REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Petitioner-Appellant,

- versus -

THE PROVINCE OF NUEVA ECIJA, THE OFFICE OF THE PROVINCIAL ASSESSOR OF NUEVA ECIJA and THE OFFICE OF THE PROVINCIAL TREASURER OF NUEVA ECIJA,
Respondents-Appellees,

NATIONAL IRRIGATION ADMINISTRATION and DEPARTMENT OF FINANCE,
As Necessary Parties.

CTA EB No. 1380
(CBAA Case Nos. L-68, L-73, and L-78)

x - x

THE PROVINCE OF NUEVA ECIJA, THE OFFICE OF THE PROVINCIAL ASSESSOR OF NUEVA ECIJA and THE OFFICE OF THE PROVINCIAL TREASURER OF NUEVA ECIJA,
Petitioner-Appellant,

- versus -

CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Respondents-Appellees,

NATIONAL IRRIGATION ADMINISTRATION and DEPARTMENT OF FINANCE,
As Necessary Parties.

CTA EB No. 1420
(CBAA Case Nos. L-68, L-73, and L-78)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

NOV 10 2017 4:08 p.m.

x - x

DECISION

UY, <u>J.</u>:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review* docketed as CTA EB No. 1380, and CTA EB No. 1420.

In CTA EB No. 1380, CE Casecnan Water and Energy Company, Inc. seeks the partial reversal and setting aside of the Decision dated December 5, 2013[1] and Resolution dated August 21, 2015[2] rendered by the Central Board of Assessment Appeals (CBAA) in CBAA Case Nos. L-68, L-73, and L-78, all entitled *"CE Casecnan Water and Energy Company, Inc., Petitioner-Appellant, versus Local Board of Assessment Appeals of the Province of Nueva Ecija, Appellee, and The Province of Nueva Ecija, The Provincial Governor, Provincial Assessor, Provincial Treasurer, and Asst. Provincial Treasurer of the Province of Nueva Ecija, Respondents-Appellees. National Irrigation Administration and The Department of Finance, As Necessary Parties"*, the dispositive portions of which respectively read:

<u>Decision dated December 5, 2013</u>:

> "**WHEREFORE,** premises considered, the Respondent-Appellee Provincial Assessor is hereby ORDERED to recognize the allowances for depreciation of the subject machinery and equipment as provided for in Section 225 of the LGC: the allowance for depreciation for the year 2002 should be recognized and reflected in the assessment for 2003, and so on.
>
> Otherwise, CE Casecnan's Appeals in CBAA Case Nos. L-68- L-73 and L-78 are hereby DISMISSED.
>
> **SO ORDERED.**"

<u>Resolution dated August 21, 2015</u>:

> "KAYA NGA, Alinsunod sa mga isyu at pagtalakay na nabanggit sa itaas, ang kasalukuyang Lupon ay dito at ngayo'y NAGPASIYA:

---

[1] EB Docket (CTA EB No. 1380) – Vol. I, pp. 47 to 90; EB Docket (CTA EB No. 1420), pp. 27 to 70; and CBAA Records (Folder 5), pp. 573 to 616.
[2] EB Docket (CTA EB No. 1380) – Vol. I, pp. 91 to 131; EB Docket (CTA EB No. 1420), pp. 73 to 113; and CBAA Records (Folder 6), pp. 691 to 731.

---

1. NA ang **'Partial Motion for Reconsideration'** ng respondents-appellees Province of Nueva Ecija, et al, ay **ITINATANGGI** ('DENIED');

2. NA alinsunod sa mga probisyon R.A. 7160 lalo na ang Sec. 234 nito, na kami ay sumasang-ayon sa naunang **Desisyong na may petsang Disyembre 5, 2013** ng Lupong Sentral ng Pag-apela sa Pagtatasa (Central Board of Assessment Appeals) ay **PINAGTITIBAY** ('AFFIRMED'), at ang apela ng petitioner-appellant CE Casecnan kaugnay ng **isyu bilang III, IV at VI** tungkol sa usapin ng pagiging di saklaw ng buwis ('TAX EXEMPTION') ay pinapawalang-saysay **('DENIED')**;

3. NA bilang pagtugon at pagbibigay-lunas ng Lupong ito sa mga **ika-I, II, VI at VII isyu tungkol sa kawalan ng angkop ng proseso ng batas** ('due process') at dahil sa hindi napatunayan o naihain ng respondents-appellees Province of Nueva Ecija, et al, ukol sa kaukulang ordinansa na nagrerebisa ng mga antas ng pag-tuos **ITINATAKDA at IPINAG-UUTOS na sa aktwal ng pagtuos, pagtasa at pagkolekta ng buwis sa mga kaukulang ari-arian ng CE Casecnan, ang dapat ipatupad ay ang mga alituntunin tungkol sa espesyal na uri ('SPECIAL CLASSES')** ayon sa R.A. 7160 Sec. 216 at 218.

4. NA batay sa mga naunang binanggit sa itaas nito ang Desisyong may petsang Disyembre 5, 2013 ay **BINABAGO** (MODIFIED) kaugnay ng mga Isyung tinalakay sa Mosyon ng Petitioner-Appellant CE Casecnan sa **isyu bilang I at II, VI and VII** tungkol sa kawalan ng 'Due Process of Law' o angkop na kaparaanan ng Batas.

5. NA ang pinairal or ipinatupad na Pagtatasa (Assessment), Pagkwenta (Appraisal) at Pagkolekta ng buwis na ipinataw ng Respondent-Appellee laban sa CE Casecnan na hindi ibinatay sa anumang Ordinansang pinagtibay ng Sangguniang Bayan or Sangguniang Panlalawigan ng Nueva Ecija ay walang batayan sa batas at lumalabag sa mga patakaran ng Bureau of Local Government of Finance (BLGF) kaya't ditto **ITINATAKDA** at **IPINAGUUTOS na ang pagtuos, pagtatasa at pagkolekta ng buwis sa mga kaukulang ari-arian ng CE Casecnan matapos at bukod sa mga taong 2003-**

2005 ay dapat isagawa ng mga pagtupad sa mga alituntunin ng DOF-Department Order No. 1-04 (Oktubre 1, 2004) ukol sa Seksyon 212, 214 at 217 ng R.A. 7160 at sa 'Manual on Real Property Appraisal ang Assessment Operations', na may kalakip ng 'Local Assessment Regulations No. 1-2007 (05 Nobyembre 2007) na pinamagatang 'Supplemental Regulations for the Effective Implementation of Local Assessment Regulations No. 1-04'.

6. NA ang ibang bahagi ng Desiyong may petsang Disyembre 5, 2013, na tinalakay sa mga **isyu bilang III, IV at VI** na ang mga binanggit ng Ari-arian ay walang 'TAX EXEMPTION, batay sa RA 7160, Sek, 234 ay **PINAGTIBAY** at **NANATILING MAY BISA** (in force and effect), kaya't ang CE Casecnan ay dapat magbayad ng mga angkop na buwis para sa mga lupain at ari-arian nito, ayon sa 'Assessment Level' na nakatakda.

IPINAPASIYA."

In CTA EB No. 1420, the Province of Nueva Ecija, the Provincial Treasurer, and the Provincial Assessor pray for the partial reversal of the above-stated Resolution dated August 21, 2015, and for the affirmation of the said the Decision dated December 5, 2013[3].

THE FACTS

On June 26, 1995, CE Casecnan Water and Energy Company, Inc. (CE Casecnan) entered into a Build-Operate-Transfer contract with the National Irrigation Administration (NIA) denominated as *"Amended and Restated Casecnan Project Agreement"* for the construction and development of the multi-purpose irrigation and power project located at Pantabangan, Nueva Ecija, and Alfonso Castañeda, Nueva Viscaya (the Project).

On September 29, 2003, CE Casecnan and NIA executed a *"Supplemental Agreement Regarding the Amended and Restated Casecnan Project Agreement"* (*Supplemental Agreement*) with respect to the Project, which was approved by the Department of Finance.

---

[3] Erroneously referred to as the Decision dated "December 6, 2013" in the *Petition for Review*, EB Docket (CTA EB No. 1420), p. 21.

Pursuant to the Agreement, CE Casecnan constructed, financed and now operates the Project.

The Project is a combined irrigation and power generation facility intended to harness the full potential of the Pantabangan Dam in Gapan, Nueva Ecija, by diverting approximately 800 million cubic meters of water annually until 2013 and 700 million cubic meters annually thereafter until 2021 from the rivers of Nueva Viscaya to the Pantabangan Reservoir. The Project irrigates at least 37,200 hectares of farmland in the service area of NIA, covering several towns of Nueva Ecija and some 102,000 hectares of farmland in the Upper Pampanga Integrated Irrigation System in the Pampanga irrigation service of NIA. The Project generates 140-150 megawatts of hydroelectric power. The Project's power generation capacity supplements the energy supply to the Luzon grid and augments power generation in the existing Pantabangan and Masiway hydroelectric power plants in Nueva Ecija.

The project's commercial operation commenced on December 11, 2001.

The following facts of the case as culled from the Decision of the CBAA, read as follows:

<u>CBAA CASE NO. L-68</u>:

1. On April 11, 2003, the Office of Respondent Provincial Assessor received a document entitled 'Casecnan Project Real Property Declaration' dated 29 September 2005. Said document was signed by David Baldwin, former president of herein appellant.

2. Attached to said document (Annex 'R') was a notarized document entitled 'CE Casecnan Water and Energy Co., Inc. – List of Property and Plant Equipment' which had a total value of P3,829,260,940.13, as per appellant's declaration.

3. Subsequently, nine (9) declarations of real property were issued under the name of the appellant as 'OWNER' by respondent Assessor which were indicated as Tax Declaration Nos. 93-18009-00489 to 18009-00496 and 93-18009-00498. The nine declarations of real property contained an annotation stating:

> *'Idiniklara sa pagbubuwis sa ilalim ng R.A. 7160, laki pang sinumpaang salaysay ni David A. Baldwin-Presidente ng CE Casecnan Water and Energy Co., Inc., at Notaryado ni Notaryo Publiko Marietta B. Saludaga nuong ika 10 ng Abril, 2003 sa lungsod ng Makati.'*

4. On 2 August 2005, a 'Notice of Assessment of Real Property' was sent to Mr. David A. Baldwin by respondent Assessor. On even date, a 'Statement of Real Property Tax Account' and 'Order of Payment' were sent to the appellant by the Office of the Respondent Provincial Treasurer. The 'Order of Payment' sought the payment of TWO HUNDRED FORTY EIGHT MILLION, SIX HUNDRED SEVENTY SIX THOUSAND, THREE HUNDRED FORTY NINE AND 60/100 PESOS (PhP248,676,349.60) as RPT for the years 2003-2005.

5. Petitioner-Appellant admits to have received on September 5, 2005 copies of the documents mentioned in the immediately preceding paragraph.

6. On September 30, 2005, the appellant filed its Appeal before the LBAA to 'nullify as incorrect, invalid and/or void the real property tax assessments in the total amount of P248,676,349.60 made by the respondents-appellees Provincial Treasurer and Provincial Assessor on CE Casecnan's real properties in the Municipality of Pantabangan, Nueva Ecija.' The Appeal was docketed as LBAA Case No. 001-05.

7. After receipt by the appellant of the 'Order of Payment' directing the payment of the amount of P248,676,349.60 as RPT for the years 2002-2005, the appellant paid the said amount under protest on December 28, 2005.

8. The respondents-appellees filed their Answer to the Appeal on January 18, 2006.

9. On January 26, 2006, the respondent LBAA rendered its decision, the dispositive portion of which reads:

> *'In sum, this Board finds the grounds raised by CASECNAN in its appeal to be lacking in merit, in law and fact. Such being*

the case, it has no other recourse but to DISMISS the instant appeal of CASECNAN, and to declare the tax assessment made by the PROVINCE to be correct, valid and justified.'

10. On January 27, 2006, the appellant filed a written protest questioning the collection of the amount of P248,676,349.60 by the appellee Treasurer and likewise prayed for a refund of the amount paid. The protest was not resolved by the appellee Treasurer's Office within the 60-day period prescribed under Section 252 of the LGC.

11. On February 23, 2006, the appellant filed an Appeal with this Board to question the above Decision of the LBAA, which Appeal was docketed as CBAA Case No. L-68. xxx:

xxx xxx xxx

CBAA CASE NO. L-73:

12. On March 23, 2006, as admitted by appellant in its Appeal, the appellee Provincial Treasurer sent a letter to the appellant demanding payment of real property taxes (RPT) for the year 2006 amounting to FORTY-THREE MILLION SIX HUNDRED THIRTY-ONE THOUSAND TWENTY-EIGHT AND 64/100 PESOS (PhP43,631,028.64), on or before March 31, 2006 in order for the appellant to avail of the discounts for prompt payment.

13. On March 31, 2006, the appellant 'paid under protest' the RPT for 2006.

14. On April 27, 2006, the appellant filed a Protest with the Provincial Treasurer's Office to question the collection of the 2006 RPT and to seek a refund of the amount paid. The appellees filed their comment to the protest which was replied to by the appellant. However, the protest was not resolved by the Provincial Treasurer's Office.

15. On August 4, 2006, the appellant filed an Appeal with the LBAA to question the collection of the 2006 RPT and asked for the refund of the amount paid. A comment was filed by the appellees which was responded

to by the appellant.

16. On October 8, 2006, the LBAA rendered its Decision, the dispositive portion of which reads:

> *"WHEREFORE, in the light of all the foregoing, let the instant Appeal of CE CASECNAN dated August 4, 2006 be DISMISSED, for lack of merit."*

17. The appellant appealed the Decision to this Board on December 13, 2006 raising the following grounds:

xxx xxx xxx

CBAA CASE NO. L-78:

18. On May 19, 2006, the appellant filed an appeal before the LBAA docketed as LBAA Case No. 001-06-A. The appeal reiterated the same grounds stated in its January 27, 2006 protest. A Comment, Reply, Rejoinder and Sur-rejoinder were filed. On February 27, 2007, the LBAA rendered the Decision, the dispositive portion of which reads as follows:

> *'WHEREFORE, facts and circumstances considered, the instant Appeal of the CE Casecnan Water and Energy Company, Inc. dated May 16, 2006 is hereby DISMISSED for lack of merit.'*

19. On March 23, 2007, Petitioner-Appellant appealed the above Decision to this Board which docketed the appeal as CBAA Case No. L-78.

20. On May 7, 2012, this Board received NIA's Memorandum dated April 30, 2012. NIA merely confirmed what had been stated by CE Casecnan in the latter's pleadings under the proposition that 'NIA is the beneficial owner of the Project and actually uses the Project and the real properties on it.'

21. On May 14, 2012, Petitioner-Appellant filed its Memorandum of even date.

22. On May 24, 2012, Respondents-Appellees

filed their Memorandum dated May 16, 2012.

xxx xxx xxx

24. In its Memorandum dated May 14, 2012, CE Casecnan prays that the CBAA renders a Decision:

> '[a] in CBAA Case No. L-68, **ANNULING** and **SETTING ASIDE** the LBAA of Nueva Ecija's Decision dated January 26, 2006 in LBAA Case No. 001-05, and **RULING instead** that: (i) the Project properties are exempt from RPT in accordance with Section 234(c) of the LGC; (ii) the subterranean transbasin tunnel covered by the 2002-2005 Notice of Assessment is not subject to RPT, CE Casecnan is entitled to allowance for depreciation on the machinery and equipment covered by the 2002-2005 Notice of Assessment; and (iv) assuming the Project properties are not exempt from RPT, CE Casecnan is entitled to a ten percent (10%) assessment level on the remaining properties covered by the 2002-2005 Notice of Assessment that are not otherwise exempt from RPT;
>
> '[b] in CBAA Case No. L-73, ANNULING and SETTING ASIDE the LBAA of Nueva Ecija's Decision dated October 8, 2006 in LBAA Case No. 001-06, and instead ORDERING respondent-appellee Provincial Treasurer of Nueva Ecija to REFUND the RPT for the year 2006 in the amount of PhP43,631,028.64 paid by CE Casecnan under protest; and
>
> '[c] in CBAA Case No. L-58, ANNULLING and SETTING ASIDE the LBAA of Nueva Ecija's Decision dated February 9, 2007 in LBAA Case No. 001-06-A and instead ORDERING respondent-appellee Provincial Treasurer of Nueva Ecija to REFUND the RPT for the years 2002-2005 in the amount of PhP248,676,349.60 paid by CE Casecnan under protest."

On December 6, 2013, the CBAA promulgated the assailed Decision,[4] rendering the following rulings:

1. CE Casecnan's right to due process was not violated in Local Board of Assessment Appeals (LBAA) Case No. 001-05;
2. The LBAA did not err in holding that the questioned assessments are valid even in the absence of a Schedule of Fair Market Values;
3. The machinery and equipment covered by the questioned assessments are subject to real property tax;
4. CE Casecnan is directly liable for the real property tax due on said machinery and equipment;
5. While it actually, directly and exclusively uses the lands, buildings and other improvements thereton, CE Casecnan is not entitled to have these properties classified as Special Classes of Real Property for the reason that it is a private entity, not a water district nor a government-owned or controlled corporation;
6. The tax assessment on the subterranean transbasin tunnel, being considered as "machinery" under Section 199(o) of the Local Government Code (LGC), is valid;
7. As provided by Section 225 of the LGC, a depreciation allowance should be made for the subject machinery and equipment for every year of use starting the year 2002. However, such allowances shall be computed, reflected and recognized only in assessment(s) subsequent to that (assessment) effective the year 2002;
8. CE Casecnan's argument that Respondents-Appellees are authorized to collect real property taxes notwithstanding the pendency of CBAA Case No. L-68 is bereft of merit pursuant to Section 231 of the LGC; and
9. The treasurer is not required by law to hold in trust the protested payment indefinitely.

On January 14, 2014, the Province of Nueva Ecija, Appellee, and The Province of Nueva Ecija, The Provincial Governor, Provincial Assessor, Provincial Treasurer, and Asst. Provincial Treasurer of the Province of Nueva Ecija, as Respondents-Appellees, filed their *Appellees' Partial Motion for Reconsideration*,[5] praying that the dispositive portion of the said Decision additionally state that: (a) the allowance for depreciation shall be at a rate between one percent (1%) and five percent (5%) as determined by the Provincial Assessor;

---

[4] EB Docket (CTA EB No. 1380) – Vol. I, pp. 47 to 90; EB Docket (CTA EB No. 1420), pp. 27 to 70; and CBAA Records (Folder 5), pp. 573 to 616.
[5] CBAA Records (Folder 6), pp. 617 to 620.

M

and (b) the allowance for depreciation be made after inspection by the Provincial Assessor of the subject machinery and equipment.

For its part, CE Casecnan filed its *Motion for Partial Reconsideration of the Decision dated December 5, 2013,*[6] praying for the reconsideration and setting aside of the said CBAA Decision, and render judgment as follows:

1. In CBAA Case No. L-68, annulling and setting aside the LBAA of Nueva Ecija's Decision dated January 26, 2006 in LBAA Case No. 001-05, and ruling instead that: (i) the machinery and equipment subject of this case are exempt from real property taxes in accordance with Section 234(c) of the LGC; (ii) the subterranean transbasin tunnel covered by Respondents-Appellees' assessment is not subject to real property taxes; and (iii) assuming the machinery and equipment subject of this case are not exempt from real property taxes, CE Casecnan is entitled to a ten percent (10%) assessment level on the remaining properties covered by Respondents-Appellees assessment that not otherwise exempt from real property taxes;
2. In CBAA Case No. L-73, annulling and setting aside the LBAA of Nueva Ecija's Decision dated October 8, 2006 in LBAA Case No. 001-06, and instead ordering the Provincial Treasurer to refund the real property taxes for the year 2006 in the amount of PhP43,631,028.64 paid by CE Casecnan under protest; and
3. In CBAA Case No. L-78, annulling and setting aside the LBAA of Nueva Ecija's Decision dated February 9, 2007 in LBAA Case No. 001-06-A and instead ordering the Provincial Treasurer to refund the real property taxes for the years 2002-2005 in the amount of PhP248,676,349.60 paid by CE Casecnan under protest.

The NIA likewise filed its *Motion for Reconsideration* on February 5, 2014,[7] praying for the reversal and/or setting aside of the assailed Decision insofar as it dismissed CE Casecnan's appeals in the said cases.

In the assailed Resolution dated August 21, 2015,[8] the CBAA partially reversed its decision and ruled that CE Casecnan was

---

[6] CBAA Records (Folder 6), pp. 621 to 645.
[7] CBAA Records (Folder 6), pp. 656 to 664.
[8] EB Docket (CTA EB No. 1380) – Vol. I, pp. 91 to 131; EB Docket (CTA EB No. 1420), pp. 73 to 113; and CBAA Records (Folder 6), pp. 691 to 731.

denied due process considering that there was no valid ordinance revising the Schedule of Market Values (SMV) for the years 2003 to 2005, and consequently, declared that the assessment, appraisal and collection of the Province against CE Casecnan's properties had no legal basis. The CBAA, however, maintained its decision that the subject properties are not exempt from the real property tax.

On November 6, 2015, CE Casecnan filed its *Petition for Review* with the Court *En Banc*.[9] The case was docketed as CTA EB No. 1380.

Upon the other hand, on November 9, 2015, the Province of Nueva Ecija, the Provincial Treasurer, and the Provincial Assessor (the Province, *et al.*) filed their *Petition for Review* with the Court *En Banc*.[10] This case was docketed as CTA EB No. 1420.

Subsequently, per its Resolution dated December 15, 2015 in CTA EB No. 1380,[11] the Court *En Banc* ordered the CBAA to elevate the complete records of the consolidated cases docketed as CBAA Case Nos. L-68, L-73 and L-78 (LBAA Case Nos. 001-05, 001-06 and 001-06-A) within a period of ten (10) days from receipt of the said Resolution. In compliance with the Court *En Banc*'s order, the CBAA forwarded the said records on January 25, 2016.[12]

The Court *En Banc* then ordered the Province, *et al.*, via the Resolution dated February 4, 2016 in CTA Case No. 1380, to file their respective comments within ten (10) days from receipt of the said Resolution.[13]

On February 11, 2016, the Court *En Banc* ordered the consolidation of CTA EB No. 1380 and CTA EB No. 1420.[14]

In CTA EB No. 1380, on February 24, 2016, NIA filed a *Motion for Extension of Time To File Comment* on February 24, 2016,[15] which the Court *En Banc* granted, subject to the condition that the

---

[9] EB Docket (CTA EB No. 1380) – Vol. I, pp. 1 to 27.
[10] EB Docket (CTA EB No. 1420), pp. 3 to 22.
[11] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1144 to 1145.
[12] Refer to the CBAA's letter dated January 22, 2015, EB Docket (CTA EB No. 1380) – Vol. III, pp. 1146 to 1147.
[13] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1151 to 1152.
[14] Minute Resolution dated February 11, 2016, EB Docket (CTA EB No. 1380) – Vol. III, p. 1153.
[15] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1154 to 1157.

said motion was filed on time.[16] NIA filed its *Comment* dated February 29, 2016 in CTA EB No. 1380, on March 11, 2016.[17]

On March 8, 2016, the respondents (*i.e.*, the Province, *et al.*) in CTA EB No. 1380 filed a *Motion to Admit the Attached Comment*, praying for the admission by the Court *En Banc* of their *Comment (To CE Casecnan's Petition for Review)*.[18] The said *Motion* was granted and thus, the said *Comment* was admitted.[19]

In the Resolution dated April 28, 2016,[20] CE Casecnan and the necessary parties were ordered by the Court *En Banc* to file their respective comment to the *Petition for Review* filed by the Province, *et al.* in CTA EB No. 1420.

Thereafter, NIA filed a *Motion for Extension of Time to File Comment* on May 16, 2016, praying that it be granted an additional time of fifteen (15) days from May 16, 2016 or until May 31, 2016, within which to file the required *Comment*.[21] And on May 19, 2016, CE Casecnan likewise filed a *Motion for Time*,[22] praying for an additional period of ten (10) days from May 23, 2016 or until June 2, 2016, within which to file its comment. Both *Motions* were granted by the Court *En Banc*, but qualified the extension of time as *"final and non-extendible"* periods.[23]

On May 31, 2016, NIA filed a *Manifestation and Motion (In Lieu of Comment to Province of Nueva Ecija's 9 November 2015 Petition for Review)*,[24] stating that it totally adopts and repleads its allegations, arguments and defenses in its February 29, 2016 *Comment* in CTA EB No. 1380, as its *Comment* in CTA EB No. 1420, it being based on facts, the law and applicable jurisprudence on the matter.

For its part, CE Casecnan filed another *Motion for Time* on

[16] Minute Resolution dated March 1, 2016, EB Docket (CTA EB No. 1380) – Vol. III, p. 1158.
[17] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1173 to 1177.
[18] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1159 to 1171.
[19] Resolution dated April 28, 2016, EB Docket (CTA EB No. 1380) – Vol. III, pp. 1179 to 1182.
[20] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1179 to 1182.
[21] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1183 to 1187.
[22] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1189 to 1192.
[23] Minute Resolution dated May 27, 2016, EB Docket (CTA EB No. 1380) – Vol. III, p. 1195.
[24] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1196 to 1199.

June 2, 2016,[25] praying for an additional period of five (5) days from June 2, 2016 or until June 7, 2016, within which to file required *Comment*. On June 8, 2016, CE Casecnan filed *Motion to Admit attached* Comment *(on the Province of Nueva Ecija, et al.'s* Petition for Review *dated November 9, 2015) dated June 6, 2016*,[26] praying for the admission of its *Comment* dated June 6, 2016.

In the Resolution dated July 1, 2016, the Court *En Banc* made the following resolutions, to wit;

1. Took note of NIA's *Manifestation and Motion*;
2. Granted CE Casecnan's *Motion for Time* and *Motion to Admit attached* Comment; and
3. Admitted CE Casecnan's *Comment*.

In the same Resolution, the parties were ordered to submit their respective *Memorandum*, within thirty (30) days from receipt thereof.

On August 17, 2016, CE Casecnan filed its *Memorandum*;[27] while on August 25, 2016, NIA filed its *Memorandum*.[28] And in the case of the Province, *et al.*, they filed their *Memorandum* on August 26, 2016.[29] The Department of Finance, however, did not file its *Memorandum*.[30]

On October 21, 2016, the consolidated cases were deemed submitted for decision.[31]

Hence, this Decision.

ASSIGNMENT OF ERRORS and THE ISSUES

CE Casecnan assigns the following errors supposedly committed by the CBAA, to wit:

"I.

---

[25] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1205 to 1208.
[26] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1330 to 1351.
[27] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1451 to 1490.
[28] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1502 to 1525.
[29] EB Docket (CTA EB No. 1380) – Vol. III, pp. 1528 to 1558.
[30] Records Verification dated September 16, 2016 issued by the Judicial Records Division of this Court, EB Docket (CTA EB No. 1380) – Vol. III, p. 1560.
[31] Resolution dated October 21, 2016, 2016, EB Docket (CTA EB No. 1380) – Vol. III, pp. 1566 to 1567.

The CBAA erred in ruling that the properties, machinery, and equipment subject of the Consolidated Appeals are not exempt from RPT.

II.

The CBAA erred in ruling that CE Casecnan is liable for RPT.

III.

As regards its ruling that there was no valid ordinance revising the SMV in the Province for the taxable years subject of this case (*i.e.*, 2002 to 2006), the CBAA erred when it referred to the years 2003 to 2005 only in the dispositive portion of the Assailed Resolution.

IV.

The CBAA erred in failing to direct the Provincial Treasurer to return to CE Casecnan the RPT allegedly due for the years 2002 to 2005 in the amount of PhP248,676,349.60, and the RPT allegedly due for the year 2006 in the amount of PhP43,631,028.64, which CE Casecnan paid under protest."[32]

On the other hand, the Province, *et al.* assert that the CBAA erred in reversing itself by ordering that:

"a. '....sa aktwal na pagtuos, pagtasa at pagkolekta ng buwis sa mga kaukulang ari-arian ng CE Casecnan, ang dapat ipatupad ay ang mga alituntunin tungkol sa espesyal na uri ('SPECIAL CLASSES') ayon sa R.A. 7160 Sec. 216 at 218 (Suggested interpretation: in the actual valuation, assessment and collection of the taxes due the properties of CE Casecnan, what ought to be followed are the requirements involving special classes of real property in accordance with Section 216 and 218 of the Local Government Code);

b. '...ang Desisyong may petsang Disyembre 5, 2013 ay BINABAGO (MODIFIED) kaugnay ng mga isyung tinatalakay sa Mosyon ng Petitioner-Respondent CE Casecnan sa isyu bilang I at II, VI at VII tungkol sa

[32] CE Casecnan's Memorandum, EB Docket (CTA EB No. 1380) – Vol. III, pp. 1451 to 1497, at 1464 to 1465.

---

kawalan ng 'Due Process of Law' o angkop na kaparaanan ng Batas' (Suggested interpretation: the Decision with date December 5, 2013 is MODIFIED in relation to the issues traversed in the motion, particularly issues I,II, VI, and VII, relating to the issue of lack of due process)

c. '...na ang pagtuos, pagtatasa at pagkolekta ng buwis sa mga kaukulang ari-arian ng CE Casecnan matapos at bukod sa mga taong 2003-2005 ay dapat isagawa ng may pagtupad sa mga alituntunin ng DOF-Department Order No. 1-04 (Oktubre 1, 2004) ukol sa Seksyon 212, 214 at 217 ng RA 7610 at sa 'Manual on Real Property Appraisal and Assessment Operations', na may kalakip ng Local Assessment Regulations NO. 1-2007 (05 Nobyembre 2007) na pinagmagatang 'Supplemental Regulations for Effective Implementation of Local Assessment Regulatios No. 1-04' (Suggested interpretation: The valuation, assessment and collection of the real property taxes due on the properties of CE Casecnan shall be based on the procedures promulgated under DOF- Department Order No. 1-04 (October 1, 2004) involving Section 212, 214 at 217 of RA 7610 and the 'Manual on Real Property Appraisal and Assessment Operations', with the attached Local Assessment Regulations NO. 1-2007 (05 November 2007) entitled 'Supplemental Regulations for Effective Implementation of Local Assess ment Regulations No. 1-04".[33]

For its part, NIA raises the following issues:

"A. WHETHER CE CASECNAN'S PETITION SHOULD BE GIVEN DUE COURSE.

B. WHETHER RESPONDENTS-APPELLEES' PETITION SHOULD BE GIVEN DUE COURSE."[34]

However, a careful perusal of the consolidated appeals leads the Court *En Banc* to resolve the following necessary issues in disposing of the instant consolidated cases, to wit:

---

[33] Memorandum of the Province of Nueva Ecija, the Provincial Treasurer and the Provincial Assessor, EB Docket (CTA EB No. 1380) – Vol. III, pp. 1528 to 1558, at .

[34] NIA's Memorandum, EB Docket (CTA EB No. 1380) – Vol. III, pp. 1502 to 1525, at 1513.

1. Whether the NIA is the actual, direct and exclusive user of the subject machineries;
2. Whether the CBAA erred in ruling that the subject machineries and equipment are not classified as a special class that is subject to the 10% assessment level under Section 216 of the LGC; and
3. Whether CE Casecnan was deprived of due process in the proceedings before the LBAA in Case No. 001-05, and that the assessment of real property tax (RPT) should be based on a Schedule of Fair Market Values.

CE Casecnan's arguments:

CE Casecnan argues that since the properties, machinery, and equipment subject of this case are actually, directly, and exclusively used by NIA, a government-owned and controlled corporation, as established by the evidence presented in this case and by NIA's own admissions, the said properties are exempt from RPT, pursuant to Section 234 of the LGC.

Moreover, according to CE Casecnan, based on the body of the assailed Resolution, wherein the CBAA discussed that there was no valid ordinance revising the SMV in the Province, it is clear that the CBAA referred to all the taxable years subject of the Consolidated Appeals (*i.e.*, 2002 to 2006, inclusive); and thus, there was a mistake in the dispositive portion in the assailed Resolution where the CBAA referred to the years 2003 to 2005 only as regards its ruling that there was no valid ordinance revising the SMV of the Province.

CE Casecnan further contends that since there was no valid ordinance revising the SMV for the years 2002 to 2006, then there was no legal basis for the Province to assess and impose RPT on the properties, machinery and equipment subject of this case; that it necessarily follows that CE Casecnan had no obligation to pay the RPT allegedly due for the years 2002 to 2005 in the amount of ₱248,676,349.60 and the RPT allegedly due for the year 2006 in the amount of ₱43,631,028.64, which CE Casecnan paid under protest; and that, accordingly, CE Casecnan should have been refunded the RPT that it paid under protest for the said years. Moreover, CE Casecnan is of the view that the CBAA should have applied Executive Order (EO) No. 173, found that CE Casecnan had overpaid the Province, *et al.* and ordered a refund.

Furthermore, CE Casecnan avers that the CBAA was correct in ruling that it was denied due process. According to CE Casecnan, the conduct of evidentiary hearings by the LBAA on any appeal lodged before it is not a mere "technical rule" that may be brushed aside summarily or ignored dismissively; the conduct of a hearing is a statutory requirement under the LGC and the LBAA is mandated to render its decision on an appeal only after the conduct of such hearing; and the hearings are necessary in order for the parties to present evidence, which the LBAA would need in order to support its decision on the appeal.

Finally, CE Casecnan argues that the CBAA was correct in declaring that the assessment, appraisal, and collection efforts of the Province had no legal basis because of the absence of a valid ordinance promulgating a valid SMV; and that assuming, solely for the sake of argument, that the properties, machinery, and equipment subject of this case are not exempt from RPT, then the CBAA was correct in ruling that the said properties should be classified as Special Classes under Sections 216 and 218 of the LGC.

The arguments of the Province, et al.:

The Province, et al. argues that the CBAA did not err in ruling that CE Casecnan's property, equipment and machinery are not exempt from RPT; that it follows that the CBAA did not err in holding that CE Casecnan liable for the payment of the RPT; and that the CBAA did not err in not ordering a refund.

Moreover, according to the Province, *et al.*, CE Casecnan's properties cannot be classified under Special Classes as defined under Section 214 of the LGC because it is not a government-owned or controlled corporation; and since the properties are not tax exempt, said Section 214 shall not apply as the basis for the imposition of the 15% assessment level, as exemplified in the case of *NPC vs. CBAA, et al.*, January 30, 2009, G.R. No. 171470.

Furthermore, the Province, *et al.* points out that any infirmity committed before the LBAA, such as the alleged lack of hearing were cured by the hearings held before the CBAA, hence, CE Casecnan was not denied of due process.

In any event, the Province, *et al.* stresses that the CBAA grievously erred in reversing itself when it ruled that the assessed properties of CE Casecnan must be based on any schedule of fair market values because these are newly discovered and are technologically advanced and state of the art, hence, there are no existing properties, equipment and machineries in the Nueva Ecija which are similar thereto from which their values can be based as required by law; and that the law requires that the values of CE Casecnan's properties, machineries and equipment shall be based on the acquisition cost and the person in the best position to know their acquisition cost is CE Casecnan's former President who issued an affidavit to that effect.

NIA's arguments:

As a necessary party, NIA prays to give due course to CE Casecnan's *Petition for Review*; while praying that *Petition for Review* of the Province, *et al.*, be denied for lack of merit.

NIA points out that it is the beneficial owner and in actual use of the subject real properties purposely "for the supply and distribution of water and/or generation and transmission of electric power"; hence, these properties must be considered exempt from RPT. According to NIA, however, the remaining properties or those not excluded or exempt, should nonetheless be considered as Special Classes of real property subject only to the assessment level of 10% as provided under Section 216 of the 1991 LGC.

Furthermore, NIA stresses that there is lack of fundamental legal basis for the questioned RPT assessments on CE Casecnan because of the apparent absence of an appropriate tax ordinance for the purpose, one which Nueva Ecija must first pass, pursuant to the pertinent provisions of Sections 187, 188, 212, 218 and 235 of the 1991 LGC; that where no valid and legal tax ordinance exists to support the tax assessments, the Nueva Ecija government cannot validly impose the RPT on CE Casecnan; and that absent such liability of CE Casecnan, NIA's own independent contractual obligation with the latter would not rise in the *interim*, and the Government, through NIA, should not be unduly prejudiced.

Moreover, NIA avers that CE Casecnan's beneficial use of the project is more apparent than real, having been conferred merely to allow it to recoup its investment, in financing the Project; and that actual, direct, and exclusive use of the property belongs to NIA, or in reality, the Government of the Republic of the Philippines, by virtue of the Amended and Restated Project Agreement that NIA and CE

Casecnan executed. NIA then claims it is indubitable that the real owner of the subject properties is the Republic of the Philippines and NIA is merely the instrumentality to operate the Project; and therefore, this makes the subject properties tax exempt.

NIA further argues that since NIA, being the beneficial owner and actual user of the subject real properties, then the special ten percent (10%) rate must consequently be applied to the properties that are not already excluded or exempt from taxation.

Lastly, NIA contends that assuming that all properties within the Project properties are to be taxed, the Provincial Assessor's assessments are incorrect because the fair market value of the properties are substantially padded, resulting in their grossly erroneous valuation.

THE COURT *EN BANC*'S RULING

The *Petition for Review* filed by the Province, *et al.* in CTA EB No. 1420 must be denied; while the *Petition for Review* filed by CE Casecnan in CTA EB No. 1380 must be partially granted.

The subject real properties are <u>not</u> actually, directly and exclusively used by NIA.

In its *Petition for Review*, CE Casecnan insists that NIA is the owner and the actual, direct and exclusive user of the subject real properties.

We do not agree.

Section 234(c) of the LGC of 1991 provides as follows:

> "SEC. 234. *Exemption from Real Property Tax.* — The following are exempted from payment of the real property tax:
>
> xxx xxx xxx
>
> (c) **All machineries and equipment that are actually, directly and exclusively used by** local water districts and **government-owned or -controlled**

> **corporations engaged in the supply and distribution** of water and/or generation **and transmission of electric power**;" *(Emphases supplied)*

Thus, to successfully claim exemption under the above-quoted provision, the claimant must prove two (2) 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, *i.e.*, NIA, must be the entity actually, directly, exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power.[35] In other words, the test of exemption is the use, not the ownership of the machineries and equipment devoted to generation and transmission of electric power.[36] Thus, the ownership of the said machineries and equipment, whether "beneficial" or otherwise, is immaterial in resolving the imposition of the RPT thereon.

CE Casecnan was not able to convincingly establish that the subject machineries and equipment are being used actually, directly, and exclusively, by NIA.

By CE Casecnan's own discussion found in its *Petition for Review* (CTA EB No. 1380), We can easily surmise that NIA is **<u>not</u>** actually, directly, and exclusively using the subject machineries and equipment, to wit:

> "50. NIA's use is ***actual*** because although the properties, machinery, and equipment are being operated by CE Casecnan, NIA avails itself, and enjoys the benefit of the properties, machinery, and equipment since they are the means by which water and electricity are delivered to NIA. The use is also ***direct*** because the properties, machinery, and equipment are directly or

[35] Refer to *National Power Corporation vs. Province of Quezon, et al.*, G.R. No. 171586, July 15, 2009.
[36] Supra.

> proximately employed for the delivery of water and electricity to NIA. Finally, the use is ***exclusive*** because the properties, machinery, and equipment are used primarily for the purpose of supplying water and generating electricity."[37]

A cursory reading thereof would reveal that NIA's availment and enjoyment of the benefits of the subject properties would come only after the delivery of the water and electricity to NIA. Thus, this simply means that NIA is not the possessor of the subject properties.

Section 199(b) of the LGC of 1991 defines what "actual use" means, to wit:

> "SEC. 199. *Definitions.* — When used in this Title:
>
> xxx xxx xxx
>
> (b) **'Actual Use' refers to the purpose for which the property is principally or predominantly utilized <u>by the person in possession thereof</u>**;" *(Emphasis and underscoring supplied)*

"(S)ince they are the means by which water and electricity are delivered to NIA", the properties, machinery, and equipment cannot be said to be in NIA's possession or in its "actual use". For if they were in NIA's possession, no delivery of the water and electricity to NIA by CE Casecnan would be necessary. Moreover, as a corollary, CE Casecnan could not have "operated" the said properties, machinery, and equipment, before delivery of the water and electricity to NIA, unless they are in CE Casecnan's possession.

In the same vein, before delivery of the water and electricity to NIA, the latter could not have *"directly"* used the subject properties, machinery, and equipment, since CE Casecnan is the entity "operating" the same. Parenthetically, the word *"directly"* has been interpreted to mean *"without anything intervening"* or *"proximately or without intervening agency or person"*.[38]

Furthermore, while it may be true that the subject properties, machinery, and equipment are exclusively used *"for the purpose of*

---

[37] EB Docket (CTA EB No. 1380) – Vol. I, p. 17; Refer also to Par. 38, CE Casecnan's *Memorandum*, EB Docket (CTA EB No. 1380) – Vol. III, p. 1467.
[38] *La Carlota Sugar Central, et al. vs. Jimenez, et al.*, G.R. No. L-12436, May 31, 1961.

supplying water and generating electricity", such exclusive use does not pertain to NIA, but CE Casecnan, since the latter is the operator of the said properties, machinery and equipment. The term "exclusive" in its usual and generally accepted sense, means possessed to the exclusion of others; appertaining to the subject alone, not including, admitting or pertaining to another or others, undivided, sole.[39] CE Casecnan cannot operate the said properties, machineries and equipment, if it is not in possession thereof, to the exclusion of others, including NIA.

Thus, without doubt, CE Casecnan is the entity in actual, direct and exclusive use of the subject real properties, and thus, is not exempt from the imposition of the RPT by the Province of Nueva Ecija.

Apropos, in *National Power Corporation vs. Province of Quezon, et al.*,[40] the Supreme Court said:

> "The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property. **In either case, the unpaid realty tax attaches to the property but 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.**"

Correspondingly, We affirm the CBAA's finding that the subject machineries and equipment are not actually, directly and exclusively used by NIA and thus not exempt from RPT.

The subject real properties cannot fall under the classification of "Special Classes" of real property under

---

[39] *The City Mayor, et al. vs. The Chief, Philippine Constabulary, et al.*, G.R. No. L-20346, October 31, 1967.
[40] G.R. No. 171586, July 15, 2009.

the law.

CE Casecnan argues that even if the subject properties are not exempt from real property taxation, they should at least be treated as falling under the "Special Classes of Real Property" as defined by Section 216 of the LGC, and thus become subject only to the ten percent (10%) assessment level under Section 218(d).

The argument of CE Casecnan is untenable.

The said sections provide as follows:

> "SEC. 216. *Special Classes of Real Property.* - **All lands, buildings, and other improvements thereon** actually, directly and exclusively used for hospitals, cultural, or scientific purposes, **and those owned and used by** local water districts, and **government-owned or controlled corporations rendering essential public services in the** supply and distribution of water and/ or **generation and transmission of electric power shall be classified as special.**" *(Emphases supplied)*
>
> "SEC. 218. *Assessment Levels.* -The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:
>
> xxx xxx xxx
>
> (d) On Special Classes: The assessment levels for all lands buildings, machineries and other improvements:

Actual Use	Assessment Levels
Cultural	15%
Scientific	15%
Hospital	15%
Local water districts	10%
Government-owned or controlled corporations engaged in the supply and distribution of water and/or	

> **generation and transmission of electric power** **10%**"
> *(Emphases supplied)*

To qualify for the 10% assessment level under Section 218(d), the properties must first qualify as part of the "Special Classes" under Section 216. For the real properties of NIA, as a government-owned or controlled corporation engaged in the supply, distribution and transmission of electric power, to qualify for the special classification, the properties must be "owned and used" by NIA.

As already discussed earlier, We already found that it is CE Casecnan, not NIA, that is the actual user of the subject properties. This alone renders it impossible for NIA to meet the paired standard of ownership and use laid down by the said Section 216.

Moreover, it is clear that CE Casecnan is the owner of the subject real properties, pursuant to Clause 2.11 of Article 2 of the *Amended and Restated Casecnan Project Agreement*, to wit:

> "2.11 OWNERSHIP OF PROJECT. From the date of this Agreement until the Transfer Date[41], the Operator[42] shall own **the Project[43] and all structures, fixtures, fittings, machinery, and equipment on the Site or used in connection with the Project that have been supplied by it or at its cost.**" *(Emphasis supplied)*

Since NIA is neither the owner nor the user of the subject properties at the time of their assessment, the Provincial Assessor of Nueva Ecija cannot be compelled to include the subject properties in the "*Special Classes*" under Section 216 of the LGC, in order to qualify for the 10% assessment level under Section 218(d) of the

---

[41] Under the Clause 1.1 of Article 1 of the *Amended and Restated Casecnan Project Agreement*, the "TRANSFER DATE" means the date following the last day of the Cooperation Period or such other date on which this Agreement terminates pursuant to its terms.

[42] Referring to CE Casecnan.

[43] Under the Clause 1.1 of Article 1 of the *Amended and Restated Casecnan Project Agreement*, the "PROJECT" means the total facilities comprising, but not limited to, the diversion structures, the tunnel, the tailrace and the power plant housing the Operator's total generating equipment, including all appurtenant facilities, turbines, generators, step-up transformers, switching facilities, switchyard, surgetank and valve chamber, together with housing facilities for the operating and maintenance personnel and all protective, communication, and other associated equipment and improvements necessary to produce electrical energy and to divert water from the Casecnan Watershed to the Pantabangan Reservoir.

same law.

CE Casecnan's right to due process was not violated.

CE Casecnan avers that the CBAA was correct in ruling that it was denied due process.

We disagree.

The case of *Equitable PCI Banking Corporation, et al. vs. RCBC Capital Corporation*[44] elucidates on the due process requirements of administrative proceedings. Said the Supreme Court:

> "**The well-settled rule is that administrative agencies exercising quasi-judicial powers shall not be fettered by the rigid technicalities of procedure, albeit they are, at all times required, to adhere to the basic concepts of fair play.** The Court wrote in *CMP Federal Security Agency, Inc. v. NLRC*:
>
> > While administrative tribunals exercising quasi-judicial powers, like the NLRC and Labor Arbiters, are free from the rigidity of certain procedural requirements, they are nonetheless bound by law and practice to observe the fundamental and essential requirements of due process. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. **Hence, it is not legally objectionable, for being violative of due process, for the Labor Arbiter to resolve a case based solely on the position papers, affidavits or documentary evidence submitted by the parties. The affidavits of witnesses in such case may take the place of their direct testimony.**
>
> Of the same tenor is our holding in *Quiambao v. Court of Appeals*:

---

[44] G.R. No. 182248, December 18, 2008.

> **In resolving administrative cases, conduct of full-blown trial is not indispensable to dispense justice to the parties.** The requirement of notice and hearing does not connote full adversarial proceedings. Submission of position papers may be sufficient for as long as the parties thereto are given the opportunity to be heard. **In administrative proceedings, the essence of due process is simply an opportunity to be heard, or an opportunity to be heard, or an opportunity to explain one's side or opportunity to seek a reconsideration of the action or ruling complained of. This constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of an action or a ruling.** It does not require trial-type proceedings similar to those in the courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process."
> *(Emphases supplied)*

Records disclose that the LBAA considered the arguments raised by CE Casescan vis-à-vis the *Answer to the Appeal* filed by the Province *et al.* before it rendered its Decision in LBAA Case No. 001-05. Clearly, both parties were given an opportunity to air their respective side.

Moreover, it cannot be denied that CE Casecnan was able to interpose further appeal to the CBAA from the Decision of the LBAA, which necessarily cured whatever infirmity there may have been, if any, in the administrative proceedings before the LBAA. In *Vivo vs. Philippine Amusement and Gaming Corporation*,[45] the High Court held:

> "The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or

---

[45] G.R No. 187854, November 12, 2013.

> an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied. Ledesma v. Court of Appeals elaborates on the well-established meaning of due process in administrative proceedings in this wise:
>
> > x x x Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.
>
> xxx xxx xxx
>
> **In any event, any procedural defect in the proceedings taken against the petitioner was cured by his filing of the motion for reconsideration and by his appealing the adverse result to the CSC.** The Court held in *Gonzales v. Civil Service Commission* that any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard. In Autencio v. Mañara the Court observed that defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of." *(Emphasis supplied)*

Thus, We are convinced that there was no violation of due process in this case.

EO No. 173 (Series of 2014) ought to be considered in resolving the instant consolidated cases.

CE Casecnan likewise points out that the CBAA should have applied EO No. 173 dated October 31, 2014 (Series of 2014), found that CE Casecnan had overpaid the Province, *et al.* and ordered a refund.

We partly agree.

The said EO No. 173 (Series of 2014) was promulgated, *inter alia*, pursuant to Section 277 of the LGC of 1991,[46] which provides as follows:

> "SEC. 277. *Condonation or Reduction of Tax by the President of the Philippines.* — **The President of the Philippines may, when public interest so requires, condone or reduce the real property tax and interest for any year in any province** or city or a municipality within the Metropolitan Manila Area." *(Emphasis supplied)*

The said EO reduces the RPT tax liability of Independent Power Producers (IPPs), such as CE Casecnan, to an amount equivalent to the tax due if computed based on an assessment level of fifteen (15%) of the fair market value of said property, machinery and equipment depreciated at the rate of two percent (2%) per annum, less any amounts already paid by the IPPs for all years up to 2014. It also condones all fines, penalties and interests on such deficiency RPT liabilities and relieves IPPs from the payment thereof. Sections 1 and 2 of the EO No. 173 (Series of 2014) provides:

> "SECTION 1. *Reduction and Condonation.* **All liabilities for real property tax on property, machinery and equipment (including any special levies accruing to the Special Education Fund) actually and directly used by IPPs for the production of electricity under <u>Build-Operate-Transfer contracts</u>** (whether denominated Power Purchse Agreements, Energy Conversion Agreements or other contractual agreements) **with GOCCs, assessed by LGUs and other entities**

[46] Refer to the Whereas clauses of EO No. 173 (Series of 2014).

> **authorized to impose real property tax, for all years up to 2014, are hereby reduced to an amount equivalent to the tax due if computed based on an assessment level of fifteen percent (15%) of the fair market value of said property, machinery and equipment depreciated at the rate of two percent (2%) per annum, less any amounts already paid by the IPPs. All fines, penalties and interests on such deficiency real property tax liabilities are also hereby condoned and the concerned IPPs are relieved from payment thereof.**
>
> SECTION 2. *Compliance by All Government Entities.* All concerned departments, agencies and instrumentalities of the government, including GOCCs and **LGUs, are hereby ordered to strictly comply with this Executive Order.**" *(Emphases and underscoring supplied)*

Unless and until EO No. 173 (Series of 2014) is invalidated or declared void, it remains effective and its provisions must be enforced, particularly with respect to the present case involving RPT assessments for the years 2002 to 2006.

In fine, EO No. 173 must be considered in resolving the proper amount to be collected in the instant consolidated cases, and to determine whether CE Casecnan is entitled to a refund on the basis of the said EO. Correspondingly, a remand of the said cases is called for.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* filed by CE Casecnan in CTA EB No. 1380 is **PARTIALLY GRANTED**; Accordingly, CTA EB No. 1380 is **REMANDED** to the Office of the Provincial Assessor of Nueva Ecija for the proper determination of CE Casecnan's RPT liability considering EO No. 173.

The *Petition for Review* filed by the Province of Nueva Ecija, the Provincial Treasurer and the Provincial Assessor in CTA EB No. 1420 is also **PARTIALLY GRANTED**. Accordingly, the Resolution dated August 21, 2015 of the CBAA in so far as it states that the right to due process of CE Casecnan was violated is **REVERSED** and **SET ASIDE**.

MS

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(Inhibited)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were 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