REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CITY GOVERNMENT OF CAGAYAN DE ORO, Petitioner,	CTA AC NO. 168
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS-LIBAN, JJ.
CAGAYAN ELECTRIC POWER AND LIGHT COMPANY (CEPALCO), Respondent.	Promulgated: DEC 06 2017 3:30 p.m.

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DECISION

Fabon-Victorino, J:

The instant Petition for Review[1] filed by the City Government of Cagayan de Oro seeks to reverse and set aside the Orders dated November 26, 2012 and February 26, 2016, both rendered by the Regional Trial Court (RTC), Branch 20 of Cagayan de Oro City in Civil Case No. 2005-196, entitled "Cagayan Electric Power and Light Co., Inc. (CEPALCO) v. City of Cagayan de Oro". The said Orders deemed CEPALCO's machinery and improvements, specifically, its transmission power lines and concrete/wooden/steel posts/poles, as real properties for purposes of real property taxation, thus, holding CEPALCO liable for real property taxes thereon.

THE FACTS AND THE PROCEEDINGS

Petitioner City Government of Cagayan de Oro is a local

[1] Docket, pp. 8-18.

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government unit created by law and represented by its City Mayor, Oscar S. Moreno.

On the other hand, respondent CEPALCO is a domestic corporation with principal business address at #44 Don Toribio Chaves Street, 9000 Cagayan De Oro City. It is represented by its Chief Operating Officer, Consuelo G. Tion.

Respondent claims that it is a grantee of a legislative franchise[2] to construct, operate and maintain for public interest and commercial purposes, a distribution system for the conveyance of electric power to end-users in Cagayan de Oro City.

On January 11, 2005, the City Assessor of petitioner sent a letter[3] to respondent informing the latter that the representatives of the City Assessment Department would conduct an appraisal of its machinery and improvement, specifically the transmission power lines and posts located within the city. In response, respondent sent to petitioner Letters dated January 13, 2005[4] and July 12, 2005[5].

On September 20, 2005, respondent filed a Petition for Declaratory Relief and Damages with the RTC of Cagayan de Oro City praying for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction against petitioner. The case was docketed as Civil Case No. 2005-196.

Thereafter, the City Assessor issued a Notice of Assessment for the appraisal of the transmission lines, posts and other machinery and improvements of respondent on the ground that the latter is liable for real property taxes under the Local Government Code (LGC) of 1991.

After the parties traded pleadings pertaining to the prayer for issuance of a TRO, or on April 24, 2008, the RTC

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[2] Annex "B", docket, pp. 39-42.
[3] Annex "C", docket, p. 43.
[4] Annex "D", docket, pp. 44-46.
[5] Annex "E", docket, p. 47.

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issued an Order[6] directing the parties to file their joint stipulation of facts within thirty (30) days from notice.

In their compliance filed on June 23, 2008[7], the parties entered into the following stipulations, to wit:[8]

> 1. The parties admit their respective juridical personalities, including the existence of all laws necessary for their respective existence such as, but not limited to, the Local Government Code of 1991 (RA 7160, as amended) and the franchise of CEPALCO (RA 9284 and its precursors).
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> 2. The City Assessor of the respondent City Government of Cagayan de Oro sent a letter dated January 11, 2005 to petitioner CEPALCO informing the latter that the representatives of the City Assessment Department will conduct an appraisal of CEPALCO'S machineries and improvement, specifically the transmission power line and posts, located within Cagayan de Oro City.
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> 3. Petitioner CEPALCO formally objected to the proposed appraisal in its letters of January 13, 2005 and July 12, 2005.
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> 4. The City Assessor had issued a notice of assessment for the appraisal of the transmission lines, posts and other machineries and improvements of petitioner CEPALCO because the City Assessor asserts that CEPALCO is liable for real property taxes under the 1991 Local Government Code.
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> 5. The instant case was filed prior to the issuance of the aforesaid assessment.
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> 6. CEPALCO has been paying to the City Government of Cagayan de Oro, without protest, real property taxes on its lands and buildings, local franchise tax, and community tax, <u>except real property tax on transmission power line assets such as concrete post, wooden post, steel poles, cables, transformers and insulators</u>.

[6] Exhibit "P-12", docket, p. 79.
[7] Exhibit "P-13", docket, pp. 80-82.
[8] Joint Stipulation of Facts, docket, pp. 80 to 82.

> 7. Petitioner CEPALCO invoked its franchise, under the 'in lieu of all taxes' clause thereof, as legal ground for its exemption from payment of real property tax.
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> 8. Petitioner CEPALCO contends that, granting it is liable for real property tax under the 1991 Local Government Code, the poles or steel towers of electric company do not constitute real property for purposes of real property tax.

On November 26, 2012, the RTC rendered the assailed Order granting respondent's Petition for Declaratory Relief, in the following fashion:

> WHEREFORE, in view of the foregoing, this petition for Declaratory Relief is hereby GRANTED. The Notice of appraisal and whatever appraisals that might have been made on the said transmission power lines and concrete/wooden/steel posts/poles is declared null and void.
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> No pronouncement of damages as there is no sufficient evidence to justify any award for damages and no pronouncement as to costs.
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> SO ORDERED."

On December 14, 2012, petitioner filed a Motion for Reconsideration[9], which the RTC denied in the equally assailed Order of February 26, 2016.[10]

On March 31, 2016, petitioner filed, through registered mail, the instant Petition for Review which the Court received on April 8, 2016[11], raising the following issues, to wit:

I. Whether or not the Respondent CEPALCO's machineries and improvements specifically its transmission power lines and concrete/wooden/steel poles/posts, wires, cables, transformers and

[9] Exhibit "P-14", docket, pp. 83-89.
[10] Docket, p. 26.
[11] Docket, p. 8.

insulators constitute real/immovable properties for purposes of real property taxation.

II. Whether or not Respondent CEPALCO is liable for any real property tax assessments for its machineries and improvements specifically its transmission power lines and concrete/wooden/steel poles/posts, wires, cables, transformers and insulators.

Pursuant to this Court's Resolution[12] dated May 13, 2016, respondent posted its Comment on the Petition on July 4, 2016.

On August 16, 2016, the Court gave due course to the Petition for Review and the parties were directed to file their respective memoranda.[13]

The case was declared submitted for decision on December 6, 2016,[14] considering the filing of the Memorandum (For the Petitioner City Government of Cagayan de Oro)[15] on October 5, 2016 and the Records Verification Report of the Judicial Records Division dated December 1, 2016 stating that no memorandum was filed by respondent.

THE ISSUES

In its Petition for Review and Memorandum, petitioner presented the following assignment of errors, which respondent adopted in its Comment on the Petition:

I. The trial court committed grave and reversible error when it issued the Orders dated 26 November 2012 and 26 February

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[12] Docket, p. 101.
[13] Resolution, docket, p. 146.
[14] Resolution, docket, p. 178.
[15] Docket, pp. 149 to 165.

2016 finding that respondent CEPALCO's transmission or distribution lines, concrete, wooden and steel posts and poles, wires, insulators, and transformers not real property for real property taxation; and

II. The trial court committed grave and reversible error when it declared null and void the notice of appraisal and whatever appraisal that might have been on respondent CEPALCO's transmission power lines and concrete/wooden/steel poles/posts without presenting the notice of assessment.

THE RULING OF THE COURT

First, the Court must determine its jurisdiction over the instant Petition for Review filed by petitioner.

The Rules of Court and relevant jurisprudence define declaratory relief as an action by any person interested in a deed, will contract or other written instrument, executive order or resolution, filed before breach or violation thereof, to determine any question of construction or validity arising from the instrument, executive order or regulation or statute and for a declaration of his rights and duties thereunder.[16] As a general rule, this special civil action does not entail an executory process since the result is only a declaration of rights.

The special civil action of declaratory relief falls under the exclusive original jurisdiction of the Regional Trial Court.

Relevantly, Section 7 of RA No. 9282 provides that this Court has exclusive appellate jurisdiction over the following cases, to wit:

> Sec. 7. Jurisdiction. — The CTA shall exercise:

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[16] Almeda, et al. v. Bathala Marketing Industries, Inc. G.R. No. 150806, January 28, 2008, 542 SCRA 470, Rule 63, Section 1, Rules of Court.

(a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

(3) **Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction**;

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention, or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

(6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to

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> the Government under Section 2315 of the Tariff and Customs Code;
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> (7) Decisions of the Secretary of Trade and Industry, in the case of non-agricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sections 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties." (emphases supplied)

Clearly, the Court has jurisdiction over the present appeal assailing the twin Orders of the RTC in a special civil action for declaratory relief questioning the Notice of Assessment, *vis-à-vis,* the franchises allegedly exempting it from paying realty taxes on its equipment and improvements used for its operation.

Now on the merit of the case.

It appears that both parties recognize the ruling of the Supreme Court in the case of *Manila Electric Company vs. The City Assessor and City Treasurer of Lucena City*[17] that the transformers, electric posts, transmission lines, insulators, and electric meters of Meralco are no longer exempted from real property tax and may qualify as machinery subject to real property tax under the Local Government Code.

However, respondent contends that despite the afore-cited ruling, it is still not liable to pay real property tax on its electric posts and transmission towers as it is not the exclusive user thereof. Thus, any appraisal of the post is premature since there must first be a preliminary determination if the said electric posts and/or towers are indeed exclusively used by it.

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[17] G.R. No. 166102, August 5, 2015.

Settled in the *Meralco* case[18] that the transformers, electric posts, transmission lines, insulators, and electric meters may qualify as machinery subject to real property tax under the Local Government Code, thus:

> "The Court finds that the transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO are no longer exempted from real property tax and may qualify as 'machinery' subject to real property tax under the Local Government Code. Nevertheless, the Court declares null and void the appraisal and assessment of said properties of MERALCO by the City Assessor in 1997 for failure to comply with the requirements of the Local Government Code and, thus, violating the right of MERALCO to due process."

This Court however cannot resolve the factual issue raised by respondent in its Comment to the effect that its electric posts are not exclusively used by it but also by cable TV companies namely PARASAT and JADE, and telephone companies, namely PLDT-Philcom, Globe, and Smart.[19]

First, the record of the trial court has not been elevated to the Court despite the provision of Section 5(b) of Rule 6 of the Revised Rules of the Court of Tax Appeals, which provides:

> SEC. 5. *Answer.* –
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> (a) *Time for filing and contents.* – Within fifteen days after service of summons, the respondent or the defendant shall file an answer to the petition or complaint which shall include all defenses in law and the specific provision of law and applicable jurisprudence and grounds for dismissal of the petition or complaint, or which shall prevent and bar recovery.
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> (b) *Transmittal of records.* – The respondent Commissioner of Internal Revenue, Commissioner of Customs, the Secretary of Finance, the Secretary of

[18] *Supra.*
[19] Docket, p. 116.

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> Agriculture, or the Secretary of Trade and Industry, within ten days after filing an answer, the chairman of the Central Board of Assessment Appeals and **the presiding judges of the Regional Trial Courts, within ten days from receipt of notice, shall certify and forward to the Court all the records of the case in their possession,** with the pages duly numbered, and, if the records are in separate folders, then the folders will also be numbered. If there are no records, such fact shall be manifested to the Court within the same period of ten days. The Court may, on motion, and for good cause shown, grant an extension of time within which to submit the aforesaid records of the case. Failure to transmit the records within the time prescribed herein or within the time allowed by the Court may constitute indirect contempt of court." *(Emphasis supplied)*

In the absence of the RTC record, this Court has no way of determining the facts obtaining in the case below.

It appears that the issue of utilization of respondent's electric posts by other companies is an unsettled factual matter that the assailed ruling did not squarely discuss and which this Court cannot now resolve without the case record from the RTC.

Second, the determination of whether its electric posts are actually used by respondent exclusively or being utilized by other companies such as cable TV and telephone companies are confined within the authority of the local assessors.

Article 304 of the Rules and Regulations Implementing the Local Government Code of 1991 or Republic Act No. 7160 is instructive on the matter:

> ART. 304. *Authority of Local Assessors to Take Evidence.* – For the purpose of obtaining information on which to base the market value of any real property, the assessor of the province, city, or municipality or his deputy may summon the owners of the properties to be affected or persons having legal interest therein and witnesses, administer oaths, and take deposition

concerning the property, its ownership, amount, nature, and value.

On this point, the Supreme Court in the *Meralco* case did not take cognizance of the factual issue raised in the said case on the ground that it is not a trier of facts and it is the City Assessor's authority to take evidence as regards information concerning any real property, thus:

> "MERALCO maintains that its electric posts are not machinery subject to real property tax because said posts are not being exclusively used by MERALCO; these are also being utilized by cable and telephone companies. This, however, is a factual issue which the Court cannot take cognizance of in the Petition at bar as it is not a trier of facts. Whether or not the electric posts of MERALCO are actually being used by other companies or industries is best left to the determination of the City Assessor or his deputy, who has been granted the authority to take evidence under Article 304 of the Rules and Regulations Implementing the Local Government Code of 1991."

On the other issue, petitioner posits that the trial court erred in "nullifying" the Notice of Assessment on respondent's transmission power lines, poles, posts, wires, cables, transformers, electric meters and insulators without inspecting the contents of the said assessment that respondent failed to present. Allegedly, it is within the scope of authority of petitioner to issue the City Assessor's Office Letter dated January 11, 2005 since there are factual and legal bases to conduct such appraisal and make such assessment on the subject properties for purposes of real property taxation pursuant to Sections 203 and 204 of R.A. No. 7160. Further, the subject properties, whether they are exempt, are still allegedly subject to appraisal under Section 201 of R.A. No. 7160.

Respondent counter-argues that its legislative franchises known as R.A. Nos. 3247, 3570, and 6020 expressly exempt it from payment of all taxes except for the

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three per centum (3%) tax on its gross earnings. Respondent asserts that even assuming that there was a withdrawal of the exemption in R.A. No. 7160, it was restored and expanded in R.A. No. 9284. Further, R.A. No. 9284 is the latest special law on the matter enacted by Congress which categorically provides for the retention of all specific tax exemptions, incentives, or privileges granted to petitioner under any relevant law.

While there is no proof that a Notice of Assessment has been issued on the subject real properties, the parties had stipulated that (1) the City Assessor had issued a Notice of Assessment for the appraisal of the transmission lines, posts and other machineries and improvements of respondent CEPALCO as the City Assessor asserts that CEPALCO is liable for real property taxes under the 1991 Local Government Code, and (2) the instant case was filed prior to the issuance of the aforesaid assessment.

In the *Meralco* case, the Supreme Court explained the difference between, and provided the definitions of, appraisal and assessment, to wit:

> "The Local Government Code defines 'appraisal' as the 'act or process of determining the value of property as of a specific date for a specific purpose.' 'Assessment' is 'the act or process of determining the value of a property, or proportion thereof subject to tax, including the discovery, listing, classification, and appraisal of the properties[.]' When it comes to machinery, its appraisal and assessment are particularly governed by Sections 224 and 225 of the Local Government Code, which read:
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> > Section 224. *Appraisal and Assessment of Machinery.* – (a) The fair market value of a brand-new machinery shall be the acquisition cost. In all other cases, the fair market value shall be determined by dividing the remaining economic life of the machinery by its estimated economic life and multiplied by the replacement or reproduction cost.
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> > (b) If the machinery is imported, the acquisition cost includes freight, insurance, bank and other charges, brokerage, arrastre and handling, duties and taxes, plus cost of

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> inland transportation, handling, and installation charges at the present site. The cost in foreign currency of imported machinery shall be converted to peso cost on the basis of foreign currency exchange rates as fixed by the Central Bank.
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> Section 225. *Depreciation Allowance for Machinery.* – For purposes of assessment, a depreciation allowance shall be made for machinery at a rate not exceeding five percent (5%) of its original cost or its replacement or reproduction cost, as the case may be, for each year of use: *Provided, however,* That the remaining value for all kinds of machinery shall be fixed at not less than twenty percent (20%) of such original, replacement, or reproduction cost for so long as the machinery is useful and in operation.

It is apparent from these two provisions that every machinery must be individually appraised and assessed depending on its acquisition cost, remaining economic life, estimated economic life, replacement or reproduction cost, and depreciation.

Article 304 of the Rules and Regulations Implementing the Local Government Code of 1991 expressly authorizes the local assessor or his deputy to receive evidence for the proper appraisal and assessment of the real property:

> Article 304. *Authority of Local Assessors to Take Evidence.* – For the purpose of obtaining information on which to base the market value of any real property, the assessor of the province, city, or municipality or his deputy may summon the owners of the properties to be affected or persons having legal interest therein and witnesses, administer oaths, and take deposition concerning the property, its ownership, amount, nature, and value.

The Local Government Code further mandates that the taxpayer be given a notice of the assessment of real property in the following manner:

> Section 223. *Notification of New or Revised Assessment.* – When real property is

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> assessed for the first time or when an existing assessment is increased or decreased, the provincial, city or municipal assessor shall within thirty (30) days give written notice of such new or revised assessment to the person in whose name the property is declared. The notice may be delivered personally or by registered mail or through the assistance of the punong barangay to the last known address of the person to served."

A perusal of the Letter[20] dated January 11, 2005 shows that it is a mere appraisal of respondent's machinery. Also, petitioner did not attach to its Petition for Review a copy of the alleged Notice of Assessment, if indeed one has been issued.

As regards the alleged tax exemption of respondent, the Court finds the ruling of the trial court proper.

R.A. No. 9284 is otherwise known as An Act Amending and Extending the Term of the Franchise granted to Cagayan Electric Power and Light Co., Inc. under Republic Act Numbered Thirty-Two Hundred Forty-Seven, as Amended by Republic Act Numbered Thirty-Five Hundred Seventy and Republic Act Numbered Sixty Hundred Twenty. Clearly, R.A. No. 9284 amended and extended the term of respondent's franchise under R.A. Nos. 3247, 3570, and 6020. Further, Section 9 of R.A. No. 9284 provides:

> "SEC. 9. *Tax Provisions.* – The grantee, its successors or assigns, shall be subject to the payment of all taxes, duties, fees or charges and other impositions applicable to private electric utilities under the National Internal Revenue Code (NIRC) of 1997, as amended, the Local Government Code and other applicable laws: *Provided*, That nothing herein shall be construed as repealing any specific tax exemptions, incentives, or privileges granted under any relevant law: *Provided, further*, That all rights, privileges, benefits and exemptions accorded to existing and future private electric utilities by their respective franchises shall likewise be extended to the grantee."

[20] Docket, p. 43.

On the other hand, the respective provisions of Section 3 of R.A. Nos. 3247[21], 3570[22], and 6020[23] are all the same, providing the payment of three percent (3%) franchise tax. Nevertheless, the said provisions no longer exist in R.A. No. 9284, which is the present applicable law. Therefore, Section 9 of R.A. No. 9284 has amended, repealed or superseded Section 3 of R.A. Nos. 3247, 3570, and 6020 with respect to the imposition of tax against respondent.

Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[24] Tax exemptions cannot arise by mere implication, much less by an implied re-enactment of a repealed tax exemption clause.[25]

In recapitulation, the trial court did not err in ruling that respondent is not exempt from taxation based on R.A.

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[21] Sec. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three per centum of the gross earnings for electric current sold under this franchise, of which two per centum goes into the National Treasury and one per centum goes into the city treasury of Cagayan de Oro: *Provided*, That the said franchise tax of three per centum of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted.

[22] Sec. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three per centum of the gross earnings for electric current sold under this franchise, of which two per centum goes into the National Treasury and one per centum goes into the treasury of the Municipality of Tagoloan, the Municipality of Opol, and Cagayan de Oro City, as the case may be: *Provided*, That said franchise tax of three per centum of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is hereby expressly exempted.

[23] Sec. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three per centum of the gross earnings for electric current sold under this franchise, of which two per centum goes into the National Treasury and one per centum goes into the treasury of the Municipalities of Tagoloan, Opol, Villanueva and Jasaan and Cagayan de Oro City, as the case may be: *Provided*, That the said franchise tax of three per centum of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is hereby expressly exempted.

[24] Digital Telecommunications Philippines, Inc. v. City of Government of Batangas, et al., G.R. No. 156040, December 11, 2008.

[25] Cagayan Electric Power and Light Co., Inc. v. City of Cagayan de Oro, G.R. No. 191761, November 14, 2012.

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No. 9284. Moreover, the parties have already recognized the ruling in the *Meralco* case that transformers, electric posts, transmission lines, insulators, and electric meters may qualify as machinery subject to real property tax.

WHEREFORE, the instant Petition for Review is **GRANTED**. Accordingly, the finding of the Regional Trial Court of Misamis Oriental, Branch 20, Cagayan de Oro City, as stated in the assailed Orders dated November 26, 2012 and February 26, 2016, that respondent's transmission or distribution lines, concrete, wooden and steel posts and poles, wires, insulators, and transformers are not real properties for purposes of real property taxation is **REVERSED and SET ASIDE,** while the finding that respondent is subject to taxation pursuant to R.A. No. 9284 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice