Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

NATIONAL POWER CORPORATION,	**CTA EB Case No. 937** (CBAA Cases Nos. L-52 & L-81)
Petitioner,	
- versus -	Members:
THE PROVINCE OF PANGASINAN and THE PROVINCIAL ASSESSOR OF PANGASINAN, Respondents.	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
	Promulgated: NOV 11 2013 9:00 a.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review,[1] filed on September 21, 2012, by petitioner-National Power Corporation ("NPC"), seeking the reversal of the Decision (Consolidated Cases)[2] dated April 12, 2012 (Assailed Decision) and the Order[3] (Assailed Order) dated July 31, 2012, both of the Central Board of Assessment Appeals ("CBAA") in CBAA Cases Nos. L-52 and 81, entitled "National Power Corporation vs. The Local Board of Assessment Appeals of the Province of Pangasinan and the Province of Pangasinan and the Provincial Assessor of Pangasinan".

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[1] CTA En Banc Rollo, pp. 1-77.
[2] Annex "A" to the Petition for Review, Ibid, pp. 80-100.
[3] Annex "B" to the Petition for Review, Id, pp. 102-103.

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

Petitioner-NPC is a government-owned and controlled corporation created and existing by virtue of Republic Act (R.A.) No. 6395, as amended, with principal office address at NAPOCOR Office Building Complex, Quezon Avenue corner BIR Road, Diliman, Quezon City. It may be served with summons and other legal processes through its counsel, the Office of the Solicitor General, with office address at OSG Building, 134 Amorsolo Street, Legaspi Village, Makati City.[4]

On the other hand, respondent-Province of Pangasinan ("the Province") is a political entity and subdivision of the Government of the Republic of the Philippines with capacity to be sued, while respondent-Provincial Assessor is an agency of the Province of Pangasinan. They may be served with summons and other legal processes through their counsel-of-record, the Provincial Legal Office, located at Kalantiao Bldg., Provincial Capitol Compound, Lingayen, Pangasinan.[5]

CBAA Case No. L-52
(LBAA Case No. P-03-001)

On May 20, 1994, NPC and CEPA Pangasinan Electric Limited ("CEPA"), entered into an Energy Conversion Agreement ("ECA") for the construction, operation, and maintenance of the Sual Coal-Fired Thermal Power Plant ("Power Plant") pursuant to R.A. No. 6597 (sic)[6], as amended. Under the ECA, NPC will supply fuel to CEPA to be used in generating electricity, which electricity will then be sold exclusively to NPC.[7]

On December 3, 1994, a Memorandum of Agreement ("1994 MOA") was entered into between and among: (a) Pangasinan Electric Corporation ("PEC"), now Team Energy Power Holdings Corporation (Team Energy); (b) NPC; (c) the Province of Pangasinan; (d) the Municipality of Sual, Pangasinan; and, (e) the Barangay of Pangascasan, Sual, Pangasinan.[8]

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[4] Par. 3, Parties, Petition for Review, Id. p. 2.
[5] Par. 4, Parties, Petition for Review, Id, p. 3.
[6] Should be R.A. No. 6957 or Otherwise known as "An Act Authorizing the Financing, Construction and Maintenance of Infrastructure Projects by the Private Sector, and for other Purposes" or the Build-Operate Transfer Law ("BOT Law").
[7] Par. 10, Statement of Facts, Petition for Review, CTA En Banc Rollo, p. 6.
[8] Par. 11, Statement of Facts, Petition for Review, Ibid.

In accordance with the 1994 MOA, NPC claimed that it religiously paid real property taxes to the Province from 1998 up to the first quarter of 2003 for the land, buildings, machinery and equipment pertaining to the Power Plant.[9] However, it stopped paying realty taxes starting the second quarter of 2003, in the light of the provisions of R.A. No. 7160, otherwise known as the Local Government Code, which grants exemption to a project owner and user like NPC in the payment of realty taxes on the machinery and equipment.[10]

On September 10, 2003, the Office of the Municipal Treasurer of Sual issued a Notice of Assessment demanding payment of P51,958,511.46 as real property tax on the Power Plant site for the second quarter of 2003,[11] which was received by petitioner on September 17, 2003.[12]

On October 16, 2003, NPC filed with the LBAA its Petition for Exemption. On November 28, 2003, the LBAA received an Answer with Motion to Dismiss from the Province. NPC filed its Reply to the Answer with Motion to Dismiss dated December 8, 2003.[13]

Thereafter, a Preliminary Conference was held on January 8, 2004. On the same date, the LBAA undertook an ocular inspection of the Power Plant. Then, on February 19, 2004, the parties submitted the case for the resolution of the LBAA.[14]

On April 23, 2004, NPC received the questioned Resolution of the LBAA dated April 15, 2004, the dispositive portion of which reads:

> "It has been found and established that MSC, a private corporation, is the actual, direct and exclusive and beneficial owner and user of the power plant, buildings, machineries and equipment and NOT NPC. Hence, the subject machineries does (sic) not come under the coverage and operation of Section 216 of R.A. No. 7160 in relation to Article 307 of the Rules and

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[9] Par. 12, Statement of Facts, LBAA Case No. P-03-001/CBAA Case No. L-52, Petition for Review, Id, p. 8.
[10] Par. 13, Statement of Facts, LBAA Case No. P-03-001/CBAA Case No. L-52, Petition for Review, Id.
[11] Par. 14, Statement of Facts, LBAA Case No. P-03-001/CBAA Case No. L-52, Petition for Review, Id, pp. 8-9.
[12] Annex "A" of the Petition for Review, No. 2, Antecedent Facts for: CBAA Case No. L-52 (LBAA Case No. P-03-001), Id, p. 81.
[13] Annex "A" of the Petition for Review, No. 3, Antecedent Facts For: CBAA Case No. L-52 (LBAA Case No. P-03-001), Id, p. 81.
[14] Annex "A" of the Petition for Review, Nos. 4 and 5, Antecedent Facts For: CBAA Case No. L-52 (LBAA Case No. P-03-001), Id.

Regulations Implementing the Local Government Code of 1991. Therefore, a re-classification is in order.

WHEREFORE, the Petition is hereby DISMISSED FOR LACK OF MERIT." [15]

Thus, NPC filed an Appeal dated May 18, 2004 before the CBAA on May 21, 2004.[16] In response to the appeal, the Province filed an Answer dated June 29, 2004.[17] Thereafter, NPC filed its Memorandum dated October 10, 2004, which was received by the LBAA on October 11, 2004. The Province, on the other hand, filed on October 27, 2004 its Memorandum dated October 10, 2004.[18]

CBAA Case No. L-81
(LBAA Case No. P-06-001)

In the meantime, on February 20, 2006, the Municipal Treasurer of Sual issued a letter, together with an Updated Notice of Assessment and Tax Bill, demanding payment of P73,978,059.40 for 2006.[19] Thus, NPC filed a Petition dated April 11, 2006 before the LBAA.[20] In response, the Province filed its Comment dated July 3, 2006.[21]

On July 18, 2007, the LBAA issued an Order denying NPC's Petition.[22] Hence, NPC filed an appeal before the CBAA on August 7, 2007.[23] The Province filed a Motion to Admit Answer together with the Answer dated December 17, 2007.[24]

On April 2, 2009, the CBAA issued an Order consolidating CBAA Case No. L-52 and CBAA Case No. L-81. Subsequently, NPC and the

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[15] Annex "A" of the Petition for Review, Nos. 6 and 7, Antecedent Facts For: CBAA Case No. L-52 (LBAA Case No. P-03-001), Id.
[16] Annex "A" of the Petition for Review, Par. 8, Antecedent Facts For: CBAA Case No. L-52 (LBAA Case No. P-03-001), Id.
[17] Par. 22, Statement of Facts, LBAA Case No. P-03-001/CBAA Case No. L-52, Petition for Review, Id, p. 12.
[18] Annex "A" of the Petition for Review, Pars. 4 and 5, Antecedent Facts For: CBAA Case No. L-52 (LBAA Case No. P-03-001), Id, p. 84.
[19] Par. 25, Statement of Facts, LBAA Case No. P-06-001/ CBAA Case No. L-81, Petition for Review, Id, p. 15.
[20] Par. 27, Statement of Facts, LBAA Case No. P-06-001/ CBAA Case No. L-81, Petition for Review, Id, p. 16.
[21] Par. 28, Statement of Facts, LBAA Case No. P-06-001/ CBAA Case No. L-81, Petition for Review, Id.
[22] Par. 29, Statement of Facts, LBAA Case No. P-06-001/ CBAA Case No. L-81, Petition for Review, Id, p. 17.
[23] Par. 30, Statement of Facts, LBAA Case No. P-06-001/ CBAA Case No. L-81, Petition for Review, Id.
[24] Par. 31, Statement of Facts, LBAA Case No. P-06-001/ CBAA Case No. L-81, Petition for Review, Id, p. 18.

Province filed their Position Papers dated July 6, 2009 and June 4, 2009, respectively.[25]

On April 12, 2012, the CBAA rendered its Decision[26] dismissing NPC's appeals in CBAA Case No. L-52 and CBAA Case No. L-81 for lack of merit, to wit:

> "**WHEREFORE**, premises considered, the Appeal filed under CBAA Case No. L-52 and the Petition filed under CBAA Case No. L-81 are hereby DISMISSED for lack of merit.
>
> **SO ORDERED.**"

Consequently, NPC filed a Motion for Reconsideration dated May 22, 2012 while the Province filed its Comment/Opposition dated June 1, 2012.[27] In its Order dated July 31, 2012, CBAA denied NPC's Motion for Reconsideration.[28]

Hence, the instant Petition for Review.

On December 21, 2012, respondents filed their Comment[29] to the Petition for Review. Thereafter, the case was submitted for decision taking into consideration the Memorandum for the Petitioner[30], filed on May 17, 2013 and Memorandum (For the Respondents-Appellees)[31], filed on June 7, 2013.

In this Petition, petitioner raised the following issues for the resolution of this Court:

1. Whether or not NPC has the legal personality to claim the tax exemption under Sections 234 (c) and 234 (e) and the depreciation allowance under Section 225 of R.A. No. 7160;

2. Whether or not the machineries and equipment at the Power Plant are exempt from payment of real property tax; and,

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[25] Par. 32, Statement of Facts, Consolidated CBAA Cases, Petition for Review, Id.
[26] Annex "A" to the Petition for Review, Id, pp. 80-100.
[27] Par. 34, Statement of Facts, Consolidated CBAA Cases, Petition for Review, Id. p. 21.
[28] Par. 35, Statement of Facts, Consolidated CBAA Cases, Petition for Review, Id
[29] Id, pp. 557-569.
[30] Id, 580-622.
[31] Id, pp. 623-643.

3. Whether or not the machineries and equipment at the Power Plant that are liable for real property taxes are subject to a 5% annual depreciation under Section 225 of R.A. No. 7160;

Anent the first issue, NPC is of the view that since real property tax is a property tax, it attaches to the property itself and not to a particular person; as a project owner in BOT arrangement, NPC is clothed with the requisite "legal interest" to question the assessment and assert the tax exemptions under Sections 234 (c) and (e), and depreciation allowance under Section 225; respondents are estopped from disputing the legal interest of NPC in the Power Plant on the ground that respondents acknowledged in the 1994 MOA that NPC is the owner and user of the Power Plant and Team Energy is the service contractor of NPC; and, if NPC was not the owner and user of the Power Plant, it would not have assumed the payment of realty property tax.

Respondents' counter that NPC cannot qualify for exemption by merely alleging that it has "an interest" over the subject property. Its right can be best described as an inchoate right, which has not ripened into a real interest. Accordingly, it is the Mirant or Team Energy which has the preferential right since the latter is real owner of the disputed real properties. Lastly, the legal interest of NPC, assuming such legal interest exists, will start to operate only upon the acquisition of the project site.

We find a dearth of merit in NPC's insistence that it has the legal personality to claim the tax exemption under Sections 234 (c) and 234 (e) and the depreciation allowance under Section 225 of RA No. 7160.

While petitioner is correct in its claim that realty tax attaches to the property itself, the Supreme Court, however, further explained that, the unpaid realty tax is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner.[32]

Applying the foregoing jurisprudence, the first question we must settle is whether or not petitioner-NPC can be considered as the beneficial user and owner of the subject machinery and equipment.

We answer in the negative.

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[32] National Power Corporation vs. Province of Quezon and Municipality of Pagbilao, G.R. No. 171586, July 15, 2009.

Paragraphs 2.10 and 2.11 of Article 2 of the ECA explicitly provide:

> "2.10 ***Ownership of Power Station.*** From the date hereof until the Transfer Date, CEPA shall, directly or indirectly, own the Power Station and all the fixtures, fittings, machinery and equipment on the Site and the Ash Disposal Sites or used in connection with the Power Station which have been supplied by it or at its cost. CEPA shall operate and maintain the Power Station for the purpose of converting Fuel of NPC into electricity.
>
> 2.11 ***Transfer.*** On the Transfer Date, the Power Station shall be transferred by CEPA to NPC without the payment of any compensation and otherwise in accordance with the provisions of Article 8."

Based from the above-quoted articles, it can be inferred that the ownership of the subject machinery and equipment is clearly vested with CEPA, now Team Energy, and not with NPC. Moreover, NPC's ownership of the Power Plant will take effect only after the end of the "Cooperation Period" as stated in Article 8.1 of the ECA.[33] Thus, until such time arrives, the NPC's claim of ownership is merely contingent or expectant.

NPC cannot likewise be considered as the actual user or the possessor of the subject machinery and equipment since the responsibility for the management, operation, and maintenance is likewise conferred with CEPA until the Transfer Date as shown in Sections 5.1 and 5.3 of Article 5 of ECA, which are hereby quoted for ready reference:

> **"Article 5**
>
> **Operation of the Power Station**
>
> ***5.1. CEPA's Responsibilities.*** CEPA shall, at its own cost, be responsible for the management, operation,

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[33] " **Article 8**
Transfer of Ownership and Buyout
8.1 ***Transfer.*** Six (6) calendar months prior to the Transfer Date, CEPA shall arrange the training at the Site for an adequate number of NPC personnel in relation to the operation of the Power Station. On the Transfer Date, CEPA shall transfer to NPC (and shall execute such documents as may be reasonably be considered necessary to effect such transfer), free from any lien or encumbrance created by CEPA and without the payment of any compensation , all its right, title and interest in and to the fixtures, fittings, spare parts, plant and equipment (including test equipment and special tools and vehicles used solely in plant management and operation) and all improvements comprising the Power Station. xxx"

maintenance, including the supply of consumable and spare parts, and repair of the Power Station until the Transfer Date and shall use its best endeavors to ensure that during such period the Power Station is in good operating condition and capable of converting Fuel supplied by NPC into electricity in a safe stable manner within the Operating Parameters. x x x.

x x x x

5.3 Operation. CEPA undertakes that until the Transfer Date, subject to the supply of the necessary Fuel pursuant to Article 6 and to the other provisions hereof, it will operate the Power Station to convert such Fuel into electricity in accordance with Article 7."

Since the ownership of the subject machinery and equipment as well as the responsibility for the management, operation, and maintenance is conferred with CEPA, a non-exempt entity, petitioner, therefore, may not rightfully claim that it has the requisite "legal interest" to question the assessment and assert the tax exemptions under Sections 234 (c) and (e) of the Local Government Code, after all, legal interest should be an interest that is actual and material, direct and immediate, not simply contingent and expectant as explained in the case of *Cariño vs. Ofilado.*[34]

Going to the second issue, petitioner maintains that respondents are estopped from disputing the legal interest of NPC in the Power Plant on the ground that respondents acknowledged in the 1994 Memorandum of Agreement that NPC is the owner and user of the Power Plant and Team Energy (Mirant's Successor) is the service contractor of NPC.

Again, we do not agree. Upon careful perusal of the 1994 Memorandum of Agreement, the Court finds that it merely enumerates the respective obligations/responsibilities of the parties therein. But nowhere in said agreement is it stated that respondents acknowledged NPC as the owner and user of the power plant. In fact, the one responsible for the operation of the Power Plant during the agreed cooperation period is Pangasinan Electric Corporation (now Team Energy) and not petitioner.

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[34] G.R. No. 102836, January 18, 1993, cited in National Power Corporation vs. Province of Quezon and Municipality of Pagbilao, G.R. No. 171586, July 15, 2009.

Further, the undertaking of petitioner in the said Memorandum of Agreement that it shall pay the realty tax upon its acquisition of the project site, does not justify the exemption as ruled in the case of *Fels Energy, Inc., vs. The Province of Batangas and the Office of the Provincial Assessor of Batangas,* [35] in this wise:

> "The mere undertaking of petitioner NPC under Section 10.1 of the Agreement, that it shall be responsible for the payment of all real estate taxes and assessments, does not justify the exemption. The privilege granted to petitioner NPC cannot be extended to FELS. The covenant is between FELS and NPC and does not bind a third person not privy thereto, in this case, the Province of Batangas."

Furthermore, even the Supreme Court, in the case of *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao,*[36] finds it inappropriate for NPC to assume, in its BOT contracts, the tax liability of the other contracting party, to wit:

> "x x x we find it essentially wrong to allow the NPC to assume in its BOT contracts the liability of the other contracting party for taxes that the government can impose on the other party, and at the same time allow NPC to turn around and say that no taxes should be collected because the NPC is tax-exempt as a government-owned and controlled corporation. We cannot be a party to this kind of arrangement; for us to allow it without congressional authority is to intrude into the realm of policy and to debase the tax system that the Legislature established. xxx."[37]

With respect to the issue of whether the machinery and equipment at the Power Plant are exempt from payment of real property tax, this matter has been squarely settled by the High Tribunal in the same case of *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao*, in this wise:

> "At any rate, the NPC's claim of tax exemptions is completely without merit. To successfully claim

[35] G.R. No. 170628. February 16, 2007.
[36] G.R. No. 171586, July 15, 2009.
[37] Ibid.

exemption under Section 234(c) of the LGC, the claimant must prove two elements:

> a. the machineries and equipment are ***actually, directly, and exclusively used by*** local water districts and ***government-owned or controlled corporations***; and
>
> b. the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of water and/or the generation and transmission of electric power.

As applied to the present case, the government-owned or controlled corporation claiming exemption must be the entity actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power. Neither the NPC nor Mirant satisfies both requirements. Although the plant's machineries are devoted to the generation of electric power, by the NPC's own admission and as previously pointed out, Mirant – a private corporation – uses and operates them. That Mirant operates the machineries solely in compliance with the will of the NPC only underscores the fact that NPC does not actually, directly, and exclusively use them. The machineries must be actually, directly, and exclusively used by the government-owned or controlled corporation for the exemption under Section 234(c) to apply.

Nor will NPC find solace in its claim that it utilizes all the power plant's generated electricity in supplying the power needs of its customers. Based on the clear wording of the law, it is the machineries that are exempted from the payment of real property tax, not the water or electricity that these machineries generate and distribute."

Considering that petitioner is presently not the owner or the beneficial user or possessor of the subject machinery and equipment, it has, therefore, no legal standing to claim that it is exempt from payment of real property taxes on the same. Consequently, petitioner cannot demand for an automatic deduction (for assessment purposes) of the annual 5% depreciation allowance from the value of the said machinery.

Lastly, apart from petitioner's failure to prove that it has legal personality to claim the tax exemption under Sections 234 (c) and (e) of the Local Government Code, another reason for dismissing the instant Petition is petitioner's failure to comply with Section 252 of the Local Government Code which requires payment of the tax before any protest against the tax assessment can be made. The imperativeness of payment under protest when what is being questioned is the correctness of the assessment is underscored in the case *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao,*[38] which held:

> "**Like Olivarez, Napocor, by claiming exemption from realty taxation, is simply raising a question of the correctness of the assessment.** A claim for tax exemption, whether full or partial, does not question the authority of local assessors to assess real property tax. x x x
>
> x x x
>
> x x x **Since Napocor was simply questioning the correctness of the assessment, it should have first complied with Section 252, particularly the requirement of payment under protest. Napocor's failure to prove that this requirement has been complied with thus renders its administrative protest under Section 226 of the LGC without any effect. No protest shall be entertained unless the taxpayer first pays the tax**.
>
> It was an ill-advised move for Napocor to directly file an appeal with the LBAA under Section 226 without first paying the tax as required under Section 252. Sections 252 and 226 provide successive administrative remedies to a taxpayer who questions the correctness of an assessment. Section 226, in declaring that "any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his property may . . . appeal to the Board of Assessment Appeals . . .," should be read in conjunction with Section 252 (d), which states that "in the event that the protest is denied.

[38] G.R. No. 171586, January 25, 2010.

> . ., the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231]. The "action" referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessor's act of denying the protest filed pursuant to Section 252. Without the action of the local assessor, the appellate authority of the LBAA cannot be invoked. Napocor's action before the LBAA was thus prematurely filed." (Emphases supplied)

In fine, since petitioner failed to justify its claim of exemption from real property tax by a grant expressed in terms "too plain to be mistaken," its claim for exemption from realty taxes must fail. Thus, we see no cogent reason to set aside, reverse or modify the assailed Decision and Order of the Central Board of Assessment Appeals.

WHEREFORE, in view of the foregoing considerations, the instant Petition is hereby **DISMISSED** for lack of merit. The Assailed Decision and Order of the CBAA dated April 12, 2012 and July 31, 2012, respectively, in CBAA Cases No. L-52 and 81, entitled *"National Power Corporation vs. The Local Board of Assessment Appeals of the Province of Pangasinan and the Province of Pangasinan and the Provincial Assessor of Pangasinan"*, are hereby **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION,
Petitioner,

- versus -

THE PROVINCE OF PANGASINAN AND THE PROVINCIAL ASSESSOR OF PANGASINAN,
Respondents.

CTA EB NO. 937
(CBAA CASES NOS. L-52 & L-81)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *J.J.*

Promulgated:

NOV 1 1 2013 9:00 a.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Caesar A. Casanova, in so far as it denies the Petition for Review filed by National Power Corporation (NPC) on the ground that petitioner has no legal interest to question the assessment and claim the tax exemptions under Sections 234 (c) and (e) of the Local Government Code (LGC).

On the other hand, with utmost respect, I dissent on the dismissal of the Petition for Review on the ground that petitioner failed to comply with Section 252 of the LGC which requires payment of the real property tax before any protest against the assessment can be made. The *ponencia* states that "[t]he imperativeness of payment under protest when what is being questioned is the correctness of the assessment is underscored in the case of National Power Corporation vs. Province of Quezon and Municipality of Pagbilao *[NPC case]*."[1]

The *NPC case*, which in turn cites the case of **Dr. Pablo V. Olivarez, et al. vs. Mayor Joey Marquez, et al.**[2] (*"Olivarez case"*), is inapplicable in the instant case.

In the *Olivarez case,* the Supreme Court found that the allegations in the petition purportedly questioning the assessor's authority to assess and collect the taxes were made in order to justify the filing of the petition with the RTC. Truth to tell, aside from raising the issue on the exemption of some properties from taxation for being used exclusively for educational purposes, petitioners therein also raised other questions of facts, to wit: (1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the LGC; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; and (4) some errors are made in the assessment and collection of taxes due on petitioners' properties, and that respondents committed grave abuse of discretion in making improper, excessive and unlawful collection of taxes against the petitioners.

In the subsequent *NPC case*, the issues raised therein did not only pertain to the tax exemption of the machineries but also included the factual issue of who actually, directly, and exclusively used the machineries in the taxable periods in question.

On the other hand, in the instant case, petitioner is questioning the legality or validity of the real property tax assessment and the very authority of respondents to assess and collect real property tax against petitioner.[3] Thus, I find that the applicable jurisprudence is the case of **Alejandro B. Ty and MVR Picture Tube Inc. vs. The Hon. Aurelio C. Trampe, et al.**,[4] (*"Ty case"*).

In the *Ty case,* the Supreme Court clarified that the protest contemplated under Section 252 of the LGC is needed when there is a question as to the reasonableness of the *amount assessed* but not when what is being questioned are the very authority and power of the assessor to

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[1] G.R. No. 171586, January 25, 2010.
[2] G.R. No. 155591, September 22, 2004.
[3] *Rollo*, pp. 268 to 270.
[4] G.R. No. 117577, December 1, 1995.

impose the assessment and of the treasurer to collect the tax. Pertinent pronouncement of the Supreme Court in the afore-stated case is quoted hereunder:

> "In laying down the powers of the Local Board of Assessment Appeals, R.A. 7160 provides in Sec. 229 (b) that "(t)he proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts . . . ." It follows that appeals to this Board may be fruitful only where questions of fact are involved. **Again, the protest contemplated under Sec. 252 of R.A. 7160 is needed where there is a question as to the reasonableness of the <u>amount assessed</u>. Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the very validity of *any* increase**." (Emphasis supplied)

Based on its position that the subject properties are exempted from real property tax, petitioner filed the petition before the LBAA not for the purpose of questioning the correctness or reasonableness of the amount of the assessment but to question the legality or validity of the real property tax assessment and the very authority of respondents to assess and collect real property tax on properties which petitioner claims as "tax-exempt" under the provisions of the LGC. In sum, under this scenario, applying the *Ty case*, payment under protest as required under Section 252 of the LGC[5] is not necessary.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] **Section 252.** *Payment Under Protest. –*
(a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.
(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.
(d) In the event that the protest is denied or upon the lapse of the sixty day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.