REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LAZADA E-SERVICES PHILIPPINES, INC.,
Petitioner,

- versus -

CITY OF MAKATI, CITY TREASURER OF MAKATI,
Respondents.

CTA EB NO. 2766
(CTA AC No. 261)

x - x

CITY OF MAKATI, CITY TREASURER OF MAKATI,
Petitioners,

- versus -

LAZADA E-SERVICES PHILIPPINES, INC.,
Respondent.

CTA EB NO. 2767
(CTA AC No. 261)

Present:
DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
OCT 02 2025 4:20 pm

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RESOLUTION

ANGELES, J.:

Submitted for the resolution of this Court are the following:

1. Lazada E-Services Philippines, Inc.'s (Lazada) **Motion for Partial Reconsideration (of Decision promulgated on 28 October 2024)**[1] [Motion for Reconsideration], posted and electronically filed on November 25 and 26,[2] 2024, respectively, to which the City of Makati and City Treasurer of Makati (collectively, City of Makati) failed to file a comment thereon despite due notice, as evidenced by the Records Verification Report dated March 11, 2025;[3] and

2. The City of Makati's **Motion for Reconsideration (of the Decision dated 28 October 2024)**[4] [Motion], personally and electronically filed on November 21, and December 10,[5] 2024, respectively, with Lazada's **Comment (on the Petition for Review of the City of Makati and City Treasurer of Makati)**,[6] which was personally and electronically filed on February 26 and 27,[7] 2025, respectively.

Both Motions commonly seek reconsideration of the Court *En Banc*'s *Decision*[8] promulgated on October 28, 2024 (assailed Decision), which affirmed the *Decision*[9] and *Resolution*[10] rendered by the Court of Tax Appeals (CTA) – Special Third Division (Court in Division) in CTA AC No. 261. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the [(1)] *Petition for Review* filed on June 30, 2023 by Lazada E-Services Philippines, Inc. docketed as CTA EB No. 2766; and (2) *Petition for Review* filed on June 16, 2023 by City of Makati and City Treasurer of Makati docketed as CTA EB No. 2767, are both **DENIED** for lack of merit.

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[1] *En Banc* (EB) No. 2766 Docket, pp. 162-174.
[2] *Id.* at 159.
[3] *Id.*, unpaginated.
[4] *Id.* at 149-156.
[5] *Id.* at 202.
[6] *Id.*, unpaginated.
[7] *Ibid.*
[8] *Id.* at 109-135. The Decision was penned by Associate Justice Henry S. Angeles, and concurred in by Presiding Justice Roman G. Del Rosario, Associate Justice Ma. Belen M. Ringpis-Liban, Associate Justice Catherine T. Manahan, Associate Justice Jean Marie A. Bacorro-Villena, Associate Justice Maria Rowena Modesto-San Pedro, Associate Justice Lanee S. Cui-David, and Associate Justice Corazon G. Ferrer-Flores. Associate Justice Marian Ivy F. Reyes-Fajardo dissented; *see id.* at 136-141.
[9] *Id.* at 37-58. The Decision was penned by Associate Justice Erlinda P. Uy, and concurred in by Associate Justice Ma. Belen M. Ringpis-Liban, and Associate Justice Maria Rowena Modesto-San Pedro.
[10] *Id.* at 60-69. The Resolution was penned by Associate Justice Erlinda P. Uy, and concurred in by Associate Justice Ma. Belen M. Ringpis-Liban. Associate Justice Maria Rowena Modesto-San Pedro was on official business leave.

> Accordingly, the *Decision* dated November 23, 2022 and *Resolution* dated May 19, 2023 both promulgated in CTA AC No. 261, are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

In the interest of a more orderly discussion, the Court *En Banc* shall first resolve Lazada's *Motion for Partial Reconsideration.*

Lazada's Motion for Partial Reconsideration

As a preliminary matter, We first resolve the issue of the timeliness of Lazada's filing of its *Motion for Partial Reconsideration.*[11] Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> SECTION 1. *Who may and when to file motion.* — Any aggrieved party may seek a **reconsideration** or new trial of any decision, resolution or order of the Court. He shall file a **motion for reconsideration** or new trial **within fifteen days from the date he received notice of the decision**, resolution or order **of the Court** in question. (Emphasis supplied)

Records show that Lazada received the assailed Decision[12] on November 08, 2024.[13] Accordingly, the last day to file its Motion fell on November 23, 2024, a Saturday. Consequently, Lazada's filing by registered mail on November 25, 2024, and electronically on November 26, 2024, was well within the reglementary period.

Having thus established the Motion for Partial Reconsideration's timeliness, We now proceed to resolve its substantive merits.

Lazada anchors its *Motion for Partial Reconsideration* on two (2) grounds:

I.

> To compute the correct LBT due from Lazada at the time of retirement, the overpaid LBT for calendar years 2016 and 2017 in the total amount of PhP15,552,094.67 should be applied against the assessed deficiency LBT for calendar year 2015 amounting to PhP3,420,782.61 because taxable years 2015, 2016 and 2017 are

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[11] *Supra* note 1.
[12] *Supra* note 8.
[13] EB No. 2766 Docket, p. 108.

> covered by a single investigation on account of Lazada's application for retirement of business.
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> II.
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> Consistent with the Honorable Court's final and executory decisions in *The City Government of Makati and the City Treasurer of Makati City v. Eastbay Resorts, Inc.* and *City of Makati v. Municipality of Bakun and Luzon Hydro Corp.*, Lazada is not liable to pay LBT to the City of Makati for 2017 because there is no actual evidence that Lazada had a branch or sales office in the City of Makati in 2017 or otherwise conducted sales activities therein.

As regards the *first* ground, Lazada challenges the ruling in the assailed Decision[14] denying its plea to offset its deficiency local business tax (LBT) for calendar year (CY) 2015 with its alleged overpayments for CYs 2016 and 2017. It insists that, notwithstanding this Court's findings, such offsetting is warranted, given that the deficiency assessments for these years resulted from a single investigation conducted in connection with its application for the retirement of its Makati office. Lazada thus argues that the computation of its LBT liabilities for CYs 2015, 2016, and 2017 must necessarily be treated as a consolidated whole, asserting that these taxable years are inextricably linked and cannot be considered in isolation from one another.

Lazada further posits that the deficiency LBT for CY 2015—an assessment it no longer disputes—ought to be extinguished by offsetting the same against its alleged overpayments of LBT for CYs 2016 and 2017, invoking the principle of *solutio indebiti* as an additional basis for such relief.

As to the *second* ground, Lazada reiterates that it cannot be held liable for LBT for CY 2017, claiming that it neither maintained a branch or sales office in Makati nor engaged in any trade or commercial activity within the city's territorial jurisdiction during the said period. Citing *The City Government of Makati and the City Treasurer of Makati City v. Eastbay Resorts, Inc.*[15] (*Eastbay*), it argues that there exists no legal basis for the imposition of LBT against it.

Moreover, Lazada invokes *City of Makati v. Municipality of Bakun and Luzon Hydro Corp.*[16] (*Luzon Hydro*), maintaining that the City of Makati lacks authority to assess and collect LBT for CY 2017, having allegedly failed to present any evidence establishing actual sales

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[14] *Supra* note 8.
[15] C.T.A. AC No. 218, October 12, 2021 [Per J. Ringpis-Liban, Third Division].
[16] C.T.A. EB Case No. 1179 (C.T.A. AC No. 100) (Resolution), June 08, 2016 [Per J. Mindaro-Grulla, *En Banc*].

or taxable activity conducted by Lazada's Makati office during the said year. Lazada likewise asserts that all of its sales were recorded exclusively at its principal office in Taguig City, where it declared one hundred percent (100%) of its gross sales, and fully paid the corresponding LBT, leaving no taxable activity within Makati upon which any LBT assessment may be validly based.

At the outset, We find no compelling reason to depart from Our earlier ruling. What Lazada presents are mere reiterations—albeit couched in different language—of issues that have already been exhaustively pleaded, thoroughly deliberated upon, and definitively resolved, first in its *Petition for Review*[17] and *Motion for Partial Reconsideration (of Decision promulgated on 23 November 2022)*[18] before the Court in Division, and subsequently in its *Petition for Review*[19] before the Court *En Banc*. These arguments have undergone full judicial scrutiny, and the Court, both in Division and *En Banc*, has squarely ruled upon them. Lazada, therefore, fails to raise any novel, substantial, or cogent ground that would warrant a reversal or modification of the assailed Decision.

Nevertheless, for purposes of clarity, We shall once again address the demerits of Lazada's claims.

First argument

Lazada anchors its *first* argument on the premise that the deficiency assessments for CYs 2015, 2016, and 2017 emanated from a single investigation prompted by its application for the retirement of its business in Makati City. On this basis, it insists that the computation of its LBT for said years must be consolidated, allowing the alleged overpayments for CYs 2016 and 2017 to be offset against the deficiency for CY 2015.

We are not persuaded.

Settled is the rule that taxes cannot be the subject of compensation. This is because the government and the taxpayer are not creditors and debtors of each other. A clear distinction exists between a tax and a debt: debts are payable to the government in its corporate capacity, whereas taxes are obligations due to the government in its sovereign capacity.[20] Consequently, a claim for taxes

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[17] Division Docket, pp. 8-39.
[18] *Id.* at pp. 250-259.
[19] EB No. 2766 Docket, pp. 8-29.
[20] *Philex Mining Corp. v. Commissioner of Internal Revenue*, G.R. No. 125704, August 28, 1998 [Per J. Romero, Third Division], citing *In re: Cordero v. Gonda*, G.R. No. L-22369, October 15,

does not constitute a debt, demand, contract, or judgment that may be subject to set-off.[21]

As early as *Republic v. Mambulao Lumber Co.*,[22] the Supreme Court definitively ruled that the principle of legal compensation under Article 1278 of the Civil Code has no application to tax obligations, as taxes are not debts that may be offset by monetary claims against the government. Public policy dictates that taxes cannot be withheld or set-off, lest the operations of government be unduly impaired. Thus:

> Appellant maintains that the principle of compensation in Article 1278 of the new Civil Code is applicable, such that the sum of P9,127.50 paid by it as reforestation charges may compensate its indebtedness to appellee in the sum of P4,802.37 as forest charges. But in the view we take of this case, **appellant and appellee are not mutually creditors and debtors of each other. Consequently, the law on compensation is inapplicable.** On this point, the trial court correctly observed:
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>> "Under Article 1278, NCC, compensation should take place when two persons in their own right are creditors and debtors of each other. With respect to the forest charges which the defendant Mambulao Lumber Company has paid to the government, they are in the coffers of the government as taxes collected, and the government does not owe anything to defendant Mambulao Lumber Company. So, it is crystal clear that the Republic of the Philippines and the Mambulao Lumber Company are not creditors and debtors of each other, because compensation refers to mutual debts. . . . ."
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> And the weight of authority is to the effect that internal revenue taxes, such as the forest charges in question, can not be the subject of set-off or compensation.
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>> "A claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off under the statutes of set-off, which are construed uniformly, in the light of public policy, to exclude the remedy in an action or any indebtedness of the state or municipality to one who is liable to the state or municipality for taxes. Neither are they a proper subject of recoupment since they do not arise out of the contract or transaction sued on. . . . ." (80 C.J.S. 73-74.)
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>> "The general rule, based on grounds of public policy is well- settled that **no set-off is admissible against demands for taxes levied for general or local governmental purposes.** The reason on which the

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1966 [Per J. Sanchez, *En Banc*]; *Commissioner of Internal Revenue v. Palanca, Jr.*, G.R. No. L-16626, October 29, 1966 [Per J. Regala, *En Banc*]; *Francia v. Intermediate Appellate Court*, G.R. No. 67649, June 28, 1988 [Per J. Gutierrez, Third Division]; and *Caltex Philippines, Inc. v. Commission on Audit*, G.R. No. 92585, May 08, 1992 [Per J. Davide, Jr., *En Banc*].

[21] *Francia v. Intermediate Appellate Court*, G.R. No. 67649, June 28, 1988 [Per J. Gutierrez, Third Division].

[22] G.R. No. L-17725, 28 February 28, 1962 [Per J. Barrera, *En Banc*].

> general rule is based, is that **taxes are not in the nature of contracts between the party and party but grow out of a duty to, and are the positive acts of the government, to the making and enforcing of which, the personal consent of individual taxpayers is not required**. . . . If the taxpayer can properly refuse to pay his tax when called upon by the Collector, because he has a claim against the governmental body which is not included in the tax levy, it is plain that some legitimate and necessary expenditure must be curtailed. If the taxpayer's claim is disputed, the collection of the tax must await and abide the result of a lawsuit, and meanwhile the financial affairs of the government will be thrown into great confusion." (47 Am. Jur. 766-767.) (Emphasis supplied; citation omitted)

This principle was reaffirmed in *Francia v. Intermediate Appellate Court*,[23] where the Supreme Court categorically rejected the taxpayer's plea for legal compensation. It emphasized that the requisites for legal compensation under Article 1279 of the Civil Code—specifically, that both parties must be principal creditors and debtors of each other with due and demandable obligations—are not present in cases involving tax obligations.

> Francia contends that his tax delinquency of P2,400.00 has been extinguished by legal compensation. He claims that the government owed him P4,116.00 when a portion of his land was expropriated on October 15, 1977. Hence, his tax obligation had been set-off by operation of law as of October 15, 1977.
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> There is no legal basis for the contention. By legal compensation, obligations of persons, who in their own right are reciprocally debtors and creditors of each other, are extinguished (Art. 1278, Civil Code). The circumstances of the case do not satisfy the requirements provided by Article 1279, to wit:
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> > "(1) that each one of the obligors be bound principally and that he be at the same time a principal creditor of the other;
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> > xxx xxx xxx
> >
> > "(3) that the two debts be due.
> >
> > xxx xxx xxx
>
> This principal contention of the petitioner has no merit. We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.[24]

[23] *Francia v. Intermediate Appellate Court*, G.R. No. 67649, June 28, 1988 [Per J. Gutierrez, Third Division].
[24] *Ibid.*

The Court *En Banc* is not unaware of the exceptional circumstances[25] where the Supreme Court has permitted the offsetting of taxes. However, such cases are narrowly confined to situations where the determination of the taxpayer's liability is intertwined with the resolution of a claim for the refund of taxes erroneously or illegally collected under Section 229 of the National Internal Revenue Code of 1997, as amended. Such circumstances are clearly inapplicable in this case.

Here, Lazada's argument that its liabilities for CYs 2015, 2016, and 2017 should be consolidated merely because they arose from a single investigation and were covered by a single Order of Payment issued following its application for retirement is misplaced. The issuance of such Order of Payment was simply a procedural consequence of its retirement application, and merely reflected Lazada's outstanding obligations. That these assessments were embodied in a single document does not, in any manner, render them the product of a singular investigation or a unified assessment.

Each taxable year constitutes a distinct and separate tax period, requiring an independent determination of gross sales or receipts for the preceding calendar year, a different reckoning of the assessment period, and a separate legal basis for assessment and protest. In fact, Lazada itself recognized such separability when it accepted the assessment for CY 2015 without protest, thereby rendering it final and executory under Section 195 of the Local Government Code (LGC),[26] while continuing to contest the assessments for CYs 2016 and 2017. Clearly, the assessments for these years are distinct, both in fact and in law.

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[25] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 106611, July 21, 1994 [Per J. Regalado, Second Division]; *South African Airways v. Commissioner of Internal Revenue*, G.R. No. 180356, February 16, 2010 [Per J. Velasco, Jr., Third Division]; *SMI-ED Phil. Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014 [Per J. Leonen, Second Division].

[26] Section 195 of the Local Government Code (LGC) provides:

Section 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 executory. 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 (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

Therefore, Lazada's assertion that the deficiency LBT assessments stemmed from a single investigation, thereby warranting offsetting, is patently without merit. At most, what transpired was the issuance of a single document—an Order of Payment—which merely served as an administrative mechanism consolidating the notice of Lazada's separate tax liabilities for CYs 2015, 2016, and 2017, which, according to the City of Makati, must be settled, among other conditions, prior to the approval of Lazada's application for retirement.

Moreover, Lazada's invocation of the principle of *solutio indebiti* to justify its plea for offsetting is equally bereft of merit. In *CBK Power Co. Ltd. v. Commissioner of Internal Revenue*,[27] the Supreme Court clearly delineated the narrow confines of *solutio indebiti*. Under this doctrine, an obligation to return arises when something is received without any right to demand it, and such delivery was made by mistake. This creates a quasi-contractual relationship, obligating the recipient to return what was unduly paid, consistent with the long-standing tenet that no person shall unjustly enrich oneself at the expense of another, *viz.*:

> Also devoid of merit is the applicability of the principle of *solutio indebiti* to the present case. According to this principle, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In that situation, a creditor-debtor relationship is created under a quasi-contract, whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive the payment becomes obligated to return it. The quasi-contract of *solutio indebiti* is based on the ancient principle that no one shall enrich oneself unjustly at the expense of another.
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> There is *solutio indebiti* when:
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> (1) Payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and
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> (2) Payment is made through mistake, and not through liberality or some other cause.
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> Though the principle of *solutio indebiti* may be applicable to some instances of claims for a refund, the elements thereof are wanting in this case.
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> *First,* there exists a binding relation between petitioner and the CIR, the former being a taxpayer obligated to pay VAT.

[27] G.R. Nos. 198729-30, January 15, 2014 [Per C.J. Sereno, First Division].

> *Second,* the payment of input tax was not made through mistake, since petitioner was legally obligated to pay for that liability. The entitlement to a refund or credit of excess input tax is solely based on the distinctive nature of the VAT system. At the time of payment of the input VAT, the amount paid was correct and proper. (Citations omitted)

Similarly, the essential requisites for the application of *solutio indebiti* are manifestly absent in this case. *First*, there exists an established legal relationship between Lazada and the City of Makati, whereby the former, as a taxpayer, is under a statutory obligation to pay LBT to the latter, which exercises its taxing authority over business activities conducted within its jurisdiction. *Second*, the payments in question cannot be characterized as having been made by mistake. As lengthily discussed in the assailed Decision,[28] Lazada was legally bound to pay the LBT for CYs 2016 and 2017. The payments were made pursuant to this lawful obligation, and not due to any mistake that would trigger the application of *solutio indebiti*.

Clearly, Lazada's twin arguments—that the assessments arose from a single investigation and that *solutio indebiti* warrants offsetting—find no footing in this case. Its continued reliance on these claims merely reiterates a flawed position that has already been squarely addressed and rejected. Simply put, there exists no valid ground, either in law or in fact, to support Lazada's plea to offset its tax liability for CY 2015 with its alleged overpayments for CYs 2016 and 2017.

At any rate, even assuming *arguendo* that offsetting was permissible, Lazada's claim must still fail. As consistently ruled by the Court in Division,[29] and affirmed in the assailed Decision,[30] Lazada failed to establish the existence of any overpayment for CYs 2016 and 2017. Without such proof, there is plainly no amount to speak of that may be the subject of offsetting or *solutio indebiti*.

Second argument

Lazada's alleged overpayment for CY 2017, which it seeks to offset against its deficiency LBT for CY 2015, rests on its assertion that it incurred no tax liability for CY 2017—this forms the crux of its *second* argument.

We remain unconvinced.

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[28] *Supra* note 8.
[29] *Supra* notes 9 and 10.
[30] *Supra* note 8.

As clearly established in the assailed Decision,[31] Lazada's liability for LBT for CY 2017 was sufficiently proven. Its reliance on *Eastbay Luzon Hydro* is misplaced, as it misconstrues the import and application of these rulings.

Tax cases, being civil in nature, must be proven by a preponderance of evidence. The burden of proof rests upon the plaintiff/petitioner, who must establish its case by such standard. Preponderance of evidence refers to the evidence that carries greater weight, or is more convincing than that which is offered in opposition. It is the proof that leads the trier of facts to find that the existence of the contested fact is more probable than its non-existence. Once the plaintiff/petitioner makes out a *prima facie* case in its favor in the course of the trial, the duty or burden of evidence shifts to the defendant/respondent to controvert petitioner/plaintiff's *prima facie* case; otherwise, a verdict must be rendered in favor of the plaintiff/petitioner.[32]

Contrary to Lazada's assertions, the assailed Decision[33] firmly established, by preponderance of evidence, that Lazada conducted, generated, and recorded sales activities in its Makati office for CY 2017. This unequivocally classifies its Makati office as a branch or sales office under Article 243 (a)(2) of the Administrative Order No. 270,[34] thereby subjecting it to LBT under Section 150(a) of the LGC.[35]

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[31] *Ibid.*

[32] *Spouses Ponce v. Aldanese*, G.R. No. 216587, August 04, 2021 [Per J. Hernando, Second Division].

[33] *Supra* note 8.

[34] Article 243(a)(2) of the Administrative Order No. 270 provides:

ARTICLE 243. *Situs of the Tax.* — (a) *Definition of Terms* —

x x x

(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 as a sales office.

[35] Section 150(a) of the LGC provides:

Section 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, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and 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. x x x

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The assailed Decision[36] enumerated several compelling pieces of evidence proving that, despite the transfer of its principal office to Taguig City, Lazada retained its Makati office and continued its business operations therein during CY 2017, namely:

1. Billing Statements and Official Receipts,[37] showing declared gross sales or receipts for CY 2016 and the 1st to 3rd quarters of 2017;

2. Lazada's quarterly value-added tax (VAT) returns for CY 2016,[38] showing VATable sales or receipts with its Makati office as the registered address;

3. Lazada's *Schedule of Gross Sales/Receipts for 2017*;

    i. Certified by Lazada's accountant, showing gross sales or receipts of Php6,278,832,912.86 for Taguig City and Php1,550,132,654.50 for Makati City;

4. Lazada's *Sworn Statement of Gross Sales/Receipts*;

    i. Subscribed under oath by Lazada's Chief Executive Officer (CEO), affirming gross sales or receipts of Php1,550,132,654.50 from its Makati office for CY 2017;

    ii. The CEO likewise declared therein that Lazada's e-commerce business located at the 5/F Floor, Salustiana D. Ty Tower, 104 Paseo de Roxas, Makati City, would close, terminate, or transfer its operations effective September 30, 2017;

    iii. This *Sworn Statement* was submitted to the Office of the City Treasurer of Makati in support of Lazada's application for business retirement;

5. The Contract of Lease for Lazada's Makati office, which was terminated only on August 31, 2017;

6. Lazada's application for retirement of its Makati office, filed only on February 12, 2018;[39]

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[36] *Ibid.*
[37] Regional Trial Court (RTC) Records – Vol. 3, pp. 35-50, Exhibits "G-1" to "G-8."
[38] *Id.* at pp. 78-75, Exhibits "P-1" to "P-4."
[39] *Id.*, Vol. 4, p. 177, Exhibit "10."

7. Absence of any record showing the surrender of Lazada's original business permit to the City of Makati within thirty (30) days from its alleged transfer to Taguig City in 2016; and

8. The clear statutory rule that mere application for retirement or transfer does not extinguish tax liabilities that accrued prior to the official closure of the business. Only full payment of such liabilities, among other conditions, effects retirement, pursuant to Section 145 of the LGC, as implemented by Article 241 of Administrative Order No. 270, and Paragraph (g), Section 3A.10 of the Revised Makati Revenue Code.

In contrast, Lazada's *Motion for Partial Reconsideration*[40] merely raised unsubstantial, if not bare, allegations, to wit:

1. That the timing of its application for retirement of its Makati office is of no moment, as it does not constitute proof of actual trade or commercial activity within the jurisdiction of Makati City;[41]

2. That its *Schedule of Gross Sales/Receipts for 2017* and its *Sworn Statement of Gross Sales/Receipts* do not qualify as the type of evidence required under *Eastbay* to authorize the City of Makati to impose LBT for CY 2017, insisting that no proof was presented by the City of Makati showing actual trade or commercial activity conducted within Makati for the said year;[42]

3. That its witness, Ms. Mary Jane V. Pineda (Ms. Pineda), testified that following the transfer of its principal office to Taguig City in 2016, Lazada no longer maintained a branch or sales office within Makati;[43] and

4. That the City of Makati failed to refute Lazada's declaration that it reported and paid one hundred percent (100%) of its gross sales to Taguig City in 2017, where its principal office is situated.[44]

These contentions, however, are clearly outweighed by the evidence on record, which formed the basis of the assailed Decision.[45] The totality of evidence unmistakably established that Lazada maintained and operated a taxable presence within Makati City in

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[40] *Supra* note 1.
[41] *Id.* at 170, par. 19.
[42] *Id.*, pars. 20-22.
[43] *Id.* at 172, par. 24.
[44] *Id.*, par. 25.
[45] *Supra* note 8.

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2017, especially in light of the unique nature of its **e-commerce business operations**—activities which, while not necessarily tied to a fixed physical location, nonetheless remain subject to local taxation where such business activities are actually carried out. Ultimately, Lazada must stand or fall on the strength of its own evidence, not on the perceived weakness of the City of Makati's case. In *Valbueco, Inc. v. Province of Bataan*,[46] the Supreme Court held:

> The Court, therefore, affirms the RTC's opinion that petitioner was not able to establish its cause of action for its failure to submit convincing evidence to establish a case and the CA's position that it must rely on the strength of its evidence and not on the weakness of respondents' claim. Indeed, in *Sapu-an v. Court of Appeals*, We held:
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>> The general rule in civil cases is that the party having the burden of proof must establish his case by a preponderance of evidence. By "preponderance of evidence" is meant that the evidence as a whole adduced by one side is superior to that of the other.
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>> In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts on which they are testifying, the nature of such facts, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility as far as the same may legitimately appear at the trial. The court may also consider the number of witnesses, although the preponderance is not necessarily with the greatest number.
>>
>> It is settled that matters of credibility are addressed basically to the trial judge who is in a better position than the appellate court to appreciate the weight and evidentiary value of the testimonies of witnesses who have personally appeared before him.
>
> What petitioner has accomplished is only to cast doubts by capitalizing on the absence of documentary evidence on the part of respondents. While such approach would succeed if carried out by the accused in criminal cases, plaintiffs in civil cases need to do much more to overturn findings of fact and credibility by the trial court, especially when the same had been affirmed by the CA. It must be stressed that overturning judgments in civil cases should be based on preponderance of evidence, and with the further qualification that, when the scales shall stand upon an equipoise, the court should find for the defendant. The **"equiponderance of evidence" rule states that when the scale shall stand upon an equipoise**

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[46] G.R. No. 173829, June 10, 2013 [Per J. Peralta, Third Division].

> **and there is nothing in the evidence which shall incline it to one side or the other, the court will find for the defendant.** Under this principle, **the plaintiff must rely on the strength of his evidence and not on the weakness of the defendant's claim**; even if the evidence of the plaintiff may be stronger than that of the defendant, there is no preponderance of evidence on his side if such evidence is insufficient in itself to establish his cause of action.[47] (Emphasis supplied; citations omitted)

The cited cases—*Eastbay* and *Luzon Hydro*—likewise hinged on the standard of preponderance of evidence. However, Lazada's reliance thereon is manifestly misplaced, as these cases were viewed and applied under an entirely different and erroneous context.

In *Eastbay*, the City of Makati's position was anchored merely on two (2) grounds: *(1)* Eastbay's classification as a "Service Establishment-Other Independent Contractor;" and *(2)* its supposed capability to conduct sales activities, or the mere possibility thereof—arguments which the Court *En Banc* found insufficient to overcome Eastbay's evidence that its Makati office served solely as an administrative office.

In a similar vein, in *Luzon Hydro*, Lazada overlooks the clear import of the Court *En Banc*'s ruling therein—that the City of Makati failed to disprove the petitioner-taxpayer's evidence that its Makati office functioned purely as an administrative office, and not as a "Project Office" subject to LBT.

What remains consistent in both cases—and equally controlling in this case—is the well-settled rule that tax liability to a local government unit hinges on whether, during the relevant period, the taxpayer actually conducted business within its jurisdiction. It must be shown that, in such a fixed place or location, the taxpayer was regularly engaged in trade or commercial activities, either as a means of livelihood or with a view to profit, thereby requiring the recording of the corresponding sales therein.

In those cases, the petitioner-taxpayers successfully demonstrated that no taxable activity occurred within Makati, and the City failed to rebut such claims. In stark contrast, Lazada, in this case, failed to present evidence sufficient to overcome the clear showing that it conducted taxable activities within Makati for CY 2017, thereby justifying the imposition of LBT.

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[47] *Valbueco, Inc. v. Province of Bataan*, G.R. No. 173829, June 10, 2013 [Per J. Peralta, Third Division].

In fine, *(1)* Lazada's plea for offsetting is unavailing, as there exists neither a lawful basis nor any established amount from which to offset; and *(2)* the Court *En Banc* correctly upheld, on the basis of the evidence on record, Lazada's liability for CY 2017.

City of Makati's Motion for Reconsideration

As a threshold matter, We first address the timeliness of the City of Makati's filing of its *Motion for Reconsideration*[48] under Section 1, Rule 15 of the RRCTA.[49] Records show that the City of Makati received a copy of the assailed Decision[50] on November 12, 2024.[51] Counting fifteen (15) days therefrom, it had until November 27, 2024, to file its Motion. The records likewise confirm that the City of Makati filed its *Motion for Reconsideration* on November 21, 2024—well within the prescribed period.

With the matter of timeliness settled, We now proceed to resolve the substantive issues raised.

The City of Makati raises the following sole ground[52] for reconsideration of the Court *En Banc*'s assailed Decision:

> WITH DUE RESPECT, the Honorable Court erred in ruling that LAZADA is not liable for the deficiency LBT for alleged under-declared gross receipts for CY 2015 amounting to Php13,671,149.93.

In its Motion, the City of Makati contends that the Court *En Banc* erred in absolving Lazada from liability for the alleged deficiency LBT for CY 2016 in the amount of Php13,671,149.93, arising from the under-declaration of gross receipts for CY 2015. It maintains that Lazada's Audited Financial Statements (AFS) for 2016 reflects gross receipts totaling Php2,292,557,230.00 for CY 2015, with a purported under-declaration of Php996,076,497.13, from which the deficiency LBT was derived. The City of Makati further asserts that Lazada's failure to formally offer such AFS is of no consequence, as the said

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[48] *Supra* note 4.
[49] Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals provides:

> SECTION 1. *Who may and when to file motion.* — Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.

[50] *Supra* note 8.
[51] *Supra* note 13 (back portion).
[52] *Supra* note 4, at 150.

document was presented, identified, marked, and incorporated into the records through the testimony of Lazada's witness, Ms. Pineda.

Additionally, the City of Makati insists that the entirety of Lazada's gross receipts for CY 2015, amounting to Php2,292,557,230.00, are solely attributable to its Makati office. It anchors this claim in the testimony of Ms. Pineda, which was offered to establish, among others, the following: "*(1)* that as of 14 March 2016, Lazada transferred its principal office to Taguig City; *(2)* that as of 14 March 2016, Lazada has been recording its sales in its principal office in Taguig City; and *(3)* that following the transfer of its principal office in Taguig City in 2016, Lazada registered as a taxpayer of the local government of Taguig in 2016."[53]

On these grounds, the City of Makati reiterates its prayer that Lazada be held liable for the deficiency LBT for CY 2016 in the amount of Php13,671,149.93, allegedly arising from the under-declaration of gross receipts for the preceding year (*i.e.*, CY 2015), as well as the penalty of Php5,000.00 for the late filing of its business retirement, **or** a total assessed LBT deficiency of Php21,843,844.69.

In its *Comment*,[54] Lazada counters that the City of Makati merely rehashes arguments previously raised in its *Petition for Review*[55] before the Court *En Banc*. Lazada further points out that the City of Makati failed to specifically refute the findings of the assailed Decision,[56] particularly the absence of competent evidence establishing that the entire gross sales or receipts amounting to Php2,292,557,230.00 pertain solely to its Makati operations. It also stresses that it cannot be held liable for any deficiency LBT for CY 2016, given that its payment—computed based on its 2015 gross sales—exceeded the amount due based on its attributable actual gross sales for 2016, covering only the period from January 01 until March 14, 2016, when the Securities and Exchange Commission issued a *Certificate of Filing of Amended Articles of Incorporation* recognizing the transfer of its principal office to Taguig City. Lazada reiterates that it correctly declared one hundred percent (100%) of its gross sales to the Taguig City for CYs 2016 and 2017, consistent with the transfer of its principal office thereto, and the cessation of any branch or sales office in Makati thereafter. Finally, Lazada submits that the *Motion for Reconsideration* presents no compelling ground to warrant a reversal or modification of the assailed Decision.

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[53] *Supra* note 4, at 155.
[54] *Supra* note 6.
[55] EB No. 2767 Docket, pp. 1-8.
[56] *Supra* note 8.

After due consideration, We find no merit in the City of Makati's submissions.

At the onset, We note, as correctly observed by Lazada, that the present Motion merely reiterates matters previously raised, fully pleaded, and exhaustively resolved—first, in the City of Makati's *Comment to the Petition for Review*[57] and *Motion for Partial Reconsideration*[58] before the Court in Division, and subsequently in its *Petition for Review*[59] before the Court *En Banc*. These arguments have already undergone careful judicial scrutiny and were judiciously ruled upon by the Court, both sitting in Division and *En Banc*. The City of Makati thus presents no new, substantial, or compelling ground that would justify a reversal or modification of the assailed Decision.

Nonetheless, for clarity and to finally lay the matter to rest, We shall again address the arguments raised, if only to underscore their lack of merit.

First, the City of Makati's insisted that Lazada's AFS for CY 2016[60] be given due consideration despite not having been formally offered in evidence, on the premise that it was identified and incorporated into the case records. This contention, anchored on *Vda. de Oñate v. Court of Appeals*[61] (*Vda. de Oñate*) and *Ramos v. Spouses Dizon*[62] *(Ramos)*, is clearly misplaced. These cases find no application here, as the exhibits therein were duly explained by the witnesses, who were likewise subjected to cross-examination.

In *Vda. de Oñate*, the exhibits, consisting of receipts, were explained by the witness to show the specific amounts paid by Leonor Taguba to Elvira Mato Vda de Oñate, with opposing counsel having cross-examined the witness on the said documents. Similarly, in *Ramos*, the petitioner's witness sufficiently clarified the contents of the exhibits during cross-examination, thereby establishing that the contract in question was, in fact, one of equitable mortgage.

Here, however, the testimony of Ms. Pineda (Answers to Question Nos. 14 and 15)[63] merely identified the AFS for CY 2016 to demonstrate the amount of gross sales declared to Taguig City—not for the purpose asserted by the City of Makati, which seeks to use such gross sales figures as its basis for imposing LBT for CY 2016. Notably,

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[57] Division Docket, pp. 208-220.
[58] *Id.* at pp. 265-269.
[59] EB No. 2767 Docket, pp. 1-8.
[60] Division Docket, pp. 271-282.
[61] G.R. No. 116149, November 23, 1995 [Per J. Kapunan, First Division].
[62] G.R. No. 137247, August 07, 2006 [Per J. Chico-Nazario, First Division].
[63] *Supra* note 4, at 152-154; Division Docket, pp. 166-168.

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Ms. Pineda was not subjected to cross-examination on whether the gross sales for CY 2015, amounting to Php2,140,635,155.00, as indicated in the AFS for CY 2016, were exclusively attributable to the City of Makati.[64] In fact, this very amount does not even constitute the basis of the alleged deficiency tax sought to be collected by the City of Makati. On the contrary, the City itself crafted its own computation of Lazada's total gross receipts for CY 2015 (*i.e.,* Php2,292,557,230.00) by adding 'Miscellaneous Income' (*i.e.,* Php151,922,075.00) to the gross sales reflected in the AFS for CY 2016 (*i.e.,* Php2,140,635,155.00).[65]

Nevertheless, even assuming, *arguendo*, that We consider such AFS despite its non-offer, the City of Makati still failed to prove that the gross receipts reflected therein pertain exclusively to business conducted within its jurisdiction, as shall be discussed hereunder.

Second, as categorically ruled in the assailed Decision,[66] the imposition of LBT cannot rest on **bare allegations** regarding the transfer of a principal office, nor on the recording of sales in another city or municipality. In this case, the City of Makati urges the Court to sweepingly conclude that, simply because it was alleged that Lazada transferred its principal office to Taguig City only in 2016, all gross receipts for CY 2015, as reflected in its AFS for CY 2016, must necessarily be attributed to its Makati office. Paradoxically, however, the City of Makati has consistently maintained before the Court in Division and *En Banc* that Lazada remains liable for LBT in Makati for CYs 2016 and 2017, on the assertion that Lazada never truly ceased operations within its jurisdiction. This inconsistent stance cannot be countenanced, for it would effectively compel the Court to render a ruling grounded solely on bare, self-serving allegations crafted to suit the City of Makati's position.

To be clear, the Court's ruling on Lazada's tax liability to the City of Makati is firmly anchored on the actual conduct of its e-commerce business operations within the city's jurisdiction, in accordance with Section 150(a) of the LGC. Under said provision, the crucial factor in determining tax liability is whether an actual sale or transaction was consummated within the taxing locality. Section 150(a) of the LGC explicitly provides:

Section 150. *Situs of the Tax.* -

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[64] RTC Records – Transcript of Stenographic Notes for the hearing held on February 08, 2021, pp. 6-14.
[65] *Id.* at 155.
[66] *Supra* note 8.

> (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, wholesalers, **distributors**, dealers, contractors, banks and other financial institutions, and other businesses, **maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet <u>making the sale or transaction</u>, 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 supplied)

Accordingly, mere assertion that the entire gross receipts amounting to Php2,292,557,230.00 for CY 2015 should be attributable to the City of Makati, simply because Ms. Pineda's testimony was offered to prove that Lazada's transfer of its principal office to Taguig City occurred only in 2016, cannot serve as a valid basis for determining the proper situs of taxation in this case. Section 146 of the LGC[67] is unequivocal: the liability for LBT attaches solely to the specific and distinct establishment or place where the business is actually conducted—that is, where the taxpayer habitually engages in trade or commercial business activity within the taxing jurisdiction. Absent such showing, no liability may be imposed.

Finally, the City of Makati failed to allege any factual or legal basis to substantiate its claim for the penalty arising from the late filing of Lazada's business retirement, or for the supposed total deficiency LBT amounting to Php21,843,844.69. Its Motion merely focuses on its disagreement with the Court *En Banc*'s ruling absolving Lazada from liability for the alleged deficiency LBT for CY 2016, which purportedly arose from the under-declaration of gross receipts for CY 2015. Accordingly, the City of Makati's prayer on this score must likewise be denied.

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[67] Section 146 of the LGC provides:

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 cases 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 are 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.

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In sum, it bears reiterating that the mere declaration of one hundred percent (100%) of a taxpayer's gross sales or receipts in one locality does not, by itself, automatically negate tax liability in another, especially where substantial and credible evidence establishes the existence of business presence and taxable activities within the latter's jurisdiction.

In view of all the foregoing, the Court finds no compelling reason to disturb the assailed Decision. Both Motions amount to nothing more than a reiteration of arguments previously raised, thoroughly considered, and resolved by both the Court in Division and *En Banc*.

WHEREFORE, premises considered, both Lazada's *Motion for Partial Reconsideration (of Decision promulgated on 28 October 2024)* and the City of Makati's *Motion for Reconsideration (of the Decision dated 28 October 2024)* are hereby **DENIED** for lack of merit.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice