REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***SPECIAL THIRD DIVISION***

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| **LAZADA E-SERVICES PHILIPPINES, INC.,** Petitioner, | **CTA AC No. 261** |
| | ***Members:*** |
| - versus - | **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **CITY OF MAKATI, CITY TREASURER OF MAKATI,** Respondents. | ***Promulgated:*** NOV 23 2022 9:50 a.m. |

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# DECISION

**UY, *J.*:**

Before this Court is the *Petition for Review*[1] filed on February 9, 2022 by petitioner, Lazada E-Services Philippines, Inc., against respondents, City of Makati and City Treasurer of Makati, praying that the Decision dated November 15, 2021 and Order dated December 28 2021, both rendered by the Regional Trial Court – Branch 132, Makati City, in the consolidated cases docketed as Civil Case Nos. R-MKT-18-02102-CV & R-MKT-19-00586-CV, entitled "*Lazada E-Services Philippines, Inc., Petitioner vs City of Makati, City Treasurer of Makati, Respondents*" be reversed and set aside. The dispositive portions thereof, respectively read as follows:

***Decision dated November 15, 2021***

> "**WHEREFORE**, premises considered, judgment is hereby rendered **DISMISSING** the *Petitions for*

[1] Docket – Vol. 1, pp. 10 to 23.

*Cancellation of Tax Assessment* for ₱21,843,844.69 and *Tax Refund* in the amount of ₱8,259,390.55.

Petitioner Lazada E-Services Philippines, Inc. is liable to pay the Respondents City Treasurer of Makati and City of Makati **₱21,843,844.69** representing the assessed local business tax deficiency.

**SO ORDERED.**"

***<u>Order dated December 28, 2021</u>***

"**WHEREFORE**, premises considered, finding no cogent reason why this Court should reconsider its *Decision* dated 15 November 2021, the *Motion for Reconsideration* filed by petitioner Lazada E-Services Philippines, Inc. on 07 December 2021 is hereby ordered **DENIED**.

**SO ORDRED.**"

## THE PARTIES

Petitioner Lazada E-Services Philippines, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at 23rd Floor, Seven/Neo Building (formerly, Net Park Building), 5th Avenue, Bonifacio Global City, Taguig City.[2] It is primarily engaged in the development, marketing and provision of internet goods and services through telecommunication facilities.[3]

On the other hand, respondent City of Makati is a chartered city with address at the City Government of Makati, J.P. Rizal St., Brgy. Poblacion, Makati City[4]; while respondent City Treasurer of Makati is impleaded in her official capacity as the local government that exercises the power of taxation of Makati City.[5]

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[2] Par. 11, *Petition for Review*, Docket, p. 10
[3] Par. 14, *Petition for Review*, Docket, p. 10
[4] Par. 13, *Petition for Review*, Docket, p. 10
[5] Par. 12, *Petition for Review*, Docket, p. 10

## THE FACTS

On February 16, 2012, petitioner, then known as Furniture E-Services Philippines, Inc., was incorporated under the laws of the Philippines with principal office address at the 3rd Floor, Salustiana D. Ty Tower, 104 Paseo de Roxas, Makati City, Philippines.[6]

On September 28, 2012, the Securities and Exchange Commission (SEC) issued a *Certificate of Filing of Amended Articles of Incorporation* recognizing the change of corporate name from Furniture E-Services Philippines, Inc. to Lazada E-Services Philippines, Inc.[7]

As it operates its business through its principal office in Makati City, petitioner registered with the local government of Makati City and accordingly paid local business tax (LBT) thereto.[8]

Sometime on the third quarter of 2015, petitioner decided to transfer its principal office and operate its business in Taguig City.[9]

On August 10, 2015, petitioner entered into a Contract of Lease with the Net Group Estate Management Corp. for petitioner's new principal office in Taguig City. The said *Contract of Lease* commenced on October 15, 2015 and remained valid and binding until October 14, 2018.[10]

Petitioner likewise filed an *Amended Articles of Incorporation*[11] to change its principal address to "23rd Floor Net Park, 5th Avenue, E-Square, Crescent Park West, Bonifacio Global City, Taguig, Metro Manila, Philippines". The said amendment was approved in the Joint Meeting of the Shareholders and Board of Directors held on January 4, 2016, where at least two-thirds (2/3) of all the outstanding capital stock of petitioner and majority of its directors were present and unanimously approved the said amendment.[12]

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[6] RTC Decision, Docket, p. 51.
[7] *Id.*
[8] RTC Decision, Docket, p. 52.
[9] *Id.*
[10] *Id.*
[11] *Amended Articles of Incorporation*, RTC Docket – Vol. 1A, pp. 71 to 75.
[12] RTC Docket – Vol. 1A, p. 76.

On March 14, 2016, the SEC issued a *Certificate of Filing of Amended Articles of Incorporation*[13] recognizing the change of petitioner's principal office address.

In TY 2016 and 2017, despite the transfer of its principal office to Taguig City, petitioner paid LBT to Makati City amounting to ₱9,723,605.48 and ₱8,259,390.56, respectively. The LBT payments are detailed as follows:

| Year | Quarter | Official Receipt No. | Amount |
|---|---|---|---|
| 2016 | 1st | MKTCF2856840[14] | ₱ 2,430,901.37 |
| | 2nd | MKTCF2956376[15] | 2,430,901.37 |
| | 3rd | MKTCF3040368[16] | 2,430,901.37 |
| | 4th | MKTCF3074775[17] | 2,430,901.37 |
| | | | **₱ 9,723,605.48** |
| 2017 | 1st | MKTCF3129187[18] | ₱ 2,064,847.64 |
| | 2nd | MKTCF3306257[19] | 2,064,847.64 |
| | 3rd | MKTCF3379503[20] | 2,064,847.64 |
| | 4th | MKTCF3492004[21] | 2,064,847.64 |
| | | | **₱ 8,259,390.56** |

On August 31,2017, the *Contract of Lease* over the Makati office was terminated. Consequently, petitioner filed an *Application for the Retirement* of its Makati office before the Business Tax Division of Makati City,[22] effective September 30, 2017.[23]

On March 2, 2018, the Business Tax Division of Makati City issued an *Order of Payment*[24] assessing petitioner for deficiency LBT for taxable year (TY) 2015 to 2017 amounting to ₱12,573,615.96 and penalties and interest amounting to ₱8,614,998.04, detailed as follows:

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[13] Exhibit "A", RTC Docket – Vol. 1A, p. 69.
[14] Exhibit "G-1", RTC Docket – Vol. 3, p. 35.
[15] Exhibit "G-2", RTC Docket – Vol. 3, p. 38.
[16] Exhibit "G-3", RTC Docket – Vol. 3, p. 40.
[17] Exhibit "G-4", RTC Docket – Vol. 3, p. 42.
[18] Exhibit "G-5", RTC Docket – Vol. 3, p. 44.
[19] Exhibit "G-6", RTC Docket – Vol. 3, p. 46.
[20] Exhibit "G-7", RTC Docket – Vol. 3, p. 48.
[21] Exhibit "G-8", RTC Docket – Vol. 3, p. 50.
[22] RTC Decision, Docket, p. 52.
[23] Exhibit "8", RTC Docket – Vol. 4, p. 173.
[24] Exhibit "1", RTC Docket – Vol. 3, p. 52; RTC Docket – Vol. 4, p. 163.

| CY | Particulars | Basic | Surcharge | Total |
|---|---|---|---|---|
| 2015 | Marketing | ₱1,736,437.87 | ₱1,684,344.74 | ₱3,420,782.61 |
| 2016 | Marketing | 7,470,573.73 | 5,752,341.77 | 13,222,915.50 |
| 2017 | Marketing | - | - | - |
| 9/30/2017 | Marketing | 3,366,604.36 | 1,178,311.53 | 4,544,915.89 |
| Late filing fee | | | | 5,000.00 |
| TOTAL | | ₱12,573,615.96 | ₱8,614,998.04 | **₱21,193,614.00** |

Meanwhile, on April 24, 2018, petitioner filed a *Letter Protest*[25] dated April 23, 2018, contesting the LBT assessment for TY 2016 and 2017.

On May 3, 2018, petitioner received the *Letter*[26] dated May 2, 2018 issued by Jesusa E. Cuneta, Acting City Treasurer of Makati City denying petitioner's *Letter Protest.*

On May 17, 2018, petitioner filed a *Letter*[27] to respondent City Treasurer of Makati, stating that it does not dispute the LBT assessment for TY 2015. However, as regards, the LBT assessments for TY 2016 and 2017, petitioner alleged that it is still studying the options for its resolution; requested that respondent issue a separate Order of Payment for the LBT for TY 2015. In the same letter, petitioner submitted the Official Receipts showing the LBT payments of petitioner to Taguig City for TY 2016 and 2017.

On May 24, 2018, petitioner received a *Letter*[28] dated May 21, 2018, issued by respondent City Treasurer of Makati, reiterating the denial of its *Letter Protest* and demanding the payment of the assessed LBT for TY 2015 to 2017.

Meanwhile, a revised *Order of Payment*[29] dated May 22, 2018, was issued by respondent City Treasurer of Makati City against petitioner for LBT covering TY 2015 to 2017, adjusting the computation of the surcharges. Details are as follows:

| CY | Particulars | Basic | Surcharge | Total |
|---|---|---|---|---|
| 2015 | Marketing | ₱1,736,437.87 | ₱1,684,344.74 | ₱3,420,782.61 |
| 2016 | Marketing | 7,470,573.73 | 6,200,576.20 | 13,671,149.93 |
| 2017 | Marketing | - | - | - |
| 9/30/2017 | Marketing | 3,366,604.36 | 1,380,307.79 | 4,746,912.15 |
| Late filing fee | | | | 5,000.00 |
| **TOTAL** | | **₱12,573,615.96** | **₱9,265,228.73** | **₱21,843,844.69** |

[25] Exhibit "J", RTC Docket – Vol. 3, pp. 53 to 58.
[26] Exhibit "2", RTC Docket – Vol. 4, pp. 164 to 166.
[27] Exhibit "L", RTC Docket – Vol. 3, pp. 64 to 65.
[28] Exhibit "3", RTC Docket – Vol. 3, p. 66; RTC Docket – Vol. 4, p. 167.
[29] Exhibit "4", RTC Docket – Vol. 3, p. 67; RTC Docket – Vol. 4, p. 168.

On January 24, 2019, petitioner filed a *Refund of Erroneously Collected 2017 Local Business Tax*[30] with respondent City Treasurer of Makati for the recovery of LBT payments for CY 2017.

On January 28, 2019, respondent City Treasurer of Makati issued a *Letter*[31] denying petitioner's refund claim.

***Cancellation of Tax Assessment – Civil Case No. R-MKT-18-02102-CV***

On June 4, 2018, petitioner filed a *Petition (For Cancellation of Tax Assessment)*[32] before the RTC – Branch 145, Makati City, docketed as Civil Case No. R-MKT-18-02102-CV, praying for the cancelation of the *Order of Payment* issued by the Business Tax Division of Makati City.

On July 16, 2018, respondents filed their *Answer with Affirmative Defenses*[33], stating, among others, that the Court *a quo* lack jurisdiction in view of petitioner's failure to pay under protest the assessed tax due to respondents; that the *Order of Payment* issued by the City Treasurer of Makati is correct; and that there were under declaration of gross receipts which were not accounted/declared by petitioner. Respondents further argued that petitioner's registered head office is Makati City, hence, all undeclared gross receipts is attributable to Makati office, unless otherwise declared in other jurisdiction.

On August 3, 2018, petitioner filed its *Reply*[34] stating that the payment under protest is not a requirement for filing if a valid protest for an assessment for deficiency LBT under the Local Government Code, as the same is only required for a protest of deficiency real property tax; that respondents had no authority to collect its LBT payments after it transferred its principal office to Taguig effective March 14, 2016; and that it does not dispute, as it in fact, offered to pay the assessment for deficiency LBT for the year 2015.

On February 6, 2019[35], for failure of the parties to arrive at any settlement, the Judicial Dispute Resolution (JDR) was terminated and Civil Case No. R-MKT-18-02102-CV was ordered re-raffled.

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[30] Exhibit "N", RTC Docket – Vol. 3, pp. 68 to 76.
[31] Exhibit "O", RTC Docket – Vol. 3, p. 77.
[32] RTC Docket – Vol. 1A, pp. 1 to 22.
[33] RTC Docket – Vol. 2, pp. 1 to 9.
[34] RTC Docket – Vol. 2, pp. 21 to 41.
[35] RTC Decision, Docket, p. 47.

Thus, Civil Case No. R-MKT-18-02102-CV was re-raffled to RTC-Branch 132, Makati City (or *Court a quo*) on March 7, 2019.[36]

***Refund Claim – Civil Case No. R-MKT-19-00586-CV***

Apparently, during the pendency of Civil Case No. R-MKT-18-02102-CV, petitioner, on January 28, 2019, filed a *Complaint (For Recovery of Tax Erroneously Collected*[37] before the RTC – Branch 135, Makati City, docketed as Civil Case No. R-MKT-19-000586-CV, praying for the refund of alleged erroneously collected LBT payments for TY 2017.

On March 15, 2019, respondents filed their *Answer with Affirmative Defenses*[38] stating that contrary to the claim of petitioner that the Makati office is just an administrative office providing aftersales customer care services, the *Schedule of Gross Sales/Receipts* submitted by petitioner confirms and validates that income is recognized and generated in petitioner's office in Makati Office. Respondents further alleged that the business operation of petitioner did not completely stop considering that it was only on September 30, 2017 that their lease contract with their office in Makati City was terminated; and that it was only on February 12, 2018, that the City of Makati received an application for business retirement relative to the relocation of their office to Taguig.

***Consolidation of Civil Case Nos. R-MKT-18-02102-CV and R-MKT-19-000586-CV***

On March 21, 2019, petitioner filed a *Manifestation and Motion to Consolidate Cases*[39] praying for the consolidation of Civil Case Nos. R-MKT-18-02102-CV and R-MKT-19-000586-CV.

In the *Order*[40] dated May 6, 2019, Civil Case No. R-MKT-19-000586-CV was consolidated with Civil Case Nos. R-MKT-18-02102-CV, pending before RTC-Branch 132, Makati City.

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[36] *Id.*
[37] RTC Docket – Vol. 1B, pp. 1 to 21.
[38] RTC Docket – Vol. 1B, pp. 136 to 141.
[39] RTC Docket – Vol. 1B, pp. 154 to 157.
[40] RTC Docket – Vol. 1B, p. 161.

Respondents filed their *Pre-Trial Brief* on May 24, 2019; while petitioner filed its *Pre-Trial Brief* on May 28, 2019. [41] On October 28, 2019, the Court *a quo* issued the *Pre-Trial Order*.[42]

During trial, petitioner presented the following witnesses: (1) Roman R. Pigtain[43], Senior Analyst of the Administrative Department of petitioner; and (2) Mary Jane V. Pineda[44], petitioner's Accounting Manager.

On the other, respondents presented as sole witness, Diana Jean A. Tobella[45], Local Revenue Examiner at the City Government of Makati.

In the Order[46] dated July 30, 2021, the Court *a quo* directed both parties to file their respective memoranda. Respondents filed their *Memorandum*[47] on September 15, 2021, while petitioner belatedly filed its *Memorandum*[48] on November 22, 2021.

In the Decision[49] promulgated on November 15, 2021, the Court *a quo* admitted respondents' exhibits and dismissed both petitioner's *Petition for Cancellation of tax Assessment* and *Complaint (For Recovery of Tax Erroneously Collected)*. It further ruled that petitioner is liable to pay respondents the amount of ₱21,843,844.69 representing the assessed LBT deficiency.

On December 7, 2021, petitioner filed a *Motion for Reconsideration (of the Decision promulgated on 15 November 2021)*.[50]

Respondents filed their *Comment to the Motion for Reconsideration (filed by the Plaintiff on 06 December 2021)*[51] on December 14, 2021.

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[41] RTC Docket – Vol. 2, pp. 105 to 110 and RTC Docket – Vol. 3, pp. 1 to 7, respectively.
[42] RTC Docket – Vol. 3, p. 110.
[43] *Judicial Affidavit of Mr. Roman R. Pigtain*, RTC Docket – Vol. 3, pp. 113 to 120.
[44] *Judicial Affidavit of Ms. Mary Jane V. Pineda*, RTC Docket – Vol. 3, pp. 205 to 219.
[45] *Judicial Affidavit of Ms. Diana Jean A. Tobella*, RTC Docket – Vol. 4, pp. 153 to 120.
[46] RTC Docket – Vol. 4, p. 215.
[47] RTC Docket – Vol. 4, pp. 218 to 234.
[48] RTC Docket – Vol. 4, pp. 280 to 309.
[49] RTC Docket – Vol. 4, pp. 236 to 248.
[50] RTC Docket – Vol. 4, pp. 312 to 331.
[51] RTC Docket – Vol. 4, pp. 345 to 354.

On December 28, 2021, the Court *a quo* issued the assailed Order[52], denying petitioner's *Motion for Reconsideration* for lack of merit.

***Proceedings before this Court***

Aggrieved, petitioner filed the instant *Petition for Review*[53] on February 9, 2022, through electronic mail[54], the hard copy of which was received by the Court on February 10, 2022.

In the Resolution[55] dated February 23, 2022, the Court ordered respondents to file their comment; and directed the Branch Clerk of Court of RTC-Branch 132, Makati City to elevate the entire original records of Civil Case Nos. R-MKT-18-02102-CV & R-MKT-19-00586-CV. Thereafter, the Branch Clerk of Court of RTC-Branch 132, Makati City, transmitted to the Court the original records of Civil Case Nos. R-MKT-18-02102-CV & R-MKT-19-00586-CV on March 24, 2022.[56]

On March 23, 2022, respondents filed their *Comment to the Petition for Review*.[57] In the Resolution[58] dated March 31, 2022, the instant case was submitted for decision.

Hence, this Decision.

**THE ISSUES**

Petitioner raises the following assignment of errors[59], to wit:

**A.**

> **The RTC committed reversible error in ruling that Lazada continued to be liable for the payment of LBT to Respondent City of Makati until Lazada filed its application for retirement of business.**

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[52] RTC Docket – Vol. 4, pp. 355 to 358.
[53] Docket, pp. 8 to 39.
[54] Docket, p. 7.
[55] Docket, pp. 195 to 196.
[56] Docket, p. 197.
[57] Docket, pp. 208 to 220.
[58] Docket, pp. 223 to 224.
[59] "Assignment of Errors", *Petition for Review*, Docket, pp. 15 to 16.

**B.**

**The RTC committed reversible error in affirming Respondent's assessment of alleged deficiency LBT against Lazada and denying Lazada's claim for refund despite the transfer of Lazada's principal office to the City of Taguig as of March 14, 2016.**

**C.**

**The RTC committed reversible error in upholding the methodology employed by Respondents in computing the alleged deficiency LBT of Lazada for taxable years 2015 to 2017"**

***Petitioner's arguments:***

Petitioner argues that there is no legal basis to support the ruling of the *Court a quo* that petitioner continued to be liable for the payment of LBT to Makati City until the filing of its application for retirement of business. Allegedly, it is wrong to require petitioner to file an application for the retirement of its business in Makati City upon the transfer of its principal office to Taguig City since it was still required to obtain a permit from respondents while its administrative office remained in Makati City.

It is petitioner's position that the location of the principal office determines the situs of the imposition of LBT; and that the authority of respondents to collect LBT stems from sales transactions effected within their territorial jurisdiction and is not dependent on the procedural requirements of filing an application for retirement of business.

In this case, petitioner asserts that after the transfer of its principal office to Taguig City in 2016, petitioner only maintained an administrative office in Makati, which did not record any sales transactions nor issue receipts or invoices. Thus, respondents have no authority to impose LBT for TY 2016 and 2017.

Further, petitioner maintains that it was constrained to pay respondents the LBP for TY 2017 amounting to ₱8,259,390.56, to secure a permit for its Makati office. Considering, however, that it retired its business in Makati City in 2016, then it follows that the LBT payments made to Makati City was collected without authority and must accordingly be refunded.

***Respondent's counter-arguments:***

Respondents counter-argue that the *Court a quo* did not err in ruling that petitioner continued to be liable for the payment of LBT to respondent City of Makati until it filed its application for retirement of business on February12, 2018.

Allegedly, the *Orders of Payment* dated March 2, 2015 and May 22, 2018 issued by the Business Tax Division of the City of Makati for the LBT deficiencies of petitioner for TY 2015 to 2017 are correct.

Respondents claim that petitioner is keen on paying the assessed LBT for TY 2015 based on the Letter dated May 17, 2018, showing its willingness to settle the same. As regards the assessed LBT for TY 2016, respondents aver that the same was based on the undeclared gross receipts of petitioner; while the assessed LBT for TY 2017 was based on the *Schedule of Gross Sales/Receipts* certified by petitioner's accountant and the *Sworn Statement of Gross Sales/Receipts* executed by petitioner's Chief Executive Officer.

With respect to the transfer of petitioner's principal address to Taguig City, respondents maintain that the same is of no moment in the determination of its local tax liability.

## THE COURT'S RULING

Essentially, LBT are taxes imposed by local government units on the privilege of doing business within their jurisdictions.[60]

Section 150 (a) of the LGC provides for the situs of LBT, *to wit*:

"Section 150. *Situs of the Tax.* —

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[60] *City of Davao, et al., and Bella Linda N. Tanjili, in her official capacity as City Treasurer of Davao City, vs. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 19, 2019.

(a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality." (Emphasis supplied)

Based on the foregoing provisions, for purposes of collection of local business taxes under Section 143 of the LGC, distributors maintaining or operating a branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the city where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.

Notable, the term "business" means trade or commercial activity regularly engaged in, as a means of livelihood or with a view to profit.[61]

Accordingly, business taxes are due in the city where the taxpayer's principal place is situated or where the trade or commercial activity are conducted. In other words, in order for a city to validly impose local business tax, the situs (*i.e., principal place of business or branch and sales office*) thereof must be in that city.

Thus, for purposes of imposing local business taxes against petitioner, it is crucial to determine whether petitioner conducted

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[61] Section 131 (d) of the LGC of 1991.

commercial activities with a view to make a profit in its Makati office during the subject period of assessment.

***Petitioner conducted business operations in Makati during taxable year 2015.***

As gleaned from the records of the instant case, petitioner conducted business operations in its Makati office during the taxable year 2015. In fact, petitioner confirmed that it is only during the third quarter of 2015 when it decided to transfer its principal office and operate its business to Taguig City.[62] Further, the said transfer of principal office was only approved by petitioner's shareholders and board of directors in 2016[63]. Evidently, there is no dispute that petitioner carried out commercial activities and generated sales in its Makati office in 2015.

Thus, We find the imposition of deficiency LBT for TY 2015 against petitioner to be proper. However, petitioner is not precluded from assailing the correctness of the assessment for LBT pursuant to Section 195 of the Local Government Code of 1991, to wit:

> "**Section 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; <u>otherwise, the assessment shall become final and executory</u>.** 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 (60) day period prescribed herein within which to appeal

[62] Paragraph 14.5, Petition for Review, Docket, p. 11.
[63] RTC Docket – Vol. 1A, p. 76.

with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable." (Emphasis supplied.)

Based on the foregoing, upon receipt of the LBT assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory.

In this case, a perusal of petitioner's ***Letter Protest***[64] dated April 23, 2018, reveals that petitioner protested only the LBT assessment for TY 2016 & 2017. It did **not** include in its protest the LBT assessment for TY 2015. For reference, pertinent portion of the said *Letter Protest* states as follows:

> "Based on the above, and considering the clear language of the law that LBT shall be paid to the municipality or city where the principal office is located, we respectfully submit that the LBT assessment against Lazada Philippines for CY 2016 to 2017 have no bases in fact and in law. **We therefore respectfully request that the deficiency LBT assessment against Lazada Philippines for CY 2016 to CY 2017 be cancelled and set aside**." (Emphasis supplied.)

Further, in the *Letter*[65] dated May 17, 2018, petitioner confirmed that it is not refuting the LBT assessment for TY 2015. In fact, petitioner expressed its willingness to pay the LBT deficiency for TY 2015 in the amount of ₱3,420,782.61. Pertinent portion of the said *Letter* states as follows:

> "On April 23, 2018, the Company filed its Protest Letter dated April 23, 2018 with Office of Makati City Treasurer to refute the LBT assessment against the Compat for CY 2016 to 2017.
>
> **Please note that the Company did not refute the Makati City's LBT assessment against the Company for the CY 2015 anymore**. In this regard, the Company tendered its payment on the said LBT assessment on May 7, 2018. However, the Cashier's Office of Makati City said that they cannot accept payment and issue

[64] Exhibit "J", RTC Docket – Vol. 3, pp. 53 to 58.
[65] Exhibit "L", RTC Docket – Vol.3, pp. 64 to 65.

official receipt for partial payment of the Order of Payment. Thus, the Company's payment was not accepted by the said office on the ground that the Order of Payment dated March 2, 2018 includes LBT assessment against the Company for the CY 2016 and 2017.

**In this regard, we respectfully request for the issuance of a separate Order of Payment for the Company's LBT deficiency for the CY 2015 in the amount of Php3,420,782.61, <u>to enable the Company to pay the same</u>**." (Emphasis supplied.)

Accordingly, in view of petitioner's failure to contest the LBT assessment for TY 2015, the same has become final, executory and unappealable. Consequently, petitioner is now precluded from questioning the same. To be sure, the fact that an assessment has become final, only means that the validity or correctness of the assessment may no longer be questioned on appeal.[66]

Hence, the Court sustains the assessed LBT for TY 2015 amounting to ₱3,420,782.61.

***Respondents are justified in imposing LBT taxes against petitioner for TY 2016 and 2017.***

In the assailed Decision, the *Court a quo* held that petitioner is likewise liable for LBT for TY 2016 and 2017. It ruled that in order for petitioner to escape liability for the payment of LBT to the City Government of Makati, it must apply for *Retirement of Business Operation*. In this case, the Court *a quo* found that petitioner filed its application for retirement only on February 12, 2018. There being no application for retirement filed in the City of Makati, the transfer of business in Taguig in 2016 did not prevent the City of Government of Makati from taxing petitioner for TY 2016 to 2017.

Petitioner, however, contends that respondents have no authority to impose LBT for TY 2016 and 2017. Allegedly, after the transfer of its principal office to Taguig City in 2016, petitioner only

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[66] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

maintained an administrative office in Makati, which did not record any sales transactions.

As earlier discussed, business taxes are due in the city where the trade or commercial activity are conducted; and that in order for a city to validly impose local business tax, the situs (*i.e., principal place of business or branch and sales office*) thereof must be in that city.

Thus, contrary to the ruling of the *Court a quo*, the authority of local government units to impose LBT for TY 2016 and 2017 is not dependent on the procedural requirement of filing an application for retirement of business but is conditioned on the business transactions conducted within their territorial jurisdiction.

***Petitioner failed to prove that the operations in its Makati office were limited to non-revenue generating activities.***

In the instant case, it is undisputed that after the transfer of its principal office to Taguig City in 2016, petitioner retained its Makati office until the retirement of its business in Makati City effective September 30, 2017.

For purposes of determining petitioner's liability for deficiency LBT for TY 2016 and 2017, the principal question hinges on whether petitioner's **Makati office** pursued commercial activities, even after the transfer of its principal office to Taguig City in 2016.

It is petitioner's claim that it merely used its Makati office as an administrative office which did not record any sales activities. However, apart from the unsubstantiated and self-serving testimony of petitioner's witness, Mary Jane V. Pineda, there is nothing on record which would remotely support petitioner's stance that the operations in its Makati office were limited to non-revenue generating activities and that no sales were recorded therein.

It must be borne in mind that self-serving statements are deemed inadequate; competent proof must be adduced.[67] Thus, absent any corroborating evidence, the lone testimony of petitioner's

[67] *Rodolfo Cornes, et al. vs. Leal Realty Centrum Co., Inc., et al.*, G.R. No. 172146, July 30, 2008.

witness cannot be considered as substantial proof that petitioner's Makati office was merely used as an administrative office.

On the contrary, the following uncontroverted evidence shows that petitioner continued to conduct its commercial operations in Makati City during the subject period, to wit:

A. *Schedule of Gross Sales/Receipts for 2017*[68] certified by petitioner's accountant, indicating **petitioner's gross sales and receipts recorded in its Makati Office in 2017**; and

B. The *Sworn Statement of Gross Sales/Receipts*[69], subscribed under oath by petitioner's Chief Executive Officer, **showing the gross sales/receipts for TY 2016 and 2017**.

It is evident from the foregoing documents that despite the transfer of petitioner's principal office to Taguig City, sales activities were still being conducted, generated, and recorded in petitioner's Makati office. Further, it is worth noting that petitioner religiously declared gross sales/receipts relating to its Makati office as shown in the payments[70] of LBT to respondents for TY 2016 and 2017.

Taken together, the foregoing pieces of evidence and circumstances indubitably establish that petitioner continued to conduct business and generate revenues in Makati City during the subject period. Thus, the Court finds that respondents are justified in imposing LBT against petitioner for TY 2016 and 2017.

***Computation of petitioner's LBT liability for TY 2015 to 2017.***

***LBT for TY 2015***

As discussed earlier, the assessed LBT for TY 2015 amounting to ₱3,420,782.61 had already become final, executory and demandable in view of petitioner's failure to protest the same. Accordingly, We sustain the LBT assessment for TY 2015.

[68] Exhibit "7", RTC Docket – Vol. 4, p. 172.
[69] Exhibit "8", RTC Docket – Vol. 4, p. 173.
[70] Exhibits "G-1" to "G-8", RTC Docket – Vol. 3, pp. 35 to 50.

***LBT for TY 2016***

Respondents assessed petitioner for LBT for TY 2016 amounting to ₱13,671,149.93, computed as follows:

| | |
|---|---|
| Gross receipts per 2015 Audited Financial Statement | ₱2,292,557,230.00 |
| Less: Declared by petitioner in their application for renewal of business permit for TY 2016 | 1,296,480,732.87 |
| Undeclared Gross Receipts | 996,076,497.13 |
| Tax Due for Undeclared Gross Receipts | 7,470,573.73 |
| Surcharge of 25% / Monthly Interest of 2% | 6,200,576.20 |
| **Total Tax Due for Undeclared Gross receipts** | **₱ 13,671,149.93** |

However, upon perusal of the records and the evidence submitted, the Court finds no basis for the "**Gross Receipts per 2015 Audited Financial Statement**" amounting to ₱2,292,557,230.00, which was used by respondents in computing petitioner's deficiency LBT for TY 2016. No supporting documents (*i.e., 2015 Audited Financial Statement*) were submitted/offered by respondents to establish the gross sales/receipts of petitioner for 2015.

Moreover, granting *arguendo* that petitioner's gross sales/receipts per Audited Financial Statement for 2015 amounts to ₱2,292,557,230.00, there is no showing that the entire gross sales/receipts pertain solely to petitioner's Makati Office. Hence, for lack of sufficient factual basis, the LBT assessment for TY 2016 shall be cancelled and set aside.

***LBT for TY 2017***

In view of the retirement of petitioner's business in Makati City effective September 30, 2017, respondents assessed petitioner for LBT for TY 2017 amounting to ₱4,746,912.15, computed as follows:

| | |
|---|---|
| Gross sales/receipts for TY 2017 | ₱1,550,132,654.50 |
| Tax Due for TY 2017 | 11,625,994.91 |
| Less: Payments made for TY2017 | 8,259,390.55 |
| Difference | 3,366,604.36 |
| Surcharge of 25% / Monthly Interest of 2% | 1,380,307.79 |
| **Total Tax Due** | **₱ 4,746,912.15** |

*[signature]*

Section 145 of the LGC of 1991, lays down the guidelines in computing the tax due upon retirement of business, *to wit:*

> SECTION 145. Retirement of Business. – A business subject to tax pursuant to the preceding sections shall, upon termination thereof, submit a **sworn statement of its gross sales or receipts for the current year**. **If the tax paid during the year be less than the tax due on said gross sales or receipts of the current year, the difference shall be paid before the business is considered officially retired.**

Based on the foregoing, upon termination of business, a sworn statement of its gross sales or receipts for the current year shall be submitted by the taxpayer. The taxpayer shall be required to pay for the difference, if the *amount of tax paid/collected during the year* is less than the *amount of tax due on the gross sales/receipts as indicated in the said sworn statement.*

Thus, the following shall be determined for purposes of computing the liability of petitioner upon its retirement in 2017:

1) amount of **tax paid/collected during the year;** and

2) amount of **tax due for the current year**, which is based on the sworn statement of gross sales/receipts submitted by petitioner.

In this case, upon review of the records, the Court notes that the amount of tax paid/collected in 2017 is **₱8,259,390.56**, detailed as follows:

| Year Paid/ Collected | Quarter | Official Receipt No. | Amount |
|---|---|---|---|
| **2017** | 1st | MKTCF3129187[71] | ₱ 2,064,847.64 |
| | 2nd | MKTCF3306257[72] | 2,064,847.64 |
| | 3rd | MKTCF3379503[73] | 2,064,847.64 |
| | 4th | MKTCF3492004[74] | 2,064,847.64 |
| | **Total tax paid/collected in 2017** | | **₱ 8,259,390.56** |

[71] Exhibit "G-5", RTC Docket – Vol. 3, p. 44.
[72] Exhibit "G-6", RTC Docket – Vol. 3, p. 46.
[73] Exhibit "G-7", RTC Docket – Vol. 3, p. 48.
[74] Exhibit "G-8", RTC Docket – Vol. 3, p. 50.

On the other hand, the *amount of tax due based on petitioner's Sworn Statement of Gross Sales/Receipts* is **₱11,625,994.91**, computed as follows:

| | |
|---|---|
| Gross receipts/sales for reported in Makati Makati office (2017) | ₱1,550,132,654.50 |
| Tax rate (75% of 1%) | 0.75% |
| **Tax due** | **₱11,625,994.91** |

It must be noted that the gross sales/receipts for 2017 amounting to **₱1,550,132,654.50** was entirely recorded in petitioner's Makati office as shown in the *Schedule of Gross Sales/Receipts for 2017*[75] certified by petitioner's accountant, and the *Sworn Statement of Gross Sales/Receipts*[76] subscribed under oath by petitioner's Chief Executive Officer.

Accordingly, applying Section 145 of the LGC of 1991, considering that the amount of tax paid/collected for TY 2017 **(₱8,259,390.56)** is **less than** the amount of tax due based on the gross receipts/sales reported in 2017 **(₱11,625,994.91)**, the difference amounting to **₱3,366,604.36** must be paid by petitioner. Details are as follows:

| | |
|---|---|
| Tax Due for TY 2017 ( Based on the gross receipts/ sales reported in petitioner's Makati Office in TY 2017) | ₱11,625,994.91 |
| Tax paid/collected in TY 2017 | 8,259,390.56 |
| **Difference** | ₱3,366,604.36 |

Thus, We sustain the LBT assessment for TY 2017 against petitioner amounting to **₱4,746,912.15**, inclusive of interest and surcharge, to wit:

| | |
|---|---|
| Tax Due | ₱ 3,366,604.36 |
| Surcharge of 25% / Monthly Interest of 2% | 1,380,307.79 |
| **Total Tax Due for TY 2017** | ₱ 4,746,912.15 |

To summarize, the Court finds that petitioner is liable for the assessed LBT for TY 2015 and 2017 amounting to **₱8,167,694.76**, computed as follows:

[75] Exhibit "7", RTC Docket – Vol. 4, p. 172.
[76] Exhibit "8", RTC Docket – Vol. 4, p. 173.

| | |
|---|---|
| LBT liability for TY 2015 | ₱ 3,420,782.61 |
| LBT liability for TY 2017 | 4,746,912.15 |
| **Total LBT due** | **₱8,167,694.76** |

However, as for TY 2016, the Court finds petitioner not liable for the assessed LBT, for lack of sufficient factual basis.

**WHEREFORE**, in light of the foregoing considerations, the instant Petition *for Review* is **PARTIALLY GRANTED**. The Decision dated November 15, 2021 and Order dated December 28, 2021 rendered by RTC - Branch 132, Makati City, in the consolidated cases docketed as Civil Case Nos. R-MKT-18-02102-CV & R-MKT-19-00586-CV, are hereby **AFFIRMED with MODIFICATION**.

Accordingly, petitioner Lazada E-Services Philippines, Inc. is **ORDERED TO PAY** respondents City of Makati and City Treasurer of Makati City the reduced amount of **₱8,167,694.76**, representing the assessed LBT for taxable years 2015 and 2017, inclusive of interests and surcharges.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

WE CONCUR:

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**MARIA ROWENA MODESTO-SAN PEDRO**
*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.

**ERLINDA P. UY**
*Associate Justice*
Chairperson, Special 3rd Division

## 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.

**ROMAN G. DEL ROSARIO**
*Presiding Justice*