REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

THE MUNICIPAL TREASURER OF THE MUNICIPALITY OF CLAVER, represented by CARYL DEE LUKBAN, Petitioner,	**CTA AC NO. 183** (Civil Case No. 8208)
	Members:
- versus -	**Del Rosario**, *P.J., Chairperson,* **Uy**, and **Mindaro-Grulla**, *JJ.*
PLATINUM GROUP METALS CORPORATION (PGMC), Respondent.	Promulgated: AUG 30 2019 · 10:49a

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves the following:

1. Respondent's **Manifestation** filed on July 30, 2019; and
2. Petitioner's **Motion for Reconsideration** filed on June 3, 2019 and received by this Court on June 13, 2019, with respondent's Opposition filed on July 3, 2019.

Respondent's Manifestation

Respondent manifests that on June 20, 2019, it received a copy of a Notice of Resolution dated 19 June 2019 but the Court's Resolution rendered on June 11, 2019, which was referred to in that Notice, was not attached thereto; that respondent's counsel notified the Office of the Clerk of Court of the missing attachment; and that on June 24, 2019, it received a copy of the Notice with a copy of the June 11, 2019 Resolution attached thereto; hence, it timely filed its Opposition to petitioner's Motion for Reconsideration on July 3, 2019.

The foregoing Manifestation of the respondent is **NOTED**.

Petitioner's Motion for Reconsideration

Petitioner seeks reconsideration of the Court's Amended Decision dated April 16, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, respondent's "Motion for Reconsideration (of the Honorable Court's Decision dated 9 August 2018)" filed on September 6, 2018 is **GRANTED**. Accordingly, the August 9, 2018 Decision of this Court is **REVERSED and SET ASIDE**. The Notice of Assessment issued against respondent for the years 2015 (based on its 2014 shipments) and 2016 (based on its 2015 shipments) is **CANCELLED**.
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> With the foregoing declaration of the nullity of the present tax assessment and the cancellation of the Notice of Assessment issued against respondent for the years 2015 and 2016, petitioner's Motion for Clarification filed on September 12, 2018, and respondent's Motion to Set Case for Oral Argument filed on January 11, 2019 are considered **MOOT and ACADEMIC**.
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> SO ORDERED."

Petitioner insists that the impugned assessment is based on respondent's gross receipts. It claims that the summary of shipment from the Mines and Geosciences Bureau (MGB), Regional Office XIII of the Department of Environment and Natural Resources (DENR) utilized as reference in the computation of the assessed business tax is actually respondent's summary of sales or receipts for the period in issue.

Petitioner asserts that respondent's summary of shipment is truly its summary of sales or receipts as confirmed by respondent's Audited Financial Statements for the years 2014 and 2015 on file with the Securities and Exchange Commission (SEC); that respondent's audited gross sales or receipts of P11,797,678,000.00 and P6,533,218,000.00 for the years 2014 and 2015, respectively, are basically the same as its total gross value of shipment [of P11,986,763,985.85 for 2014 and P6,532,670,516.17 for 2015] as shown in the summary of shipment, and the minute difference in figures accounts for the reporting treatment of the sales or shipments, which occurred close to the beginning or ending of the relevant year.

Petitioner contends that respondent's total gross value of shipment in peso and its unaudited gross sales or receipts for the years 2016 and 2017 are basically the same, claiming that respondent's total gross values of shipment in its summaries of shipments for the years 2016 and 2017 are P3,663,923,003.13 and P5,117,914,807.40, respectively, while its reported unaudited gross receipt or sales for the same years amount to P3,654,606,282.52 and P5,117,753,442.64, respectively. It claims that the small difference between the two figures accounts for the diverse reporting treatment of sales or shipments, which happened close to the beginning or ending of the year.

Petitioner avers that even assuming that the reference utilized by petitioner as gross receipts is not entirely correct, still the assessment is not void.

Petitioner contends that since respondent did not dispute the gross receipts when it filed its protest before petitioner, nor contest the said gross receipts or the computation of the assessed business tax due when it filed its Petition for Review with the Regional Trial Court in Surigao City and its comment on the Petition for Review before this Court, it is too late for respondent to question the same without violating the principle of equitable estoppel.

Petitioner also argues that the present case does not fall within the exception to the rule against changing the theory of the case on appeal because respondent's new theory requires petitioner to present evidence that the impugned assessment is actually based on respondent's gross sales or receipts. According to petitioner, to prove that respondent's summary of shipment, which was utilized as reference for respondent's gross receipts, is in fact its summary of sales or receipts, it needs to present the attached documents. It claims that the present scenario, where it needs to present evidence to meet respondent's issue raised in the new theory, is what the rule against changing the theory of the case on appeal seeks to prevent; and this is very unfair and violative of its right to due process.

In its Opposition, respondent counter-argues that the Court correctly ruled upon the issue of validity of the Notice of Assessment that is patently illegal. It submits that the issue on the validity of the assessment could readily be resolved without need of additional evidence because the fact that the assessment was calculated on the gross value of its shipments is not in dispute as it is indicated on the face of the Notice of Assessment dated 18 April 2016 and admitted on record. It emphasizes that the law is clear that local business tax on mining companies shall be levied on gross receipts of the preceding calendar year; therefore, petitioner's imposition of tax on gross value of its shipments is invalid.

It contends that the allegation of the petitioner that its gross shipments in 2014 and 2015 are the same as its gross receipts for the same period is erroneous because it is riddled with flawed presumptions. It asserts that sales are not the same as receipts, and these values are not interchangeable, especially, in the computation of taxes; the revenue recognized and reported in its Audited Financial Statements (AFS) covers sales that were paid for in advance during the preceding period/s and sales to be paid for in the succeeding period/s; the sales revenue reflected in its AFS for 2014 and 2015 are not the same as the gross receipts for the period; the actual receipts are normally recorded in the record or book of receipts kept by the business; its record or receipts and/or summary of gross receipts could have been made available to petitioner had it conducted an audit.

Respondent argues that an assessment issued without the conduct of a valid tax investigation is void. It claims that petitioner failed to issue a Letter of Authority to conduct the audit; petitioner could not have ascertained the correct taxes allegedly due from it without a proper examination of the records; petitioner issued the assessment without factual basis; and the failure of the local treasurer to discharge its duty and exercise its power to conduct an investigation does not justify the issuance of an assessment based on presumption.

Respondent contends that the doctrine of estoppel in *pais* cannot be applied in this case, claiming absence of the essential elements of estoppel *in pais*. It asserts the following points:

> (1) it did not falsely represent or conceal any material fact as it was the petitioner that came up with the figures in the assessment without its participation; it never concealed its gross receipts; and petitioner did not seek the record of its gross receipts;
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> (2) there was no intent to mislead petitioner as to the amounts of its gross receipt; and it even contested the assessment in its entirety when the same was issued;
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> (3) petitioner had means to ascertain the truth as Section 171 of the Local Government Code accorded

petitioner the power to examine books of accounts and pertinent records of the taxpayer, and through a proper examination, the petitioner could have ascertained the gross receipts for 2014 and 2015;

(4) petitioner knowingly imposed the tax on the gross value of shipments even though the law clearly says it must be based on gross receipts. No conduct of respondent could have in good faith led petitioner to a belief that gross shipments are the same as gross receipts; and

(5) respondent's action did not cause the petitioner to change its position. Petitioner came up with a patently invalid assessment, and it is not upon respondent to revise the same.

Respondent, in conclusion, cites the declaration in *Kalalo vs. Luz*[1] that the essential elements of estoppel *in pais* must be shown by clear, convincing and satisfactory evidence before estoppel can be sustained.

THE COURT'S RULING

The Court finds that petitioner's arguments raised in its Motion for Reconsideration are mere reiteration or amplification of the arguments presented in its "Comment" on respondent's Motion for Reconsideration filed on September 26, 2018, all of which were duly considered in the assailed Amended Decision, particularly, on pages 6 to 10 thereof.

Anent petitioner's comparison of the figures in the AFS with the total gross value of shipments for the years 2014 and 2015, on one hand, and the latter's unaudited gross sales or receipts in relation to its total gross values of shipment in its summaries of shipments for the years 2016 and 2017, upon the other hand, the same only highlights the patent infirmity of the assessment.

A scrutiny of the AFS[2] discloses that the figures being referred to by petitioner as respondent's gross receipts or sales actually pertain to respondent's *"Sale of Ore"* for the years 2014 and 2015, which amounts are referred to in the Notes to AFS as respondent's *"Revenue"* from Queensland Nickel Pty. Limited and from Chinese

[1] G.R. No. L-27782, July 31, 1970.
[2] Attached as Annexes "A" and "B" of the Motion for Reconsideration.

customers. Suffice it to say that in *Ericsson Telecommunications, Inc. vs. City of Pasig,*[3] the Supreme Court upheld the cancellation of assessment based on gross revenue and not on gross receipts of the taxpayer, *viz:*

> "*Gross receipts* include money or its equivalent actually or constructively received in consideration of services rendered or articles sold, exchanged or leased, whether actual or constructive.
>
> xxx xxx xxx
>
> In contrast, *gross revenue* covers money or its equivalent actually or constructively received, including the value of services rendered or articles sold, exchanged or leased, the payment of which is yet to be received.
>
> xxx xxx xxx
>
> The imposition of local business tax based on petitioner's gross revenue will inevitably result in the constitutionally proscribed double taxation – taxing of the same person twice by the same jurisdiction for the same thing – inasmuch as petitioner's revenue or income for a taxable year will definitely include its gross receipts already reported during the previous year and for which local business tax has already been paid.
>
> **Thus, respondent committed a palpable error when it assessed petitioner's local business tax based on its gross revenue as reported in its audited financial statements**, as Section 143 of the Local Government Code and Section 22(e) of the Pasig Revenue Code clearly provide that the tax should be computed based on *gross receipts*." *(Boldfacing supplied)*

The fact that there is a discrepancy *first*, between the AFS and the gross value of shipment provided by MGB, and *second*, between the unaudited gross sales/receipts and the gross value of shipment, only shows that the MGB figures upon which the assessments were based, could not *ipso facto* be used as tax bases for assessing respondent with local business tax.

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[3] G.R. No. 176667, November 22, 2007.

Simply put, petitioner's assessment of local business tax is not in accordance with the mandate of the law that it should be based on gross receipts. The assessment is not based on fact, *i.e., actual gross receipts of respondent*, which is a requirement in order that an assessment would stand judicial scrutiny.[4]

To reiterate, as the Notice of Assessment issued against respondent for 2015 and 2016 was not based on its 2014 and 2015 gross receipts, the same is void *ab initio*. The Notice of Assessment could not be a valid source of obligation to pay deficiency local business taxes for the years 2015 and 2016 on the part of respondent. Being a void assessment, the Notice of Assessment bears no fruit[5] and should be slain at sight.

All told, the Court finds no justifiable reason to disturb much more to reverse the assailed Amended Decision.

WHEREFORE, petitioner's **Motion for Reconsideration** filed on June 3, 2019 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

(I reiterate my Dissenting Opinion)
ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[4] Commissioner of Internal Revenue vs. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005.
[5] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.