REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

NATIONAL TRANSMISSION CORPORATION, Petitioner,	**CTA AC NO. 75** *For: Franchise Tax Assessment*
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
PROVINCE OF AGUSAN DEL NORTE, REPRESENTED BY ITS PROVINCIAL TREASURER, MR. LEOPOLDO L. AVILA, Respondent.	**Promulgated:** OCT 03 2012 11:15 a.m.

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AMENDED DECISION

MINDARO-GRULLA, *J.*:

For resolution is petitioner's ***"Motion for Reconsideration of the 5 June 2012 Decision"*** filed on June 29, 2012, with respondent's "***Comments (To the Petitioner's Motion for Reconsideration)***" filed through registered mail on July 30, 2012 and received by this Court on August 23, 2012.

The instant Motion seeks for reconsideration of this Court's Decision dated June 5, 2012 *(assailed Decision)*, the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision promulgated on March 5, 2010 and the Order promulgated on February 14, 2011 by the RTC-Butuan City in SP. Civil Case No. 1357 are hereby **AFFIRMED.**

SO ORDERED."

In support of its Motion for Reconsideration, petitioner raised the following ground:

> "A. Agusan del Norte cannot impose franchise tax on businesses outside its territorial jurisdiction;
>
> B. The Honorable Court of Tax Appeals already decided in CTA AC No. 78 that a province cannot impose franchise tax outside of its territorial jurisdiction;
>
> C. Assuming TransCo is liable to Agusan del Norte for franchise tax, the alleged amount of liability is erroneous:
>
> a. The purported figures of TransCo's gross receipts ANECO provided cannot be the basis of TransCo's alleged FT liability to the Province.
>
> b. The alleged FT liability for 2003 to 2004 has already prescribed; and
>
> D. The FT's imposition without any basis in law will be oppressive and confiscatory, thus, illegal."

In its *Comment (To the Petitioner's Motion For Reconsideration*), respondent counters that the Provincial Government of Agusan del Norte has the authority to impose Franchise Tax against petitioner NTC pursuant to: (a) Section 137 of the Local Government Code of 1991; (b) Section 3 of Local Finance Circular No. 1-07; (c) the ruling of the Supreme Court in NAPOCOR vs. City of Cabanatuan (G.R. No. 149110, April 9, 2001); and (d) Provincial Ordinance No. 008-93 as amended by Section 11, Provincial Ordinance No. 195-2006.

Respondent reiterates that it is not imposing franchise taxes on gross receipts of another territorial jurisdiction but only on business within its territorial jurisdiction; hence, respondent asserts that it is erroneous for petitioner to label the imposition as oppressive and confiscatory. Respondent further claims that the imposition of franchise tax in the Notice of Assessment is limited to that derived within the Province of Agusan del Norte, hence, CTA AC No. 78 has no application in this case.

Finally, respondent avers that paragraph C in petitioner's Motion is a new issue which was not raised in the Court *a quo* and is too late to include such issue at this point in the proceedings. Respondent asserts that petitioner never disputed the computation of the assessment nor the basis thereof in its protest before the Provincial Treasurer nor in its subsequent appeal.

Except for the issue of erroneous computation of the amount of franchise tax liability, which is raised herein for the first time, and petitioner's trust in the case of *National Transmission Corporation vs. Province of Bataan*[1] *(Bataan case),* the other grounds and arguments raised by petitioner in its *Motion for Reconsideration* are essentially similar to its previous arguments, which had been duly considered and exhaustively passed upon in the assailed *Decision*.

Petitioner's reliance in the Bataan case is misplaced.

In the said case, it was not shown, except for a finding that PENELCO was located in Balanga City, that the gross revenues or receipts used as tax base for franchise tax imposed by the Province of Bataan were derived from PENELCO's customers outside Balanga City, a component of the Province of Bataan; hence, Balanga City's jurisdiction to impose the tax was upheld over that of the Province.

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[1] CTA AC Case No. 78

In the present case it is not disputed, as stated in the assailed Decision, that the Province of Agusan del Norte imposed a franchise tax based on ANECO's annual gross receipts derived from the 11 municipalities within respondent's territorial jurisdiction. Petitioner's taxable base is the annual gross receipts derived from the 11 municipalities within respondent's territorial limits, as reported by ANECO, and not the entire gross receipts of petitioner, nor does it include those derived by petitioner in its operation in the City of Butuan.

Considering the different factual circumstances of these two cases, the ruling in the Bataan case is not applicable to the present case.

On the alleged erroneous computation of franchise tax liability, petitioner claims that the figures of gross receipts that ANECO provided cannot be the basis of its liability to the province. Petitioner asserts that it is not in a position to verify and validate the data that ANECO submitted since it is not privy to the "resale" of electricity to its customers.

The Court observes that petitioner did not raise the said objection at the earliest opportunity. Neither did petitioner raise it before the court *a quo* nor in the Petition for Review before this Court. It is only now in this instant Motion for Reconsideration that this factual issue is being put to question. Being factual in nature, the same should have been presented and properly proved before the court a *quo*.

Suffice it to say that points of law, theories, issues and arguments not adequately brought to the attention of the trial court ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal because this would be offensive to the basic rules of fair play, justice and due process.[2]

Another point raised by petitioner in support of the alleged erroneous computation of liability is prescription.

While petitioner's argument on prescription is only raised for the first time in this Motion, the same can be properly considered by this Court pursuant to Section 1, Rule 9 of the Rules of Court, which provides:

> "SECTION 1. *Defenses and objections not* pleaded.— Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, **when it appears from the pleadings** or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by a prior judgment or **by statute of limitations**, the court shall dismiss the claim." *(Emphasis supplied)*

In *Dino vs. Court of Appeals*,[3] the Supreme Court followed the doctrine *that allows the dismissal of an action on the ground of prescription even after judgment on the merits, or even if the defense was not raised at all so long as the relevant dates are clear on the record* in deciding the case, which accordingly, is confirmed and now enshrined in Rule 9, Sec. 1 of the 1997 Rules of Civil Procedure.

In the instant case, petitioner asserts that the alleged franchise tax for 2003 and 2004 had already prescribed when the Province served upon it the assessment on February 12, 2009.

This Court agrees in part with petitioner.

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[2] Philippine Commercial and International Bank (now Banco de Oro-EPCI, Inc.) vs. Custodio, G.R. No. 173207, 14 February 2008, 545 SCRA 367, 380

[3] G.R. No. 113564, June 29, 2001

Section 194 of the Local Government Code prescribes a five (5) year period for local government units to assess local taxes from the date they became due, as quoted below:

> Section 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." (Emphasis supplied)

In relation to this, the governing ordinance applicable in this case during 2003 and 2004 was Provincial Tax Ordinance No. 008-93,[4] which provides among others, the time of payment of franchise tax. Section 17, Article III of the Provincial Tax Ordinance No. 008-93 provides:

> "Section 17. **Time of Payment.** – The tax imposed in this article **shall be payable to the Provincial Treasurer, within the first twenty (20) days of January following the end of the preceding calendar year**. In the case of a newly started business, the owner or operator of the business shall pay the corresponding tax prescribed in Section 2.10 before the business starts to operate." (Emphasis supplied)

Based from the foregoing provisions of law and ordinance, the Province of Agusan del Norte has five (5) years to assess franchise tax reckoned from January 20, following the end of the preceding calendar year of 2003 and 2004. Consequently, respondent had until the following dates within which to assess petitioner of the subject deficiency franchise tax for calendar years 2003 and 2004:

[4] Docket, pp. 88 to 90

Year	Due Date of Payment	Last Day to Assess (5-year period)
2003	January 20, 2003	January 21, 2008*
2004	January 20, 2004	January 20, 2009

*January 20, 2008 fell on Sunday.

In the instant case, it is undisputed, as found by the court a *quo,* that respondent issued the Notice of Franchise Tax Delinquency covering the franchise taxes due in 2003 to 2008 against herein petitioner on January 19, 2009. Based on the table above, the 2003 franchise tax liability, which is based on the receipts realized during the preceding year 2002, should have been assessed by respondent on or before January 21, 2008. Since respondent assessed petitioner of the 2003 franchise tax only on January 19, 2009, the same had already prescribed as of the date the assessment was made. However, the assessment for 2004 franchise tax due was well within the 5-year prescriptive period since respondent had until January 20, 2009 to issue the said assessment.

The Notice of Franchise Tax Delinquency[5] dated January 19, 2009 shows that respondent assessed petitioner of franchise tax for the years 2003 to 2008, in the total amount of ₱3,401,001.92, detailed as follows:

Year (A)	Annual Gross Receipts Preceding Year (B)	Rate of Tax 50% of 1% (C)	Tax Due (D= 50% of 1% of B)	Surcharge (E= 25% of D)	Interest (F = D+E x 72%)	Total Tax Delinquency (G=D+E+F)
2003	10,329,137.65	50% of 1%	51,645.69	12,911.42	46,481.12	111,038.23
2004	61,349,056.00	50% of 1%	306,745.28	76,686.32	276,070.75	659,502.35
2005	62,504,959.31	50% of 1%	312,524.80	78,131.20	281,272.32	671,928.32
2006	66,143,307.99	50% of 1%	330,716.54	82,679.13	297,644.89	711,040.56
2007	71,850,639.45	50% of 1%	359,253.20	89,813.30	215,551.92	664,618.42
2008	75,209,553.86	50% of 1%	376,047.77	94,011.94	112,814.33	582,874.04
TOTAL	**347,386,654.26**		**1,736,933.28**	**434,233.31**	**1,229,835.33**	**3,401,001.92**

5 Annex "C", Petition for Review, docket, pp. 33-34

In view of the fact that the assessed franchise tax for 2003 had already prescribed, petitioner is entitled to a corresponding deduction of the amount of P111,038.23, representing franchise tax due for 2003, from the total assessed franchise tax liability of P3,401,001.92. Thus, petitioner is liable of franchise tax in the aggregate amount of P3,289,963.69 only covering calendar years 2004 to 2008.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is hereby **PARTIALLY GRANTED** and the Court's Decision dated June 5, 2012 is hereby **MODIFIED.** Accordingly, the Decision promulgated on March 5, 2010 and the Order promulgated on February 14, 2011 by the RTC-Butuan City in SP. Civil Case No. 1357 are hereby **AFFIRMED WITH MODIFICATION.** The Notice of Assessment dated January 19, 2009 issued against National Transmission Corporation by the Province of Agusan del Norte is hereby **AFFIRMED,** except the assessed franchise tax for 2003 in the amount of P111,038.23 for being barred by prescription.

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

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice