REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NATIONAL POWER CORPORATION, Petitioner,	**C.T.A. AC NO. 126**
- versus -	Members: **CASTAÑEDA, JR.,** *Chairperson*, **CASANOVA,** and **COTANGCO-MANALASTAS,** *JJ.*
THE PROVINCIAL GOVERNMENT OF COMPOSTELA VALLEY and CARMEN R. RAZUL, in her capacity as PROVINCIAL TREASURER OF COMPOSTELA VALLEY, Respondents.	**Promulgated:** MAR 01 2016 11:25 a.m.

x - x

RESOLUTION

CASANOVA, *J.*:

This resolves petitioner's Motion for Reconsideration (Re: Decision dated November 25, 2015), filed on December 9, 2015, with respondents' Comment (To the Motion for Reconsideration) filed, thru registered mail, on February 1, 2016.

Petitioner, in its Motion, seeks reconsideration of this Court's Decision dated November 25, 2015 (the "Assailed Decision") and prays that the same be reconsidered and that (i) the assessment issued by respondents dated January 25, 2007 be nullified and set aside; and (ii) NPC be declared exempt from payment of franchise tax.

The decretal portion of the Assailed Decision reads as follows:

> "**WHEREFORE,** the Assailed Judgment dated January 29, 2010 of Branch 3, Regional Trial Court, Nabunturan, Compostela Valley in Miscellaneous Case No. 897 - (National Power Corporation vs. The Provincial Government of Compostela Valley, and Carmen Razul, in her capacity as Provincial Treasurer of Compostela Valley) is hereby **SET ASIDE** and the records of the case are hereby **REMANDED** to the court a quo for further proceedings in accordance with the pronouncements in this Decision.
>
> **SO ORDERED.**"

Petitioner argues that it is not liable to pay the assessed franchise tax as it is clearly exempt from payment thereof. Petitioner maintains, among others, that by virtue of the passage of the EPIRA Law (RA No. 9136) when its transmission of power function and all its generation assets as well as its nationwide franchise had been transferred to TRANSCO, it is no longer required to secure a franchise and, thus, cannot be burdened with the payment of franchise tax.

Petitioner further avers that even assuming that NPC performs its missionary electrification in the Province of Compostela Valley, still it is not liable for franchise tax since it is not engaged in business for profit; that petitioner's Small Power Utilities Group (SPUG) has not been established for the purpose of deriving profit therefrom but for the purpose of undertaking missionary electrification as provided for under Section 70 of the EPIRA; that, a SPUG's gross receipts can be below the cost of producing electric supply for the area it covers within the missionary local government unit, hence, the cost shortage is covered from other sources; that, the imposition of franchise tax based on its gross receipts would not only defeat the benevolent purpose of missionary electrification but also seriously obstruct the SPUG from providing power generation and delivery to missionary areas/LGUs.

Respondents, on the other hand, counter-argue in their Motion that: (1) while petitioner invokes Sec. 1, Rule 5, Part II of the IRR of R.A. 9136 (EPIRA Law) as basis for its exemption from payment of franchise tax as it is no longer required to secure a National Franchise, however, it does not necessarily follow that petitioner is exempt from the payment of Local Franchise Tax to the LGU. Petitioner, by its own admission of facts in its Appeal filed with the RTC Branch 3, Nabunturan, Compostela Valley and, likewise, in its Protest dated February 13, 2007 addressed to the Provincial Treasurer of Compostela Valley, is in fact operating a power barge and generating as well as supplying electricity in the Province of Compostela Valley. As such, petitioner satisfies the two (2) requisites laid down by the Supreme Court in the NPC vs. Cabanatuan case; (2) they disagree with petitioner's argument that it is not liable for franchise tax since it is not engaged in business for profit; (3) that it is obvious from the records that petitioner is seeking declaratory relief as provided under Rule 63 of the Rules of Civil Procedure particularly whether or not it is exempted from the payment of Local Franchise Tax under the EPIRA Law and not through the mode of appeal from the denial of assessment as provided under the Local Government Code; and, finally, (4) respondents do not agree with the contention of petitioner that the imposition of Local Franchise Tax would greatly affect petitioner's financial standing considering that it had been paying the said Local Franchise Tax due to the Province of Compostela Valley, consistent with the provision of the law and prevailing jurisprudence.

After a careful and thorough evaluation of petitioner's arguments, We find petitioner's Motion for Reconsideration (Re: Decision dated November 25, 2015) unmeritorious.

Except for petitioner's argument on its non-liability for franchise tax even assuming that it performs its missionary electrification function, We find petitioner's other arguments as mere rehash of its arguments in its Memorandum dated April 23, 2015 which were all thoroughly discussed and disposed of in the Assailed Decision.

Petitioner contends that, even assuming that it performs its missionary electrification under the Small Power Utilities Group (SPUG), it derives no profit therefrom as the SPUG was not established for the purpose of deriving profit therefrom but for the purpose of undertaking missionary electrification under Section 70 of the EPIRA Law. Petitioner further contends that a SPUG's gross receipts can be below the cost of producing electric supply for the area it covers within the missionary local government unit.

The fact of petitioner's allegation that it is not deriving any profit from performing its missionary electrification function, to Our mind, must be established and proven by clear and convincing evidence. Thus, this Court, in the Assailed Decision, remanded the case to the court a quo for further proceedings where these contentious matters can be fully ventilated.

WHEREFORE, premises considered, finding no reversible error in the Assailed Decision, petitioner's Motion for Reconsideration (Re: Decision dated November 25, 2015) is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice