REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

PROVINCE OF CAGAYAN and ELIZABETH H. DEL ROSARIO, in her capacity as the Provincial Treasurer of the Province of Cagayan,
Petitioners,

-versus-

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
Respondent.

C.T.A. AC NO. 63
(RTC Civil Case No. 07-077)

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

JAN 27 2011
ABFernando 4:18p.m.

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AMENDED DECISION

PALANCA-ENRIQUEZ, J.:

This resolves:

1.a) respondent Philippine Long Distance Telephone Company, Inc.'s ("PLDT") "Partial Motion for Reconsideration (For Respondent PLDT)" filed on October 4, 2010;

b) petitioners' "Comment/Opposition" filed on November 30, 2010;

2.a) petitioners' "Motion for Partial Reconsideration" filed on October 18, 2010; and

b) respondent PLDT's "Comment and Opposition (to Petitioners' Motion for Partial Reconsideration)" filed on November 12, 2010.

"Partial Motion for Reconsideration (For Respondent PLDT)"

Respondent PLDT's "Partial Motion for Reconsideration" is anchored on the following grounds:

1) The Court erred in partially granting petitioners' claim that payments made by PLDT for the years 1998 to 2004 are subject to surcharge and interest;

2) The Court erred in ruling that petitioners' assessment of surcharge and interest in its Computation of Franchise Tax Due issued to PLDT on July 8, 2004 is valid.

Petitioners, on the other hand, counter that respondent's reliance on the BLGF (Bureau of Local Government Finance) Opinion is misplaced since the BLGF is not an agency tasked to implement the tax law; and the assessment being questioned had already become final and executory for failure to contest and raise the issue of prescription within 60 days from notice.

As regards respondent's contention that it was a holder in good faith of the ruling issued by the BLGF stating that PLDT is exempt from franchise tax, we agree with petitioners that respondent's reliance on the BLGF Opinion is misplaced since BLGF is not an agency tasked to implement tax laws. As already discussed in our Decision dated September 15, 2010, the Supreme Court ruled that BLGF's interpretation of local tax laws is not authoritative and persuasive since the BLGF's function is merely to provide consultative services and technical assistance to local governments and the general public on taxation, real property assessment, and other related matters. Unlike the Commissioner of Internal Revenue who has been given the express power to interpret the Tax Code and other national tax laws, no such power is given to the BLGF. Respondent's reliance on BLGF's interpretation is, thus, misplaced.

As regards respondent's contention that the right of petitioners to assess respondent of taxes due for 1998, inclusive of surcharge and interest, has already prescribed, we find the same meritorious.

Section 194 of the LGC limits the period of assessment and collection of local taxes, fees, or charges to five years, as follows:

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

Since *Section 166 of the LGC* provides that all local taxes, fees, and charges shall accrue on the first (1^{st}) day of January of each year, and *Section 167 of the same Code* provides for the payment of all local taxes, fees, and charges, within the first twenty (20) days of January or of each subsequent quarter, as the case may be; then, the local taxes for the fourth quarter of 1998, which includes franchise tax, accrued on January 1, 1999, and became payable within the first twenty (20) days of January of the same year.

Records show that the assessment includes franchise fee for the fourth quarter of taxable year 1998. Pursuant to *Section 194 of the LGC,* in relation to *Sections 166 and 167,* the assessment for the fourth quarter of 1998 prescribed on January 1, 2004. Since the assessment was issued on July 8, 2004 only, the assessment for the fourth quarter of 1998 was issued beyond the prescriptive period. Thus, the imposition of surcharge and interest for the fourth quarter of 1998 in the amount of P59,797.16 is hereby deducted from respondent's liability for surcharge and interest in the amount of P1,806,369.14. Therefore, respondent PLDT is liable for surcharge and interest in the reduced amount of P1,746,571.98.

Accordingly, respondent PLDT is entitled to a refund or issuance of a tax credit certificate in the increased amount of P1,082,106.95 (P2,828,678.93-P1,746,571.98).

Petitioners' "Motion for Partial Reconsideration"

Petitioners' "Motion for Partial Reconsideration" is anchored on the lone ground:

> THE HONORABLE COURT ERRED IN ITS INTERPRETATION AND APPLICATION OF SECTION 137 OF THE LOCAL GOVERNMENT CODE AND ARTICLE 226(a) OF THE IMPLEMENTING RULES AND REGULATIONS OF THE LGC.

Petitioners contend that the peculiar nature of the telecommunications business of respondent and the fact that respondent's only business center where payments are paid in the whole Cagayan province is located in Tuguegarao City, calls for a different interpretation of *Section 226 of the IRR of the LGC*, particularly the phrase "realized within its territorial jurisdiction".

In its "Comment and Opposition (to Petitioners' Motion for Partial Reconsideration)", respondent counters that petitioners, who were declared in default in the lower court for failure to file an answer within the reglementary period, cannot now belatedly raise a new issue of what constitutes "gross receipts realized within the territorial jurisdiction" of the Province of Cagayan; the provisions of the LGC and its IRR are clear and unambiguous and require no interpretation; and petitioners' factual allegations that respondent's only business office is located in Tuguegarao City where payments were received for the whole province of Cagayan, while it operated in the Municipalities of Peñablanca, Iguig, Enrile and Solana, is erroneous and was belatedly raised.

We find no merit in petitioners' "Motion for Partial Reconsideration".

This issue has already been sufficiently passed upon in the Decision sought to be reconsidered. The provision of *Section 226 (a) of the IRR of the LGC* is clear and unequivocal that the tax on business enjoying a franchise that may be imposed by a province excludes the territorial limits of any city located in the province. Settled is the rule that Court may not construe a statute that is free from doubt *(Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), 462 SCRA 220)*. Where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application *(Cebu Portland Cement Co. vs. Municipality of Naga, Cebu, 24 SCRA 712)*. Thus, we have no choice but to see to it that its mandate is obeyed *(Luzon Surety Co., Inc. vs. De Garcia, 30 SCRA 116)*.

Moreover, the argument raised by petitioner that the phrase "realized within its territorial jurisdiction" calls for a different interpretation, was raised for the first time in this appeal. In a long line of cases, reiterated in the recent case of *Imani vs. Metropolitan Bank and Trust Company, G.R. No. 187023, November 17, 2010*, the Supreme Court ruled that "it is well settled that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by *estoppel*. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice, and due process." Hence, petitioners cannot raise for the first time on appeal the defense that the phrase "realized within its territorial jurisdiction" calls for a different interpretation.

WHEREFORE, premises considered:

1) respondent PLDT's "Partial Motion for Reconsideration (For Respondent PLDT)" is hereby **PARTLY GRANTED**. Accordingly, the dispositive portion of our Decision, promulgated on September 15, 2010, is hereby amended to read, as follows:

> "**WHEREFORE**, premises considered, the Petition For Review is **PARTLY GRANTED**. The Decision dated February 25, 2009 and the Order dated April 24, 2009 of the RTC of Makati City, Branch 148, in Civil Case No. 07-077 are hereby **AFFIRMED with MODIFICATION** that respondent PLDT is hereby held liable for surcharge and interest for taxable years 1999 to 2004. Accordingly, petitioner Province of Cagayan is hereby ordered to refund

or to issue a tax credit certificate to respondent PLDT the amount of ONE MILLION EIGHTY TWO THOUSAND ONE HUNDRED SIX AND 95/100 PESOS (P1,082,106.95).

SO ORDERED."

2) petitioners' "Motion for Partial Reconsideration" is

hereby **DENIED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
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 Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice