REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

THE CITY GOVERNMENT OF MAKATI AND THE CITY TREASURER OF MAKATI CITY,
Petitioners,

CTA AC NO. 218

-versus-

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

EASTBAY RESORTS, INC.,
Respondent.

Promulgated:
OCT 12 2021
2:10 p.m.

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DECISION

RINGPIS-LIBAN, J.

THE CASE

Before this Court is a *Petition for Review* filed on April 1, 2019 by petitioners The City of Government of Makati and The City Treasurer of Makati City,[1] praying for the reversal of the Decision dated November 28, 2018,[2] and the Order dated January 29, 2019,[3] both rendered by the Regional Trial Court (RTC) – Branch 58, Makati City, in Civil Case No. 12-1142, entitled *"Eastbay Resorts, Inc. vs. The City Government of Makati City and Nelia A. Barlis, in her capacity as City Treasurer"*, the dispositive portions of which respectively read as follows:

Decision dated November 28, 2018:

> "**WHEREFORE,** premises, the Court, finding preponderance of evidence, sustains and grants the above-entitled petition and **RENDERS** Decision in favor of petitioner Eastbay Resorts, Inc., and **ORDERS** as follows:

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[1] Docket, pp. 8 to 22.
[2] Docket, pp. 24 to 49.
[3] Docket, p. 50.

1. **DECLARES** the deficiency assessment for local business tax, inclusive of surcharge and interest in the aggregate amount of P479,309.73 issued by respondents The City Government of Makati and Nelia A. Barlis in her capacity as City Treasurer, to the Makati Office of petitioner Eastbay Resorts, Inc., as invalid and/or null and void for lack of factual and legal bases;

2. **CANCELS** and **WITHDRAWS** the deficiency assessment for local business tax, inclusive of surcharge and interest, in the aggregate amount of P479,309.43 issued by respondents The City Government of Makati and Nelia A. Barlis in her capacity as City Treasurer, to the Makati Office of petitioner Eastbay Resorts, Inc.

3. **DECLARES** the Makati Office of petitioner Eastbay Resorts, Inc., as a mere administrative office, not subject to local business taxes, where no commercial activity or no revenue or profit is generated by said office; and

4. **DECLARES** the Makati Office of petitioner Eastbay Resorts, Inc. not subject to local business tax being merely an administrative office where no commercial activity or nor revenue or profit is being generated.

SO ORDERED."

<u>Order dated January 29, 2019</u>:

"**WHEREFORE**, premises considered, the Court **DENIES** respondents' Motion for Reconsideration (of the Decision dated 28 November 2018) for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner City of Makati is a local government unit chartered into existence under Republic Act (RA) No. 7854, *"An Act Converting the Municipality of Makati Into a Highly Urbanized City to be Known as the City of Makati"*, with address at Makati City Hall, JP Rizal Street, Makati City;[4] while petitioner City Treasurer is the incumbent City Treasurer of petitioner City.[5]

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[4] Par. 2, *Petition (Pursuant to Section 195 of the Local Government Code of 1991)* vis-à-vis Par. 1, *Answer*, RTC Docket (Civil Case No. 12-1142) – Vol. 1, pp. 1 and 54, respectively.

[5] Par. 3, *Petition (Pursuant to Section 195 of the Local Government Code of 1991)* vis-à-vis Par. 1, *Answer*, RTC Docket (Civil Case No. 12-1142) – Vol. 1, pp. 2 and 54, respectively.

Respondent Eastbay Resorts, Inc. is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at Brgy. Bilibiran, Binangonan, Rizal.[6] It is registered with the Philippine Economic Zone Authority (PEZA) as a Tourism Economic Zone Enterprise, with PEZA Certificate of Registration No. 05-01-T dated March 30, 2005.[7]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

The then City Treasurer Nelia A. Barlis issued the *Letter of Authority* (LA# 2012-0036) dated February 9, 2012 against respondent at its address at 18/F Salcedo Towers, 169 H.V. Dela Costa St., Barangay Bel-Air Village, Makati City,[8] authorizing Revenue Examiner Sulpicio B. Belchez, Jr., to examine the books of accounts and other financial records of respondent's business, and to verify, assess and collect the true and correct amount of tax/taxes, fees and charges due from respondent during the period from 2009 to December 31, 2011.

Thereafter, the said City Treasurer issued the *Notice of Assessment* dated June 21, 2012 against respondent still at its address in Makati City,[9] assessing the latter for deficiency taxes, fees and charges, in the amount of ₱479,309.73, covering taxable period from 2009 to 2011. The same was received by respondent on June 25, 2012.[10]

On August 24, 2012, respondent filed its protest letter dated August 23, 2012,[11] arguing that it has no branch or sales office in Makati City, but has its principal office duly registered with Binangonan, Rizal, where it pays local business taxes; and that its office in Makati is not operating as a hotel or restaurant, but merely an administrative office and not an extension of respondent's hotel operations.

PROCEEDINGS BEFORE RTC-BRANCH 58

Alleging inaction on the part of petitioners, respondent filed on November 26, 2012, its *Petition (Pursuant to Section 195 of the Local Government Code of 1991)*, with the RTC – Makati City. The case was docketed as Civil Case No. 12-1142, and was initially raffled to RTC – Branch 147.[12]

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[6] Exhibits "A" and "A-1", RTC Docket (Civil Case No. 12-1142) – Vol. 4, pp. 18 to 41.
[7] Exhibits "B" and "B-1", RTC Docket (Civil Case No. 12-1142) – Vol. 4, pp. 42 to 41.
[8] Exhibit "P", RTC Docket (Civil Case No. 12-1142) – Vol. 4, p. 227.
[9] Exhibits "C" and "C-1", RTC Docket (Civil Case No. 12-1142) – Vol. 4, pp. 56 to 57; and Exhibits "1" and "1-A", RTC Docket (Civil Case No. 12-1142) – Vol. 5, pp. 43 to 45.
[10] *Id.*
[11] Exhibit "D", RTC Docket (Civil Case No. 12-1142) – Vol. 4, pp. 58 to 62.
[12] RTC Docket (Civil Case No. 12-1142) – Vol. 1, pp. 1 to 20.

Petitioners filed their *Answer* on January 17, 2013.[13] Respondent filed its *Reply [To Respondent's Answer dated January 17, 2013]* on February 4, 2013.[14]

Petitioners' *Pre-Trial Brief* was filed on March 25, 2013;[15] while respondent filed its *Pre-Trial Brief* on March 27, 2013.[16]

On June 6, 2013, the Court issued an Order, wherein the proceedings were suspended for thirty (30) days, and the case was referred to the Philippine Mediation Center.[17] However, the parties were not able to settle.[18] Thus, the case was re-raffled to RTC – Branch 58, and was set to trial.[19]

Trial then ensued, and both parties presented their respective documentary and testimonial evidence.

Respondent filed its *Memorandum* on April 10, 2018.[20] Petitioners, however, failed to submit their memorandum.[21]

RTC-Branch 58 promulgated the assailed Decision on November 28, 2018.[22]

On December 20, 2018, petitioners filed a *Motion for Reconsideration (of the Decision dated 28 November 2018)*,[23] to which respondent filed its *Opposition and Comment (To Respondent's Motion for Reconsideration)* on January 16, 2019.[24]

RTC-Branch 58 issued the assailed Order, denying petitioners' *Motion for Reconsideration* on January 29, 2019.[25]

PROCEEDINGS BEFORE THIS COURT

On April 1, 2019, petitioners filed the instant *Petition for Review* with this Court.[26]

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[13] RTC Docket (Civil Case No. 12-1142) – Vol. 1, pp. 54 to 60.
[14] RTC Docket (Civil Case No. 12-1142) – Vol. 1, pp. 69 to 79.
[15] RTC Docket (Civil Case No. 12-1142) – Vol. 1, pp. 80 to 87.
[16] RTC Docket (Civil Case No. 12-1142) – Vol. 1, pp. 106 to 117.
[17] Order dated June 6, 2013, RTC Docket (Civil Case No. 12-1142) – Vol. 2, p. 232.
[18] Order Judicial Dispute Resolution dated October 8, 2014, RTC Docket (Civil Case No. 12-1142)- Vol. 2, p. 274.
[19] Order dated October 28, 2014, RTC Docket (Civil Case No. 12-1142) – Vol. 2, p. 281.
[20] RTC Docket (Civil Case No. 12-1142) – Vol. 5, pp. 73 to 81.
[21] *Order* dated September 13, 2018, RTC Docket (Civil Case No. 12-1142) – Vol. 5, p. 123.
[22] RTC Docket (Civil Case No. 12-1142) – Vol. 5, pp. 124 to 149; Docket, pp. 24 to 49.
[23] RTC Docket (Civil Case No. 12-1142) – Vol. 5, pp. 150 to 159.
[24] RTC Docket (Civil Case No. 12-1142) – Vol. 5, pp. 161 to 166.
[25] RTC Docket (Civil Case No. 12-1142) – Vol 5, p. 178; Docket, p. 50.
[26] Docket pp. 8 to 22.

Respondent then filed its *Opposition and Comment (To Petitioner's Petition for Review dated March 29, 2019)* on May 27, 2019.[27]

In the Resolution dated June 17, 2019,[28] the Court ordered the Branch Clerk of Court of RTC – Branch 58, to certify and elevate the RTC Records of the case, within ten (10) days from notice. On the same day, the Court issued another Resolution,[29] giving due course to the instant *Petition for Review*, and granting the parties thirty (30) days from notice, within which to file their respective memorandum.

On July 30, 2019, the *Memorandum (for the Petitioners)* was submitted;[30] and on August 15, 2019, *Respondent's Memorandum* was filed.[31]

However, no RTC records were forwarded to this Court.[32] Thus, in the Resolution dated August 28, 2019,[33] the Branch Clerk of Court of RTC – Branch 58, was reminded to certify and elevate the entire original records of Civil Case No. 12-1142, within ten (10) days from notice thereof, with a warning that failure to submit the same within the same period, the Court shall be constrained to act accordingly.

Despite, however, the issuance of this Court's Resolution dated August 28, 2019, the Branch Clerk of Court of RTC – Branch 58, still failed to certify and elevate the entire original records of Civil Case No. 12-1142.[34] The Court then issued the Resolution dated October 24, 2019,[35] ordering the Branch Clerk of Court of RTC – Branch 58, to explain in writing why the said records were not yet transmitted to the Court, and to elevate the same, within ten (10) days from notice.

Again, despite the directive of the Court, the said Branch Clerk of Court still failed to comply therewith.[36] The Court then, in the Resolution dated February 27, 2020,[37] ordered the same Branch Clerk of Court to explain in writing, within five (5) days from notice, why he/she should not be held in contempt of court for failure to comply with the Court's Order dated June 17, 2019, August 28, 2019 and October 24, 2019.

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[27] Docket pp. 57 to 70.
[28] Docket, pp. 164 to 165.
[29] Docket, p. 167.
[30] Docket pp. 168 to 181.
[31] Docket, pp. 184 to 201.
[32] Records Verification Report dated August 16, 2019 issued by the Judicial Records Division of this Court, Docket, p. 203.
[33] Docket, pp. 205 to 206.
[34] Records Verification Report dated September 27, 2019 issued by the Judicial Records Division of this Court, Docket, p. 207.
[35] Docket, pp. 209 to 210.
[36] Records Verification Reports dated January 9, 2020 and February 6, 2020 issued by the Judicial Records Division of this Court, Docket, pp. 211 to 212.
[37] Docket, pp. 214 to 215.

On October 7, 2020, the records of Civil Case No. 12-1142, consisting of five hundred eighty-five (585) pages, were transmitted to this Court.[38]

In the Resolution dated October 13, 2020,[39] the instant case was deemed submitted for decision.

ASSIGNMENT OF ERROR and ARGUMENTS OF THE PARTIES

Petitioners' arguments:

In its *Petition for Review*, petitioners aver the following assignment of errors, and arguments in support thereof, to wit:

> "PETITIONERS would like to respectfully point out that the following contentious portions of the Decision dated 28 November 2018 rendered by the Honorable RTC-Makati City, Branch 58, which led to the dispositive portion of said Decision quoted above:
>
> I. On page 24 of said Decision dated 28 November 2018, the Honorable RTC-Makati City, Branch 58 said:
>
>> *'There is no evidence which proves that petitioner conducts business operations and/or engages in any commercial activity which separately generate revenue for petitioner in Makati City. Petitioner's Makati Office does not generate or record revenue nor does it engage in any profit-making activity. There are no books of account, receipts or invoices or even sale recording which are maintained in petitioner's Makati Office.'*
>
> II. On page 24 of said Decision dated 28 November 2018, the Honorable RTC-Makati City, Branch 58 said:
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>> *'In the same breath, the Court is of the considered view that the examination on books of accounts and pertinent records of petitioner to assess taxes for a given taxable year shall be limited to the immediately preceding year, otherwise, the assessment* [is] *void pursuant to Article 259 (c) of the Local Government Code's Implementing Rules and Regulations.'*
>
> III. On page 25 of said Decision dated 28 November 2018, the Honorable RTC-Makati City, Branch 58 said:

[38] Docket, pp. 224 to 228.
[39] Docket pp. 230 to 231.

> 'Suffice it to state that the examination of respondent Treasurer or her duly authorized representatives in 2012, could only extend to the immediately preceding taxable year. Thus, the assessment for the alleged deficiency tax for 2009 and 2010 in the total amount P479,309.73 inclusive of interest and charges, as appearing in the table attached to the Notice of Assessment is invalid and/or null and void for lack of factual and legal bases since no valid examination could have been conducted upon petitioner.

The above-quoted contentious statements made by the Honorable Court are contradicted by the pieces of evidence and arguments raised by Petitioners during the trial of the present case, and in fact, Petitioners were able to prove convincingly that:

A. THE EXAMINATION OF THE BOOKS OF ACCOUNT AND PERTINENT RECORDS OF RESPONDENT EASTBAY RESORTS, INC. WAS MADE PURSUANT TO SECTION 171 OF THE LOCAL GOVERNMENT CODE OF 1991 ('LGC'), IN RELATION TO SECTION 7a.07 OF THE REVISED MAKATI REVENUE CODE, AND SECTION 194 OF THE LGC

B. RES[P]ONDENT'S MAKATI OFFICE IS CLASSIFIED AS A 'SERVICE ESTABLISHMENT-OTHER INDEPENDENT CONTRACTOR', NOT MERELY AN ADMINISTRATIVE OFFICE

C. PAYMENT BY RESPONDENT OF LOCAL BUSINESS TAXES IN BINANGONAN, RIZAL NEGATES PETITIONER'S CLAIM THAT BEING A PEZA-REGISTERED ENTITY, IT IS EXEMPT FROM LOCAL TAXES".

Respondent's counter-arguments:

Respondent counters that RTC – Branch 58 correctly held that its Makati Office is a mere administrative office not subject to local business tax; that its classification as Service Establishment – Other Independent Contractor is not controlling, and that it is the actual conduct of business that is the determining factor; that the Honorable Court correctly held that the examination of books of accounts and pertinent records of respondent to assess taxes for a given taxable year shall be limited to the immediately preceding year, otherwise, the assessment is void; that petitioners' interpretation of Section 7A.07 of the Revised Makati Revenue Code is contrary to the LGC; and that respondent's availment of local tax exemption by virtue of its being PEZA-registered is not within the purview of petitioners.

THE COURT'S RULING

The instant *Petition for Review* lacks merit.

The crux of the controversy of the instant case is the determination of ***whether petitioner City of Makati may validly impose the subject local business tax against respondent.*** Relative to such determination is the second assigned error of petitioners which involves the proper classification of respondent's Makati Office.

Section 5, Article X of the 1987 Constitution reads as follows:

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

Based on the foregoing provisions, the fundamental law recognizes the power of local government units to tax. However, such power is *"subject to such guidelines and limitations as the Congress may provide"*. The said guidelines and limitations are embodied in the Local Government Code (LGC) of 1991.

Section 151 of the LGC of 1991 specifically provides the scope of the taxing powers of cities, to wit:

> "SEC. 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, **the city may levy the taxes, fees, and charges which the province or municipality may impose**: *Provided, however*, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes." *(Emphasis added)*

Relative thereto, Section 143(e) of the LGC of 1991 reads:

"SEC. 143. *Tax on Business.* – **The municipality may impose taxes on the following businesses:**

xxx xxx xxx

(e) **On contractors and other independent contractors, in accordance with the following schedule:**

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
Less than P5,000.00	P27.50
P5,000.00 or more but less than P10,000.00	61.60
10,000.00 or more but less than 15,000.00	104.50
15,000.00 or more but less than 20,000.00	165.00
20,000.00 or more but less than 30,000.00	275.00
30,000.00 or more but less than 40,000.00	385.00
40,000.00 or more but less than 50,000.00	550.00
50,000.00 or more but less than 75,000.00	880.00
75,000.00 or more but less than 100,000.00	1,320.00
100,000.00 or more but less than 150,000.00	1,980.00
150,000.00 or more but less than 200,000.00	2,640.00
200,000.00 or more but less than 250,000.00	3,630.00
250,000.00 or more but less than 300,000.00	4,620.00
300,000.00 or more but less than 400,000.00	6,160.00
400,000.00 or more but less than 500,000.00	8,250.00
500,000.00 or more but less than 750,000.00	9,250.00
750,000.00 or more but less than 1,000,000.00	10,250.00
1,000,000.00 or more but less than 2,000,000.00	11,500.00
2,000,000.00 or more	at a rate not exceeding fifty percent (50%) of one percent (1%)."

(Emphases added)

Thus, based on Section 151, in relation to Section 143(e), both of the LGC of 1991, cities may impose business taxes on contractors and other independent contractors. Relative thereto, under Section 131(h) of the LGC of 1991, a "contractor" includes persons, natural or juridical, not subject to professional tax under Section 139 of this Code, whose activity consists essentially of the sale of all kinds of services **for a fee**, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.

Moreover, for a city to validly impose the foregoing local business tax, the situs thereof must be in that city.

Article 244 of the *Rules and Regulations Implementing The Local Government Code of 1991* reads, in part, as follows:

"Article 244. ***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 or 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 a sales office.

(3) *Warehouse* – a building utilized for the storage of products for sale and from which goods or merchandise are withdrawn for delivery to customers or dealers, or by persons acting in behalf of the business. A warehouse that does not accept orders and/or issue sales invoices as aforementioned shall not be considered as branch or sales office.

xxx xxx xxx." *(Emphases added)*

Based on the foregoing provisions, the situs of local business taxes is in the city or municipality specifically mentioned in the articles of incorporation or official registration papers of the concerned taxpayer as being the official address of the latter's principal office. Furthermore, a branch or sales office is a fixed place in a locality which conducts operations of the business as an extension of the principal office.

Moreover, Section 150(a) of the LGC of 1991 provides, in part, as follows:

> "SEC. 150. *Situs of the Tax.* – (a) **For purposes of collection of the taxes under Section 143 of this Code,...contractors...and other business, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.**" *(Emphasis and underscoring added)*

Thus, notwithstanding that the city or municipality wherein the principal office of the taxpayer is located is, in general, the tax situs, the business taxes due on the sales or transactions by the same taxpayer, in any other city or municipality, through a branch or sales outlet, or otherwise, shall accrue or be attributable to such latter city or municipality.

Moreover, anent the payment of local business taxes, Section 146 of the LGC of 1991 reads as follows:

> "SECTION 146. *Payment of Business Taxes.* – (a) **The taxes imposed under Section 143 shall be payable for every separate or distinct establishment or place where business subject to the tax is conducted** and one line of business does not become exempt by being conducted with some other business for which such tax has been paid. **The tax on a business must be paid by the person conducting the same.**
>
> (b) In case where a person conducts or operates two (2) or more of the businesses mentioned in Section 143 of this Code which are subject to the same rate of tax, the tax shall be computed on the combined total gross sales or receipts of the said two (2) or more related businesses.
>
> (c) In cases where a person conducts or operates two (2) or more businesses mentioned in Section 143 of this Code which subject to different rates of tax, the gross sales or receipts of each business shall be separately reported for the purpose of computing the tax due from each business." *(Emphases and underscoring added)*

It is noteworthy that for the purpose of imposing local business taxes, the term "business" means trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit.[40]

[40] Section 131(d) of the LGC of 1991.

In view of such definition and considering the foregoing provisions of the LGC of 1991, the pertinent local business tax is payable by every separate or distinct establishment or place only where business is conducted, or only where there is a trade or commercial activity regularly engaged in by the taxpayer, as a means of livelihood or with a view to profit. Furthermore, in relation to the aforequoted Article 244(2) of the *Rules and Regulations Implementing The Local Government Code of 1991*, a branch or sales office may only be treated as such when there is trade or commercial activity regularly engaged in by the taxpayer, as a means of livelihood or with a view to profit, in such establishment or place.

In this case, to justify the imposition of local business taxes for the period from 2009 to 2011, petitioners point out that respondent's Makati Office is classified as "Service Establishment-Other Independent Contractor", not merely an administrative office. In support thereof, petitioners contend as follows:

> "6. The Business Permits issued by the Makati City in favor of Respondent for the years 2009, 2010, and 2011 would show that **it was classified as an 'SEO' or 'SERVICE ESTABLISHMENT- OTHER INDEPENDENT CONTRACTOR', and not as an administrative office** (Please refer to the Business Permit No. 080015281 dated 02 February 2009, Business Permit No. 0014881 dated 31 January 2010, and Business Permit No. 0023516 dated 04 February 2011, which were Exhibits '5', '6' and '7' to the present case).
>
> 7. Therefore, **Respondent is capable of conducting sales activities**, such as reservations or bookings, or accepting payment for deposit or reservation fees in its Makati Office.
>
> 8. **This possibility** was even raised, albeit hypothetically, by Respondent in paragraphs 50, 48.1, 48.2, and 48.3 of its original Petition frilled in the RTC-Makati, Branch 58."[41] *(Emphases added)*

Thus, on the basis of the foregoing arguments, petitioners' grounds for imposing local business taxes to respondent are the following: (1) the latter is classified as a *"Service Establishment-Other Independent Contractor"*; and (2) respondent is *"capable"* of conducting sales activities, or since there is a *possibility* thereof.

The foregoing grounds, however, are clearly untenable.

Respondent's classification as a *"Service Establishment-Other Independent Contractor"* is *not* controlling. Instead, what is crucial is a showing that

[41] *Petition for Review*, Docket, pp. 15 to 16; *Memorandum (for the Petitioners)*, Docket, p. 176.

respondent's Makati office is a branch or sales office. Specifically, it must be shown that for the subject period, respondent conducted business therein, or that in such fixed place or location, there was trade or commercial activity regularly engaged in by respondent, as a means of livelihood or with a view to profit. Surely, a contractor or other independent contractor may be treated only as such when there is a showing that the services it is giving are "for a fee" in accordance with the aforequoted Section 131(h) of the LGC of 1991.

In the same vein, the *"capability"* or *"possibility"* in conducting sales activities by respondent in its Makati Office is not sufficient for the imposition of local business tax by petitioner City of Makati. It must be remembered that under the earlier quoted Section 143(e), in relation to Section 151, both of the LGC of 1991, the imposition of business tax by a city should be based on the *"gross sales or receipts for the preceding calendar year"*. Thus, such imposition must be based on actual figures of *"gross sales or receipts"* earned by, or attributable to, respondent's Makati Office. Considering that petitioners merely rely on the *"capability"* or *"possibility"* in conducting sales activities by respondent in its Makati Office, and not on the said actual figures, it is clear that the amounts of *Gross Sales*, on which the subject local tax assessments are based (as indicated in *Worksheet* [42] attached to the *Notice of Assessment* dated June 21, 2012[43]) are not attributable to said Makati Office.

Essentially, local business taxes are taxes imposed by local government units on the privilege of doing business within their jurisdictions.[44] To reiterate, the phrase *"doing business"* means some *"trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit."*[45] Correspondingly, if the said privilege is not shown to have been exercised by respondent in petitioner City of Makati, the latter cannot validly impose local business taxes on respondent.

In sum, since there is no showing that the Makati Office of respondent may be treated as a branch or sales office, or as a fixed place, where business transactions were held for the subject period, no valid levy or collection of local business taxes may be made by petitioner City of Makati against respondent.

Such being the case, the *Notice of Assessment* dated June 21, 2012 against respondent,[46] assessing the latter for deficiency taxes, fees and charges, in the amount of ₱479,309.73, covering the taxable period from 2009 to 2011, is void, for being *ultra vires*, and must perforce be cancelled and set aside.

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[42] Exhibit "1-A", RTC Docket (Civil Case No. 12-1142) – Vol. 5, pp. 44 to 45.
[43] Exhibit "1", RTC Docket (Civil Case No. 12-1142) – Vol. 5, p. 43.
[44] *City of Davao, et al. vs. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019.
[45] *Id.*
[46] Exhibits "C" and "C-1", RTC Docket (Civil Case No. 12-1142) – Vol. 4, pp. 56 to 57; and Exhibits "1" and "1-A", RTC Docket (Civil Case No. 12-1142) – Vol. 5, pp. 43 to 45.

In view of the finding that petitioners cannot validly impose the subject local business taxes and that the subject *Notice of Assessment* is void, it becomes unnecessary to address the other assigned errors raised by petitioners.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

Accordingly, the Decision dated November 28, 2018, and the Order dated January 29, 2019, both rendered by the RTC – Branch 58, Makati City, in Civil Case No. 12-1142, are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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