Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

THE CITY OF MAKATI, Petitioner,	**CTA EB CASE NO. 1179** (CTA AC No. 100)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS RINGPIS-LIBAN, JJ.
THE MUNICIPALITY OF BAKUN AND LUZON HYDRO CORPORATION, Respondents.	Promulgated: JAN 14 2016 11:09 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(2), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2]

[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) xxxxx.
(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

dated November 8, 2013, rendered by the Special First Division of this Court in CTA AC No. 100, and its Resolution[3] dated April 30, 2014.

The City of Makati assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated November 8, 2013:

*"**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."

Resolution dated April 30, 2014:

*"**WHEREFORE,** the "Motion for Reconsideration" dated December 23, 2013 filed by respondent City of Makati, and the Motion for Partial Reconsideration dated January 15, 2014 filed by petitioner Municipality of Bakun, are both **DENIED,** for lack of merit.*

SO ORDERED."

The pertinent facts as narrated by this Court's Division in its Decision are as follows:

"xxx 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.

[2] En banc Docket, pp. 64-80.
[3] En banc Docket, pp. 96-101.

xxx Municipality of Bakun is a local government unit with principal office at Ampusungan, Bakun, Benguet Province. xxx City of Makati is also a local government unit with principal office at J.P. Rizal, Makati City. xxx, Luzon Hydro Corporation (LHC) is a duly organized domestic corporation with principal address at Alilem, Ilocos Sur.

LHC operates a 70MW hydroelectric power plant facility that harnesses the Bakun River spanning the Provinces of Ilocos Sur and Benguet. It maintains factories, project offices, plants, and/or plantations in the pursuit of its business. Since it was registered with 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. Thus, it was only in 2004 that it commenced paying local business tax to xxx Bakun, xxx 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 unit (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")*

xxx xxx xxx.

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.

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 the LHC for the payment of local business tax for lack of legal basis. It opined that there was nothing in the LGC of 1991 and its IRR authorizing the same. The LHC's office in Makati City is an administrative office, and as such, is not among the sites enumerated in Section 150 of the LGC and its IRR 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.*
>
> *On September 18, 2006, Bakun adopted the BLGF opinion via Resolution No. 134-2006, 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 2004-2006.*
>
> *On January 15, 2007, Alilem issued Resolution No. 07-02 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 docketed as Civil Case No. 07-049 on January 17, 2007 with the RTC of Makati, Branch 134. LH[C] 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. xxx.*
>
> *xxx xxx xxx.*
>
> *After trial on the merits, the RTC rendered the assailed Decision dated April 20, 2012 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%. xxx.*
>
> *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. xxx.*
>
> *The Motion for Reconsideration filed by Bakun was denied by the RTC in the Order dated September 12, 2012, thus, the instant Petition for Review filed on November 14, 2012.*

On November 8, 2013, this Court's Division partially granted the petition of the Municipality of Bakun and set aside the Decision dated April 20, 2012 and the Order dated September 12, 2012 of the RTC Branch 134 of Makati City in Civil Case No. 07-049.

The Motion for Reconsideration[4] filed by the City of Makati was denied by the Court's Division in a Resolution Dated April 30, 2014. Hence, the present petition.

Petitioner City of Makati raised the following issues:

I. WHETHER OR NOT THE SPECIAL FIRST DIVISION OF THE COURT OF TAX APPEALS GRAVELY ERRED IN IGNORING THE FINDINGS OF FACTS OF THE TRIAL COURT, RTC-MAKATI CITY, BRANCH 134, WHICH CONDUCTED THE HEARINGS AND TRIALS OF THE PRESENT CASE, WHEREIN IT WAS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE IN THE HONORABLE REGIONAL TRIAL COURT THAT LUZON HYDRO CORPORATION'S ("LHC") OFFICE IN MAKATI CITY IS A PRODUCER/POWER GENERATION OFFICE OR "PROJECT OFFICE", NOT A MERE ADMINISTRATIVE OFFICE.

II. WHETHER OR NOT THE SPECIAL FIRST DIVISION OF THE COURT OF TAX APPEALS GRAVELY ERRED IN APPLYING LOCAL FINANCE CIRCULAR NO. 03-95 ENTITLED "PRESCRIBING GUIDELINES GOVERNING THE POWER OF CITIES AND MUNUCIPALITIES TO IMPOSE BUSINESS TAX ON CONSTRUCTION CONTRACTORS PURSUANT TO SECTION 143(e), REPUBLIC ACT NO. 7160, xxx" dated MAY 22, 1995 TO SUPPORT ITS RULING THAT THE OFFICE IN MAKATI IS NOT A PROJECT OFFICE.

III. WHETHER OR NOT THE BLGF OPINION DATED 08 FEBRUARY 2006 HAS NO BINDING AND MANDATORY EFFECT.

IV. WHETHER OR NOT THE SPECIAL FIRST DIVISION OF THE COURT OF TAX APPEALS GRAVELY ERRED IN RULING IN FAVOR OF A PARTY, MUNICIPALITY OF ALILEM, WHICH

[4] En banc Docket, pp. 81-94.

DID NOT EVEN FILE AN APPEAL BEFORE THE COURT OF TAX APPEALS, AND THEREFORE AS FAR AS THE MUNICIPALITY OF ALILEM IS CONCERNED, THE DECISION DATED 20 APRIL 2012 RENDERED BY THE HONORABLE RTC-MAKATI CITY SHOULD HAVE BECOME FINAL AND EXECUTORY.

V. WHETHER OR NOT THE SPECIAL FIRST DIVISION OF THE COURT OF TAX APPEALS GRAVELY ERRED IN TAKING COGNIZANCE OF THE PRESENT APPEAL FROM A "SPECIAL CIVIL ACTION FOR INTERPLEADER", WHICH IS NOT WITHIN THE APPELATE JURISDICTION OF THE COURT OF TAX APPEALS.

The City of Makati argued as follows:

1. It was established by clear and convincing evidence in the Regional Trial Court that LHC's office in Makati City is a producer/power generation office or "Project Office", not a mere administrative office.

2. Local Finance Circular No. 03-95 is not applicable in the case at bar.

3. The opinion rendered by the BLGF has no binding and mandatory effect.

4. The Municipality of Alilem is deemed to have waived its right to appeal the subject Decision of the Honorable RTC-Makati City, and as a consequence therefore, the portion which should have gone to Alilem should go to Makati City, it being final and executory as to that portion.

5. The appeal from a special Civil Action for Interpleader under Rule 62 may not be within the original jurisdiction of the Court of Tax Appeals.

In Respondent Municipality of Bakun's "Comment and Opposition to the Petition for Review"[5], it was reiterated that the Office of LHC in Makati City is a mere administrative office and not a "Project Office". Respondent Municipality of Bakun claims that the City of Makati never disputed the allegation of LHC 's complaint for interpleader and testified to by the LHC's Finance and Accounting manager that "the invoices or records of all sales to NPC are not handled by Plaintiff's Makati City office nor does it operate any aspect of the business or primary purpose of the Company as provided in Plaintiff's Article of Incorporation."

On the otherhand, LHC's "Comment" averred that as of March 31, 2013 LHC closed its administrative office and retired its business in Makati City.

The main issue in the petition is whether the Special First Division erred in declaring that the office of Luzon Hydro Corporation (LHC) in Makati City is an administrative office and not a "Project Office".

We resolve.

The Court in Division did not err in its finding that the office of LHC in Makati City is not a "Project Office" but an administrative office.

Central to the controversy at hand is the application of Section 150 of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" and Article 243 of Administrative Order No. 270- Prescribing the Implementing Rules and Regulations of the Local Government Code of 1991, to wit:

Local Government Code of 1991
Section 150. Situs of the Tax. -

> *(a)* ***For purposes of collection of the taxes*** *under Section 143 of this Code, manufacturers, assemblers,*

[5] En banc Docket, pp. 105-114.

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.*

(b) The following sales allocation shall apply to manufacturers, assemblers, contractors, producers, and exporters with factories, project offices, 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 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.***

(c) In case of a plantation located at a place other than the place where the factory is located, said seventy percent (70%) mentioned in subparagraph (b) of subsection (2) above shall be divided as follows:

> *(1) Sixty percent (60%) to the city or municipality where the factory is located; and*
>
> *(2) Forty percent (40%) to the city or municipality where the plantation is located.*

(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 plantation is located. (Emphasis Supplied)

Administrative Order No. 270
Article 243. Situs of the Tax. –

(a) Definition of Terms –

(1) Principal Office- the head or main office of the business appearing in the pertinent documents submitted to the Securities and Exchange Commission, or the Department of Trade and Industry, or other appropriate agencies, as the case may be.

The city or municipality specifically mentioned in the articles of incorporation of official registration papers as being the official address of said principal office shall be considered as the situs thereof.

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.

xxx xxx xxx.

(a) 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 where the same is located

(2)In cases where there is no such branch, sales office, or warehouse in the locality where the sale is made, the sale shall be recorded in the principal office along with the sales made by said principal office and the tax shall accrue to the city or municipality where said principal office is located

(3) In cases where there is a factory, project office, plant or plantation in pursuit of business, thirty percent (30) of

all sale recorded in the principal office shall be taxable by the city or municipality where the principal office is located and 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. LGUs where only experimental farms are located shall not be entitled to the sales allocation in this subparagraph

xxx

(5) In cases where there are two (2) or more factories, project offices, plants or plantations located in different localities, the seventy percent (70%) sales allocation shall be prorated among the localities where such 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. In the case of project offices of service and other independent contractors, the term production shall refer to the cost of projects actually undertaken during the tax period.

(6) The sales allocation in paragraph (b) hereof shall be applied irrespective of whether or not sales are made in the locality where the factory, project office, plant or plantation is located. In case of sale made by the factory, project office, plant or plantation, the sale shall be covered by subparagraphs (1) or (2) above.

(7) In case of manufacturer or producers which engage the services of an independent contractor to produce or manufacture some of their products, these rules on situs of taxation shall apply except that the factory or plant and warehouse of the contractor utilized for the production and storage of the manufacturer' products shall be considered as the factory or plant and warehouse of the manufacturer.

From the foregoing, the city or municipality specifically mentioned in the articles of incorporation as the official address of said principal office shall be considered as the situs of tax in the absence of branch or sales office. Otherwise, the branch or sales outlet 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 a factory, project office, plant or plantation in pursuit of business, thirty percent (30%) of all sales recorded in the principal office shall be taxable by the city or municipality where the principal office is located and 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.

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 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.

In the case at bar, it is undisputed that thirty percent (30%) of the local business tax was paid to Alilem as the principal office mentioned in the Articles of Incorporation and the remaining 70% is being contested by the Municipality of Bakun, Municipality of Alilem and Makati City. Furthermore, it is undisputed that the Luzon Hydro Corporation's electric power plant facility spans across the provinces of Benguet and Ilocus Sur. The power station and switch chart are located in Alilem Ilocos Sur while the conveyance panel and water intake are located in Bakun, Benguet. LHC has an office in Makati City. Thus, the question is raised as to whether Makati City should share in the local business tax.

The Regional Trial Court of Makati City Branch 134, considered the office in Makati City as a branch which conducts operation of the business as an extension of its principal office because it is where the plaintiff consummates its business transactions by its admission that it is where executive and general administrative functions are done.[6]

However, to be considered as a branch or sales office for purposes of collection of the taxes, it is not enough that

[6] En banc Docket, p. 49.

the branch or sales office conducts operations of the business as an extension of the principal office, the branch or sales office shall likewise record 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 pursuant to Article 243 (b) of Administrative Order No. 270 in relation to Section 150 (a) (b)(d) of the LGC. In this case, Makati City failed to present any evidence which will show sales made in Makati City. Likewise, Makati City failed to controvert that invoices or records of all sales to NPC are not handled by the 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. Thus, we find that the Special First Division of this Court was correct when it ruled as follows:

> *"xxx, [T]o 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.*
>
> *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 '<u>[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.</u>'*
>
> *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. <u>This administrative office does not handle any sales invoices or records of the company</u>."*
>
> *All these were reiterated in LHC's Memorandum dated June 24, 2011, where it unequivocally declared anew that <u>"[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."</u>*

Concomitantly, considering that the Makati City office is not a branch or sales office, it is not entitled to share in the 70% sales allocation.

As to the other issues and arguments raised by petitioner, it deserves scant consideration. We find no merit and the disquisition by the Special First Division of this Court thereon was sufficient. This Court's Division aptly ruled as follows:

> *"xxx, [T]he 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;* c

> *'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.*

xxx xxx xxx

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.

xxx xxx xxx.

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,xxx:

xxx xxx xxx."

In sum the petition is unmeritorious. Accordingly, finding no reversible error, the Court En Banc finds no cogent reason or justification to disturb the conclusions reached by the CTA Special First Division:

WHEREFORE premises considered, the petition is **DENIED** for lack of merit. The Decision of the Special First Division of this Court in CTA AC No. 100, promulgated on November 8, 2013 and its Resolution, promulgated on April 30, 2014, are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice