REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

PROVINCE OF CAGAYAN and ELIZABETH H. DEL ROSARIO, in her capacity as the Provincial Treasurer of the Province of Cagayan,
Petitioners,

-versus-

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
Respondent.

C.T.A. AC NO. 63
(RTC Civil Case No. 07-077)

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

SEP 15 2010
ABFernando 3:20 p.m.

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

The province has the power to impose franchise tax on businesses enjoying a franchise within its territorial jurisdiction, excluding however, the territorial limits of any city located within the province *(Section 226(a), Implementing Rules and Regulations of the Local Government Code)*.

THE CASE

This is an appeal by way of Petition for Review, under *Section 7(a)(3) of RA 9282,* filed by the Province of Cagayan and Elizabeth H.

Del Rosario in her capacity, as the Provincial Treasurer of the Province of Cagayan, (hereafter "petitioners"), from the Decision dated February 25, 2009, rendered by the Regional Trial Court of Makati City, Branch 148, in Civil Case No. 07-077, entitled "Philippine Long Distance Telephone Company, Inc. vs. Province of Cagayan and Elizabeth H. Del Rosario, in her capacity, as Provincial Treasurer of the Province of Cagayan", the dispositive portion of which reads, as follows:

> "WHEREFORE, premises considered, judgment is hereby rendered in favor of petitioner PHILIPPINE LONG DISTANCE COMPANY and against respondent PROVINCE OF CAGAYAN and ELIZABETH H. DEL ROSARIO. Accordingly, as prayed for in the Supplemental Petition:
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> 1. The execution of the Notice of Garnishment is hereby declared premature, confiscatory and without basis; and,
> 2. Petitioner is hereby entitled to a tax credit or refund to be issued by respondent PROVINCE OF CAGAYAN and ELIZABETH H. DEL ROSARIO in her capacity as Provincial Treasurer of the Province of Cagayan.
>
> No cost of suit.
>
> SO ORDERED."

and the Order dated April 24, 2009, denying respondent's "Motion For Reconsideration", the dispositive portion of which reads, as follows:

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"WHEREFORE, premises considered, the Court hereby denies the Motion For Reconsideration filed by Respondents on the Decision of this Court dated February 25, 2009 as it is hereby DENIED for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner Province of Cagayan is a public corporation, with office address at Cagayan Provincial Capitol, and was the respondent in Civil Case No. 07-077, RTC Makati City.

Petitioner Elizabeth H. Del Rosario, of legal age, with office address at Cagayan Provincial Capitol, was the co-respondent in said Civil Case No. 07-077, in her capacity as the Provincial Treasurer of the Province of Cagayan.

Respondent Philippine Long Distance Telephone Company, Inc. (hereafter "PLDT"), on the other hand, is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Ramon Cojuanco Building, Makati Ave., Makati City, and was the petitioner in Civil Case No. 07-077.

THE FACTS

The facts of the case, as culled from the records, are as follows:

On August 15, 2003 and August 26, 2003, petitioner Elizabeth Del Rosario, in her capacity as the Provincial Treasurer of the Province of Cagayan, wrote respondent PLDT that it is subject to franchise tax, pursuant to the decision of the Supreme Court in *PLDT vs. City of Davao, et al. (363 SCRA 522-534)*, in relation to *Section 137 of RA 7160 and Chapter II, Article 3 of the Provincial Tax Ordinance No. 04-92.*

On July 5, 2004, respondent PLDT paid the amount of P1,856,652.46, representing its franchise tax for the period of 1999 to 2004.

On July 8, 2004, petitioners informed respondent that despite the payment made on July 5, 2004, respondent still owes the province the amount of P1,834,781.37 from the gross receipts for 1998 to 2003, consisting of the balance for the fourth quarter of 1998, including interests and surcharges for said years.

On July 14, 2004, respondent requested that the imposition of surcharges and interests be waived considering that it has relied in good faith on the Bureau of Local Government Finance's ("BLGF") opinion that telecommunication companies are not subject to franchise tax, which request was denied by petitioners on August 18, 2004. Petitioners demanded payment of the amount of P1,858,366.68, corresponding to unpaid tax for the fourth quarter of 1998 and surcharges and interest of the gross receipts for 1998 to 2003.

On December 20, 2005, petitioners required respondent to submit documents relative to the examination of its books of accounts covering the year 2004, which respondent complied on December 29, 2005 by declaring that its gross receipts for 2004 realized within the Province of Cagayan amounted only to P4,249,906.58.

On December 29, 2005, petitioners informed respondent that a discrepancy was noted in respondent's declaration of gross receipts for 2004 realized within the Province of Cagayan in the amount of P4,249,906.58 and the gross receipts it declared for the same year in its application for business permit with the City of Tuguegarao in the amount of P58,921,046.06.

On January 3, 2006, respondent clarified that the alleged discrepancy noted by petitioners was due to the fact that the amount declared before the Province of Cagayan includes gross receipts realized in municipalities within the province only, excluding gross receipts realized within the City of Tuguegarao. This is based on respondent's belief that Cagayan, as a province, may only impose franchise tax within its territorial jurisdiction, to the exclusion of the City of Tuguegarao.

On August 8, 2006, respondent paid the franchise tax for taxable year 2005 in the amount of P18,927.77.

On September 1, 2006, respondent paid the franchise tax for taxable year 2006 in the amount of P42,016.60.

On October 4, 2006, petitioners issued a final demand, requiring respondent to pay its franchise tax due in the amount of P907,973.20, inclusive of surcharge and interests, on the gross receipts realized from the City of Tuguegarao for taxable years 2005 and 2006, based on the gross receipts declared by respondent in its application for a business permit with the City of Tuguegarao.

On December 7, 2006, respondent protested said demand letter and reiterated its previous position that it is subject to franchise tax on gross receipts only from the Province of Cagayan, but excluding its gross receipts from the City of Tuguegarao.

However, on December 28, 2006, petitioners issued a Notice of Garnishment in the amount of P2,878,678.93, which was served at Banco de Oro, Makati Branch.

On January 26, 2007, with the issuance of the Notice of Garnishment, respondent appealed the denial of its protest to the RTC of Makati, Branch 148, docketed as Civil Case No. 07-077.

On February 1, 2007, petitioners enforced the questioned Notice of Garnishment with Banco de Oro, Makati Branch, as a result of which, the amount of P2,828,678.83 was released to petitioners.

On February 9, 2007, respondent filed a Supplemental Petition with the RTC of Makati, praying that judgment be rendered ordering the execution of the Notice of Garnishment premature, confiscatory and without basis, and claiming for refund or issuance of a tax credit certificate of the amount of P2,828,678.93.

For petitioners' failure to file their answer within the reglementary period, on July 10, 2007, respondent filed a "Motion to Declare Petitioners in Default", which was granted by the RTC in an Order dated July 13, 2007. Hence, respondent was allowed to present its evidence *ex-parte.*

On February 25, 2009, the RTC of Makati City rendered the assailed decision, in the terms earlier set forth.

On March 30, 2009, petitioners filed a "Motion for Reconsideration", which was denied in an Order dated October 7, 2009.

Hence, the present appeal.

On February 25, 2009, respondent filed its "Comment (on the Petition for Review") alleging that Branch 148 of the RTC of Makati City has jurisdiction over Civil Case No. 07-077; respondent's gross receipts realized within the City of Tuguegarao are not included in the gross receipt to be declared to the Province of Cagayan for franchise tax purposes; respondent is not liable to pay surcharge and interest; the issuance and enforcement of the Notice of Garnishment was confiscatory, premature, without any legal basis and denied respondent of due process;

petitioners' right to assess respondent of franchise tax for the years 1997 to 1998 has prescribed; petitioner Elizabeth H. Del Rosario is not authorized to sign the verification page; and the Petition for Review did not comply with the Rules of Court.

On April 30, 2010, we issued a Resolution ordering the parties to file their simultaneous memoranda, within thirty (30) days from notice, afterwhich, the case shall be deemed submitted for decision.

On June 4, 2010, respondent filed its "Memorandum (For Respondent)", and on June 25, 2010, petitioner filed the "Memorandum for Petitioners". Hence, the case was deemed submitted for decision on June 29, 2010.

The issues, as raised by the petitioners, are as follows:

ISSUES

I

WHETHER OR NOT THE TRIAL COURT HAS JURISDICTION OVER THE INSTANT CASE.

II

WHETHER OR NOT RESPONDENT PLDT IS LIABLE TO PAY FRANCHISE TAX TO THE PETITIONER

PROVINCE EVEN ON GROSS RECEIPTS REALIZED WITHIN THE CITY OF TUGUEGARAO.

III

WHETHER OR NOT RESPONDENT PLDT IS SUBJECT TO SURCHARGES AND INTERESTS ON LATE PAYMENT AS A RESULT OF ITS RELIANCE TO A BLGF OPINION THAT IT IS NOT LIABLE TO FRANCHISE TAX.

IV

WHETHER OR NOT THE ISSUANCE AND ENFORCEMENT BY PETITIONERS OF THE NOTICE OF GARNISHMENT AGAINST RESPONDENT PLDT ARE VALID AND WITH LEGAL BASIS.

THE COURT'S RULING

Procedural Issues

Before resolving the substantive issues raised by petitioners, we will first address the procedural issues raised by respondent PLDT. Respondent alleges that petitioner Elizabeth H. del Rosario is not authorized to sign the verification page since as of December 3, 2009, at the time of the filing of the Petition for Review with this Court, Elizabeth del Rosario was no longer the Provincial Treasurer of petitioner Province of Cagayan, as a certain Emelia L. Iringan has been appointed as the new Provincial Treasurer last August 18, 2009.

Respondent also contends that the Petition for Review did not comply with the Rules of Court, as it was not furnished a copy of said Petition for Review. Hence, the Petition for Review should be dismissed.

We find no merit in respondent's contentions.

The basic rule is that mere allegation is not evidence, and is not equivalent to proof *(Baygar, Sr. vs. Panontongan, 581 SCRA 580)*. In the instant case, it is the bare allegation of respondent that petitioner Elizabeth H. del Rosario was no longer the Provincial Treasurer of the Province of Cagayan at the time of filing of the instant Petition for Review. Hence, we cannot rely on such bare allegations.

Even granting *arguendo* that Elizabeth H. del Rosario was no longer the Provincial Treasurer of the Province of Cagayan, still it will not warrant the dismissal of the instant petition on the ground that the verification and certification page is defective.

In the case of *Altres, et al. vs. Empleo, et al., 573 SCRA 596-598 (Altres case)*, the Supreme Court laid down the rules regarding non-compliance with the requirements on, or submission of defective verification and certification against forum shopping, to wit:

> "1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
>
> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
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> 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
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> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.'
>
> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest

> and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.
>
> 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf."

Pursuant to the aforesaid ruling, verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and said allegations have been made in good faith.

On the other hand, while as a general rule, the certification against non-forum shopping must be signed by all the plaintiffs or petitioners in a case, and the signature of only one of them is insufficient, the Supreme Court ruled that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness, as to subvert its own ultimate and legitimate objective *(Espina, el al. vs. Court of Appeals, 519 SCRA 344)*. In the Altres case, the Supreme Court ruled that when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

In the instant case, Elizabeth H. del Rosario is one of the herein petitioners, and also one of the respondents in Civil Case No. 07-077, against whom judgment was rendered by the RTC of Makati City. Elizabeth H. del Rosario, therefore, has ample knowledge to swear to the truth of the allegations in the petition; hence, her signature on the verification page substantially complied with the Rules on verification. The Supreme Court has consistently ruled that the requirement regarding verification of a pleading is formal, not jurisdictional *(Uy vs. LandBank, 336 SCRA 427)*. Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective *(LDP Marketing, Inc. vs. Monter, 480 SCRA 144)*.

Also, even assuming that Elizabeth H. del Rosario is not the incumbent Provincial Treasurer at the time the Petition for Review was filed in this Court, her signature on the certification against non-forum shopping is substantial compliance with the requirement on certification, since Elizabeth H. del Rosario invokes a common cause of action with the Province of Cagayan against respondent PLDT, pursuant to the Altres case.

Moreover, it must be stressed that while the requirement of the certification of non-forum shopping is mandatory, nonetheless the requirements must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum-shopping *(Bernardo vs. NLRC, 255 SCRA 117, Shipside Incorporated vs. Court of Appeals, 352 SCRA 347)*. Technical rules of procedure should be used to promote, not frustrate justice. While the swift unclogging of court dockets is a laudable objective, the granting of substantial justice is an even more urgent ideal *(Alternative Center for Organizational Reforms and Development, Inc. (ACORD), et al. vs. Zamora, 459 SCRA 592, Shipside Incorporated vs. Court of Appeals, supra)*.

We, likewise, find no merit in respondent PLDT's contention that the instant petition should be dismissed for failure to comply with the Rules of Court, as respondent was not furnished a copy of the petition.

In the case of *Go vs. Chaves, G.R. No. 182341, April 23, 2010*, the Supreme Court ruled that a litigant's failure to furnish his opponent with a copy of his appeal brief does not suffice to warrant dismissal of the appeal. In such instance, all that is needed is for the court to order the litigant to furnish the opponent with a copy of his brief. Likewise, in the case of *EDI-Staffbuilders International, Inc. vs. NLRC, 537 SCRA 425*, the Supreme Court held that "in a catena of cases, it was ruled that failure of appellant to furnish a copy of the appeal to the adverse party is not fatal to the appeal". It is treated only as a formal lapse, an excusable neglect, and hence, not a jurisdictional defect *(EDI-Staffbuilders International, Inc. vs. NLRC, supra, 426)*.

Pursuant to the above rulings of the Supreme Court, petitioner's failure to furnish respondent a copy of the petition cannot, likewise, be considered a ground for the dismissal of the instant petition.

Also, a perusal of respondent's Comment (on Petitioners' Petition for Review) shows that respondent had exhaustively protested the allegations contained in the petition. Hence, the purpose of the need to furnish the opposing party a copy of the petition filed in court has been substantially complied with. Settled is the rule that every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities *(Tan Boon Bee & Co., Inc. vs. Jarencio, 163 SCRA 213)*. Thus, *dismissal of appeals purely on technical grounds is frowned upon where* the policy of the court is to encourage hearings of appeal on their merits and the rules of procedure ought not to be applied in very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice *(Aguam vs. Court of Appeals, 332 SCRA 790)*. It is a far better and more prudent course of action to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice *(Tan vs. Ballena, 557 SCRA 248)*.

Substantive Issues

We now proceed to the substantive issues raised by petitioners.

The petition is partly meritorious.

The RTC has Jurisdiction Over Respondent PLDT's Petition

Petitioners' allegation that the RTC has no jurisdiction over respondent's Petition since under *Section 196 of the Local Government*

Code, a written claim for refund or credit is a condition *sine qua non* before the trial court can assume jurisdiction over the petition of respondent, and respondent failed to file a written claim for refund or credit, is bereft of merit.

Records show that respondent filed Civil Case No. 07-077 before the RTC of Makati City, when petitioners denied respondent's protest dated November 7, 2006 on petitioners' letter dated October 4, 2006 demanding payment of franchise tax due from collections realized for 2004 and 2005, through the issuance of a Notice of Garnishments to RCBC, Tuguegarao Branch and BDO, Makati Branch.

Attached to said Notice of Garnishment is the Computation of Franchise Tax Due, as of November 30, 2006 in the total amount of P2,828,678.93.

When a taxpayer files a protest or a request for reconsideration of the assessment, the issuance of a warrant of distraint and levy is 'proof of the finality of the assessment' and renders hopeless a request for reconsideration, being 'tantamount to an outright denial thereof and makes said request deemed rejected *(Commissioner of Internal Revenue vs.*

Algue, Inc., 158 SCRA 12). Moreover, jurisprudence dictates that a final demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment *(CIR vs. Isabela Cultural Corporation, 361 SCRA 77).* Hence, in this case, the issuance of the Notice of Garnishment is deemed a denial of respondent's protest.

Respondent's protest having been denied through the issuance of the Notice of Garnishment dated December 20, 2006, the remedy of respondent is to appeal the denial of the protest, within thirty days with the court of competent jurisdiction, as provided in *Section 195 of the Local Government Code ("LGC"),* to wit:

> "SEC. 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 executor. 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-day period prescribed herein within which to appeal with the court of competent jurisdiction; otherwise the assessment becomes conclusive and unappealable".

The court of competent jurisdiction referred to above is the RTC, as held by the Supreme Court in the case of *Yamane vs. Lepanto Condominium Corporation, 474 SCRA 267.* Accordingly, respondent PLDT correctly filed Civil Case No. 07-077, with the RTC of Makati City, the denial of its protest by petitioner Elizabeth H. del Rosario, pursuant to the above-quoted *Section 195 of the LGC.*

It must be stressed that respondent PLDT's prayer for the refund or issuance of a tax credit certificate in the amount of P2,828,678.93 in its Supplemental Petition was the consequence of the supervening event that transpired after respondent filed the aforesaid petition on January 26, 2007. Records show that on February 1, 2007, petitioners demanded execution of the Notice of Garnishment dated December 28, 2006 at respondent's bank account at the Banco de Oro, Makati Branch, to which said bank complied.

Since the Petition for Cancellation of the Notice of Garnishment and Annulment of the Deficiency Franchise Tax Assessment has already been filed with the RTC of Makati City, pursuant to *Section 195 of the LGC*, and respondent's prayer for refund or issuance of a tax credit certificate was the consequence of the execution of the Notice of Garnishment, recourse to *Section 196 of the LGC* is no longer necessary.

In the case of *Vda. De San Agustin vs. Commissioner of Internal Revenue, 364 SCRA 808*, the Supreme Court ruled that to require the taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Commissioner would certainly disallow the claim for refund in the same way, as he disallowed the protest against the assessment. The law should not be interpreted as to result in absurdities. In the same vein, to require the taxpayer to file the claim for refund under *Section 196 of the LGC*, as a condition precedent to claim the refund or issuance of a tax credit certificate of the amount of P2,828,678.93 garnished by petitioners, would in effect require it to go through a useless and needless ceremony that would only delay the disposition of the case,

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as the petitioners would certainly disallow the claim for refund, in the same way as they disallowed the protest against the assessment.

Clearly, the RTC of Makati City has jurisdiction over the petition of respondent, pursuant to *Section 195 of the LGC.*

<u>On Gross Receipts Realized Within the City of Tuguegarao</u>

As regards the second issue, whether or not respondent is liable to pay franchise tax to petitioner Province of Cagayan, even on gross receipts realized within the City of Tuguegarao, *Section 137 of the LGC* provides:

> "SEC. 137. Franchise Tax. – Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.
>
> xxx xxx"

Corollary thereto, *Article 226(a) of the Implementing Rules and Regulations of the LGC,* provides:

> "ART. 226. Franchise Tax. (a) Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on business enjoying a franchise,

> at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within its territorial jurisdiction, excluding the territorial limits of any city located in the province."

Pursuant to the above provisions of the *LGC* and its *Implementing Rules and Regulations*, the province has the power to impose a tax on businesses enjoying a franchise within its territorial jurisdiction, excluding however, the territorial limits of any city located within the province.

The *Implementing Rules and Regulations* exclude the coverage from franchise tax of the province those covered within the territorial jurisdiction of cities located within the province, by express mandate of *Section 151 of the LGC*, the city may levy taxes, fees, and charges, which the province or municipality may impose.

Records show that on November 27, 2003, *City Ordinance No. 13-2003*, entitled: "An Ordinance Amending Ordinance No. 19-2002 to Include Tax on Printing and Publication, Franchise Tax, Amusement Tax on Admission and Professional Tax" was enacted and approved by the City Mayor.

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On November 28, 2003, *City Ordinance No. 13-2003* was submitted to the Sangguniaang Panlalawigan for review. However, pursuant to the Letter dated February 18, 2005 of City Councilor Supremo Bautista, no action was taken by the Sangguniang Panlalawigan on said ordinance, 99 days from the time it was submitted. *Section 56(d) of the LGC* provides that if no action has been taken by the Sangguniang Panlalawigan, within thirty (30) days after submission of such an ordinance or resolution, the same shall be presumed consistent with law and therefore valid. Accordingly, starting January 1, 2004, the City of Tuguegarao is also empowered to impose franchise tax on businesses enjoying franchise within its territorial jurisdiction.

Considering that administrative rules and regulations issued to implement a law have the force of law *(Balbuna vs. Secretary of Education, G.R. No. L-14283, November 29, 1960),* and considering further that there is a City Ordinance empowering the City of Tuguegarao to impose franchise tax on businesses located within the territorial jurisdiction of the City, we rule that respondent PLDT should not be held liable to pay franchise tax to petitioner Province of Cagayan on gross receipts realized within the

City of Tuguegarao, pursuant to *Section 226 of the Implementing Rules and Regulations of the LGC*. Accordingly, respondent PLDT should not be held liable by petitioner Province of Cagayan of the franchise tax corresponding to the gross receipts realized for 2004 and 2005 (taxable years 2005 to 2006).

On Surcharge and Interests

In a Letter dated August 18, 2004 of petitioners, respondent PLDT was assessed the amount of P1,858,366.68, corresponding to the basic franchise tax from gross receipts for 1998 (taxable year 1999), of P51,997.54, and surcharge and interests for franchise tax from gross receipts for 1998 to 2003 (taxable years 1999 to 2004) of P1,806,369.14, since respondent PLDT belatedly paid the amount of P1,865,652.46 on July 5, 2004, corresponding to basic franchise tax for taxable years 1999 to 2004 from gross receipts realized on the fourth quarter of 1998 to taxable year 2003 only. Respondent alleges that it relied in good faith on the opinion of the Bureau of Local Government Finance that it is exempt from franchise tax; hence respondent claims that it is not liable of surcharge and interests.

Respondent's contention is devoid of merit.

In the recent case of *City of Iloilo vs. Smart Communications, Inc., 580 SCRA 342-343*, where Smart Communications was assessed of deficiency local franchise tax, plus surcharges and interest for taxable years 1997 to 2000 on February 12, 2002, the Supreme Court ruled, as follows:

> "Surcharge and Interests
>
> Since SMART cannot validly claim any tax exemption based either on Section 9 of its franchise or Section 23 of the Public Telecoms Act, it follows that petitioner can impose and collect the local franchise and business taxes amounting to ₱764,545.29 it assessed against SMART. **Aside from these, SMART should also be made to pay surcharge and interests on the taxes due.**
>
> The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax laws are sufficient justification to delete the imposition of surcharges and interest. **In refuting liability for the local franchise and business taxes, we do not believe SMART relied in good faith in the findings and conclusion of the Bureau of Local Government and Finance (BLGF).**
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> In a letter dated August 13, 1998, the BLGF opined that SMART should be considered exempt from the franchise tax that the local government may impose under Section 137 of the LGC. SMART, relying on the letter-opinion of the BLGF, invoked the same in the administrative

> protest it filed against petitioner on February 15, 2002, as well as in the petition for prohibition that it filed before the RTC of Iloilo on April 30, 2002. **However, in the 2001 case of PLDT v. City of Davao, we declared that we do not find BLGF's interpretation of local tax laws to be authoritative and persuasive. The BLGF's function is merely to provide consultative services and technical assistance to the local governments and the general public on local taxation, real property assessment, and other related matters. Unlike the Commissioner of Internal Revenue who has been given the express power to interpret the Tax Code and other national tax laws, no such power is given to the BLGF. SMART's dependence on BLGF's interpretation was thus misplaced.**" *(emphasis supplied)*

Pursuant to the aforesaid ruling, SMART's reliance on BLGF's interpretation is misplaced since in the 2001 case of PLDT vs. City of Davao *(363 SCRA 522-534),* the Supreme Court ruled that BLGF's interpretation of local tax laws is not authoritative and persuasive. The BLGF's function, being merely to provide consultative services and technical assistance to the local governments and the general public on local taxation, real property assessment, and other related matters, BLGF is not given the express power to interpret the Tax Code and other national laws, unlike the Commissioner of Internal Revenue.

Since in the instant case, on August 15, 2009, respondent was informed by petitioner Province of Cagayan, thru petitioner Elizabeth H.

Del Rosario on August 15, 2003 that respondent is not exempt from the payment of franchise tax, pursuant to the ruling of the Supreme Court in *PLDT vs. City of Davao*, supra, we rule that respondent PLDT's reliance on the BLGF ruling is also misplaced.

Accordingly, respondent PLDT is not exempt from the payment of surcharge and interests corresponding to 1999 to 2004 franchise tax of respondent's gross receipts from taxable years 1998 to 2003, as respondent paid its franchise tax liabilities for taxable years 1999 to 2004 only on July 5, 2004.

The *LGC* provides that all local taxes, fees, and charges shall accrue on the first (1st) day of January of each year *(Section 166 thereof)*, and the same shall be paid within the first twenty (20) days of January or of each subsequent quarter, as the case may be *(Section 167 thereof)*. In case the local tax is not paid on time, the *LGC* also allows the imposition of surcharge, not exceeding twenty five percent (25%) of the amount of taxes, fees or charges, and an interest at the rate, not exceeding two percent (2%) per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid, but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty six (36) months *(Section 168 thereof)*.

In the instant case, since respondent PLDT did not pay its franchise tax from its gross receipts for the fourth quarter of 1998 up to the fourth quarter of 2003 (taxable years 1999 to 2004), within the period prescribed in the *LGC*, it was assessed by petitioners of 25% surcharge and 2% interest per month, in the total amount of P1,806,369.14, computed as follows:

	Unpaid Amount for the 4th Q of CY 1998	**CY 1998 to CY 2000**	**CY 2001**	**CY 2002**	**CY 2003**	**Total**
Tax Due	P51,997.54	P922,239.56	P315,225.82	P319,701.79	P308,485.29	P1,917,650.00
Add:Surcharge 25%	12,999.38	230,559.89	78,806.45	79,925.45	77,121.32	479,412.49
Interest of 2% per month of delay but not to exceed 72%	46,797.78	830,015.60	244,300.00	151,858.35	53,984.92	1,326,956.65
Total Surcharge and interests	**P59,797.16**	**P1,060,575.49**	**P323,106.45**	**P231,783.80**	**P131,106.24**	**P1,806,369.14**

Hence, we rule that respondent is liable for said surcharge and interests.

However, considering that the amount of P2,828,678.93 had already been garnished from respondent, which is more than its total tax liabilities, respondent is entitled to a refund or issuance of a tax credit certificate in the amount of P1,022,309.79 (P2,828,678.93 - P1,806,369.14).

WHEREFORE, premises considered, the Petition For Review is **PARTLY GRANTED**. The Decision dated February 25, 2009 and the Order dated April 24, 2009, of the RTC of Makati City, Branch 148, in Civil Case No. 07-077 is hereby **AFFIRMED with MODIFICATION** that respondent PLDT is hereby held liable for surcharge and interest for taxable years 1999 to 2004. Accordingly, petitioner Province of Cagayan is hereby ordered to refund or to issue a tax credit certificate to respondent PLDT the amount of ONE MILLION TWENTY TWO THOUSAND THREE HUNDRED NINE AND 79/100 PESOS (P1,022,309.79).

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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 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.

ERNESTO D. ACOSTA
Presiding Justice