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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FIRST PLANTERS PAWNSHOP, INC.,
Petitioner,

CTA EB No. 501
(RTC Civil Case No. 71634)
(MTC Civil Case No. 2838)

- versus-

Present:

Acosta, *P.J.,*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

CITY TREASURER OF PASAY CITY
Represented by its former OIC,
Ms. OFELIA M. OLIVA,
Respondent,

Promulgated:

DEC 10 2010 [illegible] 1:00 p.m.

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* by way of Petition for Review[1] filed on June 26, 2009 by First Planters Pawnshop Inc. ("petitioner"), pursuant to *Section 11 of Republic Act (R.A.) No. 1125, as amended by Section 9 of R.A. No. 9282, and Section 4(c), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)*, are the Decision[2] and Order[3] promulgated on April 15, 2009 and May 27, 2009,

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[1] *Rollo*, CTA EB No. 501, pp. 1-35, with Annexes.
[2] *Rollo*, pp. 12-15, Annex "B"
[3] *Rollo*, pp. 16-18, Annex "C"

respectively, by the Regional Trial Court, Branch 153, Taguig City, dismissing petitioner's appeal due to failure of petitioner to implead the City Government of Pasay and thus, denying petitioner's claim for refund.

THE FACTS

Based on the record[4], the facts are as follows:

> "Petitioner is a domestic corporation duly organized and existing under Philippine laws with principal address at No. 28 C-1 Rodriguez Street, Signal Village, Taguig City.
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> Respondent City Treasurer of Pasay City, with office address at City Hall, Pasay City, represented by its former Officer-In-Charge, Ofelia M. Oliva[5], of legal age, Filipino, who is being sued in her official capacity.
>
> On January 4, 2005, petitioner applied for a renewal of its Mayor's Permit and business license/tax for the year 2005 and declared as its gross sales the amount of Two Million Two Hundred Eighty Seven Thousand Three Hundred Forty Six Pesos (P2,287,346.00) for the year 2004. The respondent increased the gross sales of the petitioner to Five Million Pesos (P5,000,000.00). Petitioner paid the amount under protest in order to obtain the Mayor's Permit to operate its business in Pasay City.
>
> On February 25, 2005, petitioner made a demand upon the respondent for the refund of the illegally collected business tax amounting to Twenty Thousand Three Hundred Forty Four Pesos and Sixty Five Centavos (*sic*) (P20,344.90) not P20,335.60 as appearing on the questioned Decision. Instead of granting the refund, respondent issued a Letter of Authority for the examination of the books of accounts, financial statements, stubs of used cash and/or charge invoices, official receipts, mayor's permit, merchandise inventory, purchase invoices, community tax payments of employees and other clearances and documents covering the years 2000 to 2004. Despite the demand for refund of the illegally collected business tax for the year 2005, respondent failed and refused to refund the same.
>
> In January 2006, petitioner again filed an application for renewal for its Mayor's Permits for the year 2006 and attached to its application the Affidavit of Gross Sales/Receipts for the year 2005 and the Branch's Income Statement reflecting a gross income of Two Million One Hundred Eighty Thousand Nine Hundred Fifty Four Pesos (P2,180,954.00). Instead of using as tax base the said declared gross income of petitioner, respondent assessed petitioner using a higher income using the Presumptive Income Level Assessment Approach of Five Million Pesos (P5,000,000.00), thereby

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[4] *Rollo*, pp. 1-5.

[5] The City Treasurer's name in the pleadings was reflected as "Ms. Ofelia M. Olivia." However, perusal of the records, especially correspondence originating from the City Treasurer's Office show that the correct name is "Ms. Ofelia M. <u>Oliva</u>". Please refer to *Rollo*, pp. 68 and 70.

resulting in the over assessment and overpayment of petitioner's business tax in the amount of Twenty One Thousand One Hundred Forty Two Pesos and Eighty Five Centavos (P21,142.85).

A re-computation of business taxes for the years 2005 and 2006 shows that petitioner overpaid the taxes due for said years amounting P20,344.90 and P21,142.85, respectively. Hence, petitioner's counsel made a final demand for the refund of the illegally collected and paid business taxes. Despite the demands made upon the respondent to refund said illegally collected and overpaid business taxes, respondent failed and refused to effect the refund. Petitioner, therefore, through its Vice-President Antonio Ramon Ongsiako in order to protect its rights and interest, filed the case which is covered by the Revised Rules on Summary Procedure.

In a decision dated March 28, 2008, the Presiding Judge of Metropolitan Trial Court ("MeTC"), Branch 74, Taguig City, dismissed the case, copy of which was received by petitioner on April 8, 2008 and immediately and seasonably filed a Notice of Appeal dated April 10, 2008. The appeal, however, was dismissed by the appellate court in its decision dated April 15, 2009 and the Motion for Reconsideration was denied in an Order dated May 27, 2009."

Hence, this Petition for Review.

THE ISSUES

1. Whether or not the Regional Trial Court ("RTC") erred in dismissing the appeal due to the failure of petitioner to implead the City Government of Pasay;

2. Whether or not the petitioner is entitled to refund of the illegally collected taxes for the years 2005 and 2006.

THE RULING OF THE COURT *EN BANC*

Dismissal of the complaint by the trial court and appellate court was proper

On appeal, the appellate court dismissed the petitioner's claim for refund on the ground that the real party in interest was not made a party to the action, to wit:

> "The Court has to strike down the appeal because it was not filed against the real party in interest. The other issues will no longer be

> discussed as they are dependent on the main issue as to whether or not Ms. Ofelia M. Olivia (*sic*) is the real party in interest."[6]

Section 2, Rule 3 of the Revised Rules of Court provides that a real party in interest is "*the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.*" The appellate court and respondent posit that the City Government of Pasay City should have been made a party to the action. The RTC discussed as follows:

> "And, in case the tax is found to have been illegally collected, the City Government of Pasay, through the Sangguniang Panglungsod will have to pass an ordinance appropriating funds for the payment of the refund, interest, attorney's fees, and actual damages/costs of litigation prayed for in the Complaint and it is not Ms. Olivia (*sic*) who is empowered to pay these amounts on her own."[7]

On the other hand, petitioner believes that naming Ms. Ofelia M. Oliva as the defendant (now respondent) in her capacity as the City Treasurer of Pasay City is sufficient to comply with Section 2, Rule 3 of the Revised Rules of Court.

This Court agrees with petitioner that the City Treasurer in her official capacity may be impleaded alone in a claim for refund, without need to include the City Government in the suit. Questions involving protests and claims for refund of local business taxes fall squarely with the Office of the City Treasurer. Said Office is tasked with the implementation of the City Revenue Code, together with the collection and assessment of business taxes, licenses and other permit fees within the City. This is supported by a line of cases decided by this Court wherein only the

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[6] *Rollo*, p. 14.
[7] *Rollo*, p. 15.

Office of the City Treasurer has been named as defendant/respondent in a claim for refund of local business tax.[8]

Thus, it appears that petitioner's suit was not dismissible on the ground of failure to implead the real party in interest. However, an examination of the record shows that the trial court dismissed the petitioner's complaint not only for failure to implead the real party in interest but also for the following grounds: (1) failure to exhaust administrative remedies; (2) failure to attach Articles of Incorporation; and (3) lack of a proper verification.

With respect to the third ground, it is worth noting that the original complaint filed with the MeTC contained a "Verification and Certification of Non-Forum Shopping"[9] in the name of "Lingkod Bayan Pawnshop, Inc." and not the petitioner. We agree with the MeTC's discussion, quoted below:

> "Under the said verification, Antonio Ramon Ongsiako under oath declared that he is the Vice-President of **Lingkod Bayan Pawnshop Inc.** and he was authorized by the (sic) its Board of Directors to institute/file the instant case in behalf of the **Lingkod Bayan Pawnshop Inc.** However, the Secretary's Certificate dated March 10, 2006, attached to complaint, shows that the Board of Directors of **First Planters Pawnshop Inc.** authorized Antonio Ramon Ongsiako to institute the instant complaint. Nowhere in the complaint, in the verification or the Secretary's Certificate was it shown that the members of the Board of Directors of the two pawnshops are the same. In fact, Ongsiako caused the preparation of the complaint not as a representative of First Planters Pawnshop Inc. but of Lingkod Bayan Pawnshop Inc. Therefore, the complaint lacks a proper verification and is treated herein as an unsigned pleading."[10]

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[8] China Banking Corporation vs. The Treasurer of the City of Manila, CTA EB Case No. 525, September 13, 2010; Unilever Philippines, Inc. vs. The Treasurer of the City of Manila, CTA A.C. No. 56, June 2, 2010; China Banking Corporation vs. City Treasurer of Manila, CTA EB Case No. 150, September 15, 2006; Alcan Packaging Starpack Corp. vs. The Treasurer of the City of Manila, CTA A.C. No. 17, September 11, 2006; China Banking Corporation vs. City Treasurer of Kalookan, CTA EB Case No. 151, August 28, 2006; Swedish Match Philippines Inc. vs. The Treasurer of the City of Manila, CTA A.C. No. 15, July 21, 2006; and China Banking Corporation vs. City Treasurer of Kalookan, CTA A.C. No. 12, August 31, 2005.

[9] *Rollo*, p. 61.

[10] *Rollo*, p. 28.

Apart from the foregoing, the Verification/Certification attached to the complaint also fails for being made based on "personal knowledge and belief".

Under Rule 7, Section 4, a pleading is "*verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. A pleading required to be verified which contains a verification based on 'information and belief,' or upon 'knowledge, information and belief,' or lacks a proper verification shall be treated as an unsigned pleading.*" Mere belief is insufficient and negates the verification which should be on the basis of personal knowledge or authentic records.[11]

Considering also that the certification of non-forum shopping was integrated in the verification, submission of said Verification/Certification in the name of another entity, and not the petitioner in the instant case, is equivalent to the lack of a proper Certification of Non-Forum Shopping, or failure to comply with Rule 7 Section 5 which is a proper cause for dismissal.[12] However, considering that the substantive issue raised by petitioner is meritorious, in the interest of substantial justice, we will decide the case on the merits.

<u>Presumptive Income Level Assessment Approach may only be used if financial data is not submitted</u>

The petitioner objects to the use of the "Presumptive Income Level Assessment Approach" ("PILAA") in computing its local business taxes for the

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[11] Fernando Go vs. Court of Appeals, Pilar Lim, et. al., G.R. No. 163745, August 24, 2007 quoting LDP Marketing Inc. vs. Monter, G.R. No. 159633, January 25, 2006.

[12] Rules of Court, Rule 7 Section 5. *Certification against forum shopping.* – xxx xxx xxx. Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice. xxx xxx xxx.

taxable years 2005 and 2006, despite the submission of its sworn declaration of gross sales/receipts and branch income statement for 2004 and 2005.

The respondent justifies its use of the PILAA by explaining that it is commonly practiced in most local government units throughout the country as a tool for the efficient and effective collection of taxes.[13] The respondent further explains that the PILAA is used at the height of the renewal of business permits when it has very limited time to verify the amount of gross sales declared by those applying for business permits.[14]

We agree with petitioner.

The PILAA is indeed a tax collection tool which enables the local government units to set a certain income level standard for various business entities based on industry factors. However, the PILAA does not give the respondent a *carte blanche* authority to increase the gross sales/receipts of the taxpayers within its jurisdiction and on that basis, assess the local business tax.

This Court believes that the PILAA may be used by the respondent in computing the local business tax only if the taxpayer is unable to provide proof of its income.

The word "presumptive" is defined as "based on a presumption". A "presumption" is "a legal inference or assumption that a fact exists, based on the known or proven existence of some other fact or group of facts."[15] Based on the foregoing definition, the "presumptive income" is a presumed or assumed income level based on known or proven factors. These factors may include information from

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[13] *Rollo*, p. 68.
[14] *Ibid.*
[15] Black's Law Dictionary, 8th Edition.

the industry such as average customers per day, inventory turnover and mark-ups, and other measurable and verifiable indicators specific to the nature of business.

With the petitioner's submission of its sworn declaration of gross income together with its audited financial statements, the respondent could have sufficiently computed the local business tax due without resort to the PILAA. There was no need for the respondent to use a "presumptive income level" since the petitioner has already provided its actual gross income for the taxable years in question.

If the respondent believed that the petitioner underdeclared its gross income, the remedy should have been to compute the local business tax on the petitioner's declared income and then subsequently issued a Letter of Authority for the examination and audit of petitioner's books of accounts and other records. If petitioner fails to present its books of accounts and other records or if the petitioner has no such records to validate its declared income, then the respondent may use the presumptive income level for the assessment of deficiency taxes.

It is also noted that the use of the PILAA is not provided for in the Local Revenue Code of Pasay City[16]. While the Local Government Code of 1991 (LGC) grants local government units (LGU) the power to create its own sources of revenue[17], the same is subject to the limitation that the tax be imposed through an appropriate ordinance.[18] Admittedly, the City Treasurer of Pasay is authorized to collect local business taxes under both the LGC and the Pasay Revenue Code. However, if the City

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[16] *Ordinance No. 1614, Series of 1999* amending certain chapters and sections of *Ordinance No. 241, Series of 1993.*
[17] *Republic Act No. 7160*, Sec. 129. **Power to Create Sources of Revenue**. – Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units.
[18] *Ibid.*, Sec. 132. **Local Taxing Authority**. – The power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the sanggunian of the local government unit concerned through an appropriate ordinance.

Treasurer intended to use the PILAA, the same should have been subject to the procedures provided in the LGC regarding public hearings and publication.[19] This is to ensure that the taxpayers are properly informed of the factors used in determining the presumptive income and for the taxpayers to agree to such level of presumptive income applicable to their industry.

Absent such ordinance authorizing the use of the PILAA and embodying the presumptive income levels to be used by the City Treasurer, the collection of additional local business taxes based on such PILAA was illegal and the petitioner may properly claim the refund of the excess business taxes collected.

Exhaustion of administrative remedies and entitlement to refund

Respondent, in its Comment[20], alleges that petitioner failed to exhaust administrative remedies when petitioner failed to appeal to the Local Board of Assessment Appeals as required under Section 226[21] of the LGC. Petitioner, on the other hand, alleges that respondent is relying on LGC provisions relating to real

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[19] *Ibid.*, Sec. 187. **Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.** – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: xxx xxx xxx.

Sec. 188. **Publication of Tax Ordinances and Revenue Measures.** – Within ten (10) days after their approval, certified true copies of all provincial, city, and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation: *Provided, however,* That in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

[20] *Rollo*, p. 96-102.

[21] Sec. 226. **Local Board of Assessment Appeals.** – Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

property taxation, which are not applicable to this case.[22] Petitioner believes that the appropriate provisions should be Sections 195 and 196.

We agree with petitioner. Section 226 of the LGC relied upon by the respondent falls under Title II of the LGC relating to real property taxation. The refund being claimed by petitioner relates to overcollected business taxes and not to real property taxation, thus, the provisions on local government taxation should apply. Specifically, Section 196 of the LGC provides the procedure in claiming for refund of erroneously or illegally collected taxes. It provides:

> "Sec. 196. **Claim for Refund of Tax Credit.** No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit."

For a claim for refund to prosper in court, the taxpayer must first file a written claim for refund or credit with the local treasurer. In the case of *China Banking Corporation vs. City Treasurer of Manila*[23], this Court had occasion to rule as follows:

> "While the Court agrees with petitioner's contention that the Local Government Code does not require any specific form of the letter for refund/protest, still a letter purporting to be a refund must inform the respondent of the basis of such claim as to enable the latter to make an intelligent decision thereon."

After petitioner's renewal of its 2005 mayor's permit, petitioner filed a letter-demand[24] for refund with the City Treasurer on Feb. 25, 2005. The claim for refund was premised on the illegal and erroneous collection of the additional business tax computed by the City Treasurer upon its unilateral application of the presumptive income level of P5,000,000.00. On March 3, 2005, respondent explained the use of

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[22] *Rollo*, p. 108-111.
[23] C.T.A. E.B. Case No. 150, September 15, 2006.
[24] *Rollo*, p. 69.

the PILAA and informed the petitioner of the examination of its books of accounts in its letter[25] to petitioner. On March 4, 2005, petitioner received a Letter of Authority[26] for the examination of its books of accounts and other records.

On January 30, 2006, petitioner filed a letter-demand[27] for refund with the City Treasurer for the overcollected business taxes for taxable years 2005 and 2006. The letter reiterated petitioner's objection to the use of the presumptive income level of P5,000,000.00 on the ground that said presumptive income is "*baseless, illegal, confiscatory, whimsical and contrary to law*". Furthermore, petitioner provided the computation of the excess business tax and unequivocally demanded its refund, as follows:

	A	B	C	
Year	Gross Income (Based on previous year's income)	Business Tax Due [A x (75% of 1%)]	Business Tax Collected based on PIL of P5 Million [5M x (75% of 1%)]	Overpayment [C – B]
2004	2,287,346.00	17,155.10	37,500.00	20,344.90
2005	2,180,954.00	16,357.15	37,500.00	21,142.85
Total Overpayment of Taxes				**41,487.75**

These letters demanding for the refund of the overcollected taxes are sufficient for the purpose of Section 196 and which also provides enough basis for the City Treasurer to form its decision. The Court *En Banc* finds that the petitioner substantially complied with the requirements of Section 196 thereby exhausting the administrative remedy under Section 196 of the LGC. Petitioner's action for refund filed with the MeTC was not premature and therefore, petitioner is entitled to a refund of the overcollected business taxes for taxable years 2005 and 2006.

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[25] *Rollo*, p. 68.
[26] *Rollo*, p. 70.
[27] *Rollo*, p. 74.

WHEREFORE, finding merit in the instant Petition for Review, the same is hereby GRANTED. The assailed Decision and Order dated April 15, 2009 and May 27, 2009, respectively of the Regional Trial Court of Taguig, Branch 153 in Civil Case No. 71634 are hereby REVERSED. Another one is hereby entered ordering respondent to REFUND to petitioner the amount of P20,344.90 and P21,142.85, representing excess business taxes collected for years 2005 and 2006.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice