REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

THE MUNICIPALITY OF BAKUN,
Petitioner,

- versus -

LUZON HYDRO CORPORATION and the CITY OF MAKATI,
Respondents.

C.T.A. AC NO. 100

Members:

UY, *Chairperson* and
FABON-VICTORINO, JJ

Promulgated:

NOV 08 2013 ; 3:08 p.m.

x- -x

DECISION

Fabon-Victorino, J.:

In this Petition for Review dated November 14, 2012, petitioner Municipality of Bakun assails the Decision dated April 20, 2012, and the Order dated September 12, 2012, both rendered by the Regional Trial Court (RTC) Branch 134 of Makati City in Special Civil Action for interpleader docketed as Civil Case No. 07-049.

As found by the court *a quo,* petitioner Municipality of Bakun is a local government unit with principal office at Ampusungan, Bakun, Benguet Province. Respondent City of Makati is also a local government unit with principal office at J.P. Rizal, Makati City. The other respondent, Luzon Hydro Corporation (LHC) is a duly organized domestic corporation with principal office address at Alilem, Ilocos Sur.[1]

LHC operates a 70 MW hydroelectric power plant facility that harnesses the Bakun River spanning the Provinces of

[1] The Parties, Petition for Review, docket, p. 5.

Ilocos Sur and Benguet.[2] It maintains factories, project offices, plants, and/or plantations in the pursuit of its business.[3] Since it was registered with the Board of Investments (BOI) as an entity engaged in a pioneer area of investment, it enjoyed a six-year tax holiday until the year 2003.[4] Thus, it was only in 2004 that it commenced paying local business taxes to petitioner Bakun, respondent Makati City, and the Municipality of Alilem pursuant to Section 150 of the Local Government Code (LGC), in relation to Article 243(b)(1), (2), (3) and (5) of the Implementing Rules and Regulations (IRR) of the LGC.

To pay local business tax, LHC allocated 70% of its annual gross sales and receipts apportioning it among the three named local government units (LGUs) as follows:

Municipality of Alilem	-	23.33% (as site of the plant)
Municipality of Bakun	-	23.33% (as site of the plant)
City of Makati	-	23.33% (as site of the "project office")

While the three LGUs accepted the said payments, it explicitly reserved the right to contest the above allocation made by LHC.[5]

On September 20, 2004, Bakun passed Resolution No. 168-2004 questioning the allocation of local business taxes made by LHC to Makati City and Alilem. The issue was submitted through the same Resolution to the Bureau of Local Government Finance (BLGF) for determination.[6]

On February 8, 2006, the BLGF issued an opinion dated February 8, 2006 declaring that the Makati City is not entitled to share in the 70% allocation of LHC for the payment of local business taxes for lack of legal basis. It opined that there was nothing in the LGC of 1991 and its Implementing Rules and Regulations authorizing the same. The LHC's office in Makati is an administrative office, and as

[2] Par. 6, Facts, Complaint, RTC Record, p. 2.
[3] Par. 12, Facts, Complaint, RTC Record, p. 3.
[4] See Par. 10, Facts, Complaint, RTC Record, p. 3.
[5] Par. 19, Facts, Complaint, RTC Record, p. 6.
[6] Annex "A" (RTC Decision), Petition for Review, docket, p. 21.

such, is not among the sites enumerated in Section 150 of the LGC and its Implementing Rules for purposes of local business taxation. BLGF concluded that only Alilem and Bakun must share in equal portion the 70% allocation of LHC for the payment of local business taxes. The City of Makati, where the administrative office is located, can only collect Mayor's permit fee and other regulatory fees provided under the pertinent local tax ordinance.[7]

On September 18, 2006, Bakun adopted the BLGF opinion via Resolution No. 134-2006,[8] and urged LHC to apportion its 70% local business tax allocation equally to it and Alilem only. Bakun further urged LHC to pay both Municipalities deficit business taxes constituting the 23.33% allocation previously paid to Makati City for the years 2004 to 2006.

On January 15, 2007, Alilem issued Resolution No. 07-02[9] also requiring LHC to abide by the BLGF opinion. Makati City, on the other hand, intimated that despite the BLGF opinion, it will continue to assess LHC for local business tax.

This prompted LHC to file Special Civil Action for Interpleader[10] docketed as Civil Case No. 07-049 on January 17, 2007 with the RTC of Makati, Branch 134. LHA asked the RTC to determine to which LGUs it should pay local business taxes and how it should distribute the 70% allocation it made for the purpose. LHC further prayed to consign the amount of P7,022,369.68, representing its 70% allocation for the payment of business taxes for the year 2007.

In the Order dated February 12, 2007,[11] the RTC allowed the consignation of the amount of P7,022,369.68 which LHC deposited to the Office of the Clerk of Court of the RTC of Makati on March 27, 2007[12].

---

[7] Department of Finance (BLGF) 2nd Indorsement dated February 8, 2006, RTC Record, pp. 35-36.
[8] RTC Record, pp. 181-182.
[9] RTC Record, pp. 183-184.
[10] RTC Record, pp. 1-15.
[11] RTC Record, pp. 80-81.
[12] Compliance dated March 27, 2007, RTC Record, pp. 129-133.

In the Order[13] dated August 30, 2007, the RT(Bakun's motion and released in its favor the 23.33% s... in the 70% consigned amount by LHC. The amount released was corrected in the RTC Order[14] dated September 19, 2007.

On March 31, 2003, the RTC, again at the instance of Bakun, ordered LHC to pay directly to Bakun its 23.33% share in the local business tax for the year 2008 onwards pending the final resolution of the case. In the same incident, Bakun informed the RTC that by virtue of a resolution of its local board, it would no longer demand payment of deficiency local business tax from LHC for the years 2004 to 2006 constituting the disputed 23.33% allotted to the City Makati.

After trial on the merits, the RTC rendered the assailed Decision dated April 20, 2012,[15] declaring Alilem, Bakun and Makati City entitled to share in the 70% business tax allocation of LHC. However, the RTC increased the allocation of Alilem and Bakun from 23.33% to 25%, and reduced that of Makati City from 23.33% to 20%. The dispositive portion of the RTC Decision reads, as follows:

> WHEREFORE, premises considered, the petition for interpleader is hereby given due course. Defendants Municipalities of Alilem and Bakun as well as the City of Makati are all declared entitled to the 70% business tax allocation of the plaintiff to be distributed starting taxable year 2012, as follows:

Municipality of Alilem	-	25% (as site of the plant)
Municipality of Bakun	-	25% (as site of the plant)
City of Makati	-	20% (as "project office")

> SO ORDERED.

---

[13] RTC Record, pp. 223-224.
[14] RTC Record, p. 253.
[15] RTC Record, pp. 850-863.

The RTC considered LHC's office in Makati as a "project office" and not a mere administrative office, contrary to the opinion of the BLGF. The RTC ruled that based on Section 150 of the LGC and Article 243 of its Implementing Rules, Makati City is entitled to its share in the 70% allocation made by LHC for purposes of local business taxation. The RTC however reduced the share of Makati City based on the manifestation made by its counsel in open court that Makati is willing to have its share reduced.[16]

The Motion for Reconsideration[17] filed by Bakun was denied by the RTC in the Order[18] dated September 12, 2012, thus, the instant Petition for Review [19] filed on November 14, 2012.

Bakun argues that the BLGF Opinion dated February 8, 2006 is the correct interpretation of Section 150 of the LGC and its implementing rules. Bacun agrees with the BLGF's opinion that LHC's office in Makati is an administrative office and not a project office. In view thereof, Makati City is not entitled to a share in the 70% allocation of LHC and it can only collect Mayor's permit fee and other regulatory fees by virtue of local ordinances.

Petitioner points out that the LHC office in Makati is not a project office for it does not handle the invoices or records of the sales of LHC nor does it operate any aspect of the business or primary purpose of LHC as provided in the latter's Articles of Incorporation. Since the main operations of LHC are conducted in Bakun and Alilem, hence only the two are entitled to the 70% allocation of LHC for the payment of local business tax.

Bakun added that the testimony of LHC's witness Arazeli Malapad is not sufficient basis to hold that the LHC office in Makati is a project office. The testimony of the said witness merely established that LHC paid 23.33% of the 70% allocation to Makati City as local business tax and would not in any way lead to a conclusion that LHC's office in Makati City is a project office.

---

[16] See page 13 of the RTC Decision dated April 20, 2012, RTC Record, p. 862.
[17] RTC Record, pp. 864-870.
[18] RTC Record, p. 897.
[19] Docket, pp. 5-19.

Further, the classification of the LHC Makati City office as "producer/power generation" is of no moment and does not make it into a project office as such classification applies to the nature of business of LHC in general and does not necessarily pertain to the Makati Office alone.

In assailing the RTC Decision dated April 20, 2012, and the Order dated September 12, 2012, Bakun also prays for an order directing respondent LHC to pay it deficiency local business taxes for the years 2004 to the present.

By way of comment, Makati City posits that LHC conducts its business and is registered and pays local business tax to Makati City since 2004 under the classification "producer/power generation," as evidenced by its Mayor's Permit and official receipts issued by Makati City.

Besides, the RTC has already determined the issue and has declared that the LHC Makati office is a project office, which should not be disturbed on the ground that findings of facts of the trial court such as the RTC should be given much weight.

Makati City further argues that the BLGF opinion is not binding on the courts, as correctly ruled by the RTC in its Decision dated April 20, 2012, and effectively confirmed in the Order dated September 12, 2012. Such opinion pales in comparison to the RTC ruling which was arrived at after an extensive examination of the evidence presented by the parties.

In addition, the CTA has no jurisdiction over the instant Petition since it originated from a special civil action for interpleader, which, based on Section 7 of R.A. No. 1125 as amended by R.A. No. 9282, is not among the cases that may be reviewed by the CTA.

In its own comment, LHC emphasizes that it does not contest its liability to pay local business taxes to the municipalities concerned as it has consistently paid the same, and it is willing and ready to comply with the ruling of the Court. Be that as it may, LHC objects to Bakun's prayer for payment of deficiency local business taxes from the year 2004 to the present. Aside from Bakun's failure to provide basis for such relief, the record reveals that LHC has fully settled all of its local business tax liability from the year 2004 up to the present, either through payments made directly to Bakun and Alilem, or through consignation to the RTC.

Further, in its Comment to the Motion for Consignation before the RTC, Bakun admitted that it had issued Resolution No. 152-2007 in which it withdrew its claim for any deficiency tax on the part of LHC for previous years. Under Section 4 Rule 129 of the Rules of Court, such judicial admission is binding upon Bakun. To allow the latter to collect anew deficiency local business taxes will jeopardize LHC's legitimate business. More importantly, there must be an end to a litigation especially in this Petition wherein all the arguments of Bakun have already been discussed and addressed by the RTC in the assailed Decision.

The issues in this case can be synthesized, as follows:

1. Whether the CTA has jurisdiction over the instant petition; and

2. Whether the RTC erred in ruling that Makati City is entitled to its share in the 70% allocation made by LHC for purposes of local business taxation under Section 150 of the LGC albeit in the reduced rate from of 23.33 % to 20%.

The Ruling of the Court

The Court of Tax Appeals is a highly specialized court which appellate jurisdiction over local tax cases is governed by Section 7(a)(3) of R.A. No. 1125, as amended by R.A. No. 9282, viz:

> SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx 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;

Corollary to the foregoing is Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals which provides, as follows:

> SEC. 3. *Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> xxx xxx xxx
>
> (3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;

Based on the foregoing, the Court has jurisdiction over the instant petition which involves a review of the decision of the RTC rendered in the exercise of its original jurisdiction, interpreting Section 150 of the LGC and its Implementing Rules and Regulations.

Insofar as the BLGF opinion dated February 8, 2006 is concerned, suffice it to say that it is not binding upon the Court. The BLGF was created to provide consultative services and technical assistance to LGUs and the general public on local taxation, real property assessment, and other related matters, among others. The Supreme Court ruled on the matter in this wise;

> To be sure, the BLGF is not an administrative agency whose findings on questions of fact are given weight and deference in the courts. The authorities cited by petitioner pertain to the Court of Tax Appeals, a highly specialized court which performs judicial functions as it was created for the review of tax cases. In contrast, the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation, real property assessment, and other related matters, among others. The question raised by petitioner is a legal question, to wit, the interpretation of Section 23 of R.A. No. 7925. There is, therefore, no basis for claiming expertise for the BLGF that administrative agencies are said to possess in their respective fields. [20]

On the issue of Makati City's entitlement to the 70% allocation of LHC for local business tax, the applicable law is Section 150(a) of the LGC and its Implementing Rules and Regulations, particularly Article 243 (a), which respectively read, as follows:

> 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

[20] Philippine Long Distance Telephone Company, Inc. vs. City of Davao, et al., G.R. No. 143867, August 22, 2001.

w/

> 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)*
>
> 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. *(Emphasis supplied)*

Thus, to be considered as a branch or sales office under the LGC, such office must be engaged in the sale of goods/services of the principal office.

Evidence shows that LHC is a producer of power or into power generation through the operation of hydro electric power plant facilities it set on the Bakun River located in the provinces of Benguet and Ilocos Sur as testified to by witness Arazeli Malapad, the Finance and Accounting Manager of LHC. She declared, thus:

> Q Ms. Witness, can you please tell this Honorable Court the nature of the business of the plaintiff, Luzon Hydro?
>
> A Luzon Hydro Corporation or LHC operates a 70 megawatts hydro electric power plant facility that are set to Bacun river which spans across the provinces of Benguet and Ilocos Sur. The major component of the facility such as the power station and switch chart are located in Alilem, Ilocos Sur while the other structure such as the conveyance panel, the water intake are located in Bacun, Benguet. The company also maintains an administrative office in the City of Makati. This administrative office does not handle any sales invoices or records of the company.[21]

In other words, to be considered as a branch or sales office of LHC, the Makati City office must be engaged in the sale of the hydro electric power being produced by LHC. However, the record shows otherwise. The Makati office of LHC does not sell the goods/products of its principal office, which is hydro electric power. This much is evident in the allegation of LHC in its Complaint dated January 17, 2006 filed with the RTC which was never disputed by any of the municipalities concerned. LHC states that "[T]he invoices or records of all sales to NPC are not handled by Plaintiff's (LHC) Makati City Office nor does it operate any aspect of the business or primary purposes of the Company as provided in Plaintiff's Articles of Incorporation."[22]

Witness Arazeli Malapad, the Finance and Accounting Manager of LHC, further volunteered that "The company also maintains an administrative office in the City of Makati. This

[21] Transcript of Stenographic Notes (TSN) dated October 25, 2007, RTC Record p. 916.
[22] Par. 9, Complaint dated January 17, 2006, RTC Record, p.3.

administrative office does not handle any sales invoices or records of the company."

All these were reiterated in LHC's Memorandum dated June 24, 2011, where it unequivocally declared anew that "[T]he invoices or records of all sales to the National Power Corporation are not handled by LHC's Makati City Office, nor does it operate any aspect of the business or primary purposes of LHC as provided in its Articles of Incorporation."[23]

Note that LHC admits liability for the 70% allocation for local business taxes and has in fact paid the same since 2004 either directly to the municipalities or from the amount consigned with the RTC. It continued paying the said business taxes to the three municipalities during the pendency of the interpleader case. This again was never disputed by any of the three municipalities. Indeed, no reason or rhyme exists for the Court to ignore these assertions which should be given some weight and credence especially considering that they were confirmed in open court by witness Arazeli Malapad.

Relevant as well is Section 150(b),(d), and (e) of the LGC, regarding the place for the payment of local business tax, which reads as follows:

> SEC. 150. *Situs of the Tax.* –
>
> xxx xxx xxx
>
> (b) The following sales allocation shall apply to manufacturers, assemblers, contractors, producers, and exporters with factories, project office, plants, and plantations in the pursuit of their business:
>
> > (1) Thirty percent (30%) of all sales recorded in the principal office shall be taxable by the city or municipality where

[23] Par. 10, Memorandum dated June 24, 2011, RTC Record, p. 757

> the principal office is located; and
>
> (2) Seventy percent (70%) of all sales recorded in the principal office shall be taxable by the city or municipality where the factory, project office, plant, or plantation is located.
>
> x x x x x x x x x
>
> (d) In cases where a manufacturer, assembler, producer, exporter or contractor has two (2) or more factories, project offices, plants, or plantations located in different localities, the seventy percent (70%) sales allocation mentioned in subparagraph (b) of subsection (2) above shall be prorated among the localities where the factories, project offices, plants and plantations are located in proportion to their respective volumes of production during the period for which the tax is due.
>
> (e) The foregoing sales 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.

While Section 150 does not specifically define the term project office, it is nonetheless defined in Section 5(a)(3) of Local Finance Circular No. 03-95 which, as an administrative interpretation of a law, exerts weighty influence in the judicial construction of statutes.[24]

Section 5(a)(3) of Local Finance Circular No. 03-95, with the subject: "Prescribing Guidelines Governing the Power of Cities and Municipalities to Impose Business Tax on Construction Contractors Pursuant to Section 143(e), Republic Act No. 7160, Otherwise Known as the Local Government Code of 1991, with Its Implementing Rules and Regulations" dated May 22, 1995, provides:

[24] People of the Philippines vs. Martin, et al., G.R. No. L-38019, May 16, 1980.

w

SECTION 5. *Situs of Tax.*

(a) *Definition of Terms*

xxx xxx xxx

(3) *Project Office* — shall mean the field office in the construction site. It is equivalent to the factory of a manufacturer.

While the said circular generally applies to construction contractors, it can nonetheless be applied in interpreting the term "project office" as contemplated in Section 150 of the LGC, as is apparent in the statement that a project office "is equivalent to the factory of a manufacturer."

The applicability of Section 5(a)(3) of Local Finance Circular No. 03-95 is further strengthened by Section 5(b)(2) of the said circular which also detailed the allocation of the thirty percent (30%) and seventy percent (70%) sharing of gross receipts similar to Section 150(b) of the LGC, to wit:

SECTION 5. *Situs of Tax.*

xxx xxx xxx

b) For purposes of collection of the tax, the following rules shall apply:

xxx xxx xxx

(2) In cases where there is no branch office, the gross receipts from domestic projects or contracts shall be recorded in the Head/Principal Office and the same shall be allocated as follows:

(i) Thirty percent (30%) of the gross receipts shall be taxable by the city

> of municipality where the principal office is located; and
>
> (ii) Seventy percent (70%) of the gross receipt shall be taxable by the city or municipality where the project office is located.

Thus, the LHC Makati office is not a project office and must be considered "equivalent to the factory of a manufacturer". As the factory is deemed the heart of and is indispensable to the operations of the manufacturer, so must the Makati office be deemed indispensable to the main purpose of LHC, to wit, the generation of hydro electric power.

Since the LHC Makati office is not a branch or sales office nor a project office as contemplated under Section 150(a) of the LGC, and Article 243(a) of its Implementing Rules, and it is an administrative office, Makati City, where such administrative office is located, is not entitled to the 70% allocation for local business taxes made by LHC.

Lastly, the Court cannot ignore and veer away from the fact that Bakun, in its motion filed sometime in March 2003, formally informed the RTC that by virtue of the resolution issued by its local board, it would no longer demand payment of deficiency local business tax from LHC for the years 2004 to 2006 constituting the disputed 23.33% allotted to Makati City.[25] Precisely the matter became a non-issue not only to the parties but also to the Court, who relied on the said declaration. This intention became more apparent when Bakun failed to discuss the matter in its Petition for Review. Obviously an afterthought, Bakuns' prayer to direct LHC to pay it deficiency local taxes from the years 2004 up to the present should be denied. The said admission that Bakun has been authorized by no less than its local board to forego its claim for deficiency local business tax from LHC for the years 2004 to the present cannot just be set aside. Such admission made by Bakun in the course of the proceedings does not require proof.[26]

[25] RTC Records, pp. 303-305
[26] Garcia vs. Court of Appeals, et al., G.R. No. 119845, July 5, 1996.

WHEREFORE, the Petition for Review dated November 14, 2012 filed by petitioner Municipality of Bakun is **PARTIALLY GRANTED**. Accordingly, the Decision dated April 20, 2012 and the Order dated September 12, 2012 of the RTC in Civil Case No. 07-049 are hereby **REVERSED** and **SET ASIDE**. The Municipalities of Bakun and Alilem are hereby declared the only local government units entitled to equally share in the 70% allocation made by LHC for the payment of its local business.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
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.

ERLINDA P. UY
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