REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

BOHOL LIGHT COMPANY, INC.,
Petitioner,

CTA AC NO. 288

- versus -

THE CITY GOVERNMENT OF TAGBILARAN AND THE CITY TREASURER OF TAGBILARAN,
Respondent.

Members:
RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
SEP 10 2024
3:40 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

Before this Court is a *Petition for Review* filed by petitioner Bohol Light Company, Inc. ("BLCI") on March 27, 2023,[1] assailing the Decision dated March 31, 2016[2] and the Order dated November 22, 2022,[3] rendered by the Regional Trial Court of Tagbilaran City, Bohol ("RTC") – Branch 2, in Civil Case No. 8317, entitled "*Bohol Light Company, Inc. vs. The City Government of Tagbilaran and the City Treasurer of Tagbilaran*", the dispositive portions of which respectively read as follows:

Decision dated March 31, 2016:

> "**IN VIEW OF THE FOREGOING CONSIDERATIONS** and finding that there is no clear and categorical exemption from other local taxes provided for by Rule

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1 Docket, pp. 1-D-35.
2 *Id.*, pp. 37-45.
3 *Id.*, pp. 46-57.

7 sec. 4(q) of the IRR of the EPIRA law, the doubt must be resolved in favor of the City of Tagbilaran. As such and there being nothing in the law which prohibits the City Government of Tagbilaran from imposing a business tax on plaintiff Bohol Light Company, Inc. the latter is directed to make the necessary payment on the billing statement for business tax as imposed.

The complaint therefore is dismissed for lack of merit.

SO ORDERED."

Order dated November 22, 2022:

"**IN VIEW OF THE FOREGOING CONSIDERATIONS**, the court finds no cogent reason to disturb its DECISION of March 31, 2016. The Motion for Reconsideration is hereby DENIED.

Furnish copies of this Order to parties thru counsels.

SO ORDERED."

Petitioner further prays that this Court render judgment: (a) nullifying the *Billing Statement* dated January 27, 2014; (b) directing respondents to impose and assess franchise tax based on the formula prescribed by the Energy Regulatory Commission ("ERC") Decision, the Implementing Rules and Regulations of the Electric Power Industry Reform Act of 2001 ("EPIRA-IRR"), Department of Finance ("DOF") Local Finance Circular No. 1-07 dated June 28, 2007; and (c) enjoining respondents from billing petitioner based on a formula and computation contrary to the formula prescribed by the ERC Decision, the EPIRA-IRR, and DOF Local Finance Circular No. 1-07 dated June 28, 2007

The Parties

Petitioner Bohol Light Company, Inc. is a domestic private corporation with address at R. Enerio St., Tagbilaran City.[4]

[4] RTC Docket (Civil Case No. 8317), Par. 1, *Complaint*, , p. 1, vis-à-vis *Answer with express reservation on jurisdiction as laid down in the Affirmative Defenses*, par. 1, p. 34.

Respondent City Government of Tagbilaran is a local government unit of the Republic of the Philippines with principal address at the City Hall, Tagbilaran City.[5]

Respondent City Treasurer of Tagbilaran is an appointive local official in respondent City Government of Tagbilaran.[6]

The Facts

In the letter dated January 10, 2014, with attached *Billing Statement* of even date,[7] respondent City Treasurer demanded from petitioner to settle its tax obligations with the City Government of Tagbilaran in the amount of Php140,907,995.28, representing local business taxes ("LBT") and fees due, including surcharges and interests, from 1999 to 2013.

On January 15, 2014, petitioner paid respondents the amount of Php3,270,075.87, representing LBT, including interest and surcharge, for the 1st quarter of 2009.[8]

Subsequently, petitioner met with respondents, on January 27, 2014, regarding the said tax obligation of Php140,907,995.28.[9]

Respondents then issued to petitioner the *Billing Statement* dated January 27, 2014,[10] wherein mayor's permits, franchise taxes, and other fees were billed.

On February 04, 2014, respondent City Treasurer issued to petitioner a *Billing Statement* for LBT from 2011 to 2014.[11]

Proceedings before the RTC

On March 14, 2014, petitioner filed its *Complaint* with the RTC,[12] praying that it render judgment: (1) nullifying the *Billing Statement* dated January 27, 2014; (2) directing defendants (respondents herein) to compute petitioner's franchise

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5 *Id., Complaint*, Par. 2, vis-à-vis *Answer with express reservation on jurisdiction as laid down in the Affirmative Defenses*, par. 2, pp. 1 and 34, respectively.
6 *Id., Complaint*, Par. 3, vis-à-vis *Answer with express reservation on jurisdiction as laid down in the Affirmative Defenses*, par. 2, pp. 1 and 34, respectively.
7 *Id.,* Exhibits "1" and "1-A", pp. 139-141.
8 *Id.,* Exhibit "4", pp. 147-148.
9 *Id.,* Exhibit "10", pp. 178-181.
10 *Id.,* Exhibits "C" and "2", pp. 25 to 27, and 157-159, respectively.
11 *Id.,* Exhibit "3", pp. 144-146.
12 *Id.,* pp. 1-6.

tax based on the formula prescribed by the ERC Decision, the EPIRA IRR, and the DOF Local Finance Circular No. 1-07 dated June 28, 2007, and accordingly accept petitioner's payment of franchise tax computed based on such formula; and (3) enjoining the same defendants from billing petitioner based on a computation contrary to the formula prescribed by the same administrative issuances. The case was docketed as Civil Case No. 8317, and raffled to the RTC – Branch 2.[13]

Respondents filed their *Answer with express reservation on jurisdiction as laid down in the Affirmative Defenses* on April 02, 2014.[14]

In the Order dated April 25, 2014,[15] the case was set for mediation, but the parties refused to mediate.[16]

Petitioner then filed its *Reply* on May 05, 2014.[17]

The Pre-Trial Conference was initially set on September 29, 2014,[18] but was reset to and held on November 18, 2014.[19] Prior thereto, petitioner filed its *Pre-Trial Brief* on July 10, 2014,[20] while respondents submitted their *Pre Trial Brief of the Defendants* on July 11, 2014.[21]

On December 04, 2014, petitioner filed a *Manifestation Re: Consignation of Franchise Tax Payment for 2014*,[22] to which respondents filed their *Comments and Opposition to the Manifestation* on December 16, 2014.[23]

The Pre-Trial Order was then issued on December 16, 2014.[24]

Thereafter, on January 30, 2015, petitioner filed another *Manifestation Re: Consignation of Franchise Tax Payment for 2015*.[25]

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13 *Id.,* Minutes of Raffle dated March 27, 2014, p. 33.
14 *Id.,* pp. 34-41.
15 *Id.,* p. 55.
16 *Id.,* Mediator's Report, p. 67.
17 *Id.,* pp. 57-61.
18 *Id.,* Notice of Pre-Trial Conference dated June 17, 2014, p. 194.
19 *Id.,* Order dated September 29, 2014, pp. 214 to 215; Order dated November 18, 2014, pp. 220-221.
20 *Id.,* pp. 70-75.
21 *Id.,* pp. 123-126.
22 *Id.,* pp. 223-224.
23 *Id.,* pp. 228-230.
24 *Id.,* pp. 371-377.
25 *Id.,* pp. 357-358.

In the Order dated February 16, 2015,[26] RTC – Branch 2 stated that after some arguments, the parties agreed that the only issue in this case is whether or not petitioner is liable to pay business tax and franchise tax to the City of Tagbilaran.

On July 13, 2015, respondents filed their *Omnibus Motion*,[27] wherein they prayed, *inter alia*, that all amounts consigned by petitioner be ordered released in favor of respondent City Government of Tagbilaran.

Subsequently, in the Order dated July 20, 2015,[28] the Court granted respondents' motion withdrawing the amount paid to the Office of the Clerk of Court for Multiple Sala, provided that in the receipt that will be issued for petitioner, the amount shall be received as local taxes and not specifically identifying the same as business or franchise tax.

In the Order dated October 12, 2015,[29] the Court directed the parties to submit simultaneous position papers within thirty (30) days from notice in order to resolve the legal issue of whether the tax imposed upon petitioner is a franchise or business tax.

Respondents filed their *Position Paper* on November 11, 2015,[30] while petitioner filed its *Position Paper With Notice of Change of Address* on November 12, 2015.[31]

On February 17, 2016, petitioner filed its *Manifestation Re: Consignation of Franchise Tax Payment for 2016*.[32]

RTC – Branch 2 then promulgated the assailed Decision dated March 31, 2016,[33] dismissing the complaint for lack of merit.

Petitioner then posted, on May 27, 2016, its *Motion for Reconsideration (Re: Decision dated March 31, 2016)*,[34] to which respondents filed their *Vehement*

[26] *Id.,* p. 362.
[27] *Id.,* pp. 380-382.
[28] *Id.,* pp. 388-389.
[29] *Id.,* p. 391.
[30] *Id.,* pp. 399-416.
[31] *Id.,* pp. 417-427.
[32] *Id.,* pp. 459-461.
[33] Docket, pp. 37 to 45; RTC Docket (Civil Case No. 8317), pp. 464-472.
[34] RTC Docket (Civil Case No. 8317), pp. 490-505.

Opposition and Objection to the Motion for Reconsideration of the Plaintiff on June 16, 2016.[35]

Both parties presented their respective documentary and testimonial evidence in support of the above motion and opposition.

On December 05, 2017, petitioner filed a *Motion to Take Judicial Notice* of certain ERC Decisions and Resolutions involving petitioner,[36] which *Motion* was granted by the Court in the *Omnibus Order* dated January 05, 2018.[37]

Thereafter, on April 12, 2018, petitioner posted its *Formal Offer of Exhibits*.[38] In the Order dated January 30, 2019,[39] the Court admitted petitioner's evidence.

Respondents filed their *Formal Offer of Evidence* on November 02, 2021,[40] to which petitioner filed its *Comment/Opposition (To Defendant's Formal Offer of Evidence)* on February 04, 2022.[41]

In the Order dated August 22, 2022,[42] the Court: (1) in effect, admitted respondents' exhibits, (2) deemed the submission of the case for decision, and (3) gave the parties thirty (30) days within which to file their respective memorandum.

On September 21, 2022, respondents filed their *Manifestation in lieu of a Memorandum,*[43] while petitioner posted its *Memorandum* on even date.[44]

The RTC – Branch 2 then issued the assailed Order dated November 22, 2022,[45] denying petitioners' *Motion for Reconsideration.*

Proceedings before this Court

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35 *Id.,* pp. 507-512.
36 *Id.,* pp. 900-923.
37 *Id.,* p. 1083.
38 *Id.,* pp. 1111-1144.
39 *Id.,* p. 1146.
40 *Id.,* pp. 1329-1337.
41 *Id.,* pp. 1351-1357.
42 *Id.,* p. 1405.
43 *Id.,* 1406-1408.
44 *Id.,* pp. 1433-1457.
45 *Id.,* pp. 1459-1470.

Petitioner filed the present *Petition for Review* on March 27, 2023.[46]

In the Resolution dated April 19, 2023,[47] the Court ordered respondents to file their comment on the *Petition for Review*, within ten (10) days from notice, and the Branch Clerk of Court of RTC – Branch 2, to elevate the entire original records in Civil Case No. 8317 *(For: Nullification of Franchise Tax Billing Statement with Injunction)*, within ten (10) days from receipt thereof.

Subsequently, in the Resolution dated June 15, 2023,[48] the present case was transferred from the Third Division of this Court to its Second Division.

On June 16, 2023, respondents then filed their *Opposition against and Comments on the Petition for Review filed by Petitioner.*[49]

Thereafter, the RTC – Branch 2 transmitted to the Court, *via* registered mail, its records in Civil Case No. 8317 on June 22, 2023.[50]

In the Resolution June 23, 2023,[51] the Court ordered the parties to file their respective memorandum. Accordingly, petitioner's *Memorandum* was filed on September 04, 2023,[52] and the *Memorandum of the Respondents* was filed on September 05, 2023.[53]

The present case was deemed submitted for decision on September 11, 2023.[54]

<u>The Issues</u>

Petitioner assigns the following errors, to wit:

"A. THE COURT *A QUO* SERIOUSLY ERRED WHEN IT DECLARED THAT [PETITIONER] BLCI MAY BE HELD LIABLE FOR <u>BOTH</u> FRANCHISE TAX AND BUSINESS TAX UNDER THE LOCAL

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46 Docket, pp. 1-D-35.
47 *Id.,* pp. 62-63.
48 *Id.,* Notice, p. 64.
49 *Id.,* pp. 65-77.
50 *Id.,* RTC-Branch 2 *Transmittal* dated June 22, 2023, pp. 82-97.
51 *Id.,* p. 80.
52 *Id.,* pp. 104-145.
53 *Id.,* pp. 168-184.
54 *Id.,* Resolution dated September 11, 2023, p. 189.

GOVERNMENT CODE AND THE REVENUE CODE OF TAGBILARAN CITY.

B. THE COURT *A QUO* SERIOUSLY ERRED WHEN IT DECLARED THAT [PETITIONER] BLCI IS LIABLE TO PAY BUSINESS TAX AT A RATE OF SEVENTY-FIVE PERCENT (75%) OF ONE PERCENT (1%) OF THE GROSS SALES OR RECEIPTS FOR THE PRECEDING CALENDAR YEAR, AS IMPOSED BY THE RESPONDENTS PURSUANT TO SECTION 3A.02(B) OF THE REVENUE CODE OF TAGBILARAN CITY.

C. THE COURT *A QUO* SERIOUSLY ERRED WHEN IT DECLARED THAT SECTION 4(Q), RULE 7 OF THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9136, OR THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA-IRR), APPLIES ONLY TO NATIONAL FRANCHISE TAX, WHICH MAY ALSO BE IMPOSED ON BLCI, AND NOT TO LOCAL FRANCHISE TAX.

D. THE COURT *A QUO* SERIOUSLY ERRED WHEN IT DECLARED THAT [PETITIONER] BLCI'S REMEDY HAD PRESCRIBED BECAUSE 'THE PERIOD WITHIN WHICH TO QUESTION THE CORRECTNESS OF THE ASSESSMENT HAS LONG PRESCRIBED.'[55]

<u>The Arguments of Parties</u>

Petitioner's Arguments

Petitioner argues that contrary to the ruling of the RTC in the assailed Decision dated March 31, 2016 and Order dated November 22, 2022:

(1) Petitioner should only be held liable for local franchise tax under Sections 3D.01 and 3D.02 of the Revenue Code of Tagbilaran City, subject to the limitation in Section 4(q), Rule 7 of the EPIRA-IRR, in accordance with the principle of *lex*

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[55] *Id., Petition for Review*, Assignment of Errors, pp. 12-13.

specialis derogate generali and the fundamental principles of local taxation under the Local Government Code ("LGC") (RA No. 7160);

(2) Respondents do not have any legal basis for the imposition of business tax on petitioner, and the latter is being assessed business tax only because the then City Mayor Dan Neri Lim believed that petitioner's franchise was not valid;

(3) Section 4(q), Rule 7 of the EPIRA-IRR applies to local franchise tax, not national franchise tax, because there is no longer any national franchise tax imposed upon electric utilities with the enactment of RA No. 9337, which amended the National Internal Revenue Code (RA No. 8424), and hence, the local franchise tax imposed on petitioner should only be on its distribution wheeling and captive market supply revenues and not on gross annual sales or receipts for the preceding year; and

(4) Petitioner's judicial remedy is a valid remedy and it is consistent with jurisprudence.

Respondents' Counter-Arguments

Respondents contend that the principle of *lex specialis derogat generali* does not apply to this case; that they have not violated the fundamental principles of local taxation; that without a distribution franchise as defined in the EPIRA-IRR, petitioner cannot insist that it should be assessed with franchise tax instead of business tax; and that petitioner's judicial remedy should not have been its immediate recourse.

The Ruling of the Court

The present *Petition for Review* must be denied.

The Court of Tax Appeals has jurisdiction.

We first resolve the issue on jurisdiction.

Section 7(a)(3) of Republic Act ("RA") No. 1125,[56] as amended by RA No. 9282[57] states that decisions of the RTC in local tax cases are appealable to this Court, to wit:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> xxx xxx xxx
>
> (3) **Decisions, orders or resolutions of the Regional Trial Courts in local tax cases** originally decided or resolved by them in the exercise of their original or appellate jurisdiction"[58]

In particular, Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provide that it is the Court of Tax Appeals Division which exercises jurisdiction over decisions of the RTC "in local tax cases decided or resolved by them in the exercise of their original jurisdiction."

On the other hand, under Section 11 of RA No. 1125, as amended by RA No. 9282, a person aggrieved by a decision of the RTC may file an appeal with the Court of Tax Appeals within thirty (30) days from the receipt thereof:

> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision, ruling or inaction of the** Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the **Regional Trial Courts <u>may file an appeal with the CTA within thirty (30) days after the receipt of such decision</u>** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."[59]

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56 An Act Creating The Court Of Tax Appeals.

57 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes.

58 *Emphasis supplied.*

59 *Emphasis and underscoring supplied.*

Petitioner allegedly received the RTC Order dated November 22, 2022 on February 23, 2023.[60] This was not refuted or controverted by respondents. Thus, we shall start counting the 30-day period from February 23, 2023. Therefore, pursuant to the afore-quoted rule, petitioner had until March 27, 2023[61] within which to file its petition.

On March 27, 2023, petitioner timely filed the present *Petition for Review*. Hence, the Court validly acquired jurisdiction over the case.

The Billing Statement is not the "notice of assessment" under Section 195 of the LGC of 1991

Respondents argue that pursuant to Section 195 of the LGC of 1991, petitioner must first file a written protest with respondent City Treasurer within sixty (60) days from receipt of assessment. However, instead of previously filing a written protest, petitioner lodged the case against respondents directly with the RTC. Thus, respondents believe that petitioner failed to exhaust administrative remedies which is provided under Section 195 of the LGC of 1991.

To bolster their argument, Respondents quoted the assailed Order[62] of the Court *a quo*, which held that:

> "Moreover, **the period within which to question the correctness of the said assessment has long prescribed.** Section 195 of the RA 7160 which provided for the mechanism in protesting an assessment states thus:
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> > ***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*

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60 Docket, *Petition for Review*, Statement of the Facts and of the Case, par. 38, p. 11.
61 The 30th day, March 25, 2023 fell on a Saturday.
62 RTC Docket (Civil Case No. 8317), pp. 1459-1470.

> *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."*

We disagree.

The above quoted Section 195 only finds application in cases where a notice of assessment is issued to the taxpayer, thereby presupposing the existence of a valid tax assessment.[63]

In *National Power Corporation v. Province of Pampanga*[64] and *Jose v. Tigerway Facilities and Resources, Inc.*[65], the Supreme Court emphasized that Section 195 of the LGC of 1991 requires that the notice of assessment state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. Furthermore, failure of the taxing authority to sufficiently inform the taxpayer of the facts and law used as bases for the assessment will invalidate the assessment.

A perusal of the subject Billing Statement shows that although the letter dated January 10, 2014, with the attached *Billing Statement*[66] stated the nature of the tax, fee or charge, surcharges, and interests, it did not provide the facts and laws from which the billed amounts were based. Hence, it cannot be considered as a "notice of assessment" falling under Section 195.

Accordingly, there being no "notice of assessment" issued by respondent City Treasurer to petitioner, Section 195 is not applicable. Petitioner's direct filing with the RTC without any written protest with respondent City Treasurer is proper.

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63 *Hon. Lourdes R. Jose, in her capacity as City Treasurer of City of Caloocan v. Tigerway Facilities and Resources, Inc.*, G.R No. 247331, February 26, 2024.
64 G.R. No. 230648, October 6, 2021.
65 G.R. No. 247331, February 26, 2024.
66 RTC Docket (Civil Case No. 8317), Exhibits "1" and "1-A", pp. 139-141.

Respondents may impose business taxes on the gross sales or receipts of petitioner

During the Pre-Trial Conference with the RTC, the issue of erroneous billing has evolved into an issue of whether or not it is proper for respondent City Government of Tagbilaran to impose a business tax on petitioner.

Petitioner argues that under Rule 7, Section 4(q) of EPIRA-IRR, a Distribution Utility shall pay a franchise tax only on its distribution wheeling and Captive Market supply revenues. Thus, Section 3A.02 on business tax in the Revenue Code of Tagbilaran City does not apply to petitioner. What is applicable are Sections 3D.01 and 3D.02 on franchise tax.

On the other hand, respondents contend that the assessment made on petitioner is for business tax. The local government may demand payment of both business tax and franchise tax.

Citing Sections 129, 132, 134, 137, and 143 of the LGC of 1991, the RTC held that respondents are not prohibited from imposing a business tax on petitioner. Under Rule 7, Section 4(q) of the EPIRA-IRR, the franchise tax should only be imposed on the distribution wheeling and captive marketing supply revenues, not on any other revenue. This interpretation however does not prohibit the imposition of other local business taxes, as the limit was only drawn specifically on the computation of a franchise tax.

The RTC also cited *Smart Communications, Inc. v. City of Davao, et al.* (*Smart Communications v. Davao*)[67] where the Supreme Court held that tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority. Finding that there is no clear and categorical exemption from local taxes provided by Rule 7, Section 4(q) of the IRR of the EPIRA law, the RTC stated that doubt must be resolved in favor of respondent City of Tagbilaran. The court *a quo* then directed petitioner to make the necessary payment on the billing statement for business tax as imposed.

The Court agrees with the ruling of the RTC.

Section 5, Article X of the 1987 Constitution provides that "[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the

[67] G.R. No. 155491, September 16, 2008.

Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government." The LGC of 1991 supplements the 1987 Constitution with its Sections 151 and 186, to wit:

> "SEC. 151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, **the city, may levy the taxes, fees, and charges which the province or municipality may impose**: xxx
>
> **The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by <u>not more than fifty percent (50%)</u>** except the rates of professional and amusement taxes."[68]
>
> "SEC. 186. *Power to Levy Other Taxes, Fees or Charges.* — Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided,* That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further,* That the ordinance levying such taxes, fees, or charges shall not be enacted without any prior public hearing conducted for the purpose."

Indeed, local government units have the power to impose local business taxes 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."[69]

Relative thereto, Section 143(b) of the LGC of 1991 reads:

> "SEC. 143. *Tax on Business.* – **The municipality may impose taxes on the following businesses**:
>
> xxx xxx xxx
>
> (b) **On** wholesalers, **distributors,** or dealers of any article of commerce of whatever kind of nature, in accordance with the following schedule:

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[68] *Emphasis and underscoring supplied.*

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

With **gross sales or receipts** for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than 1,000.00		18.00
1,000.00 or more but less than	2,000.00	33.00
2,000.00 or more but less than	3,000.00	50.00
3,000.00 or more but less than	4,000.00	72.00
4,000.00 or more but less than	5,000.00	100.00
5,000.00 or more but less than	6,000.00	121.00
6,000.00 or more but less than	7,000.00	143.00
7,000.00 or more but less than	8,000.00	165.00
8,000.00 or more but less than	10,000.00	187.00
10,000.00 or more but less than	15,000.00	220.00
15,000.00 or more but less than	20,000.00	275.00
20,000.00 or more but less than	30,000.00	330.00
30,000.00 or more but less than	40,000.00	440.00
40,000.00 or more but less than	50,000.00	660.00
50,000.00 or more but less than	75,000.00	990.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,870.00
150,000.00 or more but less than	200,000.00	2,420.00
200,000.00 or more but less than	250,000.00	3,300.00
300,000.00 or more but less than	500,000.00	4,400.00
500,000.00 or more but less than	750,000.00	6,600.00
750,000.00 or more but less than	1,000,000.00	8,800.00
1,000,000.00 or more but less than	2,000,000.00	10,000.00
2,000,000.00 or more	at a rate not exceeding fifty percent (50%) of one percent (1%)	

xxx xxx xxx"[70]

Thus, based on Sections 151 and 186, in relation to Section 143(b), of the LGC of 1991, cities may impose business taxes on distributors. And since the law did not distinguish or qualify the word "distributors", neither should this Court.

Pursuant to this taxing power, respondent City Government of Tagbilaran adopted City Ordinance No. RC-001,[71] otherwise known as *An Ordinance Enacting the Revenue Code of the City of Tagbilaran*, imposing local business taxes, the pertinent portions of which are quoted hereunder:

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70 *Emphasis supplied.*
71 RTC Docket (Civil Case No. 8317), Exhibits "EE" and "8", pp. 1214-1327.

"SECTION 3A.02. Imposition of tax — there is hereby levied an annual tax on the following businesses at rates prescribed thereof:

(a) xxx

(b) On wholesalers, importers, **distributors**, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

xxx xxx xxx

At a rate of seventy-five (75%) of 1%"[72]

In this case, petitioner argues that it should only be held liable for local franchise tax (subject to the limitation in Section 4(q), Rule 7 of the EPIRA-IRR) under Sections 3D.01 and 3D.02 of the *Revenue Code of the City of Tagbilaran*, to wit:

"SECTION 3D.01. Definition of franchise — It is a right or privilege, affected with public interest which is conferred upon private persons or corporations, under such terms and conditions as the government and its political subdivisions may impose in the interest of public welfare, security and safety.

SECTION 3D.02. Imposition of tax — There is hereby levied a tax on business enjoying a franchise at a rate of seventy-five percent (75%) of one percent (1%) of the gross annual receipts for the preceding year based on the incoming receipts, or realized within the territorial jurisdiction of the City of Tagbilaran."

According to petitioner, it is erroneous for respondents to impose business tax based on the gross sales or receipts of petitioner.

Petitioner is mistaken.

There is no provision in the LGC of 1991, nor *the Revenue Code of the City of Tagbilaran*, which prohibits respondent City Government of Tagbilaran from

[72] *Emphasis supplied.*

imposing local tax on businesses that are subject to local franchise tax, such as a distribution utility like petitioner.

Aside from testimonial evidence and the official acts of the legislative and executive departments of the Philippines that were taken judicial notice of by the RTC upon motion of petitioner, petitioner presented the following issuances to prove that it is exempt from payment of business tax on its distribution wheeling and Captive Market supply revenues, *viz.*:

1. ERC Resolution No. 36, Series of 2006;[73]
2. ERC Resolution No. 16, Series of 2009;[74]
3. ERC Decision dated May 21, 2008 on ERC Case No. 2008-005 RC;[75]
4. ERC Decision dated November 24, 2008 on ERC Case No. 2008-025 RC;[76]
5. ERC Decision dated March 27, 2008 on ERC Case No. 2007-122 RC;[77]
6. ERC Order dated July 20, 2007 on ERC Case No. 2007-122 RC;[78]
7. NEA Decision dated July 10, 2003 on NEC Case No. 2000-10;[79]
8. ERC Decision dated June 25, 2008 on ERC Case No. 2001-763 (ERB Case No. 2000-174);[80]
9. Revenue Code of the City of Tagbilaran (City Ordinance No. RC-001);[81] and
10. Local Finance Circular No. 1-07 dated June 28, 2007.[82]

Nothing however in the foregoing issuances suggest that petitioner is exempt from payment of local business taxes on its distribution wheeling and Captive Market supply revenues. In fact, the contrary appears. Section 6 of the ERC Resolution No. 16, Series of 2009 or *Rules Governing the Automatic Cost Adjustment and True-Up Mechanisms and Corresponding Confirmation Process for Distribution Utilities* provides that both the franchise and business taxes rates shall be computed using a prescribed formula:

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73 RTC Docket (Civil Case No. 8317), pp. 924-926.
74 *Id.*, pp. 927-970.
75 *Id.*, pp. 971-979.
76 *Id.*, pp. 980-997.
77 *Id.*, pp. 998-1030.
78 *Id.*, pp. 1031-1059.
79 *Id.*, pp. 1068-1072.
80 *Id.*, pp. 1073-1081.
81 *Id.*, pp. 1214-1327.
82 *Id.*, pp. 1338-1344.

"**Section 6.** The Franchise and Business Taxes Rates shall be calculated using the following formulae:

6.1. **For Franchise Taxes that a DU is required to pay the LGU/s that shall be included in its customer's bills, recovery shall be based on the tax rate multiplied against the multiplied against the total distribution charges in Peso (Distribution,** Supply, Metering and other charges/adjustments, i.e. subsidy on lifeline charge, lifeline subsidy discount and inter-class cross subsidy discharge, excluding Reinvestment Fund collections in the case of an EC). For transparency, the EC shall reflect as a separate line item in its monthly billings to its customers the approved Reinvestment Fund rate/kWh and corresponding revenues.

6.2. **For Business Taxes that a DU is required to pay the LGU/s that shall be included in its customers' bills**, recovery shall be based on the following formula:

xxx xxx xxx

The computation of local business taxes shall be based on the DU's total distribution charges, excluding the penalties and surcharges paid by the DU. For an EC, Reinvestment Fund shall be excluded from the total distribution charges. For transparency, the EC shall reflect as a separate line item in its monthly billings to its customers the approved Reinvestment Fund rate/kWh and corresponding revenues.

A DU that intends to include in its retail rates the <u>franchise and business taxes</u> **imposed on it by the LGU/s where it operates** must first submit to the ERC the certified true copies of the valid tax ordinance/s subjecting it to such taxes. In the case of Business Taxes, submissions shall include tax receipts for the payments made for the preceding year, data on its kWh sales for the previous year, and other relevant data. The DU shall await the ERC's clearance before the inclusion and imposition of such taxes in its customers' retail rates.

6.3. **For Franchise and Business Taxes that a DU had already paid to the concerned LGU/s** prior to the implementation of recovery of current Franchise and Business Taxes shall be allowed recovery based on the following formula:

xxx xxx xxx

Upon receipt of the complete documents, the ERC shall verify and determine from the submissions the appropriate TRAC that the DU shall be allowed to impose on its customers.

The DU shall await the ERC's clearance before the inclusion and imposition of such taxes in its customers' retail rates and shall impose the TRAC allowed until such time that **its franchise and business tax payments**, as may be adjusted by the ERC during its prior verification, have been fully recovered."[83]

Accordingly, respondent City Government of Tagbilaran is not prevented from imposing local business taxes to petitioner in addition to the franchise tax.

In arguing that its distribution wheeling and Captive Market supply revenues may only be subject to local franchise tax, petitioner is in effect asking for its exclusion from local business tax. As held by the Supreme Court in *Smart Communications v.* Davao, tax exclusions are equivalent to tax exemptions, and are applied in *strictissimi juris* against the taxpayer and liberally in favor of the government. Moreover, in *Philippine Long Distance Telephone Co. v. City of Bacolod*[84], "doubts should be resolved in favor of municipal corporations in interpreting statutory provisions on municipal taxing powers". Thus, petitioner's contention must fail in the absence of legal and factual bases.

As for Petitioner's invocation of the principle of *lex specialis derogat generali*, Sections 3D.02 and 3A.02(b) of the *Revenue Code of Tagbilaran City*, as amended, refer to two (2) types of local taxes and the imposition of both on the same entity is allowed under the law. Therefore, petitioner's contention that it should be assessed franchise tax only and not local business tax, because Section 3D.02 of the *Revenue Code of Tagbilaran City* prevails over Section 3A.02 of the same Revenue Code, is bereft of merit. N

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83 *Id.*, pp. 694-697; *Emphasis and underscoring supplied.*
84 G.R. 149179, July 15, 2005.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED**.

Accordingly, the assailed Decision dated March 31, 2016 and the Order dated November 22, 2022, both rendered by the Regional Trial Court of Tagbilaran City, Bohol – Branch 2, in Civil Case No. 8317, are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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