REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

TOYOTA FINANCIAL SERVICES PHILIPPINES CORPORATION,
Petitioners,

-*versus*-

CITY OF DAVAO and ERWIN P. ALPARAQUE, in his capacity as the Acting City Treasurer of the City of Davao,
Respondents.

CTA AC NO. 280
(Civil Case No. R-Davao-19-01303-CV)

Members:

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

Promulgated:
OCT 15 2024
8:45 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under *Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals* ("*RRCTA*"),[2] asking the Court to reconsider, reverse, and set aside the Decision, dated January 28, 2022, as well as the Resolution, dated October 3, 2022, of the Regional Trial Court ("RTC") of Davao City, Branch 152; and to render judgment cancelling and setting aside the assessment made by respondents which found it liable for deficiency local business taxes, fees and charges for taxable years 2014 to 2018.

The Parties

Petitioner Toyota Financial Services Philippines Corporation is a domestic corporation with address at 32nd Floor, GT Tower International, Ayala Avenue corner H.V. Dela Costa St., Salcedo Village, Makati City. It is engaged in the business of extending credit facilities to customers, dealers and distributors of Toyota vehicles.

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1 *Rollo*, pp. 5-55.
2 A.M. No. 05-11-07-CTA, 22 November 2005.

Respondent City of Davao is a local government unit while respondent Erwin P. Alparaque is the Acting City Treasurer of the City of Davao tasked with the implementation of the City's Revenue Code, including the assessment and collection of local taxes, fees, and charges. They hold office at the Davao City Hall Bldg., City Hall Drive, San Pedro St., Davao City.

The Facts

The case began on October 29, 2018 when respondents issued Letter of Authority No. 161-2018, authorizing Ernesto P. Derecho and Romeo B. Wong to examine petitioner's books of accounts and other records for taxable year 2017. This was followed by a Notice of Assessment, dated December 19, 2018, assessing petitioner for deficiency local business tax for taxable years 2009 to 2018 in the total amount of P4,011,590.51, inclusive of surcharge and interest.

After receiving the Notice of Assessment on December 20, 2018, petitioner filed its letter-protest on February 12, 2019. This was denied by respondents in its Decision of February 18, 2019, on the ground that petitioner had yet to pay the said taxes.

Petitioner then filed an appeal to respondents' Decision with the Regional Trial Court of Davao City ("Davao RTC") via a Petition for Review. The case was docketed as Civil Case No. R-DVO-19-01303-CV and raffled off to Branch 52 of Davao RTC.

In its appeal before the Davao RTC, petitioner alleged that on August 3, 2017, the Bangko Sentral ng Pilipinas granted its application for the establishment of an extension office in Davao City. Meanwhile, on September 4, 2017, the Securities and Exchange Commission granted it a Certificate of Authority to operate a branch in Davao City.

Prior to both the Bangko Sentral ng Pilipinas's ("BSP") and the Securities and Exchange Commission's approval and grant of certificate to operate in Davao City, it merely operated a lending desk in Davao City where it only accepted loan applications. The credit approval and processing of such loan applications were made at its principal office in Makati City, and no sales were made and recorded in Davao City prior to 2017. Accordingly, it argued that it was not liable to pay the allegedly deficient local business taxes for the years 2009 to 2018 as assessed by respondents. It also presented the Official Receipt for its payment of local business tax in 2018, following its commencement of operations of its branch in 2017.

Aside from arguing that respondents could act on its protest even without payment of the assessed taxes, petitioner also raised the issue of prescription. It held out the 5-year limitation on the power of local government units to assess local business taxes, such that respondents' right to assess local business taxes for the years 2009 to 2013, had already prescribed.

Respondents countered petitioner's insistence that it only operated a lending desk in Davao City prior to 2017. It stressed that petitioner openly entertained customers for in-house financing inside Toyota Davao City.

With respect to petitioner's contention that they should act on its protest even when no taxes have been paid, respondents pointed to *Section 441, Local Ordinance No. 291-17*, which requires payment before the filing of protests. They stated that it is well within their power to create sources of revenue as provided for under *Section 129 of the Local Government Code.*

Finally, with respect to the period to assess, respondents reasoned out that petitioner's apparent evasion of payment constitutes fraud, and, as such, the assessment period is 10 years.

Following trial, the Davao RTC issued the assailed Decision on January 28, 2022. The dispositive portion of the Decision provided as follows:

> WHEREFORE, premises considered, the appeal of the Petitioner is partially granted insofar as the prior payment or payment under protest is not necessary prior to resolving a tax protest.
>
> However, considering that the petitioner Toyota Financial Services Corporation was actually doing business in Davao City as early as 2009 and was not merely operating a "lending desk" in view of their active solicitation of clients inside the premises of the local Toyota dealership, the City Government of Davao was correct in assessing local business taxes on the Petitioner from 2009 to 2018 in the total amount of PHP4,011,590.51, inclusive of surcharge and interest
>
> SO ORDERED

The Motion for Reconsideration filed by petitioner on February 23, 2022 was then partially granted by the Davao RTC in its Resolution of October 3, 2022, which reads as follows:

> WHEREFORE, in the light of the foregoing, the Motion for Reconsideration is PARTIALLY GRANTED. Accordingly, the assailed Decision dated January 28, 2022 is hereby sustained with modifications as follows:

> a) Respondents' assessments for local business taxes for the years 2009 to 2013 are ordered CANCELLED and SET ASIDE for being barred by prescription.
>
> b) Respondents' assessments for petitioner's local business taxes for the years 2014 to 2018 in the amounts as stated in the respective Tax Order(s) of Payment are declared VALID without prejudice to any condonation the respondent may extend.
>
> SO ORDERED.

Thereafter, petitioner filed their Petition for Review with this Court on December 14, 2022.[3]

On March 27, 2023, the respondent posted its Comment[4], as directed by the Court in its January 23, 2023 Resolution[5]

On June 30, 2023, the RTC elevated the case records of the above-captioned case to this Court.[6]

Following the parties' filing of their respective Memoranda on September 4, 2023 for petitioner,[7] and September 25, 2023 for the respondents,[8] this Court issued a Resolution on October 25, 2023, submitting the case for decision.[9]

The Issues

The petitioner submitted the following issues for this Court's consideration:

A. The court *a quo* erred in ruling that Petitioner was actually doing business in Davao City since 2009 and was not merely operating a 'lending desk' in view of its active solicitation of clients inside the Toyota dealership premises.

B. The court *a quo* erred in ruling that the City Government of Davao was correct in assessing local business tax on Petitioner from 2014-2018 in the total amount of P2,400,827.04, inclusive of surcharge and interest.

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3 *Rollo*, pp. 5-56.
4 *Id.* at 60-66.
5 *Id.* at 57-58.
6 See letter of Atty. Michelle Tamayo-Nobles, *id.*, at 94-99.
7 *Id.* at 102-126.
8 *Id.* at 127-136.
9 *Id.* at 137.

Arguments of the Parties

Petitioner's Arguments[10]

Petitioner's arguments can be summarized as follows:

1. The RTC's reliance on the definition of doing business under *Republic Act* ("*RA*") *No. 7042* is misplaced since said law is only applicable to foreign entities and should not be made to apply to domestic corporations like petitioner.
2. Further, *RA 7042* itself provides that it shall not be applicable to financial institutions which are governed and regulated by the General Banking Act under the supervision of the Central Bank. This provision was carried over to *RA 11647*, which amended *RA 7042*. Since petitioner is a financial institution governed and regulated by the BSP, said *RA 7042* cannot be applicable to it.
3. Instead, the applicable law is the *Local Government Code* ("LGC") which defines "doing business" as doing a trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit.
4. Petitioner was not doing business in the City of Davao as it only operated only a lending desk there which only accepted loan applications. No sales or commercial activities were regularly conducted therein in view to gaining a profit and the processing and approval of the loan applications were made at its principal office in Makati City.
5. Based on the LGC and Revenue Code of Davao, the situs of local business tax is the location where the sales are both made and recorded, which in its case, was in Makati City.

Respondent's Counterargument[11]

Respondent insists that petitioner is liable for the tax assessments against it, based on the Revenue Code of Davao City which, in its definition of "doing business" includes "the solicitation of orders."

[10] See Memorandum, pp. 7-21, *id.* at 108-122.
[11] Memorandum for the Respondents, pp. 5-8, *id.* at 131-134.

The Ruling of the Court

After going through the arguments raised by the parties, the Court finds good ground to grant the Petition for Review.

Petitioner was doing business in Davao City

First off, the Court agrees with petitioner that the RTC erred in applying *RA 7042* and the Supreme Court decisions on foreign corporations doing business to its case. The law itself is clear that it "shall not apply to banking and other financial institutions which are governed and regulated by the General Banking Act and other laws under the supervision of the Central Bank."[12] It is also not disputed that petitioner is a domestic corporation and, hence, the pronouncements relative to foreign corporations do not apply to it.

Instead, as petitioner itself holds out, what is applicable to determine whether it is, indeed, doing business in Davao City, is the *LGC*. *Section 131(d) of the LGC* provides as follows:

> (d) "Business" means trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit".

Guided by this definition, despite the persistent denial of petitioner of doing business in Davao City, the Court finds that it did engage in business there.

Key to the Court's conclusion is the phrase "with a view to profit."

The parties have stipulated that petitioner, based on its Articles of Incorporation, was established, among others, "to carry on and undertake the general business of financing by extending credit facilities."[13]

In the conduct of such business, several stages are involved, the most basic of which are: loan application, application processing, underwriting process, loan approval and agreement, loan disbursement, loan servicing, and loan closure.[14] y

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[12] See *Republic Act No. 7042, Section 4*; See also *Republic Act No. 11647, Section 11* in relation to *Section 18*.

[13] See Pre-Trial Order, p. 1, RTC Docket, Vol. II, p. 293.

[14] See Understanding the Loan Life Cycle: A Comprehensive Guide; https://www.tatacapital.com/blog/capital-goods-loan/understanding-the-loan-life-cycle-a-comprehensive-guide/.

The Court notes that petitioner admits operating what it terms a "lending desk" in Davao City. Petitioner has also expressed that said lending desk was made to accept loan applications.

To the mind of the Court, such acceptance of loan applications is part of the process of the financing business of petitioner, which end goal is of course to earn profits. As stated above, loan applications are usually the starting points in the business of lending. The acceptance of loan applications in Davao City commences petitioner's "business of financing by extending credit facilities". Stated differently, petitioner's acceptance of loan applications in Davao City starts the process of its lending business. Such acceptance of loan applications consequently qualifies as an activity that is engaged in "with a view to profit".

Petitioner's argument that "[i]t is the act of processing and approving the loan application which constitutes 'doing business' as this is the act which will consummate the actual sales to gain profit"[15] is futile in light of the very definition of "doing business" upon which petitioner itself has relied. To reiterate, "[b]usiness" means trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit." Again, the operative word is "with a view to profit" and not "consummate actual sales to gain profit" or even "to gain profit." Every stage of the business which qualifies as having "a view to profit" thus qualifies such activity as doing business. Here, the acceptance of loan applications in Davao City already qualifies as doing business since such activity is already done "with a view to profit."

All told, petitioner cannot continue to insist that it was not doing business in Davao City.

Situs of tax is not in Davao City

While petitioner has been found to have been doing business in Davao City, the Court, nevertheless, finds that it should not be made to pay the assessed taxes against it, Davao City not being the situs of the taxes payable.

In so ruling, the Court is guided by *Section 150 of the LGC* which 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

[15] See Memorandum, p. 16, *Rollo*, p. 117.

> 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.*"

(Italics supplied.)

The Court notes that the provision on situs refers to "sale or transaction." Our laws define sales as an obligation between parties to transfer ownership and deliver determinate thing and to pay a price certain.[16] On the other hand, transaction has been defined as "[s]omething which has taken place, whereby a cause of action has arisen" and "by which the legal relations of such persons between themselves are altered."[17]

As loan applications do not fall under these definitions, neither do they fall under the coverage of transactions.

Instead, any such sale or transaction would be recorded in its principal place of business in Makati City where the loan applications are processed and approved. So, too should the taxes due accrue and be paid to such city.

The *Revenue Code of Davao* not only supports this position but expressly points to the principal office as the situs of the tax. Its provision on situs is as follows:

> Section 79. Situs of the Tax.
>
> (a) *For purposes of collection of the business tax* under the "situs" of the tax law, the following definition of terms and guidelines shall be strictly observed:
>
> *The city or municipality specifically mentioned in the Articles of Incorporation or official registration papers as being the official address or said principal office shall be considered as the situs thereof.*
>
> . . . .
>
> (b) Sales Allocation
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> 1. All sales made in Davao City where there is branch or sales office or warehouse shall be recorded in said branch or sales office or warehouse and the tax shall be payable to the City where the same is located.
>
> 2. If the business concerned has no branch office or sales outlet in Davao City, the sale or transaction may be recorded in the place where the principal office of the said business is located. The taxes, however, shall accrue and be paid to Davao City where the sale or transaction was made or

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16 New Civil Code, Article 1458.

17 *Black's Law Dictionary*, Fifth ed., p. 1341.

> consummated, associated with the delivery of the articles, commodities or things which are the subject matter of the contract of sale.
> (Italics supplied.)

Its provision on sales allocation also bars the collection of business tax in Davao City as, as discussed above, no sales (only acceptance of loan applications) have been made therein.

ACCORDINGLY, the instant Petition for Review is **GRANTED**.

The January 28, 2022 Decision of the Regional Trial Court of Davao City, Branch 52 in Civil Case No. R-DVO-19-01303-CV is **REVERSED** and **SET ASIDE**. Accordingly, the assessment made by respondents against petitioner for alleged deficiency taxes and fees for taxable years 2009 to 2018 in the total amount of Four Million Eleven Thousand Five Hundred Ninety Pesos and 51/100 (P4,011,590.51) is hereby **CANCELLED** and **SET ASIDE**. Consequently, respondents are **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
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

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice