Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

MUNICIPALITY OF LABRADOR, PANGASINAN AND THE OFFICE OF THE MUNICIPAL TREASURER OF LABRADOR, PANGASINAN,
Petitioners,

-versus-

NATIONAL TRANSMISSION CORPORATION,
Respondent.

CTA AC No. 120
For: Local Business Tax Assessment

Members:

DEL ROSARIO, PJ,
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:
NOV 03 2015 , 10:20 a.m.

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DECISION

MINDARO-GRULLA, J.:

This is an appeal pursuant to Section 7(a)(3) of Republic Act (R.A.) No. 1125, as amended,[1] in relation to Section 4(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[2] seeking to reverse and set aside the Decision dated June 10, 2014 of the Regional Trial Court

[1] REPUBLIC ACT NO. 1125,
AN ACT CREATING THE COURT OF TAX APPEALS, as amended
SEC. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx
(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

[2] RULE 8
PROCEDURE IN CIVIL CASES
SEC. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

(RTC) Branch 69 of Lingayen, Pangasinan in Civil Case No. 19099 entitled *National Transmission Corporation (TRANSCO) vs. Municipality of Labrador and the Office of the Municipal Treasurer, represented by Mr. Edualino C. Casipit in his Capacity as the Municipal Treasurer.*

Petitioner Municipality of Labrador, Pangasinan is a local government unit created by law and with capacity to sue and be sued, with its office at the Municipal Hall, Poblacion, Labrador, Pangasinan; while petitioner Office of Municipal Treasurer is a department of the Municipality of Labrador, with its office at the Municipal Hall, Labrador, Pangasinan.[3]

On the other hand, respondent National Transmission Corporation (TRANSCO) is a government-owned and -controlled corporation created under Republic Act (RA) No. 9136, with capacity to sue and be sued, with office at TRANSCO Main Building, Power Center, BIR Road corner Quezon Avenue, Quezon City.[4]

On January 10, 2011, TRANSCO received three (3) Notices of Assessment dated January 7, 2011 from the Office of the Municipal Treasurer of the Municipality of Labrador, Pangasinan, through Mr. Edualino C. Casipit, informing TRANSCO that it has business tax liabilities for the taxable years 2006, 2007, and 2008, amounting to ₱137,961,159.62, inclusive of surcharges and interests.[5]

TRANSCO protested the assessment in a letter dated February 22, 2011, arguing, among others, that (1) the Tax Ordinance of Labrador does not contain any provision that it can impose business tax on the business of transmitting electricity; (2) it is a government instrumentality exempt from the power of taxation of local government units; (3) the Municipality of Labrador cannot impose business tax on a business enjoying a franchise because it is already being

[3] The Parties, Petition for Review, Docket, p. 6.
[4] *Ibid.*
[5] Docket, pp. 143-148.

subjected to a franchise tax by provinces and cities; (4) the assessments violate the basic principle of local taxation, particularly Section 133(e) of the Local Government Code (LGC) prohibiting local government units from taxing goods passing through such local government unit; and (5) there is no tax situs within the territory of the Municipality of Labrador.[6]

In a letter dated April 5, 2011, the Municipal Treasurer denied TRANSCO's protest.[7]

On May 5, 2011, TRANSCO filed a Complaint[8] before the Regional Trial Court Branch 69 of Lingayen, Pangasinan alleging (1) that municipalities, like the Municipality of Labrador, do not have the power to impose business tax on businesses enjoying a franchise, as the latter, which is in fact already being taxed by provinces, is not one of those enumerated under Section 143 of the Local Government Code; (2) that a business enjoying a franchise or the business of transmitting electricity is not actually enumerated in the Revenue Code of the Municipality of Labrador; (3) that since the Kadampat substation merely transmits the electric power generated by different power plants to various distribution utilities and electric cooperatives, the electric power can be said to have merely passed through the territory of the Municipality of Labrador and as such, the imposition of business tax thereon violates Section 133(e) of the Local Government Code; (4) that as it did not derive gross receipts from the Municipality of Labrador, the Kadampat substation's function being merely to transmit electric power and not serve as a branch or sales office that accepts orders or issues sales invoices or records sales transactions, then the tax situs of the business is not within the Municipality of Labrador; and (5) that being a government instrumentality, it is beyond the taxing power of the Municipality of Labrador.

[6] Docket, pp. 149-152.
[7] Docket, pp. 153-158.
[8] Docket, pp. 43-67.

On June 10, 2014, the RTC Branch 69 of Lingayen, Pangasinan issued the assailed Decision[9], the dispositive portion of which reads:

> "WHEREFORE, premises considered, the assessments for local business taxes for the years 2006, 2007, and 2008 made by the Municipality of Labrador against TRANSCO are hereby declared null and void.
>
> This case is dismissed, however, with respect to the assessment for the same tax for the year 2009.
>
> SO ORDERED."

Petitioners herein received the RTC's Decision on June 16, 2014.[10] They filed the instant Petition for Review with this Court on July 14, 2014.[11]

On July 28, 2014, this Court issued a Resolution ordering respondent TRANSCO to file its comment, and not a motion to dismiss, within ten (10) days from notice.[12] Respondent then submitted its Comment on August 11, 2014.[13]

On September 11, 2014, the Court issued a Resolution directing the parties to submit their respective memoranda within thirty (30) days from notice.[14] Respondent instead filed a Motion for Extension of Time to File Memorandum on October 14, 2014,[15] which the Court granted through a Resolution promulgated on October 17, 2014.[16]

[9] Docket, pp. 27-41.
[10] Docket, p. 27.
[11] Docket, pp. 5-26.
[12] Docket, p. 336.
[13] Docket, pp. 337-348.
[14] Docket, p. 351.
[15] Docket, p. 352-354.
[16] Docket, p. 356.

Respondent submitted its Memorandum on October 29, 2014.[17] However, as per Records Verification dated December 2, 2014, petitioners failed to file their Memorandum.[18] Hence, in a Resolution dated December 5, 2014, the Petition for Review was deemed submitted for decision.[19]

Petitioners filed a Motion on January 6, 2015, praying that their Petition for Review and its Annexes be treated as their Memorandum. The Court issued a Resolution on February 4, 2015, noting petitioner's Motion.

Petitioners interposed the following issues for this Court's resolution:

> 1. Whether the RTC erred in ruling that the Municipality of Labrador's Municipal Tax Ordinance does not levy business tax on the business of transmitting electricity;
>
> 2. Whether the RTC erred in ruling that there is no situs of taxation in the Municipality of Labrador; and
>
> 3. Whether the RTC erred in deciding that there is no estoppel against TRANSCO.

The applicable provision to determine the timeliness of filing the instant Petition for Review is Section 195 of the Local Government Code of 1991, which provides:

> "SEC. 195. *Protest of Assessment*. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment

[17] Docket, pp. 357-373.
[18] Docket, p. 375.
[19] Docket, p. 377.

> stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory.
>
> The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

Here, respondent TRANSCO received the three (3) Notices of Assessment on January 10, 2011 from the Office of the Municipal Treasurer of the Municipality of Labrador. Respondent TRANSCO protested the assessment in a letter dated February 22, 2011. In a letter dated April 5, 2011, the Municipal Treasurer denied TRANSCO's protest.

On May 5, 2011, respondent TRANSCO filed a Complaint before RTC Branch 69 of Lingayen, Pangasinan. RTC Branch 69 issued the assailed Decision on June 10, 2014. Petitioners received the RTC's Decision on June 16, 2014, and on July 14, 2014, they filed the Petition for Review before this Court. Clearly, the instant Petition for Review was timely filed.

Petitioners claim that Tax Ordinance No. 97-001, which enacted the Revenue Code of the Municipality of Labrador, contains a catch-all provision which reads, "On any Business, Not Otherwise Specified in the Preceding

Sections".[20] Petitioners assert that this can be used as basis to tax TRANSCO's transmission business.

On the other hand, respondent insists that by making an enumeration of specific businesses in the Municipal Tax Ordinance, the Municipality of Labrador manifested its intention to limit the application of the ordinance only to those businesses specifically mentioned therein. Hence, not being included in the enumeration, the transmission of electricity cannot be said to be covered by the said ordinance or subject to local business tax.

The Court finds merit in respondent's contentions.

The power of local government units to impose taxes within their territorial jurisdiction is derived from the Constitution itself. Section 5 of Article X of the 1987 Constitution provides that "each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments." These guidelines and limitations as provided by Congress are mainly contained in the Local Government Code of 1991, which provides for comprehensive instances when and how local government units may impose taxes.[21]

The power to tax by the local government is vested and exercised by the *Sanggunian,* and as provided in Section 132 of the Local Government Code, this power "shall be exercised by the sanggunian of the local government unit concerned **through an appropriate ordinance**".

In line with this, Section 143 of the LGC provides an enumeration and corresponding scale of taxes on businesses that may be taxed by municipalities. However, Section

[20] Docket, p. 183.
[21] *Yamane vs. BA Lepanto Condominium Corporation,* G.R. No. 154993, October 25, 2005.

143(h) recognizes the authority of the *Sanggunian* to tax what it deems fit, by including the following provision:

> "SEC. 143. *Tax on Business*. – The municipality may impose taxes on the following businesses:
>
> xxx xxx xxx
>
> (h) **On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax**: *Provided*, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.
>
> The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein." *(Emphasis supplied)*

The Tax Ordinance of the Municipality of Labrador enumerates the businesses to be taxed and likewise provides for a similar catch-all provision, to wit:

> **"CHAPTER II**
> **Municipal Taxes**
>
> Article A. <u>MUNICIPAL TAXES ON BUSINESS</u>
>
> Section II.A.01. GRADUATED TAXES ON BUSINESS. Every person who establishes or operates any of the enumerated business mentioned in this Article within the Municipality of Labrador, shall pay an annual tax the amount prescribed thereof.
>
> xxx xxx xxx

(m) On any Business, Not Otherwise Specified in the Preceding Sections, the Rate of Tax shall be Two Percent (2%) of Gross Sales or Receipts of the Preceding Calendar Year.

Accounting Office
Advertising Agency
Animal Hospital
Assaying Laboratories
Audio Visual Equipment rental
Bakery
Balut Manufacturing
Bamboo Craft
Barber Shop
Belt and Backles Shop
Blacksmith shop
Bookbinder
Booking Office for Film Exchange
Booking Office for Transportation on Commission Basis
Breeding of Sporting Animals belonging to others
Brokerage
Building (Gen. & Specialty) Contractor
Business Management Services
Buying Station (agricultural product)
Cable TV station
Collecting Agency
Cold Storage
Computer School
Dental Clinic
Dental Laboratories
Diesel Injection Service
Drafting Services
Driving School
Drug Store
Duck Raising
Employment Agency
Engineering (General) contractor
Escort Services
Feasibility Studies
Feasibility Studies (Consultancy Service)
Flower Shop
Funeral Parlor
Garbage Disposal Contractor
Heavy Equipment for Hire
Health Clinic Studio

Hospital (Private)
House, room and Space for Rent
Ice Plant
Indentor and Indent Service
Insurance Agency/Adjuster Broker
Interior Decorating Service
Iron Works
Janitorial Service
Job Placement Agency
Junk Shop and Scrap Material
Keysmith Shop
Landscape Contractor
Lath Machine Shop
Law Office (Legal and Professional Service)
Lessor or Sub-Lessor of Real Estate
Light Equipment rental
Lumberyard
Medical Clinic
Messengerial Service
Metal Craft and Engraving
Ornamental Plant Seller
Pharmacy (see Drug Store)
Piano Repair Shop
Piano Lessons School
Private School
Promotional Agency
Real Estate Appraiser
Real Estate Broker
Recruiting Agency (Domestic and Abroad)
Repacker (Except on Wine)
Recopying and Duplicating Service
Rental of Bicycle and other Light-weight Equipment
Roasting Cow, Pig and Chicken
Importer
Security Agency
Septic Tank Disposal Contractor
Service Station for Motor Vehicle
Sculpture Shop
Shoe-Shine Stand
Shopping Centre
Skates-for-hire
Silk-Screening for Shirt Printing
Silversmith Shop
Soda Fountain
Stevedoring Service
Stock Broker c

Printing Press
Sub-Division Developer/Operator
Surveying Office
Tinsmith Shop
Towing Service
Travel Agency
Tricycle and Animal Drawn Vehicle
Typing and Mimeographing Service
Vaciador Shop
Veterinary Supply
Video coverage Service
Video Tape Rental
Vocational School
Watch Repair Shop
Wood Carving Shop
Optical Clinic
Trucking Service"[22]

As can be seen in the Municipal Tax Ordinance, although Section IIA.01(m) reads "On any Business, Not Otherwise Specified in the Preceding Sections", it is then followed by an exhaustive list of businesses to be taxed. However, the transmission of electricity is not one of those enumerated in the Municipal Tax Ordinance and therefore cannot be deemed included among the businesses subject to tax. This Court agrees with the RTC's opinion that the Municipality of Labrador is bound by and cannot go beyond the terms of its ordinance.

In the case of *Yamane vs. BA Lepanto Condominium Corporation*[23], the Supreme Court emphasized the following:

> "xxx Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local Government Code alone. What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body.

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[22] Docket, pp. 179-185.
[23] G.R. No. 154993, October 25, 2005.

The language of the Municipal Tax Ordinance is clear in enumerating the businesses covered; thus, the basic rule of statutory construction applies. The Supreme Court, in the case of *Canet vs. Decena*[24], held that:

> "Along the same vein, to read into the ordinances relied upon by petitioner objects which were neither specifically mentioned nor enumerated would be to run afoul of the dictum that where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters. In other words, it is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others, as expressed in the oft-repeated maxim *expressio unius est exlusio alterius*. Elsewise stated, *expressium facit cessare tacitum* – what is expressed puts an end to what is implied. The rule proceeds from the premise that the legislative body would not have made specific enumerations in a statute, if it had the intention not to restrict its meaning and confine its terms to those expressly mentioned."

Moreover, Section 5(b) of the Local Government Code provides that "in case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer." This qualification has to be respected as a constitutionally authorized limitation which Congress has seen fit to provide. Evidently, local fiscal autonomy should not necessarily translate into abject deference to the power of local government units to impose taxes.[25]

To reiterate, the Court agrees with the RTC's ruling that since respondent's business does not fall within the enumerated classes of business subject to tax under the

[24] G.R. No. 155344, January 20, 2004.
[25] *Petron Corporation vs. Tiangco, et. al.*, G.R. No. 158881, April 16, 2008.

Municipal Tax Ordinance, respondent is not required to pay the local business tax.

Petitioners claim that considering the fact that respondent TRANSCO's transmission assets are located in the Municipality of Labrador, it is enough to establish that situs lies with it. Petitioners assert that should these transmission assets be removed from the municipality, TRANSCO would not be deriving income.

Respondent counters that TRANSCO has no branch or sales office within the Municipality of Labrador and that TRANSCO's substations do not qualify as such. Therefore, the situs of taxation for local business tax was not satisfied; and consequently, it cannot be held liable.

The Court agrees with respondent's assertions.

For purposes of collecting local business taxes, it is important to determine the city or municipality to which the said taxes accrue. Section 150(a) of the LGC provides for the rules on the situs of local business tax, to wit:

> "SEC. 150. *Situs of the Tax.* – (a) **For purposes of collection of 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. 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**." *(Emphasis supplied)*

Pursuant to Article 243 of the Implementing Rules and Regulations of the Local Government Code, a "branch" or "sales office" is defined in the following manner:

> "ARTICLE 243. *Situs of the Tax*. – (a) *Definition of Terms* –
>
> xxx xxx xxx
>
> (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 invoices independent of a branch with sales office shall be considered as a sales office."

In the instant case, petitioners based the alleged local business tax liabilities on the power generated by the Masinloc Coal Fired Thermal Power Plant situated in Masinloc, Zambales that passed through and was transmitted to TRANSCO's Kadampat substation situated in the Municipality of Labrador.

Respondent TRANSCO has various substations and transmission assets all over the country, each one providing transmission services to customers in different provinces and cities. However, evidence shows that such substations are maintained simply to monitor the transmission assets and equipment. The testimonies made before the Court a quo proved said assertion, and they are stated in the Decision of the RTC in this wise:

> "Gerardo Torres, former branch head of TRANSCO for Western Pangasinan during the years

subject of the herein questioned assessments, testified, without contravention from the defendants, that TRANSCO's two substations in the Municipality of Labrador, including the Kadampat substation, merely connect the power plant to the transmission lines. In his judicial affidavit, he described the functions of said substations in this wise: 'The Labrador and Bolo (Kadampat) Substations are part of the Luzon grid. Electricity generated by power plants passes through the substations for voltage regulation and distribution to the various transmission lines that are connected to it. The electricity then goes to the distribution utilities (electric cooperatives) for distribution to end-users of electricity'. While TRANSCO's office in the Municipality of Labrador dealt with customers, such, according to Mr. Torres, was only on operation and maintenance aspects of the substation equipment and transmission facilities. Mr. Torres explained: 'operation and maintenance of substation involves the monitoring, control, conduct of inspection and maintenance of various power equipment, reporting and correction of defects. Maintenance of transmission line facilities involve the conduct of regular inspection of various transmission/sub-transmission lines, reporting, scheduling, and correction of defects.' Likewise, Nestor Felix testified that TRANSCO had no business office and had no customer within the Municipality of Labrador, neither did it receive payments, issue receipts or book payments within the said municipality.

The defendant's argument that the Kadampat substation is in the category of a 'plant' and hence, the sales allocation under Section 150 (b) of the Local Government Code, in relation to paragraph (e) thereof which mandates that such allocation 'shall be applied irrespective of whether or not sales are made in the locality where the factory, project office, plant, or plan is located', applies cannot be sustained. As provided for in said provision, such sales allocation is applicable to 'manufacturers, assemblers, contractors, producers and exporters', which TRANSCO has not been established to be one."

TRANSCO's substations in the Municipality of Labrador do not fall under the afore-quoted definition of a "branch" or "sales office". Therefore, the RTC's ruling that the Municipality of Labrador cannot collect local business taxes from TRANSCO is correct, the tax situs not being present.

In the case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[26], the Supreme Court explained when estoppel will apply, to wit:

> "xxx As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied."

Considering that the Municipal Tax Ordinance does not provide for the taxing of TRANSCO's business and that pursuant to Section 150 of the Local Government Code, TRANSCO cannot be held liable for tax by the Municipality of Labrador, the situs not being with it, the principle of estoppel cannot apply in this case. After all, estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.[27]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the assailed Decision of the Regional Trial Court dated June 10, 2014 is hereby **UPHELD** and the assessments for local business taxes for the years 2006, 2007 and 2008, made by

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[26] G.R. No. 178087, May 5, 2010.
[27] *Ching vs. Nicdao, et. al.*, G.R. No. 141181, April 27, 2007.

the Municipality of Labrador against TRANSCO are declared null and void.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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, 1st Division