REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NATIONAL POWER CORPORATION (NPC),
Petitioner,

-versus-

PHILIPPINE NATIONAL BANK (PNB) and MUNICIPALITY OF SUAL, PANGASINAN,
Respondents.

CTA AC NO. 101

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated: SEP 06 2013 1:00 p.m.

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

This is an appeal filed pursuant to Sections 7 and 11 of Republic Act No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals," as amended, to seek the reversal and setting aside of the Order dated February 18, 2011 and the Resolution dated October 30, 2012 both rendered by the Regional Trial Court (RTC) Branch 99 of Quezon City in Civil Case No. Q-11-68711 entitled "National Power Corporation (NPC) vs. Philippine National Bank (PNB) and Municipality of Sual, Pangasinan", dismissing the Petition filed by herein petitioner for injunction and temporary restraining order on the ground of forum shopping.

THE FACTS

Petitioner National Power Corporation (NPC) is a government-owned and -controlled corporation, with capacity to sue and be sued, created and existing under and by virtue of Republic Act No. 6395[1], as amended, with principal office at the NPC Building Complex, Quezon Avenue corner BIR Road, Diliman, Quezon City. It is represented herein by the Office of the Solicitor General (OSG), with office address at 134 Amorsolo St., Legaspi Village, Makati City. Petitioner is also the petitioner in Civil Case No. Q-11-68711 filed before RTC Branch 99 of Quezon City.

Respondent Philippine National Bank (hereinafter referred to as "respondent Bank") is a corporation created under Philippine laws with capacity to sue and be sued, and with principal office address at PNB Financial Center, President Diosdado Macapagal Boulevard, Pasay City. On the other hand, respondent Municipality of Sual, Pangasinan (hereinafter referred to as "respondent Municipality") is a local government unit existing and organized under Philippine laws, with address at Municipal Hall Compound, Sual, Pangasinan.[2] Both respondents are the respondents in Civil Case No. Q-11-68711.

The factual antecedents, based on and taken from petitioner's statement of facts in its Petition[3] and Petition for Review[4], are as follows:

> On September 27, 2010, petitioner received a Notice of Assessment dated September 23, 2010 from respondent Municipality demanding the payment of local business taxes for taxable year 2010 allegedly pursuant to the "decision of the Supreme Court in the case of *National Power Corporation vs. City of Cabanatuan* and other subsequent cases ruling that the National Power Corporation is liable for taxes imposed by the local government units" and the provisions of Sual Municipal Ordinance No. 121.

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[1] An act Revising the Charter of the National Power Corporation
[2] The Parties, Petition for Review, CTA Docket, p. 7
[3] Petition (With Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction), RTC Records, pp. 1-25
[4] CTA Docket, pp. 5-30

On December 2, 2010, respondent Municipality filed before RTC Branch 69 of Lingayen, Pangasinan a Complaint for Collection of Local Business Tax for taxable years 2006 to 2009 against petitioner, which case was docketed as Civil Case No. 19070.

Petitioner, on the other hand, initiated an appeal on December 29, 2010 pursuant to Section 195 of Republic Act No. 7160, otherwise known as the Local Government Code, against respondent Municipality before RTC Branch 38 of Lingayen, Pangasinan. Petitioner sought the court's declaration that petitioner NPC is not liable for business tax to respondent Municipality for taxable years 2006 to 2009. The said appeal was docketed as Civil Case No. 19076.

On January 3, 2011, petitioner received a Notice of Seizure or Confiscation dated December 28, 2010 from respondent Municipality of petitioner's personal properties to the extent of P48,703,713.14 as of December 2010, allegedly representing its unpaid local business tax and accrued monthly interest for taxable year 2010.

On January 27, 2011, petitioner received a letter dated January 7, 2011 from respondent Bank, informing it of the existence of a Warrant of Distraint dated December 28, 2010 issued by respondent Municipality in the amount of P48,703,713.14.

In reply, petitioner on January 28, 2011 sent a letter to respondent Bank reiterating that in Civil Case No. 19076, it was seeking the court's declaration that it is not liable for business tax to respondent Municipality.

On January 31, 2011, petitioner received another letter dated January 17, 2011 from respondent Bank informing petitioner that unless said Warrant of Distraint would be discharged, dissolved, lifted or its implementation and enforcement enjoined, respondent Bank shall be constrained to deliver the garnished funds to respondent Municipality.

On February 1, 2011, petitioner received a letter dated January 31, 2011 from respondent Bank, informing petitioner that its accounts in different branches had been put on hold and that respondent Bank would be constrained to deliver the following garnished funds to respondent Municipality, through Ms. Prescila L. Ramos, when the latter so requires, thus:

PNB BRANCH	ACCOUNT NO.	AMOUNT
NPC Branch	S/A# 279036600047	P 51,979.06
Romblon Branch	S/A# 356790100016	10,000.00
Butuan Branch	S/A# 2895950500019	59,591.13
Malaybalay Branch	S/A# 285109400014	3,605.73
Agusan Del Sur Branch	S/A# 324750100015	214,069.24
	TOTAL	**P339,245.16**

On February 9, 2011, petitioner filed before the RTC of Quezon City a Petition for Injunction with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[5] against herein respondents to restrain respondents from collecting the alleged business tax of petitioner for taxable year 2010. It was docketed as Civil Case No. Q-11-68711 and raffled to RTC Branch 99 of Quezon City.

On February 21, 2011, petitioner received an Order[6] dated February 18, 2011 from RTC Branch 99 of Quezon City, dismissing the case for lack of merit on grounds of doctrine of non-interference between courts of equal rank and forum shopping.

Petitioner then filed its Motion for Reconsideration (to the 18 February 2011 Order)[7] on March 3, 2011.

On April 8, 2011, the RTC Branch 99 of Quezon City issued an Order[8] directing petitioner to submit a copy of the dismissal order of the case filed by respondent Municipality before RTC Branch 69 of Lingayen, Pangasinan.

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[5] RTC Records, pp. 1-25
[6] RTC Records, pp. 53-54
[7] RTC Records, pp. 55-63
[8] RTC Records, p. 71

In compliance with the Order of RTC Branch 99 of Quezon City, petitioner filed on April 13, 2011 a Compliance/Manifestation[9] with attached copy of the Order[10] dated February 21, 2011 issued by the RTC of Lingayen, Pangasinan dismissing Civil Case No. 19070 filed by respondent Municipality on the ground that it is no longer interested to pursue the case against herein petitioner for collection of alleged business tax for taxable years 2006 to 2009.

On June 14, 2011, respondent Bank filed a Manifestation and Motion[11], praying that it be discharged from the case since there was no actionable wrong imputed or alleged against it in petitioner's Petition.

On October 30, 2012, the RTC Branch 99 of Quezon City issued a Resolution[12] denying petitioner's Motion for Reconsideration and respondent Bank's Manifestation and Motion.

Consequently, on January 7, 2013, petitioner filed with this Court a Petition for Review stating the following grounds:

> "I. The Honorable RTC erred in dismissing Civil Case No. Q-11-68711 based on the grounds of doctrine of non-interference between courts of equal rank and forum shopping.
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> II. There is no proof that a Municipal Ordinance has been validly passed by the respondent Municipality to impose business tax against petitioner.
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> III. Upon the effectivity of Republic Act No. 9136, otherwise known as *'Electric Power Industry Reform Act (EPIRA)'* in June 2001, petitioner no longer operates, conducts and/or maintains any business activity in the main grid located within the territorial jurisdiction of the respondent Municipality because these activities were already transferred to the PSALM.

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[9] RTC Records, pp. 72-84
[10] RTC Records, p. 129
[11] RTC Records, pp. 187-191
[12] RTC Records, pp. 195-197

IV. Assuming that there is a valid Municipal Ordinance and that petitioner has a business activity within the Municipality of Sual, Pangasinan, the task of generating electricity is not one of the businesses under the Local Government Code that is liable for business tax.

V. Petitioner is a government instrumentality that is exempt from payment of business tax.

VI. Assuming for the sake of argument that petitioner is liable for the payment of business tax to respondent Municipality, the total amount of P48,703,713.14 for calendar year 2010 has no factual basis.

VII. The issuance of the September 23, 2010 Notice of Assessment, Warrant of Distraint and other processes by the respondent Municipality is illegal and without any factual basis.

VIII. The implementation of the September 23, 2010 Notice of Assessment, Warrant of Distraint, and the conduct of further distraint, levy and/or proceedings to collect the alleged business tax for year 2010 by the respondents, any of their officers, representatives and agents will result in the deprivation of electric power in one or more of the provinces being presently served by petitioner."

This Court issued a Resolution[13] on January 8, 2013, stating that without necessarily giving due course to the Petition for Review, respondents are ordered to file their Comments, and not a Motion to Dismiss, within ten (10) days from notice.

Respondent Bank filed its Comment[14] on January 24, 2013, asserting that the issue in the instant case is the legality of a business tax imposed by a municipality on a government-owned or controlled corporation. And since there is no actionable wrong alleged or imputed against it, respondent Bank prays that the Petition

[13] CTA Docket, p. 183
[14] CTA Docket, pp. 184-188

be dismissed against it and that it be discharged from further participating in the proceedings.

On the other hand, respondent Municipality filed a Motion for Extension of Time to file Comment[15] on February 5, 2013 and received by this Court on February 20, 2013. In the February 25, 2013 Resolution[16], this Court granted said Motion and gave respondent Municipality an additional period of thirty (30) days or until March 4, 2013 within which to file its Comment.

On March 4, 2013, respondent Municipality, through the provincial legal officer, filed its Comment[17] stating that the instant Petition for Review emanates from the complaint filed by petitioner with the RTC Branch 99 of Quezon City, which was dismissed outright on the ground of forum shopping even without respondent Municipality's Answer. Respondent Municipality alleges that had it filed an Answer, it would have raised, in addition to forum shopping, that the subject Notice of Assessment for the year 2010 has become final and executory because petitioner failed to protest said Notice of Assessment. What petitioner protested and appealed to the RTC of Lingayen are the Notices of Assessment for the years 2006 to 2009 only. Respondent further blames petitioner for failing to exhaust all available administrative remedies under the Local Government Code.

On the April 10, 2013, this Court ordered the filing of the parties' memoranda within thirty (30) days upon receipt of notice. This Court likewise ordered the Branch Clerk of Court of RTC Branch 99 of Quezon City to elevate the entire original records of Civil Case No. Q-11-68711, entitled "National Power Corporation vs. Philippine National Bank (PNB) and Municipality of Sual, Pangasinan" pursuant to Section 5(b), Rule 6 of the Revised Rules of the Court of Tax Appeals, within ten (10) days from notice.[18]

On April 26, 2013, the RTC Branch 99 of Quezon City, through OIC-Branch Clerk of Court Violeta C. Bautista, transmitted the entire records of said case;[19] which this Court acknowledged receipt in its May 6, 2013 Resolution[20].

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[15] CTA Docket, pp. 190-191
[16] CTA Docket, p. 193
[17] CTA Docket, pp. 194-197
[18] CTA Docket, p. 200
[19] CTA Docket, pp. 201-202
[20] CTA Docket, p. 204

Petitioner submitted its Memorandum[21] on May 17, 2013; while respondent Bank submitted its Memorandum[22] on May 30, 2013. On the other hand, respondent Municipality filed a Manifestation on July 17, 2013, praying that the Comment to the Petition for Review it filed on March 13, 2013 be considered as its Memorandum; which this Court noted in its August 5, 2013 Resolution.

In the June 20, 2013 Resolution[23], this Court deemed the instant case submitted for decision.

THE ISSUES

Petitioner raised the following issues[24] for this Court's resolution:

"I. Whether or not Civil Case No. Q-11-68711 is dismissible under the doctrine of non-interference between courts of equal rank and the ground of forum-shopping.

II. Whether or not a valid Municipal Ordinance has been passed by the respondent Municipality to impose business tax against petitioner.

III. Whether or not petitioner is liable to respondent Municipality for payment of local business tax in the amount of P48,703,713.14 for calendar year 2010.

IV. Whether or not the task of generating electricity is one of the businesses under the Local Government Code that is liable for business tax.

V. Whether or not petitioner is exempt from payment of business tax.

VI. Whether or not the total amount P48,703,713.14 of alleged local business tax imposed upon petitioner by

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[21] CTA Docket, pp. 205-228
[22] CTA Docket, pp. 231-235
[23] CTA Docket, p. 238
[24] Issues, Petition for Review, CTA Docket, pp. 12-13

respondent Municipality for calendar year 2010 has factual basis.

VII. Whether or not the issuance of the September 23, 2010 Notice of Assessment, Warrant of Distraint and other processes by the respondent Municipality is illegal and without any factual basis."

THE COURT'S RULING

The issues raised basically cover two main issues, namely: (1) the existence of forum shopping; and (2) the propriety or validity of the Notice of Assessment issued against herein petitioner.

Petitioner argues that RTC Branch 99 of Quezon City erred in holding that there was forum shopping when petitioner filed a Petition for Injunction with prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction despite the pendency of the cases filed before the RTC of Lingayen, Pangasinan.

Petitioner assails the decision of RTC Branch 99 of Quezon City, asserting that Civil Case No. Q-11-68711 is distinct and separate from Civil Case No. 19076 and Civil Case No. 19070 filed before RTC Branches 38 and 69 of Lingayen, Pangasinan.

Petitioner claims that Civil Case No. Q-11-68711 is for Injunction, while Civil Case No. 19076 is an appeal pursuant to Section 195 of the Local Government Code[25] initiated by petitioner against respondent Municipality, and Civil Case No. 19070 is a Complaint for Collection of Local Business Tax initiated by respondent Municipality against petitioner.

Moreover, petitioner avers that the subject matter of Civil Case No. Q-11-68711 is the alleged business tax for taxable year 2010 in the amount of P48,703,713.14, while the subject matter of both Civil Case Nos. 19076 and 19070 are the purported business taxes for taxable years 2006 to 2009 in the total amount of P283,622,544.13. *ge*

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[25] Republic Act No. 7160, October 10, 1991

Lastly, petitioner points out that respondent Bank is a party in Civil Case No. Q-11-68711, while it is a complete stranger in both Civil Case No. 19076 and Civil Case No. 19070.

Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. There is forum shopping when there are (a) identity of parties, or at least such parties represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata*.[26]

To determine whether a party violated the rule against forum shopping, the most important question to ask is whether the elements of *litis pendentia* are present or whether a final judgment in one case will result in *res judicata* in another. Otherwise stated, to determine forum shopping, the test is to see whether in the two or more cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[27]

In the instant case, there can be no forum shopping for the second requisite is lacking. It must be noted that there is neither identity of the rights asserted since the asserted rights are based on different causes of action, nor is there identity of reliefs prayed for since the instant petition for injunctive relief filed with the RTC Branch 99 of Quezon City pertains to taxable year 2010, while the other pending cases in RTC Branch Nos. 38 and 69 of Lingayen, Pangasinan pertain to taxable years 2006 to 2009. Thus, this Court disagrees with the findings of RTC Quezon Branch 99 on the existence of forum shopping.

It must be stressed that what is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and the litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process

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[26] *Young vs. Spouses Sy*, G.R. Nos. 157745 and 157955, September 26, 2006, citing *Guaranteed Hotels, Inc. vs. Baltao*, G.R. No. 164338, January 17, 2005

[27] *Huibonhoa vs. Concepcion, et al.*, G.R. No. 153785, August 3, 2006, citing *Villaluz vs. Ligon*, G.R. No. 143721, August 31, 2005

creating possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues,[28] which in the instant case, there is no such danger.

Anent the issue of validity or propriety of the assessment, appeal to this Court is not the proper remedy since the 2010 Notice of Assessment has become final and executory. As correctly pointed out by respondent Municipality in its Comment, nowhere in the instant Petition for Review did petitioner mention or allege any filing of protest for the 2010 Notice of Assessment before the municipal treasurer within the allotted period provided by law. Since petitioner failed to protest said Notice of Assessment, it became conclusive and unappealable.

The Assessment Notice[29] issued on September 23, 2010 by respondent Municipality, through Municipal Treasurer Prescila L. Ramos, was received by petitioner on September 27, 2010. Section 195 of the Local Government Code of 1991 provides:

> "SEC. 195. *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. **Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory.** The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the**

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[28] *Lim, et al. vs. Vianzon, et al.*, G.R. 137187, August 3, 2006, citing *Rudecon Management Corporation vs. Singson*, G.R. No. 150798, March 31, 2005

[29] Annex "C", Petition for Review, CTA Docket, pp. 39-40

> **court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**" *(Emphasis supplied)*

The above-quoted provision states that the taxpayer has sixty days from receipt of the Notice of Assessment to file a written protest; while the local treasurer has sixty days from the date of filing of the protest within which to decide the same. The provision further provides that the taxpayer has thirty days, either from the receipt of the denial of the protest, or from the lapse of the sixty-day period prescribed for the local treasurer to decide on the protest, within which to appeal with the court of competent jurisdiction.[30] In the instant case, petitioner has sixty (60) days from September 27, 2010 or until November 27, 2010 within which to file its protest. Unfortunately, this petitioner failed to do.

In the case of *Romulo D. San Juan vs. Ricardo L. Castro, in his capacity as City Treasurer of Marikina City*[31], the Supreme Court ruled that a taxpayer who disagrees with a tax assessment made by a local treasurer may file a written protest in accordance with Section 195 of the LGC of 1991. Section 195 of the LGC of 1991 clearly provides that "within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory".

The Highest Tribunal made the following similar pronouncements in the case of *Dayrit, et al. vs. Cruz et al.*[32], to wit:

> "(A) suit for the collection of internal revenue taxes, as in this case, where the assessment has already become final and executory, the action to collect is akin to an action to enforce the judgment. No inquiry can be made therein as to the merits of the original case or the justness of the judgment relied upon."

Furthermore, the case of *Benguet Electric Cooperative (BENECO) represented by Gerardo P. Verzosa, General Manager vs. The Municipality of La Trinidad, Benguet, and Wilma Lintan, Municipal*

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[30] *SPC Realty Corp. vs. Municipal Treasurer of Cainta*, CTA AC No. 77, November 15, 2012
[31] G.R. No. 174617, December 27, 2007
[32] G.R. No. L-39910, September 26, 1988

Treasurer[33], as decided by the Special Second Division of the Court of Tax Appeals, can help shed light on the instant controversy, to wit:

> "(W)hat petitioner failed to do was to timely resort to judicial action within the period provided under Section 195 of the LGC.
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> Section 195 of the LGC already provided for the remedy of an appeal with the court of competent jurisdiction (which is the RTC) in the event that the taxpayer's protest is denied or unacted upon by the local treasurer. The RTC, as a trial court, can decide on both factual and purely legal issues. A taxpayer should avail of this remedy of appealing the decision or inaction of the local treasurer to the RTC so that the latter can resolve whatever legal or factual issues that the taxpayer may raise in contesting the assessment.
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> xxx xxx xxx
>
> Based on all the foregoing, this Court holds that the RTC of La Trinidad did not err in dismissing petitioner's Petition for Prohibition. The special civil action for prohibition cannot be availed of as a substitute for the lost appeal. xxx
>
> Anent petitioner's claim that what it actually seeks to enjoin in the Petition for Prohibition is the enforcement of the Warrants of Garnishment, the Court finds the same unmeritorious.
>
> When the taxpayer neither pays the tax assessed nor contests its validity within the period provided under Section 195 of the LGC, the government may enforce collection through the civil remedies provided under Section 174 of the LGC, which provides:
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> > 'SEC. 174. *Civil Remedies*. - The civil remedies for the collection of local taxes, fees,

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[33] CTA AC No. 85, June 7, 2013

> or charges, and related surcharges and interest resulting from delinquency shall be:
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> (a) By administrative action thru distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property;
>
> (b) By judicial action.
>
> Either of these remedies or all may be pursued concurrently or simultaneously at the discretion of the local government unit concerned."

Based on the above-cited cases, had petitioner timely filed a protest with the local municipal treasurer and then file an appeal with the RTC thereafter, the RTC would have acquired jurisdiction to determine the legality or validity of the 2010 Notice of Assessment issued by respondent Municipality. It could have ruled over the merits of the case through the evidence presented, facts stipulated and law grounded upon. Under the present circumstances, it seems that the filing of Civil Case No. Q-11-68711 with RTC Branch 99 of Quezon City was a mere afterthought of petitioner hoping to stumble upon a better result or favorable decision for the lost appeal it had with regard to the 2010 Notice of Assessment.

In sum, there is no forum shopping in the case at bar. However, We agree on RTC Q.C. Branch 99 dismissal of the case on a different ground, that is petitioner's failure to file a timely protest rendered the 2010 Notice of Assessment of local business taxes final and collectible.

WHEREFORE, PREMISES CONSIDERED, the Regional Trial Court's Order dated February 18, 2011 and Resolution dated October 30, 2012 are hereby **AFFIRMED** for the reasons stated above. The instant Petition for Review is hereby **DISMISSED on the basis that the 2010 Assessment Notice of local business taxes has become final and collectible.**

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
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 opinión of the Court's Division.

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

C E R T I F I C A T I O N

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 Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice