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

**SPECIAL FIRST DIVISION**
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| **THE CITY GOVERNMENT OF TAGUM, represented by its City Treasurer, Mr. EDGAR C. DE GUZMAN,** | **CTA AC No. 190 (UDK-SP 015)** (Civil Case No. 4109) |
| Petitioner, | ***Members:*** |
| **- versus -** | **DEL ROSARIO,** *P.J., Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.* |
| **NATIONAL TRANSMISSION CORPORATION,** Respondent. | ***Promulgated:*** NOV 14 2018 : 4:00pm |

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# DECISION

**UY, *J.*:**

Before this Court is the *Petition for Review* filed on October 27, 2017 by the City Government of Tagum (Tagum City) against the National Transmission Corporation (TRANSCO), praying for the total and complete reversal of the Decision dated September 22, 2016[1] rendered by the Regional Trial Court – Branch 31, Tagum City, Davao del Norte, in Civil Case No. 4109 entitled *"National Transmission Corporation, Appellant, versus Tagum City, represented by its City Treasurer, Mr. Edgar C. De Guzman, Appellee"*, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the appeal is **GRANTED**. Appellee Tagum City is restrained from imposing the subject franchise tax on TRANSCO."

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[1] Division Docket, pp. 25 to 29.

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## THE FACTS

Petitioner Tagum City is a local government unit duly created and organized under the laws of the Philippines, with capacity to sue and be sued. It is represented by Edgar C. De Guzman, the City Treasurer, with office address at Office of the City Treasurer, City Hall, Tagum City.[2]

Respondent TRANSCO is a government instrumentality, created pursuant to Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, with principal office address at New Transco Building, Quezon Avenue corner BIR Road, Diliman, Quezon City.[3]

On August 18, 2009, respondent TRANSCO received a *Notice of Assessment* dated August 11, 2009 from the Office of the City Treasurer of petitioner Tagum City,[4] demanding payment of franchise tax in the total amount of ₱3,658,888.00, covering the period 2003 to 2008. There being no payments made by, nor response from respondent TRANSCO, petitioner Tagum City, thru its Treasurer, De Guzman, issued the letter dated September 7, 2009,[5] requesting for the settlement of the said amount, to avoid further accumulation of surcharge and penalties.

Consequently, respondent TRANSCO filed a protest letter dated September 16, 2009,[6] asserting that it has no franchise liability to petitioner Tagum City. According to respondent TRANSCO: (1) it has no power customer within the territorial jurisdiction of petitioner Tagum City; (2) neither does it have a substation/district/branch, regional office within the said city; (3) the power customer (*i.e.*, Davao del Norte Electric Cooperative, Inc., [DANECO]) as well as the TRANSCO facility (*i.e.*, Tindalo Substation) are both located in the province of Compostella Valley which is outside the territorial jurisdiction of Tagum City; and (4) respondent TRANSCO has fully

[2] Par. 7, *Appeal* vis-à-vis Par. 3, *Answer*, RTC Records (Civil Case No. 4109), pp. 3 and 45, respectively.
[3] Par. 6, *Appeal* vis-à-vis Par. 3, *Answer*, RTC Records (Civil Case No. 4109), pp. 3 and 45, respectively.
[4] Par. 2, *Appeal* vis-à-vis Par. 1, *Answer*, RTC Records (Civil Case No. 4109), pp. 2 and 45, respectively; Exhibits "10" and "11", RTC Records (Civil Case No. 4109), pp. 288 to 290.
[5] Exhibit "3", RTC Records (Civil Case No. 4109), p. 279.
[6] Exhibit "9", RTC Records (Civil Case No. 4109), pp. 286 to 287.

settled its franchise tax liability to Compostella Valley for its gross receipts from DANECO for the period 2003 to 2008.

Thereafter, the letter dated November 19, 2009 was issued by petitioner Tagum City's Treasurer, De Guzman,[7] reiterating the demand stated in the letter dated September 7, 2009 to pay the subject local franchise tax, and instructing respondent TRANSCO that payments made to Compostella Valley province, as far as the computed franchise tax is concerned, be remitted to petitioner.

On December 14, 2009, respondent TRANSCO filed an *Appeal* before the Regional Trial Court of Tagum City, docketed as Civil Case No. 4109, and assigned to Branch 31 (RTC-Branch 31).[8] Thereafter, trial ensued.

In the assailed Decision issued by RTC-Branch 31,[9] the *Appeal* of respondent TRANSCO was granted, and petitioner Tagum City was restrained from imposing the subject local franchise tax on respondent TRANSCO.

Hence on October 27, 2017, petitioner Tagum City filed the instant *Petition for Review.*

In the Resolution dated December 15, 2016,[10] this Court directed, among others: respondent TRANSCO, to file its *Comment* to the Petition for Review; and the Branch Clerk of Court of RTC-Branch 31, to elevate to this Court the entire records of Civil Case No. 4109, both within ten (10) days from receipt of the said Resolution. Respondent TRANSCO filed its *Comment* on January 31, 2017;[11] while the said Branch Clerk of Court transmitted the supposed complete records of the said Civil Case on January 24, 2017.[12]

Petitioner Tagum City filed a *Reply to Comment* on February 21, 2017.[13] Allegedly, respondent's insinuation that City Treasurer

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[7] Exhibit "2", RTC Records (Civil Case No. 4109), p. 278.
[8] RTC Records (Civil Case No. 4109), pp. 1 to 12.
[9] RTC Records (Civil Case No. 4109), pp. 338 to 342; Division Docket, pp. 25 to 29.
[10] Division Docket, pp. 35 to 37.
[11] Division Docket, pp. 80 to 91.
[12] Division Docket, pp. 68 to 79.
[13] Division Docket, pp. 94 to 96.

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Edgar C. De Guzman is not a real party in interest in the instant case, and that the verification and certification signed by him in the *Petition* is fatally defective are not only misplaced assertions of fact but short of legal basis. Petitioner contends that City Treasurer Edgar C. De Guzman is a real party in interest since the subject for review is the nullification of the assessment made by the latter, which is an act of the City Treasurer's Office. Allegedly, Mr. De Guzman filed the instant *Petition for Review* in his official capacity as City Treasurer in representation of the City Government of Tagum; and that by virtue of the City Treasurer's mandated function, which includes the issuance of notice of assessment, the City Treasurer becomes a real party in interest against any protest or legal question in relation thereto.

Subsequently in the Resolution dated August 2, 2017,[14] this Court directed the parties to submit their respective memoranda, within thirty (30) days from receipt thereof. Thus, respondent TRANSCO filed its *Memorandum* on September 8, 2017;[15] while petitioner Tagum City filed its *Memorandum* on October 2, 2017.[16] And on December 12, 2017, the instant case was submitted for decision.[17]

Hence, this Decision.

## ASSIGNMENT OF ERROR

Petitioner Tagum City assigns the following error supposedly committed by RTC – Branch 31, to wit:

> "THE REGIONAL TRIAL COURT ERRED IN RESTRAINING THE CITY OF TAGUM FROM IMPOSING FRANCHISE TAX ON TRANSCO RELYING SOLELY ON TRANSCO'S CONTENTION THAT IT HAS NO OFFICE, BRANCH OR SALES OUTLET WITHIN THE TERRITORIAL JURISDICTION OF TAGUM CITY."[18]

## ISSUES

For its part, respondent TRANSCO raises the following issues

[14] Division Docket, pp. 100 to 101.
[15] Division Docket, pp. 103 to 115.
[16] Division Docket, pp. 119 to 129.
[17] Division Docket, p. 149.
[18] Division Docket, pp. 15 and 51.

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for resolution of this Court, to wit:

> "A. WHETHER THE PETITION SHOULD BE DISMISSED OUTRIGHT BECAUSE OF THE ABSENCE OF A *SANGGUNIANG PANGLUNGSOD* RESOLUTION GIVING AUTHORITY TO MR. EDGAR C. DE GUZMAN, TO INITIATE THE FILING OF THE PETITION FOR REVIEW.
>
> B. WHETHER THE RTC CORRECTLY RESTRAINED TAGUM CITY FROM IMPOSING FRANCHISE TAX ON TRANSCO."[19]

***Petitioner's arguments:***

Petitioner Tagum City argues that the City Treasurer's Office has the authority to initiate the filing of the petition for review being a real party-in-interest; and that respondent TRANSCO is liable for local franchise tax on gross receipts from DANECO.

***Respondent's counter-arguments:***

Respondent TRANSCO avers that the absence of a *Sangguniang Panglungsod* resolution giving authority to Edgar C. De Guzman, City Treasurer, to initiate the filing of the petition for review, renders the same dismissible; and that the RTC-Branch 31 correctly restrained petitioner Tagum City from imposing franchise tax on respondent TRANSCO.

**THE COURT'S RULING**

The instant *Petition for Review* must be dismissed.

***Edgar C. De Guzman is not duly authorized to file the instant Petition for Review.***

It is respondent TRANSCO's view that the instant *Petition for Review* has been rendered dismissible, in view of the absence of a

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[19] Division Docket, p. 105.

*Sangguniang Panglungsod* resolution giving authority to Mr. Edgar C. De Guzman, to initiate the filing thereof.

We agree with respondent TRANSCO.

Without doubt, local government units have the power to sue, pursuant to Section 22 of the LGC of 1991, to wit:

> "SEC. 22. *Corporate Powers.*
>
> (a) **Every local government unit, as a corporation, shall have the following powers**:
>
> xxx xxx xxx
>
> (2) **To sue** and be sued;" *(Emphasis supplied)*

Relative thereto, Section 458(a)(1)(viii) of the LGC of 1991 provides as follows:

> "SEC. 458. *Powers, Duties, Functions and Compensation.*— (a) **The Sangguniang Panglungsod, as the legislative body of the city, shall** enact ordinances, **approve resolutions** and appropriate funds for the general welfare of the city and its inhabitants pursuant to section 16 of this Code and **<u>in the proper exercise of the corporate powers of the city as provided under section 22 of this Code</u>, and shall**:
>
> (1) Approve ordinances and **pass resolutions necessary for an efficient and effective city government, and in this connection, shall**:
>
> xxx xxx xxx
>
> (vii) **Subject to the provisions of this Code and pertinent laws, <u>determine the powers and duties of officials</u> and employees <u>of the city</u>**;" *(Emphases & underscoring supplied)*

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Based on the foregoing provisions, the *Sangguniang Panglungsod* is mandated, *inter alia*, to approve resolutions in the proper exercise of its power to sue. And in connection thereto, the said *Sanggunian* shall pass resolutions, among others, determining the powers and duties of city officials, subject to the provisions of the LGC of 1991 and pertinent laws. In other words, except when the power to sue is explicitly granted or designated to a particular city official under the law, a prior resolution from the *Sangguniang Panglungsod* is necessary for any city official to exercise such power.

While the LGC of 1991 grants certain powers and duties to the local treasurer, a careful examination of the said law would reveal that there is nothing therein, which authorizes the said official from filing an appeal in the appropriate court on behalf of the concerned local government unit. Furthermore, it is noteworthy that Republic Act No. 8472[20], the charter of petitioner Tagum City, does not grant such authority to the same official, as shown under Section 26 thereof, to wit:

> "Sec. 26. *The City Treasurer.* — xxx
>
> xxx xxx xxx
>
> (e) The city treasurer shall take charge of the city treasury office, and shall:
>
> (1) Advise the city mayor, the sangguniang panlungsod and other local government and national officials concerned regarding disposition of local government funds and on such other matters relative to public finance;
>
> (2) Take custody and exercise proper management of the funds of the City;
>
> (3) Take charge of the disbursement of all funds of the City and such other funds the custody of which may be entrusted to him by law or other competent authority;
>
> (4) Inspect private commercial and industrial establishments within the jurisdiction of the City in relation to the implementation of tax ordinances, pursuant to the

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[20] AN ACT CONVERTING THE MUNICIPALITY OF TAGUM, DAVAO PROVINCE, INTO A COMPONENT CITY TO BE KNOWN AS THE CITY OF TAGUM.

> provisions of the Local Government Code;
>
> (5) Maintain and update the tax information system of the City; and
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> (6) Perform such other duties and functions and exercise such other powers as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991, and those that are prescribed by law or ordinance."

Clearly therefrom, there is no specific grant of authority in the Charter of Tagum City to its City Treasurer to file a suit for and on behalf of the City of Tagum in the appropriate court. Hence, it becomes necessary that a resolution from the *Sangguniang Panglungsod* of petitioner Tagum City must have been issued prior to the filing of the instant Petition for Review.

Considering that there is no showing that the *Sangguniang Panglungsod* of petitioner Tagum City issued a resolution giving authority to De Guzman to initiate the filing of the instant *Petition for Review*, the same must be dismissed.

Nevertheless, even granting that Edgar C. De Guzman, being the Tagum City Treasurer, has been authorized by the *Sangguniang Panglungsod* of petitioner, the instant *Petition for Review* still lacks merit.

***Petitioner Tagum City may not impose a local franchise tax on respondent TRANSCO.***

To support the stance that respondent TRANSCO is liable to the subject local franchise tax, petitioner Tagum City argues as follows:

> "It is undisputed as found out by the court that DANECO, a TransCo power customer, has an office located within the territorial jurisdiction of the City of Tagum, particularly at Magugpo East, Tagum City. This Office is part of the operation of DANECO for it is considered as branch and collecting office of the latter.

With this fact it could be ascertained that DANECO operates within the jurisdiction of the City of Tagum. xxx.

xxx xxx xxx

The argument of TransCo that Franchise Tax cannot be imposed upon them for the reason that there is no substation or branch of DANECO located within Tagum City is not tenable. Franchise taxes and other taxes can be collected pursuant to Section 150 vis-à-vis Section 151 of RA 7160 which provides:

> *'Section 150. – Situs of the Tax. – (a) x x x . . .*
>
> *x x x . . . In cases where there is no branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality"*[21]

As correctly pointed out by respondent TRANSCO,[22] petitioner Tagum City is in effect saying that since DANECO has an operation in its territorial jurisdiction, then respondent TRANSCO is liable for the local franchise tax imposed on the latter.

The reasoning of petitioner Tagum City is specious.

Indeed, Section 137 in relation to Section 151, both of the LGC of 1991, empowers a city to impose local franchise tax, viz.:

> "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.** xxx." *(Emphasis supplied)*

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[21] *Petition for Review*, Division Docket, pp. 15 to 16.
[22] Par. 24, TRANSCO's *Memorandum*, Division Docket, p. 108.

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> "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." *(Emphasis supplied)*

However, in the case of *City of Iriga vs. Camarines Sur III Electric Cooperative, Inc. (CASURECO III)* ("*City of Iriga* case"),[23] the Supreme Court identified and explained the *situs* of the local franchise tax, to wit:

> "It should be stressed that what the petitioner seeks to collect from CASURECO III is **a franchise tax, which as defined, is a tax on the exercise of a *privilege*. As Section 137 of the LGC provides, franchise tax shall be based on gross receipts precisely because it is a tax on *business*, rather on persons or property. <u>Since it partakes of the nature of an excise tax, the *situs* of taxation is the place where the privilege is exercised</u>**, in this case in the City of Iriga, **<u>where CASURECO III has its principal office and from where it operates, regardless of the place where its services or products are delivered</u>.** Hence, franchise tax covers all gross receipts from Iriga City and the Rinconada area." *(Emphases and underscoring supplied)*

Based on the foregoing, the local franchise tax is imposed on the privilege of operating a franchise.[24] Moreover, according to the same case, since the local franchise tax partakes of the nature of an excise tax, the situs of taxation is the place where the privilege is exercised, *i.e.*, where the franchisee has its principal office and from where it operates, regardless of the place where its services or products are delivered.

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[23] G.R. No. 192945, September 5, 2012.
[24] Refer to *National Power Corporation vs. Provincial Government of Bataan, et al.*, G.R. No. 180654, April 21, 2014.

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In this case, there is no showing that respondent TRANSCO's principal office is in Tagum City; neither does it appear that it is from the said City where respondent TRANSCO operates. Correspondingly, petitioner Tagum City cannot impose a local franchise tax on respondent TRANSCO's gross receipts or any part thereof.

Petitioner Tagum City cannot justify the imposition of the subject local franchise tax on respondent TRANSCO, simply because the latter's power customer, namely, DANECO, has an office in Tagum City. This is simply because there is no indication that DANECO and respondent TRANSCO are one and the same entity; nor is one, a part or an extension of the other. Thus, the operation of an office by DANECO in Tagum City cannot be considered as an operation of an office by respondent TRANSCO. Correspondingly, Tagum City cannot be treated as the situs of the subject local franchise tax or where the privilege of respondent TRANSCO is being exercised.

Furthermore, We cannot subscribe to petitioner Tagum City's invocation of the last sentence of Section 150(a) of the LGC of 1991 for the determination of the situs of taxation. For a better understanding of the said provision, We quote it as follows:

> "SEC. 150. *Situs of the Tax.*—(a) **<u>For purposes of collection of the taxes under Section 143 of this Code</u>**, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. **In cases where there is no such [25] branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to**

[25] It is noteworthy that the word "such" was omitted by petitioner Tagum City in quoting the last sentence of Section 150(a) of the LGC of 1991. Refer to the instant *Petition for Review*, Division Docket, p. 16.

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> **such city or municipality.**" *(Emphases and underscoring supplied)*

A cursory examination of the above provision would reveal that the words and phrases thereof is with reference specifically to the collection of local taxes under Section 143 of the LGC of 1991. Thus, the part of Section 150(a) which was above-quoted by petitioner Tagum City contemplates only the collection of local taxes under Section 143 of the LGC of 1991 pertaining to *"Tax on Business"* which may be imposed by a local government unit; it does not refer, in any way, to the collection of the local franchise tax, which is governed by the earlier quoted Sections 137 and 151 of the same law in relation to the ruling made by the Supreme Court in the *City of Iriga* case referring to the *situs* thereof.

It is a principle of statutory construction that every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[26] In the case of the last sentence of Section 150(a), the same has been restricted by its opening phrase *"(f)or purposes of collection of the taxes under Section 143 of* (the LGC of 1991)*"*, and thus, it cannot be extended to the determination of the *situs* of the local franchise tax.

The Court *a quo* is therefore correct in granting the appeal of respondent TRANSCO in Civil Case No. 4109, and in restraining petitioner Tagum City from imposing the subject franchise tax on respondent TRANSCO.

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED**. The Decision dated September 22, 2016 rendered by the RTC – Branch 31 is **AFFIRMED**.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

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[26] *Chavez vs. Judicial and Bar Council, et al.*, G.R. No. 202242, July 17, 2012.

WE CONCUR:

**ROMAN G. DEL ROSARIO**
*Presiding Justice*

**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's Division.

**ROMAN G. DEL ROSARIO**
*Presiding Justice*
*Chairperson, Special 1st Division*