REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NATIONAL TRANSMISSION CORPORATION (TRANSCO),
Petitioner,

CTA AC NO. 220

Members:

- versus -

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, ***JJ.***

CITY OF DIGOS, represented by its CITY TREASURER, MR. JESUS B. UY, JR.,
Respondent.

Promulgated:

NOV 04 2020

x - x

1:10 p.m.

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] under Rule 4, Section 3(a)(3)[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**) filed by petitioner National Transmission Corporation (**petitioner/ TRANSCO**) against respondent City of Digos (**respondent City**). It

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[1] Dated 30 April 2019, Docket, Vol. I, pp. 8-15.

[2] **Sec. 3**. *Cases within the jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

(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[.]

seeks the partial reversal of the 12 November 2018 Decision[3] of the Regional Trial Court (**RTC/court *a quo***), Branch 18 of Digos City, Davao del Sur partially denying petitioner's complaint for cancellation of an erroneously assessed franchise tax pursuant to Section 195[4] of Republic Act (**RA**) No. 7160, otherwise known as the Local Government Code of 1991 (**LGC**). The dispositive portion of the assailed Decision reads:

> ...
>
> WHEREFORE, in view if the foregoing, this Court hereby UPHOLDS the validity of the assessment issued by the defendant, City of Digos against the plaintiff, National Transmission Corporation (TRANSCO).
>
> Consequently, herein plaintiff National Transmission Corporation is hereby directed to pay the franchise taxes assessed by the City of Digos from the years 2004 to 2008.
>
> SO ORDERED.
>
> ...

Although not made part of the dispositive portion, the RTC also cancelled respondent City's assessment of TRANSCO for the years 2002 and 2004, to wit:

> ...
>
> Considering that there is no allegation of fraud or intent to evade taxes on the part of plaintiff, herein defendant only had five (5) years within which to assess plaintiff of its franchise taxes. Pursuant to the above-said provision, it could no longer exercise its right to assess the franchise taxes of plaintiff for the years 2002 and 2003 after having failed to assess and collect from plaintiff during the said years. Hence, plaintiff is only liable to pay franchise taxes from 2004 onwards.
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> ...

As appearing in the records, petitioner is a government owned and controlled corporation created under RA 9136[5], otherwise known

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[3] Division Docket, pp. 36-39.

[4] **SEC. 195.** – *Protest of Assessment.*

[5] **SEC. 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 (NPC), and have the powers and

as the Electric Power Industry Reform Act (**EPIRA**) of 2001. On the other hand, respondent City is a local government unit created by virtue of RA 8798[6] and represented herein by its City Treasurer, Jesus Uy, Jr. (Uy).

The antecedent facts follow below.

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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.).

The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: Provided, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.

TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of this Act or the start of open access, whichever comes earlier: Provided, That in the case of electric cooperatives, the TRANSCO shall grant concessional financing over a period of twenty (20) years: Provided, however, That the installment payments to TRANSCO for the acquisition of subtransmission facilities shall be given first priority by the electric cooperatives out of the net income derived from such facilities. The TRANSCO shall determine the disposal value of the subtransmission assets based on the revenue potential of such assets.

In case of disagreement in valuation, procedures, ownership participation and other issues, the ERC shall resolve such issues.

The take over by a distribution utility of any subtransmission asset shall not cause a diminution of service and quality to the end-users. Where there are two or more connected distribution utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the subtransmission asset by the ERC.

The subscription rights of each distribution utility involved shall be proportionate to their load requirements unless otherwise agreed by the parties.

Aside from the PSALM Corp., TRANSCO and connected distribution utilities, no third party shall be allowed ownership or management participation, in whole or in part, in such subtransmission entity.

The TRANSCO may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws. Except as provided herein, no person, company or entity other than the TRANSCO shall own any transmission facilities.

Prior to the transfer of the transmission functions by NPC to TRANSCO, and before the promulgation of the Grid Code, ERC shall ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to its transmission system. Any violation thereof shall be subject to the fines and penalties imposed herein.

[6] The Charter of the City of Digos.

On 24 November 2009, petitioner received a letter dated 11 November 2009[7] from the City Treasurer of respondent City informing it of its franchise tax liabilities for the years 2002 to 2008, in the aggregate sum of Four Million Eight Hundred Eighty-Six Thousand Six Hundred Forty-Three Pesos and Seventy-Three Centavos (₱4,886,643.73), in accordance with Section 2G.02, Article G, Chapter II of the New Digos City Tax Code of 2005.[8]

In assessing petitioner's franchise tax liabilities, respondent City took account of TRANSCO's receipt of payments from Davao Del Sur Electric Cooperative, Inc. (**DASURECO**).[9] On 15 January 2010, petitioner filed a protest before the City Treasurer of respondent City.

Without respondent City acting on its protest, petitioner filed its appeal with the RTC of Digos City.[10] Finding that only questions of law were involved, the RTC promulgated the assailed Decision on 12 November 2018.

Hence, this petition.

Without necessarily giving due course to the petition, the Court ordered respondent to file its comment to the peition.[11] *Per* verification by the Court's Judicial Records Division[12] as of 05 August 2019, respondent had yet to file its comment.

Given the absence of respondent City's comment, the Court issued a Resolution ordering the parties to submit their respective memoranda within thirty (30) days from receipt of such order.[13]

Petitioner filed its Memorandum on 28 October 2019[14] without a corresponding memorandum from respondent City.[15] Therefore, *via* a

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7 Division Docket, pp. 23-25.
8 Id.
9 Id.
10 Docketed as Civil Case No. 5007.
11 Division Docket, p. 42.
12 Dated 05 August 2019, id., p. 46.
13 See Resolution dated 19 September 2019, id., p. 49.
14 Id., pp. 50-69.
15 Id., p. 84.

Resolution dated 17 December 2019[16], the Court submitted the present petition for decision.

Petitioner submits the following issues for the Court's determination:

I.
WHETHER PETITIONER IS LIABLE FOR LOCAL FRANCHISE TAX FOR GROSS RECEIPTS RECEIVED FROM ITS OPERATIONS OUTSIDE RESPONDENT CITY'S TERRITORIAL JURISDICTION.

II.
WHETHER PETITIONER'S SUPPOSED AMOUNT OF TAX LIABILITY WAS COMPUTED CORRECTLY.

In amplification of the above issues, petitioner argues that respondent cannot hold it liable for franchise taxes since it operates outside the latter's jurisdiction. It argues that, in *National Power Corporation v. City of Cabanatuan*[17] (**Cabanatuan**), the Supreme Court held that two requisites must be satisfied before a franchise tax may be levied on a taxpayer, to wit:

> ...
>
> ...Verily, to determine whether the petitioner is covered by the franchise tax in question, the following requisites should concur: (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 respondent city government.
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> ...

Although it concedes fulfillment of the first requisite, petitioner nevertheless contends that, in order to satisfy the second requisite, it must have a sub-station/district/branch/regional office and a customer within the respondent City. Despite DASURECO being its customer, petitioner argues further that it holds no facility within respondent City thus it cannot levy the assessed franchise taxes on it.

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[16] Id., p. 85.
[17] G.R. No. 149110, 09 April 2003.

Petitioner further holds that respondent cannot impose a franchise tax on goods merely passing through its jurisdiction. Assuming *arguendo* that it can be held liable for local franchise tax, the proper levying authority would be the locality where TRANSCO's principal office is located (as it has no branch within respondent City's jurisdiction).

Respondent, on the other hand, did not participate in the proceedings before the Court.

The Court's ruling follows.

Surely, ever since the enactment of the LGC, local government units (**LGU**), like respondent City, have been empowered to levy taxes on businesses operating within their territory, franchise tax being one of them. As the Supreme Court explains in *Cabanatuan*:

> ...
>
> ...As commonly used, a **franchise** tax is "a tax on the privilege of transacting business in the state and exercising corporate franchises granted by the state." It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but on its exercise of the rights or privileges granted to it by the government...[18]
>
> ...

As regards the imposition of franchise tax, the pertinent provisions of the LGC provide thusly:

> ...
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> **Section 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 the 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.
>
> In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In

18 Supra at note 17; Citations omitted and emphasis in the original text.

> the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein.
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> ...
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> **Section 151.** *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.
>
> ...

It is further undisputed that the National Power Corporation (**NAPOCOR**) was previously subjected to local franchise taxes prior to the passage of RA 9136 or the EPIRA wherein in its national franchise for power transmission was transferred to petitioner.[19] This fact is evident in cases such as that of *Cabanatuan* and the *National Power Corporation v. Province of Isabela*[20] (**Isabela**). Therefore, petitioner, as the transferee of NAPOCOR's franchise shall be taxable in a like manner, moreso that EPIRA neither amended petitioner's obligations under the franchise nor did it introduce any exemption from payment of local government taxes. Thus, the only point of contention in the case at bar is whether respondent City properly claimed the *situs* of taxation.

As earlier stated, respondent calculated petitioner's liabilities based on its gross receipts from DASURECO. The RTC, in ruling in respondent City's favor particularly cited Section 150 of the LGC. The provision reads:

> ...
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> Sec. 150. *Situs of the Tax.* -

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[19] Supra at note 5.

[20] G.R. No. 165827, 16 June 2006.

> (a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.
>
> ...

The fact that petitioner has no branch or sales outlet in respondent City is not in question. Clearly, petitioner supplies energy in bulk to DASURECO while DASURECO, in turn, delivers the same to its end-users.

The next relevant query is whether petitioner exercised its franchise inside respondent City when it supplied power to DASURECO. The RTC answered this question in the affirmative when it applied the above-quoted provision of the LGC.

In the above particular respect, the Court finds the Supreme Court's disquisition in the case of *City of Iriga v. Camarines Sur III Electric Cooperative, Inc. (Casureco III)*[21] (**Casureco III**) enlightening.

In *Casureco III*, the Supreme Court applied the principles laid down in *Cabanatuan* and found Casureco III liable for payment of local franchise taxes to the City of Iriga (where it had its principal office) based on its gross receipts within Iriga as well as the Rinconada area of Camarines Sur. Thus, the Supreme Court held:

> ...
>
> It should be stressed that what the petitioner seeks to collect from CASURECO III is a franchise tax, which as defined, is a tax on the exercise of a *privilege*. As Section 137 of the LGC provides, franchise

[21] G.R. No. 192945, 05 September 2012.

> tax shall be based on gross receipts precisely because it is a tax on *business*, rather than on persons or property. **Since it partakes of the nature of an excise tax[,] the *situs* of taxation is the place where the privilege is exercised, in this case in the City of Iriga, where CASURECO III has its principal office and from where it operates, regardless of the place where its services or products are delivered. Hence, franchise tax covers all gross receipts from Iriga City and the Rinconada area.**[22]
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> ...

In *Casureco III*, the Supreme Court disregarded where the respondent therein delivered its service while fixing the latter's tax *situs* where it held its principal place of business. Following this principle, it becomes clear that petitioner cannot be held liable for local franchise taxes by respondent City even if it caters its services within the latter's territory.

Consequently, with this Court's finding that respondent City could not collect local franchise taxes from petitioner, We shall no longer discuss the second raised issue (on the correctness of petitioner's supposed tax liability).

WHEREFORE, the foregoing considered, petitioner National Transmission Corporation's Petition for Review filed on 30 April 2019 is **GRANTED**. Accordingly, the 12 November 2018 Decision of the Regional Trial Court, Branch 18 of Digos City in Civil Case No. 5007, entitled *National Transmission Corporation (TRANSCO) v. City of Digos, represented by its City Treasurer, Mr. Jesus Uy, Jr.*, is **REVERSED** and **SET ASIDE**. Consequently, the assessment dated 11 November 2009 against petitioner is hereby declared **NULL** and **VOID**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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22 Supra at note 21; Citations omitted, italics in the original text, emphasis and underscoring supplied.

I CONCUR:

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

ATTESTATION

I attest 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.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice