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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

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LAZADA E-SERVICES PHILIPPINES, INC., Petitioner,	**CTA AC NO. 261** Members:
- versus -	**UY,** *Chairperson*, **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ*.
CITY OF MAKATI CITY TREASURER OF MAKATI, Respondents.	Promulgated: MAY 19 2023 4:02 p.m.

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RESOLUTION

UY, J.:

For resolution are petitioner's ***Motion for Partial Reconsideration (of Decision promulgated on 23 November 2022)*** filed on December 16, 2022, with respondents' ***Comment on the Motion for Partial Reconsideration*** filed on January 31, 2023, and respondent's ***Motion for Partial Reconsideration*** filed on January 31, 2023 with petitioner's ***Comment (on Respondent's Motion for Partial Reconsideration dated 30 January 2023)*** filed on March 15, 2023.

In both *Motions*, the parties respectively seek reconsideration of the Court's Decision dated November 23, 2022, the dispositive portion of which reads:

Decision dated November 23, 2022

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. The Decision dated November 15, 2021 and Order dated December 28, 2021 rendered by

RTC – Branch 132, Makati City, in the consolidated cases docketed as Civil Case Nos. R-MKT-18-02102-CV & R-MKT-19-00586-CV, are hereby **AFFIRMED with MODIFICATION**.

Accordingly, petitioner Lazada E-Services Philippines, Inc. is **ORDERED TO PAY** respondents City of Makati and City Treasurer of Makati City the reduced amount of **₱8,167,694.76**, representing the assessed LBT for taxable years 2015 and 2017, inclusive of interests and surcharges.

SO ORDERED."

<u>Petitioner's Motion for Partial Reconsideration (MPR):</u>

Petitioner maintains that it is not liable to pay the assessed deficiency local business tax (LBT) for calendar year (CY) 2015 amounting to ₱3,420,782.61 since it had allegedly already overpaid respondents in LBT for taxable years (TY) 2016 and 2017 in the total amount of ₱15,552,094.67.

Petitioner belabors that it had no branch or sales office in the City of Makati following the transfer of petitioner's principal office to the City of Taguig. Petitioner invokes the testimony of its witness, Mary Jane V. Pineda, to prove the transfer of petitioner's principal office to the City of Taguig, and that no sales of petitioner were generated, invoiced, and recorded within the City of Makati.

According to petitioner, respondents did not present any counter-evidence showing a branch or sales office of petitioner located within the City of Makati upon which they can impose LBT after the transfer of petitioner's principal office to the City of Taguig.

Allegedly, while Exhibits 7 and 8 of respondents may imply that there were sales made by petitioner in the City of Makati in 2017, these do not amount as proof that petitioner had a branch or sales office in the City of Makati in 2017 which vests the City of Makati the power to tax such sales.

Petitioner contends that it was able to establish by preponderance of evidence that: (a) petitioner had no branch or sales office in the City of Makati in 2017 where the sales can be attributed; (b) petitioner transferred its principal office to the City of Taguig as of

March 14, 2016, and (c) petitioner duly recorded in its principal office in Taguig 100% of its gross sales and the LBT due thereon accrued to the City of Taguig and were accordingly paid by petitioner.

Thus, since petitioner paid ₱15,552,094.67 in LBT to respondents in 2016 and 2017, after petitioner transferred its principal office to the City of Taguig where it conducted all sales activities, declared 100% of its gross sales to the City of Taguig, and paid LBT based thereon to the City of Taguig, such was an erroneous payment of LBT, precluding respondents from assessing and collecting the alleged deficiency LBT for TY 2015 and 2017. Thus, petitioner cannot be held liable to pay the assessed deficiency LBT for TYs 2015 and 2017.

Respondents' Comment on petitioner's MPR:

On the issue of whether petitioner is liable to pay the assessed deficiency LBT for TY 2015 amounting to ₱3,420,782.61, respondents submit that the Order of Payments dated March 2, 2018 and May 22, 2018 issued by the Business Tax Division of the City Government of Makati for LBT deficiencies for the years 2015 to 2017 are correct.

For the covered year 2014 and payable on TY 2015 the details are as follows:

Gross Receipts per 2014 Audited Financial Statements (F/S)	₱1,091,136,039.00
Less: Declared in Makati in 2015	859,610,988.81
Undeclared Gross Receipts	231,525,050.19
Tax Due for Undeclared Gross Receipts	1,736,437.88
Surcharge of 25%	434,109.47
Monthly Interest of 2%	1,250,235.27
Total Tax Due for Undeclared Gross Receipts	3,420,782.61

Respondents contend that above-mentioned figures were undisputed; and that petitioner presented a letter dated May 17, 2018, showing its willingness to settle the same.

Anent the issue on whether petitioner is liable to pay LBT to respondents for TY 2017 or the covered year (2016), respondents claim that the basis of petitioner's computation of the subject tax due for purposes of the retirement of the business should be the amount found in the Schedule of Gross Sales/Receipts from January 2017 to

September 2017 in the Makati Office which is ₱1,550,132,654.50, instead of the amount of ₱1,101,252,073.15 as shown in its 2017 business permit application.

Considering that the gross receipts from January 2017 to September 2017 amounting to ₱1,550,132,654.50 at the time of the retirement of the business is greater than the tax base used in the 2017 business permit application, respondents claim that the tax base for 2017 should be the amount in gross receipts from January 2017 to September 2017 which is ₱1,550,132,654.50.

Respondents further posit that the said amount was indicated in the sworn statement of gross sales/receipts for the year 2017 executed by petitioner's Chief Executive Officer Necmi Inanc Balci which validated that the gross receipts/sales from January 2017 to September 2017 in the Makati Office is indeed ₱1,550,132,654.50.

Since the tax base used by petitioner in 2017 amounting to ₱1,101,252,073.15 is less than the actual gross receipts of the petitioner from January 2017 to September 2017 in the amount ₱1,550,132,654.50, respondents point out that the computation would show that there is still LBT deficiency amounting to ₱4,746,912.15 for TY 2017.

Moreover, for the year 2017, respondent contends that the Schedule of Gross Sales/Receipts as certified by petitioner's accountant Jeanny Kristin Santos shows that the total gross receipts for 2017 is ₱7,828,965,567.36. Out of this ₱6,278,832,912.86 was earned in BGC Office (Taguig) and ₱1,550,132,654.50 was earned in Makati. Hence, petitioner is not entitled for refund for failing to show that the gross receipts from January 2017 to September 2017 amounting to ₱1,550,132,654.50 were earned from Taguig.

Respondents invoke Section 145 LGC of 1991 and Section 3A.10(g) Revised Makati Revenue Code as the legal bases used in the assessment of LBT deficiency for retirement of business, arguing that there are documents required for the retirement of the business and processes to be followed before the Office of the Makati Treasurer approves the same; that the purpose of such requirements and processes is for the City Treasurer to see to it that the payment of the taxes is not avoided by simulating the termination or retirement thereof and that the business operations are stopped completely. Further, Section 3A.10(g) provides that "any tax due must first be paid before any business or undertaking is finally terminated."

Finally, respondent stresses that the transfer of petitioner's principal office approved by the Securities and Exchange Commission on March 14, 2016 is of no moment in the determination of its LBT liability, considering that it was established by the respondents that it was no less than petitioner's CEO Necmi Inanc Balci who filed under oath that petitioner's gross sales/receipts from January 2017 to September 2017 in the Makati Office amounted to ₱1,550,132,654.50. Allegedly, the same was not contested by the petitioner and no controverting evidence was presented to prove that the said gross receipts were earned and realized in the City of Taguig.

Respondents' Motion for Partial Reconsideration (MPR):

In their motion, respondents argue that the tax base for TY 2016 should be the gross receipts of the petitioner for the preceding year 2015 as the covered period.

Contrary to petitioner's claim that their operation was transferred to Taguig in March 2016, respondents assert that petitioner's business permit for 2016 would show that the same was issued in January 14, 2016, and the tax based used was the amount of ₱1,296,480,732.87. Allegedly, it is the same tax base/gross receipt used by the petitioner when it paid their LBT to the City Government of Makati. The quarterly payments for 2016 of petitioner were evidenced by the receipts presented and identified by the witness and marked as Exhibits "G-2", "G-3", and "G-4". These documents were presented and formally offered by the petitioner to prove that: "*In 2016 Lazada declared to the City of Makati its gross sales in the amount of ₱1,296,480,732.87*".

Respondents add that the Order of Payment dated May 22, 2018 would show that the gross receipts amounted to ₱2,292,557,230.00. The amount paid in 2016 equivalent to ₱9,723,605.50 was for the declared gross sales/receipts in 2015 amounting to ₱1,296,480,732.87; that there is an undeclared gross receipts amounting to ₱996,076,0497.13; and the amount of ₱13,671,149.93 represents the total tax due for undeclared gross receipts. Details are as follows:

Gross Receipts per 2015 Audited Financial Statement	₱2,292,557,230.00
Less: Declared by the petitioner in their application for renewal of business permit in 2016	1,296,480,732.87
Undeclared Gross Receipts	996,076,497.13
Tax Due for Undeclared Gross Receipts	7,470,573.73
Surcharge of 25% / Monthly Interest of 2%	6,200,576.20
Total Tax Due for Undeclared Gross Receipts	₱13,671,149.93

Respondents conclude that there was an under declaration considering that the gross receipts for covered period 2015 (payable on 2016 taxable year) is ₱2,292,557,230.00. Hence, petitioner's LBT deficiency for covered period 2015 (payable on 2016) is ₱13,671,149.93. Further, the amount/figures reflected in the order of payment was not disputed by the petitioner.

Respondent reiterates that petitioner is liable for the assessed local business tax deficiency (for the covered year 2015 and payable on TY 2016) amounting to ₱13,671,149.93, considering that the subject of the local business tax deficiency is the covered period or the 2015 gross receipts of the petitioner amounting to ₱2,292,557,230.00

Petitioner's Comment on respondent's MPR:

Petitioner submits that in respondents' MPR, they continue to treat the assessed LBT on petitioner as income tax. This confusion on the part of respondents has already been clarified by the Supreme Court in the case of *Mobil Philippines, Inc. v. City Treasurer of Makati and the Chief of the License Division of the City of Makati.*[1] The business taxes paid at the beginning of a year is for the privilege of engaging in business for the same year, and not for having engaged in business for the previous year.

In petitioner's case, to engage in business in the City of Makati for the year 2016, petitioner paid to respondents at the beginning of 2016 ₱9,723,605.50 LBT based on 2015 gross sales amounting to ₱1,296,480,732.87.

In respondents' MPR, respondents notably do not refer to any evidence of petitioner's actual sales generated within the City of Makati in 2016 which served as basis for the LBT assessment for 2016. On the other hand, petitioner actually transferred its principal office to and operate its business in Taguig City beginning the 3rd quarter of 2015, and it remains undisputed that on March 14, 2016, the SEC issued a Certificate of Filing of Amended Articles of Incorporation recognizing the change of the address of petitioner's principal office to 23rd Floor Net Park, 5th Avenue, E-Square, Crescent Park West, Bonifacio Global City, Taguig, Metro Manila, Philippines.

Based on petitioner's 2016 sales from January 1, 2016 to March 14, 2016 computed at ₱789,939,220.59 (as proportionately adjusted

[1] GR No. 154092, July 14, 2005.

on the ₱4,004,552,993.26 gross sales of petitioner for the year 2016), the tax already paid by petitioner for 2016 (based on 2015 gross sales amount of ₱1,296,480,732.87) clearly exceed the tax due based on the attributable actual gross sales of 2016. Therefore, based on the foregoing, no tax is payable to respondents since the tax already paid by petitioner for 2016 is not less than the tax due based on the attributable actual gross sales of said year.

THE COURT'S RULING

Petitioner's Motion for Partial Reconsideration and respondent's Motion for Partial Reconsideration are without merit.

Petitioner's Motion for Partial Reconsideration

We find no merit in petitioner's contention that it should not be liable to pay the assessed deficiency LBT for calendar year (CY) 2015 amounting to ₱3,420,782.61 since it had allegedly already overpaid respondents in LBT for TYs 2016 and 2017 in the total amount of ₱15,552,094.67.

Petitioner is liable to pay the assessed deficiency LBT for 0TY 2015 to the City of Makati.

As held in Our assailed Decision, petitioner failed to contest the assessment of deficiency LBT for TY 2015. The same has become final, executory and unappealable pursuant to Section 195 of the Local Government Code of 1991. As such, the assessment of LBT for TY 2015 imposed by the City of Makati amounting to ₱3,420,782.61 is sustained.

Moreover, petitioner reiterates that it has no branch or sales office in the City of Makati and it has moved its principal office in the City of Taguig beginning March 2016. Thus, the payment of LBT for TYs 2016 and 2017 to the City of Makati are considered erroneous and must be credited to petitioner and applied against the assessment for deficiency LBT for TY 2015.

We do not agree.

Relative thereto, We reiterate Our finding that petitioner failed to show that the operations in its Makati office were limited to non-revenue generating activities during the covered period. The evidence that there were indeed sales recorded in petitioner's Makati office remain uncontroverted, particularly the following documents:

1. Petitioner's ***Schedule of Gross Sales/Receipts for the calendar year 2017*** certified by petitioner's accountant, Jeanny Kristin Santos, indicating petitioner's gross sales and receipts recorded in its Makati Office in 2017 from January to September;[2]

2. The ***Sworn Statement of Gross Sales/Receipts*** subscribed under oath by petitioner's Chief Executive Officer, showing the gross sales/receipts for TY 2016 and TY 2017,[3] to wit:

Gross Sales/Receipts for the Preceding Calendar Year 2016:	₱1,465,931,877.76
Gross Sales/Receipts for the Current Calendar Year 2017:	₱1,550,132.654.50

Moreover, records reveal that petitioner duly reported its gross sales or receipts in its Makati office for issuance of business permit, licenses, and the payments of LBT to respondents for TY 2016 and 2017 as shown in the following official receipts (OR) issued by respondent:

Year 2016 Covered period 2015	***OR No.***	***Tax Base (Gross)***	***Amount Paid***
	MKTCF2856840[4]	₱1,296,480,732.87	₱2,430,901.37
	MKTCF2956376[5]	₱1,296,480,732.87	₱2,430,901.37
	MKTCF3040368[6]	₱1,296,480,732.87	₱2,430,901.37
	MKTCF3074775[7]	₱1,296,480,732.87	₱2,430,901.37
Year 2017 *Covered period 2016*	***OR No.***	***Tax Base (Gross)***	***Amount Paid***
	MKTCF3129187[8]	₱1,101,252,073.15	₱2,064,847.64
	MKTCF3306257[9]	₱1,101,252,073.15	₱2,064,847.64
	MKTCF3379503[10]	₱1,101,252,073.15	₱2,064,847.64
	MKTCF3492004[11]	₱1,101,252,073.15	₱2,064,847.64

In refuting Our findings, petitioner alleges that while *Schedule of Gross Sales/Receipts for the calendar year 2017* (Exhibit 7) and ***Sworn Statement of Gross Sales/Receipts*** (Exhibit 8) may imply that there were sales made by petitioner in the City of Makati, these do not

[2] Exhibit "7", RTC Docket – Vol. 4, p. 172.
[3] Exhibit "8", RTC Docket – Vol. 4, p. 173.
[4] Exhibit "G-1", RTC Docket – Vol. 3, p. 35.
[5] Exhibit "G-2", RTC Docket – Vol. 3, p. 38.
[6] Exhibit "G-3", RTC Docket – Vol. 3, p. 40.
[7] Exhibit "G-4", RTC Docket – Vol. 3, p. 42.
[8] Exhibit "G-5", RTC Docket – Vol. 3, p. 44.
[9] Exhibit "G-6", RTC Docket – Vol. 3, p. 46.
[10] Exhibit "G-7", RTC Docket – Vol. 3, p. 48.
[11] Exhibit "G-8", RTC Docket – Vol. 3, p. 50.

amount as proof that petitioner had a branch or sales office in the City of Makati in 2017 which would vest the City of Makati the power to tax such sales.

Petitioner's bare allegation cannot be given credence for lack of evidentiary support. Settled is the ruled that bare allegations will not suffice without proof.[12] In sum, the Court finds that the payment of LBT by petitioner for TY 2016 and 2017 were not erroneous.

Respondents' Motion for Partial Reconsideration

Respondents reiterate that petitioner is liable for LBT for 2016 in the amount of ₱13,671,149.93.

According to respondents, petitioner has an undeclared gross receipts amounting to ₱996,076,497.13. Respondents' basis was the revised Order of Payment dated May 22, 2018 showing that petitioner's gross receipts per petitioner's 2015 Audited Financial Statement was ₱2,292,557,230.00. While petitioner paid in 2016 the amount of ₱9,723,605.50 to respondents, it was only for the declared gross sales/receipts in 2015 in the amount of ₱1,296,480,732.87. Obtaining the difference between ₱2,292,557,230.00 and ₱1,296,480,732.87, respondents contend that there is an undeclared gross receipts in the amount of ₱996,076,497.13 which corresponds to a deficiency LBT in the amount of ₱13,671,149.93.

The Court is not convinced.

In the instant case, there is insufficiency of evidence, such as the 2015 Audited Financial Statements to establish the gross sales/receipts of petitioner for 2015, that will enable the Court to ascertain that the amount of petitioner's gross receipts for 2015 amounted to ₱2,292,557,230.00. Absent such necessary evidence, the Court maintains its finding that the assessment of LBT for TY 2016 against petitioner must be cancelled and set aside for lack of sufficient factual basis.

WHEREFORE, in view of the foregoing considerations, petitioner's ***Motion for Partial Reconsideration (of Decision promulgated on 23 November 2022)*** and respondent's ***Motion for Partial Reconsideration*** are **DENIED** for lack of merit.

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[12] *Ma. Ana Consuelo A.S. Madrigal v. Department of Justice*, G.R. No. 168903, June 18, 2014.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Official Business)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice