REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

COSMOS BOTTLING CORPORATION,
Petitioner,

C.T.A. AC No. 60
(RTC Civil Case No. 07-116881)

Members:

- versus-

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

CITY OF MANILA and LIBERTY TOLEDO (City Treasurer of Manila),
Respondent,

Promulgated:

NOV 09 2010
ABFernando 2:10 p.m.

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DECISION

COTANGCO-MANALASTAS, J.:

Before the Court is a Petition for Review[1] praying for the modification of the Decision[2] dated April 14, 2009 of Branch 49 of the Regional Trial Court of Manila (RTC) in Civil Case No. 01-116881 entitled "Cosmos Bottling Corporation vs. City of Manila and Liberty Toledo (City Treasurer of Manila)," and its Order[3] dated September 15, 2009 denying petitioner's Motion for Partial Reconsideration.

The Facts[4]

Petitioner is a corporation duly organized and existing under Philippine law and is represented in this case by its legal counsel, A.M. Sison, Jr. & Partners Law Office, 20th Floor, Security Bank Centre, 6776 Ayala Avenue, Makati City.

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[1] *Rollo*, C.T.A. AC No. 60, pp. 4-34.
[2] *Rollo*, pp. 35-38.
[3] *Rollo*, p. 39.
[4] *Rollo*, pp. 4-10.

Respondent City of Manila is a local government unit created by law and represented by the Office of the City Legal Officer, 2/F Manila City Hall Bldg., Manila. Respondent Liberty M. Toledo is the City Treasurer of the respondent City of Manila.

For the first quarter of 2007, the City of Manila assessed petitioner local business taxes and regulatory fees in the total amount of P1,226,781.05, as contained in the Statement of Account[5] dated January 15, 2007. Petitioner protested the assessment through a letter[6] dated January 18, 2007, arguing that Tax Ordinance Nos. 7988 and 8011, amending the Revenue Code of Manila (RCM), have been declared null and void. Petitioner also argued that the collection of local business tax under Section 21 of the RCM in addition to Section 14 of the same code constitutes double taxation.

Petitioner also tendered payment of only P131,994.23 which they posit is the correct computation of their local business tax for the first quarter of 2007. This payment was refused by the City Treasurer. Petitioner also received a letter[7] from the City Treasurer denying their protest, stating as follows:

> "In view thereof, this Office, much to our regret, has to deny your protest and that any action taken thereon will be sub-judice. Rest assured, however, that once we receive a final ruling on the matter, we will act in accordance therewith."

Petitioner was thus constrained to pay the assessment of P1,226,781.05 as evidenced by Official Receipt No. BAJ-005340[8] dated February 13, 2007. On March

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[5] *Rollo*, p. 51.
[6] *Rollo*, pp. 63-66.
[7] *Rollo*, pp. 69-70.
[8] *Rollo*, p. 75.

1, 2007, petitioner filed a claim for refund[9] of P1,094,786.82 with the Office of the City Treasurer raising the same grounds as discussed in their protest.

On March 8, 2007, petitioner filed its complaint with the RTC of Manila praying for the refund or issuance of a tax credit certificate in the amount of P1,094,786.82. The RTC in its decision ruled in favor of petitioner but denied the claim for refund. The dispositive portion of the assailed Decision reads:

> "WHEREFORE, premises considered, judgment is hereby rendered enjoining the respondent Treasurer of the City of Manila to refrain henceforth from imposing tax under Section 21 of the Revenue Code of Manila if it had already imposed tax on manufacturers under Section 14 of the same Code. As to the prayer in the petition for refund, the same is denied."[10]

Petitioner's motion for partial reconsideration was also denied, hence, this Petition for Review.

Issue

Petitioner raises a single issue in its petition for review:

> "Whether or not the petitioner is entitled to a refund or tax credit in the amount of P1,094,786.82, representing erroneously and illegally collected business tax and regulatory fees which petitioner paid for the first quarter of 2007."[11]

The Court's Ruling

The petition is with merit.

The collection of local taxes under Section 21 in addition to Section 14 of the same code constitutes double taxation

The existence of double taxation in the situation wherein the City Treasurer of Manila collects local business tax under both Section 21 and 14 of the RCM has been settled by the Supreme Court, as follows:

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[9] *Rollo*, p. 76-81.
[10] *Rollo*, p. 38.
[11] *Rollo*, p. 10.

> "Using the aforementioned test, the Court finds that there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business.
>
> The distinction petitioners attempt to make between the taxes under Section 14 and 21 of Tax Ordinance No. 7794 is specious. The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that when a municipality or city has already imposed a business tax on manufacturers, etc. of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, etc. to a business tax under Section 143(h) of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentage tax under the NIRC, and that are "**not otherwise specified in the preceding paragraphs**." In the same way, business such as respondent's, already subject to a local business tax under Section 14 of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], can no longer be made liable for business tax under Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC]."[12](*Emphasis in the original*)

<u>Ordinance Nos. 7988 and 8011 have been declared null and void</u>

In the case of *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila*[13], the Supreme Court has already ruled that Ordinance Nos. 7988 and 8011 are void and unenforceable for failure to comply with the publication requirements under Section 188 of the Local Government Code. The Supreme Court discussed as follows:

> "It is undisputed from the facts of the case that Tax Ordinance No. 7988 has already been declared by the DOJ Secretary, in its Order, dated 17 August 2000, as null and void and without legal effect due to respondents' failure to satisfy the requirement that said ordinance be published for three consecutive days as required by

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[12] *The City of Manila, et al., vs. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 181845, August 4, 2009.
[13] G.R. No. 156252, June 27, 2006.

> law. Neither is there quibbling on the fact that said Order of the DOJ was never appealed by the City of Manila, thus, it had attained finality after the lapse of the period to appeal.
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> Furthermore, the RTC of Manila, Branch 21, in its Decision dated 28 November 2001, reiterated the findings of the DOJ Secretary that respondents failed to follow the procedure in the enactment of tax measures as mandated by Section 188 of the Local Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. From the foregoing, it is evident that Tax Ordinance No. 7988 is null and void as said ordinance was published only for one day in the 22 May 2000 issue of the Philippine Post in contravention of the unmistakable directive of the Local Government Code of 1991.
>
> Despite the nullity of Tax Ordinance No. 7988, the court *a quo*, in the assailed Order, dated 8 May 2002, went on to dismiss the petitioner's case on the force of the enactment of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988. Significantly, said amending ordinance was likewise declared null and void by the DOJ Secretary in a Resolution, dated 5 July 2001, elucidating that "*[I]nstead of amending Ordinance No. 7988, (herein) respondent should have enacted another tax measure which strictly complies with the requirements of law, both procedural and substantive.* ***The passage of the assailed ordinance did not have the effect of curing the defects of Ordinance No. 7988 which, any way, does not legally exist.***" Said Resolution of the DOJ Secretary had, as well, attained finality xxx xxx xxx."(*Emphasis in the original*)

Thus, respondent cannot validly assess local business tax nor use the increased rates under Tax Ordinance Nos. 7988 and 8011 after the same have been declared null and void and of no legal effect.

The 2007 local business tax should be computed based on the 2006 gross receipts

The respondent used petitioner's 2005 gross sales receipts as basis for computing the local business tax due, pursuant to the provisions of Section 14 and 21 which imposes the tax on the gross sales or receipts of the "preceding calendar year".

This Court does not agree with respondent's position.

The Local Government Code provides for the accrual of tax, as follows:

> "Sec. 165. **Tax Period and Manner of Payment.** – Unless otherwise provided in this Code, the tax period of all taxes, fees and charges shall be the calendar year. Such taxes, fees and charges may be paid in quarterly installments.
>
> Sec. 166. **Accrual of Tax.** – Unless otherwise provided in this Code, all local taxes, fees, and charges shall accrue on the first (1^{st}) day of January of each year. However, new taxes, fees or charges, or changes in rates thereof, shall accrue on the first (1^{st}) day of the quarter next following the effectivity of the ordinance imposing such new levies or rates."

As provided in the LGC, local business tax accrues or accumulates "on the first day of January of each year." However, for purposes of computing the local business tax, the LGC also provides the tax base which is the "gross sales or receipts for the preceding calendar year".[14] Thus, in the instant case, petitioner's local business tax liability for calendar year 2007 accrued on January 1, 2007. And as required by the LGC, the tax shall be computed on the basis of the gross sales or receipts for year 2006, which was the preceding calendar year. Petitioner's local business tax should have been computed based on its declared 2006 gross receipts of P217,526,918.82 instead of its 2005 gross receipts.

Audited Financial Statements
are not required for the claim for refund

As a ground for denying the refund, the RTC held that:

> "Not having introduced any evidence before this court to prove positively that they had been imposed and paid the tax for which in this case they are claiming for refund to the proper governmental agency in charged (*sic*) thereof.
>
> Moreover, the claim for a revision of statement of account and refund or credit of taxes paid by the plaintiff was not supported by any Audited Financial Statements submitted with the Bureau of Internal Revenue (BIR), such is necessary for the verification, assessment and collection of the true and correct amount of local taxes due."[15]

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[14] *Republic Act No. 7160*, Section 143.
[15] *Rollo*, p. 38.

We disagree. Petitioner has sufficiently proved that it has paid the assessed taxes imposed by the respondent as evidenced by Official Receipt No. BAJ-005340 dated February 13, 2007 in the amount of P1,226,781.05. A copy of the official receipt was attached as "Annex "G" to petitioner's complaint filed with the RTC.

With respect to the requirement for the submission of the Audited Financial Statements, we agree with petitioner's contention as follows:

> "As to the claim of the court *a quo* that there was no evidence to prove positively that the illegally collected taxes which petitioner is seeking to be refunded to it, same is contradicted by the Official Receipt No. BAJ-005340 dated February 13, 2007 issued by the City of Manila, which was attached to the Complaint as Annex "G" thereof. The said document was deemed admitted by the respondents in their Answer, for their failure to specifically deny the same.
>
> As to the claim of the court *a quo* that the complaint was not supported by any Audited Financial Statements submitted with the Bureau of Internal Revenue, same is immaterial and irrelevant to the case. As held by the court *a quo* in its Orders dated September 22, 2008, October 22, 2008, and November 10, 2008, the issues raised in this case are purely legal, that is the reason why the court *a quo* did not conduct any more a trial but instead required the parties to submit their respective memoranda. Moreover, the Official Receipt issued by the City of Manila i.e. Annex "G" of the Complaint, distinctly shows the amount collected under Section 21 of the RCM. Moreover, the amount of the gross sales of petitioner which is taxable under the RCM is only that pertaining to its sales office located within the territorial jurisdiction of the City of Manila while the gross sales that was reported in the Audited Financial Statements of the petitioner which was submitted to the BIR would show the total gross sales of petitioner within the whole Philippines. Hence, said Audited Financial Statement is not relevant and material to this case."[16]

Based on the foregoing, petitioner is entitled to a refund of local business tax in the amount of P1,094,786.82, computed as follows[17]:

PARTICULARS	Amount Due
2007 Business Taxes, Permit and Service Fees and Charges:	
Gross Sales of Preceding Year (2006)	217,526,917.82

[16] *Rollo*, pp. 24-25.
[17] *Rollo*, p. 77.

Business Tax (Sec. 14)	
First P100,000,000	279,000.00
Over P100,000,000 x 10% of 1%	117,526.92
Annual Business Tax	**396,526.92**
Quarterly Business Tax	99,131.73
Garbage Service Charges	1,875.00
Business Permit Fee	3,000.00
Sanitary Inspection Fee	800.00
Occupational Tax	9,120.00
OCC/PG/HC	17,860.00
Plumbing Inspection Fee	7.50
Electrical Inspection Fee	50.00
Building Inspection Fee	50.00
Signboard Inspection Fee	40.00
Business Registration Sticker	60.00
Total Business Taxes and Fees Due	**131,994.23**
Amount paid	(1,226,781.05)
Amount to be refunded	**(1,094,786.82)**

WHEREFORE, finding merit in the instant Petition for Review, the same is hereby granted. The assailed Decision dated April 14, 2009 of the Regional Trial Court of Manila, Branch 49 in Civil Case No. 07-116881 is hereby PARTIALLY REVERSED. Accordingly, respondent is ENJOINED from imposing the business tax under Section 21 of the Revenue Code of Manila if it had already imposed tax on manufacturers under Section 14 of the same Code. Respondent, furthermore, is ORDERED to REFUND or to issue a TAX CREDIT CERTIFICATE to petitioner the amount of P1,094,786.82, representing excess business taxes collected for the first quarter of year 2007.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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.

ERNESTO D. ACOSTA
Presiding Justice