REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

NATIONAL TRANSMISSION CORPORATION,
Petitioner,

-*versus* -

MUNICIPALITY OF LABRADOR, PANGASINAN, represented by its MUNICIPAL TREASURER,
Respondent.

CTA EB NO. 1034
(CTA OC No. 015)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, JJ.

Promulgated:

APR 07 2015
2:05 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court *En Banc* is a Petition for Review[1] to reverse and set aside the Decision of the Second Division of the Court ("Court in Division") dated 5 April 2013,[2] as well as the Resolution

[1] *Rollo,* CTA EB Case No. 1034 (CTA OC No. 15), pp. 6-34.
[2] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas concurring;, pp. 35-61, *Annex "A."*

dated 18 June 2013,[3] pursuant to Section 2(d) of Rule 4[4] and Section 4(b) of Rule 8[5] of the Revised Rules of the Court of Tax Appeals.[6]

The Parties[7]

Petitioner National Transmission Corporation ("Transco") is a government instrumentality created by virtue of Republic Act 9136 or the Electric Power Industry Reform Act of 2001 ("EPIRA Law"). It holds office at TransCo Main Building, Quezon Avenue cor. BIR Road, Diliman, Quezon City, where it may be served with notices and other court processes.

Respondent Municipality of Labrador, Pangasinan ("Labrador"), represented by the Municipal Treasurer is a local government unit under the 1991 Local Government Code with office address at Municipal hall, Labrador, Pangasinan, where it may be served with notices and other court processes.

The Facts

As stated in the Decision dated April 5, 2013,[8] the factual antecedents of this case are as follows:

> "On January 10, 2011, Transco was served at its principal office a Notice of Assessment for Local Business Tax, Surcharge and Monthly Interests for the Taxable Year 2009 in the amount of P39,688,904.09, inclusive of

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[3] *Id.*, pp. 62-68.

[4] RULE 4 - JURISDICTION OF THE COURT

xxx xxx xxx

SEC. 2. *Cases within the jurisdiction of the Court en banc.* - The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

xxx xxx xxx

(d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases;

[5] RULE 8. PROCEDURE IN CIVIL CASES

SEC. 4. *Where to appeal; mode of appeal.* -

xxx xxx xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

[6] *Rollo*, CTA EB Case 1034, p. 6.

[7] *Id.*, p. 7.

[8] *Id.*, pp. 36-61.

surcharge and monthly interest. The pertinent portions of the said notice are herein quoted, to wit:

> 'Based on the Transmission Development Plan of the National Grid Corporation of the Philippines (NGCP), it shows that your transmission station situated in our Municipality of Labrador, Pangasinan was the one that exclusively transmitted the electricity generated by the power plant situated in the Municipality of Masinloc, Zambales. Transco from the effectivity of RA 9136 (Electricity Power Industry Reform Act) on June 2001 is the only entity that has the government authority to transmit electricity all through out the country.
>
> What has been assessed you so far were your gross receipts derived in transmitting the quantity of electricity generated by the power plant situated in the Municipality of Sual, Pangasinan.
>
> It shows on our records that you have not yet paid the local business tax levied under Section IIA.01 9(m) of our municipal tax revenue ordinance providing among others the following:
>
> > '(m) on any business, not therwise specified in the preceding sections, the rate on tax shall be two percent (2°/o) of gross sales or receipts of the preceding calendar years.'
>
> for the gross receipts you derived in the year 2008 in transmitting electricity generated by the Masinloc Zambales power plant.
>
> xxx xxx xxx
>
> According to the records of the Department of Energy, this Masinloc Power

Plant generated electricity sales of 1,546,761,265.50 kWh in the year 2008. Based on your official documents that were then posted in your website, the transmission rate in the year 2008 in Luzon was Php0.7416 per kWh. Thus, Transco is liable for the local business tax, surcharges and monthly interests in peso, computed as follows:

Preceding Year	Number of kWh transmitted by Transco	Transmitted Rate per kWh	Amount of gross receipts in year 2008	Tax due (multiplied by tax rate of 2% of gross receipts)	Surcharge of 25% of the tax due	Monthly interest of 2% of the tax due
2008	1,546,761,265.50	0.7416	1,147,078,154.49	22,941,563.08	5,735,390.77	11,011,950.24
Total						**P39,688,904.09**

Thus, for the taxable year 2009, you are hereby assessed for local business tax of Php22,941,563.08; one time surcharge of Php5,735,390.77 and accrued monthly interest of Php11,011,950.24 or a total of THIRTY NINE MILLION SIX HUNDRED EIGHTY EIGHT THOUSAND NINE HUNDRED FOUR AND 09/100 PESOS **(Php39,688,904.09)** as of January 7, 2011.

Kindly settle immediately all your tax obligations mentioned above to our municipality to avoid further legal interests.'

According to plaintiff, defendant did not file any protest either personally, by registered mail or by any other manner. Thus, for failure to protest, the Notice of Assessment has become 'final and executory.'

As a result, on April 5, 2011, plaintiff filed the instant Complaint, praying that defendant Transco be ordered to pay its local business tax for calendar year 2009 in the amount of P41,065,397.87 as of April 2011 plus monthly interest of P458,831.27 for not more than 36 months from February 2009 to the Office of the Municipal Treasurer of the Municipality of Labrador, Pangasinan.

On April 29, 2011, defendant filed its Answer (With Special and Affirmative Defenses with Counterclaim and

Motion to Suspend Collection of Tax), interposing the following special and affirmative defenses:

xxx xxx xxx

On June 23, 2011, this Court issued a Resolution granting defendant's Motion to Suspend Collection of Tax provided that defendant posts a surety bond in the amount of P50,000,000.00, as well as submit the required supporting documents specified in Supreme Court A.M. No. 04-7-02-SC. Subsequently, on August 3, 2011, this Court issued a Resolution enjoining plaintiff from undertaking any and all remedies to collect the subject deficiency taxes, including the enforcement, execution and/or implementation of the 'Warrant of Distraint/Garnishment/Order of Seizure/Confiscation and Order to Deliver the Bank Deposit or Money or Personal Property of National Transmission Corporation (TRANSCO).'

On June 28, 2011, the Court in Division issued a Resolution approving the 'Joint Stipulation of Facts and Issues' filed by both parties on June 24, 2011, as well as terminating the Pre-Trial.

During trial, both parties presented their testimonial and documentary evidence to prove their respective case.

In a Resolution dated July 11, 2012, this Court ordered the parties to file their respective Memorandum within thirty (30) days from receipt of the said Resolution.

In a Resolution dated September 3, 2012, the case was submitted for decision, taking into consideration defendant's Memorandum filed on August 16, 2012 and plaintiff's Memorandum filed on August 24, 2012."

On April 5, 2013, the Court in Division issued a Decision,[9] ordering petitioner to pay respondent Municipality of Labrador, Pangasinan, stating that:

> "**WHEREFORE, PREMISES CONSIDERED,** defendant National Transmission Corporation is ordered to pay Plaintiff Municipality of Labrador, Pangasinan as represented by the Municipal Treasurer the amount of P22,941,563.08 representing basic local business tax for calendar year 2009 plus surcharge of 25% of the tax due and interest of 2% per month (on the basic tax due and surcharge) pursuant to Section 168 of the 1991 Local Government Code.
>
> **SO ORDERED.**"

Not satisfied with the Decision, petitioner filed a Motion for Reconsideration on April 23, 2013.[10] On the other hand, respondent filed its Comment and Motion for Execution under Section 2 of Rule 39,[11] to which the Court issued a Resolution[12] upholding the Decision and denying the Motion for Execution dated June 18, 2013, stating that:

> "**WHEREFORE,** the defendant's **"MOTION FOR RECONSIDERATION (Re: 5 April 2013 decision)"** and plaintiff's **"MOTION FOR EXECUTION UNDER SECTION 2 OF RULE 39"** filed on May 20, 2013 are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

On July 4, 2013, petitioner filed a Motion for Extension of Time to File Petition for Review,[13] which was granted by the Court *En Banc* in a Resolution dated July 8, 2013.

Thus, on July 24, 2013, petitioner filed the present Petition for Review.

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[9] *Id.*, pp. 36-61.
[10] *Record*, (CTA Case OC No. 015), pp. 887-897.
[11] *Record*, pp. 900-904.
[12] *Record*, pp. 959-964.
[13] *Record*, pp. 970-973.

On September 9, 2013, the Court *En Banc* issued a Resolution[14] ordering respondent to file its Comment, not a motion to dismiss, within ten (10) days from receipt.

Thereafter, on October 17, 2013, respondent filed a Compliance and Motion[15] stating that they are adopting their Memorandum filed before the Court in Division as their Comment to the Petition for Review, since there are no new matters or arguments raised.

On November 4, 2013, the Court *En Banc* issued a Resolution[16] taking note of the Compliance and Motion filed by respondent.

On December 26, 2013, the Court *En Banc* issued a Resolution[17] giving due course to the Petition for Review and requiring the parties to submit their respective Memoranda within thirty (30) days from receipt of the Resolution.

On February 12, 2014, petitioner filed its Memorandum. Respondent failed to file its Memorandum within the period prescribed by the Court, hence, the Court *En Banc* issued a Resolution dated April 23, 2014, stating that the case is deemed submitted for decision.

On May 16, 2014, respondent filed a Manifestation to adopt the Memorandum they filed in CTA OC No. 15 before the proceeding in the Court in Division.

Hence, this Decision.

The Issues[18]

Transco presents the following issues for resolution:

A. WHETHER TRANSCO RECEIVED THE ALLEGED 2009 ASSESSMENT NOTICE.

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[14] *Rollo, pp. 72-73.*
[15] *Id.*, p. 74-75.
[16] *Id.*, p. 77.
[17] *Id.*, p.79-80.
[18] Id., p. 85

B. ASSUMING THAT TRANSCO RECEIVED THE 2009 ASSESSMENT NOTICE, WHETHER IN THE INTEREST OF SUBSTANTIAL JUSTICE, THE PROTEST IT FILED FOR OTHER ASSESSMENTS MAY BE CONSIDERED FOR THE 2009 ASSESSMENT.

C. WHETHER LABRADOR HAS POWER TO LEVY BUSINESS TAX ON TRANSCO."

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the Petition for Review.

TransCo received the alleged 2009 assessment notice

Petitioner claims that it did not receive the assessment notice for the year 2009 as testified to by its witness, Ms. Maria Pilar Bigornia ("Ms. Bigornia").[19]

The Court in Division however finds the contrary and settled the issue in this wise:

> "xxx the Notice of Assessment for local business tax for the year 2009 was received by respondent[20] as evidenced by the stamp received by 'TRANSCO Legal ROW and Land Mgmt Services Group' dated January 10, 2011, bearing the signature of Ms. Maria Pilar Bigornia, defendant's Records Management Officer. Such fact of receipt was admitted by Ms. Bigornia, during the hearing held on February 22, 2012 xxx.
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> xxx xxx xxx
>
> Clearly, from the statements of Ms. Bigornia, defendant received a copy of the 2009 Notice of

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[19] *Id.*, pp. 86-87.
[20] Herein petitioner.

Assessment for local business taxes from the plaintiff.[21] Such admission, together with the presentation of the document itself showing the stamp received, contradicts defendant's mere denial. **There is no better proof of receipt than the actual document itself bearing the signature of defendant's authorized representative, corroborated by her admission that the signature appearing on the document is her signature.** *(emphasis ours)*

Section 13 of Rule 13 of the Rules of Court provides:

'SEC. 13. *Proof of service.* — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.'

Thus, as provided by the foregoing rule, the fact that the defendant's employee affirmed that the signature appearing below the stamp received is her own signature sufficiently proves that defendant was personally served of a copy of the Notice of Assessment for the year 2009."

The Court *En Banc* sustains this finding.

As the personnel authorized to receive documents in behalf of the petitioner, it is incumbent upon her to exercise due diligence in

[21] Herein respondent.

checking the documents she was receiving, mere oversight cannot be considered a valid excuse.

Furthermore, the logbook and record book presented are all self-serving and has no probative value. These, taken together with the receiving copy signed by Ms. Bigornia, will not destroy the fact that petitioner received the assessment notice for the year 2009.

The protest filed for other assessments may not be considered for the 2009 assessment

Petitioner claims that the protest made for the other assessment notices are sufficient compliance in filing a protest as provided in Section 195 of the Local Government Code.[22]

The Court En Banc disagrees.

Section 195 of the Local Government Code provides as follows:

> '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 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

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[22] *Id.*, p. 90.

becomes conclusive and unappealable.' *(Emphasis supplied)*

Based on the foregoing provision, a taxpayer who disagrees with the assessment made by the local treasurer should file a written protest within sixty (60) days from receipt of the subject assessment with the local treasurer contesting the assessment. Failure to do so is crucial and will render the assessment final and executory.

In the present case, the subject of the assessment is for the year 2009. However, petitioner filed a protest on assessment notices for the years 2006, 2007, and 2008. No protest was filed on the assessment notice for the year 2009. Therefore, the assessment has become final and executory.

In *Romulo D. San Juan vs. Ricardo L. Castro,*[23] the Supreme Court held that a taxpayer who disagrees with a tax assessment made by a local treasurer may file a written protest thereof, failure to avail of the remedies provided by Section 195 of the LGC will thus make the assessment conclusive and unappealable.

Thus, after determining that the notice of assessment for the year 2009 was received by petitioner and that it failed to file a protest against said assessment, the Court *En Banc* agrees with the Court in Division's conclusion that the assessment on the local business tax for the year 2009 has become final and executory.

WHEREFORE, premises considered, the Petition for Review filed by the National Transmission Corporation is hereby **DENIED.** The Court *En Banc* **AFFIRMS *IN TOTO*** the Decision of the Second Division dated April 5, 2013 as well as the Resolution dated June 18, 2013.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[23] G.R. No. 174617, December 27, 2007, 541 SCRA 526.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice