Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

ERNESTO A. SANCHO, doing Business under the trade name and style **"E.A. SANCHO CONSTRUCTION",** Petitioner,	**CTA EB Case No. 969** (CTA Case No. 8504)
- versus -	Members:
PROVINCIAL TREASURER OF CAMARINES SUR, Respondent.	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
	Promulgated: JUL 2 3 2013 8:30 a.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review,[1] filed on December 17, 2012, by petitioner- Ernesto A. Sancho, seeking the reversal of the July 18, 2012[2] and November 16, 2012[3] Resolutions (Assailed Resolutions) of the Court of Tax Appeals (CTA) Third Division in CTA Case No. 8504 (RTC Special Civil Action No. 2006-0107), entitled *"Ernesto A. Sancho, doing business under the trade name and style E.A. Sancho Construction vs. Provincial Treasurer of Camarines Sur."*

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[1] CTA En Banc Rollo, pp. 1-13.
[2] Annex "A" to the Petition for Review, Ibid, pp. 14-28.
[3] Annex "B" to the Petition for Review, Id, pp. 29-37.

The facts of the case, as culled from the records, are as follow:

Petitioner is of legal age, Filipino, married and a resident of Magsaysay Avenue, Naga City, who does business under the trade name and style *"E.A. Sancho Construction".* He undertakes general engineering and building works and as such is a duly accredited contractor of the Construction Industry Authority of the Philippines.[4]

On the other hand, respondent is the Provincial Treasurer of the Province of Camarines Sur and holds office at the Provincial Capitol Building, Cadlan, Pili, Camarines Sur.[5]

On March 3, 2006, petitioner was assessed by the Provincial Treasurer of the amount of P283,930.50, representing sand and gravel tax (SGT). Petitioner paid[6] under protest the said amount on March 29, 2006.

On April 17, 2006, respondent wrote a letter[7] to petitioner recognizing the amount of P283,930.50 tendered by petitioner. In the same letter, respondent informed petitioner that he is liable to pay the penalty imposed on owners/drivers/haulers of quarry materials who fail to present the required documents needed in the transport thereof at P100.00 per cubic meter of quarry materials in the total amount of P2,839,305.00, pursuant to Section 18 of Provincial Tax Ordinance No. 30, series of 1992 and Section 9 of Ordinance No. 24, series of 1994. Thus, the payment of P283,930.50 was considered by respondent as partial payment of the total assessed penalty P2,839,305.00. It is likewise stated therein that petitioner's purchases from legitimate permit holders/concessionaires shall be taxed at P10.00 per cubic meter, provided, that documents relative thereto shall be submitted to respondent's office. Petitioner protested the foregoing assessments thru a letter[8] dated April 25, 2006.

Subsequently, in a letter[9] dated October 11, 2006, respondent assessed petitioner the amount of P2,631,306.60, representing the balance of penalties for 26,313.066 cubic meters of quarry materials delivered by petitioner to his projects at the Department of Public Works and Highways (DPWH) for the years 2004 and 2005.

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[4] Par. 1 of The Parties, Verified Complaint, Division Docket, p. 6.
[5] Par. 2 of The Parties, Verified Complaint, Ibid, p. 6.
[6] Annex "E" to the Petition for Review, Id, pp. 42-43.
[7] Annex "F" to the Petition for Review, Id, p. 44.
[8] Annex "G" to the Petition for Review, Id, pp. 45-46.
[9] Annex "A" to the Petition for Review, Id, pp. 13-14.

Thereafter, petitioner filed an action for injunction before the Regional Trial Court (RTC) of Naga City, Branch 19, docketed as Special Civil Action No. 2006-0107, which was dismissed in its Decision dated November 11, 2008. Petitioner then appealed to the Court of Appeals which dismissed the petition for lack of jurisdiction. The dismissed case was elevated by petitioner via a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, docketed as G.R. Nos. 190878 and 199214. However, said Petition was subsequently withdrawn by petitioner for the reason that the petitioner believed that the RTC, where the original action was commenced, has no jurisdiction over the action.[10]

On June 21, 2012, petitioner commenced the present action by filing his Verified Complaint[11] before the Court of Tax Appeals (CTA) and the same was docketed as CTA Case No. 8504.

In a Resolution[12] dated July 18, 2012, the CTA Third Division dismissed the Verified Complaint, to wit:

> "**WHEREFORE**, premises considered, the 'Verified Complaint' is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

Undaunted, petitioner filed his Motion for Reconsideration[13] on August 16, 2012, but the same was denied for lack of merit in a Resolution[14] promulgated on November 16, 2012. Thus, this Petition for Review filed before the Court En Banc on December 17, 2012.

In a Resolution[15] dated January 28, 2013, the Court En Banc directed respondent to file a comment on the petition within ten (10) days from receipt thereof. Respondent acknowledged[16] the receipt of the Resolution on February 4, 2013. Per Records Verification[17] of the CTA Records Division, counsel for respondent sent one (1) copy of the Motion for Extension of Time to File Comment posted on March 11, 2013. Finding the said motion insufficient in number of copies as

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[10] Resolution dated July 18, 2012, Id, pp. 52-53.
[11] Id, pp. 6-12.
[12] Id, pp. 48-62.
[13] Id, pp. 65-72.
[14] Id, pp. 95-103.
[15] CTA En Banc Rollo, pp.106-107.
[16] Ibid, p.109.
[17] Id, p. 112.

required under A.M. No. 11-9-4-SC, the Court ordered[18] respondent to submit additional eight (8) copies of his Motion for Extension of Time to File Comment within ten (10) days from notice, otherwise, the motion would be considered as not filed. However, Per Records Verification[19] of the CTA Records Division dated April 11, 2013, respondent, again, filed only one (1) copy of the Motion for Extension of Time to File Comment thru registered mail posted on March 26, 2013.

Per Records Verification[20] dated April 19, 2013, the Court received respondent's Comment[21], however, the same was in insufficient number of copies. Thus, in a Resolution[22] dated May 15, 2013, the Court En Banc submitted the case for decision, without respondent's comment.

Hence, this Decision.

In this Petition, petitioner raised this sole ground for resolution of this Court:

> Whether or not the Honorable Third Division of the Court of Tax Appeals correctly ordered the dismissal of petitioner's verified complaint for lack of jurisdiction.

In this case, petitioner argues that he is not liable to pay the amount of P2,631,306.60 on the ground that he is neither a quarry permit holder, operator, extractor of sand and gravel under Section 13 of Tax Ordinance No. 30, Series of 1992, nor a truck driver, nor hauler of sand gravel and quarry materials under Section 18 of the same ordinance.

Petitioner further claims that since the amount involved is P2,631,306.60, representing the final and executory assessment by respondent of the sand and gravel tax, then, this Court has exclusive original jurisdiction to hear, try, and decide this present action pursuant to the provision of Section 7(c)(1) of Republic Act No. 9282.

Lastly, petitioner posits that if this Court would uphold the proposition that only local government units and no other may bring

[18] Id, pp. 117-118.
[19] Id, p. 119.
[20] Id, p. 124.
[21] Id, pp. 125-133.
[22] Id, pp. 136-137.

before the CTA a case involving tax collection cases, involving final and executory assessments for taxes, fees, charges and penalties, is to discriminate against other litigants, who have legitimate grievances against local government units exercising the delegated authority to pass tax ordinances.

After a careful and thorough evaluation and consideration of the arguments as well as the jurisprudence on the matter, the CTA En Banc finds no merit in the instant Petition.

We observed that the arguments that petitioner relied upon for review in the instant Petition have been thoroughly and sufficiently passed upon and resolved in the Assailed Resolutions of CTA Third Division.

Finding no cogent reason or justification to disturb the findings and conclusion spelled out in the Assailed Resolutions dated July 18, 2012 and November 16, 2012 of the CTA Third Division in CTA Case No. 8504, entitled *"ERNESTO A. SANCHO, doing business under the trade name and style E.A. SANCHO CONSTRUCTION vs. PROVINCIAL TREASURER OF CAMARINES SUR* .

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the July 18, 2012 and November 16, 2012 Resolutions of the CTA Third Division are hereby **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice