REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SKY CABLE CORPORATION, Petitioner,	**C.T.A. AC NO. 102**
- versus -	Members: **CASTAÑEDA, JR.,** *Chairperson*, **CASANOVA,** and **COTANGCO-MANALASTAS,** *JJ.*
QUEZON CITY and the OFFICE OF THE CITY TREASURER OF QUEZON CITY, Respondents.	**Promulgated:** FEB 10 2014 4:30 p.m.

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DECISION

CASANOVA, *J.*:

Before Us is an appeal, by way of Petition for Review[1], filed by petitioner-Sky Cable Corporation, from the Decision[2] dated October 24, 2012 (the "Assailed Decision"), and the Order[3] dated January 17, 2013, both rendered by Branch 224 of the Regional Trial Court ("RTC") of Quezon City in Civil Case No. Q-11-6896 entitled *Sky Cable Corporation v. Quezon City and the Office of the City Treasurer of Quezon City*.

As narrated in the Assailed Decision, the facts of the case are as follow:

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[1] CTA Docket, pp. 5-29
[2] Ibid, pp. 30-33
[3] Ibid, pp. 34-35

"x x x plaintiff is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 33F East Tower, Philippines Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City. On January 18, 2011, plaintiff received a copy of a Business Tax Bill No. 000584965 from the Quezon City Government relative to an adjustment amounting to EIGHT HUNDRED NINETY EIGHT THOUSAND EIGHT TWO *(sic)* PESOS and 95/100 (Php898,082.95). On January 21, 2011, plaintiff paid the said tax bill under Official Receipt No. A9COR0741407. Upon inquiry as to the nature of the said 'adjustment', plaintiff was verbally informed by the defendant, Office of the City Treasurer of Quezon City that the said amount represented a franchise tax due for the first quarter of the year, imposed pursuant to a letter of the Bureau of Local Government Finance (BLGF), authorizing the imposition of a franchise tax in addition to a city tax. Despite plaintiff's request for a copy of the said BLDF, defendant Office of the City Treasurer failed to provide the same. On January 26, 2011, plaintiff wrote a letter of Protest to the City Treasurer's Office and requested for the cancellation of the adjustment and the corresponding refund or credit of the amount of ₱898,082.95, claiming among others: that the imposition of a city tax and a franchise tax amounted to unjust and improper double taxation considering that both taxes were levied upon the gross receipts on the plaintiff and by the same taxing authority; and, that the plaintiff's tax obligation to the city be reclassified from a city tax to a franchise tax as it is a holder of a legislative franchise. On March 3, 2011, defendant, City Treasurer, Villanueva denied the plaintiff's protest and claim for refund or credit, which the herein plaintiff received on March 10, 2011. Thus, plaintiff filed this instant case pursuant to Section 195 of the Local Government Code.

In the Answer jointly filed by the defendants, it is alleged that the argument of the plaintiff that the Franchise Tax should not be imposed because the Quezon City Revenue Code did not provide that it should be imposed in addition to other local taxes, muddles the issue because there is no such provision in the Quezon City Revenue Code. Since there is no provision of that nature, the said tax may be imposed along with the other local taxes; that the propriety of the imposition of the local franchise tax had been admitted by the complainant several times in its Letter of Protest; and, that there is no double taxation because the complainant was taxed twice for different matters and purposes, the Franchise Tax being governed by Article 13 while the Business Tax is governed by Article 8 of the Revenue Code.

In its Reply, plaintiff contends that the defendants failed to show any legal basis for their imposition of the adjustment of Php898,082.95 representing the local franchise tax; and that it did not admit the propriety of the simultaneous imposition of a business tax and a local franchise tax. It further contends that the term 'City Tax' used by the QD CTO business in its assessments is a non-specific term, as there is no city tax under the QC Revenue Code; that before the plaintiff received the Business Tax Bill No. 000584965, it had the impression that the city tax refers to the franchise tax and not to business tax, but after receiving the said tax Bill, plaintiff realized that it was made to pay two business taxes, namely, franchise tax and business tax. Plaintiff further contends that it requested for a re-classification of the assessment from city tax to franchise tax because of the vagueness of the nature of the city tax.

During the Pre-Trial Conference, the parties agreed on the following issues: 1) Whether or not payment was made; 2) Whether or not plaintiff is entitled to a refund or tax credit of Php898,082.95; and 3) Whether or not the plaintiff is entitled to its claim for attorney's fees. In view of the legality of the issues involved in this case, the parties, through counsels, jointly moved to dispense with the presentation of evidence and witnesses. Upon motion of the plaintiff, the Pre-Trial Order was amended in so far as the ISSUES are concerned, to wit: 1) Whether or not there is improper double taxation; 2) Whether or not the plaintiff is entitled to the return, through tax refund of the amount of Php898,082.95; and 3) Whether or not the plaintiff is entitled to attorney's fees (Oder dated June 22, 2012)."

On October 24, 2012, the RTC promulgated the Assailed Decision dismissing petitioner's Complaint for Cancellation of Assessment, Reversal of Denial of the Letter of Protest and, Claim for Tax Refund/Credit.

On November 22, 2012, petitioner filed a Motion for Reconsideration[4] while respondents did not file their Comment thereto. Petitioner's Motion was deemed submitted for resolution on December 7, 2012[5].

In an Order[6] dated January 17, 2013, the RTC denied petitioner's Motion for Reconsideration.

On March 6, 2013, petitioner filed the instant case while respondents filed their Comment on May 6, 2013.

On May 10, 2013, this Court promulgated a Resolution[7] giving the parties thirty (30) days from notice to file their simultaneous memoranda.

Petitioner filed its Memorandum on June 17, 2013 and respondent filed, on August 13, 2013, a Manifestation stating that respondents are adopting the arguments stated in their Comment dated May 2, 2013 as their memorandum.

The case was considered submitted for decision on September 3, 2013[8].

In support of its Petition, petitioner laid down the following grounds:

I.

> THE LOWER COURT MADE A REVERSIBLE ERROR IN FAILING TO PUT IN ISSUE THE "CITY TAX" DESPITE SKY CABLE'S ARGUMENT THAT THERE IS IMPROPER DOUBLE TAXATION

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[4] RTC Docket, pp. 151-164
[5] Ibid, p. 166
[6] Ibid, p. 167-168
[7] CTA Docket, p. 171
[8] Ibid, p. 223

BECAUSE THE "CITY TAX" IN BUSINESS TAX BILLS ISSUED BY THE RESPONDENTS ALREADY INCLUDES LOCAL FRANCHISE TAX.

II.

THE LOWER COURT MADE A REVERSIBLE ERROR IN NOT ADDRESSING THE ARGUMENTS RAISED IN SKY CABLE'S MOTION FOR RECONSIDERATION AND IN FINDING THAT NOT ALL OF THE ELEMENTS OF IMPROPER DOUBLE TAXATION ARE PRESENT IN THIS CASE.

III.

THE LOWER COURT MADE A REVERSIBLE ERROR IN NOT RULING THAT THE TAX OBLIGATION TO THE CITY GOVERNMENT OF SKY CABLE, BEING A HOLDER OF LEGISLATIVE FRANCHISE, SHOULD BE RECLASSIFIED AS A FRANCHISE TAX INSTEAD OF CITY TAX.

IV.

SKY CABLE IS THEREBY ENTITLED TO ITS TAX CREDIT OR REFUND AND CLAIM FOR ATTORNEY'S FEES.

Respondents, on the other hand, counter-argues that petitioner's argument that the franchise tax should not be imposed because the Quezon City Revenue Code (the "QC Revenue Code") does not provide for the imposition thereof, in addition to other local taxes, simply fails to prove a point. The fact that there is no such provision in the QC Revenue Code does not deprive the Quezon City Government from imposing such tax; that, even a quick look at the QC Revenue Code clearly reveals the difference in nature, kind and character of the two taxes alleged to be the same i.e. the franchise tax which is governed by Article 13 of the QC Revenue Code and the business tax which is governed by Article 8 of the same Code.

Respondents further argue that petitioner has no reason to protest or seek tax refund/credit as there is no basis for its allegation of double taxation; and, finally, that petitioner's reference to the alleged favorable treatment by other Local Government Units on the same issues are merely bare allegations and cannot be used as basis to bind Quezon City to do the same or render the same favorable treatment as respondents' actions are based on law and established policies of taxation.

After a careful and thorough evaluation of the records of the case as well as the arguments of both parties in their memoranda, We find no merit in the Petition for Review.

Petitioner contends that there is improper double taxation when respondents assessed and imposed both a city tax and a franchise tax.

In the case of *Commissioner of Internal Revenue vs. Solidbank Corporation*[9], the Supreme Court defined "double taxation" as follows:

> "Double taxation means taxing the same property twice when it should be taxed only once; that is 'xxx taxing the same person twice by the same jurisdiction for the same thing'.[10] It is obnoxious when the taxpayer is taxed twice, when it should be but once.[11] Otherwise, described as 'direct duplicate taxation',[12] the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period, and they must be of the same kind or character."[13]

While double taxation is not prohibited in this jurisdiction, direct duplicate taxation, however, is prohibited as it violates the equal protection clause of the Constitution.[14]

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[9] G.R. No. 148191, November 25, 2003

[10] Afisco Insurance Corp. vs. Court of Appeals, 361 Phil. 671; 302 SCRA 1, January 25, 1999, per Panganiban, J.

[11] San Miguel Brewery, Inc. vs. City of Cebu, 43 SCRA 275, 280, February 26, 1972; Villanueva vs. City of Iloilo, 135 Phil. 572, 588; December 28, 1968; and Commissioner of Internal Revenue vs. Lednicky, 120 Phil. 586, 593, 11 SCRA 603, July 31, 1964

[12] Victorias Milling Co., Inc. vs. Municipality of Victorias, Province of Negros Occidental, 134 Phil. 180, 198; 255 SCRA 192, September 27, 1968

[13] Villanueva vs. City of Iloilo, supra

[14] City of Manila, et al. vs. Metro Manila Shopping Mecca, Inc., et al., CTA AC No. 54 (Civil Case No. 06-116063), May 28, 2009

In direct duplicate taxation, which is prohibited, the two (2) taxes must be imposed on the same subject matter, for the same purpose by the same taxing authority, within the same jurisdiction, during the same taxing period; and, they must be of the same kind or character.[15]

Applying the above definition and elements to the case before Us, We believe that there is no double taxation.

While the 'city or business tax' and the 'franchise tax' are both based on the gross receipts and sales of petitioner's business, the two (2) taxes, however, are different in terms of their nature or character.

As commonly used, a franchise tax is a 'tax on the privilege of transacting business in the state and exercising corporate franchises granted by the state'. It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but on its exercise of the rights or privileges granted to it by the government.[16] It is a percentage tax imposed only on franchise holders and is imposed under Section 119 of the Tax Code as a direct liability of the franchise grantee.[17]

A city or business tax, on the other hand, is otherwise known as a percentage tax which is based on a given ratio between the gross sales or receipts and the burden imposed upon the taxpayer (*City of Manila vs. Inter Island Gas Services, Inc., 99 Phil. 847*)[18]. A percentage tax is a national tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services. x x x."[19]

This was correctly pointed out in the Assailed Decision, and, We quote:

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[15] Ibid; Commissioner of Internal Revenue vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003.

[16] National Power Corporation vs. City of Cabanatuan, G.R. No. 149110, April 9, 2003

[17] Quezon City and the City Treasurer of Quezon City vs. ABS-CBN Broadcasting Corporation, G.R. No. 166408, October 6, 2008

[18] The Law on Transfer and Business Taxation, Hector de Leon 1998 Edition, p. 237

[19] Commissioner of Internal Revenue vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003

> "Lastly, as to its nature or character, a business tax is imposed on the privilege of engaging in the business of contracting a system of communications, whereas a franchise tax is imposed for the exercise of enjoying a franchise. The former is imposed pursuant to Chapter Three, Article 8, Section 19(e) of the Quezon City Revenue Code while the latter is imposed pursuant to Chapter 4, Article 13 of the same Code." (Underscoring supplied)

Clearly, while the city tax and franchise tax are both imposed by the same taxing authority, on the same subject matter and for the same taxing period, the imposition thereof, however, does not constitute double taxation as they are not of the same kind or character.

Petitioner further contends that it does not question respondents' right to impose local taxes upon it but the improper simultaneous imposition of the local franchise tax and the city tax .

While not on all fours with the case before Us, the following pronouncement of the Supreme Court in the case of *China Banking Corporation vs. Court of Appeals, et al.*[20] is most instructive, to wit:

> "Besides, there is no double taxation when Section 121 of the Tax Code imposes a gross receipts tax on interest income that is already subjected to the 20% final withholding tax under Section 27 of the Tax Code. The gross receipts tax is a business tax under Title V of the Tax Code, while the final withholding tax is an income tax under Title II of the Code. There is no double taxation if the law imposes two different taxes on the same income, business or property. (Underscoring supplied)
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> x x x x x x x x x
>
> There is no constitutional prohibition on subjecting the same income or receipt to an income tax and to some other tax like the gross receipts tax. Similarly, the same income or receipt may be subject to the value-added tax and the excise tax like the specific tax. If the tax law follows the

[20] G.R. No. 146749, June 10, 2003

constitutional rule on uniformity, making all income, business or property of the same class taxable at the same rate, there can be no valid objection to taxing the same income, business or property twice." (Underscoring supplied)

Thus, applying by analogy the above-jurisprudence to the case at hand, We find petitioner's contention devoid of merit.

It is indisputable that respondent-city has the power to impose local taxes pursuant to the authority granted under the following Constitutional provision, to wit:

> "Each local government unit shall have the power to create its own sources of revenue and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments." (Sec. 5, Article X, 1987 Constitution)

Said provision is effected under Section 151, in relation to Section 137 of the Local Government Code of 1991, with regard to the imposition and collection of franchise tax, 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: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.
>
> x x x x x x x x x

SEC. 137. Franchise Tax. – Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on business enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceeding calendar year based on the incoming receipt, or realized within its territorial jurisdiction.

x x x x x x x x x"

It is by virtue and pursuant to these laws that the Quezon City Revenue Code was passed by respondent city and from where the basis for imposing both the 'city tax' and 'franchise tax' came from i.e. under Section 19(E), Article 8, Chapter 3 for the 'city or business tax' and Section 31, Article 13 for the 'franchise tax'.

WHEREFORE, finding no reversible error in the Assailed Decision dated October 24, 2012 and the Assailed Order dated January 17, 2013, the same are both hereby **AFFIRMED** in toto.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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