REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DOLE PHILIPPINES, INC. – STANFILCO DIVISION, Petitioner,	**CTA AC NO. 215**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, *and* **BACORRO-VILLENA, *JJ.***
THE SANGGUNIANG PANLUNGSOD OF THE CITY OF DAVAO, AND THE HON. SARA Z. DUTERTE-CARPIO AND BELLA LINDA N. TANJILI, IN THEIR RESPECTIVE CAPACITIES AS MAYOR AND TREASURER OF THE CITY OF DAVAO, Respondents.	Promulgated: JUN 25 2020 2:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

In this Petition for Review, petitioner Dole Philippines, Inc. – Stanfilco Division, essentially seeks for the cancellation of the alleged environmental tax assessments issued against them by respondents.

THE FACTS

Petitioner alleges that it is a domestic corporation duly organized and existing by virtue of and under the laws of the Republic of the Philippines. It has its Stanfilco Division operating its business at Dona Socorro Street, Belisario Heights Subdivision, Lanang, Davao City.[1]

Petitioner likewise alleges that the Sangguniang Panlungsod of the City of Davao is the local legislative body empowered to enact ordinances levying taxes, fees and charges upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the city.[2] Respondents Sara Z. Duterte Carpio and Bella Linda N. Tanjili are sued in their capacities as City Mayor and Treasurer, respectively, of Davao City.[3]

On February 23, 2007, then Mayor Rodrigo R. Duterte approved the Watershed Code, which was enacted by the Sangguniang Panlungsod on January 23, 2007. It took effect fifteen (15) days after completion of its publication in a newspaper of general circulation in Davao City.[4]

Pertinent provision of the Watershed Code provides:

> "**SECTION 17. ENVIRONMENTAL FUND –** For the purpose of implementing the provisions of this Code, an annual Environmental Tax shall be imposed on all agricultural and other economic undertakings in the Agro-forestry/Non-Tillage Areas and Prime Agricultural Areas of not less than 50 hectares at the rate of Twenty Five Centavos (Php0.25) per square meter; provided that:
>
> > (i) The Environmental Tax shall also be imposed on corporate entities and persons engaged in agricultural and other economic undertakings on lands covered by growership contracts and other agreements;
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> xxx xxx xxx"

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[1] The parties, Petition for Review, par. 1, Docket, p. 9.
[2] The parties, Petition for Review, par. 2, Docket, p. 9.
[3] The parties, Petition for Review, pars. 3-4, Docket, p. 10.
[4] Statement of Material Facts, Petition for Review, par. 6, Docket, p. 10.

Pursuant thereto, on January 31, 2017, the Office of the City Treasurer of Davao issued an Assessment against petitioner in the amount of Three Million Three Hundred Twenty Four Thousand Eight Hundred Twenty Five Pesos (Php3,324,825.00).[5]

On February 6, 2017,[6] petitioner paid the amount of Three Million Three Hundred Twenty Four Thousand Eight Hundred Twenty Five Pesos (Php3,324,825.00), as evidenced by Official Receipt No. 8256117B. On March 7, 2017,[7] petitioner filed its protest.

On March 8, 2017,[8] petitioner received a Reply from the Office of the City Treasurer of Davao denying its protest.

On April 7, 2017,[9] petitioner filed an Appeal before the Regional Trial Court of Davao City.

On October 19, 2018, the Lower Court issued the assailed Order[10] dismissing petitioner's Appeal. Its dispositive portion reads:

> "WHEREFORE, finding no merit to plaintiff's Appeal from the City Treasurer's denial of its protest of assessments, this present Appeal is DISMISSED.
>
> SO ORDERED."[11]

Consequently, petitioner filed its Motion for Reconsideration dated November 14, 2018.[12] On November 22, 2018, the Lower Court likewise issued the assailed Order denying the said motion. Its dispositive portion reads:

> "**WHEREFORE**, for lack of merit, plaintiff's Motion for Reconsideration is hereby **DENIED**.
>
> SO ORDERED."[13]

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[5] Lower Court Docket, p. 44.
[6] Lower Court Docket, p. 49.
[7] Lower Court Docket, pp. 32-43.
[8] Lower Court Docket, pp. 29-30.
[9] Lower Court Docket, pp. 2-28.
[10] Docket, pp. 45-48.
[11] Docket, p. 47.
[12] Lower Court Docket, pp. 493-518.
[13] Lower Court Docket, p. 519.

On December 20, 2018[14] and February 19, 2019,[15] petitioner and respondents filed their respective Petition for Review and Comment, where they essentially reiterated their positions before the lower court.

On March 13, 2019,[16] the Court issued a Resolution requiring the parties to file their memoranda. On April 16, 2019, petitioner filed its Memorandum.[17] On the other hand, on April 23, 2019, respondents filed through registered mail their Memorandum.[18]

On May 9, 2019,[19] the Court issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUES

After considering the issues raised by the parties, the main issue to be resolved by the Court is whether it has jurisdiction over the present case. In relation thereto, the Court shall determine whether the exaction, denominated as Environmental Tax under the Watershed Code of Davao City, is a tax or a regulatory fee.

THE RULING

The Court has no jurisdiction over the present case

Section 17 of the Watershed Code of Davao City is a regulatory fee, imposed in the exercise of its police power

In ruling against petitioner, the lower court discussed the following:

> "We rule that, although the charge is named as Environmental TAX, the purpose for which it is charged is

[14] Docket, pp. 8-42.
[15] Docket, pp. 374-398.
[16] Docket, p. 404.
[17] Docket, pp. 406-445.
[18] Docket, pp. 448-473.
[19] Docket, p. 477.

NOT to raise a revenue but as provided in Section 17 of the Watershed Code, quoted hereunder to wit:

'Section 17. Environmental Fund. – xxx

xxx xxx xxx

(2) **The Environmental Tax collected** shall accrue to the General Fund and **shall be appropriated** in the Annual Budget **solely for the purpose of the implementation of this Code, the operational expenses of the Watershed Management Council and all its instrumentalities and for watershed protection, conservation and management programs and projects**, subject to the approval of the Davao City Council.'

The ruling in *Romeo Gerochi vs. Department of Energy G.R. No. 159796* dated July 17, 2007 is most instructive, to wit:

xxx xxx xxx

<u>The conservative and pivotal distinction between these two powers rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but **if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax.**</u>

Having thus ruled that the twenty five centavos Environmental fee is NOT a tax but a regulation fee, Section 17 of the Watershed Code is VALID."

The Court agrees with the conclusion reached by the lower court.

In *Smart Communications, Inc. v. Municipality of Malvar, Batangas,*[20] the issue involved is whether the fees exacted under

[20] G.R. No. 204429, February 18, 2014.

Ordinance No. 18 on construction activities involving cell sites or telecommunication towers are regulatory in nature and not revenue raising. In ruling against petitioner, the Supreme Court explained that:

> "As clearly stated in its whereas clauses, the primary purpose of Ordinance No. 18 is to regulate the 'placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus' listed therein, which included Smart's telecommunications tower. Clearly, the purpose of the assailed Ordinance is to regulate the enumerated activities particularly related to the construction and maintenance of various structures. The fees in Ordinance No. 18 are not impositions on the building or structure itself; rather, they are impositions on the activity subject of government regulation, such as the installation and construction of the structures.
>
> Since the main purpose of Ordinance No. 18 is to regulate certain construction activities of the identified special projects, which included 'cell sites' or telecommunications towers, the fees imposed in Ordinance No. 18 are ***primarily regulatory in nature, and not primarily revenue-raising***. While the fees may contribute to the revenues of the Municipality, this effect is merely incidental. Thus, the fees imposed in Ordinance No. 18 are not taxes.
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> In *Progressive Development Corporation v. Quezon City*, the Court declared that 'if the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax.'
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> In *Victorias Milling Co., Inc. v. Municipality of Victorias*, the Court reiterated that the purpose and effect of the imposition determine whether it is a tax or a fee, and that the lack of any standards for such imposition gives the presumption that the same is a tax.
>
> We accordingly say that the designation given by the municipal authorities does not decide whether the imposition is properly a license tax or a license fee. The

> determining factors are the purpose and effect of the imposition as may be apparent from the provisions of the ordinance. Thus, '[w]hen no police inspection, supervision, or regulation is provided, nor any standard set for the applicant to establish, or that he agrees to attain or maintain, but any and all persons engaged in the business designated, without qualification or hindrance, may come, and a license on payment of the stipulated sum will issue, to do business, subject to no prescribed rule of conduct and under no guardian eye, but according to the unrestrained judgment or fancy of the applicant and licensee, the presumption is strong that the power of taxation, and not the police power, is being exercised.'"

Petitioner argues that "**nowhere in the assailed Watershed Code is a covered entity required to satisfy prescribed standards as prerequisites to inspection, supervision or regulation**".[21]

Yet, a perusal of the subject Ordinance reveals that it is replete with rules of conduct to ensure the protection and sustenance of Davao City's watershed areas. Specifically, Article 9 thereof enumerates several prohibited acts to ensure the health and sustainability of the watershed areas. Further, Article 11 thereof provides for protection and conservative measures which are enumerations of the correlative obligations of direct stakeholders, *i.e.*, revocation of tenurial agreements if the stakeholder violates the terms of the agreement, protection of the rights over ancestral domain, protection and conservation of watershed areas, among others.

Clearly, the Watershed Code of Davao City does not indiscriminately permit the conduct of business without any rule of conduct on the part of stakeholders.

Here, petitioner states that it is engaged in the business of producing and exporting fresh bananas, pineapples and other agricultural crops located in Davao City Zones.[22] Incidentally, as one of Davao City's stakeholders primarily involved in agriculture, petitioner's activity must be regulated in order to ensure the ecological balance of the place where its business is located. Thus, *ge*

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[21] Memorandum, Docket, p. 422.
[22] Par. 5, Statement of Material Facts, Petition, Docket, p. 10.

the imposition under Section 17 of the Watershed Code is merely regulatory in nature.

Meanwhile, the Court has exclusive appellate jurisdiction to review by appeal the decisions, orders or resolutions of the RTC in local tax cases originally decided or resolved by the RTC in the exercise of its original or appellate jurisdiction.[23] Considering that the imposition involved is merely a regulatory fee and not a local tax, the Court has no jurisdiction over the present petition. Thus, the denial thereof is in order.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of jurisdiction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

[23] Section 7(3) of Republic Act No. 9282.

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