

## THIRD DIVISION

[ G.R. No. 176667, November 22, 2007 ]

**ERICSSON TELECOMMUNICATIONS, INC., PETITIONER, VS. CITY OF PASIG, REPRESENTED BY ITS CITY MAYOR, HON. VICENTE P. EUSEBIO, ET AL.\* RESPONDENT.**

### D E C I S I O N

#### **AUSTRIA-MARTINEZ, J.:**

Ericsson Telecommunications, Inc. (petitioner), a corporation with principal office in Pasig City, is engaged in the design, engineering, and marketing of telecommunication facilities/system. In an Assessment Notice dated October 25, 2000 issued by the City Treasurer of Pasig City, petitioner was assessed a business tax deficiency for the years 1998 and 1999 amounting to P9,466,885.00 and P4,993,682.00, respectively, based on its gross revenues as reported in its audited financial statements for the years 1997 and 1998. Petitioner filed a Protest dated December 21, 2000, claiming that the computation of the local business tax should be based on *gross receipts* and not on gross revenue.

The City of Pasig (respondent) issued another Notice of Assessment to petitioner on November 19, 2001, this time based on business tax deficiencies for the years 2000 and 2001, amounting to P4,665,775.51 and P4,710,242.93, respectively, based on its gross revenues for the years 1999 and 2000. Again, petitioner filed a Protest on January 21, 2002, reiterating its position that the local business tax should be based on *gross receipts* and not gross revenue.

Respondent denied petitioner's protest and gave the latter 30 days within which to appeal the denial. This prompted petitioner to file a petition for review<sup>[1]</sup> with the Regional Trial Court (RTC) of Pasig, Branch 168, praying for the annulment and cancellation of petitioner's deficiency local business taxes totaling P17,262,205.66.

Respondent and its City Treasurer filed a motion to dismiss on the grounds that the court had no jurisdiction over the subject matter and that petitioner had no legal capacity to sue. The RTC denied the motion in an Order dated December 3, 2002 due to respondents' failure to include a notice of hearing. Thereafter, the RTC declared respondents in default and allowed petitioner to present evidence *ex-parte*.

In a Decision<sup>[2]</sup> dated March 8, 2004, the RTC canceled and set aside the assessments made by respondent and its City Treasurer. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and ordering defendants to CANCEL and SET ASIDE Assessment Notice dated October 25, 2000 and Notice of Assessment

dated November 19, 2001.

SO ORDERED.<sup>[3]</sup>

On appeal, the Court of Appeals (CA) rendered its Decision<sup>[4]</sup> dated November 20, 2006, the dispositive portion of which reads:

WHEREFORE, the decision appealed from is hereby ordered SET ASIDE and a new one entered DISMISSING the plaintiff/appellee's complaint WITHOUT PREJUDICE.

SO ORDERED.<sup>[5]</sup>

The CA sustained respondent's claim that the petition filed with the RTC should have been dismissed due to petitioner's failure to show that Atty. Maria Theresa B. Ramos (Atty. Ramos), petitioner's Manager for Tax and Legal Affairs and the person who signed the Verification and Certification of Non-Forum Shopping, was duly authorized by the Board of Directors.

Its motion for reconsideration having been denied in a Resolution<sup>[6]</sup> dated February 9, 2007, petitioner now comes before the Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, on the following grounds:

- (1) THE COURT OF APPEALS ERRED IN DISMISSING THE CASE FOR LACK OF SHOWING THAT THE SIGNATORY OF THE VERIFICATION/ CERTIFICATION IS NOT SPECIFICALLY AUTHORIZED FOR AND IN BEHALF OF PETITIONER.
- (2) THE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO RESPONDENT'S APPEAL, CONSIDERING THAT IT HAS NO JURISDICTION OVER THE SAME, THE MATTERS TO BE RESOLVED BEING PURE QUESTIONS OF LAW, JURISDICTION OVER WHICH IS VESTED ONLY WITH THIS HONORABLE COURT.
- (3) ASSUMING THE COURT OF APPEALS HAS JURISDICTION OVER RESPONDENT'S APPEAL, SAID COURT ERRED IN NOT DECIDING ON THE MERITS OF THE CASE FOR THE SPEEDY DISPOSITION THEREOF, CONSIDERING THAT THE DEFICIENCY LOCAL BUSINESS TAX ASSESSMENTS ISSUED BY RESPONDENT ARE CLEARLY INVALID AND CONTRARY TO THE PROVISIONS OF THE PASIG REVENUE CODE AND THE LOCAL GOVERNMENT CODE.<sup>[7]</sup>

After receipt by the Court of respondent's complaint and petitioner's reply, the petition is given due course and considered ready for decision without the need of memoranda from the parties.

The Court grants the petition.

First, the complaint filed by petitioner with the RTC was erroneously dismissed by

the CA for failure of petitioner to show that its Manager for Tax and Legal Affairs, Atty. Ramos, was authorized by the Board of Directors to sign the Verification and Certification of Non-Forum Shopping in behalf of the petitioner corporation.

Time and again, the Court, under special circumstances and for compelling reasons, sanctioned substantial compliance with the rule on the submission of verification and certification against non-forum shopping.<sup>[8]</sup>

In *General Milling Corporation v. National Labor Relations Commission*,<sup>[9]</sup> the Court deemed as substantial compliance the belated attempt of the petitioner to attach to the motion for reconsideration the board resolution/secretary's certificate, stating that there was no attempt on the part of the petitioner to ignore the prescribed procedural requirements.

In *Shipside Incorporated v. Court of Appeals*,<sup>[10]</sup> the authority of the petitioner's resident manager to sign the certification against forum shopping was submitted to the CA only after the latter dismissed the petition. The Court considered the merits of the case and the fact that the petitioner subsequently submitted a secretary's certificate, as special circumstances or compelling reasons that justify tempering the requirements in regard to the certificate of non-forum shopping.<sup>[11]</sup>

There were also cases where there was complete non-compliance with the rule on certification against forum shopping and yet the Court proceeded to decide the case on the merits in order to serve the ends of substantial justice.<sup>[12]</sup>

In the present case, petitioner submitted a Secretary's Certificate signed on May 6, 2002, whereby Atty. Ramos was authorized to file a protest at the local government level and to "sign, execute and deliver any and all papers, documents and pleadings relative to the said protest and to do and perform all such acts and things as may be necessary to effect the foregoing."<sup>[13]</sup>

Applying the foregoing jurisprudence, the subsequent submission of the Secretary's Certificate and the substantial merits of the petition, which will be shown forthwith, justify a relaxation of the rule.

Second, the CA should have dismissed the appeal of respondent as it has no jurisdiction over the case since the appeal involves a pure question of law. The CA seriously erred in ruling that the appeal involves a mixed question of law and fact necessitating an examination and evaluation of the audited financial statements and other documents in order to determine petitioner's tax base.

There is a question of law when the doubt or difference is on what the law is on a certain state of facts. On the other hand, there is a question of fact when the doubt or difference is on the truth or falsity of the facts alleged.<sup>[14]</sup> For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is

whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.<sup>[15]</sup>

There is no dispute as to the veracity of the facts involved in the present case. While there is an issue as to the correct amount of local business tax to be paid by petitioner, its determination will not involve a look into petitioner's audited financial statements or documents, as these are not disputed; rather, petitioner's correct tax liability will be ascertained through an interpretation of the pertinent tax laws, i.e., whether the local business tax, as imposed by the Pasig City Revenue Code (Ordinance No. 25-92) and the Local Government Code of 1991, should be based on *gross receipts*, and not on gross revenue which respondent relied on in computing petitioner's local business tax deficiency. This, clearly, is a question of law, and beyond the jurisdiction of the CA.

Section 2(c), Rule 41 of the Rules of Court provides that in all cases where questions of law are raised or involved, the appeal shall be to this Court by petition for review on *certiorari* under Rule 45.

Thus, as correctly pointed out by petitioner, the appeal before the CA should have been dismissed, pursuant to Section 5(f), Rule 56 of the Rules of Court, which provides:

*Sec. 5. Grounds for dismissal of appeal.*- The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

x x x x

(f) Error in the choice or mode of appeal.

x x x x

Third, the dismissal of the appeal, in effect, would have sustained the RTC Decision ordering respondent to cancel the Assessment Notices issued by respondent, and therefore, would have rendered moot and academic the issue of whether the local business tax on contractors should be based on *gross receipts* or gross revenues.

However, the higher interest of substantial justice dictates that this Court should resolve the same, to evade further repetition of erroneous interpretation of the law, <sup>[16]</sup> for the guidance of the bench and bar.

As earlier stated, the substantive issue in this case is whether the local business tax on contractors should be based on *gross receipts* or gross revenue.

Respondent assessed deficiency local business taxes on petitioner based on the latter's gross revenue as reported in its financial statements, arguing that *gross receipts* is synonymous with gross earnings/revenue, which, in turn, includes uncollected earnings. Petitioner, however, contends that only the portion of the revenues which were actually and constructively received should be considered in determining its tax base.

Respondent is authorized to levy business taxes under Section 143 in relation to

Section 151 of the Local Government Code.

Insofar as petitioner is concerned, the applicable provision is subsection (e), Section 143 of the same Code covering contractors and other independent contractors, to wit:

SEC. 143. *Tax on Business.* -The municipality may impose taxes on the following businesses:

x x x x

(e) On contractors and other independent contractors, in accordance with the following schedule:

With <b>gross receipts</b> for the preceding calendar year in the amount of:	Amount of Tax Per Annum
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x x x x

(Emphasis supplied)

The above provision specifically refers to *gross receipts* which is defined under Section 131 of the Local Government Code, as follows:

x x x x

(n) "*Gross Sales or Receipts*" include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and the deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT);

x x x x

The law is clear. *Gross receipts* include money or its equivalent actually or constructively received in consideration of services rendered or articles sold, exchanged or leased, whether actual or constructive.

In *Commissioner of Internal Revenue v. Bank of Commerce*,<sup>[17]</sup> the Court interpreted gross receipts as including those which were actually or constructively received, *viz.*:

**Actual receipt of interest income is not limited to physical receipt. Actual receipt may either be physical receipt or constructive receipt.** When the depository bank withholds the final tax to pay the tax liability of the lending bank, there is prior to the withholding a constructive receipt by the lending bank of the amount withheld. From the amount constructively received by the lending bank, the depository bank deducts the final withholding tax and remits it to the government for the account of the lending bank. *Thus, the interest income actually*