REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
Petitioner,

- versus -

CITY OF BALANGA and AMADO P. JIMENEZ, in his capacity as OIC-City Treasurer of the City of Balanga,
Respondents.

C.T.A. AC NO. 27

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

MAY 08 2008 - 9:00 am

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DECISION

CASANOVA, *J.*:

The Case

Before the Court is an appeal filed by herein petitioner praying for the reversal of the Order dated August 11, 2006 dismissing the Petition for Review for lack of jurisdiction; and the Order dated December 6, 2006 denying the Motion for Reconsideration which the Regional Trial Court, Branch 57 of Makati issued in *Philippine Long Distance Telephone Company, Inc. vs. City of Balanga & Amado P. Jimenez, In His Capacity As OIC-City Treasurer of the City of Balanga*, docketed as Civil Case No. 06-177. Petitioner further prays for a judgment declaring it as not subject to business tax; ordering respondents to withdraw and cancel the assessment for business and franchise taxes issued against it; ordering respondents to amend the official receipts issued to reflect petitioner's payment of franchise tax instead of business tax; and, lastly, ordering respondents to cease and desist from imposing on petitioner both business and franchise taxes on the same gross receipts realized within the same territorial jurisdiction within the same taxable period.

The Facts

This case arose from respondent City of Balanga, represented by Amado P. Jimenez as OIC-City Treasurer, letter dated June 22, 2005 asking petitioner to pay the franchise/business tax due to the City Government of Balanga. Respondent City Treasurer also requested petitioner to pay the City of Balanga the business/franchise tax due from its gross sales or receipts in the Province of Bataan.[1]

After petitioner received the said letter, an exchange of correspondence ensued between the parties.

In its letters to respondent City Treasurer, petitioner expressed its view that only the Province of Bataan may impose franchise tax on its gross receipts within the Province of Bataan "except those pertaining to any city located within the Province such as the City of Balanga[;]" and that the City of Balanga may not impose franchise tax on its gross receipts earned outside the City of Balanga. Petitioner, however, recognized the power of the City of

[1] Annex A; docket, p. 42.

Balanga to impose franchise tax within its territorial jurisdiction and paid the franchise tax in the amount of P181,986.75 for the year 2004 to the City of Balanga. As for the year 2005, petitioner pointed out that it already paid the franchise tax in the amount of P176,527.15 when it applied for a mayor's permit that same year. Petitioner also requested that the assessment for franchise tax for the year 2005 be withdrawn and cancelled.[2]

On the other hand, respondent City Treasurer maintained the view that petitioner was liable to pay the franchise tax due from its gross sales or receipts earned in the City of Balanga and from its gross sales or receipts earned outside the City of Balanga but within the Province of Bataan.[3] He also requested petitioner to pay the franchise tax due from the gross receipts it earned from the City of Balanga in the year 2005.

On January 27, 2006, respondent City Treasurer wrote petitioner reiterating that the latter was subject to both business and franchise taxes, and the assessment in the amount of P176,527.15 representing the franchise tax due for year 2005 shall not be withdrawn and cancelled.[4]

Thus, on March 3, 2006, petitioner filed with the Regional Trial Court, Branch 57 of Makati City an appeal from the denial of its request for the withdrawal and cancellation of the assessment of franchise tax for the year 2005.[5]

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[2] Annexes B, E, F, H & I; *ibid.*, pp. 49-53, 57-59, 60, 62-63, & 64-68.
[3] Annexes C & G; *ibid.*, pp. 54-55, & 61.
[4] Annex J; *ibid.*, 69.
[5] Annex K; *ibid.*, pp. 70-92.

Subsequently, the respondents filed a Motion to Dismiss dated May 10, 2006 on the grounds that the Regional Trial Court of Makati (Branch 57) has no jurisdiction over the appeal; and the petition was fatally defective as the official who signed the certification of non-forum shopping was not among those mentioned in the petitioner's Resolution No. 3-2002-06 who may represent the petitioner.[6]

On August 11, 2006, after petitioner filed its Opposition on June 5, 2006[7] and respondents their Reply dated June 23, 2006[8], the court *a quo* issued the assailed Order granting respondents' Motion to Dismiss. The pertinent portions of the said Order reads:

> "Verily, the instant Petition is an appeal from the decision issued by the respondent OIC-City Treasurer of Balanga denying the protest filed by petitioner containing the assessment issued by respondent for the alleged local business taxes for the year 2005 xxx pursuant to Section 195 of the Local Government Code of 1991.
>
> Under Section 195 of the Local Government Code of 1991, it is provided that '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.'
>
> As correctly pointed out by the respondents, OIC-City of Balanga Treasurer's decision is the subject of protest in this case and the one sought to be reviewed, and the objective of petitioner is to prevent and restrain respondent official of the City of Balanga and respondent City of Balanga itself from collecting the said business tax within the territory of the City of Balanga. The situs of the assailed business tax was imposed on income earned in Balanga City. Clearly, this is a review of the decision of the OIC-City Treasurer and not an original action filed, hence the respondent OIC-City Treasurer is acting as an

[6] Annex O; *ibid.*, pp. 127-131.
[7] Annex Q; *ibid.*, pp. 133-140.
[8] Annex R; *ibid.*, pp. 180-183.

administrative body or quasi-judicial body when it is imposed its business tax who acquired and has original jurisdiction over the issue. Since the instant petition is a review of an administrative decision, the Court opines that the petition should have been filed in the Regional Trial Court of the place where the officer who rendered the decision holds office (Salud vs. Executive Secretary L-25546, Ma[y] 22, 1969; Dizon vs. Bayona, 98 Phil. 442; Sarabia vs. Secretary, 104 Phil. 115, cited in Vol. 1-Remedial Law Compendium by Regalado, p. 106; see also Santos vs. Moreno, 21 SCRA 1141; Salud vs. Executive Secretary, 28 SCRA 281). Hence, the instant petition must be dismissed for lack of jurisdiction considering that this Makati court is not the court of competent jurisdiction as mentioned in Section 195 of the Local Government C ode.

Besides, the instant Petition is fatally defective. The Secretary's Certificate which embodies petitioner's Resolution No. 3-2002-06 specifies the officer's who are authorized to be the attorney-in-fact of petitioner to institute the instant petition. A perusal of the instant Petition reveals, however, that the certification against forum-shopping was signed and executed by Florentino D. Mabasa, Jr., petitioner's First Vice President for Legal Center who is not among those officials authorized to represent petitioner.

WHEREFORE, the afore-stated motion is hereby GRANTED and let the instant appeal be, as it is hereby DISMISSED as the RTC-Makati City not being a court of competent jurisdiction to review the instant appeal.

SO ORDERED."[9]

On December 6, 2006, acting on petitioner's Motion for Reconsideration filed on October 10, 2006,[10] respondents Comment/Opposition thereto dated November 29, 2006,[11] and petitioner's Reply filed on November 28, 2006,[12] the Court issued the second assailed Order denying petitioner's Motion for lack of merit.[13]

[9] Annex S; *ibid.*, pp. 184-185.
[10] Annex T; *ibid.*, pp. 186-200.
[11] Annex V; *ibid.*, pp. 238.
[12] Annex W; *ibid.*, pp. 233-237.
[13] Annex X; *ibid.*, p. 231-232.

Hence, petitioner filed this Petition on January 19, 2007.[14]

This case was deemed submitted for decision after respondents failed to file both their Comment/Objection to the Petition, and Memorandum; and after petitioner filed its Memorandum on June 15, 2007.[15]

The Issues

Petitioner submits the following issues for this Court's resolution:

> "(a) Whether or not the Regional Trial Court of Makati City, Branch 57, has jurisdiction on the case filed by petitioner pursuant to the provisions of the LGC of 1991.
>
> (b) Whether or not rule for personal actions is applicable in the case filed before the Regional Trial Court of Makati City, the principal place of business of petitioner[.]
>
> (c) Whether or not Atty. Florentino D. Mabasa is authorized to sign for and in behalf of the petitioner in the verification[.]
>
> (d) 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.
>
> (e) Whether or not respondent should amend the official receipt issued to petitioner to reflect the payment of franchise tax instead of business tax."

This Court's Ruling

The core issue is whether the Regional Trial Court, Branch 57 of Makati is the court with competent jurisdiction to decide petitioner's appeal?

This Court rules in the negative.

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[14] *Ibid.*, pp. 3-41.
[15] See Resolutions dated May 7, 2007 and September 3, 2007; *ibid.*, pp. 272 & 376.

Section 195 of the Local Government Code of 1991[16] gives a taxpayer a remedy after the protest to the assessment is denied. It reads:

> "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; 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 (60) day period prescribed herein within which to appeal with the ***court of competent jurisdiction*** otherwise the assessment becomes conclusive and unappealable." [Emphasis supplied.]

Based from the above-quoted section, the question now is what court has competent jurisdiction to decide petitioner's appeal?

The question of jurisdiction of a court must be resolved on the basis of the law or statute providing for or defining its jurisdiction.[17] Thus, Section 18 of B.P. 129,[18] as amended by R.A. 7691,[19] provides:

> "SEC. 18. Authority to define territory appurtenant to each branch. — The Supreme Court shall define the territory over which a branch of the Regional Trial Court shall exercise its authority. **The territory thus defined shall be deemed to be the territorial area of the branch concerned for purposes of determining the venue of all suits, proceedings or actions, whether civil or criminal**, as well

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[16] Republic Act 7160 .

[17] *Renato Cudia vs. The Court of Appeals, The Hon. Carlos D. Rustia, In His Capacity As Presiding Judge of The Regional Trial Court Branch LVI, Angeles City* (G.R. No. 110315. January 16, 1998).

[18] "The Judiciary Reorganization Act of 1980."

[19] "An Act Expanding The Jurisdiction of The Metropolitan Trial Courts, Municipal Trial Courts, And Municipal Circuit Trial Courts, Amending For The Purpose Batas Pambansa, Blg. 129, Otherwise Known As The 'Judiciary Reorganization Act Of 1980.'"

> as determining the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts over which the said branch may exercise appellate jurisdiction. The power herein granted shall be exercised with a view to making the courts readily accessible to the people of the different parts of the region and making the attendance of litigants and witnesses as inexpensive as possible." [Emphasis supplied.]

In the Supervisory Circular No. 14,[20] the Supreme Court clarified the procedure to be followed in determining venue of actions before the regional trial courts. We quote:

> "C. PROCEDURE IN THE REGIONAL TRIAL COURTS
>
> xxx xxx xxx
>
> 13. Venue of actions. — The venue of all actions whether civil or criminal, and in special proceedings, filed in the regional trial courts shall mean such area defined by the Supreme Court as the territory over which a particular branch shall exercise its authority in accordance with Section 18 of B.P. Blg. 129.
>
> All provisions of the Rules of Court referring to 'provides' shall be deemed to mean such area."

Pursuant to the above quoted portions of B.P. 129 and Supreme Court Supervisory Circular No. 14, the territorial jurisdiction of all Regional Trial Courts determine the venue of actions. Hence, petitioner should have filed its appeal to the Regional Trial Court in the Third Judicial Region, not in the National Capital Judicial Region.[21]

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[20] "Resolution of The Court En Banc, Dated January 11, 1983 Providing For The Interim or Transitional Rules And Guidelines Relative To The Implementation of The Judiciary Reorganization Act of 1980 (B.P. Blg. 129)."
[21] See Section 13 of B.P. Blg. 129, as amended.

Besides, in its petition filed before the lower court, petitioner prayed as follows:

> "WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court that judgment be rendered in favor of Petitioner as follows:
>
> 1. Declare Petitioner not subject to business tax, being a franchise holder and not being engaged in a business which is subject to the business tax;
>
> 2. Order Respondents to withdraw and cancel the assessment issued to Petitioner for business tax in addition to the franchise tax already paid in the total amount of One Hundred Seventy Six Thousand Five Hundred Twenty Seven and 15/100 (₱176,527.15);
>
> 3. Order Respondents to amend the official receipts issued to Petitioner to reflect the payment of franchise tax instead of business tax; and
>
> 4. Order Respondents to henceforth cease and desist from imposing both a business and franchise tax on the same gross receipts realized within the same territorial jurisdiction.
>
> Petitioner likewise prays for other relief's which this Honorable Court may deem just and equitable under the circumstances."[22]

The well-established rule is that the allegations in the complaint and the character of the relief sought determine the nature of an action.[23] Petitioner was not only seeking for a review of the denial by respondent City Treasurer of petitioner's protest but petitioner was also asking the trial court to order respondents from performing specific acts like the cancellation of the assessment and amendment of official receipts; and, at the same time, to

[22] Docket, pp. 88-89.
[23] *Dr. Pablo R. Olivares, et al. vs. Mayor Joey Marquez, et al.*, G.R. No. 155591, September 22, 2004.

enjoin the respondents from imposing franchise and business taxes against petitioner.

The facts from which the various issues arose, originated in the Province of Bataan. As in criminal cases, crimes committed in Bataan must be tried in Bataan, unless for good reason it is moved by the Supreme Court to other Courts outside Bataan. Hence, as it cannot exercise its jurisdiction over respondents where the latter are not stationed within its territory, the court *a quo* is correct in dismissing the petition.[24]

The resolution of the other issues raised by the petitioner is now rendered moot.

WHEREFORE, this Court hereby **DENIES** the Petition for lack of merit. The Orders dated August 11, 2006 and December 6, 2006 are hereby **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

[24] *Palanan Lumber & Plywood Co., Inc., The Executive Secretary, The Secretary of Agriculture & Natural Resources, The Director of Forestry, and The District Forester of Isabela vs. The Hon. Manuel Arranz, As Judge of The Court of First Instance of Isabela, and Palanan Logging Enterprises, Inc.*, G.R. No. L-27106. March 20, 1968.

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice