REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

THE CITY OF VALENZUELA and HON. ADELIA SORIANO in her capacity as City Treasurer,
Petitioners,

CTA AC NO. 290

-versus-

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

NLEX CORPORATION,
Respondent.

Promulgated:
NOV 2 5 2024
3:40 p.m.

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DECISION

RINGPIS-LIBAN, J.

THE CASE

Before the Court is a *Petition for Review* filed on April 27, 2023,[1] praying for the reversal and/or setting aside of the Decision dated November 25, 2022[2] and Resolution dated February 23, 2023[3], both rendered by the Regional Trial Court of Valenzuela City (RTC) – Branch 283, in Civil Case No. 27-V-20, entitled "*NLEX Corporation, Plaintiff, versus The City of Valenzuela, Hon. Adelia Soriano, in her capacity as City Treasurer and Hon. Cecilynne Andrade in her capacity as City Assessor, Defendants*", the dispositive portions of which respectively read as follows:

Decision dated November 25, 2022:

> "**WHEREFORE,** premises considered, judgment is hereby rendered in favor of the plaintiff NLEX Corporation and ordering defendants City of Valenzuela and Hon. Adelia Soriano as City

[1] Docket, pp. 5 to 20.
[2] Docket, pp. 21 to 40.
[3] Docket, pp. 41 to 44.

Assessor, to **CANCEL and SET ASIDE the Notice of Deficiency dated 11 November 2019**, covering the taxable year 2013 to 2019 in the total amount of nine million eight hundred eighty-six thousand seven hundred fifty-five pesos and seventeen centavos (Php9,886,755.17).

No costs.

SO ORDERED."

Resolution dated February 23, 2023:

"**WHEREFORE, premises considered**, the defendants' Motion for Reconsideration, is **DENIED**.

SO ORDERED."

THE PARTIES

Petitioner City Government of Valenzuela (City of Valenzuela) is a local government unit. It may be served with summons, pleadings, notices, orders and other legal processes through the Office of the City Mayor, Valenzuela City Hall, Valenzuela City.[4]

Petitioner Adelia Soriano (Soriano) is the City Treasurer of Valenzuela City. She may be served with summons, pleadings, notices, orders and legal processes through the Office of the City Mayor, Valenzuela City Hall, Valenzuela City.[5]

Respondent NLEX Corporation (NLEX) is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at Km. 12, Balintawak Toll Plaza, NLEX Baesa, Caloocan City.[6]

THE FACTS OF THE CASE

On November 11, 2019, Soriano issued *Notice of Deficiency* against NLEX for alleged deficiency local business taxes (LBT), for taxable years 2013 to 2019

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[4] The Parties, *Petition for Review*, Docket, p. 6. Refer also to par. 4, *Complaint*, RTC Docket – Vol. 1 (Civil Case No. 27-V-20) vis-à-vis par. 4, *Answer*, RTC Docket RTC Docket – Vol. 1 (Civil Case No. 27-V-20), pp. 2, and 49 to 50, respectively.

[5] The Parties, *Petition for Review*, Docket, p. 6. Refer also to par. 5, *Complaint*, RTC Docket – Vol. 1 (Civil Case No. 27-V-20) vis-à-vis par. 4, *Answer*, RTC Docket RTC Docket – Vol. 3 (Civil Case No. 27-V-20), pp. 2, and 49 to 50, respectively.

[6] The Parties, *Petition for Review*, Docket, p. 6. Refer also to par. 3, *Complaint*, RTC Docket – Vol. 1 (Civil Case No. 27-V-20) vis-à-vis par. 4, *Answer*, RTC Docket RTC Docket – Vol. 1 (Civil Case No. 27-V-20), pp. 2, and 49 to 50, respectively; Exhibit "A", RTC Docket – Vol. 1 (Civil Case No. 27-V-20), pp. 13 to 14.

in the total amount of ₱9,886,755.17, inclusive of surcharges and interests,[7] broken down as follows:

Taxable Year	Amount
2013	₱ 1,694,857.08
2014	1,178,643.75
2015	1,310,729.79
2016	1,445,838.54
2017	1,599,918.12
2018	1,444,651.39
2019	1,212,116.60
Total	**₱9,886,755.17**

Thereafter, on November 21, 2019, NLEX filed with the Office of City Treasurer its undated letter *(Re: Protest of the Local Business Taxes for TYs 2013 to 2019)*,[8] requesting for the cancellation of the assessment for lack of legal basis.

Due to inaction of Soriano, NLEX filed with the Regional Trial Court (RTC) its *Complaint* on February 19, 2020.[9] The case was raffled to Branch 283, and was docketed as Civil Case No. 27-V-20.

Soriano filed her *Answer* on March 12, 2020.[10]

The Pre-Trial was held on November 5, 2020. NLEX filed its Pre-Trial Brief through email on October 30, 2020, and the hard copy thereof was received by the Court on November 30, 2020.[11] The City of Valenzuela and Soriano filed their Pre-Trial Brief via email on October 30, 2020.[12] In the Order dated November 5, 2020,[13] the case was set for the continuation of Pre-Trial on January 28, 2021. In a separate Order,[14] the case was referred for mediation in the Philippine Mediation Center. However, the parties failed to mediate. Thus, the case was set for Judicial Dispute Resolution (JDR) in another branch,[15] which is RTC–Branch 75. Since no settlement was reached by the parties during the JDR proceedings, RTC-Branch 75 ordered that the case be forwarded to RTC – Branch 283 for further proceedings.[16]

The Pre-Trial of the case was terminated on April 29, 2021.[17]

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[7] Exhibits "C" and "6", RTC Docket – Vol. 1 (Civil Case No. 27-V-20), pp. 22 to 29 and 976, respectively.
[8] Exhibit "B", RTC Docket – Vol. 1 (Civil Case No. 27-V-20), pp. 15 to 20.
[9] RTC Docket – Vol. 1 (Civil Case No. 27-V-20), pp. 1 to 12.
[10] RTC Docket – Vol. 1 (Civil Case No. 27-V-20), pp. 49 to 55.
[11] RTC Docket (Civil Case No. 27-V-20) – Vol. 1, pp. 109 to 125.
[12] RTC Docket (Civil Case No. 27-V-20) – Vol. 1, pp. 99 to 102.
[13] Order dated November 5, 2020, RTC Docket (Civil Case No. 27-V-20), p. 926.
[14] Order dated November 5, 2020, RTC Docket (Civil Case No. 27-V-20), p. 927.
[15] Order dated January 28, 2021, RTC Docket (Civil Case No. 27-V-20) – Vol. 1, p. 981.
[16] Order dated March 4, 2021, RTC Docket (Civil Case No. 27-V-20) – Vol. 1, p. 1003.
[17] Order dated April 29, 2021, RTC Docket (Civil Case No. 27-V-20) – Vol. 1, pp. 1016 to 1022.

Trial then ensued, with both parties presenting their respective documentary and testimonial evidence.

On November 25, 2022, RTC – Branch 283 promulgated the assailed Decision,[18] ordering the City of Valenzuela and Soriano to cancel and set aside the *Notice of Deficiency* dated November 11, 2019, covering taxable years 2013 to 2019 in the total amount of ₱9,886,755.17.

Thereafter, on January 23, 2023, the City of Valenzuela and Soriano filed their *Motion for Reconsideration*,[19] while NLEX sent *via* email its *Opposition [To the Motion for Reconsideration dated 26 January 2023]* on February 9, 2023.[20]

On February 23, 2023, RTC – Branch 283 issued the assailed Resolution[21] denying the *Motion for Reconsideration* filed by the City of Valenzuela and Soriano.

On April 27, 2023, the City of Valenzuela and Soriano filed the present Petition for Review.[22]

In the Resolution dated June 22 2023,[23] the Court noted that the subject *Petition for Review* failed to attach the proof of the authority of the affiant to file the instant petition and to sign the *Verification and Certification of Non-Forum Shopping*. Thus, the Court ordered the City of Valenzuela and Soriano to submit the said lacking documents within ten (10) days from notice. Thus, on July 19, 2023, petitioners submitted their *Manifestation/Compliance (to the Resolution dated 22 June 2023)*.[24]

In compliance with this Court's Minute Resolution dated August 4, 2023,[25] RTC – Branch 283 transmitted to the Court the entire records of Civil Case No. 27-V-20 on August 18, 2023.[26]

On August 24, 2023, NLEX filed its *Comment (To the Petition for Review dated 24 April 2023)*.[27]

In the Resolution dated September 6, 2023,[28] the Court ordered the parties to file their respective memoranda. On October 12, 2023, NLEX filed its

[18] RTC Docket (Civil Case No. 27-V-20) – Vol. 3, pp. 2632 to 2651.
[19] RTC Docket (Civil Case No. 27-V-20) – Vol. 3, pp. 2652 to 2657, and 2680 to 2687.
[20] RTC Docket (Civil Case No. 27-V-20) – Vol. 3, pp. 2659 to 2666.
[21] RTC Docket (Civil Case No. 27-V-20) – Vol. 3, pp. 2688 to 2691.
[22] Docket, pp. 5 to 18.
[23] Docket, pp. 46 to 47.
[24] Docket, pp. 48 to 52.
[25] Docket, p. 54.
[26] RTC-Branch 283 *Transmittal* dated August 16, 2023, Docket, p. 55.
[27] Docket, pp. 99 to 114.
[28] Docket, p. 118.

Memorandum,[29] while the City of Valenzuela and Soriano filed their Memorandum on November 15, 2023.[30]

The case was deemed submitted for decision on December 13, 2023.[31]

THE ISSUES

The City of Valenzuela and Soriano submit the following issues for this Court's resolution, to wit:

> "2.1
>
> The Honorable Court committed grave error when it held that the assessment for the years 2013 and 2014 [have] prescribed, contrary to law, particularly, Section 194 of the Local Government Code.
>
> 2.2
>
> The Honorable Court committed grave error when it cancelled and set aside the Notice of Deficiency dated 11 November 2019 without any factual and legal basis."[32]

On the other hand, for NLEX, the issues are as follows:

> "I. Whether the Petition for Review must be denied for failure to comply with the requirements under the Rules of Court.
>
> II. Whether the Trial Court correctly ruled that the deficiency LBT for TYs 2013 and 2014 had already prescribed.
>
> III. Whether the Trial Court correctly cancelled the Notice of Deficiency."[33]

THE ARGUMENTS OF THE PARTIES

The City of Valenzuela and Soriano argue that the assessments for years 2013 and 2014 have not yet prescribed because local taxes may be assessed and collected within 10 years from knowledge of fraud; that NLEX is guilty of fraud when it deliberately concealed its proper gross receipts amount; and that the Quarterly VAT Return or BIR Form No. 2550-Q should have been submitted to Soriano to properly reconcile the deficiency in the declared gross receipts.

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[29] Docket, pp. 119 to 135.
[30] Docket, pp. 137 to 144.
[31] Minute Resolution dated December 13, 2023, Docket, p. 145.
[32] Issues, petitioners' *Memorandum*, Docket, p. 139.
[33] Issues, respondent's *Memorandum*, Docket, p. 124.

NLEX contends that the *Petition for Review* must be denied for failure to comply with the requirements under the Rules of Court; that the trial court correctly ruled that the deficiency LBT for taxable years 2013 and 2014 had already prescribed; and that the trial court correctly cancelled the *Notice of Deficiency* because it submitted sufficient proof of its correct gross receipts.

THE COURT'S RULING

WHETHER OR NOT THE PETITION FOR REVIEW WAS FILED IN ACCORDANCE WITH THE RULES

NLEX argues that City of Valenzuela and Soriano's failure to comply with the requirements under Rule 42 of the Rules of Court warrants the outright dismissal of the *Petition for Review* because the right to appeal is a mere statutory privilege to be exercised strictly in accordance with the provisions of law. NLEX contends that while the Decision and Resolution attached by City of Valenzuela and Soriano to the *Petition for Review* referred to the factual antecedents of the case, the same, however fail to support any of the material allegations in the *Petition for Review.*

Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals provides as follows:

> *Petition for review; contents.* – The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition.

In *Galvez vs. Court of Appeals, et al.*,[34] the Supreme Court ruled as follows:

> "In *Atillo v. Bombay*, a case strikingly similar to this one because the petitioner did not annex to her petition copies of the pleadings and other material portions of the record like the complaint, answer and position papers filed in the trial court in violation of the rule, the Court had the occasion to hold that although the phrase 'of the pleadings and other material portions of the record as would support the allegations of the petition' contemplated the exercise of discretion by a petitioner in selecting

[34] G.R. No. 157445, April 3, 2013.

the documents relevant to the petition for review, it was still the CA that would determine if the attached supporting documents were sufficient to make out a *prima facie* case. In so holding, however, the Court 'fairly assumed that the CA took pains in the case at bar to examine the documents attached to the petition so that it could discern whether on the basis of what have been submitted it could already judiciously determine the merits of the petition. **The crucial issue to consider then is whether or not the documents accompanying the petition before the CA sufficiently supported the allegations therein.**'

In *Cusi-Hernandez v. Diaz*, a case where the petitioner did not attach to her petition for review a copy of the contract to sell that was at the center of controversy, the Court nonetheless found that there was a substantial compliance with the rule, considering that the petitioner had appended to the petition for review a certified copy of the decision of the MTC that contained a verbatim reproduction of the omitted contract.

Moreover, it is settled that the petitioner's failure to append the pleadings and pertinent documents to the petition can be rectified by the subsequent filing of a motion for reconsideration to which is attached the omitted pleadings and documents as required by the CA.

The foregoing rulings show that the **mere failure to attach copies of the pleadings and other material portions of the record as would support the allegations of the petition for review is not necessarily fatal as to warrant the outright denial of due course** **when the clearly legible duplicate originals or true copies of the judgments or final orders** of both lower courts, certified correct by the clerk of court of the RTC, **and other attachments of the petition sufficiently substantiate the allegations**.

For the guidance of the CA, therefore, the Court has laid down three guideposts in determining the necessity of attaching the pleadings and portions of the records to the petition in *Air Philippines Corporation v. Zamora*, which involved the dismissal of a petition for certiorari assailing an unfavorable decision in a labor dispute for failing to attach copies of all pleadings (like the complaint, answer, position paper) and other material portions of the record as would support the allegations in the petition, to wit:

First, not all pleadings and parts of case records are required to be attached to the petition. **Only those which are relevant and pertinent must accompany it**. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.

Second, **even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also [be] found in another document already attached to the petition**. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.

Third, **a petition lacking an essential pleading or part of the case record may still be given due course** or reinstated (if earlier dismissed) **upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits**.

The guideposts, which equally apply to a petition for review filed in the CA under Rule 42, reflect that **the significant determinant of the sufficiency of the attached documents is whether the accompanying documents support the allegations of the petition**." *(Emphases supplied)*

In this case, the relevancy of the documents that City of Valenzuela and Soriano attached to their Petition for Review could be appreciated by looking at their allegations and grounds in support of the *Petition for Review*.

The City of Valenzuela and Soriano allege that the assessments for taxable years 2013 and 2014 have not yet prescribed and that respondent was clearly guilty of fraud when it deliberately concealed its proper gross receipts amount without the corresponding submission of allegedly excluded VAT to the City Treasurer upon declaring the gross receipts or upon notice of deficiency. It is also apparent that both legal and factual issues were raised.

Petitioners only attached in the Petition, the certified true xerox copies of the Decision dated November 25, 2022[35] and Resolution dated February 23, 2023[36], both rendered by RTC – Branch 283, in Civil Case No. 27-V-20, entitled "*NLEX Corporation vs. The City of Valenzuela, Hon. Adelia Soriano, in her capacity as City Treasurer and Hon. Cecilynne Andrade in her capacity as City Assessor*" to their *Petition for Review*. Nevertheless, records show that RTC – Branch 283 transmitted to the Court the entire records of Civil Case No. 27-V-20 on August 18, 2023.[37]

Thus, the Court is not prevented from passing upon the issues raised by petitioners and resolving their appeal considering that the records of the Court *a quo* were already elevated to this Court.

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[35] Docket, pp. 21 to 40.
[36] Docket, pp. 41 to 44.
[37] RTC-Branch 283 *Transmittal* dated August 16, 2023, Docket, p. 55.

WHETHER OR NOT THE RTC CORRECTLY CANCELLED AND SET ASIDE THE NOTICE OF DEFICIENCY DATED NOVEMBER 11, 2019, COVERING THE TAXABLE YEAR 2013 TO 2019 IN THE TOTAL AMOUNT OF PHP9,886,755.17.

The assessment erroneously included VAT in the gross receipts for purposes of computing LBT

Article X, Section 5 of our Constitution recognizes the power of local government units to tax, *subject to such guidelines and limitations as the Congress may provide.*" The said guidelines and limitations are embodied in Section 151 of the Local Government Code (LGC) of 1991, to wit:

> "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 added)*

Relative thereto, Section 143(e) and (h) of the LGC of 1991 reads:

> "SEC. 143. *Tax on Business.* – **The municipality may impose taxes on the following businesses**:
>
> xxx xxx xxx
>
> (e) **On contractors and other independent contractors, in accordance with the following schedule**:

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
Less than P5,000.00	P27.50
P5,000.00 or more but less than P10,000.00	61.60
10,000.00 or more but less than 15,000.00	104.50
15,000.00 or more but less than 20,000.00	165.00
20,000.00 or more but less than 30,000.00	275.00
30,000.00 or more but less than 40,000.00	385.00

40,000.00 or more but less than 50,000.00	550.00
50,000.00 or more but less than 75,000.00	880.00
75,000.00 or more but less than 100,000.00	1,320.00
100,000.00 or more but less than 150,000.00	1,980.00
150,000.00 or more but less than 200,000.00	2,640.00
200,000.00 or more but less than 250,000.00	3,630.00
250,000.00 or more but less than 300,000.00	4,620.00
300,000.00 or more but less than 400,000.00	6,160.00
400,000.00 or more but less than 500,000.00	8,250.00
500,000.00 or more but less than 750,000.00	9,250.00
750,000.00 or more but less than 1,000,000.00	10,250.00
1,000,000.00 or more but less than 2,000,000.00	11,500.00
2,000,000.00 or more	at a rate not exceeding fifty percent (50%) of one percent (1%)."

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." *(Emphases added)*

It is clear from the afore-quoted Sections 151, 143(e) and (h), that cities may impose business taxes on contractors and other independent contractors. Relative thereto, Section 131(h) of the LGC of 1991, declares that a "contractor," includes persons, natural or juridical, not subject to professional tax under Section 139 of this Code, whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees. In this regard, Section 4 of DOF Local Finance Circular No. 001-13[38] states that tollway operators/concessionaires shall be classified under the category of *contractors.*

Note that Section 143 specifically refers to *gross receipts* which is defined under Section 131(n) of the LGC of 1991, as follows:

"SEC. 131. ***Definition of Terms.*** – When used in this Title, the term:

[38] SUBJECT: *Prescribing Guidelines Governing the Power of Municipalities and Cities to Impose Business Tax, Fees and Charges on Tollway Operators/Concessionaires Pursuant to Section 143 (e), Republic Act No. 7160, Otherwise Known as the Local Government Code of 1991, and Its Implementing Rules and Regulations.*

xxx xxx xxx

(n) **'Gross Sales or Receipts'** include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person **excluding** discounts if determinable at the time of sales, sales return, excise tax, and **value-added tax (VAT)**;

xxx xxx xxx" *(Emphases added)*

As clearly defined, gross sales or receipts exclude value-added tax (VAT).

In the implementation of the above provisions of the LGC, the Bureau of Local Government Finance (BLGF) issued Memorandum Circular No. 01-001-2017,[39] addressed to all provincial, city and municipal treasurers, and assistant treasurers, reminding them of the assessment of LBT for renewal of Business Permit, *viz.:*

"It has come to the attention of this Bureau of reported erroneous assessment of taxes and fees in the local governments during the registration and renewal of business permits and licenses. In order to ease the process and prevent undue harassment on the part of the taxpayers, all concerned are reminded of the following:

xxx xxx xxx

B. Assessment of LBT for Renewal of Business Permit

1. In the absence of audited Financial Statement, the LBT shall be based on the Sworn Declaration of gross sales or receipts by the taxpayers 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.

2. If applicable, **the following shall not form part of the gross sales or receipts**:

   i. xxx xxx xxx

[39] SUBJECT: Reminders in the Assessment of the Local Business Tax (LBT), Registration and Renewal of Business Permits and Licenses and Payment of Community Tax.

ii. Determinable discounts at the time of sales, sales returns, excise tax, and **value-added tax (VAT);**

xxx xxx xxx" *(Emphasis supplied)*

In fine, it is apparent in all the afore-quoted provisions, that VAT does not form part of a taxpayer's gross sales or receipts.

In this case, the *Tax Data and Assessment Forms – Deficiency* attached to the *Notice of Deficiency* dated November 11, 2019[40] issued by Soriano against NLEX clearly shows that VAT was included in the computation of latter's gross sales used as basis for imposing deficiency LBT for taxable years 2013 to 2019.

Thus, Soriano erred when she assessed NLEX with LBT based on its gross sales as reported in its audited financial statements, including VAT in their computation of the same.

When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. Thus, a statute that is clear, plain, and free from ambiguity, must be given its literal meaning and applied without attempted interpretation. [41]

The City of Valenzuela and Soriano argue that it is the duty of NLEX to submit the Quarterly VAT Returns or BIR Form 2550-Q to prove its claim that the deficiency VAT is remitted to the BIR and that the same is excluded by the LGC of 1991.

On the contrary, NLEX claims that the submission of the Quarterly VAT Returns was never an issue during the assessment of the deficiency LBT and the trial of this case. It is only when the Court *a quo* issued the subject Decision that the City Government and Soriano claim that it should have submitted the Quarterly VAT Returns for them to be able to reconcile the alleged deficiency in the declared gross receipts. NLEX further argues that the non-submission of the Quarterly VAT Returns does not validate the assessment since it erroneously included VAT in the gross receipts.

The Court agrees with NLEX.

The LGC of 1991, the *Rules and Regulations Implementing The Local Government Code of 1991,* and BLGF Memorandum Circular No. 01-001-2017, are quite clear in enumerating the exclusions from gross sales or receipts and require hardly anything beyond a simple application of their provisions. If VAT is listed

[40] Exhibit "6", RTC Docket – Vol. 1 (Civil Case No. 27-V-20), p. 976.
[41] *Aces Philippines Cellular Satellite Corp. vs. Commissioner of Internal Revenue,* G.R. No. 226680, August 30, 2022.

among the exclusions from gross sales or receipts, then Soriano cannot include such in computing the gross sales or receipts of NLEX.

Considering that the law is clear and unambiguous, it must be taken to mean exactly what it says and this Court has no choice but to see to it that its mandate is obeyed.[42]

Thus, the City of Valenzuela and Soriano cannot invoke the definition of gross receipts under DOF Local Finance Circular No. 001-13 considering that it expands or amends the definition under Section 131(n) of the LGC of 1991 in that the enumerated exclusions from gross receipts in the former refer to "VAT **paid by the taxpayer**" instead of "VAT", as stated in the latter.

Fraud as basis of assessment beyond the 5-year prescriptive period

Section 194 of the LGC of 1991 provides:

> "SECTION 194. *Periods of Assessment and Collection.* – (a) **Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due.** No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period: Provided, That taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.
>
> (b) **In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.**
>
> (c) Local taxes, fees, or charges may be collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period: Provided, however, That taxes, fees or charges assessed before the effectivity of this Code may be collected within a period of three (3) years from the date of assessment.
>
> (d) The running of the periods of prescription provided in the preceding paragraphs shall be suspended for the time during which:
>
> (1) The treasurer is legally prevented from making the assessment of collection;

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[42] *Abello vs. Commissioner of Internal Revenue, et al.*, G.R. No. 120721, February 23, 2005.

(2) The taxpayer requests for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect; and

(3) The taxpayer is out of the country or otherwise cannot be located." *(Emphases supplied)*

From the foregoing, local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.

In *Commissioner of Internal Revenue vs. Spouses Magaan,*[43] citing *Commissioner of Internal Revenue vs. Fitness by Design, Inc.,*[44] the Supreme Court already ruled:

> "**Fraud is a question of fact that should be alleged and duly proven**. 'The willful neglect to file the required tax return or **the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed.**' Fraud entails corresponding sanctions under the tax law. Therefore, *it is indispensable for the Commissioner of Internal Revenue to include the basis for its allegations of fraud in the assessment notice.* (Emphasis supplied, citations omitted)" *(Emphases added)*

As can be gleaned from the foregoing jurisprudential pronouncements, fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed. It is also indispensable that the basis for allegations of fraud be included in the assessment notice.

In this case, other than the bare allegations of the City of Valenzuela and Soriano that NLEX deliberately concealed its proper gross receipts without submission of allegedly excluded VAT, there is nothing in the records that establishes the same. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.*, mere allegations are not evidence.[45] A cursory review of the subject *Notice of Deficiency* issued by Soriano shows that the basis for her allegations of fraud were not included therein nor was the term "fraud" even mentioned.

Consequently, the assessment for taxable years 2013 and 2014 issued on November 11, 2019 had already prescribed on January 20, 2018 and January 20, 2019, respectively, considering that LBT are paid within the first twenty (20) days

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[43] G.R. No. 232663, May 3, 2021.
[44] 799 Phil. 391, 412-415 (2016) [Per J. Leonen, Second Division].
[45] *Castillo vs. Republic, et al.,* G.R. No. 214064, February 6, 2017.

of January or of each subsequent quarter, as the case may be, under Section 167 of the LGC of 1991, to wit:

> "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."

In fine, considering that petitioners cannot validly impose the subject deficiency LBT, the *Petition for Review* must be denied.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

Accordingly, the Decision dated November 25, 2022, and the Resolution dated February 23, 2023, both rendered by the RTC – Branch 283, Valenzuela City, in Civil Case No. 27-V-20, are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice