REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

YAMAHA MOTOR PHILIPPINES, INC., Petitioner,	**CTA AC NO. 233** (Civil Case No. R-DVO-18-01754-CV)
	Members:
- versus -	DEL ROSARIO, *P.J.*, Chairperson, MANAHAN, and REYES-FAJARDO, *JJ.*
CITY OF DAVAO and HON. BELLA LINDA N. TANJILI, in her official capacity as the City Treasurer of Davao City, Respondents.	Promulgated: MAR 07 2022 11:02 am

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DECISION

DEL ROSARIO, P.J.:

Before the Court is the "**Petition for Review**"[1] filed by Yamaha Motor Philippines, Inc. praying for the reversal and setting aside of the Decision dated May 23, 2019[2] and Order dated September 27, 2019[3] issued by the Regional Trial Court of Davao City, Branch 16 in Civil Case No. R-DVO-18-01754-CV captioned "*Yamaha Motor Philippines, Inc., Petitioner, versus City of Davao and Hon. Bella Linda N. Tanjili, in her official capacity as the City Treasurer of Davao City, Respondents.*"

The dispositive portions of the challenged Decision and Resolution, respectively read:

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[1] Docket (CTA AC No. 233), Vol. I, pp. 5-819.
[2] *Id.* at 54-64.
[3] *Id.* at 65. The Order dated September 27, 2019 indicated a different case number, Case No. R-DVO-17-04870-CV, albeit case title is correct.

Decision dated May 23, 2016

"**WHEREFORE, premises considered**, the instant Petition for Review of the Petitioner is hereby **DENIED** and is therefore **DISMISSED**.

SO ORDERED.

Resolution dated September 27, 2019

"Despite the arguments raised in the "***Motion for Reconsideration***", the Court finds no cogent reason to alter, modify or set aside the assailed Decision dated May 23, 2019.

As such, the instant "***Motion for Reconsideration***" is hereby **DENIED**.

SO ORDERED."

THE PARTIES

Petitioner Yamaha Motor Philippines, Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Lots 1 & 2, Block 17, Phase 1, Lima Technology Center, Malvar, Batangas.[4] It is engaged in the business of manufacturing, developing, producing, assembling, processing, fabricating, repairing, preserving, maintaining, enhancing, refining ang packing any article of commerce, including motorcycles[5] and registered as an Ecozone Domestic Market Enterprise with the Philippine Economic Zone Authority.[6] Petitioner's principal office is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 006-726-461-00000.[7]

Respondent City of Davao is a local government unit duly created by law impleaded herein as the implementing agency of Davao City Ordinance No. 158-95 or the Revenue Code of the City of Davao.[8]

Respondent Bella Linda N. Tanjili is the City Treasurer of Davao City impleaded herein for issuing Business Tax Order Payment

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[4] *Id.* at 72.
[5] *Id.* at 8, 68 and 69.
[6] *Id.* at 82.
[7] *Id.* at 83.
[8] *Id.* at 8.

(BTOP) No. 0194616 which assessed local business tax (LBT) on petitioner's office in Davao City.[9]

THE FACTS

On January 25, 2018, respondent Tanjili issued BTOP No. 0194616 against petitioner for LBT, regulatory fees and charges in the total amount of ₱570,892.01, ₱18,717.00 and ₱2,570.12, respectively, for taxable year 2018.[10]

On January 31, 2018, petitioner filed a protest against the assessment for LBT with the Office of the City Treasurer.[11]

Without waiting for the decision of respondent Tanjili, petitioner filed a "Petition for Review"[12] with the Regional Trial Court of Davao City, Branch 11 on April 30, 2018. On May 11, 2018, petitioner filed a "Motion to Admit Amended Petition for Review,"[13] which the court *a quo* granted in the Order dated May 15, 2018.[14]

On May 31, 2018, petitioner filed a "Motion for Consignation [Of Mandatory Regulatory Fees and Charges]"[15] with the court *a quo* praying that it be allowed to consign with it the regulatory fees and charges amounting to ₱22,760.62 due to respondent City of Davao as of May 10, 2018. In the Order dated June 19, 2018,[16] the court *a quo* allowed petitioner to consign the total amount of ₱22,760.62 to the Office of the Clerk of Court during the pendency of the case. Following such approval, petitioner consigned the amount to the court *a quo* on June 28, 2018.[17]

On July 2, 2018, within the extended period,[18] respondents filed their Answer[19] stating the following as affirmative defenses:

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[9] *Id.*
[10] *Id.* at 819.
[11] Docket (Civil Case No. R-DVO-18-01754-CV), Vol. I, pp. 198-200.
[12] *Id.* at 3-219.
[13] *Id.* at 225-439.
[14] *Id.* at 440.
[15] *Id.* at 446-454.
[16] *Id.* at 463.
[17] *Id.* at 502-506.
[18] *Id.* at 462 and 468. July 1, 2018 was a Sunday.
[19] *Id.* at 471-500.

1. The ultimate issue raised by petitioner in its petition boils down to the sole issue of whether its local office in Davao City can be considered as a branch or sales office or liaison office or warehouse with sales;

2. Upon the facts and law, petitioner is not entitled to the relief demanded on the ground that its contentions tend to mislead the application of the provisions cited, attempting to circumvent the law and avoid tax liability computed against it;

3. Petitioner lied with its statement that its marketing office in Davao City does not engage in the sale of motorcycles and that its activities are limited to dealer coordination and marketing, promotion, and exhibition of Yamaha products;

4. The LBT liability of petitioner was computed based on its own declaration as to its gross income for the preceding year (2017);

5. The authority of Ms. Ma. Robe Ann S. Enero is by virtue of a Special Power of Attorney executed by Mr. Alfredo O. Lejano, the Administration and Corporate Planning Director of petitioner;

6. From the very declaration of petitioner, it is earning sales in Davao City as a manufacturer;

7. During the renewal of business permits, petitioner with business address at Lot 4,5,6 B4651 Complex, Sta. Ana Avenue, Brgy. 13-B, Poblacion District, Davao City, declared that it has gross sales of ₱101,959,796.43 for 2017, as certified by Ms. Ma. Robe Ann S. Enero, its authorized representative;

8. For the past five (5) years, petitioner has been declaring its gross sales per year;

9. These declarations were further supported by a Barangay Business Clearance issued by the Office of the Punong Barangay, Barangay 13-B, Poblacion District, Davao City, wherein it declared that petitioner is engaged in the business of manufacturing motorcycles;

10. Based on these declarations, Davao City's business tax system generated petitioner's LBT payable to Davao City. Unfortunately, petitioner now denies these declarations by claiming that its local office in Davao City earns no income since it is not engaged in the manufacture or sale of motorcycles or other products;

11. Petitioner pretends to be not doing any sales transactions in Davao City, contradicting its own declaration of income by trying to define its operations in a different sense in order to fall beyond the taxing authority of Davao City;

12. Petitioner claims that its local office in Davao City is not a branch or sales office but merely a warehouse with no recorded sales and all of its sales are consummated and thus, recorded at its principal office in Malvar, Batangas;

13. Petitioner's Certificate of Registration with the BIR of its Marketing Office in Davao City clearly categorizes the same to be a "Branch Office";

14. Section 72(a)(2), Article 11, Chapter 2 of Davao City Ordinance No. 158-05 defines a branch or sales office[20] and Section 72 (b)(1), Article 11, Chapter 2 of the same ordinance provides that: "All sales made in Davao City where there is a branch or sales office or warehouse shall be recorded in said branch or sales office or warehouse and the tax shall be payable to the City where the same is located";

15. Petitioner contradicted its own statement stating that: "While it may be true that petitioner sells motorcycles to third-party dealers located in Davao City, the transactions between Petitioner and its third-party dealers are executed and booked in Petitioner's principal office in Malvar, Batangas and the sales invoices are also issued by the Petitioner in the same location";

16. It is apparent that petitioner made sales in Davao City, only that, as petitioner claims, it is not recorded in its office in Davao City but the point of sales transaction commences at its office in Davao City and actually ends in same office;

17. Petitioner cited a Bureau of Local Government Finance (BLGF) Opinion, which is based on its representations and pointing solely to portions of the opinion which are favorable to it;

18. It must be noted that the last portion of the cited BLGF Opinion states that: "It bears emphasis, however, that the views expressed herein are based on the facts presented. However, if upon verification and investigation of the same shall be proven to the contrary, particularly if the subject office in Davao City issues invoices or receipts, or records sales transaction from its location, then the opinion rendered shall be considered null and void and of no effect";

19. Since it has been established that the branch office of petitioner in Davao City is engaged in selling Yamaha products, as supported by Annexes 1,3,4,5 and 6 appended hereto, it follows that the BLGF Opinion should be considered null and void and no effect;

20. Since petitioner is enjoying the benefit of favorable business climate in Davao City which is attributable to the effort extended by the local government, it is just and proper for petitioner to pay the taxes demanded upon it; and,

21. In our jurisdiction, taxes are the lifeblood of the nation. Its collection must be made without hindrance if the state is to maintain its orderly existence.[21]

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[20] *Id.* at 485.
(2) Branch or Sales Office – a fixed place in a locality which conducts operations of the business as an extension of the principal office xxx
[21] *Id.* at 476-488.

On August 2, 2018, beyond the period granted,[22] petitioner filed a Reply.[23]

In the September 17, 2018 Hearing, the parties agreed that the "Amended Petition for Review" can be resolved without testimonial evidence since the issues therein are legal in nature. The court *a quo,* thus, gave them a non-extendible period of thirty (30) days to file their respective memoranda.[24]

On October 17, 2018, respondents filed their "Defendant's Memorandum".[25]

On October 18, 2018, petitioner filed a "Motion to Formally Mark Exhibits [Re: Amended Petition for Review Dated 9 May 2018]".[26]

On October 25, 2018, petitioner filed its "Memorandum".[27]

In the January 14, 2019 Hearing, the Court allowed the parties to submit their respective manifestations pertaining to the list of exhibits and attaching thereto their exhibits within fifteen (15) days and thereafter, the "Amended Petition for Review" shall be submitted for resolution.[28]

On January 29, 2019, respondents filed a "Manifestation"[29] submitting their documentary exhibits for marking. On February 12, 2019, petitioner filed a "Manifestation with Motion to Admit Exhibits".[30] The court *a quo* admitted the parties' respective exhibits to form part of the records of the case.[31]

On May 23, 2019, the court *a quo* rendered the assailed Decision denying the "Amended Petition for Review". Petitioner moved for its reconsideration[32] but the court *a quo* denied the same in the assailed Order dated September 27, 2019.

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[22] *Id.* at 512.
[23] *Id.* at 517-529.
[24] *Id.* at 531.
[25] *Id.* at 532-550.
[26] *Id.* 551-555.
[27] *Id.* at 556-768.
[28] *Id.* at 785.
[29] *Id.* at 772-784.
[30] *Id.* at 786-1010.
[31] *Id.* at 1012-1015.
[32] *Id.* at 1050-1063.

Undeterred, petitioner appealed to the Court of Tax Appeals (CTA) on December 26, 2019 by filing the present "Petition for Review".

Respondents filed their "Comment" on February 27, 2020.[33] On July 1, 2020, petitioner filed a "Reply (Re: Comment Dated 27 February 2020]."[34]

On December 14, 2020, the entire records of Civil Case No. R-DVO-18-01754-CV was elevated to the Court.[35]

On January 7, 2021, the Court submitted for decision the present "Petition for Review".[36]

THE ISSUES

Petitioner submitted the following issue for consideration of the Court:

> "Whether or not the RTC of Davao City seriously committed errors of fact and/or law when it issued the Decision dated May 23, 2019 and Order dated 27 September 2019 declaring Petitioner YMPH's Marketing Office in Davao City liable to pay the local business tax in favor of the City of Davao."[37]

THE PARTIES' ARGUMENTS

Petitioner's arguments[38]

Petitioner argues that the subject BTOP No. 0194616 must be terminated, cancelled and declared null and void, with respect to the LBT assessed against petitioner's Marketing Office in Davao City considering that:

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[33] Docket (CTA AC No. 233), Vol. II, pp. 832-850.
[34] *Id.* at 859-867.
[35] *Id.* at 897.
[36] *Id.* at 920. On January 31, 2022, the case was raffled to Presiding Justice Roman G. Del Rosario and the period to decide the case was extended until March 9, 2022.
[37] Docket (CTA AC No. 233), Vol. I, p. 38.
[38] *Id.* at 39-47.

1. Its Marketing Office in Davao City, which functions merely to provide support services to petitioner's Head Office in Batangas City and independent of third-party dealers/distributors, is not a Branch/Sales Office as defined by law;

2. It is petitioner's Head Office that is engaged in the business of manufacturing and sale of motorcycles and not its Marketing Office; hence, no sales transaction can be attributed to the latter;

3. The sales transactions made by petitioner's Head Office are independent and distinct from the conduct of support services by its Marketing Office. The sale transactions with independent third-party dealers in Davao City are booked and paid in petitioner's Head Office and not in its Marketing Office; and,

4. Petitioner is not guilty of *estoppel in pais*. The documents submitted to respondents show that the declared gross sales were those of petitioner's Principal Office located in Malvar, Batangas, not the Marketing Office in Davao City which is not engaged in any sales activity. Also, it is respondents' custom or standing practice to assess petitioner's Marketing Office in Davao City for LBT despite not having any sales transaction. This custom or practice cannot be upheld for being against the law and public policy. This action challenging the validity of the LBT assessment is petitioner's way of correcting the erroneous LBT assessment of respondents against petitioner's Marketing Office in Davao City for taxable year 2018 and the subsequent taxable years.

In its "Reply", petitioner adds that:

1. While it is true that petitioner's Marketing Office declared gross income in its yearly Application for Renewal of Business Permit to do business in Davao City, the gross income declared therein does not pertain to the Marketing Office but from the sale transactions between petitioner's Head Office and its third-party dealers/distributors in Davao City. This fact is evidenced by the Certification dated February 15, 2017 which was duly accepted by respondents but which they failed to include in their own version of the facts of the case;

2. Respondents relied on the Barangay Business Clearance dated January 24, 2017 which clearly shows that petitioner's Marketing Office in Davao City is an Admin Office – Monitoring of Dealership, an

office which merely renders support services to petitioner's dealers/distributors and not engaged in any sale activities;

3. Based on Section 72(a)(2) and (b)(1), Article 11, Chapter 2 of Davao City Ordinance No. 158-05, defining Branch or Sales Office and the ruling in *Commissioner of Internal Revenue vs. British Overseas Airways Corporation*,[39] for an entity to be liable to pay LBT, said entity must be engaged in commercial activities with a view to make a profit;

4. The BLGF Ruling must be given weight and cannot be considered as null and void because the representations made by petitioner before the BLGF are the same set of facts contained in its petition pending with this Court; and,

5. Petitioner is not guilty of *estoppel in pais*. Respondent cannot raise this argument based on the fact that the assessment of LBT on petitioner's Marketing Office is illegal from the time it was established. It was only proper for petitioner to question respondents' custom or standing practice of assessing its Marketing Office or any other liaison or administrative offices under similar situation of LBT despite not having any sales transaction.

Respondents' comment

In their "Comment",[40] respondents reiterate their position that: *(1)* petitioner is engaged in selling its products through its Davao City Local Office which is a branch and sales office pursuant to Section 72(a)(2) and (b)(1), Article 11, Chapter 2 of Davao Ordinance No. 158-05; and, *(2)* the BLGF Opinion relied by petitioner should be considered null and void and of no effect since it has been established that petitioner's branch office in Davao City is engaged in selling Yamaha products.

Additionally, they argue that petitioner is guilty of *estoppel in pais*. Allegedly, there is no declaration in its 2017 Application for Renewal of Business Permit that the gross sales were from its principal office in Malvar, Batangas. It was also declared that its business address is located at Lots 4,5,6 B4651 Complex, Sta. Ana Avenue, Brgy. 13-B, Poblacion District, Davao City and respondents relied on such declaration. Furthermore, for the past five (5) years, petitioner has been declaring gross sales per year.

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[39] G.R. No. L-65773-74, April 30, 1987.
[40] Docket (CTA AC No, 233), Vol. II, pp. 832-838.

If petitioner is of the view that the tax imposition of the City of Davao to its business within its jurisdiction is illegal, it could have raised the same years ago. This shows that the present action is a mere afterthought with the intention of coming up with a new scheme to evade tax liability, which if countenanced, will set a bad and illegal precedent.

THE COURT'S RULING

Timeliness of the Petition

Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals provides:

> "Sec. 3. Who may appeal; period to file petition. –
>
> (a) **A party adversely affected by a decision, ruling** or the inaction of the Commissioner of Internal Revenue on disputed assessment or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a **Regional Trial Court** in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within **thirty days after receipt of a copy of such decision or ruling**, xxx" *(Boldfacing supplied)*

The allegations of petitioner in its "Petition for Review" regarding its receipt of the assailed Decision on June 19, 2019 and Order on December 3, 2019 are uncontradicted.[41] Thus, pursuant to the rules, petitioner had until January 2, 2020 to appeal to the CTA. Hence, the filing of its "Petition for Review" on December 26, 2019 was timely.

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[41] Docket (CTA AC No. 233), Vol. I, pp. 8 and 9. There are no proofs of service of the assailed Decision and Resolution found in the docket of Civil Case No. R-DVO-18-01754-CV.

Liability for LBT

Section 143[42] in relation to Section 151[43] of the Local Government Code (LGC), empowers cities to tax the businesses listed thereunder within their jurisdiction.

On the other hand, Section 150 of the LGC categorically provides:

> "Section 150. Situs of the Tax. - (a) For purposes of collection of the taxes under Section 143 of this Code, **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. <u>In cases where there is no such 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</u>**." *(Boldfacing and underscoring supplied)*

Clearly, for purposes of collection of taxes under Section 143 of the LGC, manufacturers, among others, maintaining or operating a 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 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**.

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[42] SECTION 143. Tax on Business - The municipality may impose taxes on the following businesses:

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or **manufacturers of any article of commerce of whatever kind or nature**, in accordance with the following schedule: xxx

[43] SECTION 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; xxx.

Article 243(2)[44] of the implementing rules of the LGC defines a "branch" as a fixed place in a locality which conducts operations of the business as an extension of the principal office, excluding display areas of the products where no stocks or items are stored for sale, although orders may be received there while Article 220 (d)[45] thereof defines business as commercial activity regularly engaged with a view to profit.

A careful scrutiny of the records reveals that petitioner's office in Davao City is a Marketing Office whose function is merely to provide services to its Head Office in Batangas; and, said Marketing Office does not pursue commercial activities with a view to make a profit. The following pieces of documentary evidence undeniably establish this fact:

(i) The **Barangay Business Clearance dated January 24, 2017**,[46] issued by Barangay 13-B, Poblacion District, Davao City, certifies that the nature of petitioner's business is: **"Manufacturer of Motorcycles – (Admin Office – Monitoring a Dealership)**" with business address at Lot 4, 5, 6 B4651 Complex, Sta. Ana Avenue, Barangay 13-B, Davao City.

(ii) **BTOP No. 0194616**[47] glaringly indicates that petitioner's application for business permit for 2018 is for the renewal of its business permit as a **"Manufacturer of Motorcycles – (Admin Office – Monitoring a Dealership)**".

(iii) The **sales invoices** and their corresponding **delivery receipts**[48] issued by petitioner to its dealers in Davao City all indicate its Head Office located at **Lot 1&2, Block 17,**

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[44] Art. 243. Situs of the Tax. – (a) Definition of Terms –
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(2) Branch or Sales Office – a fixed place in a locality which conducts operations of the business as an extension of the principal office. Offices used only as display areas of the products where no stocks or items are stored for sale, although orders for the products may be received thereat, are not branch or sales offices as herein contemplated. A warehouse which accepts orders and/or issues sales invoice independent of a branch with sales office shall be considered as a sales office.

[45] Art. 220. Definition of Terms. –
xxx
(d) Business means trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit.

[46] Docket (CTA AC No. 233), Vol. I, p. 818.
[47] *Id.* at 819.
[48] *Id.* at 145-252.

Phase 1, Lima Technology Center, Malvar, 4233 Batangas, and Sales Office located at **2/F Twin Oaks Place I, 750 Shaw Blvd., Plymouth St., Highway Hills Greenfields Dist., Mandaluyong City** as its business addresses.

This is consistent with Revenue Memorandum Order No.12-2013 dated May 2, 2013 issued by the BIR which requires that **the business address where the sales invoices or other commercial invoices <u>shall be used</u> shall be printed in the sales invoices or commercial invoices**, to wit:

> "II. Policies
>
> xxx xxx xxx
>
> J. The ORs/SIs/CIs shall be printed showing among others the following (see Annex C for sample receipts/invoices):
>
> xxx xxx xxx
>
> **4. Business address where such ORs/SIs/CIs shall be used**; xxx" *(Boldfacing supplied)*

(iv) Petitioner's **3S Dealership Agreements** with Emcor Inc.,[49] Motorjoy Depot Inc.,[50] and DHCI Cyclehaus[51] also do not mention its Marketing Office in Davao City and clearly indicates its principal office at Lots 1&2, Block 17, Phase 1, Lima Technology Center, Malvar, 4233 Batangas[52].

(v) Petitioner's **BIR Certificate of Registration** does not indicate any tax (*i.e.*, Value-added Tax [VAT] or percentage tax) for which it may be liable for unlike the BIR Certificate of Registration of petitioner's Head Office which indicates that it is liable for income tax, VAT and other percentage taxes, among others.

(vi) The **Certification dated February 15, 2017**[53] attached to petitioner's 2017 Application for Renewal of Business

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[49] *Id.* at 103-116.
[50] *Id.* at 117-130.
[51] *Id.* at 131-144.
[52] *Id.* at 106, 120 and 134.
[53] *Id.* at 817.

> Permit[54] categorically states that **the sales declared in the aforesaid Application were executed and booked in its principal office in Batangas**.

Taken together, the foregoing pieces of documentary evidence indubitably prove that petitioner has no branch or sales outlet in Davao City within the context of Section 143 of the LGC and that the sales transactions between petitioner and its dealers were made at the Head Office of petitioner in Batangas and not in its Marketing Office in Davao City.

The declaration in petitioner's 2017 Application for Renewal of Business Permit does not *per se* estopped petitioner from asserting that the ₱101,959,796.43 sales stated therein pertains to its Head Office. As aforestated, the Certification dated February 15, 2017 attached to petitioner's 2017 Application for Renewal of Business Permit, **distinctly indicated that the sales declared in the aforesaid Application were that of its Head Office**.

In fine, petitioner's Marketing Office in Davao City is not a "branch" or "sales outlet", and since no sales were made thereat, there is utterly no basis for the City of Davao's imposition of LBT against petitioner. Consequently, the court *a quo* erred in upholding the assessment for LBT against petitioner.

WHEREFORE, in light of the foregoing discussions, the Petition for Review filed by Yamaha Motor Philippines, Inc. is hereby **GRANTED**. The assailed Decision dated May 23, 2019 and Order dated September 27, 2019 of the Regional Trial Court of Davao City, Branch 16 in Civil Case No. R-DVO-18-01754-CV are hereby **REVERSED** and **SET ASIDE**.

Accordingly, BTOP No. 0194616 is **CANCELLED** in so far as it assesses petitioner of local business for its Marketing Office in Davao City for taxable year 2018.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[54] *Id.* at 816.

WE CONCUR:

With due respect, please see my Dissenting Opinion.
CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

YAMAHA MOTOR PHILIPPINES, INC.,
Petitioner,

-versus-

CITY OF DAVAO and HON. BELLA LINDA N. TANJILI, in her official capacity as the City Treasurer of Davao City,
Respondents.

CTA AC NO. 233
(Civil Case No. R-DVO-18-01754-CV)

Members:

DEL ROSARIO, *Chairperson*
MANAHAN, *and*
REYES-FAJARDO,*JJ.*

Promulgated:
MAR 07 2022 11:02am

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DISSENTING OPINION

With all due respect to my distinguished colleagues, I register my dissent to the cancellation of Business Tax Order of Payment (BTOP) No. 0194616 issued by the city treasurer of Davao City against petitioner for local business taxes (LBT), regulatory fees and charges in the total amount of Php570,892.01, Php18,717.00 and Php2,570.12, respectively, for taxable year 2018.[1]

Petitioner seeks the reversal of the Decision (assailed Decision) and Order (assailed Order) of the RTC of Davao City dated May 23, 2019 and September 27, 2019, respectively, which upheld the position of the city treasurer of Davao City that it was liable to pay local business taxes (LBT) for the year 2018. Petitioner maintains that its office

[1] Annex "FF", Court Docket, Volume I, page 819.

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in Davao City is merely a Marketing Office and is not engaged in any sales transactions and other income generating activities, hence not liable to pay LBT.

A careful analysis of the records pertaining to the case decided by the RTC of Davao City moved the undersigned to conclude that petitioner failed to disprove the allegations of the city treasurer of Davao City that indeed sales were made by its office located in Davao City. As found by the RTC of Davao City in its assailed Decision, the allegations made by petitioner in the Petition for Review is belied by the declarations made in its application for business permit renewal for the year 2018. As a general rule, all businesses have the obligation to renew their business/mayor's permit annually and pay all local taxes, fees, charges (as may be applicable), beginning the first day of January until January 20 of each year[2] and shall be based on the gross sales of the preceding year which in this case is petitioner's supposed gross sales in 2017.

In its Application for Renewal of Business Permit filed with the Permits and Licensing Office of Davao City and identified as Exhibit "1" (for the respondents), petitioner declared its *gross sales* for 2017 in the amount of Php101,959,796.43. This application was subscribed under oath by the representative of petitioner, Ms. Ma. Robe S. Enero.

In civil cases, the burden proof is on the plaintiff to establish his case by preponderance of evidence. "Preponderance of evidence" means evidence which is of greater weight or more convincing than that which is offered in opposition to it.[3]

In the instant case, petitioner did not present its Business/Mayor's Permit for 2018 and/or prior years when it formally offered its evidence during the trial in the RTC of Davao City. The Business/Mayor's Permit would have shed

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[2] **LGC of 1991**
Section 167. *Time of Payment.* Unless otherwise provided in this Code, all local taxes, fees and charges shall be paid within the first twenty (20) days of January or of each subsequent quarter, as the case may be. The sanggunian concerned may, for a justifiable reason or cause, extend the time for payment of such taxes, fees or charges without surcharges or penalties, but only for a period not exceeding six *(6) months.*

[3] *Spouses Arturo Condes and Nora Condes vs. CA*, G.R. No. 161304, July 27, 2007.

light on its actual line of business and would serve as a refutation against the allegations of respondents. Instead, petitioner submitted the Barangay Business Clearance issued on January 24, 2017 by Barangay 13-B, Poblacion District, Davao City which purportedly shows that the office in Davao City is designated as a Marketing Office. The undersigned humbly finds the submission of the Barangay Business Clearance irrelevant for two reasons: one, it pertains to taxable year 2017 while the taxable year in question is 2018. When it applied for its business permit in 2018, it should have already secured the Barangay Business Clearance for 2018 which is one of the requirements of LGUs for the renewal of an entity's Business/Mayor's permit. Second, if petitioner was able to submit its Barangay Business Clearance, why did it not submit the actual Business/Mayor's Permit of 2018 (even of prior years, as the case may be) which will show its actual line of business. The city treasurer of Davao City could not be faulted if it relied on the statements and figures indicated in petitioner's application for renewal of its business permit when it indicated that it is engaged in manufacturing activities and that it had gross sales in 2017 in the amount of Php101,959,796.43.

The undersigned humbly believes that the BLGF Opinion[4] cited by petitioner offers little value in terms of convincing the Court of its position because it was based on its representations that the Davao office is only engaged in dealer coordination, marketing activities and product exhibition. Noteworthy is the caveat found in the last portion of the BLGF Opinion when it stated thus:

> **"It bears emphasis, however, that the views expressed herein are based on the facts presented.** However, if upon verification and investigation of the same shall be proven to the contrary, particularly if the subject office in Davao City issues invoices or receipts, or records sales transactions from its location, then the Opinion rendered shall be considered null and void without any effect." (emphasis supplied)

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[4] BLGF Opinion dated October 28, 2016 , Court Docket, pp.254-256.

WHEREFORE, I register my dissent to the majority opinion and vote to affirm the assailed Decision dated May 23, 2019 and the Order dated September 27, 2019 rendered by the Regional Trial Court of Davao City in Civil Case No. R-DVO-18-01754-CV.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice