# REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
# QUEZON CITY

## SPECIAL FIRST DIVISION

**CITY GOVERNMENT OF BALANGA, BATAAN, and JOSELITO R. EVANGELISTA, in his capacity as City Treasurer of Balanga, Bataan,**
Petitioners,

- versus -

**SMART COMMUNICATIONS, INC., SMART BROADBAND, INC., and PILIPINO TELEPHONE CORPORATION,**
Respondents.

**CTA AC NO. 200**

Members:

**DEL ROSARIO,** *P.J., Chairperson,*
**UY,** and
**MINDARO-GRULLA,** *JJ.*

Promulgated:

OCT 22 2018 : 1:27pm

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## DECISION

***DEL ROSARIO, P.J.:***

This is a Petition for Review[1] filed by the City Government of Balanga, Bataan, and Joselito R. Evangelista, in his capacity as City Treasurer of Balanga, Bataan, pursuant to Rule 8, Section 3(a) of the Revised Rules of the Court of Tax Appeals, praying that the Court render judgment reversing and setting aside the Decision dated October 23, 2017,[2] promulgated by the Regional Trial Court (RTC), Branch 2, Balanga City in Civil Case No. 9810 entitled "*Smart Communications, Inc., Smart Broadband, Inc., and Pilipino Telephone Corporation vs. City Government of Balanga, Bataan and Joselito R. Evangelista, in his capacity as City Treasurer of Balanga, Bataan*".

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[1] Filed through registered mail on December 4, 2017, CTA Docket, pp. 8-26.
[2] RTC Docket, vol. 2, pp. 968-991; Annex "A", CTA Docket, pp. 27-49.

In the assailed Decision, the RTC granted the **Petition for Refund** of local business taxes for the years 2010 and 2011 filed by Smart Communications, Inc. (Smart), Smart Broadband, Inc. (Smart Broadband), and Pilipino Telephone Corp. (Piltel), pursuant to Section 196 of the Local Government Code of 1991 (LGC). The dispositive portion of the assailed Decision reads:

> "WHEREFORE, *premises considered*, the petition is hereby given due course and the assailed assessments are hereby nullified and set aside. The respondents are directed to re-compute the local business taxes due from respondents for the years 2010 and 2011 based on the amounts declared by petitioners in their sworn declaration of gross sales/receipts and/or certifications and, thereafter, refund the petitioners the excess taxes paid.
>
> No costs.
>
> SO ORDERED."

## THE PARTIES

Petitioner City Government of Balanga, Bataan is a local government unit under the LGC with office address at Balanga City Hall, Poblacion, Balanga City, Bataan, where it may be served with orders, notices, decisions and other legal processes through the City Legal Officer.[3]

Petitioner Joselito R. Evangelista (City Treasurer) is the City Treasurer of the City of Balanga, Bataan. He may be served with orders, notices, decisions, and other legal processes at the Balanga City Hall, Poblacion, Balanga City, Bataan.[4]

Respondents Smart, Smart Broadband and Piltel are corporations duly organized and existing under and by virtue of the laws of the Republic of the Philippines. Respondent Smart and Piltel have their principal office at SMART Tower, 6799 Ayala Avenue, Makati City, while Smart Broadband has its principal office at 12th Floor, Rufino Pacific Tower, 6784 Ayala Avenue, Makati City. They

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[3] Par. No. 2.1, II. The Parties, Petition for Review, CTA Docket, p. 9.
[4] Par. No. 2.2, II. The Parties, Petition for Review, CTA Docket, p. 9.

may be served with notices and other processes through their counsel. [5]

## THE FACTS OF THE CASE

In January 2010, respondents Smart, Smart Broadband and Piltel submitted to the City Government of Balanga, Bataan their respective applications for the renewal of their business permits. Respondents reported their respective total gross sales or receipts for the preceding calendar year 2009, as follows[6]:

| | Gross Sales/Receipts (2009) |
|---|---|
| Smart | ₱1,427,170.34 |
| Smart Broadband | ₱2,296,825.59 |
| Piltel | ₱428.57 |

Notwithstanding the submission of their respective gross sales or receipts for the preceding calendar year 2009, petitioner City Government, through petitioner City Treasurer, assessed respondents with local business taxes for the year 2010, in the following amounts, using the Presumptive Income Level Assessment Approach (PILAA) as provided in Section 2K.03 of the Balanga City Revenue Code:

| | Local Business Tax Assessed (2010) |
|---|---|
| Smart | ₱145,000.00[7] |
| Smart Broadband | ₱40,000.00[8] |
| Piltel | ₱64,000.00[9] |

In order to secure the necessary business permits, on January 26, 2010, respondents paid under protest the local business taxes for the year 2010 in the following amounts:

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[5] Par. Nos. 3.01, 3.02, 3.03, III. The Parties, Petition for Refund, RTC Docket, vol. 1, p. 4.
[6] Pre-Trial Order dated December 6, 2013, as amended on December 2, 2014; RTC Docket, vol. 2, pp. 298-299, and 373.
[7] Exhibit "A", RTC Docket, vol. 1, p. 153; Exhibit "1", RTC Docket, vol. 2, p. 792.
[8] Exhibit "B", RTC Docket, vol. 1, p. 154; Exhibit "5", RTC Docket, vol. 2, p. 801.
[9] Exhibit "C", RTC Docket, vol. 1, p. 155; Par. 14. Stipulation of Facts (Admissions), Pre-Trial Order, RTC Docket, vol. 2, pp. 299-300.

| | Local Business Tax Paid (2010) |
|---|---|
| Smart | ₱145,000.00[10] |
| Smart Broadband | ₱40,000.00[11] |
| Piltel | ₱64,000[12] |

In January 2011, respondents Smart and Smart Broadband, again applied for the renewal of their respective business permits, and declared their respective gross sales or receipts accruing to Balanga City for the preceding calendar year 2010 in their respective application forms, as follows[13]:

| | Gross Sales/Receipts (2010) |
|---|---|
| Smart | ₱842,434.38 |
| Smart Broadband | ₱2,076,263.39 |

In assessing respondents Smart and Smart Broadband with local business taxes for the year 2011, petitioner City Government, through petitioner City Treasurer, disregarded their gross sales or receipts for the preceding calendar year 2010. Instead, petitioners again used the PILAA in assessing respondents Smart and Smart Broadband with the following amounts of local business taxes:

| | Local Business Tax Assessed (2011) |
|---|---|
| Smart | ₱46,000.00[14] |
| Smart Broadband | ₱166,750.00[15] |

Again, in order to secure the necessary business permits, on January 26, 2011, respondents Smart and Smart Broadband were constrained to pay, under protest, petitioner City Government the following amounts:

| | Local Business Tax Paid (2011) |
|---|---|
| Smart | ₱46,000.00[16] |
| Smart Broadband | ₱166,750.00[17] |

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[10] Exhibit "F", RTC Docket, vol. 1, p. 160.
[11] Exhibit "G", RTC Docket, vol. 1, p. 161.
[12] Exhibit "H", RTC Docket, vol. 1, p. 162.
[13] *Id.*
[14] Exhibit "D", RTC Docket, vol. 1, pp. 156-157.
[15] Exhibit "E", RTC Docket, vol. 1, pp. 158-159.
[16] Exhibit "J", RTC Docket, vol. 1, p. 164.

On July 15, 2011, respondents filed with petitioner City Treasurer **claims for refund** of the excess local business taxes they paid to petitioner City Government for the years 2010 and 2011, in the following amounts:

| | 2010 | 2011 | TOTAL |
|---|---|---|---|
| Smart | ₱136,730.31[18] | ₱154,325.66[19] | ₱291,055.97[20] |
| Smart Broadband | ₱5,290.76[21] | ₱21,237.37[22] | ₱26,528.13[23] |
| Piltel | ₱56,000[24] | - | ₱56,000[25] |

Since petitioners failed to act on respondents' claims for refund, respondents considered such inaction as a denial of their claims. Thus, respondents filed a **Petition for Refund** with the RTC of Bataan on October 6, 2011[26] pursuant to Section 196 of the LGC. The Petition for Refund was raffled to RTC, Branch 2, Balanga City.

***Proceedings before the court a quo***

On November 15, 2011, petitioners filed their Answer[27] to the Petition for Refund, interposing the following special and affirmative defenses:

(i) The Petition for Refund filed by respondents should be dismissed for lack of cause of action against petitioner;

(ii) Respondents' cause of action had already prescribed pursuant to Section 195 of the Local Government Code of 1991 by reason of respondents' failure to protest the assessment of petitioners;

(iii) Petitioners enjoy the presumption of regularity in the performance of their duties, thus, respondents have the burden of proof to show that the assessments are wrong primarily through submission of their duly audited financial statements, which in this case, they failed to submit;

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[17] Exhibit "I", RTC Docket, vol. 1, p. 163.
[18] Exhibit "K", RTC Docket, vol. 1, p. 167.
[19] *Id.*
[20] *Id.*
[21] Exhibit "L", RTC Docket, vol. 1, p. 175.
[22] *Id.*
[23] *Id.*
[24] Exhibit "M", RTC Docket, vol. 1, p. 182.
[25] *Id.*
[26] Petition for Refund, RTC Docket, vol. 1, pp. 2-25.
[27] RTC Docket, vol. 1, pp. 70-80.

(iv) Tax refunds are in the nature of tax exemptions and are, thus, regarded as in derogation of sovereign authority and construed *strictissimi juris* against the person or entity claiming the exemption;

(v) Respondents merely submitted sworn declarations of gross income to petitioners or the computation of their local business taxes without the required audited financial statements and any supporting document, thus, the City Treasurer was constrained to use the PILAA, and respondents were duly informed thereof;

(vi) The tax base used by petitioners in computing the local business taxes of respondents are well within and authorized under the Balanga City Revenue Code;

(vii) Local government units are allowed some discretion in determining the rates of imposable taxes; and,

(viii) Respondents Smart and Smart Broadband are not classified and considered as retailers, and thus should be taxed under Sec. 2K.02 (g).13 and not under Sec. 2K.02 (d) of the Balanga City Revenue Code.

Respondents filed their Reply[28] to petitioners' Answer on January 3, 2012.

The case was set for pre-trial on February 27, 2012.[29] Petitioners filed their Pre-Trial Brief[30] on February 22, 2012, while respondents' pre-trial brief[31] was filed on February 24, 2012.

During the pre-trial conference, upon motion of respondents, the RTC referred the case to the Philippine Mediation Center, pursuant to Section 2(a) Rule 18 of the 1997 Rules of Civil Procedure and the Second Revised Guidelines for the Implementation of mediation proceedings approved by the Supreme Court on October 16, 2001.[32] Upon failure of the mediation proceedings[33], the case was again set for pre-trial. The pre-trial conference was held on

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[28] RTC Docket, vol. 1, pp. 98-121.
[29] Order, RTC Docket, vol. 1, p. 131; Notice of Pre-Trial Conference, RTC Docket, vol. 1, p. 132.
[30] RTC Docket, vol. 1, pp. 133-139.
[31] Pre-Trial Brief for the Petitioners, RTC Docket, vol. 1, pp. 140-152.
[32] Minutes, RTC Docket, vol. 1, p. 187; Order, RTC Docket, vol. 1, p. 189.Order, RTC Docket, vol. 1, p. 190.
[33] Mediator's Report, RTC Docket, vol. 1, p. 191; Order, RTC Docket, vol. 1, p. 192.

December 6, 2013[34] during which the parties entered into stipulations of facts which were later on reflected in the "Pre-Trial Order".[35]

During trial, respondents presented their witnesses, Rina Lorena Manuel[36] and Lilian G. Narida,[37] whose testimonies were offered to prove petitioners' allegations and claims in their Petition for Refund, particularly that:

(i) Respondents applied for business permits with the petitioner City Government of Balanga, Bataan for the years 2010 and, except for Piltel, 2011;[38]

(ii) Respondents paid, under protest, the local business taxes assessed by petitioners City Government of Balanga, Bataan, and City Treasurer Evangelista using the PILAA;[39]

(iii) Petitioners accepted such payments made by respondents[40] and petitioners issued the corresponding official receipts as proof of such payments;[41]

(iv) Respondents were never informed of how petitioners were able to arrive at the amounts of local business taxes assessed by them;[42]

(v) The demand of petitioners for respondents to submit their respective audited financial statements for their respective

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[34] Minutes, RTC Docket, vol. 2, p. 259.
[35] Supra note 6.
[36] Minutes of the Session held on December 2, 2014, RTC Docket, vol. 2, p. 345, TSN dated December 2, 2014, RTC Docket, vol. 2, pp. 357-372; Order dated December 2, 2014, RTC Docket, vol. 2, pp. 373-374; Minutes of the Session held on February 16, 2005, RTC Docket, vol. 2, p. 417; TSN dated February 16, 2015, pp. 393-416; Order dated February 16, 2015, RTC Docket, vol. 2, p. 418; Minutes of the Session held on April 27, 2015, RTC Docket, vol. 2, p. 419; TSN dated April 27, 2015, pp. 431-441; Order dated April 27, 2015, RTC Docket, vol. 2, p. 420; Minutes of the Session held on September 14, 2015, RTC Docket, vol. 2, p. 442; TSN dated September 14, 2015, pp. 444-456; Order dated September 14, 2015, RTC Docket, vol. 2, p. 443.
[37] Minutes of the Session held on December 7, 2015, RTC Docket, vol. 2, p. 468; TSN dated December 7, 2015, RTC Docket, vol. 2, pp. 575-593; Order dated December 7, 2015, RTC Docket, vol. 2, p. 469.
[38] Direct Examination of Rina Lorena R. Manuel Testifying as Witness for the Petitioners, RTC Docket, vol. 2, pp. 194-211; Direct Examination of Lillian G. Narida Testifying as Witness for the Petitioners, RTC Docket, vol. 2, pp. 470-481.
[39] *Id.*
[40] Direct Examination of Rina Lorena R. Manuel Testifying as Witness for the Petitioners, RTC Docket, vol. 2, pp. 194-211.
[41] *Id.*
[42] *Id.*

branches in Balanga, Bataan is unreasonable and is, in fact, impossible;[43]

(vi) Respondents filed their written claims for refund;[44] and,

(vii) Ms. Narida prepared certifications showing the amounts of gross sales generated by respondents in the Balanga wireless center or branch for the year 2009, and by respondents Smart and Smart Broadband, in the Balanga wireless center or branch for the year 2010.[45]

On January 8, 2016, respondents filed their "Offer of Evidence",[46] consisting of Exhibits "A" to "X" including their sub-markings, which were admitted in the Order dated May 16, 2016, notwithstanding petitioners' objection to the exhibits' purposes, as contained in their Comment and Opposition to Petitioner's Formal Offer of Evidence filed on January 20, 2016.[47]

On the other hand, petitioners presented the Officer-in-Charge of the City License, Permit and Franchising Office, Neil Erwin B. Dizon, as witness,[48] who testified to prove the following:

(i) PILAA is a proper tool in computing local business taxes;

(ii) The submission of certified copies of audited financial statements is necessary and required by law to ascertain the gross sales or receipts of respondents in Balanga City;

(iii) Respondents did not submit the said audited financial statements, despite petitioners' repeated demands, hence, petitioners were constrained to apply the PILAA in assessing petitioners their local business taxes; and,

(iv) Respondents are not entitled to refund of the local business taxes they paid.

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[43] *Id.*
[44] *Id.*
[45] Direct Examination of Lillian G. Narida Testifying as Witness for the Petitioners, RTC Docket, vol. 2, p. 470.
[46] RTC Docket, vol. 2, pp. 616-629.
[47] RTC Docket, vol. 2, pp. 607-615.
[48] Minutes of the Session held on February 22, 2016, RTC Docket, vol. 2, p. 723; Order dated February 22, 2016, RTC Docket, vol. 2, p. 724; Minutes of the Session held on September 19, 2016, RTC Docket, vol. 2, p. 764; Order dated September 16, 2016, RTC Docket, vol. 2, p. 763; and Judicial Affidavit of Neil Erwin B. Dizon, RTC Docket, vol. 1, pp. 249-276.

Petitioners filed their "Formal Offer of Evidence" on October 4, 2016,[49] consisting of Exhibits "1" to "11", with their sub-markings. Said exhibits were all admitted in the Order dated November 17, 2016,[50] despite respondents' Comment (To Formal Offer of Evidence dated 3 October 2016).[51]

In the Order dated November 17, 2016,[52] the parties were given thirty (30) days to submit Memoranda. Petitioners filed their Memorandum on December 22, 2016.[53]

On January 9, 2017, respondents filed their Omnibus Motion, praying for the re-opening of Civil Case No. 9810 for the reception of rebuttal evidence and suspension of the filing of the parties' respective memoranda.[54] After the hearing on the Omnibus Motion, the same was granted by the RTC in its Order dated February 6, 2017,[55] despite petitioners' opposition thereto.[56] Hence, the Order dated November 17, 2016,[57] requiring the submission of the parties' respective memoranda was withdrawn.

On April 17, 2017, respondents presented their rebuttal evidence, which consisted of a copy of Bureau of Local Government Finance (BLGF) Memorandum Circular No. 01-001-2017.[58] The same was formally offered by respondents and admitted as Exhibit "Y", inclusive of sub-markings, in the Order dated May 29, 2017.[59]

The RTC eventually directed the parties to file their respective memoranda.[60] Thus, petitioners filed their Memorandum[61] on July 6, 2017 and respondents filed their Memorandum on July 24, 2017.[62] The case was submitted for decision on September 5, 2017.[63]

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[49] RTC Docket, vol. 2, pp. 786-790.
[50] RTC Docket, vol. 2, p. 845.
[51] RTC Docket, vol. 2, pp. 841-844.
[52] Supra note 44.
[53] RTC Docket, vol. 2, pp. 846-865.
[54] RTC Docket, vol. 2, pp. 867-874.
[55] RTC Docket, vol. 2, pp. 885-887.
[56] Opposition to Omnibus Motion, RTC Docket, vol. 2, pp. 876-880.
[57] Supra note 46.
[58] Order, RTC Docket, vol. 2, p. 893.
[59] RTC Docket, vol. 2, p. 914.
[60] Order, RTC Docket, vol. 2, p. 914.
[61] RTC Docket, vol. 2, pp. 916-939.
[62] RTC Docket, vol. 2, pp. 940-966.
[63] Order, RTC Docket, vol. 2, p. 967.

On October 23, 2017, the RTC promulgated the assailed Decision,[64] nullifying and setting aside the local business tax assessments; directing petitioners to re-compute the local business taxes due from petitioners for the years 2010 and 2011 based on the amounts declared by respondents in their sworn declarations of gross sales/receipts and/or certifications and thereafter, to refund respondents the excess taxes paid.[65]

Aggrieved, petitioners filed the instant Petition for Review with the CTA on December 4, 2017.[66]

***Proceedings before this Court***

In the Resolution dated April 2, 2018, the Court directed respondents to file their Comment on the Petition for Review within ten (10) days from notice.

On May 4, 2018, respondents posted their Motion for Time, which was received by the Court on May 11, 2018, praying that they be given an additional period of ten (10) days from May 4, 2018 or until May 14, 2018 within which to file their Comment. Respondents' Motion for Time was granted in the Resolution dated May 22, 2018.

In their Comment[67] filed through registered mail on May 15, 2018, respondents aver the following:

(i) Respondents have duly reported their respective gross sales or receipts for the preceding calendar years of 2009 and 2010 and have likewise submitted corresponding documents in support thereof, thus, petitioners have no factual and legal bases to assess local business taxes using the PILAA;

(ii) In other jurisdictions, PILAA or presumptive taxation is only resorted to when there is administrative difficulty or inability to ascertain a taxpayer's income, as in the case of small to medium enterprises which do not keep any books of account;

(iii) Petitioner City Treasurer violated respondents' right to procedural due process when he failed to inform

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[64] Supra note 2.
[65] *Id.*
[66] CTA Docket, vol. 2, pp. 8-24.
[67] CTA Docket, vol. 2, pp. 257-276.

respondents of how the presumed local business taxes were computed using the PILAA and when there was no stratified schedule of presumptive income level;

(iv) The absence of said stratified schedule also violated the Constitutional requirement of uniformity in taxation; and,

(v) The presumption of regularity in the performance of duties has no application in this case considering that the manner by which petitioner City Treasurer assessed respondents with local business taxes for the years 2010 and 2011 was tainted with evident irregularity and arbitrariness.

On May 25, 2018, the Petition for Review was submitted for decision.[68]

## ISSUE

As culled from the Petition,[69] the following issue is submitted for the Court's resolution:

> Whether or not the RTC erred in nullifying the local business tax assessments issued by petitioners against respondents Smart, Smart Broadband, and Piltel for calendar year 2010, and the local business tax assessments against respondents Smart and Smart Broadband for calendar year 2011.

## THE COURT'S RULING

***The administrative and judicial claims for refund and the appeal to this Court were timely filed***

Section 196 of the LGC governs the rules on claiming for refund or tax credit of local business taxes erroneously or illegally collected, *viz.*:

> "SECTION 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

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[68] Resolution, CTA Docket, p. 449.
[69] CTA Docket, pp. 12-13.

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 payment of such tax**, fee, or charge, or from the date the taxpayer is entitled to a refund or credit." (Boldfacing supplied)

In *City of Manila vs. Cosmos Bottling Corporation*,[70] the Supreme Court had the occasion to discuss the requisites of prosecuting an action for refund under Section 196 of the LGC:

"xxx, Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, **the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action**." (Boldfacing supplied)

Applying the foregoing provisions, the Court finds that the administrative and judicial claims for refund of respondents were timely filed as shown hereunder:

<table>
<tr><th>Taxable Year</th><th>Taxpayers</th><th>Dates of Payment of Local Business Taxes</th><th>Dates of Filing of Administrative Claims for Refund</th><th>Date of Filing of Judicial Claim for Refund</th><th>End of the Two-Year Prescriptive Period</th></tr>
<tr><td>2010</td><td>Smart, Smart Broadband, and Piltel</td><td>January 26, 2010[71]</td><td rowspan="2">July 15, 2011</td><td rowspan="2">October 6, 2011</td><td>January 26, 2012</td></tr>
<tr><td>2011</td><td>Smart and Smart Broadband</td><td>January 26, 2011[72]</td><td>January 26, 2013.</td></tr>
</table>

Anent the timeliness of petitioner's judicial appeal, Section 11 of RA No. 1125, as amended, provides that any party adversely affected by a decision, order or resolution of the RTC may file an appeal with this Court within thirty (30) days from receipt thereof.

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[70] G.R. No. 196681, June 27, 2018.
[71] Exhibits "F", "G", "H", RTC Docket, vol. 1, pp. 160-162.
[72] Exhibits "I" and "J", RTC Docket, vol. 1, pp. 163-164.

Since petitioner received a copy of the assailed Decision on November 2, 2017,[73] and subsequently filed the instant Petition for Review on December 4, 2017 (December 2, 2017 being a Saturday), the same was timely filed.[74]

***PILAA may be used only if financial data is not submitted***

Section 2M.04 (d) of the Balanga City Revenue Code provides:

"(d) *Sworn Statement of Gross Receipts or Sales*. Operators of business subject to taxes on business shall submit a sworn statement of the capital investment before the start of their business operations and upon application for a Mayor's permit to operate business. Upon payment of the tax levied in this Chapter, **any person engaged in business subject to the business tax paid based on gross sales and/or receipts shall submit a sworn statement of his gross sales/receipt for the preceding calendar year or quarter in such manner and form as may be prescribed by the City Treasurer**. **Should the taxpayer fail to submit a sworn statement of gross sales or receipts, due among others to his failure to have a book of accounts, records of subsidiaries for his business, the City Treasurer or his authorized representatives may verify or assess gross sales or receipts of the taxpayer under the best available evidence upon which the tax may be based**." (Boldfacing supplied)

Based on the foregoing, the sworn declaration of gross sales and/or receipts submitted by the concerned taxpayer shall be used in computing the local business tax due therefrom; resort to best available evidence may be done only if the taxpayer fails to provide said sworn declaration of sales and/or receipts on account of its failure to maintain books of accounts and records.

In its Memorandum Circular (MC) No. 01-001-2017,[75] the BLGF reiterated the prevailing rules in the assessment of local business taxes, to wit:

"B. Assessment of LBT for Renewal of Business Permit

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[73] Petition for Review, CTA Docket, p. 9.
[74] December 2, 2017 fell on a Saturday.
[75] RTC Docket, vol. 2, pp. 906-907.

> 1. **In the absence of audited Financial Statement, the LBT shall be based on the Sworn Declaration of gross sales or receipts by the taxpayer or its Income Tax Returns (ITR).** In case of suspected underdeclaration of gross sales/receipts, the application shall be tagged by the LGU, and the business may be subjected to the examination of books of accounts by the local treasurer, which shall be done after the business renewal period.
>
> xxx
>
> 3. **The Presumptive Income Level Assessment Approach (PILAA) may be used in computing the local business [tax] ONLY if the taxpayer is unable to provide proof of its gross sales or receipts.** The PILAA may be used in estimating the gross sales or receipts provided that the PILAA is in the local tax ordinance and has undergone public hearings and publications. xxx" (Boldfacing supplied)

While the aforecited MC was issued only on January 5, 2017, the same is applicable in resolving the present case considering that it is a mere reiteration and confluence of existing laws, rules, and jurisprudence on assessment of local business taxes, including the rules on the use of the PILAA.[76] The MC reiterates that the "presumptive income level" may be used only in determining the taxpayer's local business tax due if there was a failure on the part of the taxpayer to provide proof of its gross sales or receipts.

In *First Planters Pawnshop, Inc. vs. City Treasurer of Pasay City represented by its former OIC, Ms. Ofelia M. Oliva*,[77] this Court had the occasion to discuss that the PILAA, as a tax-collection tool, may be used only if the taxpayer is unable to provide proof of its income, *viz.*:

> "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**.

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[76] Memorandum, RTC Docket, vol. 2, p. 952.
[77] City Treasurer of Pasay City, represented by its former OIC, Ms. Ofelia M. Oliva, CTA EB No. 501, December 10, 2010.

> 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.' 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 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.
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> **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**."[78] (Boldfacing supplied)

As outlined in *First Planters Pawnshop*, resort to PILAA may be justified only upon compliance with the following procedure:

(a) Require the taxpayer to declare the amount of its gross sales or receipts;

(b) If the local government unit (LGU) believes that the taxpayer underdeclared its gross sales or receipts, LGU should proceed in the computation of the taxpayers' local business tax based on the declared amount of gross sales or receipts;

(c) LGU should issue a Letter of Authority for the examination and audit of the taxpayer's books of accounts and other records;

(d) LGU should validate the amount of declared gross sales or receipts from the taxpayer's books of accounts and records, and re-compute the local business tax after said verification; and,

(e) If the taxpayer fails to present its books of accounts and other records or if it has no such records to validate its declared gross sales or receipts, the LGU may use the PILAA in

[78] Decision, CTA Docket, p. 47.

computing or re-assessing the local business tax due from the taxpayer.

Petitioners insist that the City Treasurer was constrained to assess respondents for local business taxes for the years 2010 and 2011 using the PILAA as the documents submitted by respondents were inadequate to substantially prove respondents' actual and correct gross sales or receipts in Balanga City for the preceding calendar years 2009 and 2010. According to petitioners, the documents submitted by respondents were mere print-outs, unsigned, unverified and appeared to be unaudited by any of their personnel.

On the other hand, respondents posit that petitioners erred in resorting to the use of PILAA in computing their local business taxes for the years 2010 and 2011, as respondents have already complied with the requirements under Section 2M.04 (d) of the Balanga City Revenue Code when respondents submitted their sworn statements of gross sales or receipts.

The Court finds for respondents.

Records reveal that respondents duly reported their respective gross sales or receipts for the preceding calendar years 2009 and 2010 and submitted corresponding documents in support thereof, in compliance with the provisions of Section 2M.04 (d) of the Balanga City Revenue Code. Contrary to petitioners' assertion, under Section 2M.04 (d) of the Balanga City Revenue Code, audited financial statements are not required in the computation of the local business taxes due from respondents as what is explicitly required is the submission of sworn statements of gross sales or receipts. This is so because audited financial statements for the preceding year are not available during the date prescribed for renewal of business permits and licenses and the payment of local business taxes, that is, within the first twenty (20) days of January of each year.

In the case of respondents, at the time that they were applying for the renewal of their respective business permits in January of 2010 and 2011, their respective audited financial statements have not yet been prepared and finalized by their respective external auditors. Considering that their audited financial statements were finalized only in April of each taxable year, it was impossible for respondents to submit their audited financial statements for the preceding calendar years 2009 and 2010 when they applied for the renewal of business permits in years 2010 and 2011.

The Court notes that to corroborate their sworn statements of gross sales or receipts, respondents Smart, Smart Broadband, and Piltel presented Certifications issued by Lilian G. Narida, Head of Marketing and Sales Accounting, stating the amount of gross sales of respondents for the years 2009 and 2010, which Certifications were based on the results of operations report of respondents.[79] Respondents Smart and Smart Broadband also submitted print-outs of the Detailed Sales Report Based on Production per Location or the daily transactions or sales of handsets, handset accessories, modems and other accessories of Smart and Smart Broadband's Wireless Center in Melano Building, Lerma corner Banzon Streets, Ibayo, Balanga City.[80]

As aptly pointed out by respondents, if petitioners believed that the amounts declared by respondents in their sworn statements of gross sales or receipts were manifestly below industry standards, then petitioner City Treasurer should have subjected the books of accounts of respondents to examination as stated in Section 2M.04 (d) of the Balanga City Revenue Code, instead of immediately resorting to the PILAA. Without any attempt to conduct an audit or examination, petitioner City Treasurer automatically computed the local business taxes using the PILAA on the very same day that the application forms were submitted by respondents, and even before requiring the submission of the audited financial statements.[81]

During trial, petitioners presented Neil Erwin B. Dizon, City Assistant Government Department Head I of the City Government of Balanga, Officer-in-Charge of the City License, Permit and Franchising Office of Balanga City. In his Judicial Affidavit,[82] he affirmed that PILAA was used because respondents failed to submit their audited financial statements:

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[79] Exhibits "O", "P", "Q", "R", "S", inclusive of sub-markings, RTC Docket vol. 2, pp. 630-634.
[80] Exhibit "W" and "X", inclusive of sub-markings, RTC Docket, vol. 2, pp. 635-669, 670-722.
[81] Comment, CTA Docket, pp. 263-267.
[82] RTC Docket, vol. 1, pp. 278-302.

"16. Q. When making assessment, you state that you consider their gross income or receipts, how you determine its correctness?

A. To determine the correctness of their gross income or receipts, we check their declaration they have made in their application form, their monthly rental, number of employees and other costs that might be incurred in maintaining their business.

17. Q. Was there any instance that you find taxpayers undervalue their gross income or receipts?

A. Yes, sir.

18. Q. What do you do then, if any?

A. **We request them to submit additional documents, such as the certified true copies of their audited financial statements**.

xxx xxx xxx

25. Q: Mr. Witness, if a business establishment submitted its audited financial statements, do you still apply PILAA?

A. **No, sir.** We use only PILAA if the business establishment is unable to provide proof of its income. When it submitted its sworn declaration of gross income and audited financial statement, we can now sufficiently compute the local business tax due without resort to the PILAA. There is no need to use a "presumptive income level" since it has already provided its actual gross income for the subject taxable year/s.

xxx xxx xxx

36. Q: What was the result of your assessment?

A. Upon my initial evaluation and assessment, it appears that in their application form, they undervalued their gross or receipts, and the discrepancies are very apparent.

37. Q: Why do you say so?

A. Sir, we considered their monthly rental, the monthly salary of their personnel as stated in their application form. We also consider the cost of utilities plus the fact that it is the only business center in the whole province.

38. Q: What did you do with your evaluation?

> A. **I informed them and requested them to submit their audited financial statement for their sales center in Balanga but they did not; hence, we were forced to use the PILAA** after explaining the same to them the reason and the basis." (Boldfacing supplied)

Upon cross-examination,[83] however, Mr. Dizon testified that **he used the PILAA even before requesting respondents to submit their audited financial statements**:

> "ATTY. VERZO:
>
> xxx
>
> Q: So according to your answer in question no. 22, you make use of PILAA if a business does not submit its audited financial statements, that's correct?
>
> A: Yes, sir.
>
> **Q: In the case of my client, you did not ask for an audited financial statement you apply the PILAA first and then you asked audited financial statement, is that correct?**
>
> **A: Yes, sir.**
>
> xxx xxx xxx
>
> **Q: So you applied PILAA before you asked for another audited financial statement?**
>
> **A: Yes, because if they have declared in the gross application form.**" (Boldfacing supplied)

The Court cannot simply ignore the glaring inconsistencies in the statements of petitioner's witness. During cross-examination, Mr. Dizon admitted that in determining respondents' local business tax liability, petitioners applied the PILAA first before asking for respondents' audited financial statements, which is inconsistent with his judicial affidavit, stating that PILAA was used for respondents' failure to submit their audited financial statements.

To be sure, in immediately applying the PILAA in computing the local business taxes due from respondents for the years 2010 and 2011 even after respondents have already provided their sworn

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[83] TSN of the February 22, 2016 Hearing, RTC Docket, vol. 2, pp. 751-754.

statements of gross sales or receipts for the preceding calendar years 2009 and 2010 with supporting documents, petitioner acted in gross violation of Section 2M.04 (d) of the Balanga City Revenue Code.

Consequently, considering that petitioners' computation and collection of local business taxes were erroneously and illegally made, respondents are entitled to the refund of the excess local business taxes paid to respondent City Government in the years 2010 and 2011, as so aptly declared by the court *a quo*.

**WHEREFORE**, premises considered, the instant Petition for Review dated December 4, 2017 filed by the City Government of Balanga, Bataan, and Joselito R. Evangelista, in his capacity as City Treasurer of Balanga, Bataan, is hereby **DENIED** for lack of merit. Accordingly, the Decision dated October 23, 2017 issued by the Regional Trial Court, Branch 2, Balanga City, Bataan in Civil Case No. 9810 entitled "*Smart Communications, Inc., Smart Broadband, Inc., and Pilipino Telephone Corporation vs. City Government of Balanga, Bataan and Joselito R. Evangelista, in his capacity as City Treasurer of Balanga, Bataan*" is **AFFIRMED**.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

***WE CONCUR:***

**ERLINDA P. UY**
Associate Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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