Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

NATIONAL POWER CORPORATION,
Petitioner,

-versus-

PROVINCE OF CAGAYAN AND EMILIA IRINGAN,
Respondents.

CTA AC NO. 84
For: Franchise Tax Assessment

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

Promulgated:
MAR 01 2013
8:30 a.m.

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DECISION

MINDARO-GRULLA, J.:

This is an appeal pursuant to Section 7(a)(3) of Republic Act (RA) No. 9282[1] 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 the RRCTA[3].

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[1] Section 7. *Jurisdiction*. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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(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:

The instant Petition assails the Decision of the Regional Trial Court (RTC), Branch 5, Second Judicial Region, Tuguegarao City, Cagayan dated November 16, 2011 in Civil Case No. 7141 entitled "**National Power Corporation vs. Province of Cagayan and Emilia Iringan**". The assailed Decision dismissed the appeal of petitioner National Power Corporation and sustained the legality and efficacy of the letter of respondent Emilia L. Iringan dated March 18, 2008 and ordered petitioner to pay the amount of franchise tax stated therein upon finality of said Decision.

Petitioner National Power Corporation (NPC) is a government-owned and controlled corporation mandated under RA No. 6395, as amended, to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal, and other sources.[4]

Respondent Province of Cagayan is the local government unit whose franchise tax assessment is being assailed in the present Petition; while respondent Emilia L. Iringan is impleaded as the acting Assistant Provincial

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(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 <u>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.</u>

[4] The Parties, Petition, Docket, p. 6.

Treasurer and Officer-in-Charge of the Office of the Provincial Treasurer of Cagayan.[5]

On April 1, 2008, petitioner received an Assessment Letter[6] dated March 18, 2008 from respondents, assessing petitioner for franchise tax covering taxable years 2001 to 2007 in the amount of Twenty Million Eight Hundred Twenty-Six Thousand Three Hundred Sixty-Seven Pesos and Sixty Four Centavos (Php20,826,367.64), allegedly based on Section 137 of RA No. 7160, otherwise known as the "Local Government Code (LGC) of 1991"; which authorizes a province to impose a tax on businesses enjoying a franchise.[7]

Petitioner filed a Protest Letter[8] dated May 19, 2008 with the Office of respondent Iringan, protesting the assessment for franchise tax on the ground, among others, that under RA No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), the power generation undertaken by petitioner is no longer considered a public utility operation for which a franchise is required. Hence, petitioner can no longer be considered as a "business enjoying a franchise" for the purpose of the collection of franchise tax under Section 137 of the LGC.[9]

Since respondents failed to resolve petitioner's protest within the sixty-day period provided under Section 195 of the LGC[10], petitioner filed an Appeal with the RTC of

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[5] *Id.*, Docket, p. 7.
[6] Annex "B", Petition, Docket, p. 38.
[7] The Factual and Juridical Antecedents, Petition, Docket, p. 7.
[8] Annex "C", Petition, Docket, p. 50.
[9] The Factual and Juridical Antecedents, Petition, Docket, p. 8.
[10] 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 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

Cagayan on July 10, 2008[11]; which was docketed as Civil Case No. 7141. In said Appeal, petitioner prayed that the assessment dated March 18, 2008 issued by respondent Iringan be nullified and set aside and that petitioner be declared exempt from payment of franchise tax.

On March 25, 2009, respondents filed their Answer to the Appeal[12] denying, among others, petitioner's allegation that upon effectivity of the EPIRA, petitioner is already exempt from franchise tax as it is no longer considered engaged in public utility operation for which a franchise is required, and praying for the dismissal of the Appeal filed by petitioner.

On April 14, 2009, petitioner filed its Reply[13] to respondents' Answer and sought the denial of respondents' prayer to dismiss petitioner's Appeal.

During the pre-trial conference held on January 19, 2011 at the RTC of Cagayan, the parties submitted the case for resolution alleging that the issues raised are purely legal. Thus, the RTC of Cagayan directed the parties to submit their respective memorandum within thirty (30) days from the date of the pre-trial conference.[14]

Petitioner filed its Position Paper[15] on February 3, 2011 while respondents filed their Memorandum[16] on February 25, 2011. Consequently, Civil Case No. 7141 was submitted for decision on May 2, 2011.[17]

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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.

[11] RTC Records, pp. 1 to 15.
[12] *Id.*, pp. 41 to 49
[13] *Id.*, pp. 50 to 57.
[14] *Id.*, pp. 158 to 161.
[15] *Id.*, pp. 162 to 179.
[16] *Id.*, pp. 182 to 190.
[17] *Id.*, p. 235.

On November 16, 2011, the RTC of Cagayan issued the assailed Decision[18] dismissing petitioner's Appeal, sustaining the legality and efficacy of the letter of respondent Iringan dated March 18, 2008, and ordering petitioner to pay the amount of franchise tax stated therein upon finality of the decision and within thirty (30) days therefrom. The dispositive portion of the assailed Decision is quoted hereunder:

> "WHEREFORE, premises considered, the court dismisses the appeal and sustains the legality and efficacy of the letter (Exhibit 'A') of appellee Emilia C. [sic] Iringan dated 18 March 2008 (p. 17, Record). Upon the finality of this decision and within thirty (30) days therefrom, the court orders the appellant NPC to pay the amount of franchise [sic] stated therein.
>
> SO ORDERED."[19]

Petitioner received the assailed Decision on November 24, 2011[20]. Thus, on December 21, 2011, petitioner filed the instant Petition praying for this Court to give due course to the Petition and after due deliberations, grant the Petition by setting aside the Decision of the RTC of Cagayan dated November 16, 2011 in Civil Case No. 7141.[21]

Respondents filed their Comment on February 8, 2012[22] and prayed that the instant Petition be dismissed for lack of merit.

In a Resolution[23] dated March 22, 2012, the Court gave due course to the instant Petition for Review and granted both parties a period of thirty (30) days from notice within which to file their respective Memorandum.

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[18] *Id.*, pp. 236 to 252.
[19] *Id.*, p. 252.
[20] Nature and Timeliness of the Petition, Petition, Docket, p. 6.
[21] Prayer, Petition, Docket, p. 15.
[22] Docket, pp. 103 to 107.
[23] Docket, pp. 121 to 122.

In view of the filing of petitioner's Memorandum on April 26, 2012[24] and respondents' Memorandum on May 10, 2012[25], the instant Petition was submitted for decision on May 29, 2012.[26]

In the instant Petition, petitioner raised the following issues for the Court's resolution:[27]

1. Whether or not petitioner is liable for the franchise tax assessed by respondent; and

2. Assuming that petitioner is liable for the franchise tax, whether or not the taxes for the year 2001 and 2002 had already prescribed.

In assailing the validity of respondent's Assessment Letter[28] dated March 18, 2008, petitioner argues that upon the effectivity of the EPIRA in 2001, the power generation activity of petitioner is no longer considered as a public utility operation for which a franchise is required. Thus, it can no longer be considered as a business enjoying a franchise for the purpose of the franchise tax imposed and collected under Section 137 of the LGC.

Petitioner also claims that the decisions of the Supreme Court in the cases of **National Power Corporation vs. Province of Isabela represented by Hon. Benjamin G. Dy, Provincial Governor**[29] (*Isabela case*) and **National Power Corporation vs. City of Cabanatuan**[30] (*Cabanatuan case*), which both held that petitioner is liable for franchise tax, can no longer be relied upon because said cases involve franchise taxes which became due to the concerned local government units (LGU) prior to the passage and effectivity of the EPIRA in 2001, that is, before the rule

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[24] Docket, pp. 123 to 133.
[25] Docket, pp. 143 to 151.
[26] Docket, p. 153.
[27] Petition, Docket, p. 9.
[28] Annex "B", Petition, Docket, p. 38.
[29] G.R. No. 165827, June 16, 2006.
[30] G.R. No. 149110, April 9, 2003.

that generation companies are not required to secure a national franchise was established.

On the other hand, respondents argue that the EPIRA did not dissolve petitioner as a government-owned and controlled corporation. The EPIRA only removed from petitioner certain rights and privileges, like the function of transmitting electricity on a nationwide basis, which was transferred to the National Transmission Corporation (TRANSCO). Notwithstanding the EPIRA, petitioner continues to engage in the business of power generation and sale of electricity it generates to power distributors, thus, making it liable for franchise and business taxes.

Respondents likewise posit that petitioner is considered as a "business enjoying franchise" liable to franchise tax because it completely satisfies the requirements laid down in the *Cabanatuan case*, to wit: (1) that the taxpayer 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 concerned LGU.

Respondents point out that as to the first requisite, RA No. 6395 constitutes petitioner's primary and secondary franchise. It serves as petitioner's charter, defining its composition, capitalization, appointment and specific duties of its corporate officers, and corporate lifespan. RA No. 6395 also constitutes as petitioner's secondary franchise as it vests upon petitioner certain powers which are not available to ordinary corporations. With regard to the second requisite, respondents emphasize that petitioner is operating within the respondent Province of Cagayan's territorial jurisdiction pursuant to the powers granted to it by its charter.

Finally, respondents assert that since tax exemptions are construed strictly against the claimant, it is incumbent upon petitioner to point to some provisions of the LGC or even the EPIRA that expressly grant it exemption from local franchise tax and other local taxes.

In the assailed Decision, the RTC of Cagayan sustained respondent's position that petitioner enjoys a franchise and that petitioner is doing business within the territory of respondent Province of Cagayan as evidenced by the billings made by petitioner on CAGELCO I and II. Furthermore, the court *a quo* ruled that Section 6 of the EPIRA does not state that entities generating electricity are exempted from the payment of franchise tax. With regard to the applicability of the *Isabela case* and the *Cabanatuan case*, the RTC of Cagayan held that until there is a decision of the Supreme Court which supersedes or overturns the doctrines laid down in the *Isabela case* and the *Cabanatuan case,* it is premature to consider the same abandoned.

The power of the province to impose a franchise tax is based on Section 137 of the LGC, which provides:

> "SEC. 137. *Franchise Tax.* — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction."

Based on the above-cited provision of the LGC, a province may impose a franchise tax on "businesses enjoying a franchise". Therefore, this Court has to determine whether or not petitioner was still enjoying a franchise during the years 2001 to 2007 thereby making it liable for franchise tax.

The Court notes that the EPIRA took effect on June 26, 2001. Under Section 8 of the EPIRA, TRANSCO shall assume the electrical transmission function of petitioner, to wit:

> "SECTION 8. *Creation of the National Transmission Company.* — **There is hereby created a National Transmission Corporation, hereinafter**

> **referred to as TRANSCO, which shall assume the electrical transmission functions of the National Power Corporation (NPC)**, and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
>
> **Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO**. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.)." (*Emphasis supplied*)

Since the transfer of petitioner's transmission facilities to TRANSCO happened only in the latter part of the year 2001, evidently, petitioner still performed its generation and transmission functions for the most part of the year 2001.

Moreover, Section 70 of the EPIRA gave petitioner a missionary electrification function, to wit:

> "SECTION 70. *Missionary Electrification*. — Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, **NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system**. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC." (*Emphasis supplied*)

Hence, even after June 26, 2001, the date when the EPIRA took effect, and notwithstanding the transfer of petitioner's electrical transmission function to TRANSCO, petitioner may still be held liable for franchise tax for performing its missionary electrification function under Section 70 of the EPIRA. This Court cannot totally ignore the doctrine laid down in the *Isabela case* and the *Cabanatuan case* in determining whether petitioner is covered by the imposition of the franchise tax, which involve the concurrence of the following requisites:

(1) that petitioner 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 local government concerned.

Since petitioner is mandated under Section 70 of the EPIRA to perform missionary electrification function through the Small Power Utilities Group (SPUG), petitioner may still be held liable for franchise tax even after the EPIRA took effect. The Small Power Utilities Group or SPUG refers to the functional unit of petitioner created to pursue missionary electrification function,[31] the performance of which involves the provision of basic electricity service in unviable areas with the ultimate aim of bringing the operations in these areas to viability levels.[32] This function may have been exercised by petitioner during the years 2001 to 2007 in the Province of Cagayan or any part thereof.

In the case of **National Power Corporation vs. The Provincial Government of Bukidnon and Luis L. Oro, in his capacity as Provincial Treasurer of Bukidnon**[33], this Court's Special Second Division discussed petitioner's powers, functions and responsibilities, in this wise:

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[31]Section 4(xx), Republic Act No. 9136, entitled "Electric Power Industry Reform Act of 2001"; Rule4(bbbb), Rules and Regulations to Implement Republic Act No. 9136, entitled "Electric Power Industry Reform Act of 2001".
[32]Rule 4(ddd), Rules and Regulations to Implement Republic Act No. 9136, entitled "Electric Power Industry Reform Act of 2001".
[33]CTA AC No. 57, August 10, 2010.

"We look into the pertinent provisions of RA No. 9136, to wit:

> '**Section 5. Organization**. — The electric power industry shall be divided into four (4) sectors, namely: generation; transmission; distribution and supply.'
>
> '**Section 6. Generation Sector**. — Generation of electric power shall be competitive and open.
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> xxx xxx xxx
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a local or national franchise.'
>
> '**Section 8. Creation of the National Transmission Company**. — There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation, and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.'

Although Section 8 of the EPIRA Law provides that TRANSCO shall assume the electrical transmission function of the NPC, We do not agree with petitioner that its remaining business activity is the generation of power, which allegedly does not require national or local franchise pursuant to Section 6 of the EPIRA law. In fact, this assertion is belied in the ruling of the Supreme Court in the case of ***National Power Corporation vs. City of Cabanatuan***, which also involves herein petitioner, wherein the High Court ruled that:

> 'As its secondary franchise, Commonwealth Act No. 120, as amended, vests the petitioner the following powers which are not available to ordinary corporations, *viz*.: *c*

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(e) To conduct investigations and surveys for the development of water power in any part of the Philippines;

(f) To take water from any public stream, river, creek, lake, spring or waterfall in the Philippines, for the purposes specified in this Act; to intercept and divert the flow of waters from lands of riparian owners and from persons owning or interested in waters which are or may be necessary for said purposes, upon payment of just compensation therefor; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to its works or any part thereof: Provided, That just compensation shall be paid to any person or persons whose property is directly or indirectly, adversely affected or damaged thereby;

(g) To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof; to acquire, construct, install, maintain, operate, and improve gas, oil, or steam engines, and/or other prime movers, generators and machinery in plants and/or auxiliary plants for the production of electric power; to establish, develop, operate, maintain and administer power and lighting systems for the transmission and utilization of its power generation; to sell electric power in bulk to (1) industrial enterprises, (2) city, municipal or provincial systems and other government institutions, (3) electric cooperatives, (4) franchise holders, and (5) real estate subdivisions. . .;

(h) To acquire, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out the purposes for which the Corporation was created: Provided, That in case a right of way is necessary for its transmission lines, easement of right of way shall only be sought: Provided, however, That in case the property itself shall be acquired by purchase, the cost thereof shall be the fair market value at the time of the taking of such property;

(i) To construct works across, or otherwise, any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway of private and public ownership, as the location of said works may require. . .;

(j) To exercise the right of eminent domain for the purpose of this Act in the manner provided by law for instituting condemnation proceedings by the national, provincial and municipal governments;

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(m) To cooperate with, and to coordinate its operations with those of the National Electrification Administration and public service entities;

(n) To exercise complete jurisdiction and control over watersheds surrounding the reservoirs of plants and/or projects constructed or proposed to be constructed by the Corporation. Upon determination by the Corporation of the areas required for watersheds for a specific project, the Bureau of Forestry, the Reforestation Administration and the Bureau of Lands shall, upon written advice by the Corporation, forthwith surrender jurisdiction to the Corporation of all areas embraced within the watersheds, subject to existing private rights, the needs of waterworks systems, and the requirements of domestic water supply;

(o) In the prosecution and maintenance of its projects, the Corporation shall adopt measures to prevent environmental pollution

> and promote the conservation, development and maximum utilization of natural resources. . .'

Apparently, petitioner failed to appreciate the fact that its existence is not based on pure power generation and electrical transmission. The above-enumerated powers of petitioner, by virtue of its secondary franchise, have not been entirely divested to TRANSCO. Moreover, We note that petitioner has not specifically pointed out which of the said powers mentioned in its special franchise under RA No. 6395 have been impliedly repealed and withdrawn by the EPIRA Law.

Additionally, Section 2 (a) of Part I, Rule 3 of the 'Rules and Regulations Implementing RA 9136' categorically provides:

> 'RULE 3. RESPONSIBILITIES OF THE DOE, ERC, NPC, NEA AND PSALM
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> xxx xxx xxx
>
> **Section 2. Responsibilities of the NPC. —**
>
> (a) Pursuant to Section 70 of the Act, ***notwithstanding the divestment and/or Privatization of NPC assets***, IPP contract and spun-off corporations, ***NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system***. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the Universal Charge to be collected from all electricity End-users as determined by the ERC.' (*Emphasis supplied*)

In this connection thereto, Rule 4 (a) of the same implementing rules and regulations provides:

> **'RULE 4. DEFINITION OF TERMS**

> As used in these Rules, the following terms shall have the following respective meanings:
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> xxx xxx xxx
>
> ddd) ***'Missionary Electrification'*** refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels;'
>
> Pursuant to the above-cited provisions, petitioner shall remain to be a National Government-owned and controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. Therefore, even with the passage of the EPIRA law, petitioner cannot be considered to be exclusively operating as a generation company."

Based on the above-quoted ruling of the Court, it is clear that petitioner's function is not limited to power generation and electrical transmission since its charter has vested it with certain powers, which are not available to ordinary corporations. Although petitioner's franchise has been modified by virtue of the transfer of its electric transmission function to TRANSCO as mandated under the EPIRA, petitioner may still be held liable for the subject franchise tax since the EPIRA has given it a missionary electrification function. Petitioner avers that while it is true that it performs missionary electrification function pursuant to Section 70 of the EPIRA, such missionary electrification function of petitioner cannot be characterized as a business activity that generates revenues that become part of petitioner's gross receipts.

Petitioner alleges that it does not have a power plant located within the territorial jurisdiction of respondent Province of Cagayan and that the source of energy/power delivered to CAGELCO I and II cannot be specifically identified because the source thereof may reasonably come from other power generation companies, *viz.*, independent power producers, private power plants, etc. Petitioner further argues that, even on the assumption that it has a power plant in the Province of Cagayan connected to the main grid, Sections 49, 50, 51, 55 and 56, among others, of the EPIRA specifically mandated PSALM Corp. to take ownership of all existing generation assets, liabilities, IPP contracts, real estate and all other disposable assets of petitioner. Thus, petitioner no longer operates, conducts and/or maintains any business activity in the main grid, particularly, within the territorial jurisdiction of the Province of Cagayan.

The foregoing factual allegations of petitioner are evidentiary in nature. Hence, petitioner should have substantiated the same with evidence during the proceedings at the court *a quo*. Since said factual allegations are not matters of judicial notice, whether mandatory[34] or discretionary[35], this Court cannot give due weight on said allegations in disposing of this case.

The records of the case show that the RTC of Cagayan decided the case by summary judgment in view of the fact that both parties submitted that the issue involved is purely legal. Consequently, the issues of whether petitioner no longer operates or conducts business within the territorial jurisdiction of the Province of Cagayan and whether petitioner generates revenues (that become part of its gross receipts) from performing its missionary electrification function in said province were not heard and substantiated.

Anent the second issue on prescription, the Assessment Letter issued by respondent Iringan on March 18, 2008

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[34] Section 1. *Judicial notice, when mandatory*. – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (Rule 129, Rules of Court)

[35] Section 2. *Judicial notice, when discretionary*. – A court may take judicial notice of matters of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. (*supra*)

covers the alleged franchise tax liability of petitioner for the years 2001 to 2007. However, the Court notes that the period for assessing and collecting franchise tax from petitioner for the periods 2001 to 2003 have already prescribed pursuant to Section 194(a) of the LGC[36], which provides that local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. Under Section 167 of the LGC[37], local taxes become due within the first twenty (20) days of January or of each subsequent quarter as the case may be. Thus, applying Section 194(a) of the LGC in relation to Section 167 of the same Code to this case, the periods for assessing petitioner for franchise tax for the years 2001 to 2003 had already prescribed, to wit:

Year Covered	**Due Date for Payment of Franchise Tax**	**Last Day to Assess**	**Date of Issuance of Assessment Letter**
2001	January 22, 2001[38]	January 23, 2006[39]	March 18, 2008
2002	January 21, 2002[40]	January 22, 2007[41]	March 18, 2008
2003	January 20, 2003	January 21, 2008[42]	March 18, 2008
2004	January 20, 2004	January 20, 2009	March 18, 2008
2005	January 20, 2005	January 20, 2010	March 18, 2008
2006	January 20, 2006	January 20, 2011	March 18, 2008
2007	January 22, 2007[43]	January 22, 2012[44]	March 18, 2008

In view of all the foregoing, for the purpose of determining petitioner's liability for franchise tax for the years 2004 to 2007, the Court has no other recourse but to remand the case to the court *a quo* for further proceedings.

[36] SEC. 194. *Periods of Assessment and Collection.* – (a) Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period; Provided, That, taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.

[37] SEC. 167. *Time of Payment.* – Unless otherwise provided in this Code, all local taxes, fees, and charges shall be paid within the first twenty (20) days of January or of each subsequent quarter, as the case may be. The sanggunian concerned may, for a justifiable reason or cause, extend the time for payment of such taxes, fees, or charges, without surcharges or penalties, but only for a period not exceeding six (6) months.

[38] January 20, 2001 fell on a Saturday.

[39] January 22, 2006 fell on a Sunday.

[40] January 20, 2002 fell on a Sunday.

[41] January 21, 2007 fell on a Sunday.

[42] January 20, 2008 fell on a Sunday.

[43] January 20, 2007 fell on a Saturday.

[44] January 22, 2012 fell on a Sunday.

subject to and in accordance with the pronouncements in this Decision.[45]

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed Decision dated November 16, 2011 of the Regional Trial Court, Branch 5, Second Judicial Region, Tuguegarao City, Cagayan in Civil Case No. 7141 entitled "**National Power Corporation vs. Province of Cagayan and Emilia Iringan**" is hereby **REVERSED** and **SET ASIDE** and the records of this case are hereby **REMANDED** to the court *a quo* for further proceedings in accordance with the pronouncements in this Decision.

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

CERTIFICATION

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

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

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[45] *The Provincial Treasurer of Leyte (formerly represented by Loreto Ballais and presently by Rodolfo P. Badiable, ICO-Provincial Treasurer) vs. National Power Corporation*, CTA AC No. 64, October 11, 2011; *National Power Corporation vs. The Provincial Government of Bukidnon and Luis L. Oro, in his capacity as Provincial Treasurer of Bukidnon*, CTA AC No. 57, December 13, 2010.