REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE CITY GOVERNMENT OF CALAMBA,
Petitioner,

-versus-

THE CITY OF MAKATI AND FUJI-HAYA INTERNATIONAL CORPORATION,
Respondent.

CTA EB NO. 1829
(CTA AC NO. 167)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ*

Promulgated:

JAN 02 2020 2:46 p.m.

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner[1] City Government of Calamba under Section 2(a)[2], Rule 4 of the Revised Rules of the Court of Tax Appeals, seeking nullification of the Decision[2] dated December 11, 2017 (Assailed Decision), the dispositive portion thereof reads:

> "**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*

[1] Respondent in CTA AC NO. 167.
[2] Rollo, CTA EB No. 1829, pp. 22-36.

of Calamba City, Laguna, and the City Treasurer and the City Government of Makati City are **REVERSED** and **SET ASIDE**.

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."

and the Resolution[3] dated March 2, 2018 of the Second Division of the Court (Court in Division) denying the Motion for Reconsideration filed by the City Treasurer and the City Government of Calamba City, the dispositive portion thereof reads:

"**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED."

PARTIES

Petitioner 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 the City Treasurer of Calamba City 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.

Respondent 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.

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 address at 33 Matrinco Building, 2178 Chino Roces Avenue, Makati City and at Silangan Industrial Park, Canlubang, Calamba City, Laguna.

[3] Rollo, pp. 44-47.

FACTS

On September 11, 2014, FHIC filed a case before the Regional Trial Court of Calamba City (RTC Calamba) for Interpleader against the City Treasurer of and the City Government of Calamba City, Laguna and the City Treasurer of and the City Government of Makati City.

On September 22, 2014, Branch 34 of RTC Calamba issued an Order directing the City Treasurer of and the City Government of Calamba City, Laguna and the City Treasurer of and the City Government of Makati City to interplead and litigate their respective claims against FHIC, which was directed to deposit with the Office of the Clerk of Court (OCC) the business taxes as soon as they become due during the course of the proceedings to avoid possible assessments of applicable interest and surcharges.

FHIC complied with the RTC Calamba's Order and deposited the amount of P202,294.01 with the OCC for its business taxes for the last quarter of 2014.

The Summons together with the Complaint were served upon the City Treasurer of and the City Government of Calamba City, Laguna and the City Treasurer of and the City Government of Makati City, which they filed their respective Answers.

During the Pre-Trial Conference, the parties entered into the following stipulations through their respective counsels[4] and raised the following issues:

"II. STIPULATIONS 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 while 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;

[4] Atty. Emmanuel E. Murillo for the City Government of Calamba and the City Treasurer of Calamba; Atty. Philip Louie H. Estember for FHIC; Atty. Juris Iris M. Ayong for the City Government of Makati and the City Treasurer of Makati.

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 the 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 but Atty. Murillo admitted only the due existence of said business permit;

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; and

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

IV. FACTUAL AND/OR LEGAL ISSUES FOR RESOLUTION

1. As to who among the defendants is entitled to the local business tax allocation of 70% or 30%, respectively;

2. Whether or not the City Government of Makati City can collect from plaintiff the thirty percent (30%) allocation of the local business tax pursuant to Section 150 of the Local Government Code, considering that plaintiff itself has declared that its principal office is located in Makati City and that the City Government of Makati City has issued a business permit in favor of plaintiff based on its own declaration that it is a "Specialty Contractor" under the taxability of "services;"

3. Whether or not plaintiff corporation availed of the proper remedy available under the law;

4. Whether or not the assessment in 2014 of the City Government of Calamba City has become final and executory;

5. Whether or not the claim of the City Government of Calamba for 100% payment of business tax from the plaintiff is valid;

6. Whether or not the money deposited to this Honorable Court for the payment of business tax by the plaintiff should be released to the City Government of Calamba City; and

7. Whether or not the City Government of Calamba City is entitled to the claim for damages from the plaintiff."[5]

On August 4, 2015, Branch 34 of RTC Calamba rendered a Decision, the dispositive portion thereof reads as follows:

> "**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 143 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.
>
> **SO ORDERED**."

On January 4, 2016, Branch 34 of RTC Calamba issued a Resolution denying the City of Makati's Motion for Reconsideration.

On February 2, 2016, the City of Makati filed a Petition for Review before the Court in Division assailing the Decision and Order of the Regional Trial Court.

The Court in Division rendered the assailed Decision on December 11, 2017, while the assailed Resolution on the parties' Motions for Reconsideration was issued on March 2, 2018.

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[5] Decision, Civil Case No. 4829-2014-C, pp. 2-4.

Aggrieved, the City of Calamba filed this Petition for Review[6] before the Court *En Banc* on April 13, 2018.

In the Resolution[7] dated April 24, 2018, respondents City of Makati and FHIC were directed by the Court *En Banc* to file their respective comments in this case.

On June 14, 2018, respondent City of Makati filed its "Comment *(Re: Petition for Review dated 11 April 2018)*."[8]

In the Resolution dated July 9, 2018,[9] the Court gave due course to the Petition for Review and ordered the parties to file their respective Memoranda.

On September 18, 2018, respondent FHIC filed a "Manifestation"[10] stating that it will not file a Memorandum.

In the Minute Resolution of the Court *En Banc*[11] dated September 24, 2018, the Court noted the FHIC's "Manifestation."

On September 28, 2018, respondent City of Makati filed a "Memorandum."

On August 28, 2018, petitioner City of Calamba filed its "Memorandum."[12]

In the Resolution dated January 11, 2019, the Court *En Banc* deemed the instant case submitted for decision.[13]

ASSIGNMENT OF ERRORS

Petitioner claims that the Court in Division committed the following errors:

1. The Court in Division seriously erred in giving due course to the Petition for Review of Makati notwithstanding that Amalia C. Santos, the Officer-in-Charge of the City Treasurer's Office of Makati was not authorized by the Local Government of Makati to sign the

[6] Rollo, CTA EB No. 1829, pp. 1-19, with Annexes.
[7] Ibid., pp. 49-50.
[8] Ibid., pp. 55-63.
[9] Ibid pp. 65-69.
[10] Ibid. p. 67.
[11] Ibid., p. 70.
[12] Ibid., pp. 83-100.
[13] Ibid., pp. 107-108.

Petition for Review for and in behalf of the said Local Government; and

2. The Court in Division seriously erred in finding that the Makati Office of FHIC is a branch office warranting application of the Situs of Taxation under Section 150 (b) of the Local Government Code.

RULING OF THE COURT

Timeliness of the Petition

On December 20, 2017, petitioner City of Calamba received a copy of the assailed Decision. On January 4, 2018, the City of Calamba filed a Motion for Reconsideration of the said Decision. On March 2, 2018, the Court in Division issued the assailed Resolution denying the City of Calamba's motion. Said Resolution was received by the City of Calamba on April 2, 2018.

From receipt of the said Resolution, the City of Calamba has until April 17, 2018 within which to file the Petition for Review. On April 13, 2018, the City of Calamba filed the instant Petition for Review. Hence, this Petition for Review was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

After a careful review of petitioner City of Calamba's arguments and the records of the case, the Court *En Banc* finds no reason to reverse the assailed Decision and Resolution. The records of the case show that the Court in Division had fully and exhaustively resolved the issues raised in the Petition for Review. The Court *En Banc* notes that the arguments presented herein are basically the same arguments offered by the City of Calamba in its Motion for Reconsideration before the Court in Division. Nonetheless, the Court *En Banc* shall discuss the issues raised by the parties to stress the salient points in the assailed Decision and Resolution.

The City Treasurer of Makati has the authority to file the Petition for Review before the Court in Division

Petitioner City of Calamba insists that the City Treasurer of Makati has no personality to file the case since the right to sue for and in behalf of the local government belongs to the City Mayor.

This argument is without merit. The City Treasurer of Makati has personality to represent the City of Makati in cases for collection of Taxes based on Sections 170 and 183 of Republic Act No. 7160 or the Local Government Code, which provides:

> "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." *(Emphasis supplied)*
>
> *"SEC. 183. Collection of Delinquent Taxes, Fees, Charges or other Revenues through Judicial Action.* – The local government unit concerned may enforce the collection of delinquent taxes, fees, charges or other revenues by civil action in any court of competent jurisdiction. ***The civil action shall be filed by the local treasurer*** within the period prescribed in Section 194 of this Code." *(Emphasis supplied)*

FHIC's office in Makati is a branch office

Section 150 of the Local Government Code 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, ***other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon, shall accrue and shall be paid to the municipality where such branch or sales outlet is located.*** In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.
>
> (b) The following sales allocation shall apply to manufacturers, assemblers, contractors, producers, and exporters with factories, project offices, plants, and plantations in the pursuit of their business;

(1) Thirty percent (30%) of all sales recorded in the principal office shall be taxable by the city or municipality where the principal office is located; and

(2) Seventy percent (70%) of all sales recorded in the principal office shall be taxable by the city or municipality where the factory, project office, plant, or plantation is located.

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

(1) Sixty (60%) to the city of municipality where the factory is located; and

(2) Forty percent (40%) to the city or municipality where the plantation is located.

(d) In case where a manufacturer, assembler, producer, exporter or contractor has two (2) or more factories, project offices, plants, or plantations located in different localities, the seventy percent (70%) mentioned in subparagraph (b) of subsection (2) above shall be prorated among the localities where the factories, project offices, plants, and plantations are located in proportion to their respective volume or production during the period for which the tax is due.

(e) The foregoing sales allocation shall be applied irrespective of whether or not sales are made in the locality where the factory, project office, plant or plan is located." *(Emphasis supplied)*

Petitioner City of Calamba asserts that FHIC's office in Makati is not a branch office and insists that the last sentence of Section 150 (a) of the Local Government Code above-cited is applicable in this case.

Again, petitioner's argument is without merit.

A perusal of the record shows that there are transactions in the office in Makati which would confirm that FHIC is doing business in Makati. The administrative, executive, engineering and accounting office of FHIC are in Makati City as per admission made by FHIC's witness, Ms. Gemma Matamorosa.

As found by the Court in Division:

"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 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.'

> Moreover, the Business Permit Application Forms 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 is a branch office of respondent FHIC."[14]

Sec. 4, Rule 129 of the Revised Rules of Court provides:

> "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."

A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding.[15] Hence, the declaration made by FHIC's witness during the hearing that sales transactions were involved in their office in Makati is considered an admission.

The Court *En Banc* reiterates with approval the discussion of the Court in Division in the assailed Decision[16] that FHIC's office in Makati is a branch office, viz:

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

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[14] Decision, pp. 12-13.
[15] *Spouses Jose N. Binaro and Preciosa Binarao vs. Plus Builders, Inc.* G.R No. 154430, June 16, 2006, citing Regalado, Remedial Law Compedium, Volume Two, Seventh Revised Edition at 650.
[16] Decision, pp. 11-13. Citations omitted.

> Applying the foregoing definition to the instant case, a branch office of respondent FHIC is an office of its business located at a different location from its principal office in Calamba City. As such, the office in Makati is a branch office.
>
> xxx xxx xxx
>
> Accordingly, the provision of the first sentence 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 shall be recorded in such office and the tax thereon shall accrue and shall be paid to petitioner."

In view of the foregoing discussions, the Court *En Banc* finds no reversible error to disturb the assailed Decision and Resolution of the Court in Division.

The findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[17]

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed Decision dated December 11, 2017 and the assailed Resolution dated March 2, 2018 are **AFFIRMED**.

SO ORDERED.

Ma. Belen S- L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[17] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G. R. No. 188016, January 14, 2015, citing Sea-Land Service, Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

With due respect, I maintain my DO dtd. Dec. 11, 2017.
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice