REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE LONG DISTANCE TELEPHONE CO., INC.,
Petitioner,

-versus-

CITY OF TUGUEGARAO, BUENAVENTURA F. LAGUNDI, in his capacity as City Treasurer of the City of Tuguegarao, and FLORENTINA S. BALISI, in her capacity as Asst. City Treasurer of the City of Tuguegarao,
Respondents.

CTA AC NO. 103
(*Civil Case No. 11-635*)

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUL 1 1 2014

10:25 a.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.*:

STATEMENT OF THE CASE

This is an appeal by way of a Petition for Review pursuant to Section 7(a)(3) of Republic Act (RA) 1125, as amended by Republic Act No. 9282 and Republic Act No. 9503[1], from the Resolution dated October 22, 2012 issued by the Regional Trial Court (RTC) of Makati City, Branch 132 in *Civil Case No. 11-635*, entitled "*Philippine Long Distance Telephone Company vs. City of Tuguegarao, Buenaventura F. Lagundi, in his capacity as City Treasurer of the City of Tuguegarao, and Florentina S. Balisi, in her capacity as Asst. City Treasurer of the City of Tuguegarao*", which reads as follows:

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[1] Otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes."

> "The court of competent jurisdiction referred to is the regional trial court which exercises original jurisdiction in the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced in any part of their respective regions. Considering that the questioned tax assessment subject of this case was issued by the Office of the Treasurer of the City of Tuguegarao, the court which has jurisdiction over the same should be the Regional Trial Court within the territorial region of Tuguegarao City, and not herein court. Further, this Court is sanctioned by the Rules to dismiss an action *motu proprio* in case of lack of jurisdiction over the subject matter.
>
> WHEREFORE, premises considered, let the herein case be DISMISSED for lack of jurisdiction. As herein court has no jurisdiction to hear and try this case, the present Motion to Set for Preliminary Hearing of Affirmative Defense of Lack of Jurisdiction or in the Alternative, To Submit Memorandum on the Issue of Jurisdiction is considered moot.
>
> SO ORDERED."

and the Order dated January 18, 2013, denying the Motion for Reconsideration of the above-quoted Resolution, *viz*:

> "Acting on the Motion for Reconsideration filed by the petitioner last 23 November 2012 as well as the Comment filed by the respondents last 08 January 2013, and finding no cogent reason why this Court should disturb its Resolution dated 22 October 2012, the present Motion for Reconsideration is hereby ordered DENIED.
>
> SO ORDERED."

STATEMENT OF FACTS

Petitioner Philippine Long Distance Telephone Co. Inc. (PLDT) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Ramon Cojuangco Building, Makati Avenue, Makati City.[2]

Respondent City of Tuguegarao is a public corporation organized and created by virtue of Republic Act (RA) No. 8755

[2] Par. 2.01, Petition for Review, CTA *rollo*, p. 6.

dated November 4, 1999; while respondents Buenaventura F. Lagundi and Florentina S. Balisi are being sued in their capacities as City Treasurer and Assistant City Treasurer, respectively, of the City of Tuguegarao, with office address at the Tuguegarao City Hall, Tuguegarao City.[3]

On March 28, 2011, petitioner received a Letter denominated as 1st Notice dated March 21, 2011[4] with attached Statement of Franchise Tax Due from PLDT[5] from Buenaventura F. Lagundi, the City Treasurer of Tuguegarao City, requesting payment of local franchise tax for calendar years (CY) 2006-2010 in the aggregate amount of P2,455,287.76 pursuant to Section III of Tuguegarao City Ordinance No. 13-2003 dated November 27, 2003.

On May 26, 2011, petitioner filed an administrative protest[6] against respondent's letter dated March 21, 2011, arguing that the franchise taxes due were already paid by the former. Petitioner further alleged that it was subject to local franchise tax but not to business tax since it was not a contractor, and a local government unit could only impose business tax on businesses specified in the Local Government Code (LGC) of 1991 (Republic Act No. 7160). Petitioner also emphasized that respondent's right to assess the former of any local tax for the year 2006 has already lapsed.

On June 9, 2011, respondent denied the afore-stated protest, upholding that petitioner's branch office at Tuguegarao was liable not only for franchise tax but also for business tax;[7] and updated the Statement of Franchise Tax Due from PLDT.[8]

Consequently, petitioner filed an appeal before the Regional Trial Court of Makati City on July 8, 2011,[9] which was later raffled to Branch 141. On July 13, 2011, the trial court issued Summons which respondents received on September 13, 2011.[10]

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[3] Par. 2.02, Petition for Review, CTA *rollo*, p. 6.
[4] Annex "A", Petition for Review, CTA *rollo*, p. 47.
[5] Annex "A-1", Petition for Review, CTA *rollo*, p. 48.
[6] Annex "B", Petition for Review, CTA *rollo*, pp. 49-57.
[7] Annex "C", Petition for Review, CTA *rollo*, p. 58.
[8] Annex "C-1", Petition for Review, CTA *rollo*, p. 59.
[9] Annex "D", Petition for Review, CTA *rollo*, pp. 60-80; RTC records, pp. 1-21.
[10] Annex "E", Petition for Review, CTA *rollo*, p. 111; RTC records, pp. 66-68.

During the proceedings in the trial court, petitioner asserted that it already paid the franchise tax and it is not liable for local business tax, invoking the prohibition against double taxation and the provisions of Sections 131(h) and 186 of the Local Government Code. It likewise alleged that the notice of assessment is not valid and respondent's right to assess petitioner of local tax for 2006 already prescribed.

In respondents' Answer[11], they asserted that the trial court has no jurisdiction over the matter in controversy since the appeal of the denial of petitioner's protest is an administrative decision; thus, it should be filed in the proper courts at Tuguegarao City, Cagayan. Respondents also filed a counter-claim[12] incorporated in their Answer.

On December 27, 2011, respondents filed a Motion to Set for Preliminary Hearing of Affirmative Defense of Lack of Jurisdiction or in the Alternative to Submit Memorandum on the Issue of Jurisdiction[13]. As a result, the trial court directed the parties on January 6, 2012 to submit their memoranda on the issue of whether or not the trial court has jurisdiction over the case, within ten (10) days from notice.[14]

Petitioner and respondent submitted their respective Memorandum on January 27, 2012[15] and February 15, 2012[16].

On February 29, 2012, the trial court notified the parties that the resolution of the issue of jurisdiction was deferred until after the completion of the Philippine Mediation Center (PMC) and Judicial Dispute Resolution (JDR) conference.[17] However, upon failure of the parties to settle the case, it was transmitted to the Office of the Clerk of Court of the Regional Trial Court of Makati for re-raffling in accordance with the JDR guidelines on May 15, 2012.[18] The case was transferred to Branch 132 of the Regional Trial Court of Makati City on May 31, 2012.

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[11] Annex "G", Petition for Review, CTA *rollo*, pp. 116-126; RTC records, pp. 73-83.
[12] RTC records, pp. 79-80.
[13] Annex "K", Petition for Review, CTA *rollo*, pp. 156-159; RTC records, pp. 111-114.
[14] Annex "L", Petition for Review, CTA *rollo*, p. 160; RTC records, p. 115.
[15] Annex "M", Petition for Review, CTA *rollo*, pp. 161-171; RTC records, pp. 121-131.
[16] Annex "N", Petition for Review, CTA *rollo*, pp. 195-200; RTC records, pp. 159-164.
[17] Annex "O", Petition for Review, CTA *rollo*, p. 204; RTC records, p. 165.
[18] Annex "P", Petition for Review, CTA *rollo*, p. 205; RTC records, p. 172.

In a Resolution[19] dated October 22, 2012, the trial court dismissed the appeal on the ground of lack of jurisdiction.

Petitioner moved for reconsideration of the Resolution,[20] which the trial court likewise denied on January 18, 2013.[21]

On February 7, 2013, petitioner received the copy of the trial court's Order denying petitioner's Motion for Reconsideration;[22] and on March 8, 2013, petitioner filed this instant Petition for Review[23].

On March 13, 2013, this Court ordered respondents to file their comments;[24] however, respondent failed to do so.

As such, this Court issued a Resolution[25] on July 2, 2013, giving both parties a period of thirty (30) days from notice within which to file their Memoranda. In the same Resolution, citing Section 5(b) of Rule 6 of the Revised Rules of the Court of Tax Appeals, this Court ordered the Branch Clerk of Court or the Officer-In-Charge of the Regional Trial Court of Makati City, Branch 132 to elevate the entire original records of Civil Case No. 11-635 entitled "Philippine Long Distance Telephone Company vs. City of Tuguegarao, Buenaventura F. Lagundi, in his capacity as City Treasurer of the City of Tuguegarao, and Florentina Balisi, in her capacity as Assistant City Treasurer of the City of Tuguegarao" within ten (10) days from notice.

On July 11, 2013, petitioner filed a Motion to Admit Memorandum and Submit Case for Resolution[26] with its Memorandum[27] attached therewith; which the Court admitted on July 15, 2013.[28]

On November 11, 2013, the trial court complied with this Court's Resolution dated July 2, 2013 by transmitting the original records of this appealed case.[29]

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[19] Annex "S", Petition for Review, CTA *rollo*, pp. 222-223; RTC records, pp. 212-213.
[20] Annex "T", Petition for Review, CTA *rollo*, pp. 224-233; RTC records, pp. 225-234.
[21] Annex "V", CTA *rollo*, p. 263; RTC records, p. 268.
[22] CTA *rollo*, p. 15.
[23] CTA *rollo*, pp. 5-42.
[24] Resolution, CTA *rollo*, p. 312.
[25] CTA *rollo*, p. 315.
[26] CTA *rollo*, pp. 316-320.
[27] CTA *rollo*, pp. 321-362.
[28] CTA *rollo*, p. 630.
[29] CTA *rollo*, p. 631.

After considering petitioner's Memorandum and the Report[30] dated October 16, 2013 of this Court's Records Division that respondents did not file a Memorandum, the Court submitted the instant Petition for Review for decision on October 17, 2013.[31]

ISSUES

Petitioner interposed the following issues[32] for this Court's resolution:

> "(a) WHETHER OR NOT THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 132, HAS JURISDICTION ON THE CASE FILED BY PETITIONER PURSUANT TO THE PROVISIONS OF THE LGC OF 1991.
>
> (b) WHETHER OR NOT PETITIONER IS LIABLE TO PAY BOTH LOCAL BUSINESS TAX AND FRANCHISE TAX TO RESPONDENT CITY BASED ON THE SAME GROSS RECEIPTS EARNED WITHIN THE TERRITORIAL JURISDICTION OF RESPONDENT CITY WITHIN THE SAME TAXABLE YEAR PURSUANT TO THE PROVISIONS OF THE LGC.
>
> (c) WHETHER OR NOT RESPONDENT SHOULD AMEND THE OFFICIAL RECEIPT ISSUED TO PETITIONER TO REFLECT THE PAYMENT OF FRANCHISE TAX INSTEAD OF BUSINESS TAX.
>
> (d) WHETHER OR NOT THE ASSESSMENT FOR TAXABLE YEAR 2006 HAS ALREADY PRESCRIBED."

The challenged *Resolution* of the Makati City RTC solely speaks of the dismissal of petitioner's case on the ground of lack of jurisdiction over the subject matter (*i.e., the denied assessment protest of petitioner*). Thus, inasmuch as the jurisdiction of this Court to review the said challenged *Resolution* is appellate in nature, the appropriate and relevant

[30] CTA *rollo*, p. 634.
[31] Resolution, CTA *rollo*, p. 635.
[32] CTA *rollo*, p. 20.

matter/issue for review and determination of this Court is merely the first issue pertaining to the jurisdiction of the RTC of Makati City.

THE RULING OF THE COURT

In this case, petitioner PLDT filed before the RTC of Makati City a case to assail the decision of the City Treasurer of the City of Tuguegarao which denied its protest contesting the demand letter and statement of account for alleged deficiency local franchise taxes amounting to P2,315,534.84. Petitioner PLDT availed of the remedy under Section 195 of the LGC of 1991 which provides that a taxpayer dissatisfied with a local treasurer's denial of or inaction on his protest over an assessment shall have thirty (30) days within which to file an '**appeal**' to the '**court of competent jurisdiction**, *viz*:

> "SEC. 195. *Protest of Assessment.* – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

A reading of the phrase "appeal with the court of competent jurisdiction" provided in Section 195 of the LGC of 1991 easily identifies the term 'appeal' as to refer to a 'judicial action'. Apparently though, the Local Government

Code does not elaborate on how such "appeal" should be undertaken.[33]

The RTC of Makati City dismissed the case of petitioner PLDT for lack of jurisdiction. In *motu proprio* dismissing the case for lack of jurisdiction, the RTC of Makati City made a pronouncement that the "court of competent jurisdiction referred to [under Section 195 of the LGC] is the regional trial court which exercises original jurisdiction in the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced in any part of their respective regions". Thus, it ruled that since the questioned tax assessment was issued by the Office of the Treasurer of the City of Tuguegarao, the court which has jurisdiction over the same should be the RTC within the territorial region of Tuguegarao City and not the RTC of Makati.

Well-entrenched is the rule that jurisdiction is the authority to hear and determine a cause – the right to act in a case. It is conferred by law and not by mere administrative policy of any court or tribunal. It is determined by the averments of the complaint and not by the defense contained in the answer.[34] What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments in the complaint and the character of the relief sought are the ones to be consulted.[35]

Hence, in order to determine whether the RTC of Makati City indeed lacks jurisdiction and to identify which court has jurisdiction over petitioner PLDT's petition/'appeal' assailing the local treasurer's denial of a protest on assessment – *a judicial action termed as 'appeal' under to Section 195 of the LGC of 1991* –, the applicable laws on jurisdiction, the nature of the action pleaded as appearing in the allegations of petitioner PLDT's petition/'appeal', and the character of the relief sought must be examined.

The petition/'appeal' filed by petitioner PLDT before the RTC of Makati City alleges that: petitioner PLDT had already

[33] *Yamane vs. BA Lepanto Condominium Corporation,* G.R. No. 154993, October 25, 2005.
[34] *Arranza vs. BF Homes*, G.R. No. 131683, June 19, 2000.
[35] *Editha Padlan vs. Elenita Dinglasan, et al.*, G.R. No. 180321, March 20, 2013.

paid the franchise tax due to the respondent City for the years 2006 to 2011 as supported by official receipts; having paid its franchise tax liabilities, petitioner PLDT cannot be made liable again for the payment of a separate local business tax on the same gross receipts; Section 143 of the LGC of 1991, which enumerates the businesses for which a city may tax, does not make mention of business related to the telecommunications or any related activity as described in its legislative franchise; petitioner has been correctly classified as a business enjoying a franchise under Section 137 of the LGC of 1991 and, thus, cannot be classified as both a "business enjoying a franchise" and "contractor" for tax purposes based on the same revenue; and that respondent City's right to assess petitioner PLDT of local tax for 2006 has prescribed.

Further, petitioner PLDT's petition/'appeal' filed with the RTC of Makati City enumerated the following prayers:

> "1. Declaring Petitioner to be not subject to business tax in addition to franchise tax based on its gross receipts derived from its franchised business;
>
> 2. Declaring the payments made by Petitioner for the period of 2006 to 2011 in the total amount of P1,545,071.20 to be payments for franchise tax and <u>ordering Respondents to so indicate in their records that the same was payment for franchise tax</u>;
>
> 3. <u>Cancelling the demand letter and Statement of Account</u> dated June 9, 2011 issued by Respondents for alleged deficiency franchise tax in the total amount of Two Million Three Hundred Fifteen Thousand Five Hundred Thirty Four and Eighty Four Centavos (P2,315,534.84) for the period covering years 2006, 2007, 2008, 2009, 2010 and 2011 for lack of legal basis; and
>
> 4. <u>Ordering Respondents to henceforth, cease and desist from assessing and collecting from Petitioner, business tax in addition to franchise tax based on the same gross receipts derived by Petitioner in this franchised business</u>." (Underscoring supplied)

A look into the allegations and the above-quoted reliefs sought in petitioner PLDT's petition/'appeal' filed before the RTC of Makati City persuades this Court that *Civil Case No. 11-635* is not simply a case seeking the review of the decision of the respondent City Treasurer, but essentially a principal action for Injunction where petitioner seeks to control the acts of the respondent City Treasurer of the City of Tuguegarao.

Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action.[36] The writ of injunction would issue upon the satisfaction of two requisites, namely: (1) the existence of a right to be protected; and (2) acts which are violative of said right.[37]

Considering that in the subject petition/'appeal' petitioner PLDT prayed that respondent City Treasurer be ordered to perform certain acts and also to refrain from doing a certain act; and considering the allegations laid down by petitioner PLDT in the petition/'appeal' concerning its rights under the Local Government Code and ordinance, the Court is convinced that *Civil Case No. 11-635* is essentially a principal action for Injunction.

Now, having ascertained that the nature of the action of petitioner PLDT's petition/'appeal' is a principal action for Injunction, the next step is to identify which court has jurisdiction over the said action according to our laws.

A reference to the basic law of jurisdiction, Batas Pambansa Blg. 129 (B.P. 129), as amended, otherwise known as the "Judiciary Reorganization Act of 1980," particularly Section 21 (1) thereof reveals:

> "SEC. 21. *Original Jurisdiction in other cases.* – **Regional Trial Courts shall exercise original jurisdiction**:
>
> (1) In the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and **injunction which may be enforced in any part of their respective regions**;"

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[36] *BP Philippines, Inc., vs. Clark Trading* Corporation, G.R. No. 175284, September 19, 2012.
[37] *Supra.*

Also worth mentioning is the precept enunciated by the Supreme Court in the case of *Embassy Farms Inc., vs. Court of Appeals, et al.,*[38] *viz*:

> "xxx an injunction under Section 21 of Batas Pambansa Bilang 129 is enforceable within the region. The reason is that the trial court has no jurisdiction to issue a writ of preliminary injunction to enjoin acts being performed or about to be performed outside its territorial boundaries."

The Supreme Court, among others, has created Regional Trial Courts for the Second Judicial Region and the National Capital Judicial Region. The Second Judicial Region consists of the provinces of Batanes, Cagayan, Ifugao, Isabela, Kalinga-Apayao, Nueva Vizcaya, and Quirino; while the National Capital Judicial Region consists of the cities and municipalities of Manila, Quezon, Pasay, Caloocan, Mandaluyong, Navotas, Malabon, San Juan, Makati, Pasig, Pateros, Taguig, Marikina, Parañaque, Las Piñas, Muntinlupa, and Valenzuela.[39]

In this case, the RTC of Makati City falls within the National Capital Judicial Region; while the City of Tuguegarao, being the capital city of the Province of Cagayan, is considered part of the Second Judicial Region.

Applying the express provision of BP 129 and foregoing jurisprudential precept, it is clear that a writ of injunction that may be issued by the RTC of Makati City is enforceable only within the National Capital Judicial Region this is because it has no jurisdiction to issue a writ of injunction to enjoin acts outside its territorial boundaries. Hence, the RTC of Makati City has no jurisdiction to enjoin, restrain or control the acts of the respondent City Treasurer located in the City of Tuguegarao as the aforesaid city is considered part of the Second Judicial Region. The court which has jurisdiction over the present action for Injunction is the regional trial court belonging to the Second Judicial Region.

Clearly, the RTC of Makati City did not err in dismissing *Civil Case No. 11-635* simply because it has no jurisdiction over an action for Injunction where the acts sought to be enjoined are outside its territorial region.

[38] G.R. No. 80682, August 13, 1990.
[39] Section 13 of the Judiciary Reorganization Act of 1980 (BP Blg. 129, as amended).

WHEREFORE, in light of the foregoing, the instant Petition for Review is hereby **DISMISSED**.

Accordingly, finding no reversible error in the assailed Resolution dated October 22, 2012 issued by the Regional Trial Court of Makati City, Branch 132 in *Civil Case No. 11-635*, the same is hereby **AFFIRMED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice