REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Petitioner,

- versus -

CITY GOVERNMENT OF QUEZON CITY, as represented by **EDGAR T. VILLANUEVA**, in his official capacity as City Treasurer of Quezon City,
Respondent.

CTA AC NO. 273

Members:

BACORRO-VILLENA, *Acting Chairperson,*
CUI-DAVID, *and*
FERRER-FLORES, *JJ.**

Promulgated:

MAY 29 2024 4:30 p.m.

x- -x

DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*[1] filed by petitioner National Grid Corporation of the Philippines, praying for the reversal and setting aside of the Decision[2] dated July 12, 2022 (assailed Decision), and the Resolution[3] dated September 8, 2022 (assailed Resolution), both rendered by the Regional Trial Court, Branch 225, Quezon City (RTC/court *a quo*) in Civil Case No. R-QZN-21-07791 entitled *National Grid Corporation of the Philippines v. City Government of Quezon City, as represented by Edgar T. Villanueva, in his official capacity as City Treasurer of Quezon City.* The respective dispositive portions of the assailed Decision and Resolution read as follows:

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* Special Member
[1] Division Docket, pp. 5-31.
[2] *Id.*, pp. 35-38.
[3] *Id.*, pp.39-46.

Assailed Decision of July 12, 2022:

> **IN VIEW OF THE FOREGOING**, the Appeal of Assessment and Claim for Refund is hereby **dismissed** for lack of merit. The Tax Bill No. B-2021-05-18-WU-003374 assessing plaintiff **NATIONAL GRID CORPORATION OF THE PHILIPPINES** the City Tax in the total amount of **Php19,306,767.07**, Mayor's Fee of **Php10,000.00** and Penalty for delinquency of **Php2,659,520.00** for calendar year 2021 is hereby **affirmed**.
>
> **SO ORDERED**.

Assailed Resolution of September 8, 2022:

> **WHEREFORE**, the Motion for Reconsideration is hereby **denied** for lack of merit.
>
> **SO ORDERED**.

THE PARTIES

Petitioner National Grid Corporation of the Philippines (NGCP) is a domestic corporation existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the NGCP Building, Quezon Avenue corner Bureau of Internal Revenue (BIR) Road, Diliman, Quezon City.[4]

Respondent City Government of Quezon City is a duly constituted public corporation, organized and existing under and by virtue of the Commonwealth Act No. 502, as amended, with office address at Quezon City Hall, Elliptical Road, Diliman, Quezon City. It is represented by Edgar T. Villanueva, in his official capacity as Treasurer of Quezon City.[5]

THE FACTUAL ANTECEDENTS

The factual antecedents, as culled from the records, are as follows:

[4] Paragraph 5, The Parties, Memorandum (For the Petitioner), Division Docket, p.220.
[5] Par. 2, The Parties, Memorandum of Respondent, Division Docket, p. 191.

Through the enactment of Republic Act (RA) No. 9511[6] on December 1, 2008, petitioner was granted a franchise to operate, manage, and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through the high voltage back-bone system of interconnected transmission lines, substations, and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines.

On March 19, 2021, respondent issued Tax Bill No. B-2021-03-19-H7-005578,[7] assessing petitioner with city tax and other business taxes, along with mayor's fee, for calendar year (CY) 2021 in the total amount of ₱98,514,993.14.

On May 18, 2021, petitioner protested[8] the said assessment before respondent's Treasurer's Office – Administrative Division, claiming that under Section 9 of RA No. 9511, it is exempt from the payment of business taxes, including the city tax, upon its payment of the three percent (3%) franchise tax based on its gross receipts. The alleged proof of payment of the 3% franchise tax was attached to its written protest.

On the same day, May 18, 2021, respondent issued Tax Bill No. B-2021-05-18-WU-003374,[9] amending the previous bill and assessing petitioner anew with local taxes amounting to ₱19,306,767.07, mayor's fee and other fees of ₱33,712.80, and penalty for delinquency of ₱2,659,520.13, for an aggregate amount of ₱22,000,000.00 for CY 2021. As shown in the Tax Bill, the gross receipts on which respondent based its local tax assessments amounted to ₱2,573,935,608.86.

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[6] AN ACT GRANTING THE NATIONAL GRID CORPORATION OF THE PHILIPPINES A FRANCHISE TO ENGAGE IN THE BUSINESS OF CONVEYING OR TRANSMITTING ELECTRICITY THROUGH HIGH VOLTAGE BACK-BONE SYSTEM OF INTERCONNECTED TRANSMISSION LINES, SUBSTATIONS AND RELATED FACILITIES, AND FOR OTHER PURPOSES.
[7] Exhibit "A", Division Docket, p. 88.
[8] Exhibit "B", Division Docket, pp. 89-92.
[9] Exhibit "C", Division Docket, p. 95.

To facilitate the issuance of its business permit, petitioner paid under protest the assessed taxes and fees on May 18, 2021. Simultaneous with said payment was the filing of a letter dated April 19, 2021, [10] informing respondent that the payment was being made under protest and requesting that the words "Paid Under Protest" be annotated on the official receipt to be issued. However, despite the request, the words "Paid Under Protest" were not reflected in the official receipt issued to it.[11]

On May 28, 2021, petitioner filed a *Written Protest and Claim for Refund*[12] before respondent's Treasurer's Office – Administrative Division, pursuant to Sections 195 and 196 of the Local Government Code (LGC) of 1991. In the said protest, petitioner reiterated that it is exempt from local taxes based on RA No. 9511. To bolster its claim, petitioner attached to its protest the *Letter-Opinion*[13] dated September 17, 2009 from the Bureau of Local Government Finance (BLGF) of the Department of Finance (DOF), where it was stated that petitioner is deemed exempt from local taxes.

On August 16, 2022, petitioner was constrained to file an "*Appeal of Assessment and Claim for Refund in accordance with Sections 195 and 196 of Republic Act No. 7160*" (*Petition*)[14] before the court *a quo* due to alleged inaction on the part of respondent.

During the proceedings before the court *a quo*, more particularly during the *Pre-Trial Conference* on March 24, 2022, both parties admitted the following:

1. On 19 March 2021, the Office of the defendant City Treasurer issued Tax Bill No. B-2021-03-19-H7-005578, for business tax/city tax and other regulatory fees in the total amount of P98,514,993.14 for calendar year 2021.

2. On 18 May 2021, NGCP filed a written protest on the said assessment asserting that it is exempt from the payment of business taxes, including the City Tax, pursuant to its franchise (RA9511) and requested for the cancellation of the assessment of the City Tax for the period 2021 in the amount of P98,481,700.34. On the same day, after NGCP filed the said written protest, the Office of the defendant

[10] Exhibit "D", Division Docket, pp. 96-97.
[11] Exhibit "E", Division Docket, p. 98.
[12] Exhibit "F", Division Docket, pp. 99-102.
[13] Exhibit "G", Division Docket, pp. 103-106.
[14] Annex "D", Division Docket, pp. 55-69.

City Treasurer issued Tax Bill No. B-2021-05-18-WU-003374 assessing and demanding payment for mayor's permit, city tax, business and other regulatory fees and charges to NGCP in the total amount of P22,000,000.00 for calendar year 2021.

3. NGCP paid under protest on 18 May 2021 the assessed amount of P22,000,000.00 for calendar year 2021. Official Receipt No. A8COR8608553-8 dated 18 May 2021 was issued by the City Treasurer of Quezon City.

4. Subsequently, NGCP filed its Written Protest and Claim for Refund for the City Tax of P19,306,767.07, Mayor's Permit of P10,000.00, and Penalty for delinquency of P2,659,520.13 on the ground that it is exempt from paying the same under its franchise.

5. That plaintiff has been paying business tax to the Respondent City Treasurer since its incorporation in 2009 up to 2020, except that payments made in 2010 and 2020 are under protest and cases are pending before RTC branches 85 and 223. *[sic]*

Based on the foregoing admissions, the parties agreed that there were no more controverted facts that needed to be presented as evidence. Hence, the case was submitted for summary judgment. However, considering that the parties did not compare their documentary evidence (as to whether they are originals or certified true copies), a hearing was held for such purpose.[15] After the comparison hearing on March 31, 2022, the court *a quo* submitted the petition for decision.[16]

On July 12, 2022, the court *a quo* rendered the assailed Decision, dismissing the aforesaid petition. Citing the case of *National Grid Corporation of the Philippines v. Ofelia M. Oliva*[17] (*NGCP v. Oliva*), the court *a quo* emphasized that petitioner's payment of the 3% franchise tax is *in lieu* of payment of "*income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise*" pursuant to Section 9 of RA No. 9511. Hence, for the court *a quo*, the failure of petitioner to submit proof that it updated its payment of the required 3% franchise tax, its petition must be dismissed.

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[15] Annex "1", Pre-Trial Order dated March 24, 2022, Division Docket, pp. 207-214.
[16] Annex "2", Order dated March 31, 2022, Division Docket, pp. 215-217.
[17] G.R. No. 213157, August 10, 2016.

Not satisfied, petitioner filed a *Motion for Reconsideration (Of the Decision dated 12 July 2022)*[18] on August 25, 2022, explaining that it submitted as evidence the BIR Certifications as proof of payments of the 3% franchise tax for the years 2009 up to July 2021. According to petitioner, at the time of filing the petition before the court *a quo*, it is updated in the payment of the said franchise tax. Hence, petitioner prayed for the court *a quo* to reconsider its previous ruling and give evidentiary weight to the said BIR Certifications.

However, the court *a quo* denied petitioner's *Motion for Reconsideration* in the equally assailed Resolution of September 8, 2022. The court *a quo* explained that while petitioner submitted during the trial the BIR Certifications pertaining to the payments made until July 2021, no other payments were presented before the case was submitted for decision on April 23, 2022. The court *a quo* added that while petitioner attached the BIR Certifications issued on November 9, 2021 and February 4, 2022 to its *Motion for Reconsideration*, the same cannot be given probative value as they were not formally offered. And even if it were to consider the attached BIR Certifications, the same will not stand since they were not duly identified. Finally, the court *a quo* opined that the BIR Certifications failed to demonstrate that the amounts collected pertained to the 3% franchise tax and that the 3% franchise tax was based on petitioner's gross receipts from its franchise operations.

Still unable to agree, petitioner elevated its case before this Court *via* the present *Petition for Review* filed on October 19, 2022.

On January 30, 2023, respondent filed its *Comment [to the Petition for Review dated 19 October 2022]*,[19] in compliance with the Court's directive per Resolution[20] dated November 7, 2022.

Thereafter, on February 2, 2023, the Court issued a Resolution [21] ordering the parties to file their respective memorandum within thirty (30) days from notice.

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[18] Annex "E", Division Docket, pp. 148-160.
[19] Division Docket, pp. 171-186.
[20] *Id.*, p. 170.
[21] *Id.*, p. 189.

With the filing of respondent's Memorandum on March 6, 2023,[22] and petitioner's Memorandum on March 10, 2023,[23] the instant case was submitted for decision on March 20, 2023.[24]

Hence, this Decision.

THE ISSUES

Petitioner submits the following grounds for the allowance of its *Petition for Review*:

a. The RTC gravely erred when it held that NGCP is not entitled to tax exemption for its failure to submit proof that it is updated in the payment of the required 3% franchise tax for the year 2021 as required under its franchise, RA No. 9511.

b. The RTC gravely erred when it failed to consider the BIR Certifications marked as Exhibits "I and series" as clear proof that NGCP has been religiously paying the 3% franchise tax since 2009 pursuant to its franchise for it to be entitled tax exemption.

c. The RTC gravely erred when it held that the BIR Certifications failed to demonstrate that:

    1. The amounts collected from the petitioners were the very same franchise taxes referred in Section 9 of RA No. 9511; and,
    2. The franchise taxes collected from Petitioner in 2021 corresponds to 3% of its gross receipts derived from its operations under its franchise as mandated in Section 9 of RA No. 9511.

d. The RTC gravely erred and violated NGCP's right to due process when it made a factual finding that NGCP failed to submit updated proof of franchise tax payments for the calendar year 2021 despite its previous ruling that there are no more factual issues to be tried and in not giving NGCP the opportunity to submit proof of the same.

e. The RTC gravely erred when it failed, in the interest of substantial justice and equity, to give weight to the BIR Certifications as proof of NGCP's compliance with its franchise and to consider the updated proof of payment of

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[22] *Id.*, pp. 190-206.
[23] *Id.*, pp. 219-245.
[24] Resolution, Division Docket, p. 258.

the 3% franchise tax for calendar year 2021 which were attached in NGCP's Motion for Reconsideration.

In sum, the material issues for the Court's determination are:

I. WHETHER PETITIONER NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) IS EXEMPT FROM PAYING LOCAL TAXES; and

II. WHETHER PETITIONER NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) IS ENTITLED TO THE REFUND OF LOCAL TAXES OF ₱19,306,767.07, MAYOR'S FEE OF ₱10,000.00 AND PENALTY FOR DELINQUENCY OF ₱2,659,520.13 WHICH IT PAID UNDER PROTEST FOR CALENDAR YEAR (CY) 2021.

***Petitioner's Arguments*:**

Petitioner argues that the BIR Certifications, allegedly presented and marked as evidence before the court *a quo*, prove that it religiously paid the 3% franchise tax since 2009. The payments were up until July 2021, when it filed a petition before the court *a quo*. Thus, it claims that it fully complied with its obligation to pay the 3% franchise tax, which the court *a quo* mistakenly failed to consider.

Petitioner also argues that the court *a quo* erred in requiring it to submit proof of payments of the 3% franchise tax for the whole year of 2021 despite having already submitted proof of payments until July 2021. According to petitioner, the accrual of payment for local taxes under Sections 166 and 167 of the LGC of 1991, in relation to Section 20, Article 8 of the Quezon City Revenue Code, is different from the payment of franchise tax under RA No. 9511. It contends that local tax assessment is based on the taxpayer's gross receipts or sales of the immediately preceding year. In contrast, franchise tax under RA No. 9511 is based on the taxpayer's gross receipts derived from the franchise operations of the current year. Thus, at the time of filing the petition before the court *a quo*, it couldn't present any proof of payment for the whole year since it has yet to determine its gross receipts for the remaining months of 2021.

In the same vein, petitioner claims that since it was able to present proof of its full payment of franchise tax for 2020, it is logical and reasonable that the proof of payments of the 3% franchise tax for the immediately preceding year should be the one submitted for the court *a quo's* consideration. To require petitioner to submit proof of payment for the whole year of 2021 on August 16, 2021 (or at the time of filing of the petition before the court *a quo*) amounts to an unjust denial of its tax exemption under its franchise.

Petitioner also asserts that the BIR Certifications are sufficient to prove that it is updated in paying its franchise tax. As reflected in the certificates, the collections listed represent its franchise tax payment through the Electronic Filing and Payment System (*e*FPS). From 2009 until 2017, its franchise tax payment was made using BIR Form No. 2551, as the BIR Certifications indicated. However, in 2018, the BIR changed the said form to BIR Forms 2553 and 0605, which is also evident on the face of the BIR Certifications.

Petitioner adds that the BIR Certifications should enjoy the presumption of regularity, considering that the BIR (the agency tasked with tax collection) issued them to confirm its payments of the 3% franchise tax from the start of its operation in 2009 up to the subject period of its claim.

Petitioner further posits that its right to due process was violated when the court *a quo* submitted the previous petition for resolution after the parties agreed that there were no more controverted facts requiring any presentation of evidence. It claims that the court *a quo* did not require it to submit additional evidence to support its claim that it duly paid the franchise tax for 2021. Hence, it was misled to believe that its updated franchise tax payments were no longer an issue.

Lastly, petitioner contends that in the interest of substantial justice and equity, the court *a quo* should have considered the BIR Certifications that it attached to its Motion for Reconsideration. Citing the cases of *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*[25] (*BPI-Family Savings*) and *Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation*[26] (*Ironcon Builders*), petitioner echoes

[25] G.R. No. 122480, April 12, 2000.
[26] G.R. No. 180042, February 8, 2010.

the Supreme Court's declaration that technicalities and legalisms should be set aside for the courts to arrive at a just determination of the controversy.

***Respondent's Arguments*:**

Respondent, on the other hand, maintains that the court *a quo* committed no error in its observations that petitioner failed to establish that it is updated in the payment of franchise tax despite submitting the BIR Certifications.

Respondent stresses that admissibility of evidence does not mean that the pieces of evidence submitted have probative value. Based on the assailed Decision and Resolution, there is no doubt that the court *a quo* considered the BIR Certifications but did not find them substantial or relevant enough to sustain petitioner's claim of updated payment of the franchise tax for 2021.

As to the alleged violation of due process, respondent counter-argues that the court *a quo* could not be expected to require petitioner to submit additional supporting evidence to prove its claim of updated payment of franchise tax. For respondent, this will run counter to the court's mandate to be impartial and not act as counsel for any party before it.

Respondent likewise argues that the court *a quo* did not err when it refused to appreciate any evidence that was not formally offered. Respondent pointed out that petitioner merely attached the BIR Certifications to its *Motion for Reconsideration* without any formal offer. And even if the court *a quo* considered them, the attached BIR Certifications will still fail to demonstrate that the amounts collected are the same franchise tax referred to in Section 9 of RA No. 9511.

Also, respondent points out that petitioner did not signify the importance of the correct forms used to pay franchise tax before the court *a quo*. Due to its belated invocation, the court *a quo* could not be faulted for not giving the BIR Certifications any weight in resolving its prior petition.

As for petitioner's invocation of a supposed liberal application of technical rules, respondent contends that the cases of *BPI-Family Savings* and *Ironcon Builders* are not applicable since both cases are not in all fours with the instant case. According to respondent, the abovementioned cases pertain to circumstances surrounding the application of the National Internal Revenue Code (NIRC) of 1997, as amended, while in herein case, the applicable laws are the LGC of 1991 in relation to RA No. 9511.

THE COURT'S RULING

Before *We* proceed to resolve the merits of the case, *We* shall first determine whether the Court has jurisdiction over the instant petition.

The Court of Tax Appeals has jurisdiction to rule on issues relating to local taxes only and <u>not</u> on regulatory fees.

Section 7(a)(3) of RA No. 1125,[27] as amended by RA No. 9282[28] provides:

> SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (3) Decisions, orders or resolutions of the **Regional Trial Courts** in **<u>local tax</u>** cases originally decided or resolved by them in exercise of their original or appellate jurisdiction. [*Emphasis supplied*]

[27] AN ACT CREATING THE COURT OF TAX APPEALS.
[28] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

Based on the foregoing provision, the appellate jurisdiction of this Court over decisions, orders, or resolutions of the RTC becomes operative when the latter has ruled on a local tax case, *i.e.*, one which is in the nature of a tax or which primarily involves a tax issue.

An examination of the instant petition reveals that petitioner prays for the refund of city tax of ₱19,306,767.07, mayor's fee of ₱10,000.00, and penalty for delinquency of ₱2,659,520.13.

Anent the mayor's fee of ₱10,000.00, the Court finds the same **not** a local tax.

Under Section 5, Article X of the 1987 Constitution, LGUs have the power to create their own revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as Congress may provide, consistent with the basic policy of local autonomy, to wit:

> "*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."

Consistent with this constitutional mandate, the LGC grants taxing powers to each LGU. Specifically, Section 151 of the LGC grants cities the power to levy taxes, fees, and charges which provinces or municipalities may impose.

Section 143 of the LGC provides for the scale of taxes on business that cities and municipalities may impose, while Section 147 of the same law provides for the fees that may be imposed by cities and municipalities on business and occupation, to wit:

> "SECTION 147. *Fees and Charges.* — The municipality may impose and collect such reasonable fees and charges on business and occupation and, except as reserved to the province in Section 139 of this Code, on the practice of any profession or calling, **commensurate with the cost of regulation, inspection and licensing before any person may engage in such business** or

occupation, or practice such profession or calling." [*Emphasis supplied*]

The term "charges" in the LGC refers to pecuniary liability, as rents or fees against persons or property, while the term "fee" means "a charge fixed by law or ordinance for the regulation or inspection of a business or activity" as follows:

> "SECTION 131. *Definition of Terms.* — When used in this Title, the term:
>
> xxx xxx xxx
>
> (g) 'Charges' refers to pecuniary liability, as rents or fees against persons or property;
>
> xxx xxx xxx
>
> (l) **'Fee'** <u>means a charge fixed by law or ordinance for the regulation or inspection of a business or activity;</u> [*Emphasis supplied*]

In this case, the mayor's fee imposed on petitioner is *primarily regulatory* in nature and not a revenue-raising tax. Thus, *We* will not rule on the issue of refunding the mayor's fee as it falls outside of this Court's jurisdiction.

The Court of Tax Appeals may rule on the factual determinations made in the summary judgment.

A perusal of the records reveals that the court *a quo* rendered the assailed Decision and Resolution through summary judgment or without conducting a full-blown trial.

In *Philippine Business Bank v. Felipe Chua*,[29] the Supreme Court defined summary judgment as follows:

> **A summary judgment, or accelerated judgment, is a procedural technique to promptly dispose of cases** where the facts appear undisputed and certain from the pleadings, depositions, admissions, and affidavits on record, or for weeding out sham claims or defenses at an early stage of the litigation to avoid the expense and loss of time involved in a

[29] G.R. No. 178899, November 15, 2010.

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> trial. **When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts.** [*Emphasis supplied*]

From the above, a summary judgment can be resorted to only where there are no questions of fact or where the material allegations of the pleadings are not disputed. Simply put, summary judgment may be availed to resolve only questions of law.

During the pre-trial conference before the court *a quo*, the previous petition was submitted for summary judgment after the parties agreed that there were no more controverted facts that would have required the presentation of evidence. Hence, what should have been left for the court *a quo* to resolve is/are *purely legal issue/s*. However, the Court finds otherwise.

In its previous petition before the court *a quo*, petitioner prayed for the following reliefs: (1) declare and confirm that NGCP is exempt from payment of local taxes under Section 9 of RA 9511; (2) direct respondent to cancel the relevant assessment of city taxes, mayor's fee and the corresponding penalty; and, (3) direct respondent to refund the city tax of ₱19,306,767.07, mayor's fee of ₱10,000.00, and penalty for delinquency of ₱2,659,520.13, which it paid under protest for CY 2021.

Likewise, in the Pre-Trial Order dated March 24, 2022, the agreed issues to be tried are: (1) whether NGCP is exempt from the payment of business tax on its franchise and other regulatory fees under RA No. 9511; and (2) whether the city tax of ₱19,306,767.07, mayor's fee of ₱10,000.00, and corresponding penalty for delinquency should be refunded to NGCP. Based on the prayer and the stipulated issues, there is a genuine issue of fact which requires the presentation of evidence, that is, *whether petitioner is entitled to the claim for refund.*

Despite the presence of a genuine issue of fact, the parties agreed during the pre-trial conference that there were no more factual controversies. Hence, the submission of the previous petition for summary judgment.

Nonetheless, sifting through the assailed Decision and Resolution, *We* find that the court *a quo* resolved not only the question of law (petitioner's exemption from local taxes), but it also resolved the question of fact (petitioner's claim for refund) when it proceeded to determine petitioner's entitlement to a refund which it based on the documentary evidence submitted and marked.

A scrutiny of the instant *Petition for Review* shows that petitioner is contesting the court *a quo*'s factual determinations (as ruled in the assailed Decision and assailed Resolution) which are as follows: (1) petitioner failed to prove that it is updated in the payment of the 3% franchise tax; and, (2) petitioner failed to show that the payments indicated in the BIR Certifications pertain to the 3% franchise tax based on its gross receipts derived from the franchise operations under RA No. 9511. Hence, the prayer for the following reliefs:

1. Declaring and confirming that **NGCP** is **EXEMPT** from the payment of City Tax and Mayor Permit Fee pursuant to Section 9 of RA 9511;

2. Recognizing NGCP's payment of the 3% franchise tax for taxable year 2009 to March 2022;

3. Directing respondent City Treasurer to **CANCEL Tax Bill Nos. B-2021-03-19-H7-005578 and B-2021-05-18-WU-003374,** which require NGCP to pay the City Tax for calendar year 2021 in the total amount of **Php98,514,993.14 and Php19,306,767.07**, respectively, and Mayors Fee of **Php10,000.00 and corresponding penalties**; and

4. Directing respondent City Treasurer to **REFUND** the City Tax in the total amount **Php19,306,767.07**, Mayors Fee of **Php10,000,00**, and Penalty for delinquency of **Php2,659,520.13** to NGCP which it paid under protest on 18 May 2021. [*Emphasis supplied*]

After a careful review of the records and the parties' arguments, this Court finds the present petition impressed with merit.

The tax exemption of petitioner granted under Section 9 of RA No. 9511 is conditioned on its payment of the 3% franchise tax.

Section 9 of RA No. 9511 reads:

> SEC. 9. *Tax Provisions.* - In consideration of the franchise and rights hereby granted, the Grantee [NGCP], its successors or assigns, shall pay a **franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee [NGCP| from its operation under this franchise. Said tax** shall be **in lieu of** income tax and any and all **taxes**, duties, fees and charges **of any kind**, nature or description **levied**, established or collected by **any authority whatsoever, local or national**, on its franchise, rights, privileges, **receipts**, revenues and profits, and on properties **used in connection with its franchise**, from which taxes, duties and charges, the Grantee is hereby expressly exempted: *Provided,* That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: *Provided, further,* That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT). [*Emphasis supplied*]

Petitioner asserts that since its legislative franchise contains an "*in lieu* of all taxes" clause, it is exempt from paying all kinds of taxes, whether levied or collected by any authority, including local government units, as long as it is in connection with its franchise. Since the law is clear, it must be given its literal meaning and applied without attempt at any interpretation.

The issue of exemption is not novel. In *NGCP v. Oliva*, the Supreme Court already defined the extent of the tax exemption granted unto petitioner under its legislative franchise –

> Back in 2003, this ponente discussed the "in lieu of all taxes" clause in a separate opinion in *PLDT v. City of Davao.* The Court struck down PLDT's argument that the "in lieu of all taxes" clause in Smart's franchise exempts PLDT from the payment of the local franchise tax imposed by the City of Davao. At first glance, it may seem that the "in lieu of all taxes" clause in Smart's franchise is similarly worded to that of

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NGCP. Smart's tax provisions in Section 9 of Republic Act No. 7294 read as follows:

> *Tax provisions.* — The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof: *Provided*, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title Il of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.
>
> The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue.
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> xxx xxx xxx
>
> Smart's franchise states that the 3 percent "**franchise tax**" shall be "in lieu of all taxes." Clearly, it is the **franchise tax** that shall be in lieu of all taxes referred to in Section 9, and not the VAT or any other tax. Following the rule on strict interpretation of tax exemptions, the "in lieu of all taxes" clause cannot apply when what is paid is a tax other than the franchise tax. Since the franchise tax on telecommunications companies has been abolished, the "in lieu of all taxes" clause has now become *functus officio*, rendered inoperative for lack of a franchise tax. *xxx*
>
> xxx xxx xxx

x---x

> *xxx* Nothing is mentioned in Section 9 about local taxes. The clear intent is for the "in lieu of all taxes" clause to apply only to taxes under the National Internal Revenue Code and not to local taxes. Even with respect to national internal revenue taxes, the "in lieu of all taxes" clause does not apply to income tax.
>
> <u>If Congress intended the "in lieu of all taxes" clause in Smart's franchise to also apply to local taxes</u>, Congress would have expressly mentioned the exemption from municipal and provincial taxes. Congress could have used the language in Section 9 (b) of Clavecilla's old franchise, as follows:
>
> > ...[I]n lieu of any and all taxes of any kind, nature, or description levied, established or collected by any authority whatsoever, **municipal, provincial** or national, from which the grantee is hereby expressly exempted. ...
>
> However, <u>Congress did not expressly exempt Smart from local taxes. Congress used the "in lieu of all taxes" clause only in reference to national internal revenue taxes. The only interpretation, under the rule on strict construction of tax exemptions, is that the "in lieu of all taxes" clause in Smart's franchise refers only to national and not to local taxes.</u>
>
> xxx xxx xxx

We take note of the pronouncements made in the separate opinion, and apply them to the present set of facts.

First. Tax exemptions must be clear and unequivocal, and must be directly stated in a specific legal provision.

In the present case, Section 9 of RA 9511 provided for NGCP's tax liabilities and exemptions.

Second. **The "in lieu of all taxes" clause is strictly limited to the kind of taxes, taxing authority, and object of taxes specified in the law.**

Section 9 of RA 9511 states that NGCP's payment of franchise tax is in lieu of payment of "income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority

> whatsoever, **local or national**, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise. "Thus, in contrast to Smart's franchise as quoted above, **Section 9 of RA 9511 clearly stated that the NGCP's "in lieu of all taxes" clause includes taxes imposed by the local government on properties used in connection with NGCP's franchise.** [*Emphasis supplied*]

From the foregoing, petitioner's franchise constitutes an express and categorical statement that it is exempt from payment of local taxes on its gross receipts from its electric power transmission. *However*, it must have paid the 3% franchise tax on the **gross receipts** to be exempted.

Applying *NGCP v. Oliva*, a prior factual determination must be made that petitioner paid the corresponding 3% franchise tax on the gross receipts it asserted to be exempt from local taxes. It is a condition *sine qua non* to its exemption from paying the local taxes. However, the issue as to which of petitioner's taxable year's gross receipts (2020 or 2021) should be subjected to a 3% franchise tax for the determination of the 2021 local tax exemption must first be addressed.

Petitioner's 2020 gross receipts must be subjected to a three percent (3%) franchise tax to avail of the 2021 local tax exemption.

The court *a quo*, in resolving the same, finds that petitioner's failure to present its proof of payments of 3% franchise tax for the months of August to December 2021 is fatal to its claim of exemption, to wit:

> Hence, **the NGCP can invoke its exemption, *only* upon showing that it has paid the 3% franchise tax based on the gross receipts it derived from the exercise of its franchise**. This fact is known to plaintiff, having cited the Oliva case in its pleading.
>
> Therefore, for this Court to decide on the legal issue at hand, it must first be established that such payment was duly made by NGCP. Upon perusal of the exhibits submitted by plaintiff, payment made was **only until July 2021**, no updated payment was submitted before the case was

> considered submitted for decision on April 13, 2022. Hence, this Court had no other recourse but to dismiss the instant case, there was no payment of the **3% franchise tax for the year 2021**. [*Emphasis supplied*]

Petitioner contends that since the local tax assessment is computed based on the gross receipts it derived from the preceding year, it is but logical and reasonable that proof of payments of such 3% franchise tax for the preceding year should be the one that is submitted for consideration.

The Court agrees.

Section 143 of the LGC of 1991 provides that "Tax on Business" must be based on "*gross sales or receipts for the **preceding calendar year***." It bears noting that under RA No. 9511, the 3% franchise tax is in lieu of the local taxes on the gross receipts. Thus, for petitioner to avail of its exemption under its legislative franchise, **it must show that the gross receipts for the preceding calendar year have been subjected to a 3% franchise tax**. This is logical since local taxes accrue on the first (1st) day of January of each year.[30] Thus, the court *a quo* erred when it required the petitioner to show updated proof of payments of 3% franchise tax for CY 2021 to be exempt for the same year.

It is emphasized that business taxes are paid for the privilege of carrying on a business in the year the tax is paid.[31] It is paid at the beginning of the year as a fee to allow the business to operate for the rest of the year. It is deemed a prerequisite to the conduct of business. Simply put, for petitioner to continue doing the exempt business activity (*i.e.*, electric power transmission) in CY 2021, **it is incumbent upon petitioner to show that the gross receipts from electric power transmission for the preceding year, 2020, were properly subjected to 3% franchise tax, as required under RA 9511.**

Thus, the relevant BIR Certifications that should be considered are those issued for CY 2020, marked as Exhibits "I-3," "I-4," and "I-5," showing petitioner's franchise tax payments for CY 2020. However, in the instant case, the court *a quo* anchored its dismissal of the petitioner's *petition* on the latter's

[30] See Section 166 of the Local Government Code of 1991.
[31] See *Mobil Philippines, Inc. v. The City Treasurer of Makati, et al.*, G.R No. 154092, July 14, 2005.

failure to prove that it is updated in its payment of the 3% franchise tax for 2021.

Hence, the Court now determines whether petitioner is entitled to its claim for exemption/refund.

During the proceedings before the court *a quo*, and as narrated in the assailed Decision dated July 12, 2022, the following transpired, to wit:

> At the Pre-Trial Conference, both parties admitted the following:
>
> 1. On 19 March 2021, the Office of the defendant City Treasurer issued Tax Bill No. B-2021-03-19-H7-005578, for business tax/city tax and other regulatory fees in the total amount of P98,514,993.14 for calendar year 2021.
> 2. On 18 May 2021, NGCP filed a written protest on the said assessment asserting that it is exempt from the payment of business taxes, including the City Tax, pursuant to its franchise (RA9511) and requested for the cancellation of the assessment of the City Tax for the period 2021 in the amount of P98,481,700.34. On the same day, after NGCP filed the said written protest, the Office of the defendant City Treasurer issued Tax Bill No. B-2021-05-18-WU-003374 assessing and demanding payment for mayor's permit, city tax, business and other regulatory fees and charges to NGCP in the total amount of P22,000,000.00 for calendar year 2021.
> 3. NGCP paid under protest on 18 May 2021 the assessed amount of P22,000,000.00 for calendar year 2021. Official Receipt No. A8COR8608553-8 dated 18 May 2021 was issued by the City Treasurer of Quezon City.
> 4. Subsequently, NGCP filed its Written Protest and Claim for Refund for the City Tax of P19,306,767.07, Mayor's Permit of P10,000.00, and Penalty for delinquency of P2,659,520.13 on the ground that its exempt from paying the same under its franchise.
> 5. That plaintiff has been paying business tax to the Respondent City Treasurer since its incorporation in 2009 up to 2020, except that payments made in 2010 and 2020 are under protest and cases are pending before RTC branches 85 and 223.

With the foregoing admissions, **there are no longer any <u>factual matters</u> to be tried**, instead, what is left for resolution are the following **<u>legal issues</u>**:

1) Whether or not NGCP is exempt from the payment of business tax on its franchise and other regulatory fees pursuant to RA 9511.
2) Whether or not the PHP19,306,767.07 paid as City tax and Php10,000.00 for mayor's permit fee and their corresponding penalties should be refunded to NGCP. [*Emphasis supplied*]

Notably, among the pieces of evidence that petitioner marked during the pre-trial conference were the *BIR Certifications* as proof of payment of the 3% franchise tax, [32] as follows:

Date of BIR Certificate	Period of Payment	Exhibit Nos.
July 1, 2020	January to June 2020	I-3
November 10, 2020	January to September 2020	I-4
February 4, 2021	October to December 2020	I-5

It must be emphasized that the parties in the court *a quo* never raised the issue of payment of the 3% franchise tax. In fact, the BIR Certifications presented by petitioner to prove payment of the 3% franchise tax were never controverted by respondent. Hence, what was left for resolution was the legal issue of whether petitioner is exempt from the payment of the business tax pursuant to its franchise under RA No. 9511.

In the case of *NGCP v. Oliva*, the Supreme Court declared that petitioner's **payment of the 3% franchise tax based on the gross receipts it derived from the exercise of its franchise is sufficient for petitioner to invoke its tax exemption** set forth in Section 9 of RA No. 9511, to wit:

"Section 9 of RA 9511 provides that NGCP shall pay 'a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise.' This franchise tax **is 'in lieu of** income tax and **any and all taxes**, duties, fees and charges of any kind, nature or description levied, **established or collected by any authority whatsoever, local or national**, on its franchise, rights, privileges, receipts, revenues and profits, **and on properties used in connection with its franchise, from**

[32] *Order* issued by the Court a quo dated March 31, 2022, Docket, pp. 215-217.

> **which taxes**, duties and charges, **the Grantee is hereby expressly exempted**.'
>
> It is very clear that NGCP's payment of franchise tax exempts it from payment of real property taxes on properties used in connection with its franchise. However, NGCP's tax exempt status on real property due to the 'in lieu of all taxes' clause is qualified: NGCP shall be liable to pay the same tax as other corporations on real estate, buildings and personal property exclusive of their franchise. The phrase 'exclusive of this franchise' means that real estate, buildings, and personal property used in the exercise of the franchise are not subject to the same tax as other corporations." [*Emphasis supplied*]

Evidently, the BIR Certifications issued by the BIR, which is the agency tasked with the collection of all national internal revenue taxes, enjoy the presumption of regularity in the performance of official duties and are sufficient to prove the fact of payment of the 3% franchise tax for the period stated in the BIR Certifications.

However, in still denying petitioner's claim for exemption, the court *a quo* ruled in the equally assailed Resolution of September 8, 2022, as follows:

> "Moreover, the information indicated in all the BIR Certifications, failed to demonstrate that: *first*, the amounts collected from petitioner were the very same franchise taxes referred in Section 9 of RA No. 9511; and *second*, the franchise taxes collected from petitioner in 2021 corresponds to 3% of its gross receipts derived from its operations under its franchise as mandated in Section 9 of RA No. 9511."[33]

Indeed, the BIR Certifications do not provide the tax base or the amount of gross receipts on which the franchise tax should have been based, as the BIR Certifications only showed the **total** franchise tax paid or remitted to the BIR. However, the BIR Certifications state that petitioner paid the 3% franchise tax from exercising its franchise. Thus, to deny outright petitioner's claim for refund on the ground that the BIR Certifications failed to indicate the tax base or the amount of gross receipts on which the franchise tax should have been based is completely unjust, considering that the payment of the 3% franchise tax was never raised as an issue by the parties before the court *a quo*. Besides, during the pre-trial conference, the parties were led to believe

[33] Division Docket, p. 46.

that there were no *factual* issues to be tried and that only *legal* issues remained for the court *a quo's* determination.

Given the pronouncement in the assailed Resolution on establishing the *factual* basis of petitioner's refund claim, the ends of justice would be better served if this Court remands the instant case to the court *a quo* for reception of evidence. This will allow petitioner to prove that the gross receipts of ₱2,573,935,608.86, on which respondent based its local tax assessments, were indeed subjected to the 3% franchise tax, as certified in the aforesaid BIR Certifications. Following this, the court *a quo* can already proceed to determine whether petitioner is entitled to its claim for refund.

WHEREFORE, premises considered, the *Petition for Review* filed by National Grid Corporation of the Philippines is **PARTIALLY GRANTED**. The assailed Decision dated July 12, 2022 and Resolution dated September 8, 2022, both rendered by the Regional Trial Court, Branch 225, Quezon City in Civil Case No. R-QZN-21-07791, are **REVERSED** and **SET ASIDE**.

Let this case be **REMANDED** to the Regional Trial Court, Branch 225, Quezon City, for further proceedings, more particularly, for the reception of evidence and determination of the amount to be refunded to petitioner, if any.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CORAZON G. FERRER-FLORES
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

NATIONAL GRID CORPORATION OF THE PHILIPPINES, Petitioner,	CTA AC No. 273 Members: **BACORRO-VILLENA,** *Acting Chairperson,* **CUI-DAVID,** *and* **FERRER- FLORES,** ***JJ.***
- versus -	
CITY GOVERNMENT OF QUEZON CITY, as represented by **EDGAR T. VILLANUEVA,** in his official capacity as City Treasurer of Quezon City, Respondent.	Promulgated: MAY 29 2024 4:30 p.m.

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague Associate Justice Lanee S. Cui-David in the Court of Tax Appeals (**CTA**) has jurisdiction to rule on issues relating to local taxes only and not on regulatory fees and that it may rule on the factual determinations made in the summary judgment.

As to the merits of the present case, I likewise express my assent with the *ponencia* in holding that Republic Act (**RA**) No. 9511 provides petitioner National Grid Corporation of the Philippines (**petitioner/NGCP**) an exemption from local taxes on gross receipts related to its franchise. I similarly register my concurrence with the finding therein that petitioner's 2020 gross receipts must be subjected to three percent (3%) franchise tax to avail of the 2021 local tax exemption.

x - x

With all due respect, however, I disagree that the proper course of action in the instant case would be to remand it to the Regional Trial Court (**RTC**) for reception of evidence.

For the reasons essayed below, I humbly proffer a different view.

Based on its actions, petitioner was of the opinion that it had sufficiently submitted pieces of evidence to prove that it was entitled to the refund of the local taxes it paid under protest. Hence, without any opposition, petitioner consented to the submission of its prior petition for summary judgment.

At the risk of being repetitive, petitioner assented to the submission of the case for summary judgment although it was fully aware that, apart from asking the court *a quo* for a confirmation of its exemption from local taxes, it was also claiming for a refund of the previously paid taxes. In the latter respect, it is well-settled that a tax refund or credit is in the nature of a tax exemption, construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Claimants of a tax refund must prove **the factual basis of their claims with sufficient evidence.**[1]

Thus, **it was petitioner's responsibility and lookout to proffer evidence in support of its claim**. As the parties clearly agreed on the summary judgment, they thus risked the rendition of judgment based on the evidence they have presented over the proceedings in the court *a quo*. It thus appears highly inappropriate and procedurally unsound to remand the case for presentation of further evidence when it is petitioner itself that voluntarily placed itself in its present position. Effectively, this Court would not only be taking an advisory stance (*i.e.*, unduly giving petitioner unsolicited guidance on how it could successfully obtain a refund), it would also be granting petitioner an opportunity to present evidence that under procedural rules would already be considered "forgotten evidence". Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a

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[1] *International Container Terminal Services, Inc. v. The City of Manila, et al.*, G.R. No. 185622, 17 October 2018.

new trial, in the guise of newly discovered evidence.[2] Taken together, these acts are a step away from being construed as tainting the Court's impartiality.

Clearly, petitioner's right to due process was not violated as it had vehemently argued in its prior Motion for Reconsideration (**MR**) with the court *a quo* and in the instant petition. Likewise, with petitioner being clearly informed of the reasons for the denial of its claim in the RTC, petitioner could have prepared its evidence before filing its appeal with the CTA.

Given the factual issue of whether petitioner is entitled to refund, the court *a quo* could have proceeded with a full-blown trial; the parties here nevertheless **did not controvert any of the evidence submitted**, hence are **now part of the records**. Despite the presence of genuine issue of fact, the parties (especially petitioner) agreed during the pre-trial conference that there were no more factual controversies.

As to the perceived deficiency in evidence working against the taxpayer's interest, the *ponencia* relied on the actions taken by the Supreme Court in *National Grid Corporation of the Philippines v. Ofelia M. Oliva*[3] (**NGCP v. Oliva**). Therein, the Supreme Court remanded the case to the Central Board of Assessment Appeals (**CBAA**) for a for a proper determination of whether the real properties are used in connection with NGCP's franchise, as follows:

> ...
>
> We remand the case to the CBAA for the assessment and computation of the correct amount of real property taxes on the subject properties for two different periods: the years 2001 to 2008 for NPC/TRANSCO, and the year 2009 for NGCP.
>
> ...
>
> We **REMAND** this case to the Central Board of Assessment Appeals which is directed to determine the following:
>
> 1. whether the properties covered by RPT-DS-FNOD0909-16-020, RPT-DS-FNOD0909-21-030, and RPT-DS-FNOD0909-21-002 belong to the special classes of real property described in Section 216 of the Local Government Code, and assess the appropriate amount of real property taxes for the years 2001 to 2008; and
>
> 2. whether the properties covered by RPT-DS-FNOD0909-16-020, RPT-DS-FNOD0909-21-030, and RPT-DS-FNOD0909-21-002 are used by the National Grid Corporation of the Philippines in

[2] Office of the Ombudsman v. Carmencita D. Coronel, G.R. No. 164460, 27 June 2006.
[3] G.R. No. 213157, 10 August 2016.

x - x

> connection with its franchise. If the subject properties are not used in connection with NGCP's franchise, then the CBAA should assess the appropriate amount of real property taxes for the year 2009.
>
> The City Treasurer of Cebu City shall refund to the NGCP any payment which it made in excess of the correct amount.[4]
>
> ...

As can be gleaned from the foregoing, remanding the case is warranted when there are actual factual matters pending determination, *i.e.*, the nature and use of the involved real property necessary to a finding of whether such property is covered by the pertinent tax exemptions.

This is ***not*** on all fours with the instant case, wherein NGCP's grant of exemption upon its franchise has already been established. In contrast to the events in *NGCP v. Oliva*, petitioner, in this case, failed to present evidence to reliably establish that its gross receipts from Quezon City already formed part of those assessed for franchise tax, and that such franchise tax was paid.

Incidentally, I must point out that the court *a quo*'s ruling on the absence of formal offer for the Bureau of Internal revenue (**BIR**) Certifications issued on 09 November 2021 and 04 February 2022 (showing franchise tax payment for CY 2021) would be immaterial given the way the proceedings went. Expectedly, there could not have been an opportunity to offer the evidence. Additionally, I find the BIR Certifications to be irrelevant in the determination of petitioner's claim for refund. The material BIR Certifications showing petitioner's franchise tax payment for CY 2020 (that shall be used in the resolution of this case) were already marked as Exhibits "I-3", "I-4" and "I-5"[5], compared and submitted before the court *a quo* prior to the rendition of the summary judgment.

From here, what remains as the *pivotal query* to resolve *is* – **whether petitioner has established, by preponderant evidence, that the subject gross receipts (*i.e.*, gross receipts for CY 2020) were subjected to 3% franchise tax to warrant exemption from local taxes in CY 2021.**

To this, it is my humble opinion that petitioner failed to prove that the subject gross receipts form part of its gross receipts subjected to 3% franchise tax.

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4 Emphasis in the original.

5 Order dated 31 March 2022, Division Docket, pp. 215-217.

My stance is supported by the reasons outlined below.

To prove entitlement to the refund of ₱21,966,287.20, or the total amount it paid under protest for local taxes and penalty for delinquency, petitioner presented the BIR Certifications[6] aiming to show that the BIR had collected ₱1,379,820,605.48[7] of franchise tax from petitioner for CY 2020. However, **an examination of the said BIR Certifications reveals that they only provide for the *total* franchise tax paid or remitted by petitioner to the BIR in CY 2020:**

> *"This is to further certify that the collection listed above representing payment(s) of franchise tax(es) was/were made thru Electronic Filing and Payment System (eFPS)".*

Evidently, **petitioner did *not* provide any supporting documents or pieces of evidence to verify and confirm that the franchise tax of ₱1,379,820,605.48 collected from petitioner in 2020 corresponds to 3% of its gross receipts derived from its operations under its franchise as mandated under Section 9 of RA 9511; and that the amount of gross receipts (on which the local tax assessment has been based [*i.e.,* ₱2,573,935,608.86 as indicated in Tax Bill No. B-2021-05-18-WU-003374]) form part of the gross receipts that were subjected to the 3% franchise tax. In other words, *petitioner failed to establish the nexus between the franchise tax paid and the gross receipts derived from its franchise operation.***

Thus, with this, this Court is prevented from properly ascertaining if petitioner indeed fully complied with the conditions under Section 9 of RA 9511 to prove its entitlement for refund.

In the CTA *En Banc* case of *National Grid Corporation of the Philippines v. The City of Tacloban, et al.*[8], **wherein the *ponente* herself had concurred in**, this Court ruled that the BIR Certifications therein failed to prove that the franchise tax collected pertained to the 3% franchise tax under Section 9 of RA 9511, to wit:

6 Exhibits "I-4" and "I-5", id., pp. 114-115.

7 The amount is the total of ₱1,022,631,559.89 (as reflected in BIR Certification issued on 10 November 2020, Exhibit "I-4") and ₱357,189,045.59 (as reflected in BIR Certification issued on 04 February 2021, Exhibit "I-5").

8 CTA EB No. 2133 (CTA AC No. 181), 31 March 2022; Citation omitted, italics in the original text and emphasis supplied.

> ...
>
> Granting for the sake of argument that the BIR Certification dated September 4, 2018 may be used in deciding this case, the information contained therein leaves much to be desired. To be precise, the BIR Certification dated September 4, 2018 states that franchise taxes in the total amount of ₱1,055,119,672.75 were collected from petitioner in 2009, among others. However, **such Certification failed to demonstrate that: *first*, the amounts collected from petitioner were the very same franchise taxes referred in Section 9 of RA No. 9511; and *second*, the franchise taxes** in the total amount of ₱1,055,119,672.75 **collected from petitioner** in 2009 **corresponds to 3% of its gross receipts derived from its operations under its franchise as mandated Section 9 of RA No. 9511.**
>
> ...

Applying the foregoing to the instant case, there is no way to determine if the amount of ₱2,573,935,608.86 was properly subjected to 3% franchise tax in 2020. Petitioner failed to present evidence demonstrating that the taxes paid actually refers to the same franchise tax. As the records bear clearly, petitioner's proof of payments only shows the total franchise tax paid or remitted to the BIR.

Under RA 9511, it is incumbent upon the taxpayer-applicant, such as petitioner, to prove by preponderant evidence, that the said gross receipts were derived from its franchise operations, and the same had already been subjected to 3% franchise tax before the exemption from local taxes can apply. After all, the 3% franchise tax is imposed *in lieu of* the local taxes.

Relatedly, the City Government of Quezon City, as respondent, is not in a position to stipulate on the fact of petitioner's payment of franchise tax and the same's correlation with the gross receipts from Quezon City. To my mind, knowledge of payment of national taxes is only within the ambit of national government, not the local government.

In close, it could not be emphasized enough that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption. Being so, the law is not only construed in *strictissimi juris* against the taxpayer but also the pieces of evidence presented to entitle it to an exemption. These pieces of evidence are *strictissimi* scrutinized and must be duly proven.[9] The burden of proof is on the taxpayer to show that it has strictly complied with

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9 *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

the conditions for the grant of the tax refund or credit.[10] Here, petitioner failed to discharge that burden.

All told, I vote to **DENY** the instant Petition for Review for lack of merit.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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10 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 222428, 19 February 2018.