for a public purpose. They cannot be used for purely private purposes or for the exclusive benefit of private persons.[46] The reason for this is simple. The power to tax exists for the general welfare; hence, implicit in its power is the limitation that it should be used only for a public purpose. It would be a robbery for the State to tax its citizens and use the funds generated for a private purpose. As an old United States case bluntly put it: "To lay with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is nonetheless a robbery because it is done under the forms of law and is called taxation."[47]

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[44] *Philippine Airlines, Inc. v. Edu, supra* note 42, at 327-329.

[45] *Rollo,* p. 197.

[46] Cruz, I., *Constitutional Law,* 1998 ed., p. 90.

[47] Bernas, J., *The 1987 Constitution of the Republic of the Philippines: A Commentary,* 1996 ed., p. 714.

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The term "public purpose" is not defined. It is an elastic concept that can be hammered to fit modern standards. Jurisprudence states that "public purpose" should be given a broad interpretation. It does not only pertain to those purposes which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services, but also includes those purposes designed to promote social justice. Thus, public money may now be used for the relocation of illegal settlers, low-cost housing and urban or agrarian reform.

While the categories of what may constitute a public purpose are continually expanding in light of the expansion of government functions, the inherent requirement that taxes can only be exacted for a public purpose still stands. Public purpose is the heart of a tax law. When a tax law is only a mask to exact funds from the public when its true intent is to give undue benefit and advantage to a private enterprise, that law will not satisfy the requirement of "public purpose."

The purpose of a law is evident from its text or inferable from other secondary sources. Here, We agree with the RTC and the CA that the levy imposed under LOI No. 1465 was not for a public purpose.

First, the LOI expressly provided that the levy be imposed to benefit PPI, a private company. The purpose is explicit from Clause 3 of the law, thus:

> 3. The Administrator of the Fertilizer Pesticide Authority to include in its fertilizer pricing formula a capital contribution component of not less than ₱10 per bag. This capital contribution shall be collected until adequate capital is raised to make PPI viable. Such capital contribution shall be applied by FPA to all domestic sales of fertilizers in the Philippines.[48] (Underscoring supplied)

It is a basic rule of statutory construction that the text of a statute should be given a literal meaning. In this case, the text

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[48] *Rollo,* p. 155.

of the LOI is plain that the levy was imposed in order to raise capital for PPI. The framers of the LOI did not even hide the insidious purpose of the law. They were cavalier enough to name PPI as the ultimate beneficiary of the taxes levied under the LOI. We find it utterly repulsive that a tax law would expressly name a private company as the ultimate beneficiary of the taxes to be levied from the public. This is a clear case of crony capitalism.

Second, the LOI provides that the imposition of the ₱10 levy was conditional and dependent upon PPI becoming financially "viable." This suggests that the levy was actually imposed to benefit PPI. The LOI notably does not fix a maximum amount when PPI is deemed financially "viable." Worse, the liability of Fertiphil and other domestic sellers of fertilizer to pay the levy is made indefinite. They are required to continuously pay the levy until adequate capital is raised for PPI.

Third, the RTC and the CA held that the levies paid under the LOI were directly remitted and deposited by FPA to Far East Bank and Trust Company, the depositary bank of PPI.[49] This proves that PPI benefited from the LOI. It also proves that the main purpose of the law was to give undue benefit and advantage to PPI.

Fourth, the levy was used to pay the corporate debts of PPI. A reading of the Letter of Understanding[50] dated May 18, 1985 signed by then Prime Minister Cesar Virata reveals that PPI was in deep financial problem because of its huge corporate debts. There were pending petitions for rehabilitation against PPI before the Securities and Exchange Commission. The government guaranteed payment of PPI's debts to its foreign creditors. To fund the payment, President Marcos issued LOI No. 1465. The pertinent portions of the letter of understanding read:

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[49] *Id.* at 52, 75-76.

[50] *Id.* at 150-154.

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Republic of the Philippines
Office of the Prime Minister
Manila

LETTER OF UNDERTAKING

May 18, 1985

TO: THE BANKING AND FINANCIAL INSTITUTIONS
LISTED IN ANNEX A HERETO WHICH ARE
CREDITORS (COLLECTIVELY, THE "CREDITORS")
OF PLANTERS PRODUCTS, INC. ("PLANTERS")

Gentlemen:

This has reference to Planters which is the principal importer and distributor of fertilizer, pesticides and agricultural chemicals in the Philippines. As regards Planters, the Philippine Government confirms its awareness of the following: (1) that Planters has outstanding obligations in foreign currency and/or pesos, to the Creditors, (2) that Planters is currently experiencing financial difficulties, and (3) that there are presently pending with the Securities and Exchange Commission of the Philippines a petition filed at Planters' own behest for the suspension of payment of all its obligations, and a separate petition filed by Manufacturers Hanover Trust Company, Manila Offshore Branch for the appointment of a rehabilitation receiver for Planters.

In connection with the foregoing, the Republic of the Philippines (the "Republic") confirms that it considers and continues to consider Planters as a major fertilizer distributor. Accordingly, for and in consideration of your expressed willingness to consider and participate in the effort to rehabilitate Planters, the Republic hereby manifests its full and unqualified support of the successful rehabilitation and continuing viability of Planters, and to that end, hereby binds and obligates itself to the creditors and Planters, as follows:

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2. Upon the effective date of this Letter of Undertaking, the Republic shall cause FPA to include in its fertilizer pricing formula a capital recovery component, the proceeds of which will be used initially for the purpose of funding the unpaid portion of the outstanding capital stock of Planters presently held in trust by Planters Foundation, Inc. ("Planters

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Foundation"), which unpaid capital is estimated at approximately ₱206 million (subject to validation by Planters and Planters Foundation) such unpaid portion of the outstanding capital stock of Planters being hereafter referred to as the "Unpaid Capital"), and subsequently for such capital increases as may be required for the continuing viability of Planters.

xxx xxx xxx

The capital recovery component shall continue to be charged and collected until payment in full of (a) the Unpaid Capital and/or (b) any shortfall in the payment of the Subsidy Receivables, (c) any carrying cost accruing from the date hereof on the amounts which may be outstanding from time to time of the Unpaid Capital and/or the Subsidy Receivables, and (d) the capital increases contemplated in paragraph 2 hereof. For the purpose of the foregoing clause (c), the "carrying cost" shall be at such rate as will represent the full and reasonable cost to Planters of servicing its debts, taking into account both its peso and foreign currency-denominated obligations.

REPUBLIC OF THE PHILIPPINES
By:
(signed)
CESAR E. A. VIRATA
Prime Minister and Minister of Finance[51]

It is clear from the Letter of Understanding that the levy was imposed precisely to pay the corporate debts of PPI. We cannot agree with PPI that the levy was imposed to ensure the stability of the fertilizer industry in the country. The letter of understanding and the plain text of the LOI clearly indicate that the levy was exacted for the benefit of a private corporation.

All told, the RTC and the CA did not err in holding that the levy imposed under LOI No. 1465 was not for a public purpose. LOI No. 1465 failed to comply with the public purpose requirement for tax laws.

The LOI is still unconstitutional even if enacted under the police power; it did not promote public interest.

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[51] *Id*.

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Even if We consider LOI No. 1695 enacted under the police power of the State, it would still be invalid for failing to comply with the test of "lawful subjects" and "lawful means." Jurisprudence states the test as follows: (1) the interest of the public generally, as distinguished from those of particular class, requires its exercise; and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.[52]

For the same reasons as discussed, LOI No. 1695 is invalid because it did not promote public interest. The law was enacted to give undue advantage to a private corporation. We quote with approval the CA ratiocination on this point, thus:

> It is upon applying this established tests that We sustain the trial court's holding LOI 1465 unconstitutional. To be sure, ensuring the continued supply and distribution of fertilizer in the country is an undertaking imbued with public interest. However, the method by which LOI 1465 sought to achieve this is by no means a measure that will promote the public welfare. The government's commitment to support the successful rehabilitation and continued viability of PPI, a private corporation, is an unmistakable attempt to mask the subject statute's impartiality. There is no way to treat the self-interest of a favored entity, like PPI, as identical with the general interest of the country's farmers or even the Filipino people in general. Well to stress, substantive due process exacts fairness and equal protection disallows distinction where none is needed. When a statute's public purpose is spoiled by private interest, the use of police power becomes a travesty which must be struck down for being an arbitrary exercise of government power. To rule in favor of appellant would contravene the general principle that revenues derived from taxes cannot be used for purely private purposes or for the exclusive benefit of private individuals. (Underscoring supplied)

The general rule is that an unconstitutional law is void; the doctrine of operative fact is inapplicable.

PPI also argues that Fertiphil cannot seek a refund even if LOI No. 1465 is declared unconstitutional. It banks on the doctrine

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[52] *Id.* at 55-58.

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of operative fact, which provides that an unconstitutional law has an effect before being declared unconstitutional. PPI wants to retain the levies paid under LOI No. 1465 even if it is subsequently declared to be unconstitutional.

We cannot agree. It is settled that no question, issue or argument will be entertained on appeal, unless it has been raised in the court *a quo*.[53] PPI did not raise the applicability of the doctrine of operative fact with the RTC and the CA. It cannot belatedly raise the issue with Us in order to extricate itself from the dire effects of an unconstitutional law.

At any rate, We find the doctrine inapplicable. The general rule is that an unconstitutional law is void. It produces no rights, imposes no duties and affords no protection. It has no legal effect. It is, in legal contemplation, inoperative as if it has not been passed.[54] Being void, Fertiphil is not required to pay the levy. All levies paid should be refunded in accordance with the general civil code principle against unjust enrichment. The general rule is supported by Article 7 of the Civil Code, which provides:

> ART. 7. 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 declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.

The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play.[55] It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot

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[53] *Cojuangco, Jr. v. Court of Appeals*, G.R. No. 119398, July 2, 1999, 309 SCRA 602, 614-615.

[54] See note 46, at 33-34.

[55] *Republic v. Court of Appeals*, G.R. No. 79732, November 8, 1993, 227 SCRA 509.

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always be ignored. The past cannot always be erased by a new judicial declaration.[56]

The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy[57] or would put in limbo the acts done by a municipality in reliance upon a law creating it.[58]

Here, We do not find anything iniquitous in ordering PPI to refund the amounts paid by Fertiphil under LOI No. 1465. It unduly benefited from the levy. It was proven during the trial that the levies paid were remitted and deposited to its bank account. Quite the reverse, it would be inequitable and unjust not to order a refund. To do so would unjustly enrich PPI at the expense of Fertiphil. Article 22 of the Civil Code explicitly provides that "every person who, through an act of performance by another comes into possession of something at the expense of the latter without just or legal ground shall return the same to him." We cannot allow PPI to profit from an unconstitutional law. Justice and equity dictate that PPI must refund the amounts paid by Fertiphil.

WHEREFORE, the petition is *DENIED*. The Court of Appeals Decision dated November 28, 2003 is *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Nachura, JJ.,* concur.

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[56] *Peralta v. Civil Service Commission,* G.R. No. 95832, August 10, 1992, 212 SCRA 425.

[57] *Tan v. Barrios,* G.R. Nos. 85481-82, October 18, 1990, 190 SCRA 686, citing *Aquino, Jr. v. Military Commission No. 2,* G.R. No. L-37364, May 9, 1975, 63 SCRA 546.

[58] *Id.*, citing *Municipality of Malabang v. Benito,* G.R. No. L-28113, March 28, 1969, 27 SCRA 533.