

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SMART
COMMUNICATIONS,
INC.,

Petitioner,

-versus-

HON. JUDGE AUGUSTO
JOSE Y. ARREZA as Acting
Presiding Judge of the
Regional Trial Court,
Branch 133, Makati City,
HON. JESUSA E. CUNETA,
in her capacity as OIC City
Treasurer of Makati City,
and CITY OF MAKATI,

Respondents.

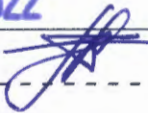
CTA EB No. 2386
(CTA AC No. 228)

Present:

DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, II.

Promulgated:

AUG 15 2022

 3:35 p.m. x

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DECISION

REYES-FAJARDO, I:

This Petition for Review¹ dated December 22, 2020, filed by Smart Communications, Inc. challenges the Decision² dated February 5, 2020, and the Resolution³ dated November 9, 2020, rendered by the Second Division of this Court ("Court in Division") in CTA AC No. 228. The challenged Decision and Resolution affirmed the Resolutions dated June 28, 2019, and August 7, 2019, of the Regional

¹ Rollo, Volume I, pp. 8-60.

² *Id.* at pp. 62-75.

³ *Id.* at pp. 77-81.



Trial Court, Branch 133 of Makati City ("RTC-Makati") granting the Makati City's Motion for Production or Inspection of Documents.

The facts follow.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal office address at Smart Tower, 6799 Ayala Avenue, Makati City, Metro Manila.

Respondent Makati City is a chartered local government unit with address at Makati City Hall, J.P. Rizal Street, Barangay Poblacion, Makati City. It is empowered to collect franchise tax through Hon. Jesusa E. Cuneta, who is the Officer-in-Charge City Treasurer.

Respondent Hon. Judge Augusto Jose Y. Arreza is the Acting Presiding Judge of the Regional Trial Court, Branch 133, Makati City.

On July 27, 2018, petitioner filed before RTC-Makati a Petition for Review, seeking the nullification of respondent Makati City's Notice of Assessment ("NOA") for deficiency franchise taxes, fees, and charges for taxable years ("TYs") 2012 to 2015 in the amount of Three Billion Two Hundred Forty-Six Million Six Hundred Forty-Seven Thousand One Hundred Four and 20/100 Pesos (P3,246,647,104.20) docketed as Civil Case No. R-MKT-18-02983-CV.⁴

On May 20, 2019, respondent Makati City filed before the RTC-Makati a Motion for Production or Inspection of Documents,⁵ to compel petitioner to produce the following documents:

...

4.1 General Ledger

4.1.1 Consolidated Book for the year[s] 2011, 2012, 2013, and 2014.

4.1.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013, and 2014.

4.2 Sales Book

4.2.1 Consolidated Book for the year[s] 2011, 2012, 2013, and 2014.

⁴ *Id.* at pp. 485-505.

⁵ *Id.* at pp. 458-464.

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- 4.2.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013, and 2014.
- 4.2.3 Sales Invoice Summary
 - 4.2.3.1 Consolidated for the year[s] 2011, 2012, 2013, and 2014.
 - 4.2.3.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013, and 2014.
- 4.2.4 Sales Invoice (Physical Document)
 - 4.2.4.1 Makati branches and sales offices for the year[s] 2011, 2012, 2013, and 2014.
- 4.2.5 Official Receipt Summary
 - 4.2.5.1 Consolidated for the year[s] 2011, 2012, 2013, and 2014.
 - 4.2.5.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013, and 2014.
- 4.2.6 Official Receipt (Physical Document)
 - 4.2.6.1 Makati branches and sales offices for the year[s] 2011, 2012, 2013, and 2014.
- 4.3 Cash Register Book**
 - 4.3.1 Consolidated [B]ook for the year[s] 2011, 2012, 2013, and 2014.
 - 4.3.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013, and 2014.
- 4.4 General Journal Book**
 - 4.4.1 Consolidated [B]ook for the years 2011, 2012, 2013, and 2014.
 - 4.4.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013, and 2014.
- 4.5 Application Form & Assessment/ Billing Assessment from other LGUs for the Taxable Year[s] 2012 to 2015 covering the years 2011 to 2014.**
 - 4.5.1 Business Taxes taxable year[s] 2012, 2013, 2014, and 2015.
 - 4.5.2 Franchise Taxes taxable year[s] 2012, 2013, 2014, and 2015.
- 4.6 Schedule/Summary of Proof of Payments from other LGUs for the Taxable Year[s] 2012 to 2015 covering the years 2011 to 2014.**
 - 4.6.1 Business Taxes taxable year[s] 2012, 2013, 2014, and 2015.
 - 4.6.2 Franchise Taxes taxable year[s] 2012, 2013, 2014, and 2015.
- 4.7 Breakdown of Gross Sales per branches and offices for the years 2011 to 2014.**
- 4.8 Quarterly VAT returns for the year[s] 2011, 2012, 2013, and 2014.**
- 4.9 Monthly VAT returns for the year[s] 2011, 2012, 2013, and 2014.**
- 4.10 Summary/Breakdown of OTHER INCOME of branches and offices and its classifications, nature and explanation and its corresponding payment from other localities for the Taxable Year[s] 2011, 2012, 2013, and 2014.**

In a Resolution dated June 28, 2019,⁶ the RTC-Makati granted the Motion for Production or Inspection of Documents in this wise:

⁶ *Id.* at pp. 443-447.

...

CONSEQUENTLY, finding merit in the respondents' Motion for Production or Inspection of Documents, this Court hereby grants the same. Considering, however, the voluminous documents that the respondents seek to inspect and/or copy, and in order to determine their relevancy, this Court hereby requires the respondents to submit not later than five (5) days from receipt hereof what specifically they seek to discover from the documents enumerated in items 4.1 to 4.10 of their motion.

SO ORDERED.

On July 15, 2019, petitioner filed a Motion for Reconsideration⁷ to the Resolution dated June 28, 2019, issued by the RTC-Makati. In a Resolution dated August 7, 2019,⁸ the RTC-Makati denied petitioner's Motion for Reconsideration:

...

CONSEQUENTLY, not finding any merit in the Petitioner's Motion for Reconsideration of the Order dated 28 June 2019, this Court hereby denies the same.

Further, the respondents having complied on 12 July 2019 with this Court's Order dated 28 June 2019 requiring them to specify what they seek to discover from the documents enumerated in paragraphs 4.1 to 4.10 of their Motion for Production or Inspection of Documents, finding them relevant and material to the factual issue discussed above, and with the denial of the petitioner's Motion for Reconsideration, this Court hereby orders the petitioner to make available to the respondents at reasonable office hours, not later than ten (10) days prior to the Pre-Trial, the documents enumerated in the above-mentioned paragraphs of the Motion for Production or Inspection of Documents. ...

On September 12, 2019, petitioner filed a Petition for *Certiorari* (With Application for the Issuance of an *Ex Parte* Temporary Restraining Order and/or Writ of Preliminary Injunction)⁹ before the Court in Division, seeking the annulment of RTC-Makati's Resolutions, docketed as CTA AC No. 228.

In a Resolution dated October 15, 2019,¹⁰ the Court in Division denied petitioner's Application for the Issuance of an *Ex Parte*

⁷ *Id.* at pp. 422-441.

⁸ *Id.* at pp. 449-456.

⁹ *Id.* at pp. 83-441.

¹⁰ Docket (CTA AC No. 228) Volume 3, pp. 864-869.

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Temporary Restraining Order and/or Writ of Preliminary Injunction for lack of merit.

On February 5, 2020, the Court in Division rendered the challenged Decision, denying petitioner's Petition for Certiorari, as follows:

...

WHEREFORE, the foregoing considered, petitioner's Petition for Certiorari is **DENIED** for lack of merit. Accordingly, the Resolutions on 28 June 2019 and on 07 August 2019 issued by Branch 133 of the Regional Trial Court of Makati City are hereby **AFFIRMED**.

SO ORDERED.

On February 24, 2020, petitioner filed through registered mail a Motion for Reconsideration to the challenged Decision,¹¹ which was likewise denied by the Court in Division in the Resolution dated November 9, 2020.

On December 23, 2020, petitioner filed before the Court *En Banc*, a Petition for Review with Application for the issuance of an *Ex Parte* Temporary Restraining Order and/or Writ of Preliminary Injunction¹² within the period granted.¹³ On May 28, 2021, respondent Makati City filed its Comment.¹⁴

In a Resolution¹⁵ dated September 16, 2021, the Court *En Banc* denied petitioner's Application for the Issuance of an *Ex Parte* Temporary Restraining Order and/or Writ of Preliminary Injunction and submitted this case for Decision.

Petitioner ascribes error to the Court in Division in holding that the RTC-Makati did not act with grave abuse of discretion in granting

¹¹ *Rollo*, Volume I, pp. 466-483.

¹² *Supra* note 1.

¹³ Petitioner received a copy of the Court in Division's challenged Resolution on November 23, 2020. Petitioner filed a Motion for Additional Time to File Petition for Review with Application for the issuance of an *Ex Parte* Temporary Restraining Order and/or Writ of Preliminary Injunction requesting for an additional period of fifteen (15) days from December 8, 2020, or until 23 December 2020. The Court *En Banc* granted said motion.

¹⁴ *Rollo*, Volume IV, pp. 1593-1602.

¹⁵ *Id.* at pp. 1604-1612.



respondent Makati City's Motion for Production or Inspection of Documents under Section 1, Rule 27 of the Rules of Court. Petitioner argues:

The allowance of the production or inspection of documents is violative of the Local Government Code (LGC) and by Revised Makati Revenue Code (RMRC) for it equates to another audit or examination of its books of account for the same taxable period, as well as the conduct of an examination without a valid Letter of Authority (LOA).

The documents for production or inspection are irrelevant and immaterial to the resolution of the main case. A set of documents¹⁶ reflect petitioner's nationwide revenue while another set¹⁷ demonstrate its revenues from localities other than Makati City. Local government units such as Makati City may exercise taxing power within its territorial jurisdiction; hence, the documents covering its nationwide revenues, alongside those documents on other localities are immaterial to respondent Makati City's collection of franchise taxes for petitioner.

Portions of the NOA for TYs 2012 and 2013 are barred by prescription under the LGC and RMRC.

¹⁶ Paragraph 7.45 of Petitioner's Petition for Review states: For ease of reference, the Motion for Production sought the inspection and copying of the following documents that cover SMART's nationwide revenues:

- a. Consolidated General Ledger
- b. Consolidated Sales Book
- c. Consolidated Sales Invoice Summary
- d. Consolidated Sales Invoice (Physical Document)
- e. Consolidated Official Receipt Summary
- f. Consolidated Cash Register Book
- g. Consolidated General Journal Book
- h. Quarterly VAT returns for the years 2011, 2012, 2013, and 2014
- i. Monthly VAT returns for the years 2011, 2012, 2013, and 2014. Boldfacing supplied.

¹⁷ Paragraph 7.46 of Petitioner's Petition for Review states: In addition, the Assailed Resolutions required SMART to produce for inspection and copying the following documents that cover SMART's revenues from localities other than Makati City:

- a. Business and Franchise Taxes Application Form & Assessment/Billing Assessment from other LGUs.
- b. Schedule/Summary of Proof of Payments of Business and Franchise Taxes to other LGUs.
- c. Breakdown of Gross Sales per branches and offices.
Summary/Breakdown of OTHER INCOME of branches and offices and its classifications, nature and explanation and its corresponding payment from other localities. Boldfacing supplied.



In refutation,¹⁸ respondent Makati City counters:

The requested documents are relevant and material. The issue in the case before RTC-Makati is whether respondent Makati City erred in assessing petitioner for deficiency franchise taxes covering TYs 2012 to 2015 in the amount of ₱3,246,647,104.20 based on its total nationwide revenue as appearing in its income tax returns and not merely based on gross annual receipts within Makati City. Hence, the requested documents would probably aid the RTC-Makati in the determination of the payment of the correct local franchise taxes.

THE RULING OF THE COURT

The Petition lacks merit.

Grave Abuse of Discretion

An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a “capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.” The abuse of discretion must be so patent and gross as to amount to an “evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.”¹⁹

As will be discussed below, RTC-Makati did not act with grave abuse of discretion in granting respondent Makati City’s Motion for Production or Inspection of Documents under Section 1, Rule 27 of the Rules of Court.

City Treasurer’s Examination Power

To recall, petitioner’s Petition for Review²⁰ filed before the RTC-Makati asserts that no deficiency franchise taxes are due because it

¹⁸ Respondent Makati City’s Comment to the Petition for Review with Application for the Issuance of an *Ex Parte* Temporary Restraining Order and/or Writ of Preliminary Injunction dated May 27, 2021. *Rollo*, Volume IV, pp. 1593-1602.

¹⁹ *Yokohama Tire Philippines, Inc. v. Sandra Reyes and Jocelyn Reyes*, G.R. No. 236686, February 5, 2020.

²⁰ *Rollo*, Volume I, pp. 485-505.

has already paid franchise taxes for Makati City for TYs 2012 to 2015 allegedly based on gross receipts realized from Makati City. Paragraph 36 of Petitioner's Petition for Review²¹ filed before the RTC-Makati states:

...

36. Consequently, SMART fully and timely made the following payments to Makati City for local franchise taxes on gross receipts realized within the territorial jurisdiction.

Taxable Year	Gross Receipts	Local Franchise Tax Due (50% of 1% of Gross Receipts)	Amount Paid
2012	1,300,406,594.00	6,502,032.97	6,502,032.97
2013	1,253,218,613.65	6,266,093.08	6,266,093.08
2014	1,273,161,291.59	6,365,806.44	6,365,806.44
2015	1,256,911,918.01	4,776,265.30	4,776,265.30
TOTAL		25,635,965.46	25,635,965.46

Despite the alleged payment, respondent Makati City issued a LOA. The LOA required the submission of documents, to wit:

...

1. Duly Approved application form for renewal of annual business permits, computerized assessment printouts of Mayor's Permit and Official Receipts (2011-2015);
2. Audited Financial Statements & Income Tax Returns (2010 to 2014);
3. Books of Accounts (2010 to 2014);
4. Articles of Incorporation;
5. Others:
 - a) For Fiscal Year & Consolidated Financial Statements- Summary/ Breakdown of Gross Sales per Calendar Year;
 - b) As per Section 7A.07 No. 4 of the Makati Revised Revenue Code- Proof of Payments of branches in Other Localities;
 - c) Other financial documents that might be necessary in the conduct of examination.²²

According to respondent Makati City, petitioner in a letter dated October 25, 2016,²³ submitted some documents but missed out on the submission of items 5(a), (b) and (c) of the above enumeration.

²¹ *Id.* at p. 497.

²² *Id.*, p. 217.

²³ *Id.*, p. 144.

The table below will show required documents vis-a-vis the submissions:

Documents Required Under the LOA	Submitted Documents
1. Duly Approved application form for renewal of annual business permits, computerized assessment printouts of Mayor's Permit and Official Receipts (2011-2015)	business permits, official receipts, assessments, and application forms (2012-2015)
2. Audited Financial Statements & Income Tax Returns (2010 to 2014)	Comparative Audited Financial Statements (2011-2014) and Income Tax Return (2011-2014)
3. Books of Accounts (2010 to 2014)	NO SUBMISSIONS
4. Articles of Incorporation	Articles of Incorporation
5. Others: a) For Fiscal Year & Consolidated Financial Statements- Summary/ Breakdown of Gross Sales per Calendar Year; b) As per Section 7A.07 No. 4 of the Makati Revised Revenue Code- Proof of Payments of branches in Other Localities; c) Other financial documents that might be necessary in the conduct of examination.	NO SUBMISSIONS

Conspicuously missing from the documents submitted by petitioner was the summary or breakdown of its gross sales per locality or proof of payment of local franchise tax in other localities as required under Section 7A.07²⁴ of the RMRC.

In view of the failure of petitioner to provide, despite demand from petitioner of the breakdown of its gross sales and receipts of its

²⁴ SECTION 7A.07.
Examination of Books of Accounts and Pertinent Records of Business Establishments by the City Treasurer...
...
4. In case there is a branch, sales office, factory, warehouse and/or project office located in another locality or outside Makati, **breakdown of "Gross Sales or Receipts", assessment and proof of payment or certified true copies of Official Receipts issued by the localities where the branch, sales office, factory, warehouse and/or project office is located covering the years of examination. ... Boldfacing supplied.**

branches and proof of payment of local franchise tax in other localities, respondent Makati City presumed petitioner to be liable for deficiency franchise taxes TYs 2012 to 2015 based on available records, i.e., on petitioner's gross receipts appearing on petitioner's financial statements.²⁵ In support of this presumptive assessment, respondent Makati City cites Section 7A.08 which provides, to wit:

SECTION 7A.08. Presumptive Assessment: In case the City Treasurer or his/her duly authorized representative is refused or denied entry to taxpayer's premises, or refused or denied access to taxpayer's books of accounts and other pertinent financial records, or the **taxpayer fails or refuses to submit his books of accounts and other pertinent financial records when so required, the taxpayer shall be presumed liable for taxes, fees and charges based on available records and documents, and presumptive assessment shall be prepared by the City Treasurer's Office accordingly.**²⁶

The fact is a self-assessing system governs Philippine internal revenue taxes. Self-assessed tax is defined as a tax that the taxpayer himself assesses or computes and pays to the taxing authority.²⁷ In enforcing compliance with local government taxes regulations, respondent Makati City cannot accept petitioner's self-assessment as a true and accurate declaration of the income of petitioner. Respondent Makati City has the power to issue an LOA for the examination of books, accounts, records in order to ascertain the correctness of the amount paid, under Section 171 of the LGC and Section 7A.07 of the RMRC, to wit:

SECTION 171. Examination of Books of Accounts and Pertinent Records of Businessmen by Local Treasurer. – The provincial, city, municipal or barangay treasurer may, by himself or through any of his deputies duly authorized in writing, examine the books, accounts, and other pertinent records of any person, partnership, corporation, or association subject to local taxes, fees and charges **in order to ascertain, assess, and collect the correct amount of the tax, fee, or charge.**²⁸

²⁵ Rollo, Volume I, p. 218.

²⁶ Boldfacing supplied.

²⁷ *Philippine National Oil Company v. The Hon. Court of Appeals, The Commissioner of Internal Revenue and Tirso Savellano*, G.R. No. 109976, April 26, 2005 and *Philippine National Bank v. The Hon. Court of Appeals, Court of Tax Appeals, Tirso B. Savellano and Commissioner of Internal Revenue*, G.R. No. 112800, April 26, 2005.

²⁸ Boldfacing supplied.



...

SECTION 7A.07. Examination of Books of Accounts and Pertinent Records of Business Establishments by the City Treasurer.
— Only the City Treasurer may, by himself/herself or through any of his/her deputies duly authorized in writing, examine the books of accounts, and other pertinent records of any person, partnership, corporation, or association subject to city taxes, fees and charges **in order to ascertain, assess, and collect the correct amount of the taxes, fees and charges.**

The City Treasurer's power to require the submission of documents is necessary to enforce Makati local tax laws by examination of books of accounts and pertinent records to determine and ascertain the correct tax liability of any person. Petitioner cannot defeat this power by the mere expedience of refusing to submit records necessary for the evaluation of the extent of its tax compliance.

Hence, when petitioner filed this case assailing the deficiency taxes under the NOA, Makati City had every right to assert its power to examine the records of petitioner for the purpose of ascertainment of the correct tax liabilities due. Verily, the documents specified in items 4.1 to 4.10²⁹ of respondent Makati City's Motion for Production and Inspection of Documents consist of documents that petitioner has failed to submit before the City Treasurer, i.e., document that may contain details of petitioner's sales and receipts for TYs 2011 to 2014 in Makati and other localities (respondent Makati City's local franchise tax assessment issued against petitioner for TYs 2012 to 2015 must be based on the sales and receipts for the preceding years, i.e., years 2011 to 2014).

Petitioner's argument that the taxing jurisdiction of respondent Makati City is only in Makati City; thus, some³⁰ of the requested documents on its nationwide sales and receipts, along with those documents on localities other than Makati City must be regarded as irrelevant and immaterial to the matter pending before the RTC-Makati is unavailing. The city treasurer's examination power under Section 171 of the LGC and Section 7A.07 of the RMRC is extensive. The city treasurer had the power to require the submission of the documents pursuant to an LOA; and is also in the right in asking

²⁹ See pp. 2-3 of this Decision.

³⁰ Items 4.5 and 4.6 of respondent Makati City's Motion for Production or Inspection of Documents. See p.3 of this Decision.

RTC-Makati compel by subpoena duces tecum the submission of the same for the determination of whether respondent Makati City's deficiency local franchise taxes assessment for TYs 2012 to 2015 embodied in the NOA includes "SMART's total nationwide sales and receipts" imputable to both Makati City and other localities, which is necessary for the resolution of the correct basis and computation of deficiency franchise tax, if any, due from petitioner.

Judicial Power of Review

Section 195 of the LGC³¹ provides taxpayer's remedy of an appeal with the court of competent jurisdiction if the taxpayer's assessment protest is denied by the local treasurer.

Petitioner argues that RTC-Makati's Order to produce the documents requested by respondent Makati City is tantamount to a second audit of petitioner's books of accounts and records for the same TYs, as well as an audit without any LOA violative of the LGC.

Petitioner's argument is untenable.

In requiring the production of documents, RTC-Makati, being the court of competent jurisdiction, is not **making an assessment or conducting an audit**; rather, it is exercising the **power of judicial review** as vested in Section 1 of Article VIII of the 1987 Constitution.³² The RTC, as a trial court, can decide on both factual and purely legal

³¹ 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 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 canceling 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.

³² Section 1 of Article VIII of the 1987 Constitution defines judicial power as the power of the courts to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality, of the government.

issues.³³ RTC-Makati as the court of competent jurisdiction has the authority to look into the correctness of the local treasurer's assessment against petitioner and to require the production of material and relevant evidence necessary for the determination of the factual issues involved in the taxpayer's disputed assessment.

In a tax refund case, *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*,³⁴ the Supreme Court held that the taxpayer paid an erroneous category of taxes and instead directed that the taxpayer be subjected to 6% capital gains tax, the proper category of tax that should have been paid, as ruled by the CTA. The Supreme Court recognized that the CTA had no assessment powers; however, the Supreme Court explains that when the case is brought on appeal to the CTA, the CTA reviews the correctness of BIR's assessment and decision and in so doing, may make its own determination of the taxpayer's tax liabilities, to wit:

In an action for the refund of taxes allegedly erroneously paid, the Court of Tax Appeals may determine whether there are taxes that should have been paid in lieu of the taxes paid. Determining the proper category of tax that should have been paid is not an assessment. It is incidental to determining whether there should be a refund.

...

Thus, the BIR first has to make an assessment of the taxpayer's liabilities. When the BIR makes the assessment, the taxpayer is allowed to dispute that assessment before the BIR. If the BIR issues a decision that is unfavorable to the taxpayer or if the BIR fails to act on a dispute brought by the taxpayer, the BIR's decision or inaction may be brought on appeal to the Court of Tax Appeals. The Court of Tax Appeals then acquires jurisdiction over the case.

When the BIR's unfavorable decision is brought on appeal to the Court of Tax Appeals, the Court of Tax Appeals reviews the correctness of the BIR's assessment and decision. **In reviewing the BIR's assessment and decision, the Court of Tax Appeals had to make its own determination of the taxpayer's tax liabilities. ...**³⁵

³³ *Benguet Electric Cooperative (BENECO), represented by Gerardo P. Versoza, General Manager v. The Municipality of La Trinidad Benguet and Wilma Lintan, Municipal Treasurer*, C.T.A. EB Case No. 1091 (C.T.A. AC NO. 85), May 6, 2016.

³⁴ G.R. No. 175410, November 12, 2014. Boldfacing supplied.

³⁵ Boldfacing supplied.



Similarly, in the present case, respondent City of Makati, thru its local city treasurer, assessed petitioner taxpayer's liabilities for deficiency local franchise taxes. If the city treasurer issues an unfavorable decision, the city treasurer's decision or inaction may be brought on appeal to RTC-Makati. **In reviewing the city treasurer's assessment, RTC-Makati has to make its determination of the taxpayer's tax liabilities, and may require the production of documents to aid its resolution of the principal issue of the correct amount of deficiency local franchise taxes to be paid.**

Power to Issue Writs to Exercise Jurisdiction

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.³⁶ In seeking relief from RTC-Makati, petitioner submitted to the jurisdiction of said court.

The jurisdiction conferred to RTC-Makati in exercising the power of judicial review to dispose the case on the merits carries the power to issue all auxiliary writs, processes, and other means necessary to exercise its jurisdiction,³⁷ including the issuance of a resolution allowing a party to avail of a mode of discovery. Rightly so, the issuance of the resolution granting the production or inspection of documents is well within the power and jurisdiction of RTC-Makati when all the requisites for filing said motion were satisfied by respondent.

Here, the Court notes that the RTC-Makati first required³⁸ respondent Makati City to specify the matters it seeks to discover from the documents subject of its Motion for Production or Inspection of Documents. RTC-Makati evaluated the merits of the Motion and the reason for availing the same before requiring³⁹ petitioner to produce the requested documents.

³⁶ *City of Iloilo, v. Philippine Ports Authority and Development Bank of The Philippines*, G.R. No. 233861, January 12, 2021.

³⁷ Section 6 of Rule 135 of the Revised Rules of Court:
Section 6. Means to carry jurisdiction into effect. — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.

³⁸ *Supra* note 6.

³⁹ *Supra* note 8.

Section 1, Rule 27 of the Rules of Court pertinently provides:

Section 1. Motion for production or inspection; order. - Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his or her possession, custody or control; The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just.

In *Security Bank Corporation v. Court of Appeals*,⁴⁰ the Supreme Court ruled that the requisites for the grant of a Motion for Production and Inspection are: (a) The party must file a motion for the production or inspection of documents or things, showing good cause therefor; (b) Notice of the motion must be served to all other parties of the case; (c) The motion must designate the documents, papers, books, accounts, letters, photographs, objects or tangible things which the party wishes to be produced and inspected; (d) Such documents, etc., are not privileged; (e) **Such documents, etc., constitute or contain evidence material to any matter involved in the action;** and (f) Such documents, etc., are in the possession, custody or control of the other party.⁴¹

Petitioner cannot make its gross sales and receipts unavailable for judicial scrutiny when the same are necessary to ascertain the extent of petitioner's deficiency local franchise taxes liability to respondent Makati City for TYs 2012 to 2015. It is well to remind petitioner that litigation is essentially an abiding quest for truth undertaken not by the judge alone, but jointly with the parties. **Litigants, like petitioner, therefore, must welcome every opportunity to achieve this goal; they must act in good faith to reveal documents, papers and other pieces of evidence material to the controversy.**⁴²

This Court cannot sanction a curtailment of the exercise of RTC-Makati's judicial power to discover all the relevant and material facts

⁴⁰ G.R. No. 135874, January 25, 2000.

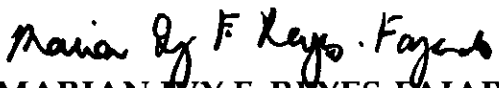
⁴¹ Boldfacing supplied.

⁴² *Eagleridge Development Corporation, Marcelo N. Naval and Crispin I. Oben, v. Cameron Granville 3 Asset Management, Inc.*, G.R. No. 204700, April 10, 2013. Boldfacing supplied.

in connection with the case and to determine the very issues petitioner itself submitted for determination of RTC-Makati. **Courts, as arbiters and guardians of truth and justice, must not countenance any technical ploy to the detriment of an expeditious settlement of the case or to a fair, full and complete determination on its merits.**⁴³ In fine, no grave abuse of discretion was committed by RTC-Makati in granting the Motion for Production or Inspection of Documents.

WHEREFORE, the Petition for Review dated December 22, 2020, filed by Smart Communications, Inc. is **DENIED**. The challenged Decision dated February 5, 2020, and Resolution dated November 9, 2020, both rendered by the Court in Division in CTA AC No. 228 are **AFFIRMED**.

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

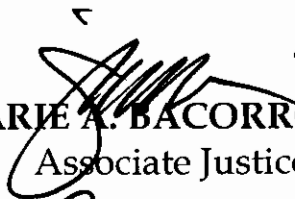
We Concur:

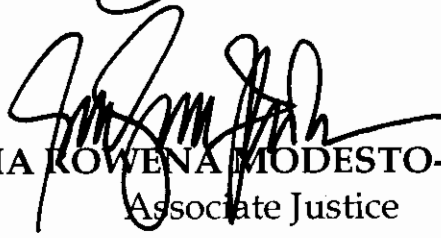

(With due respect, see my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

**SMART COMMUNICATIONS,
INC.,**

Petitioner,

**CTA EB NO. 2386
(CTA AC No. 228)**

Present:

-versus-

**HON. JUDGE AUGUSTO
JOSE Y. AREZA as Acting
Presiding Judge of the
Regional Trial Court, Branch
133, Makati City, HON.
JESUSA E. CUNETA in her
capacity as OIC City
Treasurer of Makati City and
CITY OF MAKATI,**

Respondents.

**DEL ROSARIO, PJ.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.**

PROMULGATED

AUG 15 2022

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I dissent on the denial of the present Petition for Review.

Records reveal that Civil Case No. R-MKT-18-02983-CV involves an appeal by way of a Petition for Review filed by Smart Communications, Inc. (Smart) pursuant to Section 195 of Republic Act (RA) No. 7190, otherwise known as the Local Government Code of 1991 (LGC), against the local franchise tax and fees assessed and imposed on Smart by Makati City for the taxable period beginning January 1, 2012 to December 31, 2015 in the aggregate amount of ₱3,246,647,104.20.

In their Answer, respondent Makati City alleges that: (i) Smart failed to provide the documents requested by the former pursuant to Letter of Authority (LOA) No. 2016-0006 dated September 1, 2016; (ii) Smart failed to submit a Summary or Breakdown of its Gross Receipts

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DISSENTING OPINION

CTA EB No. 2386 (CTA AC No. 228)

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per locality or proof of payment of local franchise tax in other localities; and, (iii) considering that Smart has its principal office in Makati City, and that Smart failed to provide the breakdown of the gross sales/receipts to show which portions thereof would pertain to its branches outside of Makati City, respondent Makati City was constrained to use as tax base the amount of gross receipts appearing on Smart's financial statements and issued a presumptive assessment, assessing Smart for deficiency local franchise taxes for the years 2012 to 2015.

In issuing the aforesaid presumptive assessment, respondent Makati City relied on the provisions of Sections 7A.07 and 7A.08 of the Revised Makati Revenue Code, which state:

SECTION 7A.07. Examination of Books of Accounts and Pertinent Records of Business Establishments by the City Treasurer. — Only the City Treasurer may, by himself/herself or through any of his/her deputies duly authorized in writing, examine the books of accounts, and other pertinent records of any person, partnership, corporation, or association subject to city taxes, fees and charges in order to ascertain, assess, and collect the correct amount of the taxes, fees and charges. Xxx xxx xxx.

The Business Establishment under examination shall furnish the following financial documents:

1. xxx;

xxx xxx xxx

4. In case there is a branch, sales office, factory, warehouse and/or project office located in another locality or outside Makati, **breakdown of "Gross Sales or Receipts", assessment and proof of payment or certified true copies of Official Receipts issued by the localities where the branch, sales office, factory, warehouse and/or project office is located covering the years of examination.**

xx xxx xxx. (*Boldfacing supplied*)

SECTION 7A.08. Presumptive Assessment. — In case the City Treasurer or his/her duly authorized representative is refused or denied entry to taxpayer's premises, or refused or denied access to taxpayer's books of accounts and other pertinent financial records, **or the taxpayer fails or refuses to submit his books of accounts and other pertinent financial records when so required, the taxpayer shall be presumed liable for taxes, fees and charges based on available records and documents, and presumptive assessment shall be prepared by the City Treasurer's Office accordingly.** (*Boldfacing supplied*)



DISSENTING OPINION

CTA EB No. 2386 (CTA AC No. 228)

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Subsequent to the filing of its Answer, respondent Makati City filed a Motion for Production or Inspection of Documents pursuant to Rule 27 of the Rules of Court. In its Motion, respondent Makati City alleges that Smart, in its Petition for Review, claims that it fully paid the local franchise taxes due to respondent Makati City on the basis of gross receipts earned within the territorial jurisdiction of Makati City and that respondent Makati City erred in assessing it for local franchise taxes based on Smart's total nationwide revenue. Respondent Makati City posits that the production of the documents enumerated in its Motion is necessary to resolve the factual issue of whether or not the presumptive local franchise tax deficiency assessment made by respondent Makati City based on Smart's total nationwide revenue is erroneous.

Notwithstanding Smart's vehement opposition, the RTC granted respondent Makati City's Motion for Production or Inspection of Documents in the Resolutions dated June 28, 2019 and August 7, 2019. The Court in Division affirmed the aforesaid RTC Resolutions in its Decision dated February 5, 2020 and Resolution dated November 9, 2020.

After an assiduous review of the records, I submit that the Resolutions dated June 28, 2019 and August 7, 2019 of the Regional Trial Court, Branch 133 of Makati City (RTC), in Civil Case No. R-MKT-18-02983-CV, granting Makati City's Motion for Production or Inspection of Documents were issued with grave abuse of discretion.

The Petition for Review was filed by Smart to assail the presumptive assessment issued by respondent Makati City. Thus, the matters to be established before the RTC should pertain only to the validity of the issuance of the presumptive assessment. Smart has the burden of proving that the requisites for the issuance of a presumptive assessment, as laid down in Sections 7A.07 and 7A.08 of the Revised Makati Revenue Code, were absent, thus, rendering the presumptive assessment void.

A perusal of the documents sought to be produced or inspected would not in any way prove that respondent Makati City was correct or justified in making the presumptive assessment. Instead, they sought to establish the amount of gross receipts upon which the assessment for deficiency local franchise tax should have been based, using extraneous documents or information which have nothing to do with the application of the principle on "presumptive assessment."



DISSENTING OPINION

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To reiterate, in the proceedings before the RTC, the only evidence that the parties are allowed to present are those which will establish the existence or non-existence of the requisites that justify the action of respondent Makati City in issuing a presumptive assessment.

All told, I VOTE to grant the Petition for Review filed by Smart Communications, Inc.; REVERSE and SET ASIDE the Decision dated February 5, 2020 and Resolution dated November 9, 2020 of the Court in Division in CTA AC No. 228; and, REVERSE and SET ASIDE the Resolutions dated June 28, 2019 and August 7, 2019 of the Regional Trial Court, Branch 133 of Makati City (RTC), in Civil Case No. R-MKT-18-02983-CV.


ROMAN G. DEL ROSARIO
Presiding Justice