**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**<u>SECOND DIVISION</u>**

**THE CITY OF VALENZUELA and HON. ADELIA SORIANO, in her respective capacity as City Treasurer,**
Petitioners,

- versus -

**NLEX CORPORATION,**
Respondent.

**CTA AC NO. 290**

Members:

**RINGPIS-LIBAN,** *Chairperson,*
**MODESTO-SAN PEDRO,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated:

MAR 2 7 2025

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## RESOLUTION

***RINGPIS-LIBAN, J.:***

Before this Court is petitioners' **Motion for Reconsideration (to the CTA Second Division's Decision dated 25 November 2024)** posted on December 23, 2024, and received by the Court on January 2, 2025, with respondent's **Comment (Re: Motion for Reconsideration dated 20 December 2024)** posted on January 13, 2025, and received by the Court on January 21, 2025.

On November 25, 2024, the Court promulgated a Decision affirming the findings of the Regional Trial Court – Branch 283, Valenzuela City, in cancelling petitioners' *Notice of Deficiency* dated November 11, 2019 against respondent for local business tax (LBT) covering taxable year 2013 to 2019 in the amount of ₱9,886,755.17, the dispositive portion of which states as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the present *Petition for Review* is **DENIED**.
>
> Accordingly, the Decision dated November 25, 2022, and the Resolution dated February 23, 2023, both rendered by the RTC- Branch 283, Valenzuela City, in Civil Case No. 27-V-20, are **AFFIRMED**.
>
> **SO ORDERED.**"

In their Motion, petitioners seek reconsideration of the above Decision primarily arguing that the Court erred in finding that: the inclusion of value-added tax (VAT) in the computation of gross receipts for LBT was improper; and, petitioners were not able to prove the existence of fraud, hence, assessment was made beyond the five (5) years prescriptive period for taxable year (TY) 2013 and 2014.

As to the first argument, petitioners assert that assessment against respondent was based on a post-audit review. As such, respondent's declaration of gross receipts upon its application for renewal of business permits is ministerial to petitioner City Treasurer, and any adjustments require the taxpayer's cooperation through proper submission of supporting documents. While respondent claims that the submission of its quarterly VAT return (BIR Form 2550-Q) was never an issue, petitioners however insist that submission of the said returns is essential to determine whether the declared gross receipts therein exclude VAT, as required under Section 131(n) of Republic Act (RA) No. 7160,[1] or the "Local Government Code (LGC) of 1991," especially since the burden of proving that VAT was properly excluded from gross receipts rests on the taxpayer. In any case, assuming that VAT was included in assessing respondent's LBT, petitioners maintain that the inclusion of VAT in the gross receipts is justified under the Department of Finance (DOF) Local Finance Circular No. 001-13,[2] which categorizes VAT paid by the taxpayer as part of gross receipts for LBT computation.

With regard to the second argument, petitioners reiterate that the prescription has not set in for TY 2013 and 2014 since local taxes, fees, or charges may be assessed and collected within ten (10) years from knowledge of fraud, pursuant to Section 194 of the LGC of 1991. Petitioners expound that respondent's failure to disclose its full gross receipts, including VAT components, constitutes fraudulent misrepresentation or willful concealment of the correct taxable amounts. Hence, petitioners aver that they have ten (10) years from discovery of fraud, which is sometime in November 2019, within which to assess and collect deficiency LBT.

On the other hand, in its Comment, respondent points out that the *Tax Data and Assessment Forms-Deficiency,* as attached to petitioner City Treasurer's *Notice of Deficiency,* clearly show that VAT was included in the computation of respondent's gross sales, which was used as the basis for computing the LBT for TYs 2013 to 2019. Respondent also maintains that petitioners cannot insist to submit the quarterly VAT returns to prove remittance and payment of VAT to the Bureau of Internal Revenue (BIR), and that non-submission of which *ipso facto* validate petitioners' assessment because it is still erroneous to include VAT in respondent's gross sales. Furthermore, respondent asserts that petitioners

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[1] AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991, took effect on January 1, 1992.

[2] "SUBJECT: Prescribing Guidelines Governing the Power of Municipalities and Cities to Impose Business Tax, Fees and Charges on Tollway Operators/Concessionaires Pursuant to Section 143 (e), Republic Act No. 7160, Otherwise Known as the Local Government Code of 1991, and Its Implementing Rules and Regulations," dated January 18, 2013.

misinterpreted DOF Local Finance Circular No. 001-13 as a legal justification, considering that the said circular expressly excludes VAT from the gross sales or receipts for purposes of computing LBT, similar to Section 131(n) of the LGC of 1991.

Lastly, respondent agrees with the Court that petitioners' assessment for deficiency LBT for TYs 2013 and 2014 had already prescribed since petitioners misguidedly relied that they have 10 years from November 2019 to assess and collect the alleged deficiency taxes. Respondent reiterates that there was no concealment of the "excluded VAT" because there was no duty to disclose the excluded VAT in the first place. Respondent further claims that it cannot be held liable for fraud because the *Notice of Deficiency* did not state that the assessment is based on fraud or concealment, and that the allegation of fraud or concealment was not raised or proven during the trial. As such, respondents avers that petitioners clearly failed to establish the quantum of proof required by law when they did not at all present any evidence of fraud to warrant the application of the said 10-year prescriptive period.

After due consideration, the Court finds petitioners' *Motion for Reconsideration* bereft of merit.

While the arguments proffered by petitioners in their Motion are essentially rehash of matters that have already been considered and weighed upon in the Decision, the Court, nonetheless, again stresses that petitioners erred in the computation of respondent's alleged deficiency LBT based on the gross sales/receipts reflected in its audited financial statements by including VAT in the total amount assessed.

To reiterate, under Section 131(n) of the LGC of 1991 and Article 220(n), Rule XXX, of the "Rules and Regulations Implementing the Local Government Code of 1991",[3] **gross sales or receipts** is defined to include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person <u>excluding</u> discounts if determinable at the time of sales, sales return, excise tax, and VAT.

Similarly, Item B(2)(ii) of DOF's Bureau of Local Government Finance (BLGF) Memorandum Circular No. 01-001-2017,[4] (referencing Section 131(n) of the LGC of 1991) categorically states that VAT shall not form part of the gross sales or receipts for purposes of assessment of LBT for renewal of business permit.

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3 Dated February 12, 1992.
4 "SUBJECT: Reminders in the Assessment of the Local Business Tax (LBT), Registration and Renewal of Business Permits and Licenses and Payment of Community Tax," dated January 5, 2017.

Herein, the *Business Tax Computation* and *Tax Data and Assessment Forms-Deficiency* that were attached to the *Notice of Deficiency* dated November 11, 2019,[5] readily show that VAT was included in the computation of respondent's gross sales and were further used as basis for imposing deficiency LBT for taxable years 2013 to 2019. Considering that VAT is listed among the exclusions from gross sales/receipts under Section 131(n) of the LGC of 1991, the same should not form part of respondent's gross sales/receipts for the purposes of computation of deficiency LBT.

Moreover, petitioners cannot likewise invoke the definition of gross receipts under DOF Local Finance Circular No. 001-13, since it expands or amends the definition provided under Section 131(n) of the LGC of 1991, in the sense that the enumerated exclusions from gross receipts in the said Circular refer to "VAT paid by the taxpayer" instead of "VAT", as simply stated in the LGC.

Settled is the rule that administrative issuances must not override, supplant, or modify the law; they must remain consistent with the law they intend to carry out. The power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature.[6]

As to petitioners' second argument that respondent's failure to disclose its full gross receipts, including VAT components, constitutes fraudulent misrepresentation or willful concealment of taxable amounts that entitles petitioners to the prescriptive period of 10 years within which to assess and collect deficiency taxes for respondent's LBT, pursuant to Section 194(b) of the LGC of 1991.[7]

The Court is not swayed.

Verily, Section 194 of the LGC of 1991, states that local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. And, in case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.

However, in availing itself of the extraordinary 10-year period, the Local Government bears the burden of proving the existence of facts upon which the

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5 Exhibits "4 and series", "5 and series", and "6", respectively, RTC Docket – Vol. 1 (Civil Case No. 27-V-20), pp. 962 to 976.

6 *Department of Finance, et al. v. Asia United Bank etc.*, G.R. Nos. 240163 & 240168-69, December 01, 2021.

7 "**Section 194.** *Periods of Assessment and Collection.* – x x x.

(b) In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment."

fraud is based and is obligated to communicate to the taxpayer the basis for its allegations of fraud in the assessment notice, as part of due process.[8] In this case, the Court observed that other than petitioners' bare allegations that respondent deliberately concealed its proper gross receipts without submission of "excluded VAT," there is nothing in the records of the case that establishes the same. Even the subject *Notice of Deficiency* issued by petitioner City Treasurer fails to show or indicate therein the basis for the allegations of fraud to warrant the 10 years prescriptive period – as a matter of fact, the term "fraud" was not even mentioned in said notice.

Again, fraud is a question of fact that should be specifically alleged and duly proven. In the case of *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.,*[9] the Supreme Court ruled that fraud is never imputed. The High Court stated that it will not sustain findings of fraud upon circumstances which, at most, create only suspicion. Also, in *Commissioner of Internal Revenue v. Melchor J. Javier, Jr., et al.,*[10] the Supreme Court declared that the fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. While in the more recent case of *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan,*[11] the High Court concluded that fraud must be proven with clear and convincing evidence amounting to more than mere preponderance, and cannot be justified by a mere speculation.

All told, considering that he who alleges a fact has the burden of proving it and a mere allegation is not evidence, the Court is constrained to deny petitioners' claim since they failed to discharge said burden.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioners in their Motion for Reconsideration, the Court finds no compelling reason to reverse or modify the Decision promulgated on November 25, 2024.

**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration (to the CTA Second Division's Decision dated 25 November 2024) is **DENIED** for lack of merit.

**SO ORDERED**.

Ma. Belen M. Ringpis-Liban

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

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[8] See *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016.
[9] G.R. No. 213943, March 22, 2017.
[10] G.R. No. 78953, July 31, 1991; citing *Aznar v. Court of Tax Appeals*, G.R. No. L-20569, August 23, 1974.
[11] G.R. No. 232663, May 3, 2021.

We Concur:

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice