REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

THE CITY TREASURER OF MAKATI and the CHIEF OF THE LICENSE DIVISION OF THE CITY OF MAKATI, *Petitioner,*	**CTA AC NO. 284**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
FUJIFILM BUSINESS INNOVATION PHILIPPINES CORP. [Formerly: FUJI XEROX PHILIPPINES, INC. (FXPI)], *Respondent.*	Promulgated: SEP 19 2024 4:15 p.m.

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DECISION

RINGPIS-LIBAN, J.:

This is a *Petition for Review (of the Decision dated 02 June 2021 and Order dated 20 January 2023)* filed by petitioners, assailing the Decision dated June 2, 2021[1] and Order dated January 20, 2023,[2] both issued by the Regional Trial Court of Makati City (RTC) – Branch 58, in Civil Case No. 17-01547, entitled *"Fuji Xerox Philippines, Inc., Plaintiff-Appellant, versus The City Treasurer of Makati and the Chief of the License Division of the City of Makati, Defendant-Appellees."* The dispositive portions of the said Decision and Order respectively read as follows:

<u>**Decision dated June 2, 2021**</u>:

> "**WHEREFORE,** premises considered, the Court, **RENDERS** Decision in favor of plaintiff-appellant Fuji Xerox Philippines, Inc., and **ORDERS** as follows:
>
> 1. **DECLARES** the assessment made by defendants-appellees City Treasurer Of Makati and The Chief Of The License Division Of The City Makati to plaintiff-appellant Fuji Xerox

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[1] Docket, pp. 21 to 44.
[2] Docket, p. 20.

Philippines, Inc., for the year 2016, **ERRONEOUS AND ILLEGAL;**

2. **CANCELS IN FULL** the Order of Payment issued against plaintiff-appellant Fuji Xerox Philippines, Inc., dated March 24, 2017;

3. Defendants-appellees City Treasurer Of Makati and The Chief Of The License Division Of The City Makati **TO REVISE** and **RE-COMPUTE** the assessment for retirement of plaintiff-appellant Fuji Xerox Philippines, Inc., pursuant to section 145 of R.A. 7610, otherwise known as An Act Providing For A Local Government Code of 1991;

4. Defendants-appellees City Treasurer Of Makati and The Chief Of The License Division Of The City Makati **TO CREDIT** the tender of payment dated November 15, 2018 in the amount of P931,746.96 of plaintiff-appellant Fuji Xerox Philippines, Inc.;

5. Defendants-appellees City Treasurer Of Makati and The Chief Of The License Division Of The City Makati **TO CEASE** and **DESIST** from issuing further notice of assessment for the payment of 2017 business tax based on the 2016 gross receipts to plaintiff-appellant Fuji Xerox Philippines, Inc.; and

6. Defendants-appellees City Treasurer Of Makati and The Chief Of The License Division Of The City Makati **TO PAY** the costs of suit.

SO ORDERED."

Order dated January 20, 2023:

"**WHEREFORE,** premises considered, the Court **DENIES** defendants-appellees' Motion for Reconsideration of the Decision rendered by the Court on June 2, 2021 for lack of merit.

SO ORDERED."

THE PARTIES

Petitioners The City Treasurer of Makati and Chief of the License Division of the City of Makati are represented by the Office of the City Attorney of Makati. They may be served with notices, orders, and other processes of the Court at the 18th Floor, Makati Law Department, New Makati City Hall, F. Zobel St., Makati City.[3]

[3] Par. 5, *Petition for Review (of the Decision dated 02 June 2021 and Order dated 20 January 2023)*, Docket, p. 6.

Respondent Fujifilm Business Innovation Philippines Corp. [Formerly: Fuji Xerox Philippines, Inc (FSXPI)][4] is a corporation duly organized and existing under the laws of the Philippines with principal place of business at 25/F, SM Aura Tower, 26th St. corner Mckinley Parkway, Taguig City. It may be served with notices, orders, and other court processes through its counsel, Añover Añover San Diego & Primavera Law Offices, Unit 1003, 10th Floor, Park Trade Centre, 1716 Investment Drive, Madrigal Business Park, Muntinlupa City, Metro Manila.[5]

Respondent is primarily engaged in the general merchandising business, import, export, purchase, sell, lease or otherwise deal in, by wholesale, goods, wares, merchandises, articles, commodities and/or products of all kinds, descriptions, and classes which are within the lawful objects of commerce, business machines and/or office equipment and their accessories, parts and/or supplies, and to act as manufacturer, agents or representatives, commission merchants, commercial brokers, factors, agents, upon consignment, indent orders or in any other representative capacity, for natural and/or juridical entities, whether domestic or foreign, and in furtherance thereof, to acquire and/or obtain from any governmental authority, national or municipal, local or otherwise, or from any company, person or corporation, such charters, franchises, rights, privileges, licenses and/or concessions which may be conducive to the attainment of the objectives of the corporation.[6]

THE FACTS

For the year 2016, respondent paid its local business taxes (LBTs) to Makati City in the aggregate amount of ₱6,544,743.88[7] based on its gross receipts for the year 2015, as shown in the official receipts and billings statements for the year 2016,[8] as follows:

Quarter (2016)	Billing Date	Date of Payment	Official Receipt Nos.	Amount
1st Quarter	January 11 2016[9]	January 19, 2016	MKTCF 2858186[10]	₱1,672,380.97
2nd Quarter	March 3, 2016[11]	April 13, 2016	MKTCF 2927677[12]	₱1,624,120.97
3rd Quarter	June 6, 2016[13]	July 15, 2016	MKTCF 3042660[14]	₱1,624,120.97
4th Quarter	August 2, 2016[15]	October 17, 2016	MKTCF 3079136[16]	₱1,624,120.97
			Total	**₱6,544,743.88**

[4] Docket, pp. 92 to 95.
[5] Par. 6, *Petition for Review (of the Decision dated 02 June 2021 and Order dated 20 January 2023)*, Docket, p. 6; and Annex "A", RTC Docket (Civil Case No. 17-01547) – Vol. 1, p. 21.
[6] Annex "A", RTC Docket (Civil Case No. 17-01547) – Vol. 1, pp. 17 to 18.
[7] Based on computation of all the official receipts but the amount stated in the RTC Decision dated June 2, 2021 is ₱6,496,483.88, Docket, p. 22.
[8] RTC Decision dated June 2, 2021, Docket, p. 22.
[9] Exhibits "B-1" and "B-2", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 157 to 158.
[10] Exhibit "B", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 156.
[11] Exhibit "B-4", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 160.
[12] Exhibit "B-3". RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 159.
[13] Exhibit "B-6", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 162.
[14] Exhibit "B-5". RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 161.
[15] Exhibit "B-8", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 164.
[16] Exhibit "B-7", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 163.

On December 7, 2016, respondent filed an *Application for Retirement of Business* dated December 2, 2016 before the Business Tax Division of Makati City effective December 31, 2016.[17]

Thereafter, petitioner OIC-City Treasurer of Makati, Jesusa E. Cuneta, issued the *Order of Payment* dated March 24, 2017 (relative to respondent's Retirement),[18] requiring respondent to pay LBT in the aggregate amount of ₱7,428,230.84, for the year 2017.

On March 28, 2017, respondent filed its letter dated March 27, 2017 (Subject: *Protest Letter on Retirement of Business Assessment*)[19] before the City Treasurer of Makati, alleging that the amount of tax should only be ₱931,746.96, per computation on the difference of 2016 gross revenue pursuant to Section 145 of the Local Government Code (LGC).

Subsequently, on April 12, 2017,[20] respondent received the letter dated April 5, 2017 issued by OIC-City Treasurer of Makati, Ms. Jesusa E. Cuneta,[21] denying, in effect, the protest of respondent, and requiring the latter to pay the taxes due on the gross sales/receipts for the whole year 2016, plus whatever penalties may be assessed thereon.

On May 2, 2017, respondent sent the letter dated April 27, 2017 to the Office of the Makati City Treasurer,[22] requesting the revision and re-computation of the retirement assessment pursuant to and in accordance with Section 145 of the LGC. On May 10, 2017, respondent received the letter dated May 4, 2017 issued by Office of the City Treasurer of Makati,[23] denying its request for revision and re-computation of the assessment.

On May 12, 2017, respondent filed an *Appeal* with the RTC,[24] docketed as Civil Case No. 17-01547, praying that after trial, judgment be rendered its favor and to: (1) declare the assessment made by petitioners dated March 24, 2017 erroneous and illegal; (2) order the cancellation in full of the *Order Payment* dated March 24, 2017 issued against respondent; (3) order petitioners (as defendants-appellees) to revise and re-compute the assessment for retirement pursuant to and in accordance with Section 145 of the LGC; (4) order them to cease and desist from issuing further notices of assessment for the payment of

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[17] Exhibits "J" and "K", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 32 to 33; and par. 1, Facts Established by the Parties' Evidence, Amended Terms of Reference, RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 183.
[18] Exhibit "C", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 165.
[19] Exhibit "D", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 15 to 16.
[20] Par. 12, respondent's *Comment/Opposition (on/to Petition for Review dated 27 February 2023)*; and RTC Decision dated June 2, 2021, Docket, p. 72 and 22, respectively.
[21] Exhibit "E", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 17.
[22] Exhibit "F", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 18 to 27.
[23] Exhibit "M", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 35.
[24] RTC Docket (Civil Case No. 17-01547) – Vol. 1, pp. 1 to 16.

2017 business tax based on the 2016 gross receipts; and (5) order the petitioner to pay attorney's fees and costs of suit. The case was raffled to RTC – Branch 58 on May 12, 2017.

Petitioners then filed their *Answer with Affirmative Defenses* on July 6, 2017,[25] interposing, by way of affirmative and/or special defenses, that in order for the protest to be valid, taxpayer should have first paid the tax assessment pursuant to Chapter VII, Article B, Section 7B.14 (c) of Makati City Ordinance No. 2004-A-025; that respondent had made no payment as to the tax assessment for Retirement of Business (Order of Payment) dated March 24, 2017 in the amount of ₱7,428,230.84; that the appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein; that respondent has continued its business operations until the end of March 2017; and that respondent is still liable for the assessment as early as January 2017 in which it under the Makati Revenue Code was obliged and should have at least renewed its business permit for 2017 as it still have operations until the end of March 2017.

On January 17, 2018, respondent filed its *Manifestation with Motion to Accept Tender of Payment*,[26] praying that it be allowed to tender payment of the amount of ₱931,746.96 to the Court *a quo,* and that petitioners be notified of the tender and be compelled to receive and issue receipt for the said payment.

On January 18, 2018, for failure of parties to arrive at any settlement, the Judicial Dispute Resolution (JDR) was terminated and the parties were directed to submit their respective Terms of Reference attaching their Judicial Affidavits.[27]

In the Omnibus Order dated September 5, 2018,[28] the Court *a quo*, granted respondent's *Motion to Accept Tender of Payment* and accordingly, allowed to tender Manager's Check in the amount of ₱931,746.96 directly with the Office of the City Treasurer of Makati.

The Court *a quo* issued the *Terms of Reference*,[29] and *Amended Terms of Reference*,[30] on January 23, 2019, and October 7, 2020, respectively.

Trial then ensued.

On June 2, 2021, the Court *a quo* promulgated the assailed Decision,[31] which declared, among others, petitioners' assessment erroneous and illegal and

[25] RTC Docket (Civil Case No. 17-01547) – Vol. 1, pp. 65 to 70.
[26] RTC Docket (Civil Case No. 17-01547) – Vol. 1, pp. 109 to 113.
[27] Order dated January 18, 2018, RTC Docket (Civil Case No. 17-01547) – Vol. 1, p. 119.
[28] RTC Docket (Civil Case No. 17-01547) – Vol. 1, pp. 302 to 304.
[29] RTC Docket (Civil Case No. 17-01547) – Vol. 1, pp. 328 to 334.
[30] RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 182 to 189.
[31] RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 286 to 309.

cancelled the *Order of Payment* issued dated March 24, 2017, as well as decreed to credit the tender of payment dated November 15, 2018 in the amount of ₱931,746.96 of respondent.

On November 7, 2022, petitioners filed their *Motion for Reconsideration*,[32] to which respondent filed its *Comment/Opposition* on November 15, 2022.[33]

The Court *a quo* issued the assailed Order dated January 20, 2023,[34] denying petitioners' *Motion for Reconsideration.*

Petitioners filed the present *Petition for Review (of the Decision dated 02 June 2021 and Order dated 20 January 2023)* on February 27, 2023.[35]

In the Resolution dated March 30, 2023,[36] the Court gave petitioners a period of ten (10) days from notice to submit an Amended Verification and Certification of Non-Forum Shopping and the original or certified true copy of the City Resolution, showing authority of petitioners and/or their representatives to file the instant petition and to sign the same and the Verification and Certification of Non-Forum Shopping. On April 28, 2023, petitioners filed their *Compliance*,[37] which was noted by the Court in the Minute Resolution dated May 11, 2023.[38]

On September 13, 2023, the RTC – Branch 58 transmitted to the Court its entire records, consisting of Volume 1 with 381 pages, and Volume 2 with 410 pages.[39]

Respondent then filed its *Comment/Opposition (on/to Petitioner's Petition for Review dated 27 February 2023)* on September 25, 2023.[40]

On September 29, 2023, respondent posted its *Manifestation with Motion*,[41] stating that its corporate name has already been amended, and moving that its designation for the case be changed to "FUJIFILM BUSINESS INNOVATION PHILIPPINES CORP." In the Resolution dated October 31, 2023,[42] the Court: (1) noted and granted the said *Manifestation with Motion*, and accordingly changed the title of this case; and (2) and submitted the same for decision.

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[32] RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 346 to 353.
[33] RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 358 to 368.
[34] RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 371.
[35] Docket, pp. 5 to 17.
[36] Docket, pp. 46 to 47.
[37] Docket, pp. 48 to 57.
[38] Docket, p. to 59.
[39] Docket, pp. to 65 to 68.
[40] Docket, pp. 70 to 89.
[41] Docket, pp. 92 to 95.
[42] Docket, pp. to 98 to 100.

ISSUES

Petitioners submit the following issues for this Court's resolution, to wit:

"1. Whether or not Respondent FSXPI is entitled to a refund of the Local Business Taxes.

2. Whether or not Respondent's failure to comply with Section 7B.14 (b) and (c) of the Revised Makati Revenue Code is fatal to their case."[43]

Petitioners' arguments:

Petitioners argue that the case of *Mobil Philippines, Inc. vs. The City Treasurer of Makati* (or the "*Mobil* case") is not on all fours with the current case; that respondent did not have a business permit for the year 2017; that respondent did not pay the taxes due; that they did not even pay under protest, as required by the Makati Revenue Code; that respondent's application for retirement of business was not yet approved.

Respondent's counter-arguments:

Respondent contends that the *Mobil* case is applicable; that payment under protest is not required in questioning the improper assessment of LBTs; that respondent did not conduct any business operations within Makati City in the year 2017; that a retiring business is liable to pay LBTs only when the tax due on the gross sales or receipts at the time of the retirement is more than the LBTs paid for the current year.

THE COURT'S RULING

The present *Petition for Review* is without merit.

Petitioners raised as one of issues in the *Petition for Review*, "whether respondent is entitled to a refund of the LBT." The Court finds no basis to resolve the said issue. Petitioners made no allegations or arguments to support the same. In the *Nature of the Petition* and *Prayer,* petitioners only sought to set aside the Decision dated June 2, 2012 and Order dated January 20, 2023, both issued by RTC – Branch 58, and prayed for the issuance of new Order denying the protest of assessment.

[43] Statement of Issues, *Petition for Review (of the Decision dated 02 June 2021 and Order dated 20 January 2023),* Docket, p. 9.

While pursuant to Omnibus Order dated September 5, 2018 respondent tendered payment to petitioner City Treasurer in the amount of ₱931,746.96, allegedly representing the difference of 2016 gross revenue, in accordance with Section 145 of LGC, the said payment or the refund of the same amount was not even raised, alleged, and/or proved by either party before the Court *a quo* or even before this Court. *Apropos*, issues that were not alleged or proved before the lower court cannot be decided for the first time on appeal. This rule ensures fairness in proceedings.[44]

Based on the records, the issue involves in this case is the validity of petitioners' assessment as shown in the *Order of Payment* dated March 24, 2017, and the resolution of which entails the determination as to when the retirement of business became effective.

The non-payment of the assessed tax does not render the protest invalid.

According to petitioners, the protest, in order to be valid should have been accompanied by payment of the tax assessed, pursuant to Section 7B.14(c) of the Revised Makati Revenue Code (RMRC), to wit:

> "SECTION 7B.14. *Taxpayer's Remedies.* –
>
> xxx xxx xxx
>
> (c) *Payment under Protest.* – No protest, however, shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipt the words 'paid under protest'. A copy of the tax receipt shall be attached to the written protest contesting the assessment."

The above-cited provision was supposedly based on the Local Government Code (LGC) of 1991. We note that Section 7B.14(c) of the RMRC (or Makati Ordinance No. 025-A-04, also known as *"AN ORDINANCE ADOPTING THE REVISED MAKATI REVENUE CODE"*) is in conflict, or at least, not consistent, with Section 195 of the LGC of 1991

Section 195 of the LGC provides as follows:

> "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

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[44] *Chinatrust (Phils.) Commercial Bank vs. Turner*, G.R. No. 191458, July 3, 2017.

> 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."

In *City of Manila and Office of the Treasurer of Manila vs. Cosmos Bottling Corporation* ("*Cosmos Bottling* case"),[45] the Supreme Court interpreted the aforementioned Section 195 of the LGC, to wit:

> "Clearly, when a taxpayer is assessed a deficiency local tax, fee or charge, he may protest it under Section 195 even without making payment of such assessed tax, fee or charge. **This is because the law on local government taxation, save in the case of real property tax,[46] does not expressly require *'payment under protest'* as a procedure prior to instituting the appropriate proceeding in court. <u>This implies that the success of a judicial action questioning the validity or correctness of the assessment is not necessarily hinged on the previous payment of the tax under protest</u>.**
>
> Needless to say, there is nothing to prevent the taxpayer from paying the tax under protest or simultaneous to a protest. There are compelling reasons why a taxpayer would refer to pay while maintaining a protest against the assessment. For instance, a taxpayer who is engaged in business would be hard-pressed to secure a business permit unless he pays an assessment for business tax and/or regulatory fees. Also, **a taxpayer <u>may</u> pay the assessment in order to avoid further penalties, or save his properties from levy and distraint proceedings.**
>
> xxx xxx xxx
>
> **Where an assessment is to be protested or disputed,** <u>**the taxpayer may proceed *(a)* without payment, or *(b)* with payment[47] of the assessed tax**</u>, fee or charge. **<u>Whether there is payment of the assessed tax or not</u>, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and**

[45] G.R. No. 196681, June 27, 2018.
[46] Refer to Section 252 of the LGC of 1991.
[47] Whether payment was made before, on, or after the date of filing the formal protest.

conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer, **otherwise, the assessment becomes conclusive and unappealable.**

> (a) **<u>Where no payment is made</u>, the taxpayer's procedural remedy is governed strictly by Section 195.** That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment.
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> (b) **<u>Where payment was made</u>, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (Section 195, LGC) and at the same time seeking a refund of the taxes.** In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer." *(Emphases and underscoring added)*

Consistent with the foregoing case, in *International Container Terminal Services, Inc. vs. The City of Manila, et al.* ("*International Container* case"),[48] the Supreme Court held as follows:

> "**<u>If the taxpayer receives an assessment and does not pay the tax</u>, its remedy is strictly confined to Section 195 of the Local Government Code.** Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal.
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> **If <u>the taxpayer opts to pay the assessed tax</u>, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer.** In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. 'Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.'" *(Emphases and underscoring added)*

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[48] G.R. No. 185622, October 17, 2018.

Based on the aforestated law and cases, it is clear that the taxpayer is not required to pay the assessed tax before it can validly file its protest. There is, however, no prohibition if the taxpayer opts to pay before protest. Thus, Section 7B.14(c) of the RMRC must be disregarded. Correspondingly, respondent's protest stands even without prior payment of LBT as stated in the *Order of Payment* dated March 24, 2017 issued by petitioner OIC-City Treasurer of Makati, Jesusa E. Cuneta.

Respondent did not conduct business operations in Makati for the year 2017.

There is no doubt that local government units have the power to impose LBTs on the privilege of doing business within their territorial jurisdictions. The term "doing business" contemplates some "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit."[49]

Section 150 (a) of the LGC of 1991 provides for the situs of LBTs, to wit:

> "Section 150. *Situs of the Tax.* -
>
> (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.**" (*Emphases added*)

From the foregoing provision, it is clear that for purposes of collection of LBTs under Section 143 of the LGC of 1991, 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.

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[49] *City of Davao, et al. vs. Arc Investors, Inc.*, G.R. No. 249668. July 13, 2022.

Accordingly, local business tax (LBT) is due in the city where the taxpayer's principal place is situated or where the trade or commercial activity is conducted.

For purposes of imposing LBT against respondent, it is crucial to determine whether it conducted business operations in its Makati office during the period of assessment.

In this case, petitioners claim that respondent is liable for LBT for year 2017 on the assumption that respondent conducted business operations until March 31, 2017. This conclusion was based on Contract of Lease between Makati Sky Plaza Inc. and respondent[50] and Addendum to Lease Contract[51] which extended the lease agreement or until March 31, 2017;[52] and respondent's letter dated November 24, 2016[53] addressed to OIC-City Treasurer, Ms. Jesusa E. Cuneta, which stated, among others, that respondent would need three (3) months or until March 31, 2017 to wind down its operations in the Makati office, and may still conduct business, as follows:

> "**Fuji Xerox Philippines, Inc.** which currently maintain its corporate and business office at the **18th Floor, 6788 Ayala Avenue, Makati City,** will transfer its operations, including its corporate and business offices to **25th Floor, SM Aura Tower, 26th Street corner Mckinley Parkway, Taguig City** effective **January 1, 2017.** However, it will need about three months from said date, or until March 31, 2017, to wind down its operations in its Makati office, during which time it may still be conducting business." (*Underscoring added*)

However, aside from above documents, petitioners did not present any other evidence to corroborate their claim that respondent actually conducted business until March 31, 2017. Notably, petitioners waived their rights to present evidence on their behalf during the trial before the Court *a quo.* [54]

On the contrary, the pieces of evidence presented by respondent show that its retirement of business in Makati office was deemed effective on December 31, 2016.

Records show that as early as March 22, 2016, respondent wrote a letter to Makati Sky Plaza, Inc., which was received by the latter's Property Manager, Mr. Rowel Calison on March 23, 2016,[55] informing the pre-termination of its lease contract set to expire on March 31, 2017 and requesting the waiver of

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[50] Exhibit "N", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 36 to 42.
[51] Effective date, Exhibit "(O)", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 43 to 44
[52] RTC Decision date June 2, 2021, Docket, p. 40 and as culled from Exhibits "AA", "P" and "CC", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 10, 45 and 198 to 199, respectively,
[53] Exhibit "I", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 31.
[54] Minutes of the hearing held on, and Order dated December 15, 2020, Docket (Civil Case No. 17-01547) – Vol. 2, pp. 239 to 240.
[55] Exhibit "P", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 45.

penalty to cut down its operation expenses and the commencement of its lease contract to Bonifacio Global City in December 2016. However, it was testified by Mr. Rowel Calison that Makati Sky Plaza, Inc. did not approve the pre-termination of lease. Nevertheless, respondent also started to make arrangements for the transfer of its office operations to Taguig and in fact, respondent no longer held office in Makati Sky Plaza after the Christmas of 2016.[56] The denial, however, was reasonably expected since Annex A of Contract of Lease between Makati Sky Plaza Inc. and respondent[57] does not allow pre-termination.

Also, although the letter dated November 24, 2016 addressed to OIC-City Treasurer, Jesusa E. Cuneta,[58] stated that respondent would need three (3) months or until March 31, 2017 to wind down its operations in the Makati office and may still conduct business, the same letter also provides that respondent will transfer its operations including its corporate and business offices to Taguig City **effective January 1, 2017**.

Note that after the said letter dated November 24, 2016, there was Special Meeting of the Board of Directors of respondent on November 25, 2016[59] that resolved to "*retire its business permit with the City of Makati because of the transfer of its principal office in Taguig City beginning January 1, 2017*" as evidenced by the Minutes of the Special Meeting of the Board of Directors of respondent[60] and Secretary Certificate, both dated November 25, 2016.[61]

Thereafter or on December 7, 2016, respondent filed an *Application for Retirement of Business* dated December 2, 2016 before the Business Tax Division of Makati City effective December 31, 2016.[62] In fact, the officers of the City Treasurer noted in page 10 of the Ledger File dated December 7, 2016, that respondent will transfer to Taguig on December 31, 2016.[63] After that, respondent again sent the letter dated December 12, 2016 addressed to OIC-City Treasurer, Jesusa E. Cuneta,[64] reiterating that it will transfer its operations, including its corporate and business offices to Taguig City effective January 1, 2017.

Respondent also presented Move-Out Certification dated May 17, 2017,[65] issued by the Makati Sky Plaza, Inc., through Property Manager Mr. Rowel Calison,[66] certifying that respondent "*left our premises last December 31,*

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[56] Exhibit "CC", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 199.
[57] Exhibit "N", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 42.
[58] Exhibit "I", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 31.
[59] Exhibit "G", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 28 to 29.
[60] Exhibit "G", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 28 to 29.
[61] Exhibit "H", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 30.
[62] Exhibit "J", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 32.
[63] Exhibit "K", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 33 and par. 3, Facts Established by the Parties' Evidence, Amended Terms of Reference, RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 183.
[64] Exhibit "L", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 34.
[65] Exhibit "Q", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 46.
[66] Exhibit "CC", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 198.

2016 and transferred to their new Head Office at 25th Floor SM Aura Tower 26th Street corner McKinley Parkway, Taguig City."

Mr. Rowel Calison further testified that respondent did not conduct business from the time it left Makati Sky Plaza, Inc., on December 31, 2016, and used the remaining period of lease to restore the unit before its turnover on March 31, 2017, to wit:

> "14. Q: In the Move-Out Certification, you certified that FXPI restored the leased units from 02 Jan 2017 to 31 March 2017 and was turned over as bare-shell on 01 April 2017. During this period, did FXPI conduct any business operations in the leased premises?
>
> A: No Ma'am. FXPI did not conduct any business operations in the leased premises after it left last 31 December 2016. As a matter of fact, all the computers, machines and equipment were already removed from the premises by then. Thus, it is impossible for them to conduct any business operations in the premises. They left office furniture such as tables and chairs that they did not intend to bring to their new office but as far as I know they already made arrangements with HMR for move-out and pickup of furniture at that time. FXPI employees non longer reported for work at their Makati Sky Plaza office. The period 02 January 2017 to 31 March 2017 was used only to restore the unit. In the Contract of Lease, the lessee is allowed to remove fixtures, equipment, construction and shelvings that it introduced during the lease period upon the expiration of the contract. Since FXPI had been our lessee for almost 14/15 years, and considering the size of the floor area of the leased premises – 628.66 sqm on the 18th floor and 1,218.45 sqm in the 19th floor, it took them some time to remove all the improvements they introduced therein. But their presence in the building during that period was just limited to that Ma'am and they did not conduct any business operations in the leased premises."[67]

In addition, respondent's claim of transfer to Taguig City as well as its commencement of business therein as of January 2017 was also proved by: (a) Contract of Lease dated December 1, 2016[68] between SM Prime Holdings, Inc. and respondent for the lease of former's premises located at the 25th floor for five (5) years from December 1, 2016 to November 30, 2021 unless sooner terminated or otherwise extended; (b) Certification dated June 5, 2017[69] issued by Property Manager – SM Aura Tower, Emilio M. Sagre, certifying that respondent has started its operation on January 3, 2017; and (c) Email exchanges dated December 8, 2016[70] between Mr. Mark de Leon (Globe) and

[67] Exhibit "CC", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 200.
[68] Exhibit "R", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 47 to 54.
[69] Exhibit "S", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 55.
[70] Exhibit "T", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 56 to 57.

Ms. Margarette Wynnona Babao (respondent) with subject "Globe Trunk Line for transfer to SM Aura Office".

Note that respondent was already issued Taguig Business Permit dated January 31, 2017.[71] In fact, Taguig City already assessed respondent's LBT for the year 2017 based on 2016 gross sales/revenue as evidenced by billing statements and official receipts.[72]

Basic is the rule that one who alleges a fact has the burden of proving it by means other than mere allegations.[73] Surely, allegations must be proven by sufficient evidence because mere allegation is definitely not evidence.[74] Petitioners did not present any evidence to prove their claims and to rebut the foregoing documents presented by respondent.

All the foregoing pieces of evidence lead to no other conclusion that respondent did not conduct any business in 2017 in Makati City, and that its retirement of business therein as deemed effective on December 31, 2016. Consequently, the *Order of Payment* dated March 24, 2017 issued OIC-City Treasurer of Makati, Jesusa E. Cuneta, assessing respondent for LBT in the amount of ₱7,428,230.84 for the year 2017 has no leg to stand on. Finding that respondent has not conducted business in Makati City in the year 2017, it becomes unnecessary to resolve or address the other arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review (of the Decision dated 02 June 2021 and Order dated 20 January 2023)* is **DENIED**. Accordingly, the assailed Decision dated June 2, 2021 and Order dated January 20, 2023, both issued by the Regional Trial Court of Makati City – Branch 58, in Civil Case No. 17-01547, are **AFFIRMED**.

SO ORDERED.

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[71] Exhibit "X", RTC Docket (Civil Case No. 17-01547) – Vol. 2, p. 170.
[72] Exhibits "Y", "Y-1", "Y-2", "Y-3", "Z", "Z-1", "Z-2" and "Z-3", RTC Docket (Civil Case No. 17-01547) – Vol. 2, pp. 171 to 178.
[73] *Municipality of San Mateo, Isabela, et al. vs. Smart Communications, Inc.*, G.R. No. 219506, June 23, 2021.
[74] *Real vs. Sangu Philippines, Inc., et al.*, G.R. No. 168757, January 19, 2011.

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice