REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LAZADA E-SERVICES PHILIPPINES, INC.,
Petitioner,

-versus-

CITY OF MAKATI, CITY TREASURER OF MAKATI,
Respondents.

CTA EB NO. 2766
(CTA AC No. 261)

x - x

CITY OF MAKATI, CITY TREASURER OF MAKATI,
Petitioners,

-versus-

LAZADA E-SERVICES PHILIPPINES, INC.,
Respondent.

CTA EB NO. 2767
(CTA AC No. 261)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
OCT 28 2024 4:22 pm

x- x

DECISION

ANGELES, J.:

Before the Court *En Banc* are the (1) *Petition for Review* filed on June 30, 2023 by Lazada E-Services Philippines, Inc. (**LAZADA**), docketed as CTA EB No. 2766[1]; and (2) *Petition for Review* filed on June 16, 2023 by City of Makati and City Treasurer of Makati, (collectively referred hereto as **MAKATI**), docketed as CTA EB No. 2767[2], both seeking the reconsideration of the *Decision*[3] dated November 23, 2022 (**Assailed Decision**) and *Resolution*[4] dated May 19, 2023 (**Assailed Resolution**) promulgated by the Court of Tax Appeals (CTA) - Special Third Division (the **Court in Division**) in CTA AC No. 261, entitled, *LAZADA E-Services Philippines, Inc. vs. City of Makati, City Treasurer of Makati.*

The Parties

LAZADA is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at 23rd Floor, Seven/Neo Building (formerly, Net Park Building), 5th Avenue, Bonifacio Global City, Taguig City. It is primarily engaged in the development, marketing and provision of internet goods and services through telecommunications facilities[5].

Makati City is a chartered city with address at the City Government of Makati, J.P. Rizal St., Brgy. Poblacion, Makati City 1200, Philippines, while the City Treasurer of Makati is impleaded in her official capacity as the local government official that exercises the power of taxation of Makati City[6].

The Facts of the Case

The following facts as stated in the *Assailed Decision* are hereunder quoted[7]:

> On February 16, 2012, petitioner [LAZADA], then known as Furniture E-Services Philippines, Inc., was incorporated under the laws of the Philippines with principal office address at the 3rd Floor, Salustiana D. Ty Tower, 104 Paseo de Roxas, Makati City, Philippines.
>
> On September 28, 2012, the Securities and Exchange Commission (SEC) issued a *Certificate of Filing of Amended Articles of Incorporation* recognizing the change of corporate name from Furniture E-Services Philippines, Inc. to Lazada E-Services Philippines, Inc.

[1] Entitled, Lazada E-Services Philippines, Inc. V. City of Makati, City Treasurer of Makati.
[2] Entitled, City of Makati, City Treasurer of Makati V. Lazada E-Services Phils. Inc.
[3] EB Docket No. 2766, *Decision* dated November 23, 2022, pp. 37-58.
[4] *Id., Resolution* dated May 19, 2023, pp 60-69.
[5] EB Docket No. 2766, *Decision* dated November 23, 2022, p.38.
[6] *Id.*
[7] EB Docket No. 2766, pp. 39-42.

As it operates its business through its principal office in Makati City, [LAZADA] registered with the local government of Makati City and accordingly paid local business tax (LBT) thereto.

Sometime on the third quarter of 2015, [LAZADA] decided to transfer its principal office and operate its business in Taguig City.

On August 10, 2015, [LAZADA] entered into a Contract of Lease with Net Group Estate Management Corp. for [LAZADA's] new principal office in Taguig City. The said *Contract of Lease* commenced on October 15, 2015 and remained valid and binding until October 14, 2018.

[LAZADA] likewise filed an *Amended Articles of Incorporation* to change its principal address to "23rd Floor Net Park, 5th Avenue, E-Square, Crescent Park West, Bonifacio Global City, Taguig, Metro Manila, Philippines." The said amendment was approved in the Joint Meeting of the Shareholders and Board of Directors held on January 04, 2016, where at least two-thirds (2/3) of all the outstanding capital stock of [LAZADA] and majority of its directors were present and unanimously approved the said amendment.

On March 14, 2016, the SEC issued a *Certificate of Filing Amended Articles of Incorporation* recognizing the change of [LAZADA's] principal office address.

In TY 2016 and 2017, despite the transfer of its principal office to Taguig City, [LAZADA] paid LBT to Makati City amounting to P9,723,605.48 and P8,259,390.56, respectively.

xxx

On August 31, 2017, the *Contract of Lease* over the Makati office was terminated. Consequently, [LAZADA] filed an *Application for the Retirement* of its Makati office before the Business Tax Division of Makati City, effective September 30, 2017.

On March 2, 2018, the Business Tax Division of Makati City issued an *Order of Payment* assessing [LAZADA] for deficiency LBT for taxable year (TY) 2015 to 2017 amounting to ₱12,573,615.96 and penalties and interest amounting to ₱8,614,998.04.

xxx

Meanwhile, on April 24, 2018, [LAZADA] filed a *Letter Protest* dated April 23, 2018, contesting the LBT assessment for TY 2016 to 2017.

On May 3, 2018, [LAZADA] received a *Letter* dated May 2, 2018 issued by Jesusa E. Cuneta, Acting City Treasurer of Makati City denying [LAZADA's] *Letter Protest*.

On May 17, 2018, [LAZADA] filed a *Letter* to [City Treasurer of Makati], stating that it does not dispute the LBT assessment for TY 2015. However, as regards, the LBT assessments for TY 2016 and 2017, [LAZADA] alleged that it is still studying the options for its resolution; requested that respondent issue a separate Order of

> Payment for the LBT for TY 2015. In the same letter, [LAZADA] submitted the Official Receipts showing the LBT payments of petitioner to Taguig City for TY 2016 to 2017.
>
> On May 24, 2018, [LAZADA] received a *Letter* dated May 21, 2018, issued by [City Treasurer of Makati], reiterating the denial of its *Letter Protest* and demanding the payment of the assessed LBT for TY 2015 to 2017.
>
> Meanwhile, a revised *Order of Payment* dated May 22, 2018, was issued by [City Treasurer of Makati City] against [LAZADA] for LBT covering TY 2015 to 2017, adjusting the computation of the surcharges. xxx
>
> On January 24, 2019, [LAZADA] filed a *Refund of Erroneously Collected 2017 Local Business Tax* with [City Treasurer of Makati] for the recovery of LBT Payments for CY 2017.
>
> On January 28, 2019, [City Treasurer of Makati] issued a *Letter* denying [LAZADA's] refund claim.

Proceedings Before the Regional Trial Court

On June 04, 2018, LAZADA filed a *Petition (for Cancellation for Tax Assessment)* before the Regional Trial Court (RTC)–Branch 132, Makati City docketed as Civil Case No. R-MKT-18-02102-CV, seeking the cancellation of the Order of Payment issued by the Business Tax Division of Makati City dated March 02, 2018.[8]

While the *Petition for Cancellation for Tax Assessment* is pending, LAZADA also filed a *Complaint (for Recovery of Tax Erroneously Collected)* on January 28, 2019 before the RTC–Branch 135, Makati City docketed as Civil Case No. R-MKT-19-00586, praying for the refund of the alleged erroneously collected Local Business Tax (LBT) payments for calendar year (CY) 2017.[9]

On May 06, 2019, Civil Case Nos. R-MKT-18-02102-CV and R-MKT-19-00586 were consolidated through an *Order* issued by RTC-Branch 132, Makati City.[10]

On November 16, 2021, RTC-Branch 132, Makati City promulgated its *Decision* dismissing both *Complaints for Cancellation for Tax Assessment* and *Tax Refund*[11]. Aggrieved, LAZADA filed a

[8] EB Docket No. 2766, p.42.
[9] EB Docket No. 2766, p.43.
[10] *Id.*
[11] Division Docket, pp. 45-57.

Motion for Reconsideration but the same was denied by RTC-Branch 132, Makati City through an *Order* dated December 28, 2021.[12]

Proceedings Before the Court in Division

On February 09, 2022, LAZADA filed a *Petition for Review* with the Court in Division against MAKATI[13], seeking that the *Decision* dated November 15, 2021 and *Order* dated December 28, 2021, both rendered by the RTC–Branch 132, Makati City, be reversed and set aside.

After trial on the merits, the Court in Division promulgated the *Assailed Decision* on November 23, 2022, partially granting LAZADA's *Petition* and affirming with modification the RTC's *Decision* and *Order*. The dispositive portion of the *Assailed Decision* states as follows:

> WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. The Decision dated November 15, 2021 and Order dated December 28, 2021 rendered by the RTC – Branch 132, Makati City, in the consolidated cases docketed as Civil Case Nos. R-MKT-18-02102-CV & R-MKT-19-00586-CV, are hereby **AFFIRMED WITH MODIFICATION**.
>
> Accordingly, [LAZADA] is **ORDERED TO PAY** [MAKATI] the reduced amount of ₱8,167,694.76, representing the assessed LBT for taxable years 2015 and 2017, inclusive of interests and surcharges.
>
> **SO ORDERED.**

LAZADA filed a *Motion for Partial Reconsideration (of Decision promulgated on November 23, 2022)*[14] on December 16, 2022. Likewise, on January 31, 2023, MAKATI filed a *Motion for Partial Reconsideration*[15]. On May 19, 2023, the Court in Division issued the *Assailed Resolution* denying the respective *Motions* filed by the parties, the dispositive portion of which is quoted below:

> WHEREFORE, in view of the foregoing considerations, [LAZADA's] ***Motion for Partial Reconsideration (of Decision promulgated on 23 November 2022)*** and [MAKATI's] ***Motion for Partial Reconsideration*** are **DENIED** for lack of merit.

[12] Division Docket, pp. 58-61.
[13] Division Docket, pp. 8-39.
[14] Division Docket, pp. 250-259.
[15] Division Docket, pp. 265-269.

Proceedings Before the Court *En Banc*

To seek the reversal of the *Assailed Decision* and *Resolution* promulgated by the Court in Division, MAKATI filed on June 16, 2023, a *Petition for Review* docketed as CTA EB No. 2767, while LAZADA filed a *Petition for Review* docketed as CTA EB No. 2766 on June 30, 2023.

On July 04, 2023, the Court *En Banc* issued a *Resolution*[16] consolidating CTA EB Nos. 2766 and 2767, pursuant to Section 1, Rule 31 of the Rules of Court, as amended.

Thereafter, the Court *En Banc* issued a *Resolution*[17] on July 20, 2023, directing MAKATI to file a comment on LAZADA's *Petition for Review*. Subsequently, on August 11, 2023, MAKATI, filed its *Comment to the Petition for Review*[18].

On September 19, 2023, the Court *En Banc* issued another *Resolution*[19] directing LAZADA to file its comment on MAKATI's *Petition for Review*. In compliance thereto, on October 05, 2023, LAZADA filed a *Comment (on the Petition for Review of the City of Makati and City Treasurer of Makati)*.[20]

On October 24, 2023, the instant cases were submitted for decision.[21]

Issues

Petitioner LAZADA raises the following assignment of errors in its *Petition for Review*:

1. The Court in Division erred in holding that LAZADA is liable to pay deficiency LBT for CY 2015 amounting to Php3,420,782.61 because it failed to consider that LAZADA had already overpaid LBT for CY 2016 to 2017 in the total amount of Php15,552,094.67; and

2. The Court in Division erred in holding that LAZADA is liable to pay deficiency LBT for CY 2017 based on the

[16] EB Docket No. 2766, p. 73.
[17] EB Docket No. 2766, p. 74.
[18] EB Docket No. 2766, pp.83-91.
[19] EB Docket No. 2766, p.93.
[20] EB Docket No. 2766, pp. 94-103.
[21] EB Docket No. 2766, p. 107.

schedule of gross sales/receipts for 2017 and sworn statement of gross sales/receipts.

On the other hand, MAKATI raises the following assignment of errors in its *Petition for Review*:

1. The Court in Division committed error in partially granting the *Petition for Review* filed by LAZADA and affirming with modification the Decision dated November 15, 2021 and Order dated December 28, 2021 rendered by RTC-Branch 132, Makati City, in the consolidated cases docketed as Civil Case Nos. R-MKT-18-02102-CV & R-MKT-19-00586-CV; and

2. The Court in Division committed error in ordering LAZADA to pay MAKATI the reduced amount of Php8,167,694.76, representing the assessed LBT for taxable years 2015 and 2017, inclusive of interests and surcharges.

Arguments of the Parties

CTA EB No. 2766

In LAZADA's *Petition for Review*, it contends that after the transfer of its principal office in 2016 to the Taguig City, LAZADA had no branch or sales office within the jurisdiction of MAKATI. According to LAZADA, since it had no branch or sales office in Makati City from the transfer of its principal office in 2016, LAZADA declared 100% of its gross sales in 2016 and 2017 to Taguig City. Thus, no LBT should be payable to Makati City for the said period.

LAZADA also maintains that the LBT in the amount of Php15,552,094.67 paid to MAKATI for CY 2016 and 2017 after it has transferred its principal office to Taguig City, is an erroneous overpayment and which must be credited to LAZADA and applied against the assessment for deficiency LBT for CY 2015 amounting to Php3,420,782.61 only.

Moreover, LAZADA argues that based on several opinions of the Bureau of Local Government Finance (BLGF), it was held that a person or entity may continue to perform activities within [a city] without having to pay LBT if no taxable activities (i.e. sales transactions) are performed therein; and that even if there are sales or transactions made in [a city] but as long as there are no branch or sales office and the sales or transactions made thereat are recorded in the principal or head office, the tax shall accrue to the locality where the principal or head office is located.

LAZADA argues that the *Schedule of Gross Sales/Receipts for 2017* and *Sworn Statement of Gross Sales/Receipts* may imply that there were sales made in Makati City in 2017 but they do not suffice as proof that LAZADA actually had a branch or sales office therein which would vest MAKATI the power to tax such sales. It reiterates that based on the testimony of its Accounting Manager, after the transfer of its principal office to Taguig City, no sales were generated, invoiced, and recorded within Makati City. LAZADA concludes that since LAZADA had erroneously paid LBT to MAKATI in the amount of Php15,552,094.67, such erroneously paid LBT preclude MAKATI from assessing and collecting the alleged LBT for CY 2015 and 2017.

On the other hand, MAKATI reiterates the legal findings in the Assailed *Decision* of the Court in Division for each argument raised by LAZADA. MAKATI contends that LAZADA is liable to pay LBT for CY 2017. According to MAKATI, there are documents required before the Office of the City Treasurer approves an application for retirement of business. The purpose of such requirements is to ensure that the payment of the taxes is not avoided by simulating the termination or retirement thereof and that the business operations are actually stopped completely.

Moreover, MAKATI contends that the transfer of LAZADA's principal office which was approved by the Securities and Exchange Commission (SEC) on March 14, 2016 is of no moment in the determination of its local tax liability considering that LAZADA declared gross sales/receipts from January 2017 to September 2017 in its Makati office.

CTA EB No. 2767

MAKATI argues that LAZADA is liable for the 2016 assessed LBT amounting to Php13,671,149.93, considering that LAZADA had undeclared gross sales or receipts of Php996,076,497.13 in 2015.

Conversely, LAZADA claims that it transferred its principal office to and operated its business in Taguig City beginning the third quarter of 2015. Moreover, LAZADA claims that it paid its LBT in 2016 which is based on its 2015 gross sales and that the LBT paid thereon exceeds the LBT on actual gross receipts from January to March 2016. LAZADA further asserts that it declared in 2016 and 2017, 100% of its gross sales to Taguig City in the amount of Php1,296,480,732.87 and Php4,004,552,993.26, respectively, and paid thereto a total of Php36,313,529.73 in LBT and regulatory fees.

Ruling of the Court *En Banc*

The respective *Petitions for Review* filed by LAZADA and MAKATI are both denied for lack of merit.

Both *Petitions for Review* were timely filed.

Section 2(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

> Section 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:
>
> xxx
>
> (2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction;

Since the *Petitions* seek the reversal of the *Assailed Decision* and *Resolution* issued by the Court in Division, the Court *En Banc* has jurisdiction over the subject matter of the *Petitions* pursuant to Section 2(a)(2), Rule 4 of the RRCTA.

On the period to file an appeal, Section 3(b), Rule 8 of the RRCTA provides that a party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration may appeal to the Court by filing a petition for review within fifteen (15) days from receipt of a copy of the questioned decision or resolution.

For CTA EB No. 2766, the records show that on December 16, 2022, LAZADA filed a *Motion for Partial Reconsideration*[22] before the

[22] Paragraph 5, *Petition for Review* dated 30 June 2023.

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Court in Division which was denied through the *Assailed Resolution* received by LAZADA on May 31, 2023[23].

Pursuant to Section 3(b), Rule 8 of the RRCTA, LAZADA had fifteen (15) days from receipt of the *Assailed Resolution* or until June 15, 2023, to file its petition for review with the Court *En Banc*. On June 15, 2023, LAZADA filed a *Motion for Extension of Time (to file Petition for Review)*[24] praying that it be granted an additional period of fifteen (15) days or until June 30, 2023, within which to file its petition for review. The same was granted by the Court through a *Resolution* issued on June 19, 2023[25]. On June 30, 2023, LAZADA filed its *Petition for Review*. Hence, the *Petition for Review*, docketed as CTA EB No. 2766 was timely filed.

For CTA EB No. 2767, the records show that, on June 08, 2023, Makati City received the *Assailed Resolution,* denying its *Motion for Reconsideration* filed before the Court in Division[26]. Pursuant to Section 3(b), Rule 8 of the RRCTA, Makati City had fifteen (15) days or until June 23, 2023 within which to file a *Petition for Review* with the Court *En Banc*. On June 16, 2023, the Makati City's *Petition for Review* docketed as CTA EB No. 2767 was timely filed.

Hence, due to the timely filing of the respective *Petitions* of LAZADA and MAKATI, the Court *En Banc* has validly acquired jurisdiction of the cases.

The Court in Division correctly ruled that LAZADA is liable to pay deficiency LBT for the CY 2015 amounting to Php3,420,768.61

LAZADA argues that the Court in Division erred in holding LAZADA liable to pay the deficiency LBT for CY 2015 in the amount of Php3,420,768.61 because the Court in Division failed to consider that LAZADA had already overpaid MAKATI in LBT for CYs 2016 and 2017 in the total amount of Php15,552,094.67. LAZADA further argues that after its transfer of principal office in 2016, it had no branch or sales office within the jurisdiction of MAKATI and that the latter did not present any evidence of a branch or sales office of LAZADA located within Makati City upon which it can impose LBT after the transfer of LAZADA's principal office to Taguig City.

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[23] EB Docket No. 2766, *Notice of Resolution*, p. 59.
[24] EB Docket No. 2766, pp. 1-6.
[25] EB Docket No. 2766, p. 7.
[26] Notice of Resolution dated May 23, 2023.

Based on LAZADA's *Petition for Review*, it contends that after its transfer of principal office to Taguig City in 2016, it has declared 100% of its gross sales in 2016 and 2017 to Taguig City and, as such, the taxes thereon should accrue and be paid to Taguig City where its principal office is located.

We do not agree.

At the outset, the Court *En Banc* notes that LAZADA is only contesting the LBT assessment for CY 2015 in the amount of Php3,420,768.61 on the basis of its alleged overpayment made to MAKATI for CYs 2016 and 2017 in the total amount of Php15,552,094.67. Nevertheless, the Court *En Banc* deems it imperative to first discuss the propriety of the LBT assessment for CY 2015, as found in the *Assailed Decision.*

Based on the findings of the Court in Division, LAZADA operated its business through its principal office in Makati City and registered with the LGU of Makati City. In the *Assailed Decision*, the Court in Division also determined that it was only during the third quarter of 2015 when LAZADA decided to transfer its principal office and operate its business in Taguig City. The said transfer of principal office was only approved by LAZADA's shareholders and Board of Directors on **March 04, 2016**. Likewise, such transfer was only recognized and approved by the SEC on **March 14, 2016** through the issuance of LAZADA's *Certificate of Filing of Amended Articles of Incorporation* (AOI).

Correspondingly, prior to its transfer of principal office to Taguig City in 2016, there is no doubt that LAZADA conducted its business operations in its Makati Office during CY 2015. This fact is not disputed. Thus, it follows that LAZADA is liable to pay the LBT due for CY 2015. Also, based on LAZADA's own admission in its present *Petition* and as stated in its *Letter* dated May 17, 2018[27] addressed to the City Treasurer of Makati City, LAZADA confirmed that it is ***not refuting*** the LBT assessment for CY 2015. Noteworthy also is the statement of LAZADA in the *Letter* dated May 17, 2018 that it has paid such 2015 assessment on May 7, 2018, and that it is requesting for the issuance of a separate Order of Payment for the CY 2015 LBT assessment.

Pursuant to Section 195 of the Local Government Code of 1991 (1991 LGC), any LBT assessment may be assailed by the taxpayer by filing a written protest with the local treasurer within sixty (60) days

[27] RTC Records – Vol. 4. p. 61.

from the receipt of the notice assessment, and failure to duly file the written protest shall render the assessment final and executory, to *wit*:

> Section 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 cancelling 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. [Emphasis Supplied]

Hence, in this case, the assessed LBT for CY 2015 has become final and executory for failure of LAZADA to protest the same. In view of the finality of the LBT assessment for CY 2015, the Court in Division aptly ruled that the imposition of deficiency LBT for CY 2015 amounting to Php3,420,768.61 is proper.

With respect to LAZADA's contention of overpayment of LBT made to MAKATI for CYs 2016 and 2017 in the total amount of Php15,552,094.67, the Court *En Banc* also finds the same as bereft of merit. In this case, it should be emphasized that LAZADA failed to invoke any provision of law which would show that its alleged LBT overpayments made in CYs 2016 and 2017 can be used to **offset** its deficiency LBT for the preceding year of 2015. Accordingly, its assertion that its LBT payment to MAKATI in the amount of Php15,552,094.67 for CY 2016 and 2017 must be credited to LAZADA and applied against the assessment for deficiency LBT for CY 2015 amounting to Php3,420,782.61, is patently without basis in law.

For an orderly discussion, since LAZADA's argument for the alleged overpayment relates to the issue on whether it had branch or sales office in Makati City, the Court deems it proper to address the same together with the second assignment of error as will be discussed below.

The Court in Division correctly found LAZADA

liable for the deficiency LBT for CY 2017

In its present *Petition,* LAZADA submits that it had no branch or sales office in Makati City following the transfer of its principal office to Taguig City. LAZADA also argues that while the *Schedule of Gross Sales/ Receipts for 2017*[28] and the *Sworn Statement of Gross Sales/Receipts*[29] may imply that there were sales made by LAZADA in Makati City in 2017, it is not tantamount to proof that it actually had a branch or sales office in Makati City which vests the authority to impose LBT.

We are not convinced.

Sources of Local Government Units' Taxing Power

The 1987 Constitution recognizes the power of local government units (LGUs) to create their own sources of revenue, by levying taxes, among others. Section 5, Article X of the Constitution provides:

> ARTICLE X
> LOCAL GOVERNMENT
>
> SECTION 5. Each **local government unit shall have the power to create its own sources of revenues and to levy taxes**, fees and charges subject to such **guidelines and limitations as the Congress may provide**, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. [Emphasis Supplied]

While the power to tax is primarily vested in Congress, however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to **direct authority** conferred by Section 5, Article X of the Constitution. Thus, it has been held that the important legal effect of Section 5 is that henceforth, in interpreting statutory provision on municipal fiscal powers, doubts will have to be resolved in favor of municipal corporations.[30]

Nevertheless, it should be emphasized that the taxing power of the LGUs as provided in the Constitution is not a blanket power as it is subject to such limitations and guidelines that Congress may impose.

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[28] Exhibit "7", RTC Records – Vol. 4, p. 172.
[29] Exhibit "8", RTC Records – Vol. 4, p. 173.
[30] *Lucena D. Demaala vs. Commission on Audit,* G.R. No. 199752, February 17, 2015.

In the case of *Batangas City et.al vs. Pilipinas Shell Corporation*[31], the Supreme Court explained that although the power to tax is inherent in the State, the same is not true for LGUs because although the mandate to impose taxes granted to LGUs is categorical and long established in the Constitution, the same is not all encompassing as it is subject to limitations as explicitly stated in Section 5, Article X of the Constitution.

In relation to the taxing power of the LGUs, the Congress enacted the 1991 LGC which governs the local taxation and fiscal matters of the LGUs. According to the Supreme Court, the enactment of the 1991 LGC embodied the basic policy of local autonomy, and a crucial part of local autonomy is fiscal autonomy, which refers to the LGUs' power to create their own sources of revenues and to levy taxes, fees, and charges that shall then accrue exclusively to them.[32]

The basis for a city's power to impose tax on businesses is provided under Section 143 in relation to Section 151 of the 1991 LGC, which state:

> CHAPTER II
> Specific Provisions on the Taxing and Other Revenue-Raising Powers of Local Government Units
>
> xxx
>
> ARTICLE II
> Municipalities
>
> Section 143. ***Tax on Business***. - The municipality may impose taxes on the following businesses:
>
> (a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, xxx
>
> xxx
>
> 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

[31] G.R. No. 187631. July 8, 2015.
[32] *Province of Pampanga, Petitioner vs. Executive Secretary Alberto Romulo and Department of Environment And Natural Resources*, G.R. No. 195987, January 12, 2021.

shall accrue to them and distributed in accordance with the provisions of this Code. [Emphasis Supplied]

Situs of Taxation

To determine the locality upon which the taxes shall accrue and be paid to, there is a need to distinguish where the sale or transaction is recorded by the taxpayer. Relative thereto, Section 150(a) of the 1991 LGC provides that tax on businesses shall either accrue and be paid to *(i)* the city where the sale in the branch or sales outlet making the transaction was recorded; or *(ii)* in case there is no branch or sales outlet, the city where the principal office that recorded the sale or transaction is located. Thus, for a city to validly impose tax on businesses, the situs thereof must be within such city. Section 150(a) of the 1991 LGC provides:

Section 150. Situs of the Tax.

(a) For purposes of collection of the 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]

Section 150(a) of the 1991 LGC is implemented through Article 243 of Administrative Order (AO) No. 270[33], as follows:

ARTICLE 243. Situs of the Tax. –

(a) Definition of Terms –

(1) Principal Office - xxx **The city or municipality specifically mentioned in the articles of incorporation of official registration papers as being the official address**

[33] Prescribing the Implementing Rules and Regulations of the Local Government Code of 1991.

of said principal office shall be considered as the situs thereof.

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(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 <u>tax shall be payable to the city or municipality where the same is located</u>.**

(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 <u>tax shall accrue to the city or municipality where said principal office is located</u>.** xxx [Emphasis Supplied]

Based on the foregoing provisions, We can infer two (2) scenarios from the factual circumstances involving LAZADA's principal offices, thus: *(i)* Commencing from its incorporation in 2012 up until the approved transfer of its principal office to Taguig City on March 14, 2016, LAZADA's principal office was located within the territorial jurisdiction of Makati City; and *(ii)* Beginning March 2016 when its change of principal office was approved by the SEC as reflected in *Certificate of Filing of Amended Articles of Incorporation* issued on March 14, 2016, LAZADA's principal office was transferred to Taguig City.

We shall now proceed with the issue of whether LAZADA had a branch or sales office in Makati City. To resolve such issue, the Court *En Banc* must refer to the respective definitions of principal office and branch or sales office as provided under Article 243 of AO No. 270, which states:

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.

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> (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 [Emphasis Supplied]

Accordingly, a *principal office* is the main office of the business appearing in the documents submitted to the SEC, such as Articles of Incorporation (AOI), among others, and the city or municipality mentioned in such AOI shall be considered as the situs thereof. Being the head or main office of the business, it may also be inferred that a business can only have one (1) principal office which should be reflected in the AOI. On the other hand, to be considered as a *branch or sales office* under AO No. 270, such branch office must conduct **business operations** as an extension of the principal office.

Based on the findings of the Court in Division, LAZADA was incorporated on February 16, 2012, with principal office address at 3rd Floor, Salustiana D. Ty Tower, 104 Paseo de Roxas, Makati City, Philippines (**Makati Office**). Thereafter, on January 04, 2016, LAZADA's Board of Directors and stockholders resolved to change its principal office address to 23rd Floor Net Park, 5th Avenue, E-Square, Crescent Park West, Bonifacio Global City, Taguig, Metro Manila, Philippines (**Taguig Office**). Such amendment was approved by the SEC, through the issuance of a *Certificate of Filing of Amended Articles of Incorporation* on March 14, 2016.

In view of its transfer of principal office, LAZADA maintains that it had no branch or sales office in Makati City and that it only maintained an administrative office in Makati City. LAZADA further submits that it no longer recorded any sale within the territorial jurisdiction of Makati City after such transfer.

We are not persuaded.

To further verify the situs of taxation pursuant to Section 150(a) of the 1991 LGC, the Court also deems it necessary to refer to the definition of the term "Business" under Section 131(d) of the 1991 LGC, which provides:

> Section 131. ***Definition of Terms***. - When used in this Title, the term:
>
> xxx

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> (d) "**Business**" means **trade or commercial activity regularly engaged in as a *means of livelihood or with a view to profit***; [Emphasis Supplied]

Further, it has been held that to be considered as "transacting" or "doing" business, there must be continuity of conduct and intention to establish a continuous business[34]. The term doing business implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in the progressive prosecution of, the purpose and object of its organization. A single act or transaction may then be considered as doing business when a corporation performs acts for which it was created or exercises some of the functions for which it was organized[35].

It was also stated in its Amended AOI that LAZADA is engaged in the development, marketing, and provision of internet goods and services through existing telecommunications facilities as a provider of value added telecommunications services (**e-commerce** covering goods of different kinds), the provision of logistics services and digital services as well as payment services with the exception of payment services requiring permission under statutory stipulations, and all other services relating to the aforementioned business inside and outside of the Philippines through subsidiaries or otherwise. Notably, in the *Sworn Statement of Gross Sales/Receipts,* it was likewise stated that LAZADA is engaged in the **business of e-commerce**, which is pursuant to its primary purpose under its Amended AOI.

As to whether LAZADA conducted business with a view to profit in Makati City during CY 2017, the definition of "Gross Sales or Receipts" under Section 131(n) of the 1991 LGC must likewise be referred to, thus:

> Section 131. ***Definition of Terms***. - When used in this Title, the term:
>
> xxx
>
> (n) "**Gross Sales or Receipts**" include the **total amount of money or its equivalent representing the contract price, compensation or service fee,** including the amount charged or materials supplied with the services and deposits or advance payments **actually or constructively received during the taxable quarter for the services performed or to be performed for another person** excluding discounts if determinable at the time of sales, sales return, excise tax, and **value-added tax (VAT);** [Emphasis Supplied]

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[34] *Commissioner of Internal Revenue v. British Overseas Airways Corp.,* G.R. No. L-65773-74 April 30, 1987.
[35] *Magna Ready Mix Concrete Corporation vs. Andersen Bjornstad Kane Jacobs Inc.,* G.R. No. 196158, January 20, 2021.

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In this case, the following documents show that, even after LAZADA transferred its principal office to Taguig City, it still retained its Makati Office and **conducted, generated and recorded sales activities therein until CY 2017**:

a) Billing Statements and Official Receipts[36] showing declared gross sales or receipts for CY 2016 and 1st to 3rd Quarters of 2017;

b) LAZADA's Quarterly VAT Returns for CY 2016[37] showing the its vatable sales or receipts with its Makati office as the registered address;

c) LAZADA's *Schedule of Gross Sales/ Receipts for 2017;* and

d) LAZADA's *Sworn Statement of Gross Sales/Receipts.*

In particular, the *Schedule of Gross Sales/ Receipts for 2017* as certified by LAZADA's accountant, indicated petitioner's gross sales and receipts respectively recorded in its Taguig and Makati Offices in 2017, thus:

Services (Php)	Retail (Php)	Total (Php)	**BGC Office** (Php)	**Makati Office** (Php)
4,044,142,982.99	3,784,822,584.37	7,828,965,567.36	**6,278,832,912.86**	**1,550,132,654.50**

Similarly, the *Sworn Statement of Gross Sales/Receipts* which was subscribed under oath by LAZADA's own Chief Executive Officer (CEO), reflected that LAZADA had gross sales or receipts also amounting to **Php1,550,132,654.50** for CY 2017.

Thus, while LAZADA claims that its Makati Office no longer recorded any sales or transactions after the transfer of its principal office to Taguig City, such contention, however, is negated by the declaration of gross sales or receipts as reflected in the *Schedule of Gross Sales/ Receipts for 2017* certified by its accountant, and the *Sworn Statement of Gross Sales/Receipts* executed by its own CEO.

It is also noteworthy that LAZADA's CEO stated in his *Sworn Statement of Gross Sales/Receipts* that LAZADA's e-commerce business located at *5/F Floor, Salustiana D. Ty Tower, 104 Paseo de Roxas,* ***Makati City*** *will close/terminate/transfer operations of the business/es* ***effective September 30, 2017***. In the *Assailed*

[36] Exhibits "G-1" to "G-8", RTC Records – Vol. 3, pp. 35-50
[37] Exhibits "P-1" to "P-4", RTC Records – Vol. 3, pp. 78-85.

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Decision, it was also found that the Contract of Lease covering LAZADA's Makati Office was terminated only on August 31, 2017.

From the foregoing, it cannot be denied that LAZADA generated and recorded sales transactions in its Makati Office amounting to Php1,550,132,654.50 for CY 2017, or particularly, until September 2017.

LAZADA's Makati Office may then be treated as its branch/sales office until September 2017 considering that *(a)* LAZADA conducted **e-commerce business operations** in its Makati Office until September 2017, which is a trade or commercial activity that LAZADA is regularly engaged in as a means of livelihood or with a view to profit, pursuant to its primary purpose as contained in its AOI; and *(b)* LAZADA **declared gross sales or receipts for CY 2017** amounting to Php1,550,132,654.50 in the *Sworn Statement of Gross Sales/Receipts* executed by its own CEO. Thus, pursuant to Section 150(a) of the 1991 LGC, the situs of taxation for the declared gross sales or receipts as of September 30, 2017, shall be in Makati City.

The Court *En Banc* also finds that LAZADA's continuity of business operations in its Makati Office for CYs 2016 and 2017 was further established by its belated application for retirement of business. The relevant provision on retirement of business is provided in Section 145 of the 1991 LGC, thus:

> **Section 145.** *Retirement of Business.* - A business subject to tax pursuant to the preceding sections shall, **upon termination thereof, submit a sworn statement of its gross sales or receipts for the current year. If the tax paid during the year be less than the tax due on said gross sales or receipts of the current year, the difference shall be paid before the business is considered officially retired.** [Emphasis Supplied]

Further, the implementing rule of Section 145 of the 1991 LGC is provided under Article 241 of A.O. 270 which states that:

> **ARTICLE 241. Retirement of Business.** — (a) **Any person natural or juridical, subject to the tax on businesses under Article 233 of this Rule shall, upon termination of the business, submit a sworn statement of the gross sales or receipts for the calendar year.**
> For purposes hereof, **termination shall mean that business operations are stopped completely.** Any change in ownership, management and/or name of the business shall not constitute termination as contemplated in this Article. Unless stated otherwise, assumption of the business by any new owner or manager or registration of the same business under a new name will only be

considered by the LGU concerned for record purposes in the course of the renewal of the permit or license to operate the business.

The local treasurer concerned shall see to it that the payment of taxes of a business is not avoided by simulating the termination or retirement thereof. For this purpose, the following procedural guidelines shall be strictly observed:

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(1) The local treasurer shall assign every application for the termination or retirement of business to an inspector in his office who shall go to the address of the business on record to verify if it is really no longer operating. If the inspector finds that the business is simply placed under a new name, manager and/or new owner, the local treasurer shall recommend to the mayor the disapproval of the application for the termination or retirement of said business. **Accordingly, the business continues to become liable for the payment of all taxes, fees, and charges imposed thereon under existing local tax ordinances; and**

(b) If it is found that the retirement or termination of the business is legitimate, and the tax due therefrom be less than the tax due for the current year based on the gross sales or receipts, the difference in the amount of the tax shall be paid before the business is considered officially retired or terminated. [Emphasis Supplied]

Relative thereto, Section 3A.10 paragraph (g) of the Revised Makati Revenue Code, also provides:

(g) *Retirement of business* - **Any person natural or juridical who discontinues, transfer to other locality/ies or close/retire his/her business operation(s) is subject to the taxes, fees and charges on business. Within the period of thirty (30) days of the discontinuance, transfer or closure/retirement of business, shall *surrender to the City Treasurer the original business permit license of the current year, official receipt issued for the payment of the business tax, and submit a sworn statement of the gross sales or receipts for the current year or quarter and the corresponding taxes must be collected.* <u>Any tax due must first be paid before any business or undertaking is finally terminated</u>.**

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For purposes thereof, **termination shall mean that business operations are stopped completely**. [Emphasis Supplied]

Pursuant to the above quoted provisions, a business shall be considered terminated when its business operations are **stopped**

completely. Further, a business shall officially be retired if the corresponding **tax due is paid**. In addition, the taxpayer must, within thirty (30) days from retirement or closure or transfer of business, **surrender the original business permit license** to the City Treasurer, official receipt issued for the payment of LBT, and submit a sworn statement of the gross sales or receipts for the current year.

In this case, LAZADA only filed its application for retirement of its Makati Office on February 12, 2018[38] or two (2) years counting from 2016 after it has transferred its principal office to Taguig City. Also, LAZADA submitted with the Office of the Treasurer of Makati City, in support of its business retirement application, the earlier mentioned *Sworn Statement of Gross Sales/Receipts* showing the gross sales/receipts for CY 2016 and 2017 which proves that LAZADA had sales transactions in CY 2016 and 2017. There was also no showing that LAZADA surrendered its original business permit license within thirty (30) days from its alleged transfer to Taguig City in 2016.

It must be emphasized that termination of business under the 1991 LGC, A.O. 270 and Revised Makati Revenue Code shall mean that business operations are stopped completely. This is, however, not the case for LAZADA's Makati Office during CYs 2016 and 2017. As already discussed, evidence on record shows that LAZADA **did not completely cease its business operations in its Makati Office during CYs 2016 and 2017**.

Also, as noted in Section 145 of the 1991 LGC, Article 241 of A.O. 270, and Section 3A.10 paragraph (g) of the Revised Makati Revenue Code, it is required that taxes due must be paid before any business is officially and finally retired or terminated. However, in LAZADA's case, instead of paying the taxes, it opted to protest Makati City's assessment. Thus, based on Makati City's record, LAZADA's Makati Office is not yet officially and finally retired or terminated.

We must underscore that the mere application for business retirement/termination of business or even actual transfer of principal office to another locality, does not automatically relieve the taxpayer from paying any taxes which may have accrued prior to the official closure or termination of its business.

In view thereof, the Court *En Banc* finds that the Court in Division correctly ruled that LAZADA is liable to pay the LBT assessment for CY 2017 covering the gross sales or receipts amounting

[38] Exhibit "10", RTC Records, Vol. 4, p. 177.

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to Php1,550,132,654.50. Thus, We sustain the LBT assessment for CY 2017 against LAZADA in the amount of Php4,746,912.15.

Moreover, LAZADA cannot rely on the *Opinions* of BLGF that it should not be liable for LBT considering its transfer of principal office to Taguig City. In the BLGF *Opinions* cited in LAZADA's *Petition*, the BLGF explained that (1) an office with no sales transactions is not taxable and (2) in order for the sale to be recorded and be subject to LBT in the city or municipality other than where the principal office is located, the taxpayer must have a branch or sales outlet in such city or municipality where a sale or transaction is made, other than where its principal office is located. However, in the case of the *City of Makati vs. The Municipality of Bakun and Luzon Hydro Corporation*[39], it was ruled that BLGF's findings on questions of fact are not given much weight by courts, thus:

> **BLGF is not an administrative agency whose findings on questions of fact are given weight and deference in 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**. [Emphasis Supplied]

Even assuming that reliance on the BLGF *Opinions* is appropriate, the Court *En Banc*'s conclusion remains. As already discussed, the Court determined that LAZADA's Makati Office recorded sales or transactions in CY 2017 as evidenced by the documents submitted and presented before the RTC.

We also reiterate that LAZADA failed to adduce any evidence to establish that its Makati Office did not generate any sales and is only operating purely administrative matters. In view of the basic rule that mere allegations are not evidence and not equivalent to proof[40], LAZADA's allegation is essentially self-serving and devoid of any evidentiary weight. Therefore, absent any evidence to the contrary, the findings of the Court in Division remain uncontroverted.

LAZADA is not liable for the deficiency LBT for alleged under-declared gross receipts

[39] G.R. No. 225226, July 07, 2020.

[40] *Lauro Cardinez v. Spouse Prudencio*, G.R. No. 213001, August 04, 2021, citing *Government Service Insurance System vs. Prudential Guarantee and Assurance, Inc.*, G.R. No. 165585, November 20, 2013.

for CY 2015 amounting to Php13,671,149.93.

In MAKATI's present *Petition* docketed under CTA EB No. 2767, MAKATI alleges that LAZADA is liable to pay the LBT deficiency for CY 2015 amounting to Php13,671,149.93 considering that there was an undeclared gross sales or receipts in 2015 in the amount of Php996,076,497.13.

According to MAKATI, the amount paid by LAZADA in 2016 equivalent to Php9,723,605.50 was only for the declared gross sales or receipts amounting to Php1,296,480.372.87. However, it is MAKATI's contention that LAZADA's gross receipts based on its 2015 Audited Financial Statements (AFS) is Php2,292,557,230.00. Hence, MAKATI submits that LAZADA had undeclared gross sales or receipts in 2015 amounting to Php996,076,497.13.

Based on MAKATI's *Petition*, the amount of Php13,671,149.93 is broken down as follows:

Gross Receipts per 2015 Audited Financial Statement	**Php2,292,557,230.00**
Less: **Declared** by LAZADA in their application for renewal of business permit in 2016	**1,296,480.372.87**
Undeclared Gross Receipts	**996,076,497.13**
Tax Due for Undeclared Gross Receipts	7,470,573.73
Surcharge of 25%/Monthly Interest receipts of 2%	6,200,576.20
Total Tax Due for Undeclared Gross Receipts	**13,671,149.93**

As shown above, MAKATI computed the alleged LBT deficiency for undeclared gross receipts of Php996,076,497.13 for CY 2015 based on LAZADA's 2015 AFS.

However, as aptly ruled by the Court in Division, there is insufficient evidence to prove LAZADA's gross receipts for CY 2015. In this case, MAKATI did not submit or offer any supporting documents to establish the gross sales or receipts of LAZADA for CY 2015. To be sure, based on the *Formal Offer of Exhibits* dated May 6, 2021[41] filed by MAKATI with the RTC-Branch 132, Makati City, only the following documents were submitted and offered as evidence for MAKATI in Civil Case Nos. R-MKT-18-02102-CV and R-MKT-19-00586:

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[41] RTC Records, Vol. 4, pp. 206-209.

Exhibits	Description	Purpose
1	Order of Payment dated March 2, 2018	To prove that the plaintiff was assessed a LBT on their business retirement amounting to Php21,193,614.00 as per payment order dated March 2, 2018
2	Letter-reply dated May 2, 2018	To prove that a letter reply to the LAZADA's letter protest was sent to LAZADA, to show the basis and the computation of the LBT deficiency assessment amounting to Php21,193,614.00
3	Letter dated May 21, 2018	To prove that LAZADA did not contest and is willing to pay the assessment of LBT deficiency for CY 2015 amounting to Php3,420,782.61
4	Order of payment dated May 22, 2018	To prove that MAKATI issued another Order of Payment dated May 22, 2018 amounting to Php21,193,614.00 to include additional fees and charges for failure of LAZADA to settle the Order of Payment dated March 2, 2018.
5	Certificate of Non-Payment	To prove that LAZADA failed to settle the LBT deficiency amounting to Php21,193,614.00
6	Sec. 7B.14 of the Revised Makati Revenue Code	To prove that payment under protest is required under the Revised Makati Revenue Code
7	Schedule of Gross Sales/Receipts for the year 2017	To prove that LAZADA provided the gross receipts from January 2017 to September 2017 amounting to Php1,550,132,654.50 which became the basis in the computation of the LBT deficiency amounting to Php21,193,614.00
8	Sworn Statement of Gross Sales/Receipts for the year 2017	
9	Sec. 3A of the Revised Makati Revenue Code	To show the basis/ requirements under the Revised Makati Revenue Code on the retirement of business in the City of Makati
10	Application for retirement of business	To prove that LAZADA filed its application for retirement of business in the City of Makati on February 12, 2018

As gleaned from the enumerated documents, it can be established that MAKATI did not include any documentary evidence which would prove that LAZADA's gross receipts for CY 2015 is equivalent to Php2,292,557,230.00. We must underscore that although it was alleged that the basis of the undeclared gross receipts of Php996,076,497.13 is LAZADA's 2015 AFS, such 2015 AFS was never offered and submitted as evidence of MAKATI during the trial. Thus, there is no evidence on record that would establish MAKATI's claim of undeclared gross receipts of Php996,076,497.13. In this regard, We affirm the Court in Division's finding that no supporting documents were submitted and offered by MAKATI to prove the gross sales or receipts of LAZADA for 2015.

We must emphasize that pursuant to Section 34, Rule 132[42] of the Revised Rules on Evidence, the Court *En Banc* is bound to consider only the evidence which has been formally offered. The following pronouncement of the Supreme Court in *Republic v. Asuncion*[43] is instructive on this matter, *viz*:

> In *Rep. of the Phils, v. Sps. Gimenez*, we clarified that the rules on the formal offer of evidence and objections to evidence are a manifestation of the right to due process:
>
>> The rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to secure their case Hence, any document or object that was marked for identification is not evidence unless it was "formally offered and the opposing counsel [was] given an opportunity to object to it or cross- examine the witness called upon to prove or identify it."
>>
>> This court explained further the reason for the rule:
>>
>> **The Rules of Court provides that "the court shall consider no evidence which has not been formally offered." A formal offer is necessary because <u>judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial.</u>** Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.
>>
>> To consider a party's evidence which was not formally offered during trial would deprive the other party of due process. **<u>Evidence not formally offered has no probative value and must be excluded by the court</u>**. [Emphasis Supplied]

Moreover, granting arguendo that the gross receipts declared by LAZADA in 2015 amounting to Php1,296,480.372.87 is less than the alleged gross receipts of Php2,292,557,230.00 based on its 2015 AFS, there is, however, no evidence on record which would prove that the entire gross sales or receipts of Php2,292,557,230.00 is attributable solely to LAZADA's Makati Office. Absent such necessary evidence, the Court *En Banc* maintains the findings in the *Assailed Decision* that the

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[42] SEC. 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
[43] G.R. No. 200772, February 17, 2021.

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assessment of LBT amounting to Php13,671,149.93 against LAZADA must be cancelled and set aside for lack of sufficient factual basis.

In view of the foregoing, the Court *En Banc* considers both petitions as unmeritorious. Consequently, the Court *En Banc* finds no compelling reason or justification to disturb the conclusions reached by the Court in Division.

WHEREFORE, premises considered, the *Petition for Review* filed on June 30, 2023 by Lazada E-Services Philippines, Inc. docketed as CTA EB No. 2766; and (2) *Petition for Review* filed on June 16, 2023 by City of Makati and City Treasurer of Makati docketed as CTA EB No. 2767, are both **DENIED** for lack of merit.

Accordingly, the *Decision* dated November 23, 2022 and *Resolution* dated May 19, 2023 both promulgated in CTA AC No. 261, are hereby **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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

Marian Ivy F. Reyes-Fajardo
(With Dissenting Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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 cases were 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

LAZADA E-SERVICES PHILIPPINES, INC.,
Petitioner,

- versus-

CITY OF MAKATI, CITY TREASURER OF MAKATI,
Respondents.

CTA EB No. 2766
(CTA AC No. 261)

x- x

CITY OF MAKATI, CITY TREASURER OF MAKATI,
Petitioners,

-versus-

LAZADA E-SERVICES PHILIPPINES, INC.
Respondent.

CTA EB No. 2767
(CTA AC No. 261)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
OCT 28 2024 4:22pm

x- -x

DISSENTING OPINION

REYES-FAJARDO, *J.*:

With due respect, I submit that the Court of Tax Appeals (CTA) in Division is devoid of jurisdiction to hear CTA AC No. 261.

Section 7(a)(3) of Republic Act (RA) No. 1125, as amended by RA No. 9282 provides for the jurisdiction of the CTA on local tax cases:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ...
>
> 3. Decisions, orders or resolutions of the Regional Trial Courts in **local tax cases** originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals clarified that the CTA in Division has jurisdiction over the decisions, orders or resolutions of the Regional Trial Court (RTC) in local tax cases decided or resolved by them in the exercise of their original jurisdiction.[1] Thus, before the case can be raised on appeal to the CTA, the action before the RTC must be in the nature of a tax case, or one which primarily involves a tax case. Evidently, the CTA's appellate jurisdiction over decisions, orders or resolutions of the RTC becomes operative only when the RTC has ruled on a local tax case.[2] Inversely, if the RTC ruling does *not* pertain to a local tax case, then the CTA is bereft of jurisdiction to entertain the same.

The Petition for Review in CTA AC No. 261 impugns the Decision dated November 15, 2021 and Order dated December 28, 2021, both rendered by Branch 132 of the RTC of Makati. True, said Decision and Resolution pertain to the propriety of the City of Makati's Order of Payment dated March 2, 2018, finding Lazada E-Services Philippines, Inc. (Lazada) liable for local business taxes (LBT),

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1 SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:

...

(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;

2 See *Mactel Corporation v. The City Government of Makati, et al.*, G.R. No. 244602, July 14, 2021. *Mactel* for brevity.

covering years 2015 to 2017.[3] Also true is that LBT is designated by both Section 143 of the Local Government Code[4] and the RMRC[5] as a tax. Yet, the nomenclature in a statute given to an exaction is *not* indicative as to whether it is a tax or some other kind of imposition. Rather, it is the object of the charge which is the true test in the determination thereof. *Bases Conversion and Development Authority and John Hay Management Corporation v. City Government of Baguio City, as represented by its Mayor, City Treasurer, and City Legal Officer (BCDA),*[6] citing *Calalang v. Lorenzo (Calalang)*[7]confirmed:

> This Court has likewise explained that the nomenclature in a statute given to an exaction is not necessarily indicative of whether it is a tax or a fee. In *Calalang v. Lorenzo*:
>
>> The charges prescribed by the Revised Motor Vehicle Law for the registration of motor vehicles are in Section 8 of that law called "fees." But the appellation is no impediment to their being considered taxes if taxes they really are. **For not the name but the object of the charge determines whether it is a tax or a fee. Generally speaking, taxes are for revenue, whereas fees are exactions for purposes of regulation and inspection and are for that reason limited in amount to what is necessary to cover the cost of the services rendered in that connection.** Hence, "a charge fixed by statute for the service to be performed by an officer, where the charge has no relation to the value of the services performed and where the amount collected eventually finds its way into the treasury of the branch of the government whose officer or officers collected the charge, is not a fee but a tax."
>
> ...[8]

Though designated as a tax in both the LGC and RMRC, the *object and nature* of the LBT imposed by petitioner Makati City on respondent is *really a license fee*, consistent with *BCDA, Calalang,* and the RMRC itself.

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3 See page 2, Decision dated November 23, 2022 in CTA AC No. 261.
4 Republic Act No. 7160.
5 Ordinance 2004-A-025.
6 G.R. No. 192694, February 22, 2023.
7 97 Phil. 212 (1955).
8 Boldfacing supplied.

City of Cagayan De Oro v. Cagayan Electric Power & Light Co., Inc. (CEPALCO)[9] defined the term "tax" and "fee," and provided the standard for the proper determination thereof:

> The term "taxes" has been defined by case law as "the enforced proportional contributions from persons and property levied by the state **for the support of government and for all public needs**." While, under the Local Government Code, a "fee" is defined as "any charge fixed by law or ordinance **for the regulation or inspection of a business or activity**."
>
> From the foregoing jurisprudential and statutory definitions, it can be gleaned that the **purpose of an imposition will determine its nature as either a tax or a fee**. If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly classified as an exercise of the power to tax. On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though revenue is incidentally generated. **Stated otherwise, if generation of revenue is the primary purpose, the imposition is a tax but, if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee.**

CEPALCO ordained that if generation of revenue is the primary purpose, the imposition is a tax but, if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee. Measured against the standard provided in *CEPALCO,* the LBT imposed by the Makati City is one primarily imposed for regulation; hence it is a fee, and *not* a tax. Consider:

First. In *Mobil Philippines, Inc. v. The City Treasurer of Makati, et al., (Mobil),*[10] one which involves the refund of LBT collected by the Makati City on the taxpayer therein, the Supreme Court recognized that:

> **Business taxes imposed in the exercise of police power for regulatory purposes are paid for the privilege of carrying on a business in the year the tax was paid.** It is paid at the beginning of the year as a fee to allow the business to operate for the rest of the year. It is deemed a prerequisite to the conduct of business.[11]

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9 G.R. No. 224825, October 17, 2018. Boldfacing in the original.

10 G.R. No. 154092, July 14, 2005.

11 Boldfacing supplied.

Second. BCDA[12] reaffirmed the disquisition in *Mobil,* by pronouncing that:

> **Business "taxes," thus, are a species of license fees that may be imposed by the local government unit. While incidentally revenue-earning, fees for a mayor-issued business permit are primarily regulatory,** since the local government is not precluded from imposing conditions other than the payment of business taxes before the permit is issued. Issuances of business permits are in the exercise of police power.[13]

Third. The dicta in *Mobil* and *BCDA,* attesting to the object and nature of LBT as a license fee; rather than a tax, are as well ingrained in the RMRC. To be precise, paragraph (a), Section 3A.10. thereof explicitly requires the payment of the LBT on persons who establishes, operates, or conducts any business, trade, and activity within Makati City:

> **SEC. 3A. 10. Administrative Provisions –**
>
> (a) *Requirement –* Any person who shall establish, operate or conduct any business, trade or activity mentioned in this Article in the City of Makati, Metro Manila, **shall first** obtain a Mayor's permit and **pay** the fee therefor and **the business tax imposed** under this Article.[14]

Should such persons fail to pay the LBT, despite demand, paragraph (a) of Section 4(A).15. of the RMRC declares that the issuance of the Mayor's Permit may be refused, or, if a Mayor's Permit was already issued, said permit may be revoked. In turn, the lack of a Mayor's Permit would lead to the eventual closure of a business establishment:

> **SEC. 4A. 15. Permit Refused; To Whom, Revocation and Closure.**
>
> a) Mayor's Permit may be **refused** to any person who has violated any ordinance or regulation relating to a license previously granted or **who has failed to pay the tax** or fee or a business being

12 *Supra* note 6.
13 Boldfacing supplied.
14 Boldfacing supplied.

> conducted but not licensed, or **fails to pay any** fine, penalty, **tax** or other debt or liability to the [COM] within thirty (30) days from the date of demand. The City Mayor shall close any business establishment operating without any Mayor's Permit or license. In the case of an existing license to any person, the same shall be **revoked and closed** by the City Mayor upon his [or her] **refusal to pay such** indebtedness or **liability** to the former. ...[15]

Ergo, the LBT imposed by Makati City is primarily a license fee because it regulates the business establishments located within its territorial jurisdiction. In view thereof, Makati City's LBT assessments against Lazada, covering years 2015 to 2017, addressed by the RTC-Makati in its Decision dated November 15, 2021 and Order dated December 28, 2021, is a local *fee* case, and *not* a local tax case.

From all the foregoing, I **VOTE** to: (1) **REVERSE** and **SET ASIDE** the Decision dated November 23, 2022 and Resolution dated May 19, 2023, in CTA AC No. 261; and (2) **DISMISS** CTA AC No. 261, for lack of jurisdiction.

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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15 Boldfacing supplied.