REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PROVINCIAL GOVERNMENT OF CAGAYAN, Rep. by Honorable Governor Alvaro T. Antonio and Emilia L. Iringan, in her capacity as Provincial Treasurer, Petitioner,	C.T.A. AC NO. 92
	Members:
	UY, *Chairperson and* FABON-VICTORINO, JJ
- versus -	Promulgated:
SMART COMMUNICATIONS, INC. (SMART), Respondent.	JUL 25 2013 ; 10:30 a.m.

x- -x

D E C I S I O N

***Fabon-Victorino, J.*:**

This Petition for Review[1] filed by the Provincial Government of Cagayan pursuant to Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals, assails the Decision[2] dated April 30, 2012, rendered by the Makati City Regional Trial Court, Branch 65, in Civil Case No. 11-051 entitled "*Smart Communications, Inc. vs. Province of Cagayan and Emilia L. Iringan, in her capacity as Provincial Treasurer of the Province of Cagayan*".

Petitioner Provincial Government of Cagayan is a local government unit (LGU) with office address at Capitol Hills, Tuguegarao City. It is represented by Governor Alvaro T. Antonio and Provincial Treasurer Emilia L. Iringan.

[1] Docket, pp. 5-15.
[2] Annex "A", Petition for Review, docket, pp. 17-23.

Respondent Smart Communications, Inc. (SMART) is a domestic corporation engaged in telecommunications business, with principal office address at SMART Tower, 6799 Ayala Avenue, Makati City.[3]

Petitioner claims that since mid of 2009, it had been asking respondent to submit a statement of its gross receipts or income in the province of Cagayan for purposes of computing its franchise tax pursuant to Section 2G.02 of the Cagayan Revenue Code of 2005, in relation to Section 137 of the Local Government Code (LGC) of 1991. Despite advisement, respondent failed to submit any prompting petitioner to issue a "presumptive tax assessment" on October 13, 2010, assessing respondent of franchise tax liability from 2004 to 2009 in the total amount of Php86,482,092.60.[4]

On October 26, 2010, respondent received a tax assessment notice dated October 13, 2010[5], which reads as follows:

> Sir:
>
> Please find attached computation of Franchise Tax for CY 2004-2010.
>
> Thank you very much.

The contents of the attachment are quoted below:

FRANCHISE TAX COMPUTATION
SMART COMMUNICATIONS, INC.
CY 2004-2009

Year	2004	2005	2006	*2007	**2008	***2009
Cagayan Population	1,090,024	1,115,625	1,145,886	1,072,571	1,083,940	1,083,940
Estimated Load Per Month	PHP300.00	PHP300.00	PHP300.00	PHP 300.00	PHP300.00	PHP 300.00
	12	12	12	12	12	12
Annual Presumptive	PHP3,924,086,400.00	PHP4,016,347,200.00	PHP4,125,189,600.00	PHP3,861,255,600.00	PHP3,902,184,000.00	PHP3,902,184,000.00

[3] Pars. 1 and 3, The Parties, Petition for Review, docket, p. 7.
[4] Par. 1, Brief Statement of Facts and the Case, Petition for Review, docket, pp. 7-8.
[5] Annex "A", Petition, RTC Records, p. 28.

Gross Receipts						
Estimated Market Share	40%	40%	40%	40%	40%	40%
Annual Estimated Share	PHP1,569,634,560.00	PHP1,606,538,880.00	PHP1,650,075,840.00	PHP 1,544,502,240.00	PHP1,560,873,600.00	PHP1,560,873,600.00
Franchise Tax (%)	.005	.005	.005	.005	.005	.005
Total Amount Due	PHP7,848,172.80	PHP8,032,694.40	PHP8,250,379.20	PHP 7,722,511.20	PHP7,804,368.00	PHP7,804,368.00
Surcharge – 25%	1,962,043.20	2,008,173.60	2,062,594.80	1,930,627.80	1,951,092.00	1,951,092.00
Interest	PHP5,650,684.42	PHP5,783,539.97	PHP5,940,273.02	PHP 5,096,857.39	PHP3,277,834.56	PHP1,404,786.24
GRAND TOTAL						**PHP86,482,092.60**

Interest is computed at 2% per month
*66%
**42%
***18%

In its protest letter dated November 23, 2010,[6] respondent clarified that it has only one sales office in the Province of Cagayan and it is located in Tuguegarao City, which has its own taxing jurisdiction for purposes of franchise tax. Since local franchise tax may only be imposed on a business enjoying a franchise based on receipts realized within the territorial jurisdiction of the local government unit where a branch or sales outlet is maintained, it is not liable for local franchise tax to the Province of Cagayan pursuant to Section 137 of the LGC.

On January 24, 2011, respondent, alleging inaction on the part of petitioner, filed a Petition[7] with the Regional Trial Court (RTC) of Makati City, impugning the assessment of October 13, 2010 issued against it by petitioner. The Petition entitled *Smart Communication Inc. vs. Province of Cagayan and Emilia L. Iringan* was docketed as Civil Case No. 11-051.

In its Comment filed with the RTC on April 13, 2011, petitioner argued that respondent conducts its telecommunications business in the entire province of Cagayan evidenced by its cellular towers installed and maintained in the different municipalities of the province from which it derives or realizes income. Petitioner emphasized that respondent's business operates integrated telecommunications, computer and electronic services not only in the Province of Cagayan but in the entire country as well. According to petitioner, the true and accurate reflection of respondent's income or gross receipts in the

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[6] Annex "B", Petition, RTC Records, p. 30.
[7] RTC Records, pp. 1-24.

conduct of its telecommunications business in the Province of Cagayan is not determined by the receipts issued in its sales office in Tuguegarao City alone but by the actual inventory of calls and text messages made by its subscribers within the Province.

On October 14, 2011, petitioner issued Notices of Garnishment dated September 20, 2011 against respondent's deposits in several banks, among which was Banco de Oro (BDO)-Pasay Road Branch, Makati City to enforce the collection of the assessed franchise tax liabilities for 2004-2009.[8]

On October 18, 2011, respondent filed with the RTC an Urgent Application for Issuance of a Writ of Preliminary Injunction with Prayer for Temporary Restraining Order (TRO)[9] to restrain petitioner from enforcing the Notices of Garnishment against respondent's deposits particularly with BDO-Pasay Road Branch, Makati City. This was followed by an Extremely Urgent Motion for the Issuance of a TRO,[10]filed two days thereafter or on October 20, 2011.

On October 21, 2011, the RTC granted the relief prayed for,[11] thereafter issued a TRO upon respondent's posting of the required bond in the amount of Php92,876,762.95.[12]

On November 14, 2011, the RTC granted respondent's application for a writ of preliminary injunction enjoining petitioner from proceeding with the garnishment of respondent's bank accounts and from further garnishing, levying or attaching any of the latter's properties to enforce collection of the assessed franchise tax pending the resolution of the case.[13]

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[8] Par. 3, Brief Statement of Facts and the Case, Petition for Review, docket, p. 8; RTC Records, p. 145.
[9] Par. 4, Brief Statement of Facts and the Case, Petition for Review, docket, p. 8; Docket, pp. 171-179; RTC Records, pp. 114-122.
[10] Docket, pp. 202-209; RTC Records, pp. 137-144.
[11] Docket, pp. 221-223; RTC Records, pp. 155-157.
[12] Annex "B", Petition for Review, docket, pp. 24-26.
[13] Annex "C", Petition for Review, docket, pp. 27-30.

On April 30, 2012, the RTC rendered the assailed Decision,[14] in favor of respondent. The *fallo* reads:

> **WHEREFORE**, premises considered, the petition is hereby given due course and the assailed assessment is hereby nullified and set aside. The respondents are directed to cease and desist from imposing local franchise taxes on the petitioner's gross receipts realized within the territorial jurisdiction of the City of Tuguegarao.
>
> **SO ORDERED**.

Holding firmly on its position, petitioner came to this Court on June 22, 2012 via the instant *Petition for Review*, assigning the following errors allegedly committed by the RTC, to wit:

> a. THE HONORABLE COURT A QUO GRAVELY ERRED IN RULING THAT PETITIONER CANNOT IMPOSE AND COLLECT FRANCHISE TAX FROM RESPONDENT ON ITS TELECOMMUNICATIONS BUSINESS IN THE PROVINCE OF CAGAYAN JUST BECAUSE THE BUSINESS OFFICE OF RESPONDENT IS LOCATED ONLY IN TUGUEGARAO CITY. STATED DIFFERENTLY, THE COURT A QUO GRAVELY ERRED IN HOLDING THAT RESPONDENT DOES NOT REALIZE OR EARN GROSS RECEIPTS/ INCOME WITHIN THE TERRITORIAL JURISDICTION OF THE PROVINCE OF CAGAYAN;
>
> b. THE HONORABLE COURT A QUO GRAVELY ERRED IN APPLYING SECTION 150 OF THE LOCAL GOVERNMENT CODE OF 1991 IN DETERMINING THE SITUS OF TAX (FRANCHISE TAX) OF RESPONDENT. THE

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[14] Annex "A", Petition for Review, docket, pp. 17-23.

> SAID PROVISION OF THE CODE BEING APPLICABLE ONLY TO DETERMINING SITUS OF BUSINESS TAX;
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> c. THE HONORABLE COURT A QUO GRAVELY ERRED IN ISSUING A TRO AND PRELIMINARY INJUNCTION AGAINST THE PETITIONER FROM ENFORCING THE COLLECTION OF THE FRANCHISE TAX LIABILITY OF RESPONDENT DESPITE ITS RULING IN FAVOR OF THE AUTHORITY OF PETITIONER TO LEVY FRANCHISE TAX ON BUSINESSES ENJOYING A FRANCHISE AND OF THE GIVEN FACT THAT RESPONDENT ACTUALLY CONDUCTS ITS TELECOMMUNICATIONS BUSINESS WITHIN THE TERRITORIAL JURISDICTION OF THE PROVINCE OF CAGAYAN.

Petitioner reiterated its argument in the RTC that respondent conducts its telecommunications business in the entire Province of Cagayan and not only within the territorial jurisdiction of Tuguegarao City. This is evident in the cellular towers (transmitting and receiving stations) installed and maintained by respondent in the different municipalities of the province. Respondent's business office in Tuguegarao City is mainly for receipt of payments from its subscribers for the various services (calls, texts and internet) rendered regardless of where these services were actually availed of, used or enjoyed. Therefore, the gross receipts of respondent in its telecommunications business in the Province of Cagayan are not considered earned or realized in its business office in Tuguegarao City but in the place or area where these services are actually availed of, used or enjoyed by the subscribers. As respondent conducts its business not only in Tuguegarao City, but in the entire Province of Cagayan, it realizes or earns income within the territorial jurisdiction of the Province of Cagayan for which it is liable to pay franchise tax to the latter.

Petitioner further argues that the issuance of the TRO and Writ of Preliminary Injunction against it directly contravenes the principle that taxes are the lifeblood of the government and their prompt and certain availability is an imperious need. Moreover, the damage to property rights of taxpayers takes a back seat to the paramount need of the government for funds to sustain governmental functions.

In its Comment[15] filed on August 2, 2012, respondent points out the infirmity it perceives in the instant Petition for Review. Allegedly, the Verification/Certification against forum shopping was signed by the Governor and the Provincial Treasurer as petitioners, when per the Petition for Review, the petitioner is the Province of Cagayan. In view thereof, the initiatory pleading is deemed not signed justifying outright dismissal of the case under Section 3 of Rule 42 of the Rules of Court.

Even granting that it is liable for franchise tax, the assessment for franchise tax liability for the year 2004 as well as for the first, second and third quarters of the year 2005 have already prescribed at the time petitioner issued the assessment letter on October 13, 2010 pursuant to Section 194 of the LGC, in relation to Section 2G.04 of the Cagayan Revenue Code.

Further, the City of Tuguegarao has already assessed respondent for its purported franchise tax liability amounting to P2,563,641.70 as of May 2011. Respondent believes that the imposition of franchise tax by petitioner against it is contrary to Section 226 of the Implementing Rules and Regulations (IRR) of the LGC and constitutes oppressive and confiscatory taxation. Respondent explains that the term "gross sales or receipts" under Article 220(n) of the IRR of the LGC and Section 1C.01(w) of the Cagayan Revenue Code refers to money or its equivalent which is actually or constructively received by the seller from the buyer in exchange for the goods or services sold. Hence, it should be reported by the seller/taxpayer at the time of its actual or constructive receipt of the money or its equivalent and not at the time of the actual use of the thing or service sold.

Respondent also asserts that the "actual use standard" utilized by petitioner lacks legal and factual bases. The

[15] Docket, pp. 259-260.

latter could not possibly determine respondents alleged gross receipts from the cell site towers located in the different municipalities of the Province of Cagayan because the gross receipts contemplated in Section 137 of LGC and Section 2G.02 of the Cagayan Revenue Code are based on sales realized in the place where the transaction occurred and not where its services are actually availed by the subscribers.

The same is true with petitioner's use of presumptive income level assessment approach (PILAA) to enforce collection of franchise tax. It lacks legal basis in the absence of an express provision in the Cagayan Revenue Code authorizing petitioner to use such approach to enforce collection of franchise tax. It also lacks factual basis as petitioner merely assumed that the Estimated Load per Month of the total population of the Province of Cagayan for the year 2004 to 2009 is worth P300.00. Moreover, the assessment letter does not indicate whether persons who by reasons of age and/or other conditions cannot in any way avail of the services of respondent were excluded. Petitioner further illegally assumed that for the same period respondent has an estimated market share of forty percent (40%). Citing CTA *En Banc* case of *First Planters Pawnshop, Inc. vs. City Treasurer of Pasay City,*[16] petitioner has no authority to assess the franchise tax based on presumed Estimated Load Per Month and market share.

Respondent likewise argues that under Section 9 of Republic Act No. 7924, otherwise known as SMART's Franchise, respondent is only liable to pay: (a) tax on real estate, buildings and personal property exclusive of the SMART Franchise; (b) franchise tax equivalent to three percent (3%) of all gross receipts; and (c) income taxes under Title II of the National Internal Revenue Code (NIRC). The local franchise tax is covered by the clause "in lieu of all taxes" of Section 9 of the SMART Franchise. The provision was not rendered ineffective by Republic Act No. 7716 or the Expanded Value-added Tax Law (E-VAT Law) which abolished franchise taxes on telecommunications companies. Also pursuant to Section 23 or the equality clause of Republic Act No. 7925 or the Public Telecommunications

[16] CTA EB No. 501, December 10, 2010.

Policy Act, it is exempt from franchise tax imposed by petitioner.

All said, respondent concludes that since the courts are authorized to issue injunctions to enjoin the collection of local taxes, the RTC did not err in issuing the TRO and the Writ of Preliminary Injunction against petitioner.

After petitioner filed its Memorandum on October 5, 2012 and respondent, on October 24, 2012, the instant Petition for Review was deemed submitted for decision.[17]

RULING OF THE COURT

The grounds relied upon by petitioner may be summed-up into whether or not the RTC committed reversible errors when it nullified and set aside the assessment of franchise tax imposed by petitioner against respondent covering the calendar years 2004 to 2009 as ruled in the assailed Decision of April 30, 2012.

But first, the Court shall resolve the procedural issue raised by respondent in its pleadings pertaining to the alleged flaw in the Verification and Certification against Forum Shopping attached to the Petition for Review.

Respondent contends that the said Verification and Certification against Forum Shopping is defective as it was signed by the Governor and the Provincial Treasurer as petitioners, when in the Petition for Review, the petitioner is the Province of Cagayan. In view thereof, the Petition for Review should be treated as an unsigned pleading justifying the immediate dismissal of the case.

In rejecting this stance, petitioner posits that Emilia L. Iringan was made respondent in her official capacity as the Provincial Treasurer representing petitioner Province of Cagayan in the RTC. On the other hand, the Governor is the

[17] Resolution dated November 14, 2012, docket, p. 363.

Chief Executive of the Province of Cagayan and has the power under Section 465(3)(iii) of the Local Government Code to ensure collection of taxes and revenues for the Province.

To the Court, the most instructive reflection on the matter is found in the case of *Norberto Altres, et al. vs. Camilo G. Empleo, et al.,*[18] where the Supreme Court provided a guideline for both lawyers and litigants on the required verification and certification against forum shopping, to wit:

> For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:
>
> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
>
> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
>
> **3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged**

[18] G.R. No. 180986, December 10, 2008.

> **in the petition have been made in good faith or are true and correct.**
>
> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.'
>
> 5) The certification against forum shopping must be signed by **all** the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. **Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule**.
>
> 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf. *(Emphasis supplied)*

A crosscheck for verification purposes disclosed that Emilia L. Iringan is the Provincial Treasurer who represented the Province of Cagayan in the case before the RTC, Branch 64 of Makati City, hence, she is aware of the factual circumstances of the case now on appeal. She is also privy to the issuance of the subject notice of assessment having approved the same in her official capacity. Provincial Governor Alvaro T. Antonio, on the other hand, is the Chief Executive of the Province of Cagayan, with the powers under

Section 465 of the LGC to shepherd actions to ensure collection of taxes and revenues for the Province thus he can validly represent the Province in cases affecting or involving it.

With the verification and certification they executed, the allegations in the pleading filed with the Court are deemed true and correct and not a mere figment of imagination or a matter of speculation. By virtue of their act, the petition is deemed filed in good faith and the signatories therein belong to the real parties-in-interest who have sufficient knowledge and belief to swear to the truth of the allegations in the petition.[19] In fine, requirement for a valid verification and certification against forum shopping has been complied with.

Now, on the main issue of whether the RTC committed reversible errors when it nullified and set aside the assessment of franchise tax imposed by petitioner against respondent covering the calendar year 2004 to 2005.

The power of the LGUs to create their own sources of revenues and to levy taxes, fees and charges subject only to such limitations as may be provided by Congress[20] emanates from Section 5 of Article X of the Constitution, which reads as follows:

> Section 5. Each 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 Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

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[19] *Altres, et al. vs. Empleo, et al.*, G.R. No. 180986, December 10, 2008.

[20] *Smart Communications, Inc. vs. The City of Davao, et al.*, G.R. No. 155491, July 21, 2009.

To give flesh to the constitutional mandate and enhance local autonomy of LGUs, Congress enacted the Local Government Code, Section 129 of which provides, thus:

> 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.

Relevant to the core issue of the case is Section 137 of the same Code, which provides as follows:

> Sec. 137. *Franchise Tax.* – Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein.

In the case of *Digital Telecommunications Philippines, Inc. vs. Province of Pangasinan,*[21] the Supreme Court elucidated on the foregoing provision authorizing LGUs to impose franchise tax on businesses enjoying a franchise within its territorial jurisdiction, thus:

> Republic Act No. 7160, otherwise known as the Local Government Code of 1991, took effect on 1 January 1992. Of significance to the present petition are Sections 137 and 232 of the Local Government Code. Section 137 of the Local Government Code, in principle, withdrew any exemption from the payment of a tax on businesses enjoying a franchise. Expressly, it authorized local governments to impose a franchise tax on businesses enjoying a franchise within its territorial jurisdiction, to wit:
>
> SECTION 137. ***Franchise Tax***. – xxx xxx.

Clearly, a province may impose franchise tax at a rate not exceeding 50% of 1% of the gross annual receipts. Legally therefore, petitioner Province of Cagayan may impose franchise tax in accordance with Section 137 of the LGC, through corresponding tax ordinance, subject only to limitation set by Congress.

Significantly, on June 6, 2005, the Sangguniang Panlalawigan of Cagayan adopted and approved Provincial Ordinance No. 2005-07,[22] otherwise known as the Cagayan Provincial Revenue Code of 2005. The Ordinance governs the levy, assessment, and collection of taxes, fees, charges, and other impositions within the territorial jurisdiction of the Province of Cagayan.[23] Article G, Sections 2G.02 and 2G.03,

[21] G.R. No. 152534, February 23, 2007.
[22] AN ORDINANCE LEVYING TAXES, FEES AND OTHER IMPOSITIONS, PROVIDING RULES FOR THE ADMINISTRATION THEREOF AND PRESCRIBING PENALTIES FOR VIOLATION OF ITS PROVISIONS.
[23] Docket, pp. 117-159.

thereof imposed tax on business enjoying a franchise within the province, to wit:

> **Section 2G.02.** ***Imposition of Tax*. Notwithstanding any exemption granted by law or any other special law, there is hereby imposed a tax on business enjoying a franchise tax, at a rate of fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within the Province of Cagayan**.
>
> xxx xxx xxx.
>
> **Section 2G.03.** ***Coverage of Franchise Tax*. All public utilities and businesses holding franchises from the** national, **provincial** or other local governments or their agencies **shall pay the franchise tax based on their gross receipts obtained within the province**. Among others, the following shall be subject to this tax:
>
> a) xxx
>
> b) **Telephone, Telegraph and Cellphone Companies and Wireless Centers - For long distance messages only receipts for telephone calls and messages outgoing from Cagayan shall be included in the taxable gross receipts**; *(Emphasis supplied)*

While petitioner may legally impose franchise tax on businesses enjoying franchise operating within its territorial jurisdiction in accordance with Section 137 of the LGC, the Implementing Rules and Regulation of the law, specifically, Article 226(a) and (b), thereof, which dictates the *situs* of taxation for franchise tax, clarified and explicitly delimits such power, *viz.,*:

> ARTICLE 226. *Franchise Tax.* - (a) Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year **within its territorial jurisdiction, excluding the territorial limits of any city located in the province**.
>
> (b) **The province shall not impose the tax on business enjoying franchise operating within the territorial jurisdiction of any city located within the province.** (*Emphasis supplied*)

A *fortiori*, petitioner is not allowed to impose franchise tax on businesses enjoying franchise operating within the territorial jurisdiction of **any city located within the province**, which has its own taxing power pursuant to Section 151 of the LGC, which reads as follows:

> Section 151. Scope of Taxing Powers. — **Except as otherwise provided in this Code, <u>the city may levy the taxes, fees, and charges which the province or municipality may impose</u>**: 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.** (*Emphases supplied*)

With the foregoing, a city has the exclusive jurisdiction to impose franchise tax of up to 0.0075 or 0.75% on the business' gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.[24] In the case at bar, it is the City of Tuguegarao located within the Province of Cagayan which has the jurisdiction to assess franchise tax against respondent, as it already did, in the amount of P2,563,641.70 as of May 2011.

Note that rules and regulations issued by executive and administrative officers pursuant to, and as authorized by law have the force and effect of laws.[25] Recognizing this rule-making power, authorities sustain the principle that the interpretation by those charged with their enforcement is entitled to great weight by the court in the latter's construction of such rules and regulations. It has been held that an administrative agency has the power to interpret its own rules and such interpretation becomes part of the rules.[26]

The Court agrees with petitioner that it is allowed to legislate and enact ordinance to effect collection of franchise tax, such ordinance however should not contravene an existing statute enacted by Congress like the LGC, for the spring cannot rise above its source, as elucidated in the case of *Hon. Jose D. Lina, Jr., Sangguniang Panlalawigan of Laguna, and Hon. Calixto Cataquiz v. Hon. Francisco Dizon Pano and Tony Calvento,* [27] to wit:

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[24] *Cagayan Electric Power and Light Co., Inc. vs. City of Cagayan De Oro*, G.R. No. 191761, November 14, 2012.

[25] Victorias Milling Co.,v. social Security Commission, 114 Phil. 555 (1962); Warren Manufacturing Workers Union v. Bureau of Labor Relations, 159 SCRA 387 (1988).

[26] Guekeko v. Araneta, 102 Phil. 706 (1957), citing 42 Am. Jur. 431.

[27] G.R. No. 129093, August 30, 2001.

In our system of government, the power of local government units to legislate and enact ordinances and resolutions is merely a delegated power coming from Congress. As held in *Tatel vs. Virac*, ordinances should not contravene an existing statute enacted by Congress. The reasons for this is obvious, as elucidated in *Magtajas v. Pryce* Properties Corp.

Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred upon them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.

Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the state, and the corporation could not prevent it. We know of no limitation on the right so far as the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature (citing Clinton vs. Ceder Rapids, etc. Railroad Co., 24 Iowa 455).

Nothing in the present constitutional provision enhancing local autonomy dictates a different conclusion.

> The basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax (citing Art. X, Sec. 5, Constitution), which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.
>
> Ours is still a unitary form of government, not a federal state. Being so, any form of autonomy granted to local governments will necessarily be limited and confined within the extent allowed by the central authority. Besides, the principle of local autonomy under the 1987 Constitution simply means "decentralization". It does not make local governments sovereign within the state or an *"imperium in imperio"*.

On petitioner's use of the presumptive tax assessment to enforce collection of alleged franchise tax liability, the Court is in one with respondent that the same has no legal and factual bases, hence invalid.

In issuing franchise tax assessment against respondent, petitioner used the presumptive tax assessment by assuming the following factors for the years 2004 to 2009: (a) Cagayan Population; and (b) Estimated Load per

Month of P300.00. The Cagayan population per year was multiplied by P300.00 times 12 months to arrive at the annual presumptive gross receipts from 2004 to 2009. The presumptive gross receipts per year were then multiplied by 40% estimated market share of respondent, resulting in annual estimated share. The franchise tax due per year was then computed by multiplying the franchise tax of 0.005 by the annual estimated share. Added to the principal tax due was a surcharge of 25% and interest.

The formula resulted in the total franchise tax liability of Php86,482,092.60, computed as follows:

FRANCHISE TAX COMPUTATION
SMART COMMUNICATIONS, INC.
CY 2004-2009

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Estimated Load Per Month	PHP300.00	PHP300.00	PHP300.00	PHP 300.00	PHP300.00	PHP 300.00
	12	12	12	12	12	12
Annual Presumptive Gross Receipts	PHP3,924,086,400.00	PHP4,016,347,200.00	PHP4,125,189,600.00	PHP3,861,255,600.00	PHP3,902,184,000.00	PHP3,902,184,000.00
Estimated Market Share	40%	40%	40%	40%	40%	40%
Annual Estimated Share	PHP1,569,634,560.00	PHP1,606,538,880.00	PHP1,650,075,840.00	PHP 1,544,502,240.00	PHP1,560,873,600.00	PHP1,560,873,600.00
Franchise Tax (%)	.005	.005	.005	.005	.005	.005
Total Amount Due	PHP7,848,172.80	PHP8,032,694.40	PHP8,250,379.20	PHP 7,722,511.20	PHP7,804,368.00	PHP7,804,368.00
Surcharge – 25%	1,962,043.20	2,008,173.60	2,062,594.80	1,930,627.80	1,951,092.00	1,951,092.00
Interest	PHP5,650,684.42	PHP5,783,539.97	PHP5,940,273.02	PHP 5,096,857.39	PHP3,277,834.56	PHP1,404,786.24
GRAND TOTAL						**PHP86,482,092.60**

Interest is computed at 2% per month
*66%
**42%
***18%

There is no question that under Sections 6A.06 and 6A.10 of the Cagayan Provincial Revenue Code of 2005, the Provincial Treasurer of Cagayan is allowed to conduct examination of books of accounts of businesses within its territorial jurisdiction. In the process, she may utilize any of the modes, procedures, remedies of whatever nature including those used by revenue examiners of the Bureau of Internal Revenue in discovering, computing or arriving at the taxable gross income of a taxpayer. In other words, she may use the best evidence available to ascertain, assess and collect the true and correct amount of the tax due from the taxpayer concerned as allowed under Section 6(B) of the National Internal Revenue Code (NIRC) which provides as follows:

Section 6(B) of the NIRC of 1997 reads:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
>
> xxx xxx xxx
>
> (B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

The "best evidence available" under the NIRC, as amended, includes the corporate and accounting records of the taxpayer subject of the assessment process, the accounting records of other taxpayers engaged in the same line of business, including their gross profit and net profit sales, data, record, paper, document or any evidence gathered by internal revenue officers from other taxpayers who had personal transactions or from whom the subject taxpayer received any income; as well as similar documents and information secured from government offices or agencies, such as the SEC, the Central Bank of the Philippines, the Bureau of Customs, and the Tariff and Customs Commission.[28]

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[28] *Commission of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

In the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation which does not require mathematical exactness. Approximation in the calculation of the taxes due is allowed if not justified. To rule otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously,[29] as in the case at bar.

Perusal of the relevant provisions of Provincial Ordinance No. 2005-07, otherwise known as the Cagayan Provincial Revenue Code of 2005 reveals that petitioner is not expressly authorized to compute, the way it did, the franchise tax based on assumptions to arrive at the Estimated Load per month of the total population of the Province of Cagayan for the year 2004 to 2009 and the estimated market share of respondent. Besides, the formula is of unknown origin. It is also unclear what and how the data were secured and applied to in the computation to arrive at the alleged franchise tax liability of respondent. Petitioner as well failed to establish the direct connections of the factors used to gross sales or receipts attributable to the Province. This is equivalent to a "naked assessment", *i.e.*, without any foundation character.

The *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment,"*i.e.*, without any foundation character, the determination of the tax due is without rational basis.[30] Hence, the determination by the Court must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.

Time and again this Court has ruled that the taxing authority must prove not only that the taxpayer is liable but also that the tax assessment is due and correct.

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[29] *Ibid.*
[30] *Ibid.*

In fine, the franchise tax assessment for calendar years 2004 to 2009 issued against respondent amounting to Php86,482,092.60, which was based on "presumptive tax assessment" is **null and void** for want of any legal and factual justifications.

WHEREFORE, the instant Petition for Review is hereby **DENIED,** for lack of merit. Accordingly, the Decision dated April 30, 2012 of the Regional Trial Court, Branch 65 of Makati City in Civil Case No. 11-051 is hereby **AFFIRMED**, but on grounds herein stated.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I concur:

ERLINDA P. UY
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.

ERLINDA P. UY
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