REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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CITY OF QUEZON, represented by its Mayor, HERBERT M. BAUTISTA and RUBY ROSA G. GUEVARRA, in her capacity as OIC-City Treasurer's Office, Petitioners,	**CTA EB No. 1657** (CTA AC No. 165)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** JJ.
NATIONAL TRANSMISSION CORPORATION, Respondent.	***Promulgated:*** JAN 04 2019 3:42 p.m.

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DECISION

UY, J.:

The instant *Petition for Review*[1] filed on June 9, 2017 by the City of Quezon, represented by its Mayor, Herbert M. Bautista, and Ruby Rosa G. Guevarra, in her capacity as OIC-City Treasurer's Office, against the National Transmission Corporation, prays for the reversal and setting aside of the Decision dated February 28, 2017[2] and Resolution dated May 5, 2017[3], both promulgated by the Third Division of this Court (Court in Division) in CTA AC No. 165,[4] entitled

[1] EB Docket, pp. 9 to 19.
[2] EB Docket, pp. 21 to 33.
[3] EB Docket, pp. 34 to 39.
[4] In their prayer in the subject *Petition,* petitioners erroneously referred to *CTA AC No. 93,* instead of *CTA AC No. 165.*

"National Transmission Corporation, Petitioner, versus City of Quezon, represented by its Mayor, Hon. Feliciano Belmonte Jr., and Victor B. Endriga, Ph.D., in his capacity as City Treasurer, Respondents". the dispositive portions thereof respectively read as follows:

Decision dated February 28, 2017:

> "**WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED**. The January 23, 2015 Decision and the September 18, 2015 Order of the RTC, Branch 217 of Quezon City are hereby **SET ASIDE.** Accordingly, let the case be **REMANDED** to RTC Branch 217 of Quezon City for adjudication on the merits.
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> **SO ORDERED.**"

Resolution dated May 5, 2017:

> "**WHEREFORE,** premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated February 28, 2017 is hereby **AFFIRMED** and **UPHELD.**
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> **SO ORDERED.**"

THE FACTS

Petitioner City of Quezon is a public corporation and a local government unit, created and existing under the laws of the Philippines, represented by its Mayor and its City Treasurer, the latter being a public officer vested with the power to make assessments under the Local Government Code (LGC) of 1991 and its implementing rules and regulations.

Respondent National Transmission Corporation (TRANSCO) is an entity created by virtue of Republic Act (RA) No. 9136 (EPIRA Law), and a public utility with franchise to operate and maintain the nationwide electric transmission system and the Grid.

On December 14, 2004, the City Treasurer issued a Letter of Assessment to respondent, assessing an additional business tax amounting to ₱375,394,968.75, including surcharges and penalties for taxable years 2001 to 2003.

In the letter dated February 10, 2005, respondent TRANSCO protested the assessment, wherein it argued that the local government of Quezon City has no power to impose business taxes on respondent TRANSCO, (1) pursuant to Section 133 of the LGC of 1991; and (2) because it is an instrumentality of the government performing governmental functions, that is, to act as system operator of the nationwide electrical transmission and subtransmission system, to ensure and maintain the reliability, security, stability and integrity of the Grid, and to improve and expand its transmission facilities pursuant to Section 9 of the EPIRA Law.

On March 2, 2005, respondent TRANSCO received the letter dated February 14, 2005 from the City Treasurer, denying its protest and upholding the assessment. In the said letter, the City Treasurer reasoned that the tax exemption privileges of government-owned or controlled corporations (GOCCs) have already been withdrawn by Section 193 of the LGC of 1991.

Respondent TRANSCO filed its *Complaint* before the Regional Trial Court (RTC) of Quezon City on April 1, 2005, docketed as Civil Case No. 05-55072 and assigned to Branch 217. An *Amended Complaint* was filed on March 15, 2007. After trial, the RTC rendered a Decision, ruling that respondent TRANSCO failed to exhaust administrative remedies under Presidential Decree (PD) No. 242, the dispositive portion of which reads:

> "In view of the foregoing premises and considerations, the Amended Complaint dated March 12, 2007 of plaintiff National Transmission Corporation (Transco) is hereby dismissed because its filing is premature for failure to exhaust first administrative remedies available under the law, hence, this court has no jurisdiction over the instant case.
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> SO ORDERED."

On September 18, 2015, the said RTC issued an Order, denying respondent TRANSCO's *Motion for Reconsideration (Re: "Decision" dated 23 January 2015)*, as follows:

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> "In view of the foregoing premises and considerations, and with due respect to the counsel for the plaintiff, the instant Motion for Reconsideration is hereby denied for lack of merit.
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> SO ORDERED."

On November 27, 2015, respondent TRANSCO filed its *Petition for Review* with the Court in Division of this Court docketed as CTA AC No. 165. Petitioners filed a *Comment/Opposition* thereto on March 16, 2016. The Court in Division gave due course to respondent TRANSCO's *Petition for Review*, and ordered the parties to submit their respective memoranda. Respondent TRANSCO filed its *Memorandum* on May 11, 2016, while petitioners filed their *Memorandum* on May 26, 2016. On June 9, 2016, CTA AC No. 165 was deemed submitted for decision by the Court in Division.

In the assailed Decision dated February 28, 2017,[5] the Court in Division granted the *Petition for Review*, and set aside the January 23, 2015 Decision and the September 18, 2015 Order of the RTC, Branch 217 of Quezon City, remanding the case to the RTC - Branch 217 of Quezon City for adjudication on the merits.

Aggrieved, herein petitioners filed their *Motion for Reconsideration* on March 22, 2017,[6] to which herein respondent TRANSCO filed its *Comment (On Respondent's 21 March 2017 Motion for Reconsideration)* on April 18, 2017.[7] In the assailed Resolution dated May 5, 2017,[8] the Court in Division denied petitioners' *Motion for Reconsideration* for lack of merit.

Undaunted, petitioners filed a *Motion for Extension of Time to File Petition for Review to the Court of Tax Appeals En Banc* on May 26, 2017,[9] praying for an additional period of fifteen (15) days from May 26, 2017 or until June 10, 2017, within which to file petitioners' petition for review. In the Minute Resolution dated May 31, 2017,[10] the Court *En Banc* granted petitioners a final and non-extendible period of fifteen (15) days from May 26, 2017, or until June 10, 2017, within which to file their *Petition for Review*.

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[5] EB Docket, pp. 21 to 33; and Division Docket (CTA AC No. 165), pp. 131 to 143.
[6] Division Docket (CTA AC No. 165), pp. 145 to 148.
[7] Division Docket (CTA AC No. 165), pp. 153 to 158.
[8] EB Docket, pp. 34 to 39; and Division Docket (CTA AC No. 165), pp. 161 to 166.
[9] EB Docket, pp. 1 to 7.
[10] EB Docket, p. 8.

Petitioners filed the instant *Petition for Review* on June 9, 2017.[11]

Without necessarily giving due course to the instant *Petition for Review*, respondent TRANSCO was ordered by the Court *En Banc* to file its comment thereon.[12] In compliance therewith, respondent TRANSCO filed its *Comment (On The Petition for Review dated 9 June 2017)* on September 29, 2017.[13]

In the Resolution dated October 10, 2017,[14] the parties were ordered to submit their respective memoranda, within a period of thirty (30) days from notice. Pursuant thereto, respondent TRANSCO filed its *Memorandum* on December 4, 2017,[15] while petitioners filed their *Memorandum* on December 29, 2017.[16] Thereafter, this case was submitted for decision on January 31, 2018.[17]

Hence, this Decision.

THE ISSUE

Petitioners raise the sole issue for the Court *En Banc*'s resolution, to wit:

> "WHETHER OR NOT CTA SPECIAL THIRD DIVISION ERRED IN ISSUING ITS DECISION REMANDING THE CASE BACK TO LOWER COURT FOR ADJUDICATION ON THE MERITS."[18]

More precisely, the issue in this case is whether or not RTC – Branch 217 erred in dismissing the case for lack of jurisdiction, for respondent TRANSCO's alleged non-exhaustion of administrative remedies under PD No. 242.

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[11] EB Docket, pp. 9 to 19.
[12] Resolution dated August 24, 2017, EB Docket, pp. 90 to 91.
[13] EB Docket, pp. 97 to 105.
[14] EB Docket, pp. 107 to 108.
[15] EB Docket, pp. 109 to 118.
[16] EB Docket, pp. 124 to 141.
[17] Resolution dated January 31, 2018, EB Docket, pp. 144 to 145.
[18] EB Docket, p. 112.

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Petitioners' arguments:

Petitioners contend that the trial court is correct in dismissing the complaint as the action is premature. According to petitioners, Section 66, Chapter 14, Book IV of the Administrative Code of 1987 [Executive Order (EO) No. 292] did not supersede or amend PD No. 242, which continues to be binding.

Furthermore, petitioners are of the view that PD No. 242 and the LGC of 1991 are not repugnant from each other and may be harmonized in order to give effect to both. Petitioners submit that the two laws cover different subject and object, and thus, there can be no implied repeal.

Finally, petitioners aver that the adjudication of the dispute between the parties falls within the primary jurisdiction of the Department of Justice, pursuant to PD No. 242.

Respondent TRANSCO's counter-arguments:

Respondent TRANSCO counters that Section 195 of LGC of 1991 shall prevail over PD No. 242, and must be the basis of the RTC to decide the propriety of local tax assessment through adjudication on the merits.

Allegedly, PD No. 242, as amended by EO No. 292, excluded local government units in the settlement of disputes, claims and controversies between government agencies and/or offices.

And lastly, respondent TRANSCO contends that the jurisprudence cited by petitioners is misplaced.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

The provisions of PD No. 242 have been impliedly repealed by Section 66, Chapter 14, Book IV of EO No. 292, otherwise known as the Administrative Code of 1987.

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The dispute in this case stems from the imposition of additional business taxes by petitioner City of Quezon, a local government unit, upon respondent TRANSCO, a public utility.

Following the denial of its protest of the subject assessment, respondent TRANSCO filed a *Complaint* before the RTC of Quezon City. For their part, petitioners assert that the provisions of PD No. 242 should apply between the parties. Thus, petitioners argue that the RTC was correct in dismissing the case for lack of jurisdiction, due to respondent TRANSCO's failure to exhaust administrative remedies under PD No. 242. Meanwhile, respondent TRANSCO counters that EO No. 292 should be read in conjunction with PD No. 242, and the Court in Division was correct in applying the pertinent provisions of the LGC of 1991 instead.

We agree with the respondent TRANSCO.

Indeed, PD No. 242, issued on July 9, 1973, prescribes the procedure for administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned and controlled corporations (GOCCs). For easy reference, the pertinent provisions thereof are reproduced hereunder, to wit:

> "*Section 1.* Provisions of law to the contrary notwithstanding, **all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter**: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.
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> *Section 2.* **In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice, as Attorney General and ex officio legal adviser of all government-owned or controlled corporations and entities, in consonance with section 83 of the Revised Administrative Code.** His ruling or determination of the

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question in each case shall be conclusive and binding upon all the parties concerned." *(Emphases supplied)*

Relative thereto, in *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*,[19] the Supreme Court held as follows:

> "xxx. Under Presidential Decree No. 242 (PD 242), all disputes and claims *solely* between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.
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> xxx xxx xxx
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> The use of the word 'shall' in a statute connotes a mandatory order or an imperative obligation. Its use rendered the provisions mandatory and not merely permissive, and unless PD 242 is declared unconstitutional, its provisions must be followed. The use of the word 'shall' means that administrative settlement or adjudication of disputes and claims between government agencies and offices, including government-owned or controlled corporations, is not merely permissive but mandatory and imperative. Thus, under PD 242, it is mandatory that disputes and claims 'solely' between government agencies and offices, including government-owned or controlled corporations, involving only questions of law, be submitted to and settled or adjudicated by the Secretary of Justice.
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> xxx xxx xxx
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> The purpose of PD 242 is to provide for **a speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts.** x x x
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[19] G.R. No. 198146, August 8, 2017.

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> **Furthermore, under the doctrine of exhaustion of administrative remedies, it is mandated that where a remedy before an administrative body is provided by statute, relief must be sought by exhausting this remedy prior to bringing an action in court in order to give the administrative body every opportunity to decide a matter that comes within its jurisdiction.** A litigant cannot go to court without first pursuing his administrative remedies; otherwise, his action is premature and his case is not ripe for judicial determination. PD 242 (now Chapter 14, Book IV of Executive Order No. 292), provides for such administrative remedy. Thus, only after the President has decided the dispute between government offices and agencies can the losing party resort to the courts, if it so desires. Otherwise, a resort to the courts would be premature for failure to exhaust administrative remedies. Non-observance of the doctrine of exhaustion of administrative remedies would result in a lack of cause of action, which is one of the grounds for the dismissal of a complaint."

Based on the foregoing, it is clear that all disputes and claims solely between government agencies and offices, including GOCCs, shall be administratively settled; otherwise, such action would be considered premature and not ripe for judicial determination. It should be noted, however, that in the same case, the High Court said that *"PD 242 is now embodied in Chapter 14, Book IV of EO No. 292, otherwise known as the Administrative Code of 1987, which took effect on November 24, 1989."* Thus, in the final determination of which provision of law should be applied, reference must also be made, not only of the provisions of PD 242, but also of the pertinent provisions of EO No. 292, one of which is as follows:

> **"BOOK IV – THE EXECUTIVE BRANCH**
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> **Chapter 14 - Controversies Among Government Offices and Corporations**
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> ***SECTION 66.*** *How Settled.* — All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of

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statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. **This Chapter shall, however, not apply to disputes involving** the Congress, the Supreme Court, the Constitutional Commissions, and **local governments**." *(Emphasis supplied.)*

According to the foregoing provision, local government units are expressly **excluded** from the coverage of administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities.

A comparison of the subject provisions of PD No. 242 and EO No. 292 show that there is an irreconcilable difference between them, specifically with regard to its coverage, to wit:

PD No. 242	EO No. 292
Section 1. Provisions of law to the contrary notwithstanding, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, **including constitutional offices or agencies**, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree.	SECTION 2. *General Terms Defined.* – Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning: xxx (4) **Agency of the Government refers to any of the various units of the Government, including**... **a local government** or a distinct **unit** therein. xxx SECTION 66. *How Settled.* – All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the

	interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. **This Chapter shall, however, not apply to disputes involving** the Congress, the Supreme Court, the Constitutional Commissions, and **local governments**." *(Emphasis supplied.)*

It is noteworthy that under PD No. 242 in relation to Section 2(4) of EO 292, what are *included in* the coverage of the requirement of administrative settlement or adjudication of disputes, claims and controversies are "agencies", which term encompasses local government units. However, as regards the same requirement under EO No. 292, *local governments* are specifically *excluded in* the coverage. Thus, the subject provisions of PD No. 242 and EO No. 292 are clearly inconsistent and incompatible with each other so as to render them incapable of being reconciled or harmonized, and of giving effect to both provisions at the same time.

In *Valdez vs. Tuason*,[20] the Supreme Court said:

> "We are not oblivious of the well-known rule of law that repeals by implication are not favored. Nevertheless **when there is a plain, unavoidable, and irreconcilable repugnancy between two laws the later expression of the Legislative will must be give effect. It is axiomatic in the science of jurisprudence that two inconsistent statutes cannot co-exist in one jurisdiction with reference to the same subject-matter.**
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> The most powerful implication of repeal noted by legal commentators is that which arises when the later two laws is expressed in the form of a universal negative. **The repugnance of two statutes is more readily seen when the later Act is in the form of a negative proposition than when both laws are stated in the affirmative.** Indeed most of the discussion found in the

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[20] G.R. No. 14957, March 16, 1920.

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> books on the question whether one law impliedly repeals another is concerned with the interpretation of affirmative laws. (Sutherland, Statutory Construction, 2d ed., sec. 248.) **There is a clear distinction between affirmative and negative statutes in regard to their repealing effects upon prior legislation, which may be expressed by saying that while an affirmative statute does not impliedly repeal the prior law unless an intention to effect the repeal is manifest, <u>a negative statute repeals all conflicting provisions</u> unless the contrary intention is disclosed.** In *State vs. Commissioners of Washoe County* (22 Nev., 203, 210), the court said:
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>> One affirmative statute will not repeal another, unless there is an absolute conflict between them, or it can be ascertained in some manner that a repeal was intended. **But where the later act is expressed in negative terms, the principle is different. <u>Negative statutes are mandatory, and must be presumed to have been intended as a repeal of all conflicting provisions</u>, unless the contrary can be clearly seen.**"
>> *(Emphases and underscoring supplied)*

In view of the comparison shown above, it can be readily seen that there is a plain, unavoidable, and irreconcilable repugnancy between Section 1 of PD No. 242 and Section 66, Chapter 14, Book IV of EO No. 292. The former mandates the observance of administrative settlement or adjudication of disputes, claims and controversies, involving, *inter alia*, a local government unit; while the latter explicitly says otherwise.

And such repugnancy may not only be seen through the said comparison, but also in that in Section 66, Chapter 14, Book IV of EO No. 292, the later statute, the wordings thereof are couched in the form of a negative proposition, to wit: *"This Chapter shall, however, **<u>not</u> apply** to disputes involving...local governments."* As such, it is mandatory,[21] and it is presumed to have been intended as a repeal of all conflicting provisions.

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[21] ...negative (prohibitory and exclusive words or terms are indicative of the legislative intent that the statute is to be mandatory... (*In the matter of the Adoption of the minors Maria Lualhati Magpayo and Amada Magpayo. Mcgee vs. Republic of the Philippines*, G.R. No. L-5387, April 27, 1954, citing Crawford, Statutory Construction, sec. 263, p. 523.)

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Correspondingly, the logical and inevitable conclusion is that there was an implied repeal of Section 1, PD No. 242, by Section 66, Chapter 14, Book IV, EO No. 292, insofar as the observance of administrative settlement or adjudication of disputes, claims and controversies involving a local government unit is concerned. Such being the case, any dispute, claims and controversies solely between a local government unit and other government offices or agencies (which are not expressly excluded from the coverage of the law), need not go through the process required by the said provisions.

Thus, the Court in Division is correct in setting aside the subject Decision and Order of RTC – Branch 217, and in remanding the case thereto for adjudication on the merits.

RA No. 7160 is the applicable law between the parties, and as correctly found by the Court in Division, respondent TRANSCO was able to timely file its appeal with the RTC pursuant to Section 195 of the LGC of 1991.

Considering that local government units, including petitioner City of Quezon, are expressly excluded from the enumeration under Section 66, Chapter 14, Book IV, EO No. 292, respondent TRANSCO's remedy should be governed by Section 195 of the LGC of 1991, which provides as follows:

> "Section 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 court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

In this case, respondent TRANSCO received the Letter of Assessment on December 16, 2004.[22] Thereafter, respondent TRANSCO filed its protest on February 11, 2005,[23] which is within the sixty (60) day reglementary period provided for under the aforequoted Section 195. On March 2, 2005, respondent TRANSCO received the denial of its protest,[24] and had thirty (30) days, or until April 1, 2005, within which to file an appeal before a competent court. Correspondingly, the appeal filed by respondent TRANSCO with the RTC – Branch 217 on April 1, 2005 was timely filed,[25] and the said RTC had jurisdiction to entertain the same.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated February 28, 2017 and the Resolution dated May 5, 2017 rendered by the Court in Division in CTA AC No. 165 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[22] RTC Records, Vol. I, pp. 111 to 112.
[23] RTC Records, Vol. I, pp. 113 to 115.
[24] RTC Records, Vol. I, p. 116.
[25] RTC Records, Vol. I, pp. 3 to 11.

CIELITO N. MINDARO-GRULLA
Associate Justice

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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice