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appeal as to do so would be offensive to the basic rules of fair play, justice, and due process.[31]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 27 February 2003 Decision and 17 November 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 72402.

SO ORDERED.

Puno, C.J. (Chairperson), Azcuna, Reyes,[*] and *Leonardo-de Castro, JJ.,* concur.

THIRD DIVISION

[G.R. No. 166408. October 6, 2008]

QUEZON CITY and THE CITY TREASURER OF QUEZON CITY, *petitioners, vs.* **ABS-CBN BROADCASTING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; DISMISSAL OF APPEAL BY THE COURT OF APPEALS IS PROPER BECAUSE IT RAISED PURELY LEGAL ISSUES; SUSTAINED. — Obviously, these are purely legal questions, cognizable by this Court, to the exclusion of all other courts. There is a question of law when the doubt or difference arises as to what the law is pertaining to a certain state of facts. Section 2, Rule 50 of the Rules of Court provides that an appeal taken to the CA under Rule 41 raising only questions of law is erroneous and shall be dismissed, issues of pure law not being within its

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[31] *Victorias Milling Co., Inc. v. Court of Appeals*, 389 Phil. 184 (2000).

[*] As replacement of Justice Renato C. Corona who is on official leave per Special Order No. 520.

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jurisdiction. Consequently, the dismissal by the CA of petitioners' appeal was in order.

2. TAXATION; INHERENT POWER TO TAX; THE POWER OF CONGRESS TO GRANT EXEMPTIONS IS SUPERIOR TO THE LOCAL GOVERNMENT'S DELEGATED POWER TO TAX. — Congress has the inherent power to tax, which includes the power to grant tax exemptions. On the other hand, the power of Quezon City to tax is prescribed by Section 151 in relation to Section 137 of the LGC which expressly provides that notwithstanding any exemption granted by any law or other special law, the City may impose a franchise tax. It must be noted that Section 137 of the LGC does not prohibit grant of future exemptions. As earlier discussed, this Court in *City Government of Quezon City v. Bayan Telecommunications, Inc.* sustained the power of Congress to grant tax exemptions over and above the power of the local government's delegated power to tax.

3. ID.; TAXES; TAX EXEMPTION; THE INTENTION TO MAKE AN EXEMPTION MUST BE EXPRESSED IN CLEAR AND UNAMBIGUOUS TERMS; RATIONALE. — Taxes are what civilized people pay for civilized society. They are the lifeblood of the nation. Thus, statutes granting tax exemptions are construed *stricissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception. The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed. The basis for the rule on strict construction to statutory provisions granting tax exemptions or deductions is to minimize differential treatment and foster impartiality, fairness and equality of treatment among taxpayers. He who claims an exemption from his share of common burden must justify his claim that the legislature intended to exempt him by unmistakable terms. For exemptions from taxation are not favored in law, nor are they presumed. They must be expressed in the clearest and most unambiguous language and not left to mere implications. It has been held that "exemptions are never presumed, the burden is on the claimant to establish clearly his right to exemption and cannot be made out of inference or implications but must be laid beyond reasonable doubt. In other

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words, since taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms. x x x As adverted to earlier, the right to exemption from local franchise tax must be clearly established and cannot be made out of inference or implications but must be laid beyond reasonable doubt. Verily, the uncertainty in the "in lieu of all taxes" provision should be construed against ABS-CBN. ABS-CBN has the burden to prove that it is in fact covered by the exemption so claimed. ABS-CBN miserably failed in this regard. Too, the franchise failed to specify the taxing authority from whose jurisdiction the taxing power is withheld, whether municipal, provincial, or national. In fine, since ABS-CBN failed to justify its claim for exemption from local franchise tax, by a grant expressed in terms "too plain to be mistaken" its claim for exemption for local franchise tax must fail.

4. ID.; ID.; VALUE ADDED TAX AND FRANCHISE TAX, DISTINGUISHED. — VAT is a percentage tax imposed on any person whether or not a franchise grantee, who in the course of trade or business, sells, barters, exchanges, leases, goods or properties, renders services. It is also levied on every importation of goods whether or not in the course of trade or business. The tax base of the VAT is limited only to the value added to such goods, properties, or services by the seller, transferor or lessor. Further, the VAT is an indirect tax and can be passed on to the buyer. The franchise tax, on the other hand, is a percentage tax imposed only on franchise holders. It is imposed under Section 119 of the Tax Code and is a direct liability of the franchise grantee.

APPEARANCES OF COUNSEL

The City Attorney (Quezon City) for petitioners.
Quiason Makalintal Barot Torres & Ibarra for respondent.

D E C I S I O N

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

CLAIMS for tax exemption must be based on language in law too plain to be mistaken. It cannot be made out of inference or implication.

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The principle is relevant in this petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) and that[2] of the Regional Trial Court (RTC) ordering the refund and declaring invalid the imposition and collection of local franchise tax by the City Treasurer of Quezon City on ABS-CBN Broadcasting Corporation (ABS-CBN).

The Facts

Petitioner City Government of Quezon City is a local government unit duly organized and existing by virtue of Republic Act (R.A.) No. 537, otherwise known as the Revised Charter of Quezon City. Petitioner City Treasurer of Quezon City is primarily responsible for the imposition and collection of taxes within the territorial jurisdiction of Quezon City.

Under Section 31, Article 13 of the Quezon City Revenue Code of 1993,[3] a franchise tax was imposed on businesses operating within its jurisdiction. The provision states:

> Section 31. *Imposition of Tax*. — Any provision of special laws or grant of tax exemption to the contrary notwithstanding, any person, corporation, partnership or association enjoying a franchise whether issued by the national government or local government and, doing business in Quezon City, shall pay a franchise tax at the rate of ten percent (10%) of one percent (1%) for 1993-1994, twenty percent (20%) of one percent (1%) for 1995, and thirty percent (30%) of one percent (1%) for 1996 and the succeeding years thereafter, of gross receipts and sales derived from the operation of the business in Quezon City during the preceding calendar year.

On May 3, 1995, ABS-CBN was granted the franchise to install and operate radio and television broadcasting stations in

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[1] *Rollo*, pp. 56-67. Dated August 31, 2004. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Romeo A. Brawner and Mariano C. Del Castillo, concurring.

[2] *Id.* at 46-54. Dated January 20, 1999. Penned by then Judge, now CA Associate Justice, Lucas P. Bersamin.

[3] Quezon City Ordinance No. SP-91, S-93.

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the Philippines under R.A. No. 7966.[4] Section 8 of R.A. No. 7966 provides the tax liabilities of ABS-CBN which reads:

> Section 8. *Tax Provisions*. — The grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns, **shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the radio/television business transacted under this franchise by the grantee, its successors or assigns, and the said percentage tax shall be in lieu of all taxes on this franchise or earnings thereof;** Provided that the grantee, its successors or assigns shall continue to be liable for income taxes under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto. (Emphasis added)

ABS-CBN had been paying local franchise tax imposed by Quezon City. However, in view of the above provision in R.A. No. 9766 that it "shall pay a franchise tax x x x in lieu of all taxes," the corporation developed the opinion that it is not liable to pay the local franchise tax imposed by Quezon City. Consequently, ABS-CBN paid under protest the local franchise tax imposed by Quezon City on the dates, in the amounts and under the official receipts as follows:

O.R. No.	Date	Amount Paid
2464274	07-18-95	₱ 1,489,977.28
2484651	10-20-95	1,489,977.28
2536134	1-22-96	2,880,975.65
8354906	1-23-97	8,621,470.83
0048756	1-23-97	2,731,135.81
0067352	4-03-97	2,731,135.81
Total		₱19,944,672.66[5]

[4] "An Act Granting the ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Operate and Maintain Television and Radio Broadcasting Stations in the Philippines, and for Other Purposes." Enacted on March 30, 1995 and date of effectivity on May 3, 1995.

[5] *Rollo*, p. 17.

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On January 29, 1997, ABS-CBN filed a written claim for refund for local franchise tax paid to Quezon City for 1996 and for the first quarter of 1997 in the total amount of Fourteen Million Two Hundred Thirty-Three Thousand Five Hundred Eighty-Two and 29/100 centavos (₱14,233,582.29) broken down as follows:

O.R. No	Date	Amount Paid
2536134	1-22-96	₱ 2,880,975.65
8354906	1-23-97	8,621,470.83
0048756	1-23-97	2,731,135.81
Total		₱14,233,582.29[6]

In a letter dated March 3, 1997 to the Quezon City Treasurer, ABS-CBN reiterated its claim for refund of local franchise taxes paid.

On June 25, 1997, for failure to obtain any response from the Quezon City Treasurer, ABS-CBN filed a complaint before the RTC in Quezon City seeking the declaration of nullity of the imposition of local franchise tax by the City Government of Quezon City for being unconstitutional. It likewise prayed for the refund of local franchise tax in the amount of Nineteen Million Nine Hundred Forty-Four Thousand Six Hundred Seventy-Two and 66/100 centavos (₱19,944,672.66) broken down as follows:

O.R. No.	Date	Amount Paid
2464274	7-18-95	₱ 1,489,977.28
2484651	10-20-95	1,489,977.28
2536134	1-22-96	2,880,975.65
8354906	1-23-97	8,621,470.83
0048756	1-23-97	2,731,135.81
0067352	4-03-97	2,731,135.81
Total		₱19,944,672.66[7]

Quezon City argued that the "in lieu of all taxes" provision in R.A. No. 9766 could not have been intended to prevail over

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[6] *Id.*

[7] *Id.* at 17-18.

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a constitutional mandate which ensures the viability and self-sufficiency of local government units. Further, that taxes collectible by and payable to the local government were distinct from taxes collectible by and payable to the national government, considering that the Constitution specifically declared that the taxes imposed by local government units "shall accrue exclusively to the local governments." Lastly, the City contended that the exemption claimed by ABS-CBN under R.A. No. 7966 was withdrawn by Congress when the Local Government Code (LGC) was passed.[8] Section 193 of the LGC provides:

> Section 193. *Withdrawal of Tax Exemption Privileges*. — Unless otherwise provided in this Code, **tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations**, except local water districts, cooperatives duly registered under R.A. 6938, non-stock and non-profit hospitals and educational institutions, **are hereby withdrawn** upon the effectivity of this Code. (Emphasis added)

On August 13, 1997, ABS-CBN filed a supplemental complaint adding to its claim for refund the local franchise tax paid for the third quarter of 1997 in the amount of Two Million Seven Hundred Thirty-One Thousand One Hundred Thirty-Five and 81/100 centavos (₱2,731,135.81) and of other amounts of local franchise tax as may have been and will be paid by ABS-CBN until the resolution of the case.

Quezon City insisted that the claim for refund must fail because of the absence of a prior written claim for it.

RTC and CA Dispositions

On January 20, 1999, the RTC rendered judgment declaring as invalid the imposition on and collection from ABS-CBN of local franchise tax paid pursuant to Quezon City Ordinance No. SP-91, S-93, after the enactment of R.A. No. 7966, and ordered the refund of all payments made. The dispositive portion of the RTC decision reads:

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[8] *Id.* at 46-60.

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WHEREFORE, judgment is hereby rendered declaring the imposition on and collection from plaintiff ABS-CBN BROADCASTING CORPORATION of local franchise taxes pursuant to Quezon City Ordinance No. SP-91, S-93 after the enactment of Republic Act No. 7966 to be invalid, and, accordingly, the Court hereby orders the defendants to refund all its payments made after the effectivity of its legislative franchise on May 3, 1995.

SO ORDERED.[9]

In its decision, the RTC ruled that the "in lieu of all taxes" provision contained in Section 8 of R.A. No. 7966 absolutely excused ABS-CBN from the payment of local franchise tax imposed under Quezon City Ordinance No. SP-91, S-93. The intent of the legislature to excuse ABS-CBN from payment of local franchise tax could be discerned from the usage of the "in lieu of all taxes" provision and from the absence of any qualification except income taxes. Had Congress intended to exclude taxes imposed from the exemption, it would have expressly mentioned so in a fashion similar to the proviso on income taxes.

The RTC also based its ruling on the 1990 case of *Province of Misamis Oriental v. Cagayan Electric Power and Light Company, Inc. (CEPALCO)*.[10] In said case, the exemption of respondent electric company CEPALCO from payment of provincial franchise tax was upheld on the ground that the franchise of CEPALCO was a special law, while the Local Tax Code, on which the provincial ordinance imposing the local franchise tax was based, was a general law. Further, it was held that whenever there is a conflict between two laws, one special and particular and the other general, the special law must be taken as intended to constitute an exception to the general act.

The RTC noted that the legislative franchise of ABS-CBN was granted years after the effectivity of the LGC. Thus, it was unavoidable to conclude that Section 8 of R.A. No. 7966 was an exception since the legislature ought to be presumed to

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[9] *Id.* at 54.

[10] G.R. No. 45355, January 12, 1990, 181 SCRA 38.

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have enacted it with the knowledge and awareness of the existence and prior enactment of Section 137[11] of the LGC.

In addition, the RTC, again citing the case of *Province of Misamis Oriental v. Cagayan Electric Power and Light Company, Inc. (CEPALCO),*[12] ruled that the imposition of the local franchise tax was an impairment of ABS-CBN's contract with the government. The imposition of another franchise on the corporation by the local authority would constitute an impairment of the former's charter, which is in the nature of a private contract between it and the government.

As to the amounts to be refunded, the RTC rejected Quezon City's position that a written claim for refund pursuant to Section 196 of the LGC was a condition *sine qua non* before filing the case in court. The RTC ruled that although Fourteen Million Two Hundred Thirty-Three Thousand Five Hundred Eighty-Two and 29/100 centavos (₱14,233,582.29) was the only amount stated in the letter to the Quezon City Treasurer claiming refund, ABS-CBN should nonetheless be also refunded of all payments made after the effectivity of R.A. No. 7966. The inaction of the City Treasurer on the claim for refund of ABS-CBN legally rendered any further claims for refund on the part of plaintiff absurd and futile in relation to the succeeding payments.

The City of Quezon and its Treasurer filed a motion for reconsideration which was subsequently denied by the RTC. Thus, appeal was made to the CA. On September 1, 2004, the CA dismissed the petition of Quezon City and its Treasurer. According to the appellate court, the issues raised were purely legal questions cognizable only by the Supreme Court. The CA ratiocinated:

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[11] Section 137. *Franchise Tax. — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on business is* (sic) *enjoying a franchise*, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. x x x

[12] *Supra*.

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For another, the issues which appellants submit for this Court's consideration are more of legal query necessitating a legal opinion rather than a call for adjudication on the matter in dispute.

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The first issue has earlier been categorized in *Province of Misamis Oriental v. Cagayan Electric and Power Co., Inc.* to be a legal one. There is no more argument to this.

The next issue although it may need the reexamination of the pertinent provisions of the local franchise and the legislative franchise given to appellee, also needs no evaluation of facts. It suffices that there may be a conflict which may need to be reconciled, without regard to the factual backdrop of the case.

The last issue deals with a legal question, because whether or not there is a prior written claim for refund is no longer in dispute. Rather, the question revolves on whether the said requirement may be dispensed with, which obviously is not a factual issue.[13]

On September 23, 2004**,** petitioner moved for reconsideration. The motion was, however, denied by the CA in its Resolution dated December 16, 2004. Hence, the present recourse.

Issues

Petitioner submits the following issues for resolution:

I.

Whether or not the phrase "in lieu of all taxes" indicated in the franchise of the respondent appellee (Section 8 of RA 7966) serves to exempt it from the payment of the local franchise tax imposed by the petitioners-appellants.

II.

Whether or not the petitioners-appellants raised factual and legal issues before the Honorable Court of Appeals.[14]

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[13] *Rollo,* pp. 64-65.

[14] *Id.* at 23.

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Our Ruling

The second issue, being procedural in nature, shall be dealt with immediately. But there are other resultant issues linked to the first.

I. The dismissal by the CA of petitioners' appeal is in order because it raised purely legal issues, namely:

1) Whether appellee, whose franchise expressly provides that its payment of franchise tax shall be in *lieu of all taxes in this franchise* or earnings thereof, is absolutely excused from paying the franchise tax imposed by appellants;

2) Whether appellants' imposition of local franchise tax is a violation of appellee's legislative franchise; and

3) Whether one can do away with the requirement on prior written claim for refund.[15]

Obviously, these are purely legal questions, cognizable by this Court, to the exclusion of all other courts. There is a question of law when the doubt or difference arises as to what the law is pertaining to a certain state of facts.[16]

Section 2, Rule 50 of the Rules of Court provides that an appeal taken to the CA under Rule 41 raising only questions of law is erroneous and shall be dismissed, issues of pure law not being within its jurisdiction.[17] Consequently, the dismissal by the CA of petitioners' appeal was in order.

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[15] *Id.* at 65.

[16] *Calvo v. Vergara*, G.R. No. 134741, December 19, 2001, 372 SCRA 650, as cited in *Lavides v. Pre*, G.R. No. 127830, October 17, 2001, 367 SCRA 382.

[17] Rule 50, Sec. 2. *Dismissal of improper appeal to the Court of Appeals*. — An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues of pure law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

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In the recent case of *Sevilleno v. Carilo*,[18] this Court ruled that the dismissal of the appeal of petitioner was valid, considering the issues raised there were pure questions of law, *viz.*:

> Petitioners interposed an appeal to the Court of Appeals but it was dismissed for being the wrong mode of appeal. The appellate court held that since the issue being raised is whether the RTC has jurisdiction over the subject matter of the case, which is a question of law, the appeal should have been elevated to the Supreme Court under Rule 45 of the 1997 Rules of Civil Procedure, as amended. Section 2, Rule 41 of the same Rules which governs appeals from judgments and final orders of the RTC to the Court of Appeals, provides:
>
> SEC. 2. *Modes of appeal.* —
>
> (a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.
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> (b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.
>
> (c) *Appeal by certiorari.* — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

In *Macawili Gold Mining and Development Co., Inc. v. Court of Appeals*, we summarized the rule on appeals as follows:

> (1) In all cases decided by the RTC in the exercise of its original jurisdiction, appeal may be made to the Court of Appeals by mere notice of appeal where the appellant

[18] G.R. No. 146454, September 14, 2007.

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raises questions of fact or mixed questions of fact and law;

(2) In all cases decided by the RTC in the exercise of its original jurisdiction where the appellant raises only questions of law, the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45;

(3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42.

It is not disputed that the issue brought by petitioners to the Court of Appeals involves the jurisdiction of the RTC over the subject matter of the case. We have a long standing rule that a court's jurisdiction over the subject matter of an action is conferred only by the Constitution or by statute. Otherwise put, jurisdiction of a court over the subject matter of the action is a matter of law. Consequently, issues which deal with the jurisdiction of a court over the subject matter of a case are pure questions of law. *As petitioners' appeal solely involves a question of law, they should have directly taken their appeal to this Court by filing a petition for review on certiorari under Rule 45, not an ordinary appeal with the Court of Appeals under Rule 41. Clearly, the appellate court did not err in holding that petitioners pursued the wrong mode of appeal.*

Indeed, the Court of Appeals did not err in dismissing petitioners' appeal. Section 2, Rule 50 of the same Rules provides that *an appeal from the RTC to the Court of Appeals raising only questions of law shall be dismissed; and that an appeal erroneously taken to the Court of Appeals shall be dismissed outright*, x x x.[19] (Emphasis added)

However, to serve the demands of substantial justice and equity, the Court opts to relax procedural rules and rule upon on the merits of the case. In *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation*,[20] this Court stated:

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[19] *Sevilleno v. Carilo, id.*

[20] G.R. No. 168115, June 8, 2007, 524 SCRA 333.

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Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, this Court has allowed liberal construction of the rules when to do so would serve the demands of substantial justice and equity. In *Aguam v. Court of Appeals*, the Court explained:

> "The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[21]

II. The "in lieu of all taxes" provision in its franchise does not exempt ABS-CBN from payment of local franchise tax.

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[21] *Ong Lim Sing Jr. v. FEB Leasing and Finance Corporation, id.* at 343-344.

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A. The present controversy essentially boils down to a dispute between the inherent taxing power of Congress and the delegated authority to tax of local governments under the 1987 Constitution and effected under the LGC of 1991.

The power of the local government of Quezon City to impose franchise tax is based on Section 151 in relation to Section 137 of the LGC, to wit:

> Section 137. *Franchise Tax. — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise,* at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized within its territorial jurisdiction. x x x
>
> x x x x x x x x x
>
> Section 151. *Scope of Taxing Powers. — Except as otherwise provided in this Code, the city may levy the taxes, fees and charges which the province or municipality may impose:* Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes. (Emphasis supplied)

Such taxing power by the local government, however, is limited in the sense that Congress can enact legislation granting exemptions. This principle was upheld in *City Government of Quezon City, et al. v. Bayan Telecommunications, Inc.*[22] Said this Court:

> This thus raises the question of whether or not the City's Revenue Code pursuant to which the city treasurer of Quezon City levied real property taxes against Bayantel's real properties located within the City effectively withdrew the tax exemption enjoyed by Bayantel under its franchise, as amended.

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[22] G.R. No. 162015, March 6, 2006, 484 SCRA 169.

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Bayantel answers the poser in the negative arguing that once again it is only "liable to pay the same taxes, as any other persons or corporations on all its real or personal properties, exclusive of its franchise."

Bayantel's posture is well-taken. While the system of local government taxation has changed with the onset of the 1987 Constitution, the power of local government units to tax is still limited. As we explained in *Mactan Cebu International Airport Authority*:

> "The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely be virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution. Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy. x x x"

Clearly then, while a new slant on the subject of local taxation now prevails in the sense that the former doctrine of local government units' delegated power to tax had been effectively modified with Article X, Section 5 of the 1987 Constitution now in place, the basic doctrine on local taxation remains essentially the same. *For as the Court stressed in Mactan, "the power to tax is [still] primarily vested in the Congress."*

This new perspective is best articulated by Fr. Joaquin G. Bernas, S.J., himself a Commissioner of the 1986 Constitutional Commission which crafted the 1987 Constitution, thus:

> "What is the effect of Section 5 on the fiscal position of municipal corporations? Section 5 does not change the doctrine that municipal corporations do not possess inherent powers of taxation. What it does is to confer municipal corporations a general power to levy taxes and otherwise create sources of revenue. They no longer have to wait for a statutory grant of these powers. The power of the legislative authority relative to the fiscal powers of local governments has been reduced to the authority to impose limitations on municipal powers. Moreover, these limitations must be "consistent with the basic policy of local autonomy." The important legal effect of Section

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> 5 is thus to reverse the principle that doubts are resolved against municipal corporations. Henceforth, in interpreting statutory provisions on municipal fiscal powers, doubts will be resolved in favor of municipal corporations. It is understood, however, that taxes imposed by local government must be for a public purpose, uniform within a locality, must not be confiscatory, and must be within the jurisdiction of the local unit to pass."

In net effect, the controversy presently before the Court involves, at bottom, a clash between the inherent taxing power of the legislature, which necessarily includes the power to exempt, and the local government's delegated power to tax under the aegis of the 1987 Constitution.

Now to go back to the Quezon City Revenue Code which imposed real estate taxes on all real properties within the city's territory and removed exemptions theretofore "previously granted to, or presently enjoyed by all persons, whether natural or juridical [x x x]" *there can really be no dispute that the power of the Quezon City Government to tax is limited by Section 232 of the LGC* which expressly provides that "a province or city or municipality within the Metropolitan Manila Area may levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted." Under this law, the Legislature highlighted its power to thereafter exempt certain realties from the taxing power of local government units. An interpretation denying Congress such power to exempt would reduce the phrase "not hereinafter specifically exempted" as a pure jargon, without meaning whatsoever. Needless to state, such absurd situation is unacceptable.

For sure, in *Philippine Long Distance Telephone Company, Inc. (PLDT) vs. City of Davao*, this Court has upheld the power of Congress to grant exemptions over the power of local government units to impose taxes. There, the Court wrote:

> *"Indeed, the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions to certain persons, pursuant to a declared national policy.* The legal effect of the constitutional grant to local governments simply means that in interpreting statutory provisions on municipal taxing

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powers, doubts must be resolved in favor of municipal corporations."[23] (Emphasis supplied)

In the case under review, the Philippine Congress enacted R.A. No. 7966 on March 30, 1995, subsequent to the effectivity of the LGC on January 1, 1992. Under it, ABS-CBN was granted the franchise to install and operate radio and television broadcasting stations in the Philippines. Likewise, Section 8 imposed on ABS-CBN the duty of paying 3% franchise tax. It bears stressing, however, that payment of the percentage franchise tax shall be "in lieu of all taxes" on the said franchise.[24]

Congress has the inherent power to tax, which includes the power to grant tax exemptions. On the other hand, the power of Quezon City to tax is prescribed by Section 151 in relation to Section 137 of the LGC which expressly provides that notwithstanding any exemption granted by any law or other special law, the City may impose a franchise tax. It must be noted that Section 137 of the LGC does not prohibit grant of future exemptions. As earlier discussed, this Court in *City Government of Quezon City v. Bayan Telecommunications, Inc.*[25] sustained the power of Congress to grant tax exemptions over and above the power of the local government's delegated power to tax.

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[23] *City Government of Quezon City v. Bayan Telecommunications, Inc., id.* at 183-186.

[24] Section 8. *Tax Provisions*. — The grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the radio/television business transacted under this franchise by the grantee, its successors or assigns, and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof; Provided that the grantee, its successors or assigns shall continue to be liable for income taxes under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

[25] *Supra* note 20.

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B. The more pertinent issue now to consider is whether or not by passing R.A. No. 7966, which contains the "in lieu of all taxes" provision, Congress intended to exempt ABS-CBN from local franchise tax.

Petitioners argue that the "in lieu of all taxes" provision in ABS-CBN's franchise does not expressly exempt it from payment of local franchise tax. They contend that a tax exemption cannot be created by mere implication and that one who claims tax exemptions must be able to justify his claim by clearest grant of organic law or statute.

Taxes are what civilized people pay for civilized society. They are the lifeblood of the nation. Thus, statutes granting tax exemptions are construed *stricissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption is the exception.[26] The burden of proof rests upon the party claiming the exemption to prove that it is in fact covered by the exemption so claimed.[27]

The basis for the rule on strict construction to statutory provisions granting tax exemptions or deductions is to minimize differential treatment and foster impartiality, fairness and equality of treatment among taxpayers.[28] He who claims an exemption from his share of common burden must justify his claim that the legislature intended to exempt him by unmistakable terms. For exemptions from taxation are not favored in law, nor are they presumed. They must be expressed in the clearest and most unambiguous language and not left to mere implications. It has been held that "exemptions are never presumed, the burden is on the claimant to establish clearly his right to exemption and cannot be made out of inference or implications but must be

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[26] *Mactan Cebu International Airport Authority v. Marcos,* G.R. No. 120082, September 11, 1996, 261 SCRA 667, 680.

[27] Agpalo, R.E., *Statutory Construction*, 2003 ed., p. 301.

[28] *Maceda v. Macaraeg, Jr.,* G.R. No. 88291, May 31, 1991, 197 SCRA 771, 799, citing Sands, C.D., *Statutes and Statutory Construction,* Vol. 3, p. 207.

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laid beyond reasonable doubt. In other words, since taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms.[29]

Section 8 of R.A. No. 7966 imposes on ABS-CBN a franchise tax equivalent to three (3) percent of all gross receipts of the radio/television business transacted under the franchise and the franchise tax shall be "in lieu of all taxes" on the franchise or earnings thereof.

The "in lieu of all taxes" provision in the franchise of ABS-CBN does not expressly provide what kind of taxes ABS-CBN is exempted from. It is not clear whether the exemption would include both local, whether municipal, city or provincial, and national tax. What is clear is that ABS-CBN shall be liable to pay three (3) percent franchise tax and income taxes under Title II of the NIRC. But whether the "in lieu of all taxes provision" would include exemption from local tax is not unequivocal.

As adverted to earlier, the right to exemption from local franchise tax must be clearly established and cannot be made out of inference or implications but must be laid beyond reasonable doubt. Verily, the uncertainty in the "in lieu of all taxes" provision should be construed against ABS-CBN. ABS-CBN has the burden to prove that it is in fact covered by the exemption so claimed. ABS-CBN miserably failed in this regard.

ABS-CBN cites the cases *Carcar Electric & Ice Plant v. Collector of Internal Revenue*,[30] *Manila Railroad v. Rafferty*,[31] *Philippine Railway Co. v. Collector of Internal Revenue*,[32] and *Visayan Electric Co. v. David*[33] to support its claim that that the "in lieu of all taxes" clause includes exemption from all taxes.

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[29] See note 27, at 302.

[30] 53 O.G. (No. 4) 1068.

[31] 40 Phil. 224 (1919).

[32] 91 Phil. 35 (1952).

[33] 92 Phil. 969 (1953).

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However, a review of the foregoing case law reveals that the grantees' respective franchises expressly exempt them from municipal and provincial taxes. Said the Court in *Manila Railroad v. Rafferty*:[34]

> On the 7th day of July 1906, by an Act of the Philippine Legislature, a special charter was granted to the Manila Railroad Company. Subsection 12 of Section 1 of said Act (No. 1510) provides that:
>
> "In consideration of the premises and of the granting of this concession or franchise, there shall be paid by the grantee to the Philippine Government, annually, for the period of thirty (30) years from the date hereof, an amount equal to one-half (1/2) of one per cent of the gross earnings of the grantee in respect of the lines covered hereby for the preceding year; after said period of thirty (30) years, and for the fifty (50) years thereafter, the amount so to be paid annually shall be an amount equal to one and one-half (1½) per cent of such gross earnings for the preceding year; and after such period of eighty (80) years, the percentage and amount so to be paid annually by the grantee shall be fixed by the Philippine Government.
>
> Such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature – municipal, provincial or central – upon its capital stock, franchises, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise."[35] (Underscoring supplied)

In the case under review, ABS-CBN's franchise did not embody an exemption similar to those in *Carcar*, *Manila Railroad*, *Philippine Railway*, and *Visayan Electric*. Too, the franchise failed to specify the taxing authority from whose jurisdiction the taxing power is withheld, whether municipal, provincial, or national. In fine, since ABS-CBN failed to justify its claim for exemption from local franchise tax, by a grant expressed in terms "too plain to be mistaken" its claim for exemption for local franchise tax must fail.

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[34] *Supra*.

[35] *Manila Railroad v. Rafferty, id.* at 226.

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C. The "in lieu of all taxes" clause in the franchise of ABS-CBN has become *functus officio* with the abolition of the franchise tax on broadcasting companies with yearly gross receipts exceeding Ten Million Pesos.

In its decision dated January 20, 1999, the RTC held that pursuant to the "in lieu of all taxes" provision contained in Section 8 of R.A. No. 7966, ABS-CBN is exempt from the payment of the local franchise tax. The RTC further pronounced that ABS-CBN shall instead be liable to pay a franchise tax of 3% of all gross receipts in lieu of all other taxes.

On this score, the RTC ruling is flawed. In keeping with the laws that have been passed since the grant of ABS-CBN's franchise, the corporation should now be subject to VAT, instead of the 3% franchise tax.

At the time of the enactment of its franchise on May 3, 1995, ABS-CBN was subject to 3% franchise tax under Section 117(b) of the 1977 National Internal Revenue Code (NIRC), as amended, *viz.*:

SECTION 117. *Tax on franchises*. — Any provision of general or special laws to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchise, upon the gross receipts from the business covered by the law granting the franchise, a tax in accordance with the schedule prescribed hereunder:

(a) On electric utilities, city gas, and water supplies Two (2%) percent
(b) *On telephone and/or telegraph systems, radio and/or broadcasting stations Three (3%) percent*
(c) On other franchises Five (5%) percent. (Emphasis supplied)

On January 1, 1996, R.A. No. 7716, otherwise known as the Expanded Value Added Tax Law,[36] took effect and subjected to VAT those services rendered by radio and/or broadcasting stations. Section 3 of R.A. No. 7716 provides:

Section 3. Section 102 of the National Internal Revenue Code, as amended is hereby further amended to read as follows:

[36] Approved on May 5, 1994.

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> SEC. 102. *Value-added tax on sale of services and use or lease of properties*. — (a) *Rate and base of tax*. — There shall be levied, assessed and collected, as *value-added tax equivalent to 10% of gross receipts* derived from the sale or exchange of services, including the use or lease of properties.
>
> The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines, for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; x x x *services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees* except those under Section 117 of this Code; x x x (Emphasis supplied)

Notably, under the same law, "telephone and/or telegraph systems, broadcasting stations and other franchise grantees" were omitted from the list of entities subject to franchise tax. The impression was that these entities were subject to 10% VAT but not to franchise tax. Only the franchise tax on "electric, gas and water utilities" remained. Section 12 of R.A. No. 7716 provides:

> Section 12. Section 117 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> SEC. 117. *Tax on Franchises*. — Any provision of general or special law to the contrary notwithstanding there *shall be levied, assessed and collected in respect to all franchises on electric, gas and water utilities a tax of two percent (2%) on the gross receipts* derived from the business covered by the law granting the franchise. (Emphasis added)

Subsequently, R.A. No. 8241[37] took effect on January 1, 1997[38] containing more amendments to the NIRC. Radio and/

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[37] Entitled "An Act Amending Republic Act No. 7716, Otherwise Known as the Expanded Value-Added Tax Law and Other Pertinent Provisions of the National Internal Revenue Code, as Amended." Approved on December 20, 1996.

[38] Published in the Philippine Star on January 9, 1997. Published in the Official Gazette, Vol. 93, No. 6, p. 1463, on March 10, 1997.

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or television companies whose annual gross receipts **do not exceed** ₱10,000,000.00 were granted the option to choose between paying 3% national franchise tax or 10% VAT. Section 9 of R.A. No. 8241 provides:

> SECTION 9. Section 12 of Republic Act No. 7716 is hereby amended to read as follows:
>
> "Sec. 12. Section 117 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> "Sec. 117. *Tax on franchise.* — Any provision of general or special law to the contrary, notwithstanding, *there shall be levied, assessed and collected in respect to all franchises on radio and/or television broadcasting companies whose annual gross receipts of the preceding year* ***does not exceed Ten million pesos*** *(₱10,000,000.00), subject to Section 107(d) of this Code, a tax of three percent (3%)* and on electric, gas and water utilities, a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise: Provided, however, *That radio and television broadcasting companies referred to in this section, shall have an option to be registered as a value-added tax payer and pay the tax due thereon*: Provided, further, That once the option is exercised, it shall not be revoked. (Emphasis supplied)

On the other hand, radio and/or television companies with yearly gross receipts **exceeding** ₱10,000,000.00 were subject to 10% VAT, pursuant to Section 102 of the NIRC.

On January 1, 1998, R.A. No. 8424[39] was passed confirming the 10% VAT liability of radio and/or television companies with yearly gross receipts exceeding ₱10,000,000.00.

R.A. No. 9337 was subsequently enacted and became effective on July 1, 2005. The said law further amended the NIRC by increasing the rate of VAT to 12%. The effectivity of the imposition of the 12% VAT was later moved from January 1, 2006 to February 1, 2006.

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[39] Otherwise known as the Tax Reform Act of 1997, amended some provisions of the 1977 NIRC by **renumbering** Section 117 as 119 and Section 102 as 108.

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In consonance with the above survey of pertinent laws on the matter, ABS-CBN is subject to the payment of VAT. It does not have the option to choose between the payment of franchise tax or VAT since it is a broadcasting company with yearly gross receipts exceeding Ten Million Pesos (₱10,000,000.00).

VAT is a percentage tax imposed on any person whether or not a franchise grantee, who in the course of trade or business, sells, barters, exchanges, leases, goods or properties, renders services. It is also levied on every importation of goods whether or not in the course of trade or business. The tax base of the VAT is limited only to the value added to such goods, properties, or services by the seller, transferor or lessor. Further, the VAT is an indirect tax and can be passed on to the buyer.

The franchise tax, on the other hand, is a percentage tax imposed only on franchise holders. It is imposed under Section 119 of the Tax Code and is a direct liability of the franchise grantee.

The clause "in lieu of all taxes" does not pertain to VAT or any other tax. It cannot apply when what is paid is a tax other than a franchise tax. Since the franchise tax on the broadcasting companies with yearly gross receipts exceeding ten million pesos has been abolished, the "in lieu of all taxes" clause has now become *functus officio*, rendered inoperative.

In sum, ABS-CBN's claims for exemption must fail on twin grounds. First, the "in lieu of all taxes" clause in its franchise failed to specify the taxes the company is sought to be exempted from. Neither did it particularize the jurisdiction from which the taxing power is withheld. Second, the clause has become *functus officio* because as the law now stands, ABS-CBN is no longer subject to a franchise tax. It is now liable for VAT.

WHEREFORE, the petition is *GRANTED* and the appealed Decision *REVERSED AND SET ASIDE*. The petition in the trial court for refund of local franchise tax is *DISMISSED*.

S**O ORDERED.**

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