REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CITY OF MAKATI, through its Mayor and the OFFICE OF THE CITY TREASURER OF MAKATI CITY, through the HON. NELIA A. BARLIS,
Petitioner,

-versus-

NIPPON EXPRESS PHILIPPINES CORPORATION,
Respondent.

CTA AC CASE NO. 76

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated: FEB 17 2012
3:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is an appeal by way of Petition for Review from the Decision and Order dated September 22, 2010 and March 23, 2011, respectively, rendered by the Regional Trial Court (RTC) Branch 62 of Makati City in Civil Case No. 03-123 entitled "Nippon Express Philippines Corporation vs. City of Makati, through its Mayor, the Hon. Jejomar Binay, the Office of the City Treasurer of Makati City, through the Hon. Luz R. Yamane".

THE PARTIES

Petitioner City of Makati is a public corporation duly organized and existing under the laws of the Republic of the Philippines, authorized by law to create its own sources of revenue and to levy taxes, fees and charges. The other petitioner, the Office of the City Treasurer of Makati, is an office in the City of Makati, authorized by law to collect all local taxes, fees and charges of petitioner Makati City.[1]

Respondent Nippon Express Philippines Corporation is a corporation organized and established under the law of the Republic of the Philippines authorized to engage in the business of freight forwarding, with principal office located at Unit 2701 Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, Makati City.[2]

THE FACTS

The facts of the case as narrated by the lower court and as culled from the records are as follows:

> "Petitioner[3], whose principal office address is located in Makati, is a corporation organized and authorized to engage in the business of freight forwarding and conducts its freight forwarding business through its three (3) branches, to wit: Petitioner's Air Cargo branch located at Parañaque City which handles the air transportation business for the Luzon Area; Ocean Cargo branch located at Salcedo Village, Makati City, which handles the sea and land transportation business for the Luzon Area; and Cebu branch (Cebu branch) located in Cebu, which handles the combined air, land and sea business

[1] The Parties, Petition for Review, docket, pp. 4-5.
[2] The Parties, Petition for Review, docket, p. 5.
[3] Herein respondent Nippon Express Philippines Corporation.

for the Visayas and Mindanao area. The Cebu branch started out its operations for the 1st to 3rd Quarters of 2000 in Cebu City and thereafter commenced its operations for the fourth quarter of 2000 in Lapu-Lapu City. These three branches function with specific areas of operations and whose sales and revenues per branch is separately invoiced by the petitioner and the corresponding local business taxes were paid to the city where such branch is located.

For taxable year 2000, petitioner paid business tax to the City of Makati the amount of P2,349,468.80 and for taxable year 2001, it paid the City of Makati the sum of P3,051,529.84.

However, pursuant to a Letter of Authority LA-2002 Nos. 0414, Makati City Revenue Examiner Felito A. Manrique conducted an examination of the books of accounts and other accounting records of the petitioner for the calendar years 1998, 1999 and 2000. Consequently, the Office of the City Treasurer (the 'City Treasurer') issued a Notice of Assessment dated 11 September 2002, assessing petitioner for deficiency in the local business tax, inclusive of surcharges and interest in the amounts of three million one hundred seventy thousand two hundred ninety six pesos & 7/100 (P3,170,296.07) and one million twenty thousand eight hundred fifty six pesos (P1,020,856.00) for years 2000 and 2001, respectively. Respondent City Treasurer [4] assessed the petitioner the deficiency in local business tax for the years 2000 to 2001 by taking into account the gross revenue of the petitioner for the years 1998 to 2000 as their tax base.

On November 8, 2002, petitioner seasonably filed a protest letter assailing the basis of the City Treasurer's assessment.

However, when the City failed to issue a resolution within the required sixty (60) day period from date of filing of the protest, such inaction prompted the petitioner to seasonably file the instant petition within the thirty day period prescribed under Section 195 of the Code to prevent the assessment from becoming conclusive and executory."[5] gc

[4] Petitioner herein.
[5] Annex "A", Petition for Review, docket, pp. 15-16.

Trial ensued, giving both parties the opportunity to present their respective testimonial and documentary evidence.

After filing of the parties' respective memorandum and submission of the case for the RTC of Makati's disposition, a Decision was promulgated on September 22, 2010, the dispositive portion of which reads:

> "**WHEREFORE**, judgment is hereby rendered **GIVING DUE COURSE** to this Appeal. Accordingly, the Notice of Assessment dated September 11, 2002 issued by the City Treasurer of Makati is hereby **CANCELLED or ANNULLED**."[6]

Aggrieved by said Decision, the City of Makati filed its Motion for Reconsideration[7] on January 25, 2011, which was later denied in an Order[8] promulgated by the RTC of Makati on March 23, 2011.

On April 20, 2011, the instant Petition for Review was filed by the City of Makati and the City Treasurer of Makati, now the petitioners in this case, and interposed one assignment of error, specifically, that the Court *a quo* erred in cancelling and annulling the Notice of Assessment dated September 11, 2002 issued by the City Treasurer of Makati.

On June 8, 2011, Nippon Express Philippines Corporation, now respondent, filed through registered mail its Comment/Opposition (to Petitioner's Petition for Review)[9], praying for the dismissal of the instant Petition for Review for lack of merit.

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[6] Annex "A", Petition for Review, docket, p. 23.
[7] Annex "B", Petition for Review, docket, pp. 24-27.
[8] Annex "C", Petition for Review, docket, p. 28.
[9] Docket, pp. 38-50.

Thereafter, this Court granted both parties thirty (30) days within which to file their simultaneous memoranda.[10]

On October 11, 2011, the instant case was submitted for decision after respondent's Memorandum[11] was filed on September 19, 2011 and the Memorandum (For the Petitioners)[12] was filed on September 29, 2011.

Petitioners' arguments

Petitioners averred that there was an admission made by respondent that it merely paid the corresponding tax for P1,200,000,000.00 instead of the actual gross revenues of the Air Cargo Branch of P1,404,060,448.50 in the year 1999. As such, the tax paid for the said year was based on gross revenues short of more than two hundred million pesos.

Since the said P200,000,000.00 gross revenues in 1999 was not taxed, the Office of the City Treasurer of Makati now has the right to impose and collect the corresponding deficiency tax because respondent maintains its Head Office within the said jurisdiction.

Petitioners likewise argued that respondent failed to remit the corresponding tax for the revenues amounting to P29,502,113.00, which similarly was included by Makati City as tax base.

Respondent supposedly wanted to exclude certain amounts from its tax base for the computation of taxes payable in Makati City. Thus, it is

[10] Resolution dated July 22, 2011, docket, p. 66.
[11] Docket, pp. 110-125.
[12] Docket, pp. 138-144.

petitioners' view that such situation would warrant a strict construction of the relevant statute. After all, the power of taxation is necessary to the existence of the government, and when the intent to tax is clear, such statute should be strictly construed in favor of the government and against the taxpayer.

Petitioners concluded that the sales not properly taxed in Parañaque City and Cebu City should be included in the computation of taxes payable in Makati City and that the assessment dated September 11, 2002 should be upheld to be correct and in accordance with law.

Respondent's Arguments

Respondent countered that the deficiency local business tax for the years 2000 and 2001 assessed against respondent by petitioners City of Makati and/or its Treasurer's Office has no factual and legal bases since the imputed gross revenue used by petitioner exceeded the actual gross revenue of respondent for its Ocean Cargo Branch located in Makati City.

According to respondent, herein petitioners have no right to assess respondent for any deficiency local business tax due to the territorial character of taxation. In this regard, it is further averred that there is no legal basis for the assessment of taxes corresponding to the alleged revenue in the amount of P29,502,113.00, considering that such amount was just extrapolated from the difference between the aggregate gross revenues of respondent and the gross revenues from the Cebu Branch.

Respondent explained that the examiner wrongfully added P76,530,916.16 to the revenues of the Makati City Office of respondent, which actually referred to the revenues earned by respondent through its Cebu Branch in Cebu City, before it transferred to Lapu-Lapu City. Furthermore, as stated in the RTC's Decision, petitioners have already admitted that respondent has faithfully reported its sales in Lapu-Lapu and Cebu Cities. Thus, it is not proper for petitioners to raise belatedly an issue on this point.

Respondent emphasized that the power of taxation, no matter how all-encompassing it may be, must not be exercised to the detriment of the people.

Lastly, respondent asserted that it had sufficiently shown a clear and unmistakable right to protest the assessment issued by petitioners and that it has proven payment of the proper local business tax, not just in Makati City but also in the other cities where it has branches; thus, the examiner's findings and the assessment should be disregarded.

THE ISSUE

Petitioners interposed only one assignment of error[13] in their Petition for Review, which reads:

> "WHETHER OR NOT THE HONORABLE TRIAL COURT *A QUO* GRAVELY ERRED IN RENDERING THE DECISION DATED 22 SEPTEMBER 2010 CANCELLING AND ANNULLING THE NOTICE OF ASSESSMENT DATED SEPTEMBER 11, 2002 ISSUED BY PETITIONER CITY TREASURER OF MAKATI"

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[13] Docket, p. 8.

THE COURT'S RULING

In the instant Petition for Review, it was asserted that the amount of more than P200,000,000.00 which formed part of the actual gross revenues of the Air Cargo Branch located in Parañaque City was not taxed. It is petitioners' position that the corresponding deficiency tax must be imposed and collected on the subject amount since respondent maintains its Head Office within the jurisdiction of the City of Makati.

Petitioner also mentioned that there is neither a law nor an ordinance allowing the purported agreement entered into by the Parañaque government and the respondent to justify the condonation of the said P200,000,000.00 revenues, nor any proof presented to show such agreement. Further, the assailed Decision allegedly did not touch on the matter of whether the discounts claimed by respondent were permissible under the law. Furthermore, there was no evidence presented by respondent to prove such averment.

It is undisputed that the Local Government Code of 1991 vests the local government units, such as the petitioner in this case, with the authority to create their own sources of revenue, to wit:

> "SECTION 129. *Power to Create Sources of Revenue*. - Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units."

Petitioner City of Makati, as a city, is also allowed to levy taxes, fees, and charges which a province or municipality may impose. The pertinent provision of the Local Government Code is hereunder quoted:

> "ARTICLE III
> CITIES
>
> SECTION 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."

Considering that a city is also allowed to levy taxes, fees, and charges which the province or municipality may impose, tax on business or local business tax, which is a kind of tax allowed to be imposed by a municipality, may also be imposed by petitioners in this case. Section 143 of the Local Government Code of 1991 provides:

> "SECTION 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:" *[initials]*

Accordingly, as a contractor[14] operating as a freight forwarding establishment, respondent paid local business tax for the year 2000 and 2001 in the amount of P2,349,468.80 and P3,051,529.84. However, as found by petitioner in its assessment, respondent still has a deficiency local business tax in the total amount of P4,191,152.07 mainly because petitioner allegedly has the authority to assess business taxes on revenues not properly taxed in Parañaque City and Cebu City.

In other words, the issue mainly delves on whether or not the sales not properly taxed in Parañaque City and Cebu City should be included in the computation of taxes payable in Makati City.

Significantly, the Court *a quo* found instructive the provision under the Makati Revenue Code which provides as follows:

> "SECTION 3A.06. *Situs of Tax*. -
>
> xxx xxx xxx
>
> (b) *Sales allocation*. – (1) **All sales made by a branch or sales office or warehouse located in the municipality shall be taxable herein.**
>
> (2) In case the principal office and the factory are located in this municipality, all sales recorded in the principal office and those in other localities where there is no branch or sales office or warehouse shall be recorded in the principal office and taxable by the municipality." *(Emphasis supplied)* gc

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[14] The term "contractor" is defined under Section 131(h) of Republic Act No. 7160 as follows:
"SECTION 131. *Definition of Terms*. - When used in this Title, the term:
(h) **'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.**
As used in this Section, the term **'contractor'** shall include xxx **forwarding establishments**; xxx" *(Emphasis supplied)*

The said provision of the Makati Revenue Code is also in consonance with Section 150(a) of the Local Government Code of 1991, which provides for the situs of taxes imposed under Section 143 of the same Code, to wit:

> "SECTION 150. *Situs of the Tax.* - (a) **For purposes of collection of taxes under Section 143 of this Code**, manufacturers, assemblers, repackers, brewers, distillers, rectifiers, and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, **contractors**, banks and other financial institutions, **and other businesses maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located**. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality." *(Emphasis supplied)*

Moreover, Article 243(b)(1) of the Implementing Rules and Regulations of the Local Government Code of 1991 states:

> "(b) *Sales Allocation.* —
>
> (1) All sales made in a locality where there is a branch or sales office or warehouse shall be recorded in said branch or sales office or warehouse and the tax shall be payable to the city or municipality where the same is located."

In this regard, the Court is mindful of the doctrine in statutory construction stating that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation.[15] Here, all of the afore-quoted provisions are clear in stating that establishments maintaining or operating branch or sales outlet elsewhere

[15] *Commissioner of Internal Revenue vs. Julieta Ariete,* G.R. No. 164152, January 21, 2010.

shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon, in this case the business tax under Section 143 of the Local Government Code of 1991, shall accrue and shall be paid to the municipality where such branch or sales outlet is located.[16]

In the assailed Decision, it was established that respondent has branches with specified area of operation, that sales invoicing for each branch is done separately, and that the sales of each branch are recorded separately. Consequently, the local business tax on sales of each branch - the Air Cargo Branch in Parañaque City, the Ocean Cargo Branch in Makati City, and the Cebu Branch in Cebu City - shall be payable to the place where the said branches are located.

This Court thus finds that petitioners' contention that the amount of more than P200,000,000.00, which was admitted by both parties to be part of the gross revenues earned by the Air Cargo Branch in Parañaque City, should be lumped and considered as taxable earnings accruing in favor of the City of Makati must necessarily fail, considering that it is apparent from the foregoing discussion that the revenues earned by respondent's branch in Parañaque City should only be taxable therein. Accordingly, regardless of whether or not respondent was able to prove that such failure by the local government of Parañaque City to tax the said amount was due to respondent's arrangement with the City of Parañaque regarding advanced payments, the said amount

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[16] See Aquilino Q. Pimentel, Jr., The Local Government Code Revisited, 2007 Edition, p. 369; Joseph Emmanuel L. Angeles, Restatement of the Law on Local Governments, 2005 Edition, p. 232; Abelardo T. Domondon, Bar Reviewer in Taxation, 2004 Edition, p. 572.

should not be part of the tax base for the determination of the local business tax to be paid in the City of Makati.

Similarly, the Court *a quo* aptly observed that even assuming that there was under-declaration or mis-declaration of the total taxable earnings of respondent in its Paranaque City branch thereby depriving the government of its lawful dues, the City Treasurer of Makati, through the revenue examiner, attempted to collect what under the Revenue Code and the Local Government Code properly belongs to the City of Paranaque. The action of the City Treasurer of Makati is impermissible, because to do so would be sanctioning or encroaching upon the prerogatives of another co-equal and autonomous local government.[17]

The same holds true as to the amount of P29,502,113.00, which according to petitioners should also be included in its imputed tax base since respondent failed to remit to the local government of Cebu City the tax corresponding to the said amount of revenue. Besides, petitioner's contention that respondent failed to pay to the local government of Cebu City the local tax corresponding to the said amount is also contrary to its admission that respondent has correctly reported its sales in Lapu-Lapu and Cebu Cities.[18] *Ergo*, petitioners' inclusion of the said amount in its assessment of deficiency business tax against the Ocean Cargo Branch in Makati City was without factual and legal bases.

[17] RTC Decision, p. 9.
[18] RTC Records, p. 265.

It is settled that tax assessments by tax examiners are presumed correct and made in good faith. However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious.[19]

In this case, a plain application of the relevant legal provisions shows that the assessment lacks factual and legal bases.

In recapitulation, the Court *a quo* committed no reversible error in canceling or annulling the Notice of Assessment dated September 11, 2002 issued by the City Treasurer of Makati.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

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

[19] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.,* G.R. No. 136975, March 31, 2005.

ATTESTATION

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

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

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.

ERNESTO D. ACOSTA
Presiding Justice