REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

THE CITY GOVERNMENT OF VALENZUELA, HON. ADELIA SORIANO, in her capacity as CITY TREASURER, AND ATTY. ULYSSES L. GALLEGO, in his capacity as OFFICER-IN-CHARGE OF THE BUSINESS PERMIT AND LICENSING OFFICE, *Petitioners,*	**CTA AC No. 296** *(RTC Civil Case No. C-25725)* Members: **MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
-versus-	Promulgated:
NLEX CORPORATION, *Respondent.*	NOV 15 2024 10:32 a.m.

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DECISION

MANAHAN, *J.*:

Before the Court is a *Petition for Review* filed on July 5, 2023,[1] praying that:

1. The *Decision* dated March 13, 2023 of the Regional Trial Court ("RTC") – Branch 121, Caloocan City ("assailed *Decision*")[2] be partially reversed or set aside, and the local business tax assessment on the toll booths of NLEX for taxable years (TYs) 2005 to 2014 be upheld; and

2. Respondent NLEX Corporation ("NLEX" or "respondent") be declared not entitled to the refund of local business taxes paid from the toll booths for TYs 2005 to 2014.

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[1] Docket, pp. 5-21.
[2] Docket, pp. 43-61.

The facts of the case are as follows.

On November 11, 2019, NLEX was assessed by the City Government of Valenzuela for deficiency local business taxes and other fees for TYs 2005 to 2019, inclusive of charges and interest, in the total amount of P26,531,607.30 broken down as follows: a.) P22,857,814.00 for services (toll booth revenues); and b.) P3,673,793.21 for income from signages.[3]

On January 10, 2020, NLEX filed its written protest to the assessment.[4] Petitioners did not act thereon; hence, on June 30, 2020, NLEX filed a verified complaint with the RTC.[5]

On March 13, 2023, the RTC rendered the assailed *Decision*, the dispositive portion of which reads:

> WHEREFORE, PREMISES CONSIDERED, the Court rules as follows:
>
> 1) The claim for refund of Php3,841,779.85 representing alleged deficiency for local business taxes and other fees for taxable years 2012 to 2019 for signage services is **DENIED** for lack of jurisdiction; and
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> 2) The Revised Assessment for Local Business Tax for toll booths for taxable years "2005 to 2012", on the ground of lack of jurisdiction to cause assessment and "2013 to 2014", on the ground of prescription, for the local business taxes for the revenues from toll booths is **CANCELLED**. Defendants are ordered to **REFUND** the total amounts paid by Plaintiff for the taxable years 2005-2014 inclusive of surcharges and interest
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> SO ORDERED.
> Caloocan City, 13 March 2023

In the assailed *Decision*, the RTC ruled as follows.

First, the authority to assess local business taxes from toll booth revenues involves the *situs* of taxation, therefore the

[3] *Decision* dated March 13, 2023, Civil Case No. C-25725, Docket, p. 44.
[4] *Id.*, p. 43.
[5] *Id.*, p. 44. cm

RTC has jurisdiction over the same. The RTC found that NLEX's principal offices were in Pasig City from 2005 to 2007 and Caloocan City from 2008 to present, therefore NLEX was correct in not paying the local business taxes to petitioner until 2013, when the Department of Finance (DOF) issued *Local Finance Circular No. 1-2013* dated January 18, 2013 classifying toll booths as a "branch" or "sales outlet." Prior to its issuance, non-payment was in accordance with Section 150 of the Local Government Code since NLEX never had any sale office in Valenzuela City.

Second, although petitioner is already entitled to the local business taxes beginning 2013, its right to assess petitioner for TYs 2013 and 2014 has already prescribed. Section 194 of the Local Government Code provides that local taxes shall be assessed within five (5) years from the date they become due. In this case, the assessment was made in 2019, more than five years after the local business taxes for TYs 2013 and 2014 became due.

Thus, the RTC cancelled the local business tax assessments for toll booth revenues on the ground of lack of authority to impose the tax for TYs 2005 to 2012, and on the ground of prescription for TYs 2013 to 2014.

Third, with respect to the local business taxes on income or advertising revenues from signages, the RTC held that since the question is not on the authority to impose the tax but on the correctness of the assessment, then it has no jurisdiction over the same. The amount of taxes claimed for refund is P3,841,779.85, and under Republic Act No. 9282, it is the Court of Tax Appeals ("CTA") which has original jurisdiction over tax collection cases where the principal amount of taxes and fees claimed is P1,000,000 or more.

Thus, the RTC denied the refund claim of NLEX in the amount of P3,841,779.85 representing alleged deficiency local business taxes and fees on signage services for TYs 2012 to 2019 on the ground of lack or jurisdiction. an

Petitioners sought partial reconsideration of the assailed *Decision*, but the RTC denied the same in an *Order* dated May 22, 2023 ("assailed *Order*").[6] Hence, the present petition.

Petitioners now submit the following grounds in support of its *Petition for Review* before this Court:[7]

I. The court *a quo* committed grave error in holding that NLEX was correct when it started to pay its taxes in Valenzuela City only in 2013 pursuant to DOF Circular No. 1-2023;

II. The court *a quo* committed grave error when it held that the City's assessment and collection for TYs 2005 to 2012 lacks jurisdiction;

III. The court *a quo* committed grave error when it held that the right of the City to assess for TYs 2013 to 2014 has prescribed.

Petitioners' arguments

Petitioners argue that under Section 146 of the Local Government Code, local business taxes are required to be paid at the place where the business is conducted. Hence, even without the issuance of *Local Finance Circular No. 1-2013*, the toll booths within its territorial jurisdiction should have been considered as branch or sales office for purposes of imposing the local business tax. According to petitioners, Section 150 of the Local Government Code providing for the situs of taxation where there is no branch or sales outlet does not apply. Said provision covers only sales of goods, whereas toll operations involve services.

Petitioners also allege that respondent has no sufficient evidence to prove payment of local business taxes in Pasig City and Caloocan City. If proven, the same must be properly reimbursed to petitioners.

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[6] Docket, pp. 41-42.
[7] Docket, p. 8.

Finally, petitioners maintain that the assessments for TYs 2013 and 2014 have not yet prescribed as Section 194 of the Local Government Code provides that local taxes may be assessed and collected within ten (10) years from knowledge of fraud.

Respondent's arguments

For its part, respondent primarily seeks the dismissal of the *Petition for Review* on the ground that petitioners failed to comply with the requirement under the Rules of Court that the petition must be supported by material portions of the record. Petitioners attached only the assailed *Decision* and *Order*, but these do not support the material allegations in the petition. On the contrary, the factual conclusions in the assailed *Decision* and *Order* support the dismissal thereof.

Respondent insists that toll booths are not subject to local business tax prior to the issuance of *Local Finance Circular No. 1-2013*. This is why petitioners assessed respondent for its toll booth revenues only in 2019, despite knowledge of their existence as early as 2005. There is nothing contradictory between *Local Finance Circular No. 1-2013* and the Local Government Code, since the former merely supplied what constitutes a branch or sales office. *Local Finance Circular No. 1-2013*, which provides for its prospective application, remains valid and binding unless and until declared void by a court.

Respondent also counterargues that the assessments for TYs 2005 to 2014 had already prescribed. The ten (10)-year period under Section 194 of the Local Government Code is not applicable because petitioners failed to allege, much less prove, that respondent is guilty of fraud or intent to evade taxes. In the absence of fraud, the Local Government Code provides that all assessments for local taxes must be made within five (5) years from the date they became due.

THE COURT'S RULING

We find for the respondent.

Section 7 of RA No. 1125,[8] as amended by RA No. 9282[9] ("**CTA Charter**"), provides for the Court's jurisdiction:

> SEC. 7. *Jurisdiction.* - The CTA 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;[10]

Meanwhile, Section 11 of the CTA Charter provides for the period within which to appeal with the Court:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs ... or the Central Board of Assessment Appeals ***or the Regional Trial Courts*** may file an appeal with the CTA ***within thirty (30) days after the receipt*** of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

In the present case, petitioners allege that it received a copy of the assailed *Decision* of the RTC on April 17, 2023.[11] Thereafter, it filed a motion for partial reconsideration dated April 28, 2023, which the RTC denied in the assailed *Order* received by it on June 6, 2023.[12]

However, the records of the present case fail to establish petitioners' actual date of receipt of the assailed *Decision* and assailed *Order*. Moreover, a mere photocopy of the assailed *Order* is attached to the *Petition for Review*.

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[8] AN ACT CREATING THE COURT OF TAX APPEALS.
[9] 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.
[10] *Emphasis supplied.*
[11] *Petition for Review*, Docket, p. 6.
[12] *Id.*

Rule 42, Section 2, of the Rules of Court and Rule 6, Section 2 of the Revised Rules of the CTA[13] require that a clearly legible duplicate original or a certified true copy of the decision, judgment, or final order appealed from be attached to the petition for review. Failure to comply therewith is sufficient ground for the dismissal of the petition.[14]

The present *Petition for Review* is likewise unaccompanied by copies of the pleadings and other material portions of the record as would support the allegations therein, as further required by Rule 42, Section 2 of the Rules of Court. This requirement is not a mere technicality that can be overlooked but is an essential requisite for the determination of a *prima facie* basis for giving due course to the petition.[15] The rule is that the reviewing court must be able to determine the merits of the petition solely on the basis of the submissions by the parties, without the use of the records of the court *a quo*.[16]

In any case, even if the foregoing defects are overlooked, the Court finds that the present *Petition for Review* should be denied since the assessment of local taxes for TYs 2005 to 2014 is already barred by prescription.

Section 194 of the Local Government Code expressly provides for the periods to assess and collect local taxes:

> **Section 194.** *Periods of Assessment and Collection.* -
>
> (a) Local taxes, fees, or charges shall be assessed within ***five (5) years*** from the date they became due. ***No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period***: *Provided, that,* taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.

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[13] A.M. No. 05-11-07-CTA.

[14] RULES OF COURT, Rule 42, Sec. 3; *Magsino v. Ocampo*, G.R. No. 166944, August 18, 2014 [Per J. Bersamin, First Division].

[15] *Far East Bank and Trust Co. v. Commissioner of Internal Revenue*, G.R. No. 138919, May 2, 2006 [Per J. Tinga, Third Division].

[16] *B.E. San Diego, Inc. v. Alzul*, G.R. No. 169501, June 8, 2007 [Per J. Velasco, Jr., Second Division].

> (b) In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.
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> . . .
>
> (d) The running of the periods of prescription provided in the preceding paragraphs shall be suspended for the time during which:
>
> > (1) The treasurer is legally prevented from making the assessment of collection;
> >
> > (2) The taxpayer requests for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect; and
> >
> > (3) The taxpayer is out of the country or otherwise cannot be located.

The mandatory tenor of the law is clear. Local taxes *shall* be assessed within five (5) years from the date they became due, and *no action for collection, whether administrative or judicial,* shall be instituted after such period. The only exceptions are: 1.) when there is fraud or intent to evade taxes, in which case the extraordinary period of 10 years shall apply; and 2.) when the local treasurer is legally prevented from making the assessment or collection, or the taxpayer executes a waiver or is out of the country or cannot be located, in which case the running of the prescriptive period shall be suspended.

In this case, petitioners invoke the extraordinary ten (10)-year prescriptive period on the ground of fraud. According to petitioners,

> ...NLEX deliberately concealed the toll operation gross sales in Valenzuela City from 2005 to 2011, leading to non-assessment of taxes or charges. Only in August 2019, when the Petitioners discovered NLEX's undisclosed gross sales from the toll booth operations during that period Valenzuela City became aware of this fraudulent act.
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> 3.26 NLEX's proposal to the City Government of Valenzuela to treat their payment as a donation further reveals fraud and intentions to evade

> payment. This proposition will undoubtedly have negative consequences for Valenzuela City and other local government units where NLEX operates toll booths.
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> 3.27 Thus, Petitioners have TEN (10) years from August 2019 to assess and collect local business taxes from NLEX toll operations and signage services; the subject Assessment for Local Business Tax for the toll booths of NLEX for taxable years for 2005 to 2014 and collection thereof have not yet prescribed.[17]

Petitioners' allegation of fraud, however, has no legs to stand on. Glaringly, petitioners did not offer any evidence to substantiate its claim that "NLEX deliberately concealed the toll operation gross sales in Valenzuela City." This was also the observation of the RTC, which held:

> Unfortunately here, other than the self-serving testimony of Atty. Gallego, ***no iota [of] evidence was presented by [Valenzuela City] to prove fraud***.
>
> Also, fraud must amount to intentional wrongdoing with the sole object of evading the tax. The fact that [NLEX] paid its local business taxes for its toll booths to the City Governments of Pasig and Caloocan prior to the passage of DOF Local Finance Circular No. 1-2013 dated 18 January 2013 negates the existence of fraud.[18]

Regardless if it is true that NLEX made a "proposal to the City Government of Valenzuela to treat their payment as a donation," this hardly indicates fraud or intent to evade taxes. Moreover, fraud is not presumed—it must be proved by clear and convincing evidence.[19] Mere allegation is definitely not evidence.[20]

There being no ground to apply the extraordinary ten (10)-year prescriptive period, petitioner only had five (5) years

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[17] *Petition for Review*, Docket, p. 15.
[18] *Decision* dated March 13, 2023, Civil Case No. C-25725, Docket, pp. 55-56. *Emphasis supplied*, citation omitted.
[19] *Spouses Ramos v. Obispo*, G.R. No. 193804, February 27, 2013 [Per J. Villarama, First Division].
[20] *Singson v. Spouses Carpio*, G.R. No. 238714, August 30, 2023 [Per C.J. Gesmundo, First Division].

within which to make the assessment for deficiency local business taxes from the date they became due.

Under Section 167 of the Local Government Code, all local taxes, fees, and charges shall be paid within the first twenty (20) days of January or of each subsequent quarter, as the case may be. Thus, as noted by respondent, the last day of the period to make an assessment for deficiency local business taxes from TYs 2005 to 2014 are as follows:

TAXABLE YEAR	DUE DATE FOR PAYMENT	LAST DAY TO ASSESS
2005	January 20, 2005	January 20, 2010
2006	January 20, 2006	January 20, 2011
2007	January 20, 2007	January 20, 2012
2008	January 20, 2008	January 20, 2013
2009	January 20, 2009	January 20, 2014
2010	January 20, 2010	January 20, 2015
2011	January 20, 2011	January 20, 2016
2012	January 20, 2012	January 20, 2017
2013	January 20, 2013	January 20, 2018
2014	January 20, 2014	January 20, 2019

Petitioners assessed NLEX only on November 11, 2019.[21] Considering that it is already beyond the applicable prescriptive periods pursuant to Section 194 of the Local Government Code, the RTC correctly cancelled the subject assessments.

ACCORDINGLY, the instant *Petition for Review* filed on July 5, 2023 is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[21] *Decision* dated March 13, 2023, Civil Case No. C-25725, Docket, p. 43.

HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice