

ERICSSON TELECOMMUNICATIONS, INC. v. CITY OF PASIG
G.R. No. 176667, 22 November 2007 Austria-Martinez, J. (Third Division)

The imposition of local business tax based on the taxpayer's gross revenue will inevitably result in the constitutionally proscribed double taxation – taxing of the same person twice by the same jurisdiction for the same thing – inasmuch as the taxpayer's revenue or income for a taxable year will definitely include its gross receipts already reported during the previous year and for which local business tax has already been paid.

Ericsson Telecommunications, Inc (Ericsson) was assessed by the City of Pasig with a business tax deficiency based on its gross revenues. Ericsson protested the assessment on the ground that it should be based on gross receipts and not on gross revenues. The City of Pasig denied the protest which prompted Ericsson to file a petition for review for the annulment and cancellation of its deficiency local business taxes.

The Regional Trial Court (RTC) declared the City of Pasig in default due to its failure to include a notice of hearing in its motion to dismiss. Ericsson was allowed to present evidence *ex parte* which became the basis of the RTC to cancel and set aside the assessments. On appeal, the Court of Appeals (CA), dismissed Ericsson's complaint without prejudice. The CA sustained the City of Pasig's claim that the petition filed with the RTC should have been dismissed due to Ericsson's failure to show that their 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. The motion for reconsideration was also denied and the case now comes before the Court *via* a Petition for Review on *Certiorari*.

ISSUE:

Whether or not the local business tax, as imposed by the Pasig City Revenue Code and the Local Government Code of 1991, should be based on *gross receipts* or gross revenues

HELD:

Petition GRANTED.

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. There is, therefore, constructive receipt, when the consideration for the articles sold, exchanged or leased, or the services rendered has already been placed under the control of the person who sold the goods or rendered the services without any restriction by the payor.

In contrast, *gross revenue* covers money or its equivalent actually or constructively received, **including the value of services rendered or articles sold, exchanged or leased, the payment of which is yet to be received.** This is in consonance with the International Financial Reporting Standards, which defines *revenue* as the gross inflow of

economic benefits (cash, **receivables**, and other assets) arising from the ordinary operating activities of an enterprise (such as sales of goods, sales of services, interest, royalties, and dividends), which is measured at the fair value of the consideration received or **receivable**.

In Ericsson's case, its audited financial statements reflect income or revenue which accrued to it during the taxable period although not yet actually or constructively received or paid. This is because Ericsson uses the accrual method of accounting, where income is reportable when all the events have occurred that fix the taxpayer's right to receive the income, and the amount can be determined with reasonable accuracy; the right to receive income, and not the actual receipt, determines when to include the amount in gross income.

The imposition of local business tax based on petitioner's gross revenue will inevitably result in the constitutionally proscribed double taxation – taxing of the same person twice by the same jurisdiction for the same thing – inasmuch as petitioner's revenue or income for a taxable year will definitely include its gross receipts already reported during the previous year and for which local business tax has already been paid.

Thus, the City of Pasig committed a palpable error when it assessed petitioner's local business tax based on its gross revenue as reported in its audited financial statements, as Section 143 of the Local Government Code and Section 22(e) of the Pasig Revenue Code clearly provide that the tax should be computed based on *gross receipts*.