



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CITY OF LAPU-LAPU,
Petitioner,

G.R. No. 184203

-versus-

PHILIPPINE ECONOMIC ZONE
AUTHORITY,

Respondent.

X-----X
PROVINCE OF BATAAN,
represented by GOVERNOR
ENRIQUE T. GARCIA, JR., and
EMERLINDA S. TALENTO, in her
capacity as Provincial Treasurer of
Bataan,

Petitioners,

G.R. No. 187583

Present:

CARPIO, J., Chairperson,
DEL CASTILLO,
MENDOZA,
REYES,* and
LEONEN, JJ.

-versus-

PHILIPPINE ECONOMIC
ZONE AUTHORITY,

Respondent.

Promulgated:

NOV 26 2014

X-----X

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DECISION

LEONEN, J.:

The Philippine Economic Zone Authority is exempt from payment of

* Designated Acting Member per Special Order No. 1881 dated November 25, 2014.

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real property taxes.

These are consolidated¹ petitions for review on certiorari the City of Lapu-Lapu and the Province of Bataan separately filed against the Philippine Economic Zone Authority (PEZA).

In G.R. No. 184203, the City of Lapu-Lapu (the City) assails the Court of Appeals' decision² dated January 11, 2008 and resolution³ dated August 6, 2008, dismissing the City's appeal for being the wrong mode of appeal. The City appealed the Regional Trial Court, Branch 111, Pasay City's decision finding the PEZA exempt from payment of real property taxes.

In G.R. No. 187583, the Province of Bataan (the Province) assails the Court of Appeals' decision⁴ dated August 27, 2008 and resolution⁵ dated April 16, 2009, granting the PEZA's petition for certiorari. The Court of Appeals ruled that the Regional Trial Court, Branch 115, Pasay City gravely abused its discretion in finding the PEZA liable for real property taxes to the Province of Bataan.

Facts common to the consolidated petitions

In the exercise of his legislative powers,⁶ President Ferdinand E. Marcos issued Presidential Decree No. 66 in 1972, declaring as government policy the establishment of export processing zones in strategic locations in the Philippines. Presidential Decree No. 66 aimed "to encourage and promote foreign commerce as a means of making the Philippines a center of international trade, of strengthening our export trade and foreign exchange position, of hastening industrialization, of reducing domestic unemployment, and of accelerating the development of the country."⁷

To carry out this policy, the Export Processing Zone Authority (EPZA) was created to operate, administer, and manage the export processing zones established in the Port of Mariveles, Bataan⁸ and such other export processing zones that may be created by virtue of the decree.⁹

¹ Resolution dated March 14, 2011.

² *Rollo* (G.R. No. 184203), pp. 51–54. This decision in CA-G.R. CV No. 88318 was penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Vicente Q. Roxas and Ramon R. Garcia concurring.

³ *Id.* at 48–49.

⁴ *Rollo* (G.R. No. 187583), pp. 57–68. This decision in CA-G.R. SP No. 100984 was penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicedican concurring.

⁵ *Id.* at 69–71.

⁶ Proc. No. 1081 dated September 21, 1972.

⁷ Pres. Decree No. 66 (1972), sec. 1.

⁸ Rep. Act No. 5490 (1969), sec. 2.

⁹ Pres. Decree No. 66 (1972), sec. 4(a).

The decree declared the EPZA non-profit in character¹⁰ with all its revenues devoted to its development, improvement, and maintenance.¹¹ To maintain this non-profit character, the EPZA was declared exempt from all taxes that may be due to the Republic of the Philippines, its provinces, cities, municipalities, and other government agencies and instrumentalities.¹² Specifically, Section 21 of Presidential Decree No. 66 declared the EPZA exempt from payment of real property taxes:

Section 21. *Non-profit Character of the Authority; Exemption from Taxes.* The Authority shall be non-profit and shall devote and use all its returns from its capital investment, as well as excess revenues from its operations, for the development, improvement and maintenance and other related expenditures of the Authority to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section 1 of this Decree. In consonance therewith, the Authority is hereby declared exempt:

....

(b) From all income taxes, franchise taxes, realty taxes and all other kinds of taxes and licenses to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities[.]

In 1979, President Marcos issued Proclamation No. 1811, establishing the Mactan Export Processing Zone. Certain parcels of land of the public domain located in the City of Lapu-Lapu in Mactan, Cebu were reserved to serve as site of the Mactan Export Processing Zone.

In 1995, the PEZA was created by virtue of Republic Act No. 7916 or “the Special Economic Zone Act of 1995”¹³ to operate, administer, manage, and develop economic zones in the country.¹⁴ The PEZA was granted the power to register, regulate, and supervise the enterprises located in the economic zones.¹⁵ By virtue of the law, the export processing zone in Mariveles, Bataan became the Bataan Economic Zone¹⁶ and the Mactan Export Processing Zone the Mactan Economic Zone.¹⁷

As for the EPZA, the law required it to “evolve into the PEZA in accordance with the guidelines and regulations set forth in an executive order issued for [the] purpose.”¹⁸

¹⁰ Pres. Decree No. 66 (1972), sec. 21.

¹¹ Pres. Decree No. 66 (1972), sec. 21.

¹² Pres. Decree No. 66 (1972), sec. 21(a).

¹³ Rep. Act No. 7916 (1995), sec. 11.

¹⁴ Rep. Act No. 7916 (1995), sec. 13(a).

¹⁵ Rep. Act No. 7916 (1995), sec. 13(b).

¹⁶ Rep. Act No. 7916 (1995), sec. 5(II).

¹⁷ Rep. Act No. 7916 (1995), sec. 5(m).

¹⁸ Rep. Act No. 7916 (1995), sec. 11.

On October 30, 1995, President Fidel V. Ramos issued Executive Order No. 282, directing the PEZA to assume and exercise all of the EPZA's powers, functions, and responsibilities "as provided in Presidential Decree No. 66, as amended, insofar as they are not inconsistent with the powers, functions, and responsibilities of the PEZA, as mandated under [the Special Economic Zone Act of 1995]."¹⁹ All of EPZA's properties, equipment, and assets, among others, were ordered transferred to the PEZA.²⁰

Facts of G.R. No. 184203

In the letter²¹ dated March 25, 1998, the City of Lapu-Lapu, through the Office of the Treasurer, demanded from the PEZA ₱32,912,350.08 in real property taxes for the period from 1992 to 1998 on the PEZA's properties located in the Mactan Economic Zone.

The City reiterated its demand in the letter²² dated May 21, 1998. It cited Sections 193 and 234 of the Local Government Code of 1991 that withdrew the real property tax exemptions previously granted to or presently enjoyed by all persons. The City pointed out that no provision in the Special Economic Zone Act of 1995 specifically exempted the PEZA from payment of real property taxes, unlike Section 21 of Presidential Decree No. 66 that explicitly provided for EPZA's exemption. Since no legal provision explicitly exempted the PEZA from payment of real property taxes, the City argued that it can tax the PEZA.

The City made subsequent demands²³ on the PEZA. In its last reminder²⁴ dated May 13, 2002, the City assessed the PEZA ₱86,843,503.48 as real property taxes for the period from 1992 to 2002.

On September 11, 2002, the PEZA filed a petition for declaratory relief²⁵ with the Regional Trial Court of Pasay City, praying that the trial court declare it exempt from payment of real property taxes. The case was raffled to Branch 111.

The City answered²⁶ the petition, maintaining that the PEZA is liable for real property taxes. To support its argument, the City cited a legal

¹⁹ Exec. Order No. 282 (1995), sec. 1.

²⁰ Exec. Order No. 282 (1995), sec. 2.

²¹ RTC records (Civil Case No. 02-0410), p. 16.

²² Id. at 17–20.

²³ RTC records, pp. 20–21, dated July 14, 1998; p. 22, dated December 22, 1998; p. 23, dated January 28, 1999; pp. 24–25, dated March 8, 1999; p. 26, dated May 29, 2000; pp. 27–31, dated December 13, 1999; pp. 32–33, dated May 2, 2000.

²⁴ RTC records, pp. 34–35.

²⁵ Id. at 2–15.

²⁶ Id. at 79–88.

opinion dated September 6, 1999 issued by the Department of Justice,²⁷ which stated that the PEZA is not exempt from payment of real property taxes. The Department of Justice based its opinion on Sections 193 and 234 of the Local Government Code that withdrew the tax exemptions, including real property tax exemptions, previously granted to all persons.

A reply²⁸ was filed by the PEZA to which the City filed a rejoinder.²⁹

Pursuant to Rule 63, Section 3 of Rules of Court,³⁰ the Office of the Solicitor General filed a comment³¹ on the PEZA's petition for declaratory relief. It agreed that the PEZA is exempt from payment of real property taxes, citing Sections 24 and 51 of the Special Economic Zone Act of 1995.

The trial court agreed with the Solicitor General. Section 24 of the Special Economic Zone Act of 1995 provides:

SEC. 24. Exemption from National and Local Taxes. – Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

- a. Three percent (3%) to the National Government;
- b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.

Section 51 of the law, on the other hand, provides:

SEC. 51. Ipso-Facto Clause. – All privileges, benefits, advantages or exemptions granted to special economic zones under Republic Act No. 7227, shall ipso-facto be accorded to special economic zones already created or to be created under this Act. The free port status shall not be vested upon new special economic zones.

Based on Section 51, the trial court held that all privileges, benefits, advantages, or exemptions granted to special economic zones created under the Bases Conversion and Development Act of 1992 apply to special

²⁷ Id. at 83–87.

²⁸ Id. at 119–124.

²⁹ Id. at 167–173.

³⁰ RULES OF COURT, Rule 63, sec. 3 provides:

Notice on Solicitor General. – In any action which involves the validity of a statute, executive order or regulation, or any other governmental regulation, the Solicitor General shall be notified by the party assailing the same and shall be entitled to be heard upon such question.

³¹ RTC records, pp. 137–166.

economic zones created under the Special Economic Zone Act of 1995. Since these benefits include exemption from payment of national or local taxes, these benefits apply to special economic zones owned by the PEZA.

According to the trial court, the PEZA remained tax-exempt regardless of Section 24 of the Special Economic Zone Act of 1995. It ruled that Section 24, which taxes real property owned by developers of economic zones, only applies to private developers of economic zones, not to public developers like the PEZA. The PEZA, therefore, is not liable for real property taxes on the land it owns.

Characterizing the PEZA as an agency of the National Government, the trial court ruled that the City had no authority to tax the PEZA under Sections 133(o) and 234(a) of the Local Government Code of 1991.

In the resolution³² dated June 14, 2006, the trial court granted the PEZA's petition for declaratory relief and declared it exempt from payment of real property taxes.

The City filed a motion for reconsideration,³³ which the trial court denied in its resolution³⁴ dated September 26, 2006.

The City then appealed³⁵ to the Court of Appeals.

The Court of Appeals noted the following issues the City raised in its appellant's brief: (1) whether the trial court had jurisdiction over the PEZA's petition for declaratory relief; (2) whether the PEZA is a government agency performing governmental functions; and (3) whether the PEZA is exempt from payment of real property taxes.

The issues presented by the City, according to the Court of Appeals, are pure questions of law which should have been raised in a petition for review on certiorari directly filed before this court. Since the City availed itself of the wrong mode of appeal, the Court of Appeals dismissed the City's appeal in the decision³⁶ dated January 11, 2008.

The City filed a motion for extension of time to file a motion for reconsideration,³⁷ which the Court of Appeals denied in the resolution³⁸

³² Id. at 179–191. This resolution was penned by Judge Wilhelmina B. Jorge-Wagan.

³³ Id. at 200–227.

³⁴ Id. at 262.

³⁵ CA *rollo* (CA-G.R. CV No. 88318), pp. 12–44.

³⁶ *Rollo* (G.R. No. 184203), pp. 51–54.

³⁷ CA *rollo* (CA-G.R. CV No. 88318), pp. 127–130.

³⁸ Id. at 131.

dated April 11, 2008.

Despite the denial of its motion for extension, the City filed a motion for reconsideration.³⁹ In the resolution⁴⁰ dated August 6, 2008, the Court of Appeals denied that motion.

In its petition for review on certiorari with this court,⁴¹ the City argues that the Court of Appeals “hid under the skirts of technical rules”⁴² in resolving its appeal. The City maintains that its appeal involved mixed questions of fact and law. According to the City, whether the PEZA performed governmental functions “cannot completely be addressed by law but [by] the factual and actual activities [the PEZA is] carrying out.”⁴³

Even assuming that the petition involves pure questions of law, the City contends that the subject matter of the case “is of extreme importance with [far-reaching] consequence that [its magnitude] would surely shape and determine the course of our nation’s future.”⁴⁴ The Court of Appeals, the City argues, should have resolved the case on the merits.

The City insists that the trial court had no jurisdiction to hear the PEZA’s petition for declaratory relief. According to the City, the case involves real property located in the City of Lapu-Lapu. The petition for declaratory relief should have been filed before the Regional Trial Court of the City of Lapu-Lapu.⁴⁵

Moreover, the Province of Bataan, the City of Baguio, and the Province of Cavite allegedly demanded real property taxes from the PEZA. The City argues that the PEZA should have likewise impleaded these local government units as respondents in its petition for declaratory relief. For its failure to do so, the PEZA violated Rule 63, Section 2 of the Rules of Court, and the trial court should have dismissed the petition.⁴⁶

This court ordered the PEZA to comment on the City’s petition for review on certiorari.⁴⁷

At the outset of its comment, the PEZA argues that the Court of Appeals’ decision dated January 11, 2008 had become final and executory.

³⁹ Id. at 132–149.

⁴⁰ *Rollo* (G.R. No. 184203), pp. 48–49.

⁴¹ Id. at 21–46.

⁴² Id. at 36.

⁴³ Id. at 33.

⁴⁴ Id. at 34.

⁴⁵ Id. at 40–42.

⁴⁶ Id. at 76.

⁴⁷ *Rollo* (G.R. No. 184203), p. 91, resolution dated November 17, 2008.

After the Court of Appeals had denied the City's appeal, the City filed a motion for extension of time to file a motion for reconsideration. Arguing that the time to file a motion for reconsideration is not extendible, the PEZA filed its motion for reconsideration out of time. The City has no more right to appeal to this court.⁴⁸

The PEZA maintains that the City availed itself of the wrong mode of appeal before the Court of Appeals. Since the City raised pure questions of law in its appeal, the PEZA argues that the proper remedy is a petition for review on certiorari with this court, not an ordinary appeal before the appellate court. The Court of Appeals, therefore, correctly dismissed outright the City's appeal under Rule 50, Section 2 of the Rules of Court.⁴⁹

On the merits, the PEZA argues that it is an agency and instrumentality of the National Government. It is therefore exempt from payment of real property taxes under Sections 133(o) and 234(a) of the Local Government Code.⁵⁰ It adds that the tax privileges under Sections 24 and 51 of the Special Economic Zone Act of 1995 applied to it.⁵¹

Considering that the site of the Mactan Economic Zone is a reserved land under Proclamation No. 1811, the PEZA claims that the properties sought to be taxed are lands of public dominion exempt from real property taxes.⁵²

As to the jurisdiction issue, the PEZA counters that the Regional Trial Court of Pasay had jurisdiction to hear its petition for declaratory relief under Rule 63, Section 1 of the Rules of Court.⁵³ It also argued that it need not implead the Province of Bataan, the City of Baguio, and the Province of Cavite as respondents considering that their demands came after the PEZA had already filed the petition in court.⁵⁴

Facts of G.R. No. 187583

After the City of Lapu-Lapu had demanded payment of real property taxes from the PEZA, the Province of Bataan followed suit. In its letter⁵⁵ dated May 29, 2003, the Province, through the Office of the Provincial Treasurer, informed the PEZA that it would be sending a real property tax billing to the PEZA. Arguing that the PEZA is a developer of economic

⁴⁸ Id. at 118–124.

⁴⁹ Id. at 124–128.

⁵⁰ Id. at 129–135.

⁵¹ Id. at 136–138.

⁵² Id. at 138–139.

⁵³ Id. at 141–145.

⁵⁴ Id. at 145–149.

⁵⁵ CA *rollo* (CA-G.R. SP No. 100984), p. 100.

zones, the Province claimed that the PEZA is liable for real property taxes under Section 24 of the Special Economic Zone Act of 1995.

In its reply letter⁵⁶ dated June 18, 2003, the PEZA requested the Province to suspend the service of the real property tax billing. It cited its petition for declaratory relief against the City of Lapu-Lapu pending before the Regional Trial Court, Branch 111, Pasay City as basis.

The Province argued that serving a real property tax billing on the PEZA “would not in any way affect [its] petition for declaratory relief before [the Regional Trial Court] of Pasay City.”⁵⁷ Thus, in its letter⁵⁸ dated June 27, 2003, the Province notified the PEZA of its real property tax liabilities for June 1, 1995 to December 31, 2002 totalling ₱110,549,032.55.

After having been served a tax billing, the PEZA again requested the Province to suspend collecting its alleged real property tax liabilities until the Regional Trial Court of Pasay City resolves its petition for declaratory relief.⁵⁹

The Province ignored the PEZA’s request. On January 20, 2004, the Province served on the PEZA a statement of unpaid real property tax for the period from June 1995 to December 2004.⁶⁰

The PEZA again requested the Province to suspend collecting its alleged real property taxes.⁶¹ The Province denied the request in its letter⁶² dated January 29, 2004, then served on the PEZA a warrant of levy⁶³ covering the PEZA’s real properties located in Mariveles, Bataan.

The PEZA’s subsequent requests⁶⁴ for suspension of collection were all denied by the Province.⁶⁵ The Province then served on the PEZA a notice of delinquency in the payment of real property taxes⁶⁶ and a notice of sale of real property for unpaid real property tax.⁶⁷ The Province finally sent the PEZA a notice of public auction of the latter’s properties in Mariveles, Bataan.⁶⁸

⁵⁶ Id. at 101.

⁵⁷ Id. at 102.

⁵⁸ Id.

⁵⁹ Id. at 103.

⁶⁰ Id. at 104–106.

⁶¹ Id. at 107.

⁶² Id. at 108–109.

⁶³ Id. at 110–111.

⁶⁴ CA *rollo* (CA-G.R. SP No. 100984), pp. 112–113, dated April 28, 2004; pp. 115–116, dated May 5, 2004.

⁶⁵ Id. at 114, dated April 30, 2004; p. 117, dated May 7, 2004.

⁶⁶ Id. at 118–119.

⁶⁷ Id. at 120–122.

⁶⁸ Id. at 123–125.

On June 14, 2004, the PEZA filed a petition for injunction⁶⁹ with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction before the Regional Trial Court of Pasay City, arguing that it is exempt from payment of real property taxes. It added that the notice of sale issued by the Province was void because it was not published in a newspaper of general circulation as required by Section 260 of the Local Government Code.⁷⁰

The case was raffled to Branch 115.

In its order⁷¹ dated June 18, 2004, the trial court issued a temporary restraining order against the Province. After the PEZA had filed a ₱100,000.00 bond,⁷² the trial court issued a writ of preliminary injunction,⁷³ enjoining the Province from selling the PEZA's real properties at public auction.

On March 3, 2006, the PEZA and Province both manifested that each would file a memorandum after which the case would be deemed submitted for decision. The parties then filed their respective memoranda.⁷⁴

In the order⁷⁵ dated January 31, 2007, the trial court denied the PEZA's petition for injunction. The trial court ruled that the PEZA is not exempt from payment of real property taxes. According to the trial court, Sections 193 and 234 of the Local Government Code had withdrawn the real property tax exemptions previously granted to all persons, whether natural or juridical.⁷⁶ As to the tax exemptions under Section 51 of the Special Economic Zone Act of 1995, the trial court ruled that the provision only applies to businesses operating within the economic zones, not to the PEZA.⁷⁷

⁶⁹ Id. at 126–135.

⁷⁰ Rep. Act No. 7160 (1991), sec. 260 provides:

SECTION 260. *Advertisement and Sale.* – Within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale. The advertisement shall be effected by posing a notice at the main entrance of the provincial, city or municipal building, and in a publicly accessible and conspicuous place in the barangay where the real property is located, and by publication once a week for two (2) weeks in a newspaper of general circulation in the province, city or municipality where the property is located. The advertisement shall specify the amount of the delinquent tax, the interest due thereon and expense of sale, the date and place of sale, the name of the owner of the real property or person having legal interest therein, and a description of the property to be sold[.]

⁷¹ CA *rollo* (CA-G.R. SP No. 100984), p. 140.

⁷² Id. at 143–144.

⁷³ Id. at 141–142.

⁷⁴ Id. at 14.

⁷⁵ Id. at 51–52. This decision was penned by Judge Francisco G. Mendiola.

⁷⁶ Id. at 52.

⁷⁷ Id. at 53.

The PEZA filed before the Court of Appeals a petition for certiorari⁷⁸ with prayer for issuance of a temporary restraining order.

The Court of Appeals issued a temporary restraining order, enjoining the Province and its Provincial Treasurer from selling PEZA's properties at public auction scheduled on October 17, 2007.⁷⁹ It also ordered the Province to comment on the PEZA's petition.

In its comment,⁸⁰ the Province alleged that it received a copy of the temporary restraining order only on October 18, 2007 when it had already sold the PEZA's properties at public auction. Arguing that the act sought to be enjoined was already *fait accompli*, the Province prayed for the dismissal of the petition for certiorari.

The PEZA then filed a supplemental petition for certiorari, prohibition, and mandamus⁸¹ against the Province, arguing that the Provincial Treasurer of Bataan acted with grave abuse of discretion in issuing the notice of delinquency and notice of sale. It maintained that it is exempt from payment of real property taxes because it is a government instrumentality. It added that its lands are property of public dominion which cannot be sold at public auction.

The PEZA also filed a motion⁸² for issuance of an order affirming the temporary restraining order and a writ of preliminary injunction to enjoin the Province from consolidating title over the PEZA's properties.

In its resolution⁸³ dated January 16, 2008, the Court of Appeals admitted the supplemental petition for certiorari, prohibition, and mandamus. It required the Province to comment on the supplemental petition and to file a memorandum on the PEZA's prayer for issuance of temporary restraining order.

The Province commented⁸⁴ on the PEZA's supplemental petition, to which the PEZA replied.⁸⁵

The Province then filed a motion⁸⁶ for leave to admit attached

⁷⁸ Id. at 2–49.

⁷⁹ Id. at 244–245.

⁸⁰ Id. at 251–260.

⁸¹ Id. at 261–299.

⁸² Id. at 300–330.

⁸³ Id. at 332–334.

⁸⁴ Id. at 369–393.

⁸⁵ Id. at 414–440.

⁸⁶ Id. at 459–163.

rejoinder with motion to dismiss. In the rejoinder with motion to dismiss,⁸⁷ the Province argued for the first time that the Court of Appeals had no jurisdiction over the subject matter of the action.

According to the Province, the PEZA erred in filing a petition for certiorari. Arguing that the PEZA sought to reverse a Regional Trial Court decision in a local tax case, the Province claimed that the court with appellate jurisdiction over the action is the Court of Tax Appeals. The PEZA then prayed that the Court of Appeals dismiss the petition for certiorari for lack of jurisdiction over the subject matter of the action.

The Court of Appeals held that the issue before it was whether the trial court judge gravely abused his discretion in dismissing the PEZA's petition for prohibition. This issue, according to the Court of Appeals, is properly addressed in a petition for certiorari over which it has jurisdiction to resolve. It, therefore, maintained jurisdiction to resolve the PEZA's petition for certiorari.⁸⁸

Although it admitted that appeal, not certiorari, was the PEZA's proper remedy to reverse the trial court's decision,⁸⁹ the Court of Appeals proceeded to decide the petition for certiorari in "the broader interest of justice."⁹⁰

The Court of Appeals ruled that the trial court judge gravely abused his discretion in dismissing the PEZA's petition for prohibition. It held that Section 21 of Presidential Decree No. 66 and Section 51 of the Special Economic Zone Act of 1995 granted the PEZA exemption from payment of real property taxes.⁹¹ Based on the criteria set in *Manila International Airport Authority v. Court of Appeals*,⁹² the Court of Appeals found that the PEZA is an instrumentality of the national government. No taxes, therefore, could be levied on it by local government units.⁹³

In the decision⁹⁴ dated August 27, 2008, the Court of Appeals granted the PEZA's petition for certiorari. It set aside the trial court's decision and nullified all the Province's proceedings with respect to the collection of real property taxes from the PEZA.

The Province filed a motion for reconsideration,⁹⁵ which the Court of

⁸⁷ Id. at 464–482.

⁸⁸ *Rollo* (G.R. No. 187583), p. 68.

⁸⁹ Id. at 61.

⁹⁰ Id. at 62.

⁹¹ Id. at 62–64.

⁹² 528 Phil. 181 (2006) [Per J. Carpio, En Banc].

⁹³ *Rollo* (G.R. No. 187583), p. 65.

⁹⁴ Id. at 57–68.

⁹⁵ *CA rollo* (CA-G.R. SP No. 100984), pp. 496–520.

Appeals denied in the resolution⁹⁶ dated April 16, 2009 for lack of merit.

In its petition for review on certiorari with this court,⁹⁷ the Province of Bataan insists that the Court of Appeals had no jurisdiction to take cognizance of the PEZA's petition for certiorari. The Province maintains that the Court of Tax Appeals had jurisdiction to hear the PEZA's petition since it involved a local tax case decided by a Regional Trial Court.⁹⁸

The Province reiterates that the PEZA is not exempt from payment of real property taxes. The Province points out that the EPZA, the PEZA's predecessor, had to be categorically exempted from payment of real property taxes. The EPZA, therefore, was not inherently exempt from payment of real property taxes and so is the PEZA. Since Congress omitted from the Special Economic Zone Act of 1995 a provision specifically exempting the PEZA from payment of real property taxes, the Province argues that the PEZA is a taxable entity. It cited the rule in statutory construction that provisions omitted in revised statutes are deemed repealed.⁹⁹

With respect to Sections 24 and 51 of the Special Economic Zone Act of 1995 granting tax exemptions and benefits, the Province argues that these provisions only apply to business establishments operating within special economic zones,¹⁰⁰ not to the PEZA.

This court ordered the PEZA to comment on the Province's petition for review on certiorari.¹⁰¹

In its comment,¹⁰² the PEZA argues that the Court of Appeals had jurisdiction to hear its petition for certiorari since the issue was whether the trial court committed grave abuse of discretion in denying its petition for injunction. The PEZA maintains that it is exempt from payment of real property taxes under Section 21 of Presidential Decree No. 66 and Section 51 of the Special Economic Zone Act of 1995.

The Province filed its reply,¹⁰³ reiterating its arguments in its petition for review on certiorari.

On the PEZA's motion,¹⁰⁴ this court consolidated the petitions filed by

⁹⁶ *Rollo* (G.R. No. 187583), pp. 69–70.

⁹⁷ *Id.* at 16–56.

⁹⁸ *Id.* at 25–29.

⁹⁹ *Id.* at 41–42.

¹⁰⁰ *Id.* at 46–48.

¹⁰¹ *Id.* at 76, resolution dated July 29, 2009.

¹⁰² *Id.* at 94–120.

¹⁰³ *Id.* at 129–143.

¹⁰⁴ *Id.* at 158–190.

the City of Lapu-Lapu and the Province of Bataan.¹⁰⁵

The issues for our resolution are the following:

I. Whether the Court of Appeals erred in dismissing the City of Lapu-Lapu's appeal for raising pure questions of law;

II. Whether the Regional Trial Court, Branch 111, Pasay City had jurisdiction to hear, try, and decide the City of Lapu-Lapu's petition for declaratory relief;

III. Whether the petition for injunction filed before the Regional Trial Court, Branch 115, Pasay City, is a local tax case appealable to the Court of Tax Appeals; and

IV. Whether the PEZA is exempt from payment of real property taxes.

We deny the consolidated petitions.

I.

The Court of Appeals did not err in dismissing the City of Lapu-Lapu's appeal for raising pure questions of law

Under the Rules of Court, there are three modes of appeal from Regional Trial Court decisions. The first mode is through an ordinary appeal before the Court of Appeals where the decision assailed was rendered in the exercise of the Regional Trial Court's original jurisdiction. Ordinary appeals are governed by Rule 41, Sections 3 to 13 of the Rules of Court. In ordinary appeals, questions of fact or mixed questions of fact and law may be raised.¹⁰⁶

The second mode is through a petition for review before the Court of Appeals where the decision assailed was rendered by the Regional Trial Court in the exercise of its appellate jurisdiction. Rule 42 of the Rules of Court governs petitions for review before the Court of Appeals. In petitions for review under Rule 42, questions of fact, of law, or mixed questions of fact and law may be raised.¹⁰⁷

¹⁰⁵ Resolution dated March 14, 2011.

¹⁰⁶ RULES OF COURT, Rule 41, sec. 2(a).

¹⁰⁷ RULES OF COURT, Rule 41, sec. 2(b).

The third mode is through an appeal by certiorari before this court under Rule 45 where only questions of law shall be raised.¹⁰⁸

A question of fact exists when there is doubt as to the truth or falsity of the alleged facts.¹⁰⁹ On the other hand, there is a question of law if the appeal raises doubt as to the applicable law on a certain set of facts.¹¹⁰

Under Rule 50, Section 2, an improper appeal before the Court of Appeals is dismissed outright and shall not be referred to the proper court:

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 purely of 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.

Rule 50, Section 2 repealed Rule 50, Section 3 of the 1964 Rules of Court, which provided that improper appeals to the Court of Appeals shall not be dismissed but shall be certified to the proper court for resolution:

Sec. 3. Where appealed case erroneously, brought. — Where the appealed case has been erroneously brought to the Court of Appeals, it shall not dismiss the appeal, but shall certify the case to the proper court, with a specific and clear statement of the grounds therefor.

With respect to appeals by certiorari directly filed before this court but which raise questions of fact, paragraph 4(b) of Circular No. 2-90 dated March 9, 1990 states that this court “retains the option, in the exercise of its sound discretion and considering the attendant circumstances, either itself to take cognizance of and decide such issues or to refer them to the Court of Appeals for determination.”

In *Indoyon, Jr. v. Court of Appeals*,¹¹¹ we said that this court “cannot

¹⁰⁸ RULES OF COURT, Rule 41, sec. 2(c).

¹⁰⁹ *Far Eastern Surety and Insurance Co., Inc. v. People*, G.R. No. 170618, November 20, 2013, 710 SCRA 358, 365 [Per J. Brion, Second Division]; *Republic v. Malabanan*, G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345 [Per J. Villarama, Jr., Third Division].

¹¹⁰ *Far Eastern Surety and Insurance Co., Inc. v. People*, G.R. No. 170618, November 20, 2013, 710 SCRA 358, 365 [Per J. Brion, Second Division]; *Republic v. Malabanan*, G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345 [Per J. Villarama, Jr., Third Division].

¹¹¹ G.R. No. 193706, March 12, 2013, 693 SCRA 201 [Per C.J. Sereno, En Banc].

tolerate ignorance of the law on appeals.”¹¹² It is not this court’s task to determine for litigants their proper remedies under the Rules.¹¹³

We agree that the City availed itself of the wrong mode of appeal before the Court of Appeals. The City raised pure questions of law in its appeal. The issue of whether the Regional Trial Court of Pasay had jurisdiction over the PEZA’s petition for declaratory relief is a question of law, jurisdiction being a matter of law.¹¹⁴ The issue of whether the PEZA is a government instrumentality exempt from payment of real property taxes is likewise a question of law since this question is resolved by examining the provisions of the PEZA’s charter as well as other laws relating to the PEZA.¹¹⁵

The Court of Appeals, therefore, did not err in dismissing the City’s appeal pursuant to Rule 50, Section 2 of the Rules of Court.

Nevertheless, considering the important questions involved in this case, we take cognizance of the City’s petition for review on certiorari in the interest of justice.

In *Municipality of Pateros v. The Honorable Court of Appeals*,¹¹⁶ the Municipality of Pateros filed an appeal under Rule 42 before the Court of Appeals, which the Court of Appeals denied outright for raising pure questions of law. This court agreed that the Municipality of Pateros “committed a procedural infraction”¹¹⁷ and should have directly filed a petition for review on certiorari before this court. Nevertheless, “in the interest of justice and in order to write *finis* to [the] controversy,”¹¹⁸ this court “opt[ed] to relax the rules”¹¹⁹ and proceeded to decide the case. This court said:

While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and while the swift unclogging of the dockets of the courts is a laudable objective, it nevertheless must not be met at the expense

¹¹² Id. at 207, citing *Ybañez v. Court of Appeals*, 323 Phil. 643 (1996) [Per J. Francisco, Third Division].

¹¹³ Id. at 207–208.

¹¹⁴ *Municipality of Pateros v. Hon. Court of Appeals, et al.*, 607 Phil. 104, 114 (2009) [Per J. Nachura, Third Division]; *Sevilleno v. Carilo*, 559 Phil. 789, 792 (2007) [Per J. Sandoval-Gutierrez, First Division].

¹¹⁵ See *Republic v. City of Parañaque*, G.R. No. 191109, July 18, 2012, 677 SCRA 246, 257–260 [Per J. Mendoza, Third Division]; *Government Service Insurance System v. City Assessor of Manila*, G.R. No. 186242, December 23, 2009, 609 SCRA 330, 349 [Per J. Velasco, Jr., Third Division]; *National Housing Authority v. Iloilo City, et al.*, 584 Phil. 604, 609–610 (2008) [Per J. Tinga, Second Division]; *Philippine Fisheries Development Authority v. The Honorable Court of Appeals*, 560 Phil. 738, 748 (2007) [Per J. Azcuna, First Division]; *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 209–213 (2006) [Per J. Carpio, En Banc].

¹¹⁶ *Municipality of Pateros v. The Honorable Court of Appeals*, 607 Phil. 104 (2009) [Per J. Nachura, Third Division].

¹¹⁷ Id. at 114.

¹¹⁸ Id.

¹¹⁹ Id.

of substantial justice.

The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice, and that strict and rigid application of rules which should result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. 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 to attain the ends of justice, rather than dispose of the case on technicality and cause 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.¹²⁰

Similar to *Municipality of Pateros*, we opt to relax the rules in this case. The PEZA operates or otherwise administers special economic zones all over the country. Resolving the substantive issue of whether the PEZA is taxable for real property taxes will clarify the taxing powers of all local government units where special economic zones are operated. This case, therefore, should be decided on the merits.

II.

The Regional Trial Court of Pasay had no jurisdiction to hear, try, and decide the PEZA's petition for declaratory relief against the City of Lapu-Lapu

Rule 63 of the Rules of Court governs actions for declaratory relief. Section 1 of Rule 63 provides:

SECTION 1. *Who may file petition.* – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation, thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

An action for reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule.

The court with jurisdiction over petitions for declaratory relief is the Regional Trial Court, the subject matter of litigation in an action for declaratory relief being incapable of pecuniary estimation.¹²¹ Section 19 of

¹²⁰ Id. at 115, citing *Tabujara III v. People*, 591 Phil. 216, 231 (2008) [Per J. Chico-Nazario, Third Division].

¹²¹ See *Spouses Sabitsana v. Muertegui*, G.R. No. 181359, August 5, 2013, 703 SCRA 145, 158–159 [Per J. Del Castillo, Second Division]; See also *Allied Broadcasting Center, Inc. v. Republic*, 268 Phil. 852, 857 (1990) [Per J. Gancayco, En Banc] cited in W. B. RIANO, II CIVIL PROCEDURE (THE BAR LECTURE

the Judiciary Reorganization Act of 1980 provides:

SEC. 19. *Jurisdiction in Civil Cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of litigation is incapable of pecuniary estimation[.]

Consistent with the law, the Rules state that a petition for declaratory relief is filed “in the appropriate Regional Trial Court.”¹²²

A special civil action for declaratory relief is filed for a judicial determination of any question of construction or validity arising from, and for a declaration of rights and duties, under any of the following subject matters: a deed, will, contract or other written instrument, statute, executive order or regulation, ordinance, or any other governmental regulation.¹²³ However, a declaratory judgment may issue only if there has been “no breach of the documents in question.”¹²⁴ If the contract or statute subject matter of the action has already been breached, the appropriate ordinary civil action must be filed.¹²⁵ If adequate relief is available through another form of action or proceeding, the other action must be preferred over an action for declaratory relief.¹²⁶

In *Ollada v. Central Bank of the Philippines*,¹²⁷ the Central Bank issued CB-IED Form No. 5 requiring certified public accountants to submit an accreditation under oath before they were allowed to certify financial statements submitted to the bank. Among those financial statements the Central Bank disallowed were those certified by accountant Felipe B. Ollada.¹²⁸

Claiming that the requirement “restrained the legitimate pursuit of one’s trade,”¹²⁹ Ollada filed a petition for declaratory relief against the Central Bank.

This court ordered the dismissal of Ollada’s petition “without prejudice to [his] seeking relief in another appropriate action.”¹³⁰ According

SERIES) 216 (2012).

¹²² RULES OF COURT, Rule 63, sec. 1.

¹²³ RULES OF COURT, Rule 63, sec. 1.

¹²⁴ *Republic v. Roque*, G.R. No. 204603, September 24, 2013, 706 SCRA 273, 283 [Per J. Perlas-Bernabe, En Banc].

¹²⁵ *Ollada v. Central Bank of the Philippines*, 115 Phil. 284, 291 (1962) [Per J. Dizon, En Banc].

¹²⁶ *Republic v. Roque*, G.R. No. 204603, September 24, 2013, 706 SCRA 273, 283 [Per J. Perlas-Bernabe, En Banc].

¹²⁷ 115 Phil. 284 (1962) [Per J. Dizon, En Banc].

¹²⁸ Id.

¹²⁹ Id. at 285.

¹³⁰ Id. at 291.

to this court, Ollada's right had already been violated when the Central Bank refused to accept the financial statements he prepared. Since there was already a breach, a petition for declaratory relief was not proper. Ollada must pursue the "appropriate ordinary civil action or proceeding."¹³¹ This court explained:

Petitioner commenced this action as, and clearly intended it to be one for Declaratory Relief under the provisions of Rule 66 of the Rules of Court. On the question of when a special civil action of this nature would prosper, we have already held that the complaint for declaratory relief will not prosper if filed after a contract, statute or right has been breached or violated. In the present case such is precisely the situation arising from the facts alleged in the petition for declaratory relief. As vigorously claimed by petitioner himself, respondent had already invaded or violated his right and caused him injury — all these giving him a complete cause of action enforceable in an appropriate ordinary civil action or proceeding. The dismissal of the action was, therefore, proper in the light of our ruling in *De Borja vs. Villadolid*, 47 O.G. (5) p. 2315, and *Samson vs. Andal*, G.R. No. L-3439, July 31, 1951, where we held that an action for declaratory relief should be filed before there has been a breach of a contract, statutes or right, and that it is sufficient to bar such action, that there had been a breach — which would constitute actionable violation. The rule is that an action for Declaratory Relief is proper only if adequate relief is not available through the means of other existing forms of action or proceeding (1 C.J.S. 1027-1028).¹³²

It is also required that the parties to the action for declaratory relief be those whose rights or interests are affected by the contract or statute in question.¹³³ "There must be an actual justiciable controversy or the 'ripening seeds' of one"¹³⁴ between the parties. The issue between the parties "must be ripe for judicial determination."¹³⁵ An action for declaratory relief based on theoretical or hypothetical questions cannot be filed for our courts are not advisory courts.¹³⁶

In *Republic v. Roque*,¹³⁷ this court dismissed respondents' petition for declaratory relief for lack of justiciable controversy. According to this court, "[the respondents'] fear of prospective prosecution [under the Human Security Act] was solely based on remarks of certain government officials which were addressed to the general public."¹³⁸

¹³¹ Id.

¹³² Id.

¹³³ *Republic v. Roque*, G.R. No. 204603, September 24, 2013, 706 SCRA 273, 283 [Per J. Perlas-Bernabe, En Banc].

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 428 SCRA 283, 293 [Per J. Panganiban, En Banc].

¹³⁷ G.R. No. 204603, September 24, 2013, 706 SCRA 273 [Per J. Perlas-Bernabe, En Banc].

¹³⁸ Id. at 284.

In *Velarde v. Social Justice Society*,¹³⁹ this court refused to resolve the issue of “whether or not [a religious leader’s endorsement] of a candidate for elective office or in urging or requiring the members of his flock to vote for a specific candidate is violative [of the separation clause].”¹⁴⁰ According to the court, there was no justiciable controversy and ordered the dismissal of the Social Justice Society’s petition for declaratory relief. This court explained:

Indeed, SJS merely speculated or anticipated without factual moorings that, as religious leaders, the petitioner and his co-respondents below had endorsed or threatened to endorse a candidate or candidates for elective offices; and that such actual or threatened endorsement "will enable [them] to elect men to public office who [would] in turn be forever beholden to their leaders, enabling them to control the government"[;] and "pos[ing] a clear and present danger of serious erosion of the people’s faith in the electoral process[;] and reinforc[ing] their belief that religious leaders determine the ultimate result of elections," which would then be violative of the separation clause.

Such premise is highly speculative and merely theoretical, to say the least. Clearly, it does not suffice to constitute a justiciable controversy. The Petition does not even allege any indication or manifest intent on the part of any of the respondents below to champion an electoral candidate, or to urge their so-called flock to vote for, or not to vote for, a particular candidate. It is a time-honored rule that sheer speculation does not give rise to an actionable right.

Obviously, there is no factual allegation that SJS’ rights are being subjected to any threatened, imminent and inevitable violation that should be prevented by the declaratory relief sought. The judicial power and duty of the courts to settle actual controversies involving rights that are legally demandable and enforceable cannot be exercised when there is no actual or threatened violation of a legal right.

All that the 5-page SJS Petition prayed for was "that the question raised in paragraph 9 hereof be resolved." In other words, it merely sought an opinion of the trial court on whether the speculated acts of religious leaders endorsing elective candidates for political offices violated the constitutional principle on the separation of church and state. SJS did not ask for a declaration of its rights and duties; neither did it pray for the stoppage of any threatened violation of its declared rights. Courts, however, are proscribed from rendering an advisory opinion.¹⁴¹

In sum, a petition for declaratory relief must satisfy six requisites:

[F]irst, the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; second, the terms of said documents and the validity thereof are doubtful and require judicial construction; third, there must have been

¹³⁹ G.R. No. 159357, April 28, 2004, 428 SCRA 283 [Per J. Panganiban, En Banc].

¹⁴⁰ Id. at 286.

¹⁴¹ Id. at 291–293.

no breach of the documents in question; fourth, there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; fifth, the issue must be ripe for judicial determination; and sixth, adequate relief is not available through other means or other forms of action or proceeding.¹⁴² (Emphases omitted)

We rule that the PEZA erred in availing itself of a petition for declaratory relief against the City. The City had already issued demand letters and real property tax assessment against the PEZA, in violation of the PEZA's alleged tax-exempt status under its charter. The Special Economic Zone Act of 1995, the subject matter of PEZA's petition for declaratory relief, had already been breached. The trial court, therefore, had no jurisdiction over the petition for declaratory relief.

There are several aspects of jurisdiction.¹⁴³ Jurisdiction over the subject matter is "the power to hear and determine cases of the general class to which the proceedings in question belong."¹⁴⁴ It is conferred by law, which may either be the Constitution or a statute.¹⁴⁵ Jurisdiction over the subject matter means "the nature of the cause of action and the relief sought."¹⁴⁶ Thus, the cause of action and character of the relief sought as alleged in the complaint are examined to determine whether a court had jurisdiction over the subject matter.¹⁴⁷ Any decision rendered by a court without jurisdiction over the subject matter of the action is void.¹⁴⁸

Another aspect of jurisdiction is jurisdiction over the person. It is "the power of [a] court to render a personal judgment or to subject the parties in a particular action to the judgment and other rulings rendered in the action."¹⁴⁹ A court automatically acquires jurisdiction over the person of the plaintiff upon the filing of the initiatory pleading.¹⁵⁰ With respect to the defendant, voluntary appearance in court or a valid service of summons vests the court with jurisdiction over the defendant's person.¹⁵¹ Jurisdiction over the person of the defendant is indispensable in actions *in personam* or those actions based on a party's personal liability.¹⁵² The proceedings in an action *in*

¹⁴² Id. at 283, citing *Almeda v. Bathala Marketing Industries, Inc.*, 566 Phil. 458, 467 (2008) [Per J. Nachura, Third Division].

¹⁴³ *Boston Equity Resources, Inc. v. Court of Appeals*, G.R. No. 173946, June 19, 2013, 699 SCRA 16, 28 [Per J. Perez, Second Division].

¹⁴⁴ *Villagracia v. Fifth (5th) Shari'a District Court*, G.R. No. 188832, April 23, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/188832.pdf>> [Per J. Leonen, Third Division].

¹⁴⁵ Id.

¹⁴⁶ *Philippine Association of Free Labor Unions (PAFLU) v. Padilla*, 106 Phil. 591, 593 (1959) [Per J. Labrador, En Banc]; *Perkins v. Roxas*, 72 Phil. 514, 517 (1941) [Per J. Laurel, En Banc].

¹⁴⁷ *Villagracia v. Fifth (5th) Shari'a District Court*, G.R. No. 188832, April 23, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/188832.pdf>> [Per J. Leonen, Third Division].

¹⁴⁸ Id.

¹⁴⁹ Id.

¹⁵⁰ Id.

¹⁵¹ Id.

¹⁵² Id.

personam are void if the court had no jurisdiction over the person of the defendant.¹⁵³

Jurisdiction over the *res* or the thing under litigation is acquired either “by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.”¹⁵⁴ Jurisdiction over the *res* is necessary in actions *in rem* or those actions “directed against the thing or property or status of a person and seek judgments with respect thereto as against the whole world.”¹⁵⁵ The proceedings in an action *in rem* are void if the court had no jurisdiction over the thing under litigation.¹⁵⁶

In the present case, the Regional Trial Court had no jurisdiction over the subject matter of the action, specifically, over the remedy sought. As this court explained in *Malana v. Tappa*:¹⁵⁷

. . . an action for declaratory relief *presupposes that there has been no actual breach of the instruments involved or of rights arising thereunder. Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained only before the breach or violation of the statute, deed, or contract to which it refers.* A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.

*Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the courts can no longer assume jurisdiction over the action. In other words, a court has no more jurisdiction over an action for declaratory relief if its subject has already been infringed or transgressed before the institution of the action.*¹⁵⁸
(Emphasis supplied)

The trial court should have dismissed the PEZA’s petition for declaratory relief for lack of jurisdiction.

Once an assessment has already been issued by the assessor, the proper remedy of a taxpayer depends on whether the assessment was

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id.

¹⁵⁷ 616 Phil. 177 (2009) [Per J. Chico-Nazario, Third Division].

¹⁵⁸ Id. at 188–189.

erroneous or illegal.

An erroneous assessment “presupposes that the taxpayer is subject to the tax but is disputing the correctness of the amount assessed.”¹⁵⁹ With an erroneous assessment, the taxpayer claims that the local assessor erred in determining any of the items for computing the real property tax, i.e., the value of the real property or the portion thereof subject to tax and the proper assessment levels. In case of an erroneous assessment, the taxpayer must exhaust the administrative remedies provided under the Local Government Code before resorting to judicial action.

The taxpayer must first pay the real property tax under protest. Section 252 of the Local Government Code provides:

SECTION 252. *Payment Under Protest.* -(a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.

Should the taxpayer find the action on the protest unsatisfactory, the taxpayer may appeal with the Local Board of Assessment Appeals within 60 days from receipt of the decision on the protest:

SECTION 226. *Local Board of Assessment Appeals.* - Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the provincial or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

¹⁵⁹ *National Power Corporation v. Province of Quezon*, G.R. No. 171586, January 25, 2010, 611 SCRA 71, 91 [Per J. Brion, Special Second Division].

Payment under protest and appeal to the Local Board of Assessment Appeals are “successive administrative remedies to a taxpayer who questions the correctness of an assessment.”¹⁶⁰ The Local Board Assessment Appeals shall not entertain an appeal “without the action of the local assessor”¹⁶¹ on the protest.

If the taxpayer is still unsatisfied after appealing with the Local Board of Assessment Appeals, the taxpayer may appeal with the Central Board of Assessment Appeals within 30 days from receipt of the Local Board’s decision:

SECTION 229. *Action by the Local Board of Assessment Appeals.* -

(a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) In the exercise of its appellate jurisdiction, the Board shall have the power to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue *subpoena* and *subpoena duces tecum*. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. *The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board, may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided.* The decision of the Central Board shall be final and executory. (Emphasis supplied)

On the other hand, an assessment is illegal if it was made without authority under the law.¹⁶² In case of an illegal assessment, the taxpayer may directly resort to judicial action without paying under protest the assessed tax and filing an appeal with the Local and Central Board of Assessment Appeals.

¹⁶⁰ Id. at 95.

¹⁶¹ Id.

¹⁶² *Ty v. Trampe*, 321 Phil. 81, 101 (1995) [Per J. Panganiban, En Banc]. See J. Carpio, concurring opinion, in *Camp John Hay Development Corporation v. Central Board of Assessment Appeals*, G.R. No. 169234, October 2, 2013, 706 SCRA 547, 578 [Per J. Perez, Second Division].

In *Ty v. Trampe*,¹⁶³ the Municipal Assessor of Pasig sent Alejandro B. Ty a notice of assessment with respect to Ty's real properties in Pasig. Without resorting to the administrative remedies under the Local Government Code, Ty filed before the Regional Trial Court a petition, praying that the trial court nullify the notice of assessment. In assessing the real property taxes due, the Municipal Assessor used a schedule of market values solely prepared by him. This, Ty argued, was void for being contrary to the Local Government Code requiring that the schedule of market values be jointly prepared by the provincial, city, and municipal assessors of the municipalities within the Metropolitan Manila Area.

This court ruled that the assessment was illegal for having been issued without authority of the Municipal Assessor. Reconciling provisions of the Real Property Tax Code and the Local Government Code, this court held that the schedule of market values must be jointly prepared by the provincial, city, and municipal assessors of the municipalities within the Metropolitan Manila Area.

As to the issue of exhaustion of administrative remedies, this court held that Ty did not err in directly resorting to judicial action. According to this court, payment under protest is required only "where there is a question as to the reasonableness of the amount assessed."¹⁶⁴ As to appeals before the Local and Central Board of Assessment Appeals, they are "fruitful only where questions of fact are involved."¹⁶⁵

Ty raised the issue of the legality of the notice of assessment, an issue that did not go into the reasonableness of the amount assessed. Neither did the issue involve a question of fact. Ty raised a question of law and, therefore, need not resort to the administrative remedies provided under the Local Government Code.

In the present case, the PEZA did not avail itself of any of the remedies against a notice of assessment. A petition for declaratory relief is not the proper remedy once a notice of assessment was already issued.

Instead of a petition for declaratory relief, the PEZA should have directly resorted to a judicial action. The PEZA should have filed a complaint for injunction, the "appropriate ordinary civil action"¹⁶⁶ to enjoin the City from enforcing its demand and collecting the assessed taxes from the PEZA. After all, a declaratory judgment as to the PEZA's tax-exempt status is useless unless the City is enjoined from enforcing its demand.

¹⁶³ 321 Phil. 81 (1995) [Per J. Panganiban, En Banc].

¹⁶⁴ Id. at 101.

¹⁶⁵ Id.

¹⁶⁶ *Ollada v. Central Bank of the Philippines*, 115 Phil. 284, 291 (1962) [Per J. Dizon, En Banc].

Injunction “is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act.”¹⁶⁷ “It may be the main action or merely a provisional remedy for and as incident in the main action.”¹⁶⁸ The essential requisites of a writ of injunction are: “(1) there must be a right in *esse* or the existence of a right to be protected; and (2) the act against which the injunction is directed to constitute a violation of such right.”¹⁶⁹

We note, however, that the City confused the concepts of jurisdiction and venue in contending that the Regional Trial Court of Pasay had no jurisdiction because the real properties involved in this case are located in the City of Lapu-Lapu.

On the one hand, jurisdiction is “the power to hear and determine cases of the general class to which the proceedings in question belong.”¹⁷⁰ Jurisdiction is a matter of substantive law.¹⁷¹ Thus, an action may be filed only with the court or tribunal where the Constitution or a statute says it can be brought.¹⁷² Objections to jurisdiction cannot be waived and may be brought at any stage of the proceedings, even on appeal.¹⁷³ When a case is filed with a court which has no jurisdiction over the action, the court shall *motu proprio* dismiss the case.¹⁷⁴

On the other hand, venue is “the place of trial or geographical location in which an action or proceeding should be brought.”¹⁷⁵ In civil cases, venue is a matter of procedural law.¹⁷⁶ A party’s objections to venue must be brought at the earliest opportunity either in a motion to dismiss or in the

¹⁶⁷ *Agoo Rice Mill Corporation v. Land Bank of the Philippines*, G.R. No. 173036, September 26, 2012, 682 SCRA 36, 46 [Per J. Brion, Second Division]; *Garayblas v. Atienza, Jr.*, 525 Phil. 291, 306 (2006) [Per J. Callejo, Sr., First Division]; *Bacolod City Water District v. Labayen*, 487 Phil. 335, 346 (2004) [Per J. Puno, Second Division].

¹⁶⁸ *Id.*

¹⁶⁹ *Agoo Rice Mill Corporation v. Land Bank of the Philippines*, G.R. No. 173036, September 26, 2012, 682 SCRA 36, 46 [Per J. Brion, Second Division].

¹⁷⁰ *Villagracia v. Fifth (5th) Shari’a District Court*, G.R. No. 188832, April 23, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/188832.pdf>> [Per J. Leonen, Third Division].

¹⁷¹ *Nocum v. Tan*, 507 Phil. 620, 626 (2005) [Per J. Chico-Nazario, Second Division].

¹⁷² *Villagracia v. Fifth (5th) Shari’a District Court*, G.R. No. 188832, April 23, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/188832.pdf>> [Per J. Leonen, Third Division].

¹⁷³ *Id.*, citing *Ibrahim v. Commission on Elections*, G.R. No. 192289, January 8, 2013, 688 SCRA 129, 145 [Per J. Reyes, En Banc], citing *Republic v. Bantigue Point Development Corporation*, G.R. No. 162322, March 14, 2012, 668 SCRA 158 [Per J. Sereno, Second Division]; *Figueroa v. People of the Philippines*, 580 Phil. 58, 76 (2008) [Per J. Nachura, Third Division]; *Mangaliag v. Catubig-Pastoral*, 510 Phil. 637, 648 (2005) [Per J. Austria-Martinez, Second Division]; *Calimlim v. Ramirez*, 204 Phil. 25, 35 (1982) [Per J. Vasquez, First Division].

¹⁷⁴ RULES OF COURT, Rule 9, sec. 1; *Villagracia v. Fifth (5th) Shari’a District Court*, G.R. No. 188832, April 23, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/188832.pdf>> [Per J. Leonen, Third Division].

¹⁷⁵ *Nocum v. Tan*, 507 Phil. 620, 629 (2005) [Per J. Chico-Nazario, Second Division].

¹⁷⁶ *Id.* at 626.

answer; otherwise the objection shall be deemed waived.¹⁷⁷ When the venue of a civil action is improperly laid, the court cannot *motu proprio* dismiss the case.¹⁷⁸

The venue of an action depends on whether the action is a real or personal action. Should the action affect title to or possession of real property, or interest therein, it is a real action. The action should be filed in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.¹⁷⁹ If the action is a personal action, the action shall be filed with the proper court where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.¹⁸⁰

The City was objecting to the venue of the action, not to the jurisdiction of the Regional Trial Court of Pasay. In essence, the City was contending that the PEZA's petition is a real action as it affects title to or possession of real property, and, therefore, the PEZA should have filed the petition with the Regional Trial Court of Lapu-Lapu City where the real properties are located.

However, whatever objections the City has against the venue of the PEZA's action for declaratory relief are already deemed waived. Objections to venue must be raised at the earliest possible opportunity.¹⁸¹ The City did not file a motion to dismiss the petition on the ground that the venue was improperly laid. Neither did the City raise this objection in its answer.

In any event, the law sought to be judicially interpreted in this case had already been breached. The Regional Trial Court of Pasay, therefore, had no jurisdiction over the PEZA's petition for declaratory relief against the City.

III.

The Court of Appeals had no jurisdiction over the PEZA's petition for certiorari against the Province of Bataan

¹⁷⁷ RULES OF COURT, Rule 9, sec. 1.

¹⁷⁸ *Rudolf Lietz Holding, Inc. v. The Registry of Deeds of Parañaque City*, 398 Phil. 626, 633 (2000) [Per J. Ynares-Santiago, First Division]. However, a court may *motu proprio* dismiss the case on any grounds for the dismissal of a civil action if the case falls under summary procedure per Section 4 of the 1991 Revised Rule on Summary Procedure.

¹⁷⁹ RULES OF COURT, Rule 4, sec. 1.

¹⁸⁰ RULES OF COURT, Rule 4, sec. 2.

¹⁸¹ RULES OF COURT, Rule 9, sec. 1.

Appeal is the remedy “to obtain a reversal or modification of a judgment on the merits.”¹⁸² A judgment on the merits is one which “determines the rights and liabilities of the parties based on the disclosed facts, irrespective of the formal, technical or dilatory objections.”¹⁸³ It is not even necessary that the case proceeded to trial.¹⁸⁴ So long as the “judgment is general”¹⁸⁵ and “the parties had a full legal opportunity to be heard on their respective claims and contentions,”¹⁸⁶ the judgment is on the merits.

On the other hand, certiorari is a special civil action filed to annul or modify a proceeding of a tribunal, board, or officer exercising judicial or quasi-judicial functions.¹⁸⁷ Certiorari, which in Latin means “to be more fully informed,”¹⁸⁸ was originally a remedy in the common law. This court discussed the history of the remedy of certiorari in *Spouses Delos Santos v. Metropolitan Bank and Trust Company*:¹⁸⁹

In the common law, from which the remedy of certiorari evolved, the writ of certiorari was issued out of Chancery, or the King’s Bench, commanding agents or officers of the inferior courts to return the record of a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court’s judgment was rendered without authority. The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available. If the inferior court acted without authority, the record was then revised and corrected in matters of law. The writ of certiorari was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.¹⁹⁰

In our jurisdiction, the term “certiorari” is used in two ways. An appeal before this court raising pure questions of law is commenced by

¹⁸² *Samson v. Hon. Fiel-Macaraig*, G.R. No. 166356, February 2, 2010, 611 SCRA 345, 351 [Per J. Carpio, Second Division]; *Bugarin v. Palisoc*, 513 Phil. 59, 66 (2005) [Per J. Quisumbing, First Division]; *Association of Integrated Security Force of Bislig (AISFB)-ALU v. Hon. Court of Appeals*, 505 Phil. 10, 18 (2005) [Per J. Chico-Nazario, Second Division].

¹⁸³ *Mendiola v. Court of Appeals*, 327 Phil. 1156, 1164 (1996) [Per J. Hermosisima, Jr., First Division]; *Nabus v. The Honorable Court of Appeals*, 271 Phil. 768, 779 (1991) [Per J. Regalado, Second Division].

¹⁸⁴ *Mendiola v. Court of Appeals*, 327 Phil. 1156, 1164 (1996) [Per J. Hermosisima, Jr., First Division]; *Nabus v. The Honorable Court of Appeals*, 271 Phil. 768, 779–780 (1991) [Per J. Regalado, Second Division].

¹⁸⁵ *Mendiola v. Court of Appeals*, 327 Phil. 1156, 1164 (1996) [Per J. Hermosisima, Jr., First Division]; *Nabus v. The Honorable Court of Appeals*, 271 Phil. 768, 780 (1991) [Per J. Regalado, Second Division].

¹⁸⁶ *Mendiola v. Court of Appeals*, 327 Phil. 1156, 1165 (1996) [Per J. Hermosisima, Jr., First Division]; *Nabus v. The Honorable Court of Appeals*, 271 Phil. 768, 780 (1991) [Per J. Regalado, Second Division].

¹⁸⁷ RULES OF COURT, Rule 65, sec. 1.

¹⁸⁸ Black’s Law Dictionary, Eighth Edition 241 (2004).

¹⁸⁹ G.R. No. 153852, October 24, 2012, 684 SCRA 410 [Per J. Bersamin, First Division].

¹⁹⁰ *Id.* at 420–421.

filing a petition for *review* on certiorari under Rule 45 of the Rules of Court. An appeal by certiorari, which continues the proceedings commenced before the lower courts,¹⁹¹ is filed to reverse or modify judgments or final orders.¹⁹² Under the Rules, an appeal by certiorari must be filed within 15 days from notice of the judgment or final order, or of the denial of the appellant's motion for new trial or reconsideration.¹⁹³

A petition for certiorari under Rule 65, on the other hand, is an independent and original action filed to set aside proceedings conducted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.¹⁹⁴ Under the Rules, a petition for certiorari may only be filed if there is no appeal or any plain, speedy, or adequate remedy in the ordinary course of law.¹⁹⁵ The petition must be filed within 60 days from notice of the judgment, order, or resolution.¹⁹⁶

Because of the longer period to file a petition for certiorari, some litigants attempt to file petitions for certiorari as substitutes for lost appeals by certiorari. However, Rule 65 is clear that a petition for certiorari will not prosper if appeal is available. Appeal is the proper remedy even if the error, or one of the errors, raised is grave abuse of discretion on the part of the court rendering judgment.¹⁹⁷ If appeal is available, a petition for certiorari cannot be filed.

In this case, the trial court's decision dated January 31, 2007 is a judgment on the merits. Based on the facts disclosed by the parties, the trial court declared the PEZA liable to the Province of Bataan for real property taxes. The PEZA's proper remedy against the trial court's decision, therefore, is appeal.

Since the PEZA filed a petition for certiorari against the trial court's decision, it availed itself of the wrong remedy. As the Province of Bataan contended, the trial court's decision dated January 31, 2007 "is only an error of judgment appealable to the higher level court and may not be corrected by filing a petition for certiorari."¹⁹⁸ That the trial court judge allegedly committed grave abuse of discretion does not make the petition for certiorari the correct remedy. The PEZA should have raised this ground in an appeal

¹⁹¹ *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*, 479 Phil. 768, 780–781 (2004) [Per J. Panganiban, Third Division].

¹⁹² *Id.* at 781.

¹⁹³ RULES OF COURT, Rule 45, sec. 2.

¹⁹⁴ *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*, 479 Phil. 768, 781 [Per J. Panganiban, Third Division].

¹⁹⁵ RULES OF COURT, Rule 65, sec. 1.

¹⁹⁶ RULES OF COURT, Rule 65, sec. 4.

¹⁹⁷ *Bugarin v. Palisoc*, 513 Phil. 59, 66 (2005) [Per J. Quisumbing, First Division]; *Association of Integrated Security Force of Bislig (AISFB)-ALU v. Hon. Court of Appeals*, 505 Phil. 10, 18 (2005) [Per J. Chico-Nazario, Second Division].

¹⁹⁸ *Rollo* (G.R. No. 187583), pp. 31–32.

filed within 15 days from notice of the assailed resolution.

This court, “in the liberal spirit pervading the Rules of Court and in the interest of substantial justice,”¹⁹⁹ has treated petitions for certiorari as an appeal: “(1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.”²⁰⁰ Considering that “the nature of an action is determined by the allegations of the complaint or the petition and the character of the relief sought,”²⁰¹ a petition which “actually avers errors of judgment rather than errors than that of jurisdiction”²⁰² may be considered a petition for review.

However, suspending the application of the Rules has its disadvantages. Relaxing procedural rules may reduce the “effective enforcement of substantive rights,”²⁰³ leading to “arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes.”²⁰⁴ Therefore, for this court to suspend the application of the Rules, the accomplishment of substantial justice must outweigh the importance of predictability of court procedures.

The PEZA’s petition for certiorari may be treated as an appeal. First, the petition for certiorari was filed within the 15-day reglementary period for filing an appeal. The PEZA filed its petition for certiorari before the Court of Appeals on October 15, 2007,²⁰⁵ which was 12 days from October 3, 2007²⁰⁶ when the PEZA had notice of the trial court’s order denying the motion for reconsideration.

Second, the petition for certiorari raised errors of judgment. The PEZA argued that the trial court erred in ruling that it is not exempt from payment of real property taxes given Section 21 of Presidential Decree No. 66 and Sections 11 and 51 of the Special Economic Zone Act of 1995.²⁰⁷

¹⁹⁹ *The City of Manila v. Hon. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/february2014/175723.pdf>> [Per J. Peralta, En Banc]; *Oaminal v. Castillo*, 459 Phil. 542, 556 (2003) [Per J. Panganiban, Third Division].

²⁰⁰ *The City of Manila v. Hon. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/february2014/175723.pdf>> [Per J. Peralta, En Banc]; *Oaminal v. Castillo*, 459 Phil. 542, 556 (2003) [Per J. Panganiban, Third Division].

²⁰¹ *Oaminal v. Castillo*, 459 Phil. 542, 557 (2003) [Per J. Panganiban, Third Division].

²⁰² *Id.*, citing *Delsan Transport Lines, Inc. v. CA*, 335 Phil. 1066, 1075 (1997) [Per J. Mendoza, Second Division].

²⁰³ *Sebastian v. Morales*, 445 Phil. 595, 605 (2003) [Per J. Quisumbing, Second Division].

²⁰⁴ *Id.*

²⁰⁵ CA rollo (CA-G.R. SP No. 100984), p. 2.

²⁰⁶ *Id.* at 7.

²⁰⁷ *Id.* at 33–34.

Third, there is sufficient reason to relax the rules given the importance of the substantive issue presented in this case.

However, the PEZA's petition for certiorari was filed before the wrong court. The PEZA should have filed its petition before the Court of Tax Appeals.

The Court of Tax Appeals has the exclusive appellate jurisdiction over local tax cases decided by Regional Trial Courts. Section 7, paragraph (a)(3) of Republic Act No. 1125, as amended by Republic Act No. 9282, provides:

Sec. 7. Jurisdiction. – The [Court of Tax Appeals] shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

....

3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction[.]

The local tax cases referred to in Section 7, paragraph (a)(3) of Republic Act No. 1125, as amended, include cases involving real property taxes. Real property taxation is governed by Book II of the Local Government Code on "Local Taxation and Fiscal Matters." Real property taxes are collected by the Local Treasurer,²⁰⁸ not by the Bureau of Internal Revenue in charge of collecting national internal revenue taxes, fees, and charges.²⁰⁹

Section 7, paragraph (a)(5) of Republic Act No. 1125, as amended by Republic Act No. 9282, separately provides for the exclusive appellate jurisdiction of the Court of Tax Appeals over decisions of the Central Board of Assessment Appeals involving the assessment or collection of real

²⁰⁸ LOCAL GOVT. CODE, sec. 247 provides;

SEC. 247. *Collection of Tax.* - The collection of the real property tax with interest thereon and related expenses, and the enforcement of the remedies provided for in this Title or any applicable laws, shall be the responsibility of the city or municipal treasurer concerned. The city or municipal treasurer may deputize the barangay treasurer to collect all taxes on real property located in the barangay: *Provided*, That the barangay treasurer is properly bonded for the purpose: *Provided*, further, That the premium on the bond shall be paid by the city or municipal government concerned.

²⁰⁹ TAX CODE, Title I, sec. 2 provides:

SEC. 2. *Powers and duties of the Bureau of Internal Revenue.* - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

property taxes:

Sec. 7. Jurisdiction. – The [Court of Tax Appeals] shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

.....

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

This separate provision, nevertheless, does not bar the Court of Tax Appeals from taking cognizance of trial court decisions involving the collection of real property tax cases. Sections 256²¹⁰ and 266²¹¹ of the Local Government Code expressly allow local government units to file “in any court of competent jurisdiction” civil actions to collect basic real property taxes. Should the trial court rule against them, local government units cannot be barred from appealing before the Court of Tax Appeals – the “highly specialized body specifically created for the purpose of reviewing tax cases.”²¹²

We have also ruled that the Court of Tax Appeals, not the Court of Appeals, has the exclusive original jurisdiction over petitions for certiorari assailing interlocutory orders issued by Regional Trial Courts in a local tax case. We explained in *The City of Manila v. Hon. Grecia-Cuerdo*²¹³ that while the Court of Tax Appeals has no express grant of power to issue writs of certiorari under Republic Act No. 1125,²¹⁴ as amended, the tax court’s judicial power as defined in the Constitution²¹⁵ includes the power to determine “whether or not there has been grave abuse of discretion

²¹⁰ LOCAL GOVT CODE, sec. 256 provides:

SEC. 256. *Remedies For The Collection Of Real Property Tax.* - For the collection of the basic real property tax and any other tax levied under this Title, the local government unit concerned may avail of the remedies by administrative action thru levy on real property or by judicial action.

²¹¹ LOCAL GOVT CODE, sec. 266 provides:

SEC. 266. *Collection of Real Property Tax Through the Courts.* – The local government unit concerned may enforce the collection of the basic real property tax or any other tax levied under this Title by civil action in any court of competent jurisdiction. The civil action shall be filed by the local treasurer within the period prescribed in Section 270 of this Code.

²¹² *Phil. Refining Co. v. Court of Appeals*, 326 Phil. 680, 689 (1996) [Per J. Regalado, Second Division].

²¹³ G.R. No. 175723, February 4, 2014
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/february2014/175723.pdf>> [Per J. Peralta, En Banc].

²¹⁴ AN ACT CREATING THE COURT OF TAX APPEALS (1954).

²¹⁵ CONST., art. viii, sec. 1 provides:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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

amounting to lack or excess of jurisdiction on the part of the [Regional Trial Court] in issuing an interlocutory order of jurisdiction in cases falling within the exclusive appellate jurisdiction of the tax court.”²¹⁶ We further elaborated:

Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.

.....

If this Court were to sustain petitioners' contention that jurisdiction over their certiorari petition lies with the CA, this Court would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter – precisely the split-jurisdiction situation which is anathema to the orderly administration of justice. The Court cannot accept that such was the legislative motive, especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power. Thus, the Court agrees with the ruling of the CA that since appellate jurisdiction over private respondents' complaint for tax refund is vested in the CTA, it follows that a petition for certiorari seeking nullification of an interlocutory order issued in the said case should, likewise, be filed with the same court. To rule otherwise would lead to an absurd situation where one court decides an appeal in the main case while another court rules on an incident in the very same case.

Stated differently, it would be somewhat incongruent with the pronounced judicial abhorrence to split jurisdiction to conclude that the intention of the law is to divide the authority over a local tax case filed with the RTC by giving to the CA or this Court jurisdiction to issue a writ of certiorari against interlocutory orders of the RTC but giving to the CTA the jurisdiction over the appeal from the decision of the trial court in the same case. It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases filed in and decided by the RTC carries with it the power to issue a writ of certiorari when necessary in aid of such appellate jurisdiction. The supervisory power or jurisdiction of the CTA to issue a writ of certiorari in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have

²¹⁶ *The City of Manila v. Hon. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/february2014/175723.pdf>> [Per J. Peralta, En Banc].

complete supervision over the acts of the latter.²¹⁷ (Citations omitted)

In this case, the petition for injunction filed before the Regional Trial Court of Pasay was a local tax case originally decided by the trial court in its original jurisdiction. Since the PEZA assailed a judgment, not an interlocutory order, of the Regional Trial Court, the PEZA's proper remedy was an appeal to the Court of Tax Appeals.

Considering that the appellate jurisdiction of the Court of Tax Appeals is to the exclusion of all other courts, the Court of Appeals had no jurisdiction to take cognizance of the PEZA's petition. The Court of Appeals acted without jurisdiction in rendering the decision in CA-G.R. SP No. 100984. Its decision in CA-G.R. SP No. 100984 is void.²¹⁸

The filing of appeal in the wrong court does not toll the period to appeal. Consequently, the decision of the Regional Trial Court, Branch 115, Pasay City, became final and executory after the lapse of the 15th day from the PEZA's receipt of the trial court's decision.²¹⁹ The denial of the petition for injunction became final and executory.

IV.

The remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to impose real property taxes

The proper remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to collect real property taxes. For the guidance of the members of the bench and the bar, we reiterate the taxpayer's remedies against the erroneous or illegal assessment of real property taxes.

Exhaustion of administrative remedies under the Local Government Code is necessary in cases of erroneous assessments where the correctness of the amount assessed is assailed. The taxpayer must first pay the tax then file a protest with the Local Treasurer within 30 days from date of payment of tax.²²⁰ If protest is denied or upon the lapse of the 60-day period to

²¹⁷ Id.

²¹⁸ See *City of Iriga v. Camarines Sur III Electric Cooperative, Inc. (CASURECO III)*, G.R. No. 192945, September 5, 2012, 680 SCRA 236, 244 [Per J. Perlas-Bernabe, Second Division].

²¹⁹ See *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 190660, April 11, 2011, 647 SCRA 561, 567 [Per J. Carpio Morales, Third Division].

²²⁰ Rep. Act No. 7160, sec. 252.

decide the protest, the taxpayer may appeal to the Local Board of Assessment Appeals within 60 days from the denial of the protest or the lapse of the 60-day period to decide the protest.²²¹ The Local Board of Assessment Appeals has 120 days to decide the appeal.²²²

If the taxpayer is unsatisfied with the Local Board's decision, the taxpayer may appeal before the Central Board of Assessment Appeals within 30 days from receipt of the Local Board's decision.²²³

The decision of the Central Board of Assessment Appeals is appealable before the Court of Tax Appeals En Banc.²²⁴ The appeal before the Court of Tax Appeals shall be filed following the procedure under Rule 43 of the Rules of Court.²²⁵

The Court of Tax Appeals' decision may then be appealed before this court through a petition for review on certiorari under Rule 45 of the Rules of Court raising pure questions of law.²²⁶

In case of an illegal assessment where the assessment was issued without authority, exhaustion of administrative remedies is not necessary and the taxpayer may directly resort to judicial action.²²⁷ The taxpayer shall file a complaint for injunction before the Regional Trial Court²²⁸ to enjoin the local government unit from collecting real property taxes.

The party unsatisfied with the decision of the Regional Trial Court shall file an appeal, not a petition for certiorari, before the Court of Tax Appeals, the complaint being a local tax case decided by the Regional Trial Court.²²⁹ The appeal shall be filed within fifteen (15) days from notice of the trial court's decision.

The Court of Tax Appeals' decision may then be appealed before this court through a petition for review on certiorari under Rule 45 of the Rules of Court raising pure questions of law.²³⁰

In case the local government unit has issued a notice of delinquency,

²²¹ Rep. Act No. 7160, sec. 226.

²²² Rep. Act No. 7160, sec. 229(a).

²²³ Rep. Act No. 7160, sec. 229(c).

²²⁴ Rep. Act No. 1125, as amended by Rep. Act No. 9282, sec. 7(a)(5); RULES OF PROCEDURE IN THE COURT OF TAX APPEALS, Rule 4, sec. 2(e).

²²⁵ RULES OF PROCEDURE IN THE COURT OF TAX APPEALS, Rule 8, sec. 4(c).

²²⁶ Rep. Act No. 1125 (1954), as amended by Rep. Act No. 9282 (2004), sec. 19.

²²⁷ *Ty v. Trampe*, 321 Phil. 81, 101–102 (1995) [Per J. Panganiban, En Banc].

²²⁸ *Batas Blg. 129* (1994), sec. 19; *Bank of the Philippine Islands v. Hong*, G.R. No. 161771, February 15, 2012, 666 SCRA 71, 78 [Per J. Villarama, Jr., First Division].

²²⁹ Rep. Act No. 1125 (1954), as amended by Rep. Act No. 9282 (2004), sec. 7(a)(3).

²³⁰ Rep. Act No. 1125 (1954), as amended by Rep. Act No. 9282 (2004), sec. 19.

the taxpayer may file a complaint for injunction to enjoin the impending sale of the real property at public auction. In case the local government unit has already sold the property at public auction, the taxpayer must first deposit with the court the amount for which the real property was sold, together with interest of 2% per month from the date of sale to the time of the institution of action. The taxpayer may then file a complaint to assail the validity of the public auction.²³¹ The decisions of the Regional Trial Court in these cases shall be appealable before the Court of Tax Appeals,²³² and the latter's decisions appealable before this court through a petition for review on certiorari under Rule 45 of the Rules of Court.²³³

V.

The PEZA is exempt from payment of real property taxes

The jurisdictional errors in this case render these consolidated petitions moot. We do not review void decisions rendered without jurisdiction.

However, the PEZA alleged that several local government units, including the City of Baguio and the Province of Cavite, have issued their respective real property tax assessments against the PEZA. Other local government units will likely follow suit, and either the PEZA or the local government units taxing the PEZA may file their respective actions against each other.

In the interest of judicial economy²³⁴ and avoidance of conflicting decisions involving the same issues,²³⁵ we resolve the substantive issue of whether the PEZA is exempt from payment of real property taxes.

Real property taxes are annual taxes levied on real property such as lands, buildings, machinery, and other improvements not otherwise specifically exempted under the Local Government Code.²³⁶ Real property taxes are *ad valorem*, with the amount charged based on a fixed proportion of the value of the property.²³⁷ Under the law, provinces, cities, and municipalities within the Metropolitan Manila Area have the power to levy

²³¹ Rep. Act No. 7160 (1991), sec. 267.

²³² Rep. Act No. 1125 (1954), as amended by Rep. Act No. 9282 (2004), sec. 7(a)(3).

²³³ Rep. Act No. 1125 (1954), as amended by Rep. Act No. 9282 (2004), sec. 19.

²³⁴ *Salud v. The Court of Appeals*, G.R. No. 100156, June 27, 1994, 233 SCRA 384, 389 [Per J. Puno, Second Division].

²³⁵ *See Pryce Corporation v. China Banking Corporation*, G.R. No. 172302, February 18, 2014, 716 SCRA 207, 235 [Per J. Leonen, En Banc].

²³⁶ LOCAL GOVT. CODE, sec. 232.

²³⁷ LOCAL GOVT. CODE, sec. 198(c).

real property taxes within their respective territories.²³⁸

The general rule is that real properties are subject to real property taxes. This is true especially since the Local Government Code has withdrawn exemptions from real property taxes of all persons, whether natural or juridical:

SEC. 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or – controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, any exemption from payment of real property taxes previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including government-owned or -controlled corporations are hereby withdrawn upon the effectivity of this Code. (Emphasis supplied)

The person liable for real property taxes is the “taxable person who had actual or beneficial use and possession [of the real property for the taxable period,] whether or not [the person owned the property for the period he or she is being taxed].”²³⁹

The exceptions to the rule are provided in the Local Government Code. Under Section 133(o), local government units have no power to levy taxes of any kind on the national government, its agencies and instrumentalities and local government units:

²³⁸ LOCAL GOVT. CODE, sec. 232.

²³⁹ *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila*, 623 Phil. 964, 982 (2009) [Per J. Velasco, Jr., Third Division], citing *Testate Estate of Concordia T. Lim v. City of Manila*, 261 Phil. 602, 607 (1990) [Per J. Gutierrez, Jr., Third Division]; *Manila Electric Company v. Barlis*, 410 Phil. 167, 178 (2001) [Per J. De Leon, Jr., Second Division].

SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units.* – Unless otherwise provided herein, the exercise of taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

....

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities and local government units.

Specifically on real property taxes, Section 234 enumerates the persons and real property exempt from real property taxes:

SEC. 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of real property tax:

(a) *Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;*

(b) *Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;*

(c) *All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or – controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;*

(d) *All real property owned by duly registered cooperatives as provided under R.A. No. 6938; and*

(e) *Machinery and equipment used for pollution control and environmental protection.*

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or - controlled corporations are hereby withdrawn upon the effectivity of this Code. (Emphasis supplied)

For persons granted tax exemptions or incentives before the effectivity of the Local Government Code, Section 193 withdrew these tax exemption privileges. These persons consist of both natural and juridical persons, including government-owned or controlled corporations:

SEC. 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 effectivity of this Code.

As discussed, Section 234 withdrew all tax privileges with respect to real property taxes.

Nevertheless, local government units may grant tax exemptions under such terms and conditions as they may deem necessary:

SEC. 192. *Authority to Grant Tax Exemption Privileges.* – Local government units may, through ordinances duly approved, grant tax exemptions, incentives or reliefs under such terms and conditions as they may deem necessary.

In *Mactan Cebu International Airport Authority v. Hon. Marcos*,²⁴⁰ this court classified the exemptions from real property taxes into ownership, character, and usage exemptions.

Ownership exemptions are exemptions based on the ownership of the real property. The exemptions of real property owned by the Republic of the Philippines, provinces, cities, municipalities, barangays, and registered cooperatives fall under this classification.²⁴¹

Character exemptions are exemptions based on the character of the real property. Thus, no real property taxes may be levied on charitable institutions, houses and temples of prayer like churches, parsonages, or convents appurtenant thereto, mosques, and non profit or religious cemeteries.²⁴²

Usage exemptions are exemptions based on the use of the real property. Thus, no real property taxes may be levied on real property such as: (1) lands and buildings actually, directly, and exclusively used for religious, charitable or educational purpose; (2) machineries and equipment actually, directly and exclusively used by local water districts or by government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power; and (3) machinery and equipment used for pollution control and environmental protection.²⁴³

²⁴⁰ 330 Phil. 392 (1996) [Per J. Davide, Jr., Third Division].

²⁴¹ Id. at 410.

²⁴² Id.

²⁴³ Id.

Persons may likewise be exempt from payment of real properties if their charters, which were enacted or reenacted after the effectivity of the Local Government Code, exempt them payment of real property taxes.²⁴⁴

V. (A)

The PEZA is an instrumentality of the national government

An instrumentality is “any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter.”²⁴⁵

Examples of instrumentalities of the national government are the Manila International Airport Authority,²⁴⁶ the Philippine Fisheries Development Authority,²⁴⁷ the Government Service Insurance System,²⁴⁸ and the Philippine Reclamation Authority.²⁴⁹ These entities are not integrated within the department framework but are nevertheless vested with special functions to carry out a declared policy of the national government.

Similarly, the PEZA is an instrumentality of the national government. It is not integrated within the department framework but is an agency attached to the Department of Trade and Industry.²⁵⁰ Book IV, Chapter 7, Section 38(3)(a) of the Administrative Code of 1987 defines “attachment”:

SEC. 38. *Definition of Administrative Relationship.* – Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

....

(3) *Attachment.*—(a) This refers to the lateral relationship between the department or its equivalent and the attached agency or corporation for purposes of policy and program coordination. The coordination may be accomplished by having the department represented in the governing

²⁴⁴ *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila*, 623 Phil. 964, 976–977 (2009) [Per J. Velasco, Jr., Third Division].

²⁴⁵ EXEC. ORDER NO. 292, Introductory Provisions, sec. 2(10).

²⁴⁶ *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 212–214 (2006) [Per J. Carpio, En Banc].

²⁴⁷ *Philippine Fisheries Development Authority v. The Honorable Court of Appeals*, 555 Phil. 661, 668 (2007) [Per J. Azcuna, First Division].

²⁴⁸ *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila*, 623 Phil. 964, 978–981 (2009) [Per J. Velasco, Jr., Third Division].

²⁴⁹ *Republic of the Philippines v. City of Parañaque*, G.R. No. 191109, July 18, 2012, 677 SCRA 247, 263 [Per J. Mendoza, Third Division].

²⁵⁰ Rep. Act No. 7916 (1995), sec. 11.

board of the attached agency or corporation, either as chairman or as a member, with or without voting rights, if this is permitted by the charter; having the attached corporation or agency comply with a system of periodic reporting which shall reflect the progress of the programs and projects; and having the department or its equivalent provide general policies through its representative in the board, which shall serve as the framework for the internal policies of the attached corporation or agency[.]

Attachment, which enjoys “a larger measure of independence”²⁵¹ compared with other administrative relationships such as supervision and control, is further explained in *Beja, Sr. v. Court of Appeals*:²⁵²

An attached agency has a larger measure of independence from the Department to which it is attached than one which is under departmental supervision and control or administrative supervision. This is borne out by the “lateral relationship” between the Department and the attached agency. The attachment is merely for “policy and program coordination.” With respect to administrative matters, the independence of an attached agency from Departmental control and supervision is further reinforced by the fact that even an agency under a Department’s administrative supervision is free from Departmental interference with respect to appointments and other personnel actions “in accordance with the decentralization of personnel functions” under the Administrative Code of 1987. Moreover, the Administrative Code explicitly provides that Chapter 8 of Book IV on supervision and control shall not apply to chartered institutions attached to a Department.²⁵³

With the PEZA as an attached agency to the Department of Trade and Industry, the 13-person PEZA Board is chaired by the Department Secretary.²⁵⁴ Among the powers and functions of the PEZA is its ability to coordinate with the Department of Trade and Industry for policy and program formulation and implementation.²⁵⁵ In strategizing and prioritizing the development of special economic zones, the PEZA coordinates with the Department of Trade and Industry.²⁵⁶

The PEZA also administers its own funds and operates autonomously, with the PEZA Board formulating and approving the PEZA’s annual budget.²⁵⁷ Appointments and other personnel actions in the PEZA are also free from departmental interference, with the PEZA Board having the exclusive and final authority to promote, transfer, assign and reassign officers of the PEZA.²⁵⁸

²⁵¹ *Beja, Sr. v. Court of Appeals*, G.R. No. 97149, March 31, 1992, 207 SCRA 689, 697 [Per J. Romero, En Banc].

²⁵² G.R. No. 97149, March 31, 1992, 207 SCRA 689, 697 [Per J. Romero, En Banc].

²⁵³ Id. at 697.

²⁵⁴ Rep. Act No. 7916 (1995), sec. 11.

²⁵⁵ Rep. Act No. 7916 (1995), sec. 13(h).

²⁵⁶ Rep. Act No. 7916 (1995), sec. 21.

²⁵⁷ Rep. Act No. 7916 (1995), sec. 12(d) and 19.

²⁵⁸ Rep. Act No. 7916 (1995), sec. 16.

As an instrumentality of the national government, the PEZA is vested with special functions or jurisdiction by law. Congress created the PEZA to operate, administer, manage and develop special economic zones in the Philippines.²⁵⁹ Special economic zones are areas with highly developed or which have the potential to be developed into agro-industrial, industrial tourist/recreational, commercial, banking, investment and financial centers.²⁶⁰ By operating, administering, managing, and developing special economic zones which attract investments and promote use of domestic labor, the PEZA carries out the following policy of the Government:

SECTION 2. Declaration of Policy. — It is the declared policy of the government to translate into practical realities the following State policies and mandates in the 1987 Constitution, namely:

(a) “The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.” (Sec. 20, Art. II)

(b) “The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.” (Sec. 12, Art. XII)

In pursuance of these policies, the government shall actively encourage, promote, induce and accelerate a sound and balanced industrial, economic and social development of the country in order to provide jobs to the people especially those in the rural areas, increase their productivity and their individual and family income, and thereby improve the level and quality of their living condition through the establishment, among others, of special economic zones in suitable and strategic locations in the country and through measures that shall effectively attract legitimate and productive foreign investments.²⁶¹

Being an instrumentality of the national government, the PEZA cannot be taxed by local government units.

Although a body corporate vested with some corporate powers,²⁶² the PEZA is not a government-owned or controlled corporation taxable for real property taxes.

Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines the term “government-owned or controlled corporation”:

²⁵⁹ Rep. Act No. 7916 (1995), sec. 13(a).

²⁶⁰ Rep. Act No. 7916 (1995), sec. 4(a)

²⁶¹ Rep. Act No. 7916 (1995).

²⁶² Rep. Act No. 7916 (1995), sec. 11.

SEC. 2. *General Terms Defined.* – Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

....

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: *Provided*, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

Government entities are created by law, specifically, by the Constitution or by statute. In the case of government-owned or controlled corporations, they are incorporated by virtue of special charters²⁶³ to participate in the market for special reasons which may be related to dysfunctions or inefficiencies of the market structure. This is to adjust reality as against the concept of full competition where all market players are price takers. Thus, under the Constitution, government-owned or controlled corporations are created in the interest of the common good and should satisfy the test of economic viability.²⁶⁴ Article XII, Section 16 of the Constitution provides:

Section 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

Economic viability is “the capacity to function efficiently in business.”²⁶⁵ To be economically viable, the entity “should not go into activities which the private sector can do better.”²⁶⁶

²⁶³ CONST., art. XII, sec. 16.

²⁶⁴ *Republic v. City of Parañaque*, G.R. No. 191109, July 18, 2012, 677 SCRA 246, 259 [Per J. Mendoza, Third Division], citing *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 234–237 (2006) [Per J. Carpio, En Banc].

²⁶⁵ *Republic v. City of Parañaque*, G.R. No. 191109, July 18, 2012, 677 SCRA 246, 262 [Per J. Mendoza, Third Division], citing *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 237 (2006) [Per J. Carpio, En Banc], citing J. G. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1181 (2003).

²⁶⁶ *Republic v. City of Parañaque*, G.R. No. 191109, July 18, 2012, 677 SCRA 246, 262 [Per J. Mendoza, Third Division], citing *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 237 (2006) [Per J. Carpio, En Banc], citing J. G. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1181 (2003).

To be considered a government-owned or controlled corporation, the entity must have been organized as a stock or non-stock corporation.²⁶⁷

Government instrumentalities, on the other hand, are also created by law but partake of sovereign functions. When a government entity performs sovereign functions, it need not meet the test of economic viability. In *Manila International Airport Authority v. Court of Appeals*,²⁶⁸ this court explained:

In contrast, government instrumentalities vested with corporate powers and performing governmental or public functions need not meet the test of economic viability. These instrumentalities perform essential public services for the common good, services that every modern State must provide its citizens. These instrumentalities need not be economically viable since the government may even subsidize their entire operations. These instrumentalities are not the "government-owned or controlled corporations" referred to in Section 16, Article XII of the 1987 Constitution.

Thus, the Constitution imposes no limitation when the legislature creates government instrumentalities vested with corporate powers but performing essential governmental or public functions. Congress has plenary authority to create government instrumentalities vested with corporate powers provided these instrumentalities perform essential government functions or public services. However, when the legislature creates through special charters corporations that perform economic or commercial activities, such entities — known as "government-owned or controlled corporations" — must meet the test of economic viability because they compete in the market place.

....

Commissioner Blas F. Ople, proponent of the test of economic viability, explained to the Constitutional Commission the purpose of this test, as follows:

MR. OPLE: Madam President, the reason for this concern is really that when the government creates a corporation, there is a sense in which this corporation becomes exempt from the test of economic performance. We know what happened in the past. If a government corporation loses, then it makes its claim upon the taxpayers' money through new equity infusions from the government and what is always invoked is the common good. That is the reason why this year, out of a budget of P115 billion for the entire government, about P28 billion of this will go into equity infusions to support a few government financial institutions. And this is all taxpayers' money which could have been relocated to agrarian reform, to social services like health and education, to augment the salaries of grossly

²⁶⁷ *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 210 (2006) [Per J. Carpio, En Banc].

²⁶⁸ 528 Phil. 181 (2006) [Per J. Carpio, En Banc].

underpaid public employees. And yet this is all going down the drain.

Therefore, when we insert the phrase "ECONOMIC VIABILITY" together with the "common good," this becomes a restraint on future enthusiasts for state capitalism to excuse themselves from the responsibility of meeting the market test so that they become viable. And so, Madam President, I reiterate, for the committee's consideration and I am glad that I am joined in this proposal by Commissioner Foz, the insertion of the standard of "ECONOMIC VIABILITY OR THE ECONOMIC TEST," together with the common good.

.....

Clearly, the test of economic viability does not apply to government entities vested with corporate powers and performing essential public services. The State is obligated to render essential public services regardless of the economic viability of providing such service. The non-economic viability of rendering such essential public service does not excuse the State from withholding such essential services from the public.²⁶⁹ (Emphases and citations omitted)

The law created the PEZA's charter. Under the Special Economic Zone Act of 1995, the PEZA was established primarily to perform the governmental function of operating, administering, managing, and developing special economic zones to attract investments and provide opportunities for preferential use of Filipino labor.

Under its charter, the PEZA was created a body corporate endowed with some corporate powers. However, it was not organized as a stock²⁷⁰ or non-stock²⁷¹ corporation. Nothing in the PEZA's charter provides that the PEZA's capital is divided into shares.²⁷² The PEZA also has no members who shall share in the PEZA's profits.

²⁶⁹ Id. at 235–237.

²⁷⁰ CORP. CODE, sec. 3 provides:

Classes of corporations. – Corporations formed or organized under this Code may be stock or non-stock corporations. Corporations which have capital stock divided into shares and are authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held are stock corporations. All other corporations are non-stock corporations.

²⁷¹ CORP. CODE, sec. 87 provides:

Definition. – For the purposes of this Code, a non-stock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers, subject to the provisions of this Code on dissolution: *Provided*, That any profit which a non-stock corporation may obtain as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized, subject to the provisions of this Title.

Republic v. City of Parañaque, G.R. No. 191109, July 18, 2012, 677 SCRA 246, 258 [Per J. Mendoza, Third Division], *citing Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 211–212 (2006) [Per J. Carpio, En Banc].

²⁷² PRES. DECREE NO. 66, sec. 5 in relation to EXEC. ORDER NO. 282 dated October 30, 1995, sec. 1.

The PEZA does not compete with other economic zone authorities in the country. The government may even subsidize the PEZA's operations. Under Section 47 of the Special Economic Zone Act of 1995, "any sum necessary to augment [the PEZA's] capital outlay shall be included in the General Appropriations Act to be treated as an equity of the national government."²⁷³

The PEZA, therefore, need not be economically viable. It is not a government-owned or controlled corporation liable for real property taxes.

V. (B)

The PEZA assumed the non-profit character, including the tax exempt status, of the EPZA

The PEZA's predecessor, the EPZA, was declared non-profit in character with all its revenues devoted for its development, improvement, and maintenance. Consistent with this non-profit character, the EPZA was explicitly declared exempt from real property taxes under its charter. Section 21 of Presidential Decree No. 66 provides:

Section 21. *Non-profit Character of the Authority; Exemption from Taxes.* The Authority shall be non-profit and shall devote and use all its returns from its capital investment, as well as excess revenues from its operations, for the development, improvement and maintenance and other related expenditures of the Authority to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section 1 of this Decree. In consonance therewith, the Authority is hereby declared exempt:

....

(b) From all income taxes, franchise taxes, realty taxes and all other kinds of taxes and licenses to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities[.]

The Special Economic Zone Act of 1995, on the other hand, does not specifically exempt the PEZA from payment of real property taxes.

Nevertheless, we rule that the PEZA is exempt from real property taxes by virtue of its charter. A provision in the Special Economic Zone Act of 1995 explicitly exempting the PEZA is unnecessary. The PEZA assumed the real property exemption of the EPZA under Presidential Decree No. 66.

²⁷³ Rep. Act No. 7916 (1995), sec. 47.

Section 11 of the Special Economic Zone Act of 1995 mandated the EPZA “to evolve into the PEZA in accordance with the guidelines and regulations set forth in an executive order issued for this purpose.” President Ramos then issued Executive Order No. 282 in 1995, ordering the PEZA to assume the EPZA’s powers, functions, and responsibilities under Presidential Decree No. 66 not inconsistent with the Special Economic Zone Act of 1995:

SECTION 1. Assumption of EPZA’s Powers and Functions by PEZA. All the powers, functions and responsibilities of EPZA as provided under its Charter, Presidential Decree No. 66, as amended, insofar as they are not inconsistent with the powers, functions and responsibilities of the PEZA, as mandated under Republic Act No. 7916, shall hereafter be assumed and exercised by the PEZA. Henceforth, the EPZA shall be referred to as the PEZA.

The following sections of the Special Economic Zone Act of 1995 provide for the PEZA’s powers, functions, and responsibilities:

SEC. 5. Establishment of ECOZONES. – To ensure the viability and geographical dispersal of ECOZONES through a system of prioritization, the following areas are initially identified as ECOZONES, subject to the criteria specified in Section 6:

.....

The metes and bounds of each ECOZONE are to be delineated and more particularly described in a proclamation to be issued by the President of the Philippines, upon the recommendation of the Philippine Economic Zone Authority (PEZA), which shall be established under this Act, in coordination with the municipal and / or city council, National Land Use Coordinating Committee and / or the Regional Land Use Committee.

SEC. 6. Criteria for the Establishment of Other ECOZONES. – In addition to the ECOZONES identified in Section 5 of this Act, other areas may be established as ECOZONES in a proclamation to be issued by the President of the Philippines subject to the evaluation and recommendation of the PEZA, based on a detailed feasibility and engineering study which must conform to the following criteria:

- (a) The proposed area must be identified as a regional growth center in the Medium-Term Philippine Development Plan or by the Regional Development Council;
- (b) The existence of required infrastructure in the proposed ECOZONE, such as roads, railways, telephones, ports, airports, etc., and the suitability and capacity of the proposed site to absorb such improvements;
- (c) The availability of water source and electric power supply for use of the ECOZONE;

- (d) The extent of vacant lands available for industrial and commercial development and future expansion of the ECOZONE as well as of lands adjacent to the ECOZONE available for development of residential areas for the ECOZONE workers;
- (e) The availability of skilled, semi-skilled and non-skilled trainable labor force in and around the ECOZONE;
- (f) The area must have a significant incremental advantage over the existing economic zones and its potential profitability can be established;
- (g) The area must be strategically located; and
- (h) The area must be situated where controls can easily be established to curtail smuggling activities.

Other areas which do not meet the foregoing criteria may be established as ECOZONES: Provided, That the said area shall be developed only through local government and/or private sector initiative under any of the schemes allowed in Republic Act No. 6957 (the build-operate-transfer law), and without any financial exposure on the part of the national government: Provided, further, That the area can be easily secured to curtail smuggling activities: Provided, finally, That after five (5) years the area must have attained a substantial degree of development, the indicators of which shall be formulated by the PEZA.

SEC. 7. ECOZONE to be a Decentralized Agro-Industrial, Industrial, Commercial / Trading, Tourist, Investment and Financial Community. - Within the framework of the Constitution, the interest of national sovereignty and territorial integrity of the Republic, ECOZONE shall be developed, as much as possible, into a decentralized, self-reliant and self-sustaining industrial, commercial/trading, agro-industrial, tourist, banking, financial and investment center with minimum government intervention. Each ECOZONE shall be provided with transportation, telecommunications, and other facilities needed to generate linkage with industries and employment opportunities for its own inhabitants and those of nearby towns and cities.

The ECOZONE shall administer itself on economic, financial, industrial, tourism development and such other matters within the exclusive competence of the national government.

The ECOZONE may establish mutually beneficial economic relations with other entities within the country, or, subject to the administrative guidance of the Department of Foreign Affairs and/or the Department of Trade and Industry, with foreign entities or enterprises.

Foreign citizens and companies owned by non-Filipinos in whatever proportion may set up enterprises in the ECOZONE, either by themselves or in joint venture with Filipinos in any sector of industry, international trade and commerce within the ECOZONE. Their assets, profits and other legitimate interests shall be protected: Provided, That the ECOZONE through the PEZA may require a minimum investment for any ECOZONE enterprises in freely convertible currencies: Provided, further, That the new investment shall fall under the priorities, thrusts and limits provided for in the Act.

SEC. 8. ECOZONE to be Operated and Managed as Separate Customs Territory. – The ECOZONE shall be managed and operated by the PEZA as separate customs territory.

The PEZA is hereby vested with the authority to issue certificate of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance.

SEC. 9. Defense and Security. – The defense of the ECOZONE and the security of its perimeter fence shall be the responsibility of the national government in coordination with the PEZA. Military forces sent by the national government for the purpose of defense shall not interfere in the internal affairs of any of the ECOZONE and expenditure for these military forces shall be borne by the national government. The PEZA may provide and establish the ECOZONES' internal security and firefighting forces.

SEC. 10. Immigration. – Any investor within the ECOZONE whose initial investment shall not be less than One Hundred Fifty Thousand Dollars (\$150,000.00), his/her spouse and dependent children under twenty-one (21) years of age shall be granted permanent resident status within the ECOZONE. They shall have freedom of ingress and egress to and from the ECOZONE without any need of special authorization from the Bureau of Immigration.

The PEZA shall issue working visas renewable every two (2) years to foreign executives and other aliens, possessing highly-technical skills which no Filipino within the ECOZONE possesses, as certified by the Department of Labor and Employment. The names of aliens granted permanent resident status and working visas by the PEZA shall be reported to the Bureau of Immigration within thirty (30) days after issuance thereof.

SEC. 13. General Powers and Functions of the Authority. – The PEZA shall have the following powers and functions:

(a) To operate, administer, manage and develop the ECOZONE according to the principles and provisions set forth in this Act;

(b) To register, regulate and supervise the enterprises in the ECOZONE in an efficient and decentralized manner;

(c) To coordinate with local government units and exercise general supervision over the development, plans, activities and operations of the ECOZONES, industrial estates, export processing zones, free trade zones, and the like;

(d) In coordination with local government units concerned and appropriate agencies, to construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license, bulk purchase from the private sector and build-operate-transfer scheme or joint venture, adequate facilities and infrastructure, such as light and power systems, water supply and distribution systems, telecommunication and transportation, buildings, structures, warehouses, roads, bridges, ports and other facilities for the operation and development of the ECOZONE;

(e) To create, operate and/or contract to operate such agencies and functional units or offices of the authority as it may deem necessary;

(f) To adopt, alter and use a corporate seal; make contracts, lease, own or otherwise dispose of personal or real property; sue and be sued; and otherwise carry out its duties and functions as provided for in this Act;

(g) To coordinate the formulation and preparation of the development plans of the different entities mentioned above;

(h) To coordinate with the National Economic Development Authority (NEDA), the Department of Trade and Industry (DTI), the Department of Science and Technology (DOST), and the local government units and appropriate government agencies for policy and program formulation and implementation; and

(i) To monitor and evaluate the development and requirements of entities in subsection (a) and recommend to the local government units or other appropriate authorities the location, incentives, basic services, utilities and infrastructure required or to be made available for said entities.

SEC. 17. Investigation and Inquiries. – Upon a written formal complaint made under oath, which on its face provides reasonable basis to believe that some anomaly or irregularity might have been committed, the PEZA or the administrator of the ECOZONE concerned, shall have the power to inquire into the conduct of firms or employees of the ECOZONE and to conduct investigations, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidences: Provided, That to arrive at the truth, the investigator(s) may grant immunity from prosecution to any person whose testimony or whose possessions of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by him or under the authority of the PEZA or the administrator of the ECOZONE concerned.

SEC. 21. Development Strategy of the ECOZONE. - The strategy and priority of development of each ECOZONE established pursuant to this Act shall be formulated by the PEZA, in coordination with the Department of Trade and Industry and the National Economic and Development Authority; Provided, That such development strategy is consistent with the priorities of the national government as outlined in the medium-term Philippine development plan. It shall be the policy of the government and the PEZA to encourage and provide Incentives and facilitate private sector participation in the construction and operation of public utilities and infrastructure in the ECOZONE, using any of the schemes allowed in Republic Act No. 6957 (the build-operate-transfer law).

SEC. 22. Survey of Resources. The PEZA shall, in coordination with appropriate authorities and neighboring cities and municipalities, immediately conduct a survey of the physical, natural assets and potentialities of the ECOZONE areas under its jurisdiction.

SEC. 26. Domestic Sales. – Goods manufactured by an ECOZONE enterprise shall be made available for immediate retail sales in the domestic market, subject to payment of corresponding taxes on the raw materials and other regulations that may be adopted by the Board of the PEZA.

However, in order to protect the domestic industry, there shall be a negative list of Industries that will be drawn up by the PEZA. Enterprises engaged in the industries included in the negative list shall not be allowed to sell their products locally. Said negative list shall be regularly updated by the PEZA.

The PEZA, in coordination with the Department of Trade and Industry and the Bureau of Customs, shall jointly issue the necessary implementing rules and guidelines for the effective Implementation of this section.

SEC. 29. Eminent Domain. – The areas comprising an ECOZONE may be expanded or reduced when necessary. For this purpose, the government shall have the power to acquire, either by purchase, negotiation or condemnation proceedings, any private lands within or adjacent to the ECOZONE for:

- a. Consolidation of lands for zone development purposes;
- b. Acquisition of right of way to the ECOZONE; and
- c. The protection of watershed areas and natural assets valuable to the prosperity of the ECOZONE.

If in the establishment of a publicly-owned ECOZONE, any person or group of persons who has been occupying a parcel of land within the Zone has to be evicted, the PEZA shall provide the person or group of persons concerned with proper disturbance compensation: Provided, however, That in the case of displaced agrarian reform beneficiaries, they shall be entitled to the benefits under the Comprehensive Agrarian Reform Law, including but not limited to Section 36 of Republic Act No. 3844, in addition to a homelot in the relocation site and preferential employment in the project being undertaken.

SEC. 32. Shipping and Shipping Register. – Private shipping and related business including private container terminals may operate freely in the ECOZONE, subject only to such minimum reasonable regulations of local application which the PEZA may prescribe.

The PEZA shall, in coordination with the Department of Transportation and Communications, maintain a shipping register for each ECOZONE as a business register of convenience for ocean-going vessels and issue related certification.

Ships of all sizes, descriptions and nationalities shall enjoy access to the ports of the ECOZONE, subject only to such reasonable requirement as may be prescribed by the PEZA In coordination with the appropriate agencies of the national government.

SEC. 33. Protection of Environment. - The PEZA, in coordination with the appropriate agencies, shall take concrete and appropriate steps

and enact the proper measure for the protection of the local environment.

SEC. 34. Termination of Business. - Investors In the ECOZONE who desire to terminate business or operations shall comply with such requirements and procedures which the PEZA shall set, particularly those relating to the clearing of debts. The assets of the closed enterprise can be transferred and the funds can be remitted out of the ECOZONE subject to the rules, guidelines and procedures prescribed jointly by the Bangko Sentral ng Pilipinas, the Department of Finance and the PEZA.

SEC. 35. Registration of Business Enterprises. - Business enterprises within a designated ECOZONE shall register with the PEZA to avail of all incentives and benefits provided for in this Act.

SEC. 36. One Stop Shop Center. - The PEZA shall establish a one stop shop center for the purpose of facilitating the registration of new enterprises in the ECOZONE. Thus, all appropriate government agencies that are Involved In registering, licensing or issuing permits to investors shall assign their representatives to the ECOZONE to attend to Investor's requirements.

SEC. 39. Master Employment Contracts. - The PEZA, in coordination with the Department of Labor and Employment, shall prescribe a master employment contract for all ECOZONE enterprise staff members and workers, the terms of which provide salaries and benefits not less than those provided under this Act, the Philippine Labor Code, as amended, and other relevant issuances of the national government.

SEC. 41. Migrant Worker. - The PEZA, in coordination with the Department of Labor and Employment, shall promulgate appropriate measures and programs leading to the expansion of the services of the ECOZONE to help the local governments of nearby areas meet the needs of the migrant workers.

SEC. 42. Incentive Scheme. - An additional deduction equivalent to one-half (1/2) of the value of training expenses incurred in developing skilled or unskilled labor or for managerial or other management development programs incurred by enterprises in the ECOZONE can be deducted from the national government's share of three percent (3%) as provided In Section 24.

The PEZA, the Department of Labor and Employment, and the Department of Finance shall jointly make a review of the incentive scheme provided In this section every two (2) years or when circumstances so warrant.

SEC. 43. Relationship with the Regional Development Council. - The PEZA shall determine the development goals for the ECOZONE within the framework of national development plans, policies and goals, and the administrator shall, upon approval by the PEZA Board, submit the ECOZONE plans, programs and projects to the regional development council for inclusion in and as inputs to the overall regional development plan.

SEC. 44. Relationship with the Local Government Units. - Except as herein provided, the local government units comprising the ECOZONE

shall retain their basic autonomy and identity. The cities shall be governed by their respective charters and the municipalities shall operate and function in accordance with Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

SEC. 45. Relationship of PEZA to Privately-Owned Industrial Estates. – Privately-owned industrial estates shall retain their autonomy and independence and shall be monitored by the PEZA for the implementation of incentives.

SEC. 46. Transfer of Resources. - The relevant functions of the Board of Investments over industrial estates and agri-export processing estates shall be transferred to the PEZA. The resources of government-owned Industrial estates and similar bodies except the Bases Conversion Development Authority and those areas identified under Republic Act No. 7227, are hereby transferred to the PEZA as the holding agency. They are hereby detached from their mother agencies and attached to the PEZA for policy, program and operational supervision.

The Boards of the affected government-owned industrial estates shall be phased out and only the management level and an appropriate number of personnel shall be retained.

Government personnel whose services are not retained by the PEZA or any government office within the ECOZONE shall be entitled to separation pay and such retirement and other benefits they are entitled to under the laws then in force at the time of their separation: Provided, That in no case shall the separation pay be less than one and one-fourth (1 1/4) month of every year of service.

The non-profit character of the EPZA under Presidential Decree No. 66 is not inconsistent with any of the powers, functions, and responsibilities of the PEZA. The EPZA's non-profit character, including the EPZA's exemption from real property taxes, must be deemed assumed by the PEZA.

In addition, the Local Government Code exempting instrumentalities of the national government from real property taxes was already in force²⁷⁴ when the PEZA's charter was enacted in 1995. It would have been redundant to provide for the PEZA's exemption in its charter considering that the PEZA is already exempt by virtue of Section 133(o) of the Local Government Code.

As for the EPZA, Commonwealth Act No. 470 or the Assessment Law was in force when the EPZA's charter was enacted. Unlike the Local Government Code, Commonwealth Act No. 470 does not contain a provision specifically exempting instrumentalities of the national government from payment of real property taxes.²⁷⁵ It was necessary to put

²⁷⁴ The Local Government Code became effective on January 1, 1992. *Miguel v. Court of Appeals*, G.R. No. 111749, February 23, 1994, 230 SCRA 339, 340 [Per J. Quiason, First Division].

²⁷⁵ COMMONWEALTH ACT NO. 470 (1939), sec. 3 provides:

an exempting provision in the EPZA's charter.

Contrary to the PEZA's claim, however, Section 24 of the Special Economic Zone Act of 1995 is not a basis for the PEZA's exemption. Section 24 of the Special Economic Zone Act of 1995 provides:

Sec. 24. Exemption from National and Local Taxes. — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed *on business establishments operating within the ECOZONE*. In lieu thereof, five percent (5%) of the gross income earned by *all business enterprises within the ECOZONE* shall be paid and remitted as follows:

- (a) Three percent (3%) to the National Government;
- (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located. (Emphasis supplied)

Property exempt from tax. — The exemptions shall be as follows:

- (a) Property owned by the United States of America, the Commonwealth of the Philippines, any province, city, municipality or municipal district.
- (b) Cemeteries or burial grounds.
- (c) Churches and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, scientific, or educational purposes.
- (d) When the entire assessed valuation of real property in any one municipality or municipal district belonging to a single owner is not in excess of one hundred pesos, or when the assessed valuation of a house, used as residence of the owner thereof, together with the lot on which the same is built, does not exceed three hundred pesos and such owner has no other property, the tax thereon shall not be collected, nor shall the tax be collected on a dwelling house built on the field, nor on an adjacent orchard, if any, as improvement, if the assessed value of each assessed separately, is not in excess of one hundred pesos, though in any event of the property shall be valued for the purposes of assessment and record shall be kept thereof as in other cases.
- (e) Land held by a homesteader under an application filed in accordance with law prior to the approval by the Director of lands of the final evidence as required by law; but this exemption does not extend to buildings and improvements thereon the title to which is not in the Government.
- (f) Machinery, which term shall embrace machines, mechanical contrivances, instruments, appliances, and apparatus attached to the real estate, used for industrial agricultural or manufacturing purposes, during the first five years of the operation of the machinery.
- (g) Fruit trees and bamboo plants, except where the land upon which they grow is planted principally in such growth.
- (h) Until December thirty-first, nineteen hundred thirty-nine, land not exceeding one hundred hectares used for airports or landing fields open to all aircraft operations, either free of charge or upon the payment of a nominal charge, together with such improvements thereon as are used exclusively for aeronautical purposes, when such airports are necessary facilities for air commerce. The airports or landing fields herein exempted from taxation shall revert to their original taxation status upon the certification of the Secretary of Public Works and Communications that they are no longer necessary or suitable facilities for air commerce.

The provisions hereof notwithstanding, depreciation allowance shall be made for machinery mentioned in section three (f) equivalent to an amount not exceeding ten per centum of its value for its year of use.

Tax exemptions provided under Section 24 apply only to business establishments operating within economic zones. Considering that the PEZA is not a business establishment but an instrumentality performing governmental functions, Section 24 is inapplicable to the PEZA.

Also, contrary to the PEZA's claim, developers of economic zones, whether public or private developers, are liable for real property taxes on lands they own. Section 24 does not distinguish between a public and private developer. Thus, courts cannot distinguish.²⁷⁶ Unless the public developer is exempt under the Local Government Code or under its charter enacted after the Local Government Code's effectivity, the public developer must pay real property taxes on their land.

At any rate, the PEZA cannot be taxed for real property taxes even if it acts as a developer or operator of special economic zones. The PEZA is an instrumentality of the national government exempt from payment of real property taxes under Section 133(o) of the Local Government Code. As this court said in *Manila International Airport Authority*, "there must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments."²⁷⁷

V. (C)

Real properties under the PEZA's title are owned by the Republic of the Philippines

Under Section 234(a) of the Local Government Code, real properties owned by the Republic of the Philippines are exempt from real property taxes:

SEC. 234. Exemptions from Real Property Tax. – The following are exempted from payment of real property tax:

- (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person[.]

Properties owned by the state are either property of public dominion or patrimonial property. Article 420 of the Civil Code of the Philippines enumerates property of public dominion:

²⁷⁶ *Cruz v. Commission on Audit*, 420 Phil. 102, 109 (2001) [Per J. Pardo, En Banc].

²⁷⁷ *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 215 (2006) [Per J. Carpio, En Banc].

Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without belonging for public use, and are intended for some public service or for the development of the national wealth.

Properties of public dominion are outside the commerce of man. These properties are exempt from “levy, encumbrance or disposition through public or private sale.”²⁷⁸ As this court explained in *Manila International Airport Authority*:

Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale[.]²⁷⁹

On the other hand, all other properties of the state that are not intended for public use or are not intended for some public service or for the development of the national wealth are patrimonial properties. Article 421 of the Civil Code of the Philippines provides:

Art. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

Patrimonial properties are also properties of the state, but the state may dispose of its patrimonial property similar to private persons disposing of their property. Patrimonial properties are within the commerce of man and are susceptible to prescription, unless otherwise provided.²⁸⁰

In this case, the properties sought to be taxed are located in publicly owned economic zones. These economic zones are property of public dominion. The City seeks to tax properties located within the Mactan Economic Zone,²⁸¹ the site of which was reserved by President Marcos under Proclamation No. 1811, Series of 1979. Reserved lands are lands of the public domain set aside for settlement or public use, and for specific

²⁷⁸ Id. at 219.

²⁷⁹ Id.

²⁸⁰ CIVIL CODE, art. 1113.

²⁸¹ RTC records (Civil Case No. 02-0410), p. 29.

public purposes by virtue of a presidential proclamation.²⁸² Reserved lands are inalienable and outside the commerce of man,²⁸³ and remain property of the Republic until withdrawn from public use either by law or presidential proclamation.²⁸⁴ Since no law or presidential proclamation has been issued withdrawing the site of the Mactan Economic Zone from public use, the property remains reserved land.

As for the Bataan Economic Zone, the law consistently characterized the property as a port. Under Republic Act No. 5490, Congress declared Mariveles, Bataan “a principal port of entry”²⁸⁵ to serve as site of a foreign trade zone where foreign and domestic merchandise may be brought in without being subject to customs and internal revenue laws and regulations

²⁸² EXEC. ORDER NO. 292 (1987), Book III, title I, chapter 4, sec. 14 provides:
SEC.14. *Power to Reserve Lands of the Public and Private Domain of the Government.* (1) The President shall have the power to reserve for settlement or public use, and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law. The reserved land shall thereafter remain subject to the specific public purpose indicated until otherwise provided by law or proclamation.

.....

Manila International Airport Authority v. Court of Appeals, 528 Phil. 181, 220–221 (2006) [Per J. Carpio, En Banc].

²⁸³ PUBLIC LAND ACT, secs. 83 and 88 provide:

SECTION 83. Upon the recommendation of the Secretary of Agriculture and Natural Resources, the President may designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Republic of the Philippines or of any of its branches, or of the inhabitants thereof, in accordance with regulations prescribed for this purpose, or for quasi-public uses or purposes when the public interest requires it, including reservations for highways, rights of way for railroads, hydraulic power sites, irrigation systems, communal pastures or leguas comunales, public parks, public quarries, public fishponds, workingman’s village and other improvements for the public benefit.

SECTION 88. The tract or tracts of land reserved under the provisions of section eighty-three shall be non-alienable and shall not be subject to occupation, entry, sale, lease, or other disposition until again declared alienable under the provisions of this Act or by proclamation of the President.

Manila International Airport Authority v. Court of Appeals, 528 Phil. 181, 219–221 (2006) [Per J. Carpio, En Banc].

²⁸⁴ EXEC. ORDER NO. 292 (1987), Book III, title I, chapter 4, sec. 14 provides:

SEC.14. *Power to Reserve Lands of the Public and Private Domain of the Government.* (1) The President shall have the power to reserve for settlement or public use, and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law. The reserved land shall thereafter remain subject to the specific public purpose indicated until otherwise provided by law or proclamation.

.....

Manila International Airport Authority v. Court of Appeals, 528 Phil. 181, 221 (2006) [Per J. Carpio, En Banc].

²⁸⁵ Rep. Act No. 5490 (1969), sec. 2 provides:

SEC. 2. *Mariveles Port: establishment of foreign trade zone therein: admission of foreign and domestic merchandise.*-To attain the above policy, Mariveles, Province of Bataan, is hereby made a principal port of entry by further amending section seven hundred one of Republic Act Numbered Nineteen hundred thirty-seven, otherwise known as Tariff and Customs Code of the Philippines, as amended. . . .

.....

There is hereby established in the Mariveles Port a foreign trade zone herein referred to as the Zone. Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs and internal revenue laws and regulations of the Philippines, except as otherwise provided in this Act, be brought into the Zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed or sent into customs territory of the Philippines therefrom, in the original package or otherwise[.]

of the Philippines.²⁸⁶ Section 4 of Republic Act No. 5490 provided that the foreign trade zone in Mariveles, Bataan “shall at all times remain to be owned by the Government”:

SEC. 4. *Powers and Duties.* – The Foreign Trade Zone Authority shall have the following powers and duties:

- a. To fix and delimit the site of the Zone *which at all times remain to be owned by the Government*, and which shall have a contiguous and adequate area with well defined and policed boundaries, with adequate enclosures to segregate the Zone from the customs territory for protection of revenues, together with suitable provisions for ingress and egress of persons, conveyance, vessels and merchandise sufficient for the purpose of this Act[.] (Emphasis supplied)

The port in Mariveles, Bataan then became the Bataan Economic Zone under the Special Economic Zone Act of 1995.²⁸⁷ Republic Act No. 9728 then converted the Bataan Economic Zone into the Freeport Area of Bataan.²⁸⁸

A port of entry, where imported goods are unloaded then introduced in the market for public consumption, is considered property for public use. Thus, Article 420 of the Civil Code classifies a port as property of public dominion. The Freeport Area of Bataan, where the government allows tax and duty-free importation of goods,²⁸⁹ is considered property of public dominion. The Freeport Area of Bataan is owned by the state and cannot be taxed under Section 234(a) of the Local Government Code.

Properties of public dominion, even if titled in the name of an instrumentality as in this case, remain owned by the Republic of the Philippines. If property registered in the name of an instrumentality is conveyed to another person, the property is considered conveyed on behalf of the Republic of the Philippines. Book I, Chapter 12, Section 48 of the Administrative Code of 1987 provides:

SEC. 48. *Official Authorized to Convey Real Property.* – Whenever real property of the government is authorized by law to be conveyed, *the deed of conveyance shall be executed in behalf of the government* by the following:

²⁸⁶ Rep. Act No. 5490, sec. 2.

²⁸⁷ Rep. Act No. 7916 (1995), sec. 5 (II).

²⁸⁸ Rep. Act No. 9728 (2009), sec. 3 provides:

SEC. 3. Conversion of the Bataan Economic Zone (BEZ) into the Freeport Area of Bataan. — The existing Bataan Economic Zone located in the Municipality of Mariveles, Province of Bataan is hereby converted into a special economic zone and Freeport to be known as the Freeport Area of Bataan (FAB). The FAB shall cover the Municipality of Mariveles, Province of Bataan.

²⁸⁹ Rep. Act No. 9728 (2009), sec. 4(e).

.....

(2) *For property belonging to the Republic of the Philippines, but titled in the name of any political subdivision or of any corporate agency or instrumentality, by the executive head of the agency or instrumentality.* (Emphasis supplied)

In *Manila International Airport Authority*, this court explained:

[The exemption under Section 234(a) of the Local Government Code] should be read in relation with Section 133(o) of the same Code, which prohibits local governments from imposing “[t]axes, fess or charges of any kind on the National Government, its agencies and **instrumentalities** x x x.” *The real properties owned by the Republic are titled either in the name of the Republic itself or in the name of agencies or instrumentalities of the National Government.* The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remained owned by the Republic of the Philippines and continue to be exempt from real estate tax.

The Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption/ Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the “beneficial use thereof has been granted, for consideration or otherwise, to a **taxable person.**” . . .²⁹⁰ (Emphasis in the original; italics supplied)

Even the PEZA’s lands and buildings whose beneficial use have been granted to other persons may not be taxed with real property taxes. The PEZA may only lease its lands and buildings to PEZA-registered economic zone enterprises and entities.²⁹¹ These PEZA-registered enterprises and entities, which operate within economic zones, are not subject to real property taxes. Under Section 24 of the Special Economic Zone Act of 1995, no taxes, whether local or national, shall be imposed on all business establishments operating within the economic zones:

SEC. 24. Exemption from National and Local Taxes. – Except for real property on land owned by developers, *no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE.* In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and

²⁹⁰ *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 224–225 (2006) [Per J. Carpio, En Banc].

²⁹¹ RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 7916, Rule V, sec. 1 provides: SECTION 1. Qualifications. – Lands and buildings within an ECOZONE can be leased only to ECOZONE enterprises/entities authorized by or registered with the PEZA and owned or controlled by Philippine nationals or by aliens under such terms and conditions as the Board may formulate.

remitted as follows:

a. Three percent (3%) to the National Government;

b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.²⁹² (Emphasis supplied)

In lieu of revenues from real property taxes, the City of Lapu-Lapu collects two-fifths of 5% final tax on gross income paid by all business establishments operating within the Mactan Economic Zone:

SEC. 24. Exemption from National and Local Taxes. – Except for real property on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

a. Three percent (3%) to the National Government;

b. *Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.*²⁹³ (Emphasis supplied)

For its part, the Province of Bataan collects a fifth of the 5% final tax on gross income paid by all business establishments operating within the Freeport Area of Bataan:

Section 6. Imposition of a Tax Rate of Five Percent (5%) on Gross Income Earned. - No taxes, local and national, shall be imposed on business establishments operating within the FAB. In lieu thereof, said business establishments shall pay a five percent (5%) final tax on their gross income earned in the following percentages:

(a) One per centum (1%) to the National Government;

(b) *One per centum (1%) to the Province of Bataan;*

(c) One per centum (1%) to the treasurer's office of the Municipality of Mariveles; and

(d) Two per centum (2%) to the Authority of the Freeport of Area of Bataan.²⁹⁴ (Emphasis supplied)

Petitioners, therefore, are not deprived of revenues from the operations of economic zones within their respective territorial jurisdictions.

²⁹² Rep. Act No. 7916 (1995).

²⁹³ Rep. Act No. 7916 (1995).


²⁹⁴ Rep. Act No. 9728 (2009).

The national government ensured that local government units comprising economic zones shall retain their basic autonomy and identity.²⁹⁵

All told, the PEZA is an instrumentality of the national government. Furthermore, the lands owned by the PEZA are real properties owned by the Republic of the Philippines. The City of Lapu-Lapu and the Province of Bataan cannot collect real property taxes from the PEZA.

WHEREFORE, the consolidated petitions are **DENIED**.

SO ORDERED.



MARVIC M. V. LEONEN
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice

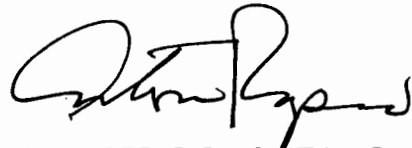


BIENVENIDO L. REYES
Associate Justice

²⁹⁵ Rep. Act No. 7916 (1995), sec. 44 provides:
SEC. 44. Relationship with Local Government Units. – Except as herein provided, the local government units comprising the ECOZONE shall retain their basic autonomy and identity. The cities shall be governed by their respective charters and the municipalities shall operate and function in accordance with Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice