Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

BENGUET ELECTRIC COOPERATIVE (BENECO) represented by GERARDO P. VERZOSA, General Manager,
Petitioner,

CTA AC No. 85
For: Prohibition etc.

-versus-

Members:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

THE MUNICIPALITY OF LA TRINIDAD, BENGUET, and WILMA LINTAN, Municipal Treasurer,
Respondents.

Promulgated:
JUN 07 2013
9:45 a.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed pursuant to Section 7(a)(3) of Republic Act No. 1125,[1] as amended, in relation to Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA)[2] and Section 4(a), Rule 8, also of

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[1] 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 local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

[2] Rule 4. Section 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

xxx xxx xxx

the RRCTA[3], seeking the reversal and setting aside of the issuances by the Regional Trial Court, Branch 62, La Trinidad, Benguet (RTC of La Trinidad), in Civil Case No. 11-CV-2756 entitled "BENGUET ELECTRIC COOPERATIVE, INC., represented by GERARDO P. VERZOSA, General Manager vs. THE MUNICIPALITY OF LA TRINIDAD, BENGUET, and WILMA LINTAN, Municipal Treasurer", specifically, the Order[4] dated August 31, 2011 dismissing petitioner's Petition for Prohibition with Urgent Prayer for a Temporary Restraining Order and a Writ of Preliminary Injunction, and another Order[5] dated December 15, 2011, dismissing petitioner's Motion for Reconsideration of the Order dated August 31, 2011.

Petitioner Benguet Electric Cooperative (BENECO) is an electric distribution utility duly organized and existing under Philippine laws. Its principal office is located at Barangay Alapang in La Trinidad, Benguet.[6] Petitioner is the exclusive distributor of electric light and power service to Baguio City and the thirteen (13) municipalities of Benguet pursuant to its franchise issued by the National Electrification Administration (NEA) on March 20, 1978.[7]

> (3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.

[3] Rule 8. Section 4. *Where to appeal; mode of appeal. –*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[4] RTC Records, pp. 186 to 189.
[5] RTC Records, p. 206.
[6] Par. 1, II, The Parties, Petition for Review, Docket, p. 000007.
[7] Par. 4, IV, Statement of Facts, Petition for Review, Docket, p. 000008; Annex A, Petition for Review, Docket, p. 000023.

Respondent Municipality of La Trinidad, Benguet is a duly organized public corporation pursuant to Philippine laws. It is headed by Mayor Gregorio Abalos, who holds office at the La Trinidad Municipal Hall at Km. 5, La Trinidad, Benguet. Respondent Wilma Lintan is the Municipal Treasurer.[8]

On February 7, 2011, petitioner received from respondents three (3) separate Notices of Assessment of Local Business Tax for the years 2006, 2007, and 2008.[9] The total amount of taxes per year, inclusive of surcharges and interests, which were based on petitioner's gross receipts of the previous years immediately preceding the years of assessments, are as follows:

Year Covered	Amount Assessed
2005	₱ 5,445,152.36
2006	5,987,235.13
2007	6,607,061.13
Total	**₱18,039,448.62**

In a letter dated February 21, 2011, petitioner protested said Notices of Assessment, arguing that petitioner is not engaged in business for being a non-stock, non-profit cooperative.[10]

On April 25, 2011, petitioner received from respondents three (3) separate Amended Notices of Assessment of Local Business Tax for years 2006, 2007, and 2008, with the same amount of business taxes.[11]

In a letter dated May 5, 2011, petitioner protested said Amended Notices of Assessment, reiterating that petitioner

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[8] Par. 2, II, The Parties, Petition for Review, Docket, pp. 000007 to 000008.
[9] Par. 5, IV, Statement of Facts, Petition for Review, Docket, p. 000008; Annexes C, C-1, and C-2, Petition, RTC Records, pp. 36 to 38.
[10] Par. 6, IV, Statement of Facts, Petition for Review, Docket, p. 000008; Annex D, Petition, RTC Records, pp. 39 to 40.
[11] Par. 7, IV, Statement of Facts, Petition for Review, Docket, p. 000008; Annexes E, E-1, E-2, Petition, RTC Records, pp. 41 to 43.

is not liable for business tax since it is a non-stock, non-profit cooperative.[12]

On May 13, 2011, petitioner received a letter of even date from respondents, denying petitioner's protest and reiterating their demand for the payment of local business taxes, including interests and surcharges, for the years 2006, 2007, and 2008.[13] Said letter specifically states that it serves as respondents' final demand against petitioner.[14]

In a letter dated May 30, 2011, petitioner reiterated its stand that it is not liable for local business taxes since its operations are not strictly construed as a business as defined by law and stressed that petitioner is a non-stock, non-profit cooperative.[15]

On June 21, 2011, petitioner received a Notice of Seizure or Confiscation of petitioner's personal properties to the extent of ₱18,039,448.63, representing petitioner's unpaid local business taxes, inclusive of penalties, interests and surcharges, for the years 2006, 2007, and 2008.[16] Said Notice of Seizure or Confiscation was accompanied by a Certification issued by respondent Lintan attesting to the fact that petitioner has unpaid local business taxes, inclusive of penalties, in the amount of ₱18,039,448.62.[17]

Respondents also furnished petitioner with copies of the Notices of Garnishment and Warrant of Levy, which respondents sent to petitioner's depository banks, to wit: Banco de Oro (Abanao Branch, La Trinidad Branch, Session

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[12] Par. 7, IV Statement of Facts, Petition for Review, Docket, p. 000008 to 000009; Annex F, Petition, RTC Records, pp. 44 to 45.
[13] Par. 8, IV, Statement of Facts, Petition for Review, Docket, p. 000009.
[14] Annex G, Petition, RTC Records, pp. 46.
[15] Par. 9, IV, Statement of Facts, Petition for Review, Docket, p. 000009; Annex H, Petition, RTC Records, pp. 47 to 48.
[16] Par. 10, IV, Statement of Facts, Petition for Review, Docket, p. 000009; Annex B, Petition for Review, docket, pp. 000024 to 000025; Annex I, Petition, RTC Records, pp. 49 to 50.
[17] Par. 11, IV, Statement of Facts, Petition for Review, Docket, p. 000009; Annex J, Petition, RTC Records, p. 51.

Road Branch, and Luneta Hill Branch), Metrobank, and the Development Bank of the Philippines in Baguio City.[18]

On August 9, 2011, petitioner filed a Petition for Prohibition with Urgent Prayer for a Temporary Restraining Order and a Writ of Preliminary Injunction with the RTC of La Trinidad.[19]

On August 12, 2011, the RTC of La Trinidad issued an Order stating that the Petition for Prohibition filed by petitioner under Section 2 of Rule 65 of the Rules of Court is not the appropriate remedy under the circumstances considering that there is a plain, speedy and adequate remedy available to petitioner under Section 195 of the Local Government Code[20] (LGC). The RTC of La Trinidad gave petitioner a period of ten (10) days from notice to explain why the Petition for Prohibition should not be dismissed outright for lack of merit.[21]

On August 23, 2011, petitioner filed a Compliance (On Why The Court Must Give Due Course To The Petition)[22] with the RTC of La Trinidad.

In an Order[23] dated August 31, 2011, the RTC of La Trinidad dismissed the Petition for Prohibition, on grounds that the collection of taxes cannot be stopped and enjoined through the writ of prohibition; that the proper remedy in this case is appeal under Section 195 of the LGC, which lapsed without petitioner having availed of it; that for failure of petitioner to appeal from the denial of the protest within the period provided in Section 195 of the LGC, the assessment became conclusive and unappealable; and that

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[18] Par. 12, IV, Statement of Facts, Petition for Review, Docket, p. 000009; Annexes D, D1, D2, D3, D4, and D5, Petition for Review, pp. 27 to 47; Annexes K, K-1, K-2, K-3, K-4, K-5, Petition, RTC Records, pp. 52 to 75.
[19] RTC Records, pp. 3 to 31.
[20] Republic Act No. 7160.
[21] Par. 13, IV, Statement of Facts, Docket, p. 000009; RTC Records, p. 167.
[22] *Id.*; RTC Records, pp. 168 to 176.
[23] RTC Records, pp. 186 to 189.

the Petition for Prohibition cannot be used as substitute for the lost remedy of appeal.

Petitioner received the Order dated August 31, 2011 on September 5, 2011.[24] Thus, on September 16, 2011, petitioner filed a Motion for Reconsideration[25] with the RTC of La Trinidad, praying that the Order dated August 31, 2011 be set aside and that the Petition for Prohibition be reinstated.

During the hearing on petitioner's Motion for Reconsideration held on September 23, 2011, the RTC of La Trinidad granted respondents a period of five (5) days to file their Reply to petitioner's Motion for Reconsideration.[26] However, records of the RTC of La Trinidad show that respondents failed to file their Reply or Comment within the prescribed period.

The RTC of La Trinidad then issued the Order[27] dated December 15, 2011, denying petitioner's Motion for Reconsideration. Said Order was received by petitioner on December 19, 2011.[28]

On January 18, 2012, petitioner filed with this Court, by registered mail, the instant Petition for Review[29] appealing the issuances of the RTC of La Trinidad, specifically, the Order dated August 31, 2011 and the Order dated December 15, 2011. Petitioner prays therein that this Court grant the Petition for Review and give due course thereto.[30]

In the Resolution[31] dated February 10, 2012, without necessarily giving due course to the Petition for Review, this

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[24] Par. 3, III, Material Dates, Petition for Review, Docket, p. 000008.
[25] RTC Records, pp. 193 to 198.
[26] Order dated September 23, 2011, RTC Records, p. 201.
[27] Order dated December 15, 2011, RTC Records, p. 206.
[28] Par. 3, III, Material Dates, Petition for Review, Docket, p. 000008.
[29] Docket, pp. 000007 to 000019.
[30] Petition for Review, Docket, p. 000019.
[31] Docket, p. 000130.

Court directed respondents to file their Comment within ten (10) days from notice. However, respondents failed to file their Comment to the Petition for Review. Thus, in the Resolution[32] dated April 24, 2012, this Court gave the parties a period of thirty (30) days from notice within which to file their respective Memoranda.

On June 14, 2012, petitioner filed its Memorandum[33] by registered mail, which was received by this Court on June 21, 2012. As to respondents, records show that they failed to file their Memorandum.[34]

In the Resolution[35] dated October 29, 2012, this Court, after noting the transmittal to this Court by the Acting Branch Clerk of Court of the RTC of La Trinidad of the entire records of Civil Case No. 11-CV-2756, submitted the instant Petition for Review for decision.

For this Court's resolution, petitioner submitted the sole issue of whether or not the RTC of La Trinidad committed an error in dismissing the original Petition for Prohibition filed by petitioner.[36]

At the outset, the Court shall first discuss its jurisdiction to take cognizance of the case. More specifically, this Court shall determine whether it has jurisdiction to entertain an appeal involving Orders of the RTC of La Trinidad dismissing petitioner's Petition for Prohibition involving a local tax.

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law and not by consent of the parties. To inquire into the existence of jurisdiction over the subject matter is the

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[32] Resolution dated April 24, 2012, Docket, p. 000140.
[33] Docket, pp. 000143 to 000155.
[34] Records Verification dated October 24, 2012, Docket, p. 000192.
[35] Docket, p. 000193.
[36] Issues, Petition for Review, Docket, p. 000010.

primary concern of a court, for thereon would depend the validity of its entire proceedings.[37]

Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, creating the Court of Tax Appeals (CTA), did not grant this Court blanket authority to decide any and all tax disputes. In defining the CTA's jurisdiction, RA No. 1125, as amended, limited the CTA's authority to those matters enumerated therein.[38] Section 7 of RA No. 1125, as amended, enumerates the subject matters which are within the CTA's jurisdiction, to wit:

> "SEC. 7. *Jurisdiction*. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
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> (3) **Decisions, orders or resolutions of the Regional Trial Court in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;**

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[37] *Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals*, G.R. No. L-23988, January 2, 1968.

[38] *Genaro Ursal, as City Assessor of Cebu vs. Court of Tax Appeals and Consuelo Noel*; *Genaro Ursal, as City Assessor of Cebu vs. Court of Tax Appeals and Jesusa Samson*, G.R. Nos. L-10123 and L-10355, April 26, 1957.

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

(6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

(7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sections 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: *Provided, however*, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. xxx

(2) Exclusive appellate jurisdiction in criminal offenses:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases decided by them, in their respective territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

(c) Jurisdiction over tax collection cases as herein provided:

(1) Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: *Provided, however*, That Collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.

(2) Exclusive appellate jurisdiction in tax collection cases:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction." *(Emphasis supplied)*

Also, under Section 3(a)(3) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), the Court in Division is vested with exclusive appellate jurisdiction to review decisions, resolutions or orders of the RTC in local taxes cases originally decided or resolved by them in the exercise of their original jurisdiction.

In the instant case, the appeal pertains to the two Orders involving a local tax, rendered by the RTC of La Trinidad in the exercise of its original jurisdiction. Consequently, this Court in Division has jurisdiction over the instant case as it falls within its exclusive appellate jurisdiction under Section 7(a)(3) of RA No. 1125, as amended, and Section 3(a)(3) of Rule 4 of the RRCTA.[39]

This Court, having jurisdiction to entertain the appeal, shall now proceed to resolve the issue on whether or not the RTC of La Trinidad committed an error when it dismissed the original Petition for Prohibition filed by petitioner.

Petitioner alleges that the RTC of La Trinidad erred in stating -

1. that a Petition for Prohibition cannot be availed of as a remedy in this case in view of the lapse of the thirty (30)-day period to appeal provided under Section 195 of the LGC; and
2. that a Petition for Prohibition cannot be availed of as a remedy to question the validity of a tax assessment issued by respondents.[40]

Petitioner contends that the Petition for Prohibition was properly filed despite petitioner's failure to avail of the remedy provided under Section 195 of the LGC. Petitioner argues that Section 195 of the LGC does not proscribe the remedy of prohibition when the issue raised is the legality of the assessment. Citing the case of *National Power*

[39] *Team Pacific Corporation vs. Josephine Daza*, G.R. No. 167732, July 11, 2012.
[40] Errors, Petition for Review, docket, p. 000010.

Corporation vs. Province of Quezon and Municipality of Pagbilao[41] *(NPC case)*, petitioner avers that Section 195 of the LGC will apply only when the taxpayer raises an issue as to the amount of the local business tax sought to be collected and not when the issue pertains to the legality of respondents' right to issue the assessment. In addition, petitioner claims that since the assessment has become final and unappealable, it is left with no other choice but to seek relief through a Petition for Prohibition, citing as basis the decision of the Supreme Court in the case of *The City Government of Quezon City, et al. vs. Bayan Telecommunications, Inc.*[42] *(Bayantel case).*

Petitioner further avers that the thirty-day period under Section 195 of the LGC does not apply when the assessment itself is assailed for not having sufficient legal or statutory basis.

Petitioner's contentions are without merit.

Section 2 of Rule 65 of the Rules of Court provides:

> "SEC. 2. *Petition for prohibition*. – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are **without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other 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 commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require." *(Emphasis supplied)*

[41] G.R. No. 171586, January 25, 2010
[42] G.R. No. 162015, March 6, 2006.

In a Petition for Prohibition against any tribunal, corporation, board, or person, whether exercising judicial, quasi-judicial, or ministerial functions, who has acted without or in excess of jurisdiction or with grave abuse of discretion, the petitioner prays that judgment be rendered, commanding the respondent to desist from further proceeding in the action or matter specified in the petition.[43] For a writ of prohibition to prosper, the requisites are:

(1) the impugned act must be that of a tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions, who has acted without or in excess of jurisdiction or with grave abuse of discretion; and

(2) there is no plain, speedy, and adequate remedy in the ordinary course of law.[44]

The issue now is whether or not petitioner can seek the issuance of a writ of prohibition to enjoin respondents from collecting the assessments which have become final and unappealable on account of petitioner's failure to appeal the same with the RTC within the period prescribed under Section 195 of the LGC.

This Court answers in the negative.

Section 195 of the LGC states:

> "SEC. 195. *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local

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[43] *Evelyn Ongsuco and Antonia Salaya vs. Hon. Mariano M. Malones*, G.R. No. 182065, October 27, 2009, citing *Perez vs. Court of Appeals*, G.R. No. L-80838, November 29, 1988, 168 SCRA 236, 243.

[44] *Id.*, citing *Rivera vs. Espiritu*, 425 Phil. 169, 180 (2002).

> treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable**." *(Emphasis supplied)*

The records show that petitioner timely protested the Notices of Assessments as well as the Amended Notices of Assessments issued by respondents. Unfortunately, petitioner failed to file an appeal with the RTC within thirty (30) days from receipt of respondents' letter dated May 13, 2011, which denied petitioner's protest, with finality. Instead of filing an appeal with the RTC, petitioner opted to write another letter dated May 30, 2011 to respondents reiterating that it is not liable for local business tax as it is a non-stock, non-profit cooperative.

Since no appeal was filed by petitioner to the RTC of La Trinidad within the thirty-day period provided under Section 195 of the LGC, the assessments for local business taxes for the years 2006, 2007, and 2008 became conclusive and unappealable. Consequently, petitioner is precluded from questioning the validity of the assessments even through a Petition for Prohibition.

This Court is aware of the factual milieu surrounding the *NPC case* and the *Bayantel case* cited by petitioner, and thus, holds that these cases will not apply in petitioner's case.

Unlike in petitioner's case, the *NPC case* and the *Bayantel case* involve real property tax assessments. The procedure for protesting a real property tax assessment is laid down in Sections 252 and 226 of the LGC; while the procedure for protesting a local business tax assessment is provided under Section 195 of the LGC.

Notably, in the *NPC case* and the *Bayantel case*, the Supreme Court addressed the issue on whether or not judicial action is allowed, even without prior exhaustion of administrative remedies, when the only issue involved is purely legal. In these cases, the Supreme Court, citing the case of *Alejandro B. Ty, et al. vs. The Hon. Aurelio C. Trampe, et al.*[45] *(Ty case)*, clarified that one of the recognized exceptions to the rule on exhaustion of administrative remedies is when only legal issues are to be resolved. In the *Ty case*, the Supreme Court clarified that not all cases involving real property tax assessments should be appealed to the LBAA and subsequently to the CBAA. If the taxpayer is raising pure questions of law, then the recourse of the taxpayer is to the regular courts, and not to the LBAA and the CBAA. The pertinent portion of the *Ty case* reads:

> "Respondents argue that this case is premature because petitioners neither appealed the questioned assessments on their properties to the Board of Assessment Appeal, pursuant to Sec. 226, nor paid the taxes under protest, per Sec. 252.
>
> We do not agree. **Although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is a well-settled exception in cases where the controversy does not involve questions of fact but only of law.** In the present case, the parties, even during the proceedings in the lower court on 11 April 1994, already agreed 'that the issues in the petition are legal' and thus, no evidence was presented in said court." *(Emphasis supplied)*

In the instant case, there is no issue on non-exhaustion of administrative remedies. In fact, records reveal that

[45] G.R. No. 117577, December 1, 1995.

petitioner fully exhausted the administrative remedy of filing protest letters with the local treasurer within the period provided under Section 195 of the LGC. What petitioner failed to do was to timely resort to judicial action within the period provided under Section 195 of the LGC.

Section 195 of the LGC already provided for the remedy of an appeal with the court of competent jurisdiction (which is the RTC) in the event that the taxpayer's protest is denied or unacted upon by the local treasurer. The RTC, as a trial court, can decide on both factual and purely legal issues. A taxpayer should avail of this remedy of appealing the decision or inaction of the local treasurer to the RTC so that the latter can resolve whatever legal or factual issues that the taxpayer may raise in contesting the assessment.

In the instant case, if only petitioner has timely availed of this remedy of appeal to the RTC, then the RTC would have acquired jurisdiction to determine the legality or validity of the Notices of Assessment/Amended Notices of Assessment issued by respondents.

Since the decision of respondents on petitioner's protest could have been appealed before the RTC within the period provided under Section 195 of the LGC, the remedy of prohibition cannot be resorted to by petitioner for the purpose of questioning the legality of the assessment. In the case of *Amalia Vda. De Suan, et al. vs. Eriberto A. Unson, et al.*[46], the Supreme Court categorically stated that "special civil actions of certiorari and prohibition do not lie where the remedy by appeal has been lost because said special civil actions cannot take the place of an appeal." The pertinent portion thereof reads:

> "The instant petition for prohibition was filed long after the trial court's decision had become final and executory. **Time and again We have dismissed petitions for *certiorari* and prohibition to annul decisions or orders which could have, but have not**

[46] G.R. No. 30716, May 18, 1990.

> **been appealed**. Where the court has jurisdiction over the subject matter as respondent Judge has in this case, the orders or decisions upon all questions pertaining to the cause are orders or decisions within its jurisdiction, and however erroneous they may be, they cannot be corrected by *certiorari* and *prohibition*. **These special civil actions do not lie where the remedy by appeal has been lost because said special civil actions cannot take the place of an appeal**. (Dela Cruz v. IAC, 134 SCRA 417; Santos, Jr. v. Court of Appeals, *supra*). Evidently, **petitioners had no valid excuse to resort to the extraordinary writs of *certiorari* and *prohibition* when appeal had been available to them** and which they, in fact, already initiated but did not pursue. (Sarmiento v. Intermediate Appellate Court, 153 SCRA 104)." *(Emphasis supplied)*

Based on all the foregoing, this Court holds that the RTC of La Trinidad did not err in dismissing petitioner's Petition for Prohibition. The special civil action for prohibition cannot be availed of as a substitute for the lost appeal. Petitioner should have assailed the validity of the local tax assessments by filing an ordinary appeal with the RTC within the period specified under Section 195 of the LGC. Since petitioner failed to file a timely appeal with the RTC, petitioner lost its right to question the validity of the Notices of Assessment/Amended Notices of Assessment, as they became conclusive and unappealable.

Anent petitioner's claim that what it actually seeks to enjoin in the Petition for Prohibition is the enforcement of the Warrants of Garnishment, the Court finds the same unmeritorious.

When the taxpayer neither pays the tax assessed nor contests its validity within the period provided under Section 195 of the LGC, the government may enforce collection through the civil remedies provided under Section 174 of the LGC, which provides:

> "SEC. 174. *Civil Remedies.* - The civil remedies for the collection of local taxes, fees, or charges, and related

> surcharges and interest resulting from delinquency shall be:
>
> (a) By administrative action thru distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property;
>
> (b) By judicial action.
>
> Either of these remedies or all may be pursued concurrently or simultaneously at the discretion of the local government unit concerned."

Since the 2006, 2007, and 2008 assessments became conclusive and unappealable, this Court finds that respondents did not act without or in excess of their jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, in issuing the Warrants of Garnishment. The issuance of the Warrants of Garnishment is one of the remedies that respondents may avail in enforcing a final and conclusive assessment.

Petitioner also posits that Section 195 of the LGC is not actually a mode of appeal as defined by law but an original action which can be filed even beyond the thirty-day period pursuant to the decision of the Supreme Court in the case *of Luz R. Yamane vs. BA Lepanto Condominium Corporation*[47] *(Yamane case)*. The Court finds no merit thereon.

The Court notes that in the *Yamane case*, the Supreme Court clarified that the RTC exercises original jurisdiction on local tax cases appealed to it pursuant to Section 195 of the LGC. The Supreme Court did not even discuss the issue of whether or not the thirty-day period to appeal a decision of the local treasurer to the RTC under Section 195 of the LGC is mandatory or not.

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[47] G.R. No. 154993, October 25, 2005.

On the other hand, it is clear under Section 195 of the LGC that a taxpayer dissatisfied with a local treasurer's denial of his protest or in case of inaction on his protest over an assessment has thirty (30) days within which to appeal to the court of competent jurisdiction.[48] The wordings of Section 195 of the LGC is plain, unequivocal and mandatory that the taxpayer **"shall"** have thirty (30) days, reckoned from the taxpayer's receipt of the denial of his protest, within which to appeal said denial with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable. This Court, therefore, finds no basis on petitioner's contention that the appeal to the RTC could be filed even beyond the thirty-day period.

Finally, *assuming arguendo* that the Petition for Prohibition was a proper remedy, the same will not prosper to enjoin respondents from collecting said local tax assessments as the act of respondents in imposing local business tax on petitioner was valid and legal.

In the recent case of *City of Iriga vs. Camarines Sur III Electric Cooperative, Inc. (CASURECO III)*[49] *(Casureco III case)*, the Supreme Court, citing the case of *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) vs. The Secretary, Department of Interior and Local Government*[50] *(Philreca case)*, reiterated that the tax privileges granted to electric cooperatives registered with NEA under PD No. 269 were validly withdrawn and only those registered with the Cooperative Development Authority (CDA) under RA No. 6938 may continue to enjoy the tax privileges under the Cooperative Code. The Supreme Court held that Casureco III is liable for franchise tax, which is a local tax, notwithstanding its non-profit nature. Significant portions of the Supreme Court's decision in the *Casureco III case* read:

[48] *Team Pacific Corporation vs. Josephine Daza*, G.R. No. 167732, July 11, 2012.
[49] G.R. No. 192945, September 5, 2012.
[50] G.R. No. 143076, June 10, 2003.

"PD 269, which took effect on August 6, 1973, granted electric cooperatives registered with the NEA, like CASURECO III, several tax privileges, one of which is exemption from the payment of 'all national government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes.'

On March 10, 1990, Congress enacted into law RA 6938, otherwise known as the 'Cooperative Code of the Philippines,' and RA 6939 creating the CDA. The latter law vested the power to register cooperatives solely on the CDA, while the former provides that electric cooperatives registered with the NEA under PD 269 which *opt not to register* with the CDA shall not be entitled to the benefits and privileges under the said law.

On January 1, 1992, the LGC took effect, and Section 193 thereof withdrew tax exemptions or incentives previously enjoyed by 'all persons, whether natural or juridical, including government-owned or controlled corporations, *except* local water districts, *cooperatives duly registered under R.A. No. 6938*, non-stock and non-profit hospitals and educational institutions.'

In *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) v. The Secretary, Department of Interior and Local Government,* the Court held that the **tax privileges granted to electric cooperatives registered with NEA under PD 269 were validly withdrawn and only those registered with the CDA under RA 6938 may continue to enjoy the tax privileges under the Cooperative Code**.

Therefore, CASURECO III can no longer invoke PD 269 to evade payment of local taxes. Moreover, its provisional registration with the CDA which granted it exemption for the payment of local taxes was extended only until May 4, 1992. Thereafter, it can no longer claim any exemption from the payment of local taxes, including the subject franchise tax.

xxx xxx xxx

Taking a different tack, CASURECO III maintains that it is exempt from payment of franchise tax because of its nature as a *non-profit cooperative*, as contemplated

> in PD 269, and insists that only entities engaged in business, and not non-profit entities like itself, are subject to the said franchise tax.
>
> The Court is not persuaded.
>
> In *National Power Corporation v. City of Cabanatuan,* the Court declared that 'a franchise tax is a '*tax on the privilege* of transacting business in the state and exercising corporate franchises granted by the state.' It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but on its exercise of the rights or privileges granted to it by the government. 'It is within this context that the phrase 'tax on businesses enjoying a franchise' in Section 137 of the LGC should be interpreted and understood.'
>
> Thus, to be liable for local franchise tax, the following requisites should concur: (1) that one has a 'franchise' in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the pertinent local government unit.
>
> There is a confluence of these requirements in the case at bar. By virtue of PD 269, NEA granted CASURECO III a franchise to operate an electric light and power service for a period of fifty (50) years from June 6, 1979, and it is undisputed that CASURECO III operates within Iriga City and the Rinconada area. **It is, therefore, liable to pay franchise tax notwithstanding its non-profit nature**." *(Emphasis supplied)*

In fine, the records show that petitioner was granted a franchise by the NEA to operate an electric light and power service for a period of fifty (50) years from March 20, 1978 in the City of Baguio and the thirteen (13) municipalities, which include the Municipality of La Trinidad. Applying the decisions of the Supreme Court in the *Casureco III case* and the *Philreca case,* since petitioner operates within the Municipality of La Trinidad, and considering that tax privileges granted to electric cooperatives registered with NEA under PD No. 269 were validly withdrawn, petitioner is liable to pay local business tax to respondent Municipality of La Trinidad, albeit it is a non-stock, non-profit cooperative.

WHEREFORE, premises considered, the instant Petition for Review filed by Benguet Electric Cooperative (BENECO) is hereby **DISMISSED**. Accordingly, the Order dated August 31, 2011 and the Order dated December 15, 2011, rendered by the Regional Trial Court, Branch 62, La Trinidad, Benguet in Civil Case No. 11-CV-2756 entitled "BENGUET ELECTRIC COOPERATIVE, INC., represented by GERARDO P. VERZOSA, General Manager vs. THE MUNICIPALITY OF LA TRINIDAD, BENGUET, and WILMA LINTAN, Municipal Treasurer", are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

A T T E S T A T I O N

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
Chairperson

C E R T I F I C A T I O N

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice