REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION
Petitioner,

CTA EB No. 1024
(CBAA Cases Nos. L-96 & L-99)

-versus-

FATIMA A. TENORIO, in her official capacity as Provincial Assessor of Ilocos Sur; ANTONIO A. GUNDRAN, in his official capacity as Provincial Treasurer of Ilocos Sur; REYNALDO BOTERES, in his official capacity as Municipal Assessor of Alilem, Ilocos Sur; and CRISTINA MONDERIN, in her official capacity as Municipal Treasurer of Alilem, Ilocos Sur,
Respondents.
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LUZON HYDRO CORPORATION and NATIONAL POWER CORPORATION,
Petitioners,

CTA EB No. 1096
(CBAA Cases Nos. L-96 & L-99)

-versus-

FATIMA A. TENORIO, in her official capacity as Provincial Assessor of Ilocos Sur; ANTONIO A. GUNDRAN, in his official capacity as Provincial Treasurer of Ilocos Sur;

REYNALDO BOTERES, in his official capacity as Municipal Assessor of Alilem, Ilocos Sur; and CRISTINA MONDERIN, in her official capacity as Municipal Treasurer of Alilem, Ilocos Sur,

Respondents.

Promulgated:

JAN 07 2015

11:15 a.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court En Banc are two (2) Petitions for Review. The first was filed on June 6, 2013 by the National Power Corporation and docketed as CTA EB Case No. 1024. The second was filed on December 6, 2013 by the Luzon Hydro Corporation and docketed as CTA EB Case No. 1096.

Both Petitions assail the Decision of the Central Board of Assessment Appeals (CBAA) dated September 26, 2012 in CBAA Consolidated Cases Nos. L-96 and L-99, entitled "Luzon Hydro Corporation and National Power Corporation vs Fatima A. Tenorio, in her official capacity as Provincial Assessor of Ilocos Sur, et al.," as well as the Resolution dated March 21, 2013 denying the motions for reconsideration of the National Power Corporation ("NPC") and the Luzon Hydro Corporation ("LHC").

THE PARTIES

Petitioner NPC is a government-owned and controlled corporation created and existing by virtue of Republic Act No. 6395, as amended. It has its principal office at the NPC Building Complex, Quezon Avenue corner BIR Road, Diliman, Quezon City. It was served with court processes through its counsel, the Office of the Solicitor General, at 134 Amorsolo St., Legaspi Village, Makati City.

Petitioner LHC is a domestic corporation organized and existing under the laws of the Philippines, with principal office address at Alilem, Ilocos Sur.

It is engaged in the business of generating electricity. It was served with court processes through its counsel, Puno and Puno, at the 12th Floor, Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City.

The respondents are the Municipal Assessor and Municipal Treasurer of Alilem, Ilocos Sur, and the Provincial Assessor and Provincial Treasurer of Ilocos Sur, all acting in their official capacities on behalf of their respective local government units. Respondents were served with court processes through their counsel, Provincial Legal Officers Oliver A. Cachapero and Maricel Z. Tacata-Bundoc, at the Provincial Legal Office, 2/F, Provincial Capitol, Vigan City, Ilocos Sur.

FACTUAL ANTECEDENTS

On November 24, 1996, the NPC entered into a Power Purchase Agreement (PPA) with a consortium composed of (a) Aboitiz Equity Ventures, Inc., (b) Pacific Hydro Limited, (c) Ever Electrical Manufacturing, Inc., and (d) Northern Mini Hydro Corporation, a subsidiary of Aboitiz Equity Ventures, Inc. Through the PPA, the NPC commissioned the consortium for the design, construction and operation of the 70 megawatt (MW) Bakun AC Hydroelectric Power Plant, under a build-operate-transfer arrangement.

On the same date as the execution of the PPA, an Accession Agreement was executed that made the LHC a party to the PPA. LHC assumed all the rights and obligations of the consortium under the PPA.

The NPC, LHC and the Municipality of Alilem, Ilocos Sur then entered into a Memorandum of Agreement ("MOA"). The MOA made Alilem a party to the PPA at least to the extent that the provisions of the PPA and the MOA overlap or are related to each other.

The NPC and LHC proceeded to fulfil their obligations under the PPA and built the power plant, the components of which were located in two different provinces. The weir, desander and tunnel were in the Municipality of Bakun, Province of Benguet. The power plant house, power station, turbine inlet and other mechanical and electrical equipment/machinery were in the Municipality of Alilem, Ilocos Sur.

Upon completion of the power plant and before its actual operation, the necessary permits were secured by the NPC to enable LHC to operate the power plant. These were water permits from the National Water Regulatory Board and a Special Land Use Permit from the Department of Environment and Natural Resources.

In accordance with the PPA and the BOT Law (R.A. No. 6957), LHC shall produce electric power exclusively for the NPC and shall operate the power plant under the NPC's direct control and supervision.

LHC submitted Sworn Declarations with the respective local government units of Ilocos Sur and Benguet involving real properties used in the production of electricity, for real property taxation purposes. In its letter dated September 5, 2002 to the Municipal Assessor's Office of Alilem, Ilocos Sur, LHC notified the assessor of the applicable provisions of the PPA between NPC and LHC.

On July 2, 2003, LHC received two (2) Notices of Assessment from the Municipal Assessor of Alilem assessing certain industrial machinery/equipment and the buildings of the Bakun Power Plant located in Alilem. The first Notice of Assessment required LHC to pay the amount of PHP4,303,953.80 as real property taxes for the fourth quarter of the year 2002. The second required the NPC to pay the amount of PHP17,233,175.00 in real property taxes for the year 2003. LHC referred the notices to the NPC.

The Notices of Assessment additionally imposed forty percent (40%) of the acquisition cost as installation cost, and fifteen percent (15%) of the acquisition cost as freight charges.

On August 18, 2003, LHC filed a protest with the LBAA, docketed as LBAA Case No. 08-01-03. The NPC intervened thereafter, alleging that it is the party liable for the payment of realty taxes under the PPA. While the proceedings therein were underway, LHC received on April 1, 2005 a Notice of Billing from the Municipal Treasurer of Alilem. The Notice of Billing required LHC to pay the total amount of PHP77,184,226.24. LHC also filed a protest against this notice.

On September 22, 2005, the NPC, the LHC, the Province of Ilocos Sur and the Municipality of Alilem executed a Compromise Agreement, under which they agreed to refer the case to the LBAA after payment by LHC/NPC of the real property tax computed at ten percent (10%) assessment level, without prejudice to the payment of a higher tax or refund as the case may be, depending on the final resolution of the case. That same day, LHC/NPC paid under protest the amount of PHP4,749,274 as real property tax for the fourth quarter of 2002 up to the entire year of 2005.

On March 16, 2009, the LBAA dismissed the protests for lack of merit, and ordered LHC –

> xxx to pay the realty taxes due on the subject real property to be computed based on the amount of Fair Market Value stated in the

> Tax Declaration Nos. 002-00510; 002-00511; 002-00512; 002-00513; and 002-00444 and with an Assessment Level at the rate of Eighty Percent (80%) thereon, and after deducting the payments made, by virtue of their Compromise Agreement, LHC is ordered to pay the deficiency taxes due on the subject real property, plus the surcharges, penalties and interest from the fourth quarter of the year 2002 until it is fully paid, pursuant to and in accordance with the pertinent provisions of the Local Government Code (Republic Act No. 7160).

The NPC filed a motion for reconsideration dated April 8, 2009, but this was denied by Order dated July 13, 2009.

LHC filed an Appeal/Petition for Review dated April 29, 2009, docketed as CBAA Case No. L-96. Then the NPC filed its own Appeal/Petition for Review dated August 10, 2009, docketed as CBAA Case No. L-99. These petitions were subsequently consolidated.

In its Decision dated September 26, 2012, the CBAA dismissed the appeals of the NPC and LHC for lack of merit. The CBAA, however, ruled that it was improper for the LBAA to order LHC to pay interest, surcharges and penalties. LHC and the NPC separately filed motions for reconsideration of the CBAA Decision, but the CBAA denied both motions by Resolution dated March 21, 2013.

Hence, the NPC and the LHC filed their respective Petitions for Review – *six months apart* – on June 6, 2013 and December 6, 2013, respectively.

JURISDICTIONAL MATTERS

Before proceeding further, the Court must preliminarily resolve two questions that can impact its jurisdiction:

First, what standing does the NPC have to file its instant Petition for Review, when the real property assessment subject of these cases was made not against it but LHC, and the decisions rendered by the LBAA and CBAA were adverse not to it directly but to LHC?

Second, how could LHC claim to have filed its Petition for Review on time, on December 6, 2013, when the CBAA Resolution denying its Motion for Reconsideration was promulgated way back on March 21, 2013?

We first address the preliminary issue of the NPC's legal interest to protest the real property tax assessment. The notices of assessment were

addressed to LHC, *not to the NPC*, and it was LHC that initially protested the same, in August 2003, at the LBAA. Subsequently, the NPC intervened in the protest. On March 16, 2009, the LBAA dismissed the petition for lack of merit. The LBAA ordered LHC – *not the NPC* – to pay the realty taxes due on the subject real property. From the LBAA, the LHC filed an Appeal/Petition for Review with the CBAA, docketed as CBAA Case No. L-96. Then the NPC filed its own Appeal/Petition for Review, docketed as CBAA Case No. L-99. On September 26, 2012, the CBAA dismissed the consolidated appeals of the NPC and LHC, and on March 21, 2013 denied their separate motions for reconsideration.

The matter of legal interest arises from Section 226 of the Local Government Code ("LGC"), which limits the right to appeal the local assessor's action to the owner or the person having legal interest in the property.

To prove its legal interest, the NPC relies on the argument that LHC has merely naked title over the subject properties, over which the NPC has beneficial ownership and control. This argument is not novel. The NPC employed this same argument when it contractually assumed the tax liabilities of another power producer, Mirant Pagbilao Corporation, which was assessed real property taxes by the Municipality of Pagbilao, Province of Quezon, in 2000. Back then, this Court *en banc*, finding that the NPC was not the proper party to protest the real property tax assessment, as the NPC did not have the requisite legal interest, dismissed the NPC's petition. When the NPC raised this Court's decision to the Supreme Court via a petition for review on certiorari, the Supreme Court upheld our holding that it is the entity liable for the tax (*i.e.*, Mirant, not the NPC) that has the right to protest the assessment.[1] And when the NPC sought reconsideration of the Supreme Court's decision, the same was denied, with the Supreme Court enunciating: "We do not believe that the phrase "person having legal interest in the property" in Section 226 of the LGC can include an entity that assumes another person's tax liability by contract," and reiterating that "without the requisite interest, the tax assessment stands, and no claim of exemption or privilege can prevail."[2] Given the foregoing, we must adhere to the principle of *stare decisis*.

> The principle of *stare decisis* enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of its Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.

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[1] See *National Power Corporation vs Province of Quezon and Municipality of Pagbilao*, G.R. No. 171586, July 15, 2009.
[2] See *National Power Corporation vs Province of Quezon and Municipality of Pagbilao*, G.R. No. 171586, January 25, 2010.

> Thus, where the same question relating to the same event is brought by parties similarly situated as in a previous case already litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[3]

The Court thus holds that the NPC's protest against the assessment, up to its instant petition, was defective or invalid, because it did not possess the requisite legal standing.

Moreover, under Section 3(c) of Rule 8 of the Revised Rules of the Court of Tax Appeals,[4] an appeal by way of petition for review from a decision or ruling of the CBAA in the exercise of its appellate jurisdiction, as in this case, may be filed with this Court by "a party adversely affected" by the CBAA ruling or decision. The real property tax was assessed not against the NPC but LHC. Perforce, the NPC is a stranger to the real property tax assessments subject of these cases, and is not "a party adversely affected" by the CBAA Decision and Resolution appealed from. Consequently, the NPC lacks the legal standing to institute its instant Petition for Review.

We now turn to the second question. Did LHC file its Petition for Review on time?

LHC alleges that "LHC obtained a copy of the CBAA Resolution on November 6, 2013," and thus had "until December 6, 2013" within which to file its instant Petition for Review. This defies belief.

The subject CBAA Resolution was dated March 21, 2013. It took LHC more than seven (7) months to "obtain" a copy thereof. The CBAA holds office at the BSP Complex along Roxas Blvd., Manila; LHC's counsel, Puno and Puno, holds office at the Philippine Stock Exchange Center in Pasig City. Given that the cities of Manila and Pasig are both in Metro Manila, it is highly implausible that it would take seven months for mail matter to travel the distance.

In comparison, when the CBAA promulgated its Decision on September 26, 2012, LHC "received" a copy thereof on October 30, 2012, or just a little over one (1) month after the promulgation. If the Decision took just a little over one month from promulgation to be received, it is fair to expect that the Resolution, delivered over the same distance, would likewise be received in more or less the same span of time.

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[3] *Government Service Insurance System vs Maricar B. Buenviaje-Carreon*, G.R. No. 189529, August 10, 2012, *En Banc* Resolution. Citations omitted.
[4] A.M. No. 05-11-07-CTA, promulgated on November 22, 2005.

LHC offered neither explanation nor proof regarding the delay in its obtaining, rather than receiving, its copy of the CBAA's Resolution. In contrast, the NPC was able to file its instant Petition for Review on June 6, 2013, which suggests that the NPC received its copy of the CBAA Resolution in early May 2013. A scrutiny of the records indeed shows that NPC's counsel Atty. Fritz B.B. Somyden received his copy of the said Resolution on May 8, 2013, the date marked on the Registry Return Receipt.[5]

The reglementary period for the filing of a petition for review with this Court is laid down in Section 11 of R.A. No. 1125, as amended by R.A. No. 9282. Section 11 states that the appeal should be filed "within thirty (30) days after receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein."

The CBAA's Notice of Resolution dated April 18, 2013 was sent by registered mail to the parties through their counsels on April 18, 2013, from the Central Bank Post Office. The Notice for LHC was addressed to Atty. Frederick Tamayo of Puno and Puno at the firm's office at the Philippine Stock Exchange Center in Pasig City, and was covered by Registry Receipt No. 2183 dated April 18, 2013.[6] The corresponding Registry Return Receipt was dated May 22, 2013.[7] LHC thus had only until June 22, 2013 within which to file its Petition for Review with this Court. When it filed its Petition for Review on December 6, 2013, the filing was clearly way beyond the reglementary period – it was **167 days late**.

This Court cannot countenance such gross, if not fraudulent, disregard of the rules. In a case, the Supreme Court remarked:

> Petitioner was not candid enough to aver in the Motion for Extension that the period had lapsed, as it still toyed with the idea that it could get away with it. The allegations therein were crafted as if the said motion was timely filed. Notably, the May 16, 2006 Order expressed no inkling that the motion was filed out of time. The trial court either was deceived by or it casually disregarded the apparent falsity foisted by petitioner. Lest this Court be similarly deceived, it is imperative to carefully examine the facts. Xxx
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> Obviously grasping straws in its final pitch to win the court's leniency, petitioner employed a ploy to conceal not just the lapse of time but also the serious lapses of non-compliance with basic rules. The scheme insults the intelligence of the Court. While the Court frowns upon default judgments, it does not

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[5] Rollo of CTA EB No. 1096, p. 102.
[6] Rollo of CTA EB No. 1096, p. 96.
[7] Rollo of CTA EB No. 1096, p. 104.

> condone gross transgressions of the rules and perceptible vestiges of bad faith. [8]

Tardiness stretching to 167 days is simply too much for the Court to tolerate or condone. There have been cases where the Supreme Court upheld the dismissal of petitions for having been filed late by as little as five (5) days[9] and thirteen (13) days,[10] and more so when filed "way beyond the reglementary period."[11]

LHC cannot escape the tolling of the prescribed period by cleverly making the self-serving and unsubstantiated allegation that "LHC obtained a copy of the CBAA Resolution on November 6, 2013,"[12] when the record shows that its counsel received his copy on May 22, 2013.

It is well-settled that notice to counsel is notice to the client. When a party is represented by his counsel in a particular case, notice of proceedings must be served upon the counsel to constitute valid notice.[13] Thus, it is immaterial when LHC actually obtained a copy of the herein-assailed CBAA Resolution. What matters is the date when LHC's counsel received the said Resolution.

> The right to appeal is neither a natural right nor a part of due process. The perfection of an appeal within the period and in the manner prescribed by law is mandatory; noncompliance with this legal requirement is fatal and has the effect of making the judgment final and executory. xxx
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> We are mindful of the Court's rulings that, as much as possible, appeals should not be dismissed on a mere technicality in order to afford the litigants the maximum opportunity for the adjudication of their cases on the merits. However, the failure to perfect an appeal is not a mere technicality as it raises a jurisdictional problem which deprives the appellate court of jurisdiction over the appeal. After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period,

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[8] *Philippine National Bank vs Deang Marketing Corporation and Berlita Deang*, G.R. No. 177931, December 8, 2008. Underscoring in the original.
[9] *Spouses Dycoco vs Court of Appeals, et al.*, G.R. No. 147257, July 31, 2013.
[10] *Cosmo Entertainment Management, Inc. vs La Ville Commercial Corporation*, G.R. No. 152801, August 20, 2004.
[11] *Evelio P. Barata vs Benjamin Abalos, Jr., et al.*, G.R. No. 142888, June 6, 2001. In the case, the delay in filing was around 68 days.
[12] Petition for Review in CTA EB Case No. 1096, p. 3.
[13] *Romeo Zoleta vs Secretary of Labor, et al.*, G.R. No. 77242, October 18, 1988.

> the winning party has the correlative right to enjoy the finality of the decision in the case.[14]

On these scores, the two (2) Petitions for Review subject of this case ought to be peremptorily dismissed.

In any event, even if the instant petitions were properly and timely filed, this Court is not persuaded that the CBAA erred in upholding, with modification, the decision of the LBAA.

ISSUES

The issues in this case are as follows:

1. Whether the CBAA erred in holding that the subject machineries and equipment are not actually, directly and exclusively used by the NPC and thus not exempt from real property taxes.

2. Whether the CBAA erred in ruling that the subject machineries and equipment are not classified as a special class that is subject to the 10% assessment level under Section 216 of the Local Government Code ("LGC").

3. Whether the CBAA erred in affirming the imposition by the respondent Municipal Assessor of an additional 55% on the value of the machineries and equipment based on LHC's Sworn Declaration, for installation cost and freight charges.

4. Whether or not the respondents are estopped, based on privity of contract, by virtue of the Memorandum of Agreement between LHC, the NPC, and the Municipality of Alilem, from assessing and collecting real property taxes from LHC.

APPLICABLE LAW

The law applicable to the case is the Local Government Code of 1991 (R.A. No. 7160), particularly the provisions under Title II on real property taxation.

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[14] *Fred N. Bello vs National Labor Relations Commission, et al.*, G.R. No. 146212, September 5, 2007. Citations omitted.

DISCUSSION

The first issue presented by the petitioners is no longer novel. They allege that the NPC is the owner and the actual, direct and exclusive user of the subject properties. Being a GOCC engaged in the generation and distribution of power, it is exempt from real property tax by virtue of Section 234(c) of the LGC. Section 234(c) grants the exemption to:

> (c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

For Section 234(c) to come into play in this case, the subject properties must be "actually, directly and exclusively used" by the NPC as a GOCC engaged in the generation and transmission of electric power. It is use, not ownership, that is of decisive import. Indeed, the NPC concedes:

> Under Section 234(c) and Section 216 of the Local Government Code, it is the fact of "use," not "ownership" which determines whether the real properties should be exempt from real property tax.[15]

The NPC, however, wants to impose on this Court "the unique relationship between LHC and NPC" as determinative of "who is the user."[16] This the Court cannot allow, because the LGC itself defines "actual use" under Section 199, as follows:

> (b) "Actual Use" refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof;

In defining "actual use", the actor identified by the LGC is simply and solely "the person in *possession*" of the property. It is undisputed that the subject properties are in the possession of LHC as operator of the electric power generation enterprise, and that LHC is not a GOCC. Thus, Section 234(c) cannot apply, because "actual use" as defined by Section 199(b) of the LGC pertains to use "by the person in possession" of the real property assessed, which person must be a GOCC. The NPC, which is the GOCC in this case, was not "the person in possession" of the subject properties at the time of their assessment.

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[15] NPC's Petition for Review, p. 15; Rollo of CTA EB Case No. 1024, p. 15.
[16] Ibid.

In arguing that it is not LHC but the NPC that actually, directly and exclusively used the subject machineries and equipment during the pertinent period, the petitioners rely chiefly on the PPA. The NPC insists that under the PPA, "LHC retains naked ownership thereof as security until it is reimbursed of its capital expenses in the construction of the Power Plant," but that "beneficial ownership" of the same plant belongs to the NPC, which is also the exclusive buyer and user of all the power generated by the plant.[17] This argument, however, misses the point: what NPC should prove is that it is the *actual, direct and exclusive user of the subject machineries and equipment* – rather than of all the *power* generated by the plant.

The NPC even points out that what LHC shall cede to the NPC at the end of the cooperation period is the "possession" of the power plant – thereby admitting that before the end of the cooperation period, it is LHC that has possession of the subject properties.[18] This contradicts NPC's posture that "the use of the Power Plant is exclusively vested in NPC."[19]

The petitioners invoke the Build-Operate-Transfer (BOT) Law. But does the BOT Law itself allow the NPC to shield LHC from real estate tax assessment? The BOT Laws[20] are both completely silent about real property taxes. Instead, the Revised Implementing Rules and Regulations[21] of the BOT Law, as amended, provide in Section 13.2(d) that "LGUs may provide additional tax incentives, exemptions, or reliefs, subject to the provisions of the Local Government Code (LGC) of 1991 and other pertinent laws." Section 13.3(c)(d) of the Revised IRR additionally provide that as a direct subsidy, an LGU may "waive or grant special rates on real property taxes on the project during the term of the contractual arrangement."

To the Court's mind, the above-cited provisions in the Revised IRR of the BOT Law, as amended, recognize rather than impair the power of LGUs under the Local Government Code to impose real property taxes, and to grant reliefs therefrom.

The PPA between the NPC and LHC was drawn under the BOT Law. The PPA made the NPC responsible for the payment of real property taxes that might be assessed against LHC. This contract, however, cannot amend the LGC's provisions on real property taxation. It is basic that the law is deemed written into every contract.[22]

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[17] Ibid., p. 9.
[18] Ibid., p. 10.
[19] Ibid., p. 10.
[20] R.A. No. 6957, approved on July 9, 1990, and R.A. No. 7718, approved on May 8, 1994.
[21] Published March 29, 2006 in the *Philippine Daily Inquirer*. The Revised IRR took effect 15 days after complete publication.
[22] *National Steel Corporation v. Regional Trial Court of Lanao del Norte, Br. 2., Iligan City*, 304 SCRA 595 [1999].

On the first issue, we thus affirm the CBAA's finding that the subject machineries and equipment are not actually, directly and exclusively used by the NPC and thus not exempt from real property taxes.

We proceed to the second issue. The NPC and LHC argue that even if the subject properties are not exempt from real property taxation, they should at least be treated as falling under the "Special Classes of Real Property" defined by Section 216 of the LGC, and thus become subject only to the ten percent (10%) assessment level under Section 218(d). These sections provide as follows:

> **Section 216.** *Special Classes of Real Property.* - All lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and government-owned or controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special.
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> **Section 218.** *Assessment Levels.* - The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following: xxx (d) On Special Classes: The assessment levels for all lands buildings, machineries and other improvements – GOCCs engaged in the supply and distribution of water and/or generation and transmission of electric power, 10%.

To qualify for the 10% assessment level under Section 218(d), the properties must first qualify as part of the "Special Classes" under Section 216. For the real properties of the NPC, as a GOCC engaged in the generation and transmission of electric power, to qualify for the special classification, the properties must be "owned and used" by the NPC.

In our discussion of the first issue, we already concluded that it is LHC, not the NPC, that is the actual user of the subject properties. This alone renders it impossible for the NPC to meet the paired standard of ownership *and* use laid down by Section 216.

There is more. As the CBAA had determined, the NPC is also not the owner of the subject properties. The CBAA found that under the terms and conditions contained in Article 2.13 of the PPA, LHC is the owner of the machineries and equipment during the Cooperation Period. Thus, the subject

properties do not fall under the classification of "Special Classes" of real property.[23]

Indeed, it was LHC that submitted to the Municipal Assessor's Office of Alilem, Ilocos Sur the sworn declaration required by Section 202 of the LGC.

> **Section 202.** *Declaration of Real Property by the Owner or Administrator.* - It shall be the duty of all persons, natural or juridical, owning or administering real property, including the improvements therein, within a city or municipality, or their duly authorized representative, to prepare, or cause to be prepared, and file with the provincial, city or municipal assessor, a sworn statement declaring the true value of their property, whether previously declared or undeclared, taxable or exempt, which shall be the current and fair market value of the property, as determined by the declarant. Such declaration shall contain a description of the property sufficient in detail to enable the assessor or his deputy to identify the same for assessment purposes. The sworn declaration of real property herein referred to shall be filed with the assessor concerned once every three (3) years during the period from January first (1st) to June thirtieth (30th) commencing with the calendar year 1992.

If NPC was truly the owner of the subject properties at the time, then it should have complied with Sec. 202 of the LGC. In fact, however, the ownership of the properties at the time was with LHC, and would only be transferred to the NPC at the end of the Cooperation Period under the PPA. That was why it was LHC that filed the declaration required by Sec. 202 of the LGC. It is an accepted principle in taxation that taxes are paid by the person obliged to declare the same for taxation purposes.[24]

Being neither the owner nor the user of the subject properties at the time of their assessment, the NPC cannot compel the respondents to include them in the Special Classes under Section 216 of the LGC, for them to qualify for the 10% assessment level under Section 218.

We turn now to the third issue. The petitioners allege that the CBAA erred in affirming the imposition by the respondent Municipal Assessor of an additional 55% on the value of the machineries and equipment based on LHC's Sworn Declaration, for installation cost and freight charges.

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[23] CBAA Decision, p. 12; Rollo of CTA EB Case No. 1096, p. 58.
[24] *Camp John Hay Development Corporation vs Central Board of Assessment Appeals, et al.*, G.R. No. 169234, October 2, 2013.

The CBAA found that the properties were valued by the Municipal Assessor based on "the amount stated in the sworn declaration plus 55% thereof representing installation cost [40%] and freight charges [15%]. The Municipal Assessor resorted to this valuation, based on Sec. 224 of the LGC, after requests from June to November 2001 for receipts or documents needed for the assessment were not heeded by LHC. It was not until September 2002 that LHC submitted a Sworn Statement. LHC contested the valuation, yet failed to present documents to the LBAA, as well as to the CBAA, to prove that the figures in the Sworn Statement represented the true, current and fair market value of the properties. LHC instead insisted that "Respondent Assessor has the burden to prove that the assessment is correct or, more likely to the point, to prove that the figures appearing on the Sworn Statement do not represent the true, current and fair market value of the subject machineries and equipment."[25]

When should this sworn statement be filed? Section 202 of the LGC does not fix the period, but Section 203 makes it the duty of a person acquiring real property or making an improvement thereon to file the statement "within sixty (60) days after the acquisition of such property or upon completion or occupancy of the improvement, whichever comes earlier." Accordingly, from June to November 2001, the respondent Municipal Assessor sent reminders and requests to LHC for this purpose. It took LHC until September 5, 2002 to submit its Sworn Statement, but without the supporting receipts or documents sought by the assessor.

Thus, even before the LHC very belatedly complied with Sections 202 and 203 of the LGC, the Municipal Assessor was already authorized by Section 204 of the LGC to make the declaration himself.

> **Section 204.** *Declaration of Real Property by the Assessor.* - When any person, natural or juridical, by whom real property is required to be declared under Section 202 hereof, refuses or fails for any reason to make such declaration within the time prescribed, the provincial, city or municipal assessor shall himself declare the property in the name of the defaulting owner, if known, or against an unknown owner, as the case may be, and shall assess the property for taxation in accordance with the provision of this Title. No oath shall be required of a declaration thus made by the provincial, city or municipal assessor.

It was only on July 2, 2003 that the Municipal Assessor sent two (2) Notices of Assessment to LHC, which became the subjects of the instant petitions.

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[25] CBAA Decision, p. 12-15; Rollo of CTA EB Case No. 1096, pp. 58-61.

In its Motion for Reconsideration, LHC alleged that the letters/requests of the Municipal Assessor from June to November 2001 were not presented in evidence to the LBAA according to the Rules on Evidence. However, LHC offered no documentary evidence of its own to the CBAA in support of its Sworn Declaration.[26]

We find that LHC did not come to the LBAA, CBAA and now this Court, with clean hands. It failed to comply with Section 202 and 203 of the LGC within the prescribed period, yet it effectively demands that its self-serving Sworn Statement be honored as the basis of the assessment. This Sworn Statement could not be validated for lack of supporting documents. It is precisely for similar situations of recalcitrance that Section 204 authorizes the assessor to make the declaration that the taxpayer failed or refused to submit within the reglementary period.

Contrary to the posture of LHC, the respondent Municipal Assessor has no burden to prove that his assessment is correct. The presumption of regularity in the performance of duties accorded to tax examiners has been extended to local assessors in *FELS Energy Inc. vs The Province of Batangas*,[27] where the Supreme Court reiterated: "Tax assessments by tax examiners are presumed correct and made in good faith, with the taxpayer having the burden of proving otherwise."[28]

In claiming tax exemption or, alternatively, a 10% assessment level, the petitioners do not thereby question the amount of realty taxes assessed. Failing in these claims, they now question the correctness of the amount assessed and the manner by which it was determined. But by failing to submit the sworn statement required by Section 202 of the LGC within the period set by Section 203, and then failing to submit receipts and pertinent documents in support of the Sworn Statement very tardily submitted by LHC, the petitioners have primarily only themselves to blame.

Indeed, by their lapses in these instant petitions – as discussed earlier under the heading "Jurisdictional Matters" – petitioners have effectively allowed the CBAA Decision to attain finality.

We turn now to the fourth and final issue. Are the respondents estopped, based on privity of contract by virtue of the Memorandum of Agreement between LHC, the NPC, and the Municipality of Alilem, from assessing and collecting real property taxes from LHC?

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[26] LHC's Motion for Reconsideration, pp. 24-25; Rollo of CTA EB Case No. 1096, pp. 92-93.
[27] G.R. No. 168557, February 16, 2007.
[28] Citing *Commissioner of Internal Revenue vs Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301, 329.

LHC argues that "by entering into the MOA, Respondents consented to NPC's assumption of liability for RPT" and are "prevented by contract from collecting the assessed RPT from LHC since both the PPA and the MOA provide that NPC is the party responsible for the payment of the same."[29]

On this issue, the CBAA disposed as follows:

> LHC says that the Municipality and the Province are stopped from questioning the MOA and NPC's liability for the assessed real property taxes because the Mayor was a party to the Memorandum of Agreement (MOA).
>
> The Memorandum of Agreement is a document made and entered into in Alilem, Ilocos Sur, by and among the Municipality of Alilem, represented by its Mayor, LHC and NPC. It does not show when it was signed by the parties thereto but it does show that it was acknowledged in Quezon City on November 18, 1998 before Notary Public May G. Saga-Aguilar.
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> xxx
>
> The "responsibilities" of the Municipality of Alilem under the MOA, as host of the project, consist only of assistance and support in every aspect of the project which requires such assistance and support from the municipality. Nowhere in the MOA did the Municipality of Alilem commit or agree to collect the subject realty taxes directly from NPC, instead of from LHC.
>
> Therefore, the Municipality of Alilem, Ilocos Sur is not bound, by the terms of the MOA, to demand payment of the subject realty tax directly from NPC.[30]

We agree with the CBAA's finding. The petitioners would want us to construe the MOA as binding the Municipality of Alilem by extension to the PPA between the NPC and LHC, particularly on the assumption by the NPC of the real property tax liabilities that may be assessed against LHC. Yet there is no express provision in the MOA to this effect. Apparently, to the petitioners, it is sufficient that this be inferred by mere implication from the MOA. We cannot subscribe to this suggestion. Instead, we see the MOA to be a contract of adhesion which the petitioners induced the Mayor of Alilem to sign. The

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[29] Petition for Review in CTA EB Case No. 1096, p. 13.
[30] CBAA Decision, p. 19; Rollo of CTA EB Case No. 1096, p. 65.

rule is that, should there be ambiguities in a contract of adhesion, such ambiguities are to be construed against the party that prepared it.[31]

> Settled is the rule that ambiguities in a contract are interpreted against the party that caused the ambiguity. "Any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it."[32]

In conclusion, we find the two (2) petitions in the instant case to be without merit.

In addition, we have found the NPC's petition in CTA EB Case No. 1024 to have been filed by a party without the requisite legal standing, and the LHC's petition in CTA EB Case No. 1096 to have been filed way beyond the reglementary period. These are sufficient causes for the CBAA's Decision and Resolution to be given finality.

WHEREFORE, premises considered, the instant Petitions for Review are **DENIED**, for lack of merit, additional to their respective jurisdictional defects. The Decision dated September 26, 2012 and the Resolution dated March 21, 2013 of the Central Board of Assessment Appeals in CBAA Cases Nos. L-96 and L-99 are hereby **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice
with separate concurring opinion

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[31] *Pilipino Telephone Corporation vs Delfino Tecson*, G.R. No. 156966, May 7, 2004.
[32] *Fortune Medicare, Inc. vs David Robert U. Amorin*, G.R. No. 195872, March 12, 2014, citing Garcia vs CA, 327 Phil. 1097, 1111 (1996).

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO – MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION, *Petitioner,* -versus- **FATIMA A. TENORIO in her capacity as Provincial Assessor of Ilocos Sur; ANTONIO A. GUNDRAN, in his official capacity as Provincial Treasurer of Ilocos Sur; REYNALDO BOTERES, in his official capacity as Municipal Assessor of Alilem, Ilocos Sur; and CRISTINA MONDERIN, in her official capacity as Municipal Treasurer of Alilem, Ilocos Sur,** *Respondents.*	**CTA EB CASE NO. 1024** (CBAA Case Nos. L-96 & L-99)
x----------x	
LUZON HYDRO CORPORATION and NATIONAL POWER CORPORATION, *Petitioners,* -versus- **FATIMA A. TENORIO in her capacity as Provincial Assessor of Ilocos Sur; ANTONIO A. GUNDRAN, in his official capacity as Provincial Treasurer of Ilocos Sur; REYNALDO BOTERES, in his official capacity as Municipal Assessor of Alilem, Ilocos Sur; and CRISTINA MONDERIN, in her official capacity as Municipal Treasurer of Alilem, Ilocos Sur,** *Respondents.*	**CTA EB CASE NO. 1096** (CBAA Case Nos. L-96 & L-99) Present: **DEL ROSARIO**, *PJ,* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS**, *and* **RINGPIS-LIBAN**, *JJ.* Promulgated: JAN 07 2015 11:15 a.m.

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SEPARATE CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Ma. Belen M. Ringpis-Liban, which affirms the denial of petitioners' protest against the real property tax (RPT) assessment, but *solely* on the grounds that: a) National Power Corporation (NPC) has no legal standing to protest the RPT assessment in CTA EB No. 1024; and, b) that the Court has no jurisdiction to entertain the instant Petition for Review in CTA EB No. 1096 which was belatedly filed by Luzon Hydro Corporation (LHC) on December 6, 2013.

In this regard, Section 226 of the Local Government Code (LGC), as amended, limits the right to appeal the local assessor's action to the owner or the person having legal interest in the property, to wit:

> "Sec. 226. *Local Board of Assessment Appeals*. Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal."

In *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*,[1] wherein Mirant built a power plant under a Build, Operate and Transfer Agreement with NPC contracting to pay all the taxes that will be assessed against Mirant, the Supreme Court held that NPC is clearly not vested with the requisite interest to protest the tax assessment, as it is not an entity having the legal title over the machineries, *viz:*

> "Legal interest is defined as interest in property or a claim cognizable at law, equivalent to that of a legal owner who has legal title to the property. Given this definition, **Napocor is clearly not vested with the requisite interest to protest the tax assessment, as it is not an entity having the legal title over the machineries. It has absolutely no solid**

[1] G.R. No. 171586, January 25, 2010.

claim of ownership or even of use and possession of the machineries, as our July 15, 2009 Decision explained." (Emphasis supplied)

In this case, considering that LHC is the owner and actual user of the subject properties and that it was LHC which was assessed with RPT, it is LHC which has the legal standing to protest the said assessment. Stated differently, NPC has no legal standing to file the instant Petition for Review.

With regard to the Petition for Review filed by LHC in CTA EB No. 1096, the Court has no jurisdiction to entertain the said petition.

In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*,[2] the Supreme Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and, (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, such fact of receipt is merely a disputable presumption subject to controversion; conversely, a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

A perusal of the records shows that the CBAA's Notice of Resolution was sent to LHC's counsel through registered mail on April 18, 2013 and the corresponding Registry Return Card was dated on May 22, 2013. LHC's counsel did not dispute nor did he deny receiving the Notice of Resolution. In the absence of direct denial of receipt of said Notice of Resolution, and applying the doctrine laid down in *Barcelon,* there is a presumption that the Notice of Resolution was received in the regular course of mail. On the basis of the date appearing in the Registry Return Card, which is May 22, 2013, LHC had until June 22, 2013 within which to file its Petition for Review before this Court. Considering that LHC filed its Petition for Review on December 6, 2013, the filing was clearly way beyond the reglementary period.

It is well-settled that the right to appeal is not a constitutional, natural or inherent right — it is a statutory privilege and of statutory origin and, therefore, available only if granted or as provided by statutes. It may be

[2] G.R. No. 157064, August 7, 2006.

exercised only in the manner prescribed by the provisions of the law.[3] By reason of LHC's failure to file the appeal within the prescribed period, the Court was deprived of its jurisdiction to entertain the same.

All told, I **VOTE** to **DISMISS** the Petitions for Review filed by National Power Corporation in CTA EB Case NO. 1024 and Luzon Hydro Corporation in CTA EB No. 1096 but solely on the afore-stated reasons.

ROMAN G. DEL ROSARIO
Presiding Justice

[3] *Yu vs. Samson-Tatad*, G.R. No. 170979, February 9, 2011.