MAR 11 2016

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ALTA VISTA GOLF AND COUNTRY CLUB, Petitioner,	G.R. No. 180235
	Present:
- *versus* -	SERENO, *CJ.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PERLAS-BERNABE, and JARDELEZA, *JJ.*
THE CITY OF CEBU, HON. MAYOR TOMAS R. OSMEÑA, in his capacity as Mayor of Cebu, and **TERESITA C. CAMARILLO**, in her capacity as the City Treasurer, Respondents.	Promulgated: JAN 20 2016

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* of the Resolution[1] dated March 14, 2007 and the Order[2] dated October 3, 2007 of the Regional Trial Court (RTC), Cebu City, Branch 9 in Civil Case No. CEB-31988, dismissing the Petition for Injunction, Prohibition, Mandamus, Declaration of Nullity of Closure Order, Declaration of Nullity of Assessment, and Declaration of Nullity of Section 42 of Cebu City Tax Ordinance, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction[3] filed by petitioner Alta Vista Golf and Country Club against respondents City of Cebu (Cebu City), then Cebu City Mayor Tomas R. Osmeña (Osmeña), and then Cebu City Treasurer Teresita Camarillo (Camarillo).

Petitioner is a non-stock and non-profit corporation operating a golf course in Cebu City.

On June 21, 1993, the *Sangguniang Panlungsod* of Cebu City enacted City Tax Ordinance No. LXIX, otherwise known as the "Revised Omnibus Tax Ordinance of the City of Cebu" (Revised Omnibus Tax Ordinance).

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1 *Rollo*, pp. 29-33; penned by Presiding Judge Geraldine A. Econg.
2 Id. at 36-38.
3 Id. at 51-66.

Section 42 of the said tax ordinance on amusement tax was amended by City Tax Ordinance Nos. LXXXII[4] and LXXXIV[5] (which were enacted by the *Sangguniang Panlungsod* of Cebu City on December 2, 1996 and April 20, 1998, respectively[6]) to read as follows:

> Section 42. Rate of Tax. – There shall be paid to the Office of the City Treasurer by the **proprietors, lessees or operators** of theaters, cinemas, concert halls, circuses and other similar places of entertainment, an amusement tax at the rate of thirty percent (30%), **golf courses and polo grounds at the rate of twenty percent (20%), of their gross receipts on entrance, playing green, and/or admission fees**; PROVIDED, HOWEVER, That in case of movie premieres or gala shows for the benefit of a charitable institution/foundation or any government institution where higher admission fees are charged, the aforementioned rate of thirty percent (30%) shall be levied against the gross receipts based on the regular admission fees, subject to the approval of the Sangguniang Panlungsod; PROVIDED FURTHER, That in case payment of the amusement tax is made promptly on or before the date hereinbelow prescribed, a rebate of five percent (5%) on the aforementioned gross receipts shall be given to the proprietors, lessees or operators of theaters; PROVIDED FURTHERMORE, that as an incentive to theater operators who own the real property and/or building where the theater is located, an additional one percent (1%) rebate shall be given to said operator/real property owner concerned for as long as their theater/movie houses are then (10) years old or older or the theater or movie house is located at the city's redevelopment area bounded on the north by Gen. Maxilom Street up to the port area; on the south by V. Rama Avenue up to San Nicolas area; and on the west by B. Rodriguez St. and General Maxilom Avenue; PROVIDED FINALLY, that the proceeds of this additional one percent (1%) rebate shall be used by the building/property owner-theater operator to modernize their theater facilities. (Emphases supplied.)

In an Assessment Sheet[7] dated August 6, 1998, prepared by Cebu City Assessor Sandra I. Po, petitioner was originally assessed deficiency business taxes, fees, and other charges for the year 1998, in the total amount of ₱3,820,095.68, which included amusement tax on its golf course amounting to ₱2,612,961.24 based on gross receipts of ₱13,064,806.20.[8]

Through the succeeding years, respondent Cebu City repeatedly attempted to collect from petitioner its deficiency business taxes, fees, and charges for 1998, a substantial portion of which consisted of the amusement tax on the golf course. Petitioner steadfastly refused to pay the amusement tax arguing that the imposition of said tax by Section 42 of the Revised Omnibus Tax Ordinance, as amended, was irregular, improper, and illegal.

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4 Records, pp. 588-597.

5 Id. at 585-587.

6 Section 4 of City Tax Ordinance No. LXXXIV expressly provides that its effectivity shall retroact to October 9, 1997 when City Tax Ordinance No. LXXXII was signed by then Mayor Alvin B. Garcia (Garcia). City Tax Ordinance No. LXXXIV, in turn, was signed by Mayor Garcia on May 4, 1998.

7 Records, p. 20.

8 The amusement tax and the other deficiency business taxes, fees, and charges were subjected to surcharge of 25% and interest of 16%.

Petitioner reasoned that under the Local Government Code, amusement tax can only be imposed on operators of theaters, cinemas, concert halls, or places where one seeks to entertain himself by seeing or viewing a show or performance. Petitioner further cited the ruling in *Philippine Basketball Association (PBA) v. Court of Appeals*[9] that under Presidential Decree No. 231, otherwise known as the Local Tax Code of 1973, the province could only impose amusement tax on admission from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses, and other places of amusement, but not professional basketball games. Professional basketball games did not fall under the same category as theaters, cinematographs, concert halls, and circuses as the latter basically belong to artistic forms of entertainment while the former catered to sports and gaming.

Through a letter dated October 11, 2005, respondent Camarillo sought to collect once more from petitioner deficiency business taxes, fees, and charges for the year 1998, totaling ₱2,981,441.52, computed as follows:

Restaurant - P4,021,830.65		₱ 40,950.00
Permit Fee		2,000.00
Liquor – P1,940,283.80		20,160.00
Permit Fee		2,000.00
Commission/Other Income		14,950.00
P1,262,764.28		
Permit Fee		1,874.00
Retail Cigarettes – P42,076.11 – Permit		84.15
Non-Securing of Permit		979.33
Sub-Total		₱ 82,997.98
Less: Payment based on computer assessment		74,858.61
Short payment		₱ 12,723.18
25% surcharge		3,180.80
72% interest		11,450.00
Penalty for understatement		500.00
Amount Due		₱ 27,854.85
Add: Amusement Tax on golf course	**₱ 1,373,761.24**	
25% surcharge (P6,868,806.20 x 20%)	**343,440.31**	
72% Interest	**1,236,385.12**	**2,953,586.67**
GRAND TOTAL		₱ 2,981,441.52[10]

(Emphasis supplied.)

Petitioner, through counsel, wrote respondent Camarillo a letter[11] dated October 17, 2005 still disputing the amusement tax assessment on its golf course for 1998 for being illegal. Petitioner, in a subsequent letter dated November 30, 2005, proposed that:

> While the question of the legality of the amusement tax on golf courses is still unresolved, may we propose that Alta Vista Golf and

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9 392 Phil. 133, 139-141 (2000).

10 Records, p. 45.

11 Id.

> Country Club settle first the other assessments contained in your Assessment Sheet issued on October 11, 2005.
>
> At this early stage, we also request that pending resolution of the legality of the amusement tax imposition on golf courses in [the Revised Omnibus Tax Ordinance, as amended], Alta Vista Golf and Country Club be issued the required Mayor's and/or Business Permit.[12]

Respondent Camarillo treated the letter dated October 17, 2005 of petitioner as a Protest of Assessment and rendered on December 5, 2005 her ruling denying said Protest on the following grounds: (a) a more thorough and comprehensive reading of the *PBA* case would reveal that the Court actually ruled therein that PBA was liable to pay amusement tax, but to the national government, not the local government; (b) Section 42 of the Revised Omnibus Tax Ordinance, as amended, enjoyed the presumption of constitutionality and petitioner failed to avail itself of the remedy under Section 187 of the Local Government Code to challenge the legality or validity of Section 42 of the Revised Omnibus Tax Ordinance, as amended, by filing an appeal with the Secretary of Justice within 30 days from effectivity of said ordinance; and (c) the Office of the City Attorney issued a letter dated July 9, 2004 affirming respondent Camarillo's position that petitioner was liable to pay amusement tax on its golf course.[13] Ultimately, respondent Camarillo held:

> **WHEREFORE**, upon consideration of the legal grounds as above-mentioned, we reiterate our previous stand on the validity of the ASSESSMENT SHEET pertaining to the Tax Deficiencies for CY 1998 and this ruling serve as the FINAL DEMAND for immediate settlement and payment of your amusement tax liabilities and/or delinquencies otherwise we will constrained (sic) the non-issuance of a Mayor's Business Permit for nonpayment of the said deficiency on amusement tax and/or other tax liabilities as well as to file the appropriate filing of administrative and judicial remedies for the collection of the said tax liability and the letter treated as a Protest of Assessment that was duly submitted before this office is hereby **DENIED**.[14]

Shortly after, on January 12, 2006, petitioner was served with a Closure Order[15] dated December 28, 2005 issued by respondent City Mayor Osmeña. According to the Closure Order, petitioner committed blatant violations of the laws and Cebu City Ordinances, to wit:

> 1. **Operating a business without a business permit for five (5) years, from year 2001-2005**, in relation to Chapters I and II and the penalty clauses under Sections 4, 6, 8, 66 (f) and 114 of the City Tax Ordinance No. 69, otherwise known as the REVISED CITY TAX ORDINANCE OF THE CITY OF CEBU, as amended by C.O. 75;

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12 Id. at 87.
13 Id. at 83-86.
14 Id. at 86.
15 Id. at 69-70.

2. **Nonpayment of deficiency on Business Taxes and Fees amounting to Seventeen Thousand Four Hundred Ninety-Nine Pesos and Sixty-Four Centavos (Php17,499.64)**, as adjusted, despite repeated demands in violation [of] Sections 4 and 8 of City Tax Ordinance No. 69, as amended;

3. **Nonpayment of deficiency on Amusement Tax and the penalties relative therewith totaling Two Million Nine Hundred Fifty-Three Thousand Five Hundred Eighty-Six Pesos and Eighty-Six Centavos (Php2,953,586.86)** in violation of Sections 4 and 8 in relation to Section 42 of City Tax Ordinance No. 69, as amended, business permit-violation of the Article 172, Revised Penal Code of the Philippines. (Emphases supplied.)

The Closure Order established respondent Mayor Osmeña's authority for issuance of the same and contained the following directive:

> As the chief executive of the City, the Mayor has the power and duty to: Enforce all laws and ordinances relative to the governance of the city x x x and, in addition to the foregoing, shall x x x Issue such executive orders for the faithful and appropriate enforcement and execution of laws and ordinances x x x. These are undeniable in the LOCAL GOVERNMENT CODE, Section 455, par. (2) and par. (2)(iii).
>
> Not only that, these powers can be exercised under the general welfare clause of the Code, particularly Section 16 thereof, where it is irrefutable that "every government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental of its efficient and effective governance, and those which are essential to the promotion of the general welfare."
>
> This CLOSURE ORDER precisely satisfies these legal precedents. Hence now, in view whereof, your business establishment is hereby declared closed in direct contravention of the above-specified laws and city ordinances. Please cease and desist from further operating your business immediately upon receipt of this order.
>
> This closure order is without prejudice to the constitutional/statutory right of the City to file criminal cases against corporate officers, who act for and its behalf, for violations of Section 114 of the REVISED CITY TAX ORDINANCE OF THE CITY OF CEBU and Section 516 of the LOCAL GOVERNMENT CODE, with penalties of imprisonment and/or fine.
>
> FOR STRICT AND IMMEDIATE COMPLIANCE.[16]

The foregoing developments prompted petitioner to file with the RTC on January 13, 2006 a Petition for Injunction, Prohibition, Mandamus, Declaration of Nullity of Closure Order, Declaration of Nullity of Assessment, and Declaration of Nullity of Section 42 of Cebu City Tax Ordinance, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction, against respondents, which was docketed as Civil Case No. CEB-31988.[17] Petitioner eventually filed an Amended Petition on

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16 Id.

17 Id. at 2-17.

January 19, 2006.[18] Petitioner argued that the Closure Order is unconstitutional as it had been summarily issued in violation of its right to due process; a city mayor has no power under the Local Government Code to deny the issuance of a business permit and order the closure of a business for nonpayment of taxes; Section 42 of the Revised Omnibus Tax Ordinance, as amended, is null and void for being *ultra vires* or beyond the taxing authority of respondent Cebu City, and consequently, the assessment against petitioner for amusement tax for 1998 based on said Section 42 is illegal and unconstitutional; and assuming *arguendo* that respondent Cebu City has the power to impose amusement tax on petitioner, such tax for 1998 already prescribed and could no longer be enforced.

Respondents filed a Motion to Dismiss based on the grounds of (a) lack of jurisdiction of the RTC over the subject matter; (b) non-exhaustion of administrative remedies; (c) noncompliance with Section 187 of the Local Government Code, which provides the procedure and prescriptive periods for challenging the validity of a local tax ordinance; (d) noncompliance with Section 252 of the Local Government Code and Section 75 of Republic Act No. 3857, otherwise known as the Revised Charter of the City of Cebu, requiring payment under protest of the tax assessed; and (e) failure to establish the authority of Ma. Theresa Ozoa (Ozoa) to institute the case on behalf of petitioner.[19]

In its Opposition to the Motion to Dismiss, petitioner countered that the RTC, a court of general jurisdiction, could take cognizance of its Petition in Civil Case No. CEB-31988, which not only involved the issue of legality or illegality of a tax ordinance, but also sought the declaration of nullity of the Closure Order and the issuance of writs of injunction and prohibition. Petitioner likewise asserted that Section 195 of the Local Government Code on the protest of assessment does not require payment under protest. Section 252 of the same Code invoked by respondents applies only to real property taxes. In addition, petitioner maintained that its Petition in Civil Case No. CEB-31988 could not be barred by prescription. There is nothing in the Local Government Code that could deprive the courts of the power to determine the constitutionality or validity of a tax ordinance due to prescription. It is the constitutional duty of the courts to pass upon the validity of a tax ordinance and such duty cannot be limited or restricted. Petitioner further contended that there is no need for exhaustion of administrative remedies given that the issues involved are purely legal; the notice of closure is patently illegal for having been issued without due process; and there is an urgent need for judicial intervention. Lastly, petitioner pointed out that there were sufficient allegations in the Petition that its filing was duly authorized by petitioner. At any rate, petitioner already attached to its Opposition its Board Resolution No. 104 authorizing Ozoa to file a case to nullify the Closure Order. Thus, petitioner prayed for

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18 Id. at 51-68.

19 Id. at 173-181.

the denial of the Motion to Dismiss.[20]

Respondents, in their Rejoinder to Petitioner's Opposition to the Motion to Dismiss,[21] asserted that the Closure Order was just a necessary consequence of the nonpayment by petitioner of the amusement tax assessed against it. The Revised Omnibus Tax Ordinance of respondent Cebu City directs that no permit shall be issued to a business enterprise which made no proper payment of tax and, correspondingly, no business enterprise may be allowed to operate or continue to operate without a business permit. The fundamental issue in the case was still the nonpayment by petitioner of amusement tax. Respondents relied on *Reyes v. Court of Appeals*,[22] in which the Court categorically ruled that the prescriptive periods fixed in Section 187 of the Local Government Code are mandatory and prerequisites before seeking redress from a competent court. Section 42 of the Revised Omnibus Tax Ordinance, as amended, was passed on April 20, 1998, so the institution by petitioner of Civil Case No. CEB-31988 before the RTC on January 13, 2006 – without payment under protest of the assessed amusement tax and filing of an appeal before the Secretary of Justice within 30 days from the effectivity of the Ordinance – was long barred by prescription.

After filing by the parties of their respective Memorandum, the RTC issued an Order[23] dated March 16, 2006 denying the prayer of petitioner for issuance of a Temporary Restraining Order (TRO). The RTC found that when the business permit of petitioner expired and it was operating without a business permit, it ceased to have a legal right to do business. The RTC affirmed respondent Mayor Osmeña's authority to issue or grant business licenses and permits pursuant to the police power inherent in his office; and such authority to issue or grant business licenses and permits necessarily included the authority to suspend or revoke or even refuse the issuance of the said business licenses and permits in case of violation of the conditions for the issuance of the same. The RTC went on to hold that:

> [Petitioner] was given opportunities to be heard when it filed a protest [of] the assessment which was subsequently denied. To the mind of this court, this already constitutes the observance of due process and that [petitioner] had already been given the opportunity to be heard. Due process and opportunity to be heard does not necessarily mean winning the argument in one's favor but to be given the fair chance to explain one's side or views with regards [to] the matter in issue, which in this case is the legality of the tax assessment.
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> It is therefore clear that when this case was filed, [petitioner] had no more legal right in its favor for the courts to protect. It would have been a different story altogether had [petitioner] paid the tax assessment for the green fees even under protest and despite payment and

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20 Id. at 183-193.
21 Id. at 196-204.
22 378 Phil. 232, 237-238 (1999).
23 Records, pp. 249-253.

> [respondent] Mayor refused the issuance of the business permit because all the requisites for the issuance of the said permit are all complied with.[24]

On March 20, 2006, petitioner paid under protest to respondent Cebu City, through respondent Camarillo, the assessed amusement tax, plus penalties, interest, and surcharges, in the total amount of ₱2,750,249.17.[25]

Since the parties agreed that the issues raised in Civil Case No. CEB-31988 were all legal in nature, the RTC already considered the case submitted for resolution after the parties filed their respective Memorandum.[26]

On March 14, 2007, the RTC issued a Resolution granting the Motion to Dismiss of respondents. Quoting from *Reyes* and *Hagonoy Market Vendor Association v. Municipality of Hagonoy, Bulacan*,[27] the RTC sustained the position of respondents that Section 187 of the Local Government Code is mandatory. Thus, the RTC adjudged:

> From the above cited cases, it can be gleaned that the period in the filing of the protests is important. In other words, it is the considered opinion of this court [that] when a taxpayer questions the validity of a tax ordinance passed by a local government legislative body, a different procedure directed in Section 187 is to be followed. The reason for this could be because the tax ordinance is clearly different from a law passed by Congress. The local government code has set several limitations on the taxing power of the local government legislative bodies including the issue of what should be taxed.
>
> In this case, since the Petitioner failed to comply with the procedure outlined in Section 187 of the Local Government Code and the fact that this case was filed way beyond the period to file a case in court, then this court believes that the action must fail.
>
> Because of the procedural infirmity in bringing about this case to the court, then the substantial issue of the propriety of imposing amusement taxes on the green fees could no longer be determined.
>
> WHEREFORE, in view of the aforegoing, this case is hereby DISMISSED.[28]

The RTC denied the Motion for Reconsideration of petitioner in an Order dated October 3, 2007.

Petitioner is presently before the Court on pure questions of law, *viz.*:

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24 Id. at 253.
25 Id. at 255-259.
26 Id. at 280.
27 426 Phil. 769 (2002).
28 *Rollo*, p. 33.

I. WHETHER OR NOT THE POWER OF JUDICIAL REVIEW OVER THE VALIDITY OF A LOCAL TAX ORDINANCE HAS BEEN RESTRICTED BY SECTION 187 OF THE LOCAL GOVERNMENT CODE.

II. WHETHER OR NOT THE CITY OF CEBU OR ANY LOCAL GOVERNMENT CAN VALIDLY IMPOSE AMUSEMENT TAX TO THE ACT OF PLAYING GOLF.[29]

There is merit in the instant Petition.

The RTC judgment on pure questions of law may be directly appealed to this Court via a petition for review on certiorari.

Even before the RTC, the parties already acknowledged that the case between them involved only questions of law; hence, they no longer presented evidence and agreed to submit the case for resolution upon submission of their respective memorandum.

It is incontestable that petitioner may directly appeal to this Court from the judgment of the RTC on pure questions of law via its Petition for Review on *Certiorari*. Rule 41, Section 2(c) of the Rules of Court provides that "[i]n all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45." As the Court declared in *Bonifacio v. Regional Trial Court of Makati, Branch 149*[30]:

> The established policy of strict observance of the judicial hierarchy of courts, as a rule, requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. A regard for judicial hierarchy clearly indicates that petitions for the issuance of extraordinary writs against first level courts should be filed in the RTC and those against the latter should be filed in the Court of Appeals. The rule is not iron-clad, however, as it admits of certain exceptions.
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> Thus, a strict application of the rule is unnecessary when cases brought before the appellate courts do not involve factual but purely legal questions. (Citations omitted.)

"A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted[;]" and it may be brought directly before this Court, the undisputed final arbiter of all questions of law.[31]

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29 Id. at 15.

30 634 Phil. 348, 358-359 (2010).

31 *Chua v. Ang*, 614 Phil. 416, 427 (2009).

The present case is an exception to Section 187 of the Local Government Code and the doctrine of exhaustion of administrative remedies.

Section 187 of the Local Government Code reads:

> Sec. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.* – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further,* That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however,* That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally,* That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

Indeed, the Court established in *Reyes* that the aforequoted provision is a significant procedural requisite and, therefore, mandatory:

> Clearly, the law requires that the dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file his appeal to the Secretary of Justice, within 30 days from effectivity thereof. In case the Secretary decides the appeal, a period also of 30 days is allowed for an aggrieved party to go to court. But if the Secretary does not act thereon, after the lapse of 60 days, a party could already proceed to seek relief in court. These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. For this reason the courts construe these provisions of statutes as mandatory.
>
> A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that protests over tax ordinances are required to be done within certain time frames. In the instant case, it is our view that the failure of petitioners to appeal to the Secretary of Justice within 30 days as required by Sec. 187 of R.A. 7160 is fatal to their cause.[32] (Citations omitted.)

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32 *Reyes v. Court of Appeals*, supra note 21 at 238.

The Court further affirmed in *Hagonoy* that:

> At this point, it is apropos to state that the timeframe fixed by law for parties to avail of their legal remedies before competent courts is not a "mere technicality" that can be easily brushed aside. *The periods stated in Section 187 of the Local Government Code are mandatory*. Ordinance No. 28 is a revenue measure adopted by the municipality of Hagonoy to fix and collect public market stall rentals. Being its lifeblood, collection of revenues by the government is of paramount importance. The funds for the operation of its agencies and provision of basic services to its inhabitants are largely derived from its revenues and collections. Thus, it is essential that *the validity of revenue measures is not left uncertain for a considerable length of time*. Hence, the law provided a time limit for an aggrieved party to assail the legality of revenue measures and tax ordinances.[33] (Citations omitted.)

Nevertheless, in later cases, the Court recognized exceptional circumstances that justify noncompliance by a taxpayer with Section 187 of the Local Government Code.

The Court ratiocinated in *Ongsuco v. Malones*,[34] thus:

> It is true that the general rule is that before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case. However, there are several exceptions to this rule.
>
> The rule on the exhaustion of administrative remedies is intended to preclude a court from arrogating unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence. Thus, **a case where the issue raised is a purely legal question, well within the competence; and the jurisdiction of the court and not the administrative agency, would clearly constitute an exception. Resolving questions of law, which involve the interpretation and application of laws, constitutes essentially an exercise of judicial power that is exclusively allocated to the Supreme Court and such lower courts the Legislature may establish.**

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33 *Hagonoy Market Vendor Association v. Municipality of Hagonoy, Bulacan*, supra note 27 at 778.

34 619 Phil. 492, 504-506 (2009).

> **In this case, the parties are not disputing any factual matter on which they still need to present evidence.** The sole issue petitioners raised before the RTC in Civil Case No. 25843 was whether Municipal Ordinance No. 98-01 was valid and enforceable despite the absence, prior to its enactment, of a public hearing held in accordance with Article 276 of the Implementing Rules and Regulations of the Local Government Code. **This is undoubtedly a pure question of law, within the competence and jurisdiction of the RTC to resolve.**
>
> Paragraph 2(a) of Section 5, Article VIII of the Constitution, expressly establishes the appellate jurisdiction of this Court, and impliedly recognizes the original jurisdiction of lower courts over cases involving the constitutionality or validity of an ordinance:
>
> > Section 5. The Supreme Court shall have the following powers:
> >
> > x x x x
> >
> > (2) Review, revise, reverse, modify or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of **lower courts** in:
> >
> > (a) All cases in which the **constitutionality or validity** of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, **ordinance**, or regulation is in question.
>
> In *J.M. Tuason and Co., Inc. v. Court of Appeals*, *Ynot v. Intermediate Appellate Court*, and *Commissioner of Internal Revenue v. Santos*, the Court has affirmed the jurisdiction of the RTC to resolve questions of constitutionality and validity of laws (deemed to include local ordinances) in the first instance, without deciding questions which pertain to legislative policy. (Emphases supplied, citations omitted.)

In *Cagayan Electric Power and Light Co., Inc. (CEPALCO) v. City of Cagayan De Oro*,[35] the Court initially conceded that as in *Reyes*, the failure of taxpayer CEPALCO to appeal to the Secretary of Justice within the statutory period of 30 days from the effectivity of the ordinance should have been fatal to its cause. However, the Court purposefully relaxed the application of the rules in view of the more substantive matters.

Similar to *Ongsuco* and *CEPALCO*, the case at bar constitutes an exception to the general rule. Not only does the instant Petition raise pure questions of law, but it also involves substantive matters imperative for the Court to resolve.

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35 G.R. No. 191761, November 14, 2012, 685 SCRA 609, 622.

Section 42 of the Revised Omnibus Tax Ordinance, as amended, imposing amusement tax on golf courses is null and void as it is beyond the authority of respondent Cebu City to enact under the Local Government Code.

The Local Government Code authorizes the imposition by local government units of amusement tax under Section 140, which provides:

> Sec. 140. *Amusement Tax.* – (a) The province may levy an amusement tax to be collected **from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement** at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.
>
> (b) In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.
>
> (c) The holding of operas, concerts, dramas, recitals, painting, and art exhibitions, flower shows, musical programs, literary and oratorical presentations, except pop, rock, or similar concerts shall be exempt from the payment of the tax hereon imposed.
>
> (d) The *sangguniang panlalawigan* may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the *sangguniang panlalawigan* may impose such surcharges, interests and penalties as it may deem appropriate.
>
> (e) The proceeds from the amusement tax shall be shared equally by the province and the municipality where such amusement places are located. (Emphasis supplied.)

"Amusement places," as defined in Section 131(c) of the Local Government Code, "include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performance."

The pronouncements of the Court in *Pelizloy Realty Corporation v. The Province of Benguet*[36] are of particular significance to this case. The Court, in *Pelizloy Realty*, declared null and void the second paragraph of Article X, Section 59 of the Benguet Provincial Code, in so far as it imposes amusement taxes on admission fees to resorts, swimming pools, bath houses, hot springs, and tourist spots. Applying the principle of *ejusdem generis*, as well as the ruling in the *PBA* case, the Court expounded on the authority of local government units to impose amusement tax under Section 140, in

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36 G.R. No. 183137, April 10, 2013, 695 SCRA 491.

relation to Section 131(c), of the Local Government Code, as follows:

> Under the principle of *ejusdem generis*, "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."
>
> The purpose and rationale of the principle was explained by the Court in *National Power Corporation v. Angas* as follows:
>
> > The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms. [2 Sutherland, Statutory Construction, 3rd ed., pp. 395-400].
>
> In *Philippine Basketball Association v. Court of Appeals*, the Supreme Court had an opportunity to interpret a starkly similar provision or the counterpart provision of Section 140 of the LGC in the Local Tax Code then in effect. Petitioner Philippine Basketball Association (PBA) contended that it was subject to the imposition by LGUs of amusement taxes (as opposed to amusement taxes imposed by the national government). In support of its contentions, it cited Section 13 of Presidential Decree No. 231, otherwise known as the Local Tax Code of 1973, (which is analogous to Section 140 of the LGC) providing the following:
>
> > Section 13. *Amusement tax on admission.* — The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement x x x.
>
> Applying the principle of *ejusdem generis*, the Supreme Court rejected PBA's assertions and noted that:
>
> > [I]n determining the meaning of the phrase 'other places of amusement', one must refer to the prior enumeration of theaters, cinematographs, concert halls and circuses with artistic expression as their common characteristic. Professional basketball games do not fall under the same category as theaters, cinematographs, concert halls and circuses as the latter basically belong to artistic forms of entertainment while the former caters to sports and gaming.
>
> However, even as the phrase 'other places of amusement' was already clarified in *Philippine Basketball Association*, Section 140 of the

> LGC adds to the enumeration of 'places of amusement' which may properly be subject to amusement tax. Section 140 specifically mentions 'boxing stadia' in addition to "theaters, cinematographs, concert halls [and] circuses" which were already mentioned in PD No. 231. Also, 'artistic expression' as a characteristic does not pertain to 'boxing stadia'.
>
> In the present case, the Court need not embark on a laborious effort at statutory construction. Section 131(c) of the LGC already provides a clear definition of 'amusement places':
>
> x x x x
>
> **Indeed, theaters, cinemas, concert halls, circuses, and boxing stadia are bound by a common typifying characteristic in that they are all venues primarily for the staging of spectacles or the holding of public shows, exhibitions, performances, and other events meant to be viewed by an audience. Accordingly, 'other places of amusement' must be interpreted in light of the typifying characteristic of being venues "where one seeks admission to entertain oneself by seeing or viewing the show or performances" or being venues primarily used to stage spectacles or hold public shows, exhibitions, performances, and other events meant to be viewed by an audience.**
>
> As defined in The New Oxford American Dictionary, 'show' means "a spectacle or display of something, typically an impressive one"; while 'performance' means "an act of staging or presenting a play, a concert, or other form of entertainment." As such, **the ordinary definitions of the words 'show' and 'performance' denote not only visual engagement (*i.e.*, the seeing or viewing of things) but also active doing (*e.g.*, displaying, staging or presenting) such that actions are manifested to, and (correspondingly) perceived by an audience.**
>
> Considering these, it is clear that resorts, swimming pools, bath houses, hot springs and tourist spots cannot be considered venues primarily "where one seeks admission to entertain oneself by seeing or viewing the show or performances". While it is true that they may be venues where people are visually engaged, they are not primarily venues for their proprietors or operators to actively display, stage or present shows and/or performances.
>
> Thus, resorts, swimming pools, bath houses, hot springs and tourist spots do not belong to the same category or class as theaters, cinemas, concert halls, circuses, and boxing stadia. It follows that they cannot be considered as among the 'other places of amusement' contemplated by Section 140 of the LGC and which may properly be subject to amusement taxes.[37] (Emphases supplied, citations omitted.)

In light of *Pelizloy Realty*, a golf course cannot be considered a place of amusement. As petitioner asserted, people do not enter a golf course to see or view a show or performance. Petitioner also, as proprietor or operator of the golf course, does not actively display, stage, or present a show or performance. People go to a golf course to engage themselves in a physical sport activity, *i.e.*, to play golf; the same reason why people go to a gym or

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37 Id. at 505-508.

court to play badminton or tennis or to a shooting range for target practice, yet there is no showing herein that such gym, court, or shooting range is similarly considered an amusement place subject to amusement tax. There is no basis for singling out golf courses for amusement tax purposes from other places where people go to play sports. This is in contravention of one of the fundamental principles of local taxation: that the "[t]axation shall be uniform in each local government unit."[38] Uniformity of taxation, like the kindred concept of equal protection, requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities.[39]

Not lost on the Court is its declaration in *Manila Electric Co. v. Province of Laguna*[40] that under the 1987 Constitution, "where there is neither a grant nor a prohibition by statute, the tax power [of local government units] must be deemed to exist although Congress may provide statutory limitations and guidelines." Section 186 of the Local Government Code also expressly grants local government units the following residual power to tax:

> Sec. 186. *Power to Levy Other Taxes, Fees, or Charges.* – Local government units may exercise the **power to levy taxes, fees, or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws**: *Provided*, that the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further*, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose. (Emphasis supplied.)

Respondents, however, cannot claim that Section 42 of the Revised Omnibus Tax Ordinance, as amended, imposing amusement tax on golf courses, was enacted pursuant to the residual power to tax of respondent Cebu City. A local government unit may exercise its residual power to tax when there is neither a grant nor a prohibition by statute; or when such taxes, fees, or charges are not otherwise specifically enumerated in the Local Government Code, National Internal Revenue Code, as amended, or other applicable laws. In the present case, Section 140, in relation to Section 131(c), of the Local Government Code already explicitly and clearly cover amusement tax and respondent Cebu City must exercise its authority to impose amusement tax within the limitations and guidelines as set forth in said statutory provisions.

WHEREFORE, in view of all the foregoing, the Court **GRANTS** the instant Petition, and **REVERSES and SETS ASIDE** the Resolution dated March 14, 2007 and the Order dated October 3, 2007 of the Regional Trial Court, Cebu City, Branch 9 in Civil Case No. CEB-31988. The Court

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38 Section 130(a) of the Local Government Code.

39 *Tan v. Del Rosario, Jr.*, G.R. Nos. 109289 and 109446, October 3, 1994, 237 SCRA 324, 331.

40 366 Phil. 428, 434 (1999).

DECLARES NULL and VOID the following: (a) Section 42 of the Revised Omnibus Tax Ordinance of the City of Cebu, as amended by City Tax Ordinance Nos. LXXXII and LXXXIV, insofar as it imposes amusement tax of 20% on the gross receipts on entrance, playing green, and/or admission fees of golf courses; (b) the tax assessment against petitioner for amusement tax on its golf course for the year 1998 in the amount of ₱1,373,761.24, plus surcharges and interest pertaining to said amount, issued by the Office of the City Treasurer, City of Cebu; and (c) the Closure Order dated December 28, 2005 issued against Alta Vista Golf and Country Club by the Office of the Mayor, City of Cebu. The Court also **ORDERS** the City of Cebu to refund to Alta Vista Golf and Country Club the amusement tax, penalties, surcharge, and interest paid under protest by the latter in the total amount of ₱2,750,249.17 or to apply the same amount as tax credit against existing or future tax liability of said Club.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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