REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SMART COMMUNICATIONS, INC.,
Petitioner,

- versus -

HON. JUDGE AUGUSTO JOSE Y. ARREZA as Acting Presiding Judge of the Regional Trial Court, Branch 133, Makati City, **HON. JESUSA E. CUNETA** in her capacity as OIC City Treasurer of Makati City and **CITY OF MAKATI,**
Respondents.

CTA AC NO. 228

Present:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:
FEB 05 2020
9:10 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for *Certiorari*[1] filed by Smart Communications, Inc. (**Smart/petitioner**) pursuant to Section 1, Rule 65[2] of the Rules of Court (**ROC**), seeking the annulment of the

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[1] Filed on 12 September 2019, Division Docket, Volume I, pp. 10-48.

[2] **Sec. 1**. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

Resolutions[3] dated 28 June 2019 and 07 August 2019[4], respectively, of the Regional Trial Court (**RTC**), Branch 133, Makati City in *Smart Communications, Inc. v. Jesusa E. Cuneta, in her capacity as OIC Treasurer for the City of Makati and City of Makati*, docketed as Civil Case No. R-MKT-18-02983-CV. The assailed 28 June 2019 Resolution granted respondent City of Makati's (**Makati City's**) Motion for Production or Inspection of Documents[5] while the 07 August 2019 Resolution denied petitioner's Motion for Reconsideration (**MR**) thereon.

THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at Smart Tower, 6799 Ayala Avenue, Makati City, Metro Manila.

Respondent Makati City is a chartered local government unit with address at Makati City Hall, J.P. Rizal St., Barangay Poblacion, Makati City while, respondent Jesusa E. Cuneta is the Officer-in-Charge City Treasurer of Makati City.

On the other hand, public respondent Judge Augusto Jose Y. Arreza (**public respondent**) is the Acting Presiding Judge of RTC, Branch 133, Makati City.

FACTUAL ANTECEDENTS

On 27 July 2018, petitioner filed a Petition for Review before the RTC seeking the nullification of respondent Makati City's Notice of Assessment[6] (**NOA**), holding petitioner liable for deficiency franchise tax and fees for taxable years (**TY**) 2012 to 2015 in the amount of THREE BILLION TWO HUNDRED FORTY-SIX MILLION SIX

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of [S]ection 3, Rule 46.

3 Annex "A" of the Petition for *Certiorari*, Division Docket, Volume I, pp. 51-55.
4 Annex "B", id., pp. 56-63.
5 Annex "L", id., pp. 330-336.
6 Annex "F", id., p. 72.

HUNDRED FORTY-SEVEN THOUSAND ONE HUNDRED FOUR AND TWENTY CENTAVOS (**₱3,246,647,104.20**).

Respondents filed their Answer dated 20 August 2019. Invoking Rule 27[7] of the ROC, they also filed a Motion for Production or Inspection of Documents[8] praying for the RTC to compel petitioner to produce the following documents:

> ...
>
> **4.1 General Ledger**
> 4.1.1 Consolidated Book for the year[s] 2011, 2012, 2013 and 2014.
> 4.1.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013 and 2014.
> **4.2 Sales Book**
> 4.2.1 Consolidated Book for the year[s] 2011, 2012, 2013 and 2014.
> 4.2.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013 and 2014.
> 4.2.3 Sales Invoice Summary
> 4.2.3.1 Consolidated for the year[s] 2011, 2012, 2013 and 2014.
> 4.2.3.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013 and 2014.
> 4.2.4 Sales Invoice (Physical Document)
> 4.2.4.1 Makati branches and sales offices for the year[s] 2011, 2012, 2013 and 2014.
> 4.2.5 Official Receipt Summary
> 4.2.5.1 Consolidated for the year[s] 2011, 2012, 2013 and 2014.
> 4.2.5.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013 and 2014.
> 4.2.6 Official Receipt (Physical Document)
> 4.2.6.1 Makati branches and sales offices for the year[s] 2011, 2012, 2013 and 201[4].
> **4.3 Cash Register Book**
> 4.3.1 Consolidated [B]ook for the year[s] 2011, 2012, 2013 and 2014.
> 4.3.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013 and 2014.

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7 **RULE 27**
Production or Inspection of Documents or Things
Section 1. *Motion for production or inspection; order.* — Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control, or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just.

8 Supra at note 5, pp. 331-332.

4.4 General Journal Book
4.4.1 Consolidated [B]ook for the years 2011, 2012, 2013 and 2014.
4.4.2 Makati branches and sales offices for the year[s] 2011, 2012, 2013 and 2014.
4.5 Application Form & Assessment/Billing Assessment from other LGUs for the Taxable Year[s] 2012 to 2015 covering the years 2011 to 2014.
4.5.1 Business Taxes taxable year[s] 2012, 2013, 2014 and 2015.
4.5.2 Franchise Taxes taxable year[s] 2012, 2013, 2014 and 2015.
4.6 Schedule/Summary of Proof of Payments from other LGUs for the Taxable Year[s] 2012 to 2015 covering the years 2011 to 2014.
4.6.1 Business Taxes taxable year[s] 2012, 2013, 2014 and 2015.
4.6.2 Franchise Taxes taxable year[s] 2012, 2013, 2014 and 2015.
4.7 Breakdown of Gross Sales per branches and offices for the years 2011 to 2014.
4.8 Quarterly VAT returns for the year[s] 2011, 2012, 2013 and 2014
4.9 Monthly VAT returns for the year[s] 2011, 2012, 2013 and 2014.
4.10 Summary/Breakdown of OTHER INCOME of branches and offices and its classifications, nature and explanation and its corresponding payment from other localities for the Taxable Year[s] 2011, 2012, 2013 and 2014.[9]

...

On 31 May 2019, petitioner filed its Comment/Opposition[10] to respondent Makati City's motion. On 28 June 2019, the public respondent issued the first assailed Resolution granting respondent Makati City's motion in the following wise:

> ...
>
> CONSEQUENTLY, finding merit in the respondents' Motion for Production or Inspection of Documents, this Court hereby grants the same. Considering, however, the voluminous documents that the respondents seek to inspect and/or copy, and in order to determine their relevancy, this Court hereby requires the respondents to submit not later than five (5) days from receipt hereof what specifically they seek to discover from the documents enumerated in items 4.1 to 4.10 of their motion.
>
> SO ORDERED.
>
> ...

9 Emphasis in the original text.
10 Annex "M" of the Petition for Review, Division Docket, Volume I, pp. 337-353.

Aggrieved by the RTC's action, petitioner filed its MR on 15 July 2019. Not swayed by petitioner's arguments, public respondent, in the second assailed Resolution of 07 August 2019, held:

> ...
>
> CONSEQUENTLY, not finding any merit in the petitioner's Motion for Reconsideration of the Order dated 28 June 2019, this Court hereby denies the same.
>
> Further, the respondents having complied on 12 July 2019 with this Court's Order dated 28 June 2019 requiring them to specify what they seek to discover from the documents enumerated in paragraphs 4.1 to 4.10 of their Motion for Production or Inspection of Documents, finding them relevant and material to the factual issue discussed above, and with the denial of the petitioner's Motion for Reconsideration, this Court hereby orders the petitioner to make available to the respondents at reasonable office hours, not later than ten (10) days prior to the Pre-Trial, the documents enumerated in the above-mentioned paragraphs of the Motion for Production or Inspection of Documents..
>
> ...

Hence, this petition which also prayed for the issuance of a temporary restraining order (**TRO**) and/or writ of preliminary injunction. After hearings on the matter and upon the submission of the parties' memoranda on the pending incident,[11] the Court denied petitioner's prayer in this wise:

> ...
>
> Based on the aforementioned requisites, petitioner, unfortunately, has failed to show the urgency and imminence of the danger it fears. At the heart of its application is the argument that the production of its documents shall subject petitioner to a duplicitous audit. However, this Court finds the possibility of this injustice ambiguous at this point. The mere production of its records does not *ipso facto* lead to its re-auditing, thereby making the issuance of a TRO and/or WPI premature, if not at all unfounded. Even assuming that petitioner's records may be used by private respondents to amend its assessment, petitioner is not left without remedy to question it. But, whether or not private respondents shall take this course is at the moment just one possibility out of many, and this Court shall issue no injunctive writ on basis of mere contingency.
>
> ...

[11] The parties also agreed that this same memoranda will be utilized for the main case.

Furthermore, Rule 27 simply requires good cause by the party seeking the production, and that the documents sought to be produced are not privileged, and that the same constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control.

Given the tenor of the case brought before the RTC, this Court finds petitioner's records (in relation to their gross sales/receipts during the taxable years subject of the NOA) material to the issue of the assessment's veracity. Incidentally, although it is true that petitioner's records may contain information relating to tax matters outside Makati City's jurisdiction; the said document sought by private respondents remain as parts thereof.

Moreover, this Court is unconvinced that petitioner's right to due process is in peril at the moment. Besides the claim of a re-audit, private respondents, on this note, anchor their argument (in support of the production of the documents) firmly on the Makati Revised Revenue Code (**MRRC**) which provides for the manner of auditing a taxpayer, to wit: ...

...

As stated above, the fact that petitioner is compelled to produce certain documents relevant to its case does not readily equate to an inevitable second assessment regarding the taxable periods in question. The modes of discovery have been developed precisely to aid both the courts and litigants to the full disclosure of the pertinent facts of case. Thus, in *Security Bank Corporation v. Court of Appeals et al.* the Supreme Court held:

> ...
> Indeed, it is the purpose and policy of the law that the parties — before the trial if not indeed even before the pre-trial — should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to their adversaries; in other words, the *desideratum* is that civil trials should not be carried on in the dark...
> ...

As private respondents point out, the production of petitioner's documents is not being sought for the purpose of assessment. Regardless of petitioner's view that it is for such ends, the fact is that the production sought in the RTC case is done through a legitimate mode of discovery provided by prevailing procedural rules.

> **WHEREFORE**, with the foregoing considered, petitioner Smart Communications, Inc.'s Application for the Issuance of an *Ex-Parte* Temporary Restraining Order and/or Writ of Preliminary Injunction (TRO/WPI) is **DENIED** for lack of merit.
>
> **SO ORDERED.**[12]
>
> ...

Petitioner did not file any MR on the above resolution. During one of the previous hearings, both parties agreed that their memoranda on the above incident would likewise be their memoranda for the Court's consideration of the main case, that is, petitioner's Petition for *Certiorari*.[13]

ISSUE

WHETHER THE REGIONAL TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ARRIVING AT ITS ASSAILED RESOLUTIONS DATED 28 JUNE 2019 AND 07 AUGUST 2019.

ARGUMENTS

In its bid to set aside the assailed resolutions, petitioner banks mainly on the argument that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it decided to allow respondent Makati City to inspect its documents. It finds the lower court's actions to be tantamount to permitting respondent Makati City to a second audit (in relation to its franchise tax payments for the years 2012 to 2015). Petitioner draws this conclusion from its contention that the RTC based the assailed resolutions on the reasoning that: *(1)* the documents are necessary to determine the accuracy of the NOA; and, *(2)* petitioner allegedly failed to submit a summary of its franchise tax payments in other localities.

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12 Resolution dated 15 October 2019.

13 Respondent opted to just file his memorandum *sans* witnesses on the witness stand.

Petitioner further posits that the assailed resolutions allow respondent Makati City to take inconsistent stances since the latter already upheld the validity and correctness of its NOA yet it could take another look at it to validate the assessment's accuracy. This, petitioner insists, is improper.

Petitioner likewise challenges the relevancy of producing some of the documents for petitioner's scrutiny; particularly, those pertaining to its nationwide revenues, revenues from other localities, and for the taxable periods of 2012 and 2013. According to petitioner, these documents contain information referring to matters outside respondent Makati City's territorial jurisdiction and pertain to taxable periods that it can no longer be assessed for.

Expectedly, respondent Makati City finds no fault in the RTC's action. Respondent Makati City points out that the question of whether the basis of its assessment of petitioner should be based on its nationwide revenues was an issue that petitioner propounded in its petition for review before the RTC. The review thus of the subject documents is necessary following petitioner's failure to provide it with a breakdown of gross sales/receipts of its branches.

Respondent Makati City also contends that the subject documents are not confidential in nature to warrant their non-production in court.

RULING OF THE COURT

A writ of *certiorari* should be issued with caution and only after the Court has been satisfied with proof that the act prejudicing a petitioner's rights was arrived through a blatant misuse of judicial power. Thus, the Supreme Court in *Spouses Jesus Dycoco and Joela E. Dycoco v. The Honorable Court of Appeals et al.*[14] explained "grave abuse of discretion" in this wise:

[14] G.R. No. 147257, 31 July 2013; *See also: Evelyn L. Miranda v. Sandiganbayan et al.*, G.R. No. 144760-61, 02 August 2017.

> ...
> An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.
> ...

After careful review of the petition and arguments presented by both parties, this Court finds no grave abuse of discretion on the part of the public respondent and/or the RTC.

As it appears, public respondent granted respondents' Motion for Production or Inspection of Documents in accordance with the provision of Rule 27[15] of the ROC, on modes of discovery, to wit:

> ...
> **Section 1.** *Motion for production or inspection; order.* — Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control, or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just.
> ...

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15 Rules of Court, Rule 27, Section 1.

A perusal of the first assailed resolution reveals that public respondent did not grant the motion for production outright. The RTC's order came with a *proviso* which subjected the grant of therein respondents' motion to the latter's capacity to prove the relevancy of the documents sought for production. Thus, it was only after respondent Makati City showed the relevancy of these documents (to the satisfaction of the lower court) that public respondent acted favorably (in Makati City's favor). As to whether these documents are indeed relevant and material to the disposition of petitioner's case is one best determined in the course of trial.

Incidentally, it is also propitious to state that respondent Makati City has yet to offer these documents that it sought petitioner to produce in court. With this, it could then not be expected that the RTC could immediately deny their presentation therein. After all, "a party who calls for the production of a document and inspects the same is not obliged to offer it as evidence".[16]

Moreover, to the Court's mind, petitioner's instant petition is a disguised objection to the admissibility of the subject documents. However, objections to the admissibility of evidence must be raised at the proper place and time. Section 36, Rule 132 of the ROC is instructive as to when objections may be raised:

> ...
>
> Section 36. *Objection.* — Objection to evidence offered orally must be made immediately after the offer is made.
>
> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.
>
> An offer of evidence in writing shall be objected to within three (3) days after notice of the unless a different period is allowed by the court.
>
> ...

Obviously, as the documents have yet to be actually offered in court, this Court finds that it would be too early and premature to disallow their production in court.

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16 Rules of Court, Rule 130, Section 8.

To be clear, the relevancy found by the lower court to warrant the production of the subject documents are *only for the purposes of discovery*. The actual relevancy of a piece of evidence or its relevancy for the purpose of admissibility is, however, a wholly different matter. Relevancy of the latter kind can only be determined after the court has been given an opportunity to appreciate the evidence presented before it. At this juncture, it is impossible either for this Court or the lower court to determine the materiality of the subject documents prior to their production.

Furthermore, the grant of the motion for production of documents will not expose petitioner to a re-auditing (by respondent Makati City). In no perceivable way can an interpretation of such sort be drawn from the lower court's assailed resolutions. In granting the motion of production, the RTC merely relied on Rule 27 of the ROC and the Supreme Court's decision in the case of *Republic of the Philippines (Presidential Commission on Good Government) v. Sandiganbayan et al.*[17] The public respondent correctly quoted in his first assailed Resolution of 28 June 2019 that:

> ...
>
> ...Indeed, it is the purpose and policy of the law that the parties — before the trial if not indeed even before the pre-trial — should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to adversaries; in other words, the *desideratum* is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29. The experience in other jurisdictions has been that ample discovery before trial, under proper regulation, accomplished one of the most necessary of modern procedure: it not only eliminates unessential issue from trials thereby shortening them considerably, but also requires parties to play the game with the cards on the table so that the possibility of fair settlement before trial is measurably increased...
>
> ...

As stated, the Court finds no grave abuse on the part of the public respondent in the application of the foregoing principles to justify the production of subject documents more so, that one of the issues presented by petitioner before the RTC for its determination is

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17 G.R. No. 90478, 21 November 1991.

the correctness of respondent Makati City's assessment of petitioner. It is for this same reason that the Court cannot find merit either in petitioner's other contentions.

The errors sought to be corrected by a writ of *certiorari* are of such nature that, if allowed to stand, they would result in a substantial injury to petitioner to whom no other remedy was available.[18] The Court does not, however, perceive any injury of such magnitude if the assailed resolutions are allowed to stand. Neither can grave abuse of discretion be attributed to the actions of public respondent in arriving at the assailed resolutions, to render them void for being beyond the lower court's jurisdiction.

WHEREFORE, the foregoing considered, petitioner's Petition for *Certiorari* is **DENIED** for lack of merit. Accordingly, the Resolutions on 28 June 2019 and on 07 August 2019 issued by Branch 133 of the Regional Trial Court of Makati City are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[18] *Marvin Cruz et al. v. People of the Philippines*, G.R. No. 224974, 03 July 2017.

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice