REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

THE CITY OF MAKATI, Petitioner,	**CTA AC NO. 167**
	Members:
-versus-	**Castañeda, Jr.,** *Chairperson,* **Casanova,** *and* **Manahan,** *JJ.*
THE CITY TREASURER AND THE CITY GOVERNMENT OF CALAMBA AND FUJI-HAYA INTERNATIONAL CORPORATION, Respondents.	Promulgated: DEC 1 1 2017 1:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This Petition for Review filed by the City of Makati pursuant to Section 7(a)(3) of Republic Act (R.A.) No. 1125, as amended by R.A. Nos. 9282 and 9503, prays for the reversal and setting aside of the August 4, 2015 Decision and the January 4, 2016 Order issued by the Regional Trial Court (RTC), Branch 34 of Calamba City, Laguna in Civil Case No. 4829-2014-C entitled *Fuji-Haya International Corporation vs. The City Treasurer and The City Government of Calamba City, Laguna, and The City Treasurer and The City Government of Makati City.*

THE FACTS

Petitioner City of Makati is a local government unit, with office address at the Office of the City Mayor, Makati City Hall, J.P. Rizal Street, Makati City.[1]

Respondent City Government of Calamba (City of Calamba) is a local government unit duly created by law, with office address at the Office of the Mayor, Calamba City, Laguna; while respondent City Treasurer (respondent treasurer) is the person appointed and duly empowered, among others, to assess and collect local business taxes in Calamba City, with office address at the City Treasurer Management Office, Calamba City, Laguna.[2]

Respondent Fuji-Haya International Corporation (FHIC) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with business addresses at 33 Matrinco Building, 2178 Chino Roces Avenue, Makati City and at Silangan Industrial Park, Canlubang, Calamba City, Laguna.[3]

On September 11, 2014, respondent FHIC filed a Complaint before the Regional Trial Court of Calamba City, Laguna, which was docketed as Civil Case No. 4829-2014-C entitled *Fuji-Haya International Corporation vs. The City Treasurer and The City Government of Calamba City, Laguna, and The City Treasurer and The City Government of Makati City*, and was raffled to Branch 34 of RTC, Calamba City, Laguna on September 18, 2014.[4] The case was instituted to litigate the respective claims of respondent City of Calamba and petitioner against the business taxes of respondent FHIC.

In the aforesaid case, the parties made the following stipulations of facts:[5] gz

[1] The Parties, Petition for Review, Division Docket, p. 8; Par. 6, Complaint, Regional Trial Court (RTC) records, p. 2.
[2] The Parties, Petition for Review, Division Docket, pp. 8 to 9; Pars. 3 and 4, Complaint, RTC records, p. 2.
[3] The Parties, Petition for Review, Division Docket, p. 9.
[4] RTC records, p. 1.
[5] Pre-Trial Order dated March 25, 2015, RTC records, vol. 2, pp. 61 to 62.

"II. STIPULATION OF FACTS (Admitted by the parties)

1. That in the Secretary's Certificate of the plaintiff attached to the Complaint, it specifically states that its address is at '33 Matrinco Building, 2178 Chino Roces Avenue, Makati City – denied by Atty. Murillo and Atty. Estember admitted with counter stipulation that it is not the principal office of the plaintiff as indicated in the SEC Registration;

2. That defendant City Treasurer of Calamba City is the person appointed and duly empowered, among others, to assess and collect local business taxes in Calamba City – Admitted by the parties;

3. That defendant City of Calamba is the local government unit concerned whose revenue ordinance is being enforced and implemented against the plaintiff – Admitted by the parties;

4. That defendant City Treasurer of Makati City is the person duly appointed and empowered, among others to collect local business taxes – Admitted by parties;

5. That defendant City of Makati is the local government unit concerned whose revenue ordinance is being enforced and implemented – Admitted by the parties;

6. That the City of Makati issued a 2014 business permit to the plaintiff – Admitted by Atty. Estember and Atty. Murillo admitted only the due existence;

7. That the City of Makati has assessed and collected from the plaintiff 30% of the plaintiff's local business taxes from 2010 to 2013 – Denied by Atty. Murillo and admitted by Atty. Estember;

8. That the City of Makati has received (only) the letter dated April 7, 2014, but no admission is being made as to the veracity of the contents thereof – Denied by Atty. Murillo and admitted by Atty. Estember;

9. That the City of Makati has issued its letter dated April 15, 2014 – Denied by Atty. Murillo and admitted by Atty. Estember."

On August 4, 2015, the trial court rendered the assailed Decision directing respondent FHIC to pay its full local business taxes to respondent City of Calamba.[6]

As a result, petitioner moved for the reconsideration of the said Decision on September 21, 2015,[7] which the trial court subsequently denied in the assailed Order dated January 4, 2016.[8]

Thus, petitioner filed this Petition for Review on February 2, 2016.[9]

On March 7, 2016, respondents treasurer and City of Calamba filed their Comment/Opposition to the Petition for Review.[10]

Respondent FHIC filed its Comment (To Petitioner City of Makati's Petition for Review dated 2 February 2016)[11] on April 7, 2016, pursuant to this Court's Resolution[12] dated February 12, 2016.

Thereafter, the parties filed their memoranda[13] in compliance with the Court's April 20, 2016 Resolution.[14] Consequently, this case was deemed submitted for decision via Resolution[15] dated June 8, 2016.

However, the aforesaid Resolution was recalled and set aside due to the filing of respondent FHIC's Manifestation and Motion, praying for the issuance of an Order directing petitioner to hold in abeyance its demand to settle the former's alleged tax obligations.[16] The Court subsequently denied the Manifestation and Motion. Thus, the case was submitted anew for decision on December 13, 2016.[17]

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[6] Division Docket, pp. 45 to 57; RTC records, vol. 2, pp. 237 to 249.
[7] Division Docket, pp. 58 to 65; RTC records, vol. 2, pp. 263 to 270.
[8] Order, Division Docket, pp. 66 to 69; RTC records, vol. 2, pp. 296 to 299.
[9] Division Docket, p. 8.
[10] Division Docket, pp. 96 to 101.
[11] Division Docket, pp. 106 to 108.
[12] Division Docket, p. 71.
[13] Division Docket, pp. 123 to 126, pp. 130 to 139, and pp. 141 to 149.
[14] Division Docket, p. 122.
[15] Resolution, Division Docket, p. 151.
[16] Resolution dated September 1, 2016, Division Docket, pp. 171 to 172.
[17] Resolution, Division Docket, pp. 201 to 204.

THE ISSUES

In its Memorandum, petitioner submitted the following assignment of errors to be resolved by this Court:

> The court a quo erroneously ruled that the local business taxes payable by respondent FHIC should accrue fully and solely to respondent Calamba City despite the overwhelming pieces of evidence submitted to the effect that petitioner can collect from respondent FHIC the thirty percent (30%) allocation of the local business tax pursuant to Section 150 of the Local Government Code, considering that respondent FHIC itself has declared that its principal office is located in Makati City, and that petitioner has issued a business permit in favor of respondent FHIC based on its own declaration that it is a "specialty contractor" under the taxability of "services."

On the other hand, respondents treasurer and City of Calamba submitted the following issues:

1. Whether the court a quo correctly ruled that the local business taxes payable by respondent FHIC should accrue fully and solely to respondent City of Calamba pursuant to the last sentence of Section 150(a) of the Local Government Code; and

2. Whether Amalia C. Santos, OIC-City Treasurer of Makati is authorized to institute the instant petition.

THE COURT'S RULING

The Court shall first discuss the issue of whether Amalia C. Santos has authority to file the instant petition.

Respondents treasurer and City of Calamba posit that Ms. Santos lacks authority from the Sangguniang Panglungsod of Makati or from the City Mayor of Makati to represent such local government unit.

Allegedly, Ms. Santos has no written authority from the local government of Makati City.

Section 170 of Republic Act No. 7160 or the Local Government Code states:

> "SEC. 170. *Collection of Local Revenues by Treasurer.* – All local taxes, fees, and charges shall be collected by the provincial, city, municipal, or barangay treasurer, or their duly authorized deputies.
>
> The provincial, city or municipal treasurer may designate the barangay treasurer as his deputy to collect local taxes, fees, or charges. In case a bond is required for the purpose, the provincial, city or municipal government shall pay the premiums thereon in addition to the premiums of bond that may be required under this Code."

It is a general rule that every action must be prosecuted or defended in the name of the real party-in-interest, who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[18]

Based on the foregoing, the city treasurer is mandated to collect taxes, and it is his obligation to perform such ministerial function which necessarily includes institution of a case to perform such duty.

The Court shall now proceed to determine whether the trial court correctly ruled that the local business taxes payable by respondent FHIC should accrue fully and solely to respondent City of Calamba pursuant to the last sentence of Section 150(a) of the Local Government Code.

Petitioner contends that when respondent FHIC applied as a new business, it registered as a specialty contractor and established its head office in the City of Makati. Allegedly, since a witness for respondent FHIC testified that its books of accounts and its administrative, executive, engineering and accounting divisions are in the office in Makati City, as well as the signing of contracts, the payroll, invoicing, collections and purchasing are performed in the said city,

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[18] *Ferrer, Jr. vs. Bautista, et al.*, G.R. No. 210551, June 30, 2105.

such office should not be considered a mere extension but a branch where vital operations of respondent FHIC are being conducted and consummated. Thus, petitioner should be entitled to the 30% allocation of the local business tax pursuant to Section 150 of the Local Government Code.

Respondents treasurer and City of Calamba counter-argue that the trial court correctly ruled that the applicable provision in the case was the last sentence of Section 150(a) of the Local Government Code. Allegedly, it is an uncontroverted fact that respondent FHIC's principal place of business is in Calamba City and that its office in Makati is not a branch office.

In the assailed Decision, the trial court based its ruling mainly on the testimony of Ms. Gemma Matamorosa that the office of respondent FHIC in Makati City was not a branch office or a sales outlet but a mere extension of the latter's principal office in Calamba City. The trial court considered Ms. Matamorosa's testimony uncontroverted; thus, it applied the provision of the last sentence of Section 150(a) of R.A. No. 7160. The trial court then declared that the business taxes of respondent FHIC accrue fully and solely to respondent City of Calamba.

On the other hand, petitioner assails in this Petition for Review the trial court's Decision, invoking that the office of respondent FHIC in Makati City is a branch office, wherein vital operations of the latter are being conducted and consummated.

Section 150 of R.A. No. 7160 provides:

> "SEC. 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.

(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.

xxx xxx xxx

(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."

At this juncture, before the Court considers which provision of Section 150 of R.A. No. 7160 is applicable, it is imperative to evaluate and settle the factual findings made by the trial court.

In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence. The extent of the relief that may be granted can only be as much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133 of the Revised Rules on Evidence.[19]

Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[20]

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[19] *Spouses Ramos vs. Obispo, et al.*, G.R. No. 193804, February 27, 2013.
[20] *Ibid.*

After a careful evaluation and scrutiny of the records, the Court finds that the principal office of respondent FHIC is in Calamba City and the office of the latter in Makati City is not a mere extension of such principal office.

Respondent FHIC stipulated that its office address stated in the Secretary's Certificate was 33 Matrinco Building, 2178 Chino Roces Avenue, Makati City, but that was not the principal office as indicated in the Securities and Exchange Commission (SEC) Registration. This fact was not admitted by respondents treasurer and City of Calamba. However, there is no indication in the RTC records whether petitioner admitted the same or not. Nevertheless, petitioner stated in the instant Petition for Review that the office of respondent FHIC in Makati City is a branch office.

In other words, petitioner admitted that the office of respondent FHIC in Makati City is a branch office and not a principal office.

In the case of *Constantino, et al. vs. Heirs of Pedro Constantino, Jr.,*[21] the Supreme Court ruled that judicial admissions are legally binding on the party making the admissions and cannot subsequently take a position contrary of or inconsistent with what was pleaded, to wit:

> "Judicial admissions are legally binding on the party making the admissions. Pre-trial admission in civil cases is one of the instances of judicial admissions explicitly provided for under Section 7, Rule 18 of the Rules of Court, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried. In *Bayas, et. al. v. Sandiganbayan, et. al.*, this Court emphasized that:
>
> > Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. **They become judicial admissions of the fact or facts stipulated.** Even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally, it must assume the consequences of the disadvantage. (Highlighting ours)
>
> Moreover, in *Alfelor v. Halasan*, this Court declared that:

[21] G.R. No. 181508, October 2, 2013.

> A party who judicially admits a fact cannot later challenge the fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded. (Citations omitted)"

Since there is no showing that the admission made by petitioner was through palpable mistake, it does not require further evidence to rule that the office in Makati City is not a principal office of respondent FHIC, in accordance with Section 4[22] of Rule 129 of the Rules of Court.

Based on the foregoing, the office of respondent FHIC in Calamba City is considered as its principal office as correctly ruled by the trial court.

Accordingly, since the warehouse of respondent FHIC is also situated in the place where its principal office is located, that is in Calamba City, Laguna, the provision of Section 150(b) of R.A. No. 7160 on sales allocation is inapplicable in this case.

Notwithstanding the foregoing, the Court shall still determine whether the ruling of the trial court is supported with sufficient evidence to declare that the office in Makati City is not a branch office.

In the assailed Decision, the trial court has ruled based on the testimony of Ms. Gemma Matamorosa that respondent FHIC's office in Makati City is neither a sales outlet nor a branch office, to wit:

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[22] SEC. 4. *Judicial admissions.* – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

> "From the testimony of plaintiff Fuji-Haya's witness, Gemma, can be gleaned the categorical averment that the principal office of plaintiff Fuji-Haya is the office in Calamba City with a warehouse which serves as a storage facility for its principal office in Calamba City where warehouse staff and some of plaintiff's engineers and electricians report. On her re-direct examination, Gemma testified that the Makati City office of plaintiff Fuji-Haya is not a Branch office but is a mere extension of the principal office in Calamba City. She based such assertion from the fact that the Makati City office is not registered as a Branch with the BIR and that such registration should show the last 3 digits as 001 or 002. And upon re-cross examination conducted by Atty. Murillo, Gemma clarified with the affirmation that their office in Makati City is neither a Branch office nor a sales outlet.
>
> From the foregoing uncontroverted testimonial evidence adduced by the plaintiff Fuji-Haya thru its sole witness Gemma, there can be no dispute that the principal office of plaintiff Fuji-Haya in Calamba City is the principal office. And as a specialty contractor principally engaged in electrical construction business-providing services like design, consultation, installation and erection of electrical systems and instrumentations-plaintiff's Makati City office is neither a sales outlet nor a Branch office but merely an extension of its principal office in Calamba City. And the Makati City office being merely an extension of plaintiff's principal office, it is definitely neither a Branch office nor a sales outlet."

The Supreme Court had the occasion to define a "branch" in the case of *National City Bank of New York vs. Posadas, Jr.,*[23] to wit:

> "xxx In a word, a 'branch' is simply an extension of the business of a national bank to foreign countries, dependencies or insular possessions of the United States."

Branch is an extension of the business of a bank or commercial establishment to a locality.[24] It is a division, office, or other unit of business located at a different location from main office or headquarters.

Applying the foregoing definition to the instant case, a branch office of respondent FHIC is an office of its business located at a

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[23] G.R. No. 41032, September 21, 1934.
[24] Philippine Law Dictionary, Third Edition, p. 113.

different location from its principal office in Calamba City. As such, the office in Makati City is a branch office.

Further, Ms. Matamorosa testified that it has another office in Makati City; that since 1998 up to 2008, the principal office of respondent FHIC was the one in Makati City and subsequently transferred the principal office from Makati City to Calamba City in 2009; that her idea of a branch office in legal term is an extension of the principal office; that the administrative, executive, engineering and accounting departments of respondent FHIC, as well as its books of accounts are in the Makati office; and that the performance of some of respondent FHIC's activities such as signing of contracts, payroll, invoicing, collections, and purchasing, are done in the Makati office, *viz*:

> "Q And you have likewise stated in your Judicial Affidavit that aside from Calamba City you have another office in Makati City?
>
> A Yes.
>
> xxx xxx xxx
>
> ATTY. AYONG:
> Q Madam witness, when did the company begin its operation here in the Philippines?
>
> THE WITNESS:
> A 1998.
>
> Q Since then your main office, principal office is?
>
> A Makati.
>
> xxx xxx xxx
>
> ATTY. ESTEMBER:
> Q And what is your idea of a legal term of a branch office?
>
> A Legal term of a branch office . . .
>
> Q Legal meaning of a branch office?

A Extension of the principal office.

Q In the Makati office what does the corporation do, what are the divisions in the Makati Office?

A Actually Makati Office, all the office employees are in Makati. The administrative, executive, engineering and accounting are in Makati, the books of accounts are also in Makati. So, the engineering office, the signing of contracts and then, the payroll, invoicing, collections and purchasing are in Makati."[25]

Moreover, the Business Permit Application Forms[26] presented by petitioner in the trial court have sufficiently established that respondent FHIC is doing business in Makati City.

Clearly, petitioner proves with preponderance of evidence that the office in Makati City is a branch office of respondent FHIC.

Accordingly, the provision of the first sentence[27] of Section 150(a) of R.A. No. 7160 shall apply in this case. In fine, all the sales made by respondent FHIC in its office in Makati City shall be recorded in such office and the tax thereon shall accrue and shall be paid to petitioner.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Decision dated August 4, 2015 and the Order dated January 4, 2016, both issued by the Regional Trial Court, Branch 34 of Calamba City, Laguna in Civil Case No. 4829-2014-C entitled *Fuji-Haya International Corporation vs. The City Treasurer and The City Government of Calamba City, Laguna, and The City Treasurer and The City Government of Makati City* are **REVERSED** and **SET ASIDE**.

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[25] Transcript of Stenographic Notes of the April 13, 2015 Hearing, pp. 6 and 13 to 15, RTC records.
[26] Exhibits "1", "3", and "5", RTC records, vol. 1, pp. 205, 207, and 209, respectively.
[27] SEC. 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. xxx.

Petitioner is likewise declared to be entitled to the local business tax which accrues from the sales made in respondent FHIC's branch office in Makati City; while respondent City of Calamba is entitled to the local business tax that accrues from the sales made in respondent FHIC's office in Calamba City and other city or municipality except Makati City.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
(with Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Second Division

THE CITY OF MAKATI.,
Petitioner,

-versus-

THE CITY TREASURER AND THE CITY GOVERNMENT OF CALAMBA AND FUJI-HAYA INTERNATIONAL CORPORATION,
Respondent.

CTA AC NO. 167
(*Civil Case No. 4829-2014-C*)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

DEC 11 2017

1:00 p.m.

x- x

Dissenting Opinion

MANAHAN, J.:

With due respect to my dear colleagues, I concur with the ruling of the Honorable Judge of the Regional Trial Court (RTC), Branch 34, Calamba City, Laguna in the civil case entitled *Fuji-Haya International Corporation v. The City Treasurer and The City Government of Calamba City, Laguna, and The City Treasurer and The City Government of Makati City,* the dispositive portion of which is quoted below, thus:

> "WHEREFORE, premises considered, the Court hereby renders judgment in favor of defendants City Treasurer of Calamba City and the City Government of Calamba City and accordingly DECLARES that the local business taxes pursuant to Section 142 of the Local Government Code shall accrue fully and solely to Calamba City, Laguna. The plaintiff Fuji-Haya International Corporation is DIRECTED to pay its full local business taxes to Calamba City, Laguna."

Section 150(a) and (b) of Republic Act No. 7160, otherwise known as the Local Government Code (LGC) of 1991, refers to the situs of taxation as to where the recording of sales should be made and the allocation of sales on principal office with factories, project offices, plants, and plantations in the pursuit of their business, to wit:

> 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.**
>
> (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.
> (*Emphasis supplied*)

Based on the provision of the abovementioned Section 150(a), the sales should be recorded in the branch or sales office where the sale or transaction was made, and, in the absence of such, the sale should be recorded in the principal office and the corresponding local business taxes (LBT) should be paid in the city or municipality having jurisdiction of said principal office.

Further, Section 150(b) provides for the allocation of sales in cases where the principal office maintains factories, *em* project offices, plants, and plantations in the pursuit of their business.

My esteemed colleagues concluded that FHIC maintains a branch office in Makati City, hence all sales made in such branch office should be subject to the local business tax of petitioner.

I beg to differ.

Under Article 243 (2) of the Implementing Rules and Regulations (IRR) of the LGC of 1991, the terms "principal office" and "branch office" are defined as follows:

> "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. In case there is a transfer or relocation of the principal office to another city or municipality, it shall be the duty of the owner, operator or manager of the business to give due notice of such transfer or relocation to the local chief executives of the cities or municipalities concerned within fifteen (15) days after such transfer or relocation is effected.
>
> (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." (*Emphasis supplied*)

Further, Article 243 (b) of the IRR of LGC of 1991 provides the allocation procedures for purposes of determining situs, thus:

> "Article 243.

> (b) Sales Allocation —
>
> (1) All sales made in a locality where there is a branch or sales office or warehouse shall be recorded in said branch or sales office or warehouse and the tax shall be payable to the city or municipality where the same is located.
>
> (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 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. LGUs where only experimental farms are located shall not entitled to the sales allocation provided in this subparagraph."

In fine, the allocation provided by the LGC of 1991 and its IRR, divides the situs into three categories, namely, (a) the principal office; (b) branch or sales office performing business operations, and (c) factory, project office, plant or plantation in case of manufacturers, assemblers, contractors, producers and exporters. Makati City alleges that FHIC operates a branch office within its jurisdiction hence allocation should be made in accordance with the relevant provisions of the LGC of 1991.

To resolve the issue in this case, it becomes imperative for this Court to determine whether a branch has indeed been established by FHIC in Makati City.

It is my humble opinion that the records and the evidence presented make it crystal clear that the office maintained in Makati City by Fuji-Haya International Corporation is not a branch office but a mere administrative office, hence should not be liable to pay local business taxes in Makati City.

Based on the testimony of FHIC Accounting Manager, Ms. Gemma C. Matamorosa, she made a distinction between the office in Calamba City and the one located in Makati City. She attested that Calamba City, is the principal office of FHIC.[1] What was affirmed by the witness was that "its administrative, executive, engineering and accounting personnel" are located in Makati City.[2] These assertions made by the Accounting Manager was affirmed by the lower court in its assailed decision and resolution.

There was no declaration nor evidence that sales are concluded in Makati City nor were sales invoices ever presented to prove the same. Hence, there was no evidence to prove that FHIC's Makati City office is operating either as a branch or sales office. On the basis of the antecedent facts, FHIC cannot even be construed as maintaining a branch in Makati City for purposes of imposition of LBT because no sales were recorded in Makati City. It is well to note that the aforequoted Section 150 of the LGC of 1991 mandates business owners to record the sales in the *branch* where sales are made in order to account for the LBT due to the local government having jurisdiction over the said branch. In this particular case, records do not show that sales were ever *recorded* in its Makati office hence there is no basis for the imposition of LBT. What was formally offered were schedules of payment showing the allocation of LBT between Calamba City[3] and Makati City[4] as presented by FHIC in RTC Civil Case No. 4829-2014-C.

Further, the Makati City office cannot also be classified either as a factory, project office, plant, or plantation subject under Section 150(b) of the 1991 LGC.

It appears from the evidence adduced by the parties that FHIC's Makati City office is an administrative office which should only pay the required mayor's permit fee and other regulatory fees.

Considering that the Makati City office does not possess the muniments of a branch, i.e. performing the same business operation as that of the principal office, then all sales are presumed to have been conducted in respondent's principal place of business which is in Calamba City. So, Makati City, cannot get a share in the sales made and recorded in the

[1] RTC Docket, Civil Case No. 4829-2014-C, Judicial Affidavit of Ms. Gemma Matamorosa, pp. 240-255.
[2] *Id.* at 244.
[3] *Id.*, Exhibit "D," Summary of Payments to City Treasury of Calamba, p. 164.
[4] *Id.*, Exhibit "E," Summary of Payments to City Treasury of Makati, p. 165.

principal office located in Calamba City as the entity located in Makati City is a mere administrative office. The 70/30 sales allocation under Section 150(b) of 1991 LGC cannot apply to the Makati City office.

Hence, contrary to the position of the majority, I humbly submit that FHIC should pay 100% of its local business taxes to the City Government of Calamba considering that FHIC has no branch or sales office in Makati City pursuant to Section 150 (a) of the LGC of 1991.

CATHERINE T. MANAHAN
Associate Justice