REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Petitioner,

- *versus* -

MUNICIPALITY OF LABRADOR PANGASINAN,
Respondent.

CTA *EB* NO. 1373
(CTA AC NO. 123)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan JJ.

Promulgated:

APR 27 2017 4:15 p.m.

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D E C I S I O N

BAUTISTA, J:

The Case

Before the Court *En Banc* is a Petition for Review filed on October 30, 2015[1], pursuant to *Section 2, Rule 4*[2] and *Section 4(b)*[3], *Rule 8 of the*

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[1] *Rollo, CTA EB Case No. 1373, Petition for Review ("PFR"),* pp. 1-107, with annexes.

[2] "RULE 4 - JURISDICTION OF THE COURT

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SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

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(d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive original jurisdiction over tax collection cases; "

[3] "RULE 8. PROCEDURE IN CIVIL CASES

SEC. 4. *Where to appeal; mode of appeal.* –

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Revised Rules of the Court of Tax Appeals[4] *("RRCTA")*, which seeks for the Court *En Banc* to:[5]

1. Reverse and set aside the Decision[6] dated June 24, 2015 and the Resolution[7] dated October 7, 2015 issued by the Second Division of the Court of Tax Appeals ("Court in Division"), which effectively granted respondent's Petition for Review and reversed and set aside the Order issued by the Regional Trial Court of Quezon City - Branch 222 ("RTC") on August 11, 2014;[8]

2. Declare petitioner National Grid Corporation of the Philippines ("NGCP"), and the properties in the Notice of Assessment ("NOA") dated April 7, 2011, Second NOA dated June 21, 2011, and Notice of Delinquency dated September 15, 2011, exempt from payment of real property tax ("RPT") pursuant to *Section 9 of Republic Act ("RA") No. 9511*; and

3. Direct the re-classification of the subject real properties in the Assessment Roll as exempt from payment of RPT.

The Parties[9]

Petitioner NGCP is a domestic corporation which was granted a congressional franchise pursuant to *RA No. 9511*, to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities. Its principal office is located at NGCP Building, Quezon Avenue corner Bureau of Internal Revenue ("BIR") Road, Diliman, Quezon City.

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal."

[4] A.M. No. 05-11-07-CTA, approved by the Supreme Court on November 22, 2005.

[5] *Rollo, PFR, Prayer*, pp. 47-48.

[6] *Records, CTA AC No. 123, Decision*, pp. 415-432; penned by Associate Justice Camelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova concurring.

[7] *Id., Resolution*, pp. 462-465; penned by Associate Justice Camelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova concurring.

[8] *Id., Decision*, p. 432.

[9] *Id.* at 416.

Respondent Municipality of Labrador, Pangasinan ("Municipality") is a local government unit ("LGU") created by law, with office at Municipal Hall, Poblacion, Labrador, Pangasinan.

The Facts

The relevant antecedents were succinctly recited by the Court in Division in its Decision dated June 24, 2015, as follows:

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> Under Section 1 of RA No. 9511, [petitioner] was granted the franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities.
>
> Effective January 15, 2009, [petitioner] assumed the business of transmitting electricity from the National Transmission Corporation ("TRANSCO" for brevity). From that date, [petitioner] operated the electricity transmission assets situated in Barangay Bolo-Kadampat, Labrador, Pangasinan.
>
> On April 11, 2011, [petitioner] received a [NOA] from Romulo Mislang, the Municipal Assessor of [respondent] giving "notice of assessment in conformity with the provisions of the Local Government Code" over the transmission assets located in Barangay Bolo-Kadampat, Labrador, Pangasinan ("First [NOA]" for brevity). Attached thereto was Tax Declaration Nos. 13243, 13244, and 13245 under the name of [petitioner].
>
> On May 27, 2011, [petitioner] filed a Petition with the Local Board of Assessment Appeals (LBAA) to assail the First [NOA] on the ground that [petitioner] is allegedly exempt from payment of all taxes, including [RPT].
>
> On June 21, 2011, the Municipal Treasurer of [respondent] issued another document that purported to be a "[NOA]" ("Second [NOA]" for brevity) covering the same transmission assets already covered by the First [NOA].

It came to the attention of [petitioner] that on September 15, 2011, the Municipal Treasurer issued a Notice of Delinquency of Payment of Real Estate Tax, stating that [petitioner] is delinquent in the payment of [RPT] as of June 22, 2011 in the sum of [Php]16,381,054.00.

On October 10, 2011, [petitioner] was informed by Banco de Oro, Metrobank, and Landbank that the Municipal Treasurer had served upon [them] a Warrant of Distraint/Garnishment dated October 4, 2011. The Warrant of Distraint/Garnishment ordered the seizure and/or confiscation of the money or the bank deposit of [petitioner] with [said] banks and to deliver the money or bank deposit of [petitioner] to the office of [respondent]'s Municipal Treasurer.

Thus, on October 17, 2011, [petitioner] filed a Complaint with prayer for temporary restraining order (TRO) and/or preliminary injunction before the [RTC], captioned as "National Grid Corporation of the Philippines (NGCP) vs. Banco De Oro Unibank, Inc., Metropolitan Bank and Trust Company, Landbank of the Philippines, and Municipality of Labrador, Pangasinan, herein represented by Edualino C. Casipit in his official capacity as Municipal Treasurer and Romulo G. Mislang in his official capacity as Municipal Assessor[,"] docketed as Civil Case No. Q-11-70148.

The trial court issued an Order dated October 25, 2011, granting the request for a TRO and further setting the hearing on preliminary injunction of the case. Aggrieved, [respondent] filed a Motion for Reconsideration and Motion for Inhibition of the Honorable Judge Charita B. Gonzales on October 28, 2011, which was denied by the trial court in an Order dated November 4, 2011; thus, the trial for preliminary injunction ensued.

The trial court granted the issuance of the writ of preliminary injunction in favor of [petitioner] in an Order dated November 15, 2011. The writ of preliminary injunction was issued by the trial court on November 21, 2011.

During the hearing on May 24, 2013, the parties agreed that the sole issue to be resolved by the lower court is whether [petitioner] is liable to pay [RPT] on the properties subject of the First and Second [NOAs].

On February 24, 2014, the trial court issued its Decision denying the Complaint for injunction filed by [petitioner], ruling that in interpreting Section 9 of RA No. 9511, [petitioner] is liable to pay taxes on its real property. The dispositive portion of the Decision states:

> []WHEREFORE, premises considered, the instant complaint for injunction is hereby denied.
>
> SO ORDERED.[]

[Petitioner] then filed a Motion for Reconsideration assailing the Decision issued by the trial court. Subsequently, in an Order dated August 11, 2014, the lower court granted [petitioner]'s Motion for Reconsideration, and ruled that [petitioner] is not liable to pay [RPT] on properties used in connection with its franchise and made the writ of preliminary injunction permanent. The dispositive portion of the said Order states:

> []WHEREFORE, premises considered, plaintiffs' subject motion for reconsideration is hereby partially granted. Accordingly, the Decision dated February 24, 2014 is hereby set aside and a new one is hereby rendered to the effect that the Writ of Preliminary Injunction issued pursuant to the Order dated November 15, 2011 against defendants Banco De Oro Unibank, Inc., Metrobank and Landbank is hereby made permanent.
>
> SO ORDERED.[]

As a result, [respondent] filed the [] Petition for Review [with the Court in Division] on September 15, 2014.[10]

On June 24, 2015, the Court in Division issued the assailed Decision[11] granting the Petition for Review, the dispositive portion thereof states:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Order dated August 11, 2014 is hereby **REVERSED AND SET ASIDE**.
>
> **SO ORDERED.**[12]

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[10] *Records, Decision,* pp. 416-419.
[11] *Id.* at 415-432.
[12] *Id., Dispositive Portion,* p. 432; emphases retained.

In the said Decision, the Court in Division ruled that the banks may not be considered as real parties in interest in the case; that under *Section 7(a) of RA No. 9282* it has jurisdiction over decisions, orders or resolutions of the RTCs in local tax cases (including RPT) originally decided or resolved by them in the exercise of their original or appellate jurisdiction; that in RPT cases, an appeal to the Board of Assessment Appeals is not necessary before a party may file a Petition for Review with the Court of Tax Appeals ("CTA"); and that since petitioner is questioning the legality of the assessments, it may directly file its complaint with the RTC without waiting for the decision of the Local Board of Assessment Appeals ("LBAA").

The Court in Division further held that while *Section 9 of RA No. 9511* states that petitioner is liable for franchise tax of three percent (3%) "in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise[,]" the next portion of the same provision expressly states that it "shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay[;]" that petitioner cannot claim exemption just for the fact that TRANSCO is exempt; that *Section 193 of RA No. 7160*, otherwise known as the *Local Government Code of 1991 ("1991 LGC")*, withdrew the exemption provided by its Charter; and that petitioner is not included in *Section 234 of the 1991 LGC*, which listed the entities expressly exempted from payment of RPT. Therefore, the Court in Division declared that petitioner is liable to pay taxes on its real estate, buildings and personal property.

On July 10, 2014, petitioner filed its Motion for Reconsideration of the Decision dated [June 24,] 2015[13] ("MR").

On July 20, 2015, the Court issued a Resolution[14] ordering respondent to file its Comment on petitioner's MR. Hence, on August 5, 2015, respondent filed its Comment (To the [MR]).[15]

[13] *Records*, pp. 433-455.
[14] *Id.* at 458.
[15] *Id.* at 459-460.

On October 7, 2015, the Court issued the assailed Resolution[16] denying the Motion for Reconsideration in the following manner:

> **WHEREFORE**, premises considered, the instant Motion for Reconsideration is hereby **DENIED**.
>
> **SO ORDERED.**[17]

On October 30, 2015, petitioner filed the instant Petition for Review[18]. Thereafter, the Court *En Banc* issued a Resolution[19] dated December 9, 2015, ordering respondent to file its comment, not a motion to dismiss, within ten (10) days from notice.

On January 8, 2016, respondent filed its Comment[20] on the Petition for Review.

On February 2, 2016, the Court *En Banc* promulgated a Resolution[21] which gave due course to the Petition for Review, thus, requiring the parties to submit their respective memoranda within thirty (30) days from receipt of the Resolution.

On March 1, 2016, respondent filed a Manifestation[22], which states that it is adopting its Comment to the Petition for Review, and all of its pleadings filed in the Court in Division, as its Memorandum. This was duly noted by the Court *En Banc* in its Minute Resolution[23] dated March 3, 2016.

On April 21, 2016, the Judicial Records Division issued a Records Verification Report[24] stating that petitioner failed to file its memorandum.

On May 11, 2016, the Court *En Banc* resolved to submit the case for decision.[25]

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[16] *Records*, pp. 462-465.
[17] *Id., Resolution, Dispositive Portion*, p. 465; emphases retained.
[18] *Rollo, PFR*, pp. 1-107, with annexes.
[19] *Id.*, pp. 109-110.
[20] *Id.* at 111-112.
[21] *Id.* at 119-120.
[22] *Id., Manifestation*, pp. 122-123.
[23] *Rollo*, p. 124.
[24] *Id.* at 125.
[25] *Id.* at 127-128.

On June 7, 2016, petitioner filed a Motion for Leave to Admit Memorandum[26] ("Motion for Leave"), with attached Memorandum[27]. On July 1, 2016 the Court *En Banc* promulgated a Resolution[28] denying petitioner's Motion for Leave. Consequently, the attached Memorandum to the Motion for Leave was deemed not filed.

The Assigned Errors/Issues[29]

Petitioner claims that the Decision dated June 24, 2015 and the Resolution dated October 7, 2015 issued by the Court in Division in CTA AC No. 123 are contrary to law and existing jurisprudence.

Petitioner likewise raises the following issues:

WHETHER THE COURT IN DIVISION HAS JURISDICTION OVER RPT CASES DECIDED BY THE RTC; and

WHETHER PETITIONER IS LIABLE FOR THE PAYMENT OF RPT ON PROPERTIES USED IN CONNECTION WITH ITS FRANCHISE.

Petitioner's Arguments[30]

Petitioner argues that respondent availed of the wrong remedy when it filed a Petition for Review before the Court in Division; that the Court in Division has no jurisdiction over the case at bar; that pursuant to *Section 7(a)(3) of RA No. 9282*, the appellate jurisdiction of the CTA does not include an injunction case in relation to RPT cases decided by the RTC; and that the appeal thereto should be taken before the Court of Appeals ("CA").

It further asserts that under *Section 133, Title 1, Book II of the 1991 LGC*, respondent has no power to impose RPT as it is not a local tax; that the "exclusive of its franchise" provision cannot be taken as an

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[26] *Rollo*, pp. 129-135, with annexes.
[27] *Id., Memorandum*, pp. 136-182.
[28] *Id.*, pp. 184-186.
[29] *Id., Petition for Review*, p. 10.
[30] *Id.* at 10-47.

exception from the general rule because following such argument will render the entire general rule ineffective; and that in interpreting a statute, every part thereof be given effect.

Lastly, petitioner argues that *RA No. 9511* granted it the legislative franchise to operate and maintain the nationwide transmission system of the country; that *Section 9* of the same law expressly grants it exemption from payment of income tax and any and all kind of taxes, fees and charges, including taxes on properties used in connection to its franchise; that when *RA No. 9511* was enacted in 2008, Congress was aware of the provisions of the *1991 LGC* regarding the withdrawal of tax exemptions on real properties; that it is the manifest intent of Congress to exempt it from the operation of the *1991 LGC* with respect to the payment of RPT; and that the machineries and equipment subject of the instant petition are actually, directly and exclusively used in the transmission of electric power, therefore, it should be exempt from RPT under *Section 234(c) of the 1991 LGC.*

Respondent's Counter-Arguments[31]

On the other hand, respondent counters that the Supreme Court ("SC"), in the case of *National Power Corporation v. Municipal Government of Navotas et al.*[32], has already made it clear that cases involving RPTs are within the contemplation of the phrase "local tax cases;" and that the term "local tax cases" should be considered in its general and comprehensive sense, which embraces RPT assessments.

Respondent argues further that the meaning of "exclusive of this franchise" has already been settled by the SC in the case of *Digital Telecommunication Philippines, Inc. v. City Government of Batangas, et al.*[33]; and that unless and until the decision of the SC is reversed, the same should prevail and is part of the law of the land.

The Ruling of the Court En Banc

Petitioner alleges that the Court in Division has no jurisdiction over the case at bar. The Court *En Banc* disagrees.

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[31] *Rollo, Comment,* pp. 111-115.
[32] G.R. No. 192300, November 24, 2014.
[33] G.R. No. 156040, December 11, 2008, 573 SCRA 675.

The CTA is a court of special jurisdiction, hence, it can only take cognizance of matters that are clearly within its jurisdiction.[34] Its jurisdiction is expressly provided in *RA No. 1125*, as amended by *RA No. 9282*. The pertinent portions of *Section 7(a)(3) of RA No. 1125* regarding the CTA's jurisdiction over decisions of the RTC are quoted hereunder, to wit:

> SECTION 7. *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> xxx xxx xxx
>
> 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;[35]

Moreover, *Section 3(a)(3), Rule 4 of the RRCTA* provides the jurisdiction of the Court in Division, *viz.*:

> RULE 4
> Jurisdiction of the Court
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> xxx xxx xxx
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> SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
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> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> xxx xxx xxx
>
> (3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;[36]

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[34] *Allied Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 175097, February 5, 2010, 611 SCRA 657.
[35] Underscoring ours.
[36] *Id.*

As aptly stated by the SC in the case of *CE Casecnan Water and Energy Company, Inc. v. The Province of Nueva Ecija, et al.*[37], local tax cases include RPT. Applying the foregoing, the Court in Division has jurisdiction to review by appeal the February 24, 2014 Decision and the August 11, 2014 Order of the RTC under of *Section 7(a)(3) of RA No. 1125* and *Section 3(a)(3), Rule 4 of the RRCTA.*

As to the jurisdiction of the RTC, the Court *En Banc* deems it necessary to discuss the procedure that should be followed in an instance wherein a taxpayer contests an assessment made by an LGU. This is provided under *Section 252 of the 1991 LGC,* which reads as follows:

> Section 252. *Payment under Protest.* -
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> (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
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> (b) xxx
>
> (c) xxx
>
> (d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code.[38]

Corollary, the above-cited *Chapter 3, Title Two, Book II of the 1991 LGC* pertains to the procedural and substantive aspects of appeal before the LBAA and Central Board of Assessment Appeals ("CBAA"), 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

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[37] G.R. No. 196278, June 17, 2015; citing *National Power Corporation v. Municipal Government of Navotas,* G.R. No. 192300, November 24, 2014, and *City of Lapu-Lapu v. Philippine Economic Zone Authority,* G.R. Nos. 184203 and 187583, November 26, 2014.

[38] Underscoring ours.

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 in support of the appeal.

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Sec. 229. *Action by the Local Board of Assessment Appeals.* – (a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) In the exercise of its appellate jurisdiction, the Board shall have the powers to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue subpoena and subpoena *duces tecum*. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

(c) The secretary of the Board shall furnish the owner of the property having legal interest therein and the provincial or city assessor with a copy of the decision if the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board may, within thirty (30) days after receipt of the decision of said Board, appeal to the CBAA, as herein provided. The decision of the CBAA shall be final and executory.

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Sec. 231. *Effect of Appeal on the Payment of Real Property Tax.* - Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to

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subsequent adjustment depending upon the final outcome of the appeal.[39]

Section 7(a)(5) of RA No. 1125 provides the jurisdiction of the CTA over decisions of the CBAA, as follows:

SECTION 7. *Jurisdiction.* — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

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; [40]

Section 2(e), Rule 4 of the RRCTA states the jurisdiction of the Court *En Banc* over decisions of the CBAA, to wit:

RULE 4
Jurisdiction of the Court

xxx xxx xxx

SECTION 2. *Cases within the jurisdiction of the Court en banc.* — The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

xxx xxx xxx

(e) Decisions of the Central Board of Assessment Appeals (CBAA) 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;

xxx xxx xxx[41]

[39] Underscoring ours.
[40] *Id.*
[41] *Id.*

As to the running of the sixty (60)-day period to appeal with the LBAA from the decision of the treasurer, while *Section 226 of the 1991 LGC* provides that it runs from the date of receipt of the NOA, it must be harmonized with *Section 252(d) of the 1991 LGC* which provides that if the protest is denied or upon the lapse of the sixty (60)-day period given to the treasurer to act on the taxpayer's protest, the taxpayer may avail of the remedies in *Chapter 3, Title Two, Book II of the 1991 LGC.* Hence, in the cases of *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*[42] and *Dr. Olivarez, et. al. v. Mayor Marquez*[43] the Supreme Court has clarified that the period shall commence from the receipt of the denial of the protest.

From the foregoing, it can be deduced that when an assessment is issued, the taxpayer (owner or person with legal interest over the property) may: *(1)* question its reasonableness or correctness; or *(2)* question its legality or validity.

On one hand, should the taxpayer question the reasonableness, correctness, or excessiveness of the assessment, he/she/it should first pay under protest, then file a protest with the treasurer thirty (30) days after payment. The treasurer has sixty (60) days to act on said protest. In case of denial or upon the lapse of the sixty (60)-day period, the taxpayer may then file an appeal with the LBAA within sixty (60) days from the date of receipt of the denial of the protest or from the lapse of the sixty (60)-day period within which the treasurer should act on the protest. Thereafter, the LBAA has one hundred and twenty (120) days from the date of receipt of such appeal to issue a decision. Should the taxpayer/the assessor be unsatisfied with the decision of the LBAA, he/she/it may, within thirty (30) days after receipt of the decision of the LBAA, appeal to the CBAA, whose decision shall be final and executory. Thereafter, the taxpayer may file an appeal with the CTA *En Banc.*

On the other hand, if the question deals with the legality or validity of the assessment (*e.g.* authority and power of the assessor to impose the assessment, and of the treasurer to collect the real property tax), or a question of law, direct judicial action may prosper.[44] That is,

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[42] G.R. No. 171586, January 25, 2010, 611 SCRA 71.

[43] G.R. No. 155591, September 22, 2004, 438 SCRA 679.

[44] *National Power Corporation v. Municipal Government of Navotas, Sangguniang Bayan of Navotas and Manuel T. Enriquez, in his capacity as Municipal Treasurer of Navotas,* G.R. No. 192300, November 24, 2014.

the taxpayer may appeal directly to the RTC, and any appeal from the latter's decision should be made before the Court in Division.

It must be noted that the main basis of petitioner's Complaint before the RTC is its claim that it is exempt from payment of RPT. Hence, it sought for the RTC to restrain and enjoin respondent from collecting, levying, and taking any action in connection with the Second NOA, Notice of Delinquency and Warrant of Distraint/Garnishment. This is similar to the *Olivares case* wherein the taxpayer filed with the RTC a petition for *certiorari*, prohibition and mandamus questioning the assessment and levy made by the Office of the City Treasurer of Parañaque City on the taxpayer's properties. The SC, in ruling that the RTC is precluded from entertaining the petition and appropriately dismissing the petition, explained as follows:

> The Court is not convinced with petitioner's argument that their recourse of filing a petition before the trial court is proper as they are questioning the very authority of respondents to assess and collect the real estate taxes due on their properties, and not merely the correctness of said amount.
>
> The well-established rule is that the allegations in the complaint and the character of the relief sought determine the nature of an action. <u>A perusal of the petition before the RTC plainly shows that what is actually being assailed is the correctness of the assessments made by the local assessor of Parañaque on petitioners properties.</u> xxx Moreover, <u>these arguments essentially involve questions of fact. Hence, the petition should have been brought, at the very first instance, to the LBAA.</u>

Records disclose that on April 11, 2011, petitioner received the first NOA[45] dated April 6, 2011, with attached Tax Declaration Nos. 13243[46], 13244[47], and 13245[48]. Thereafter, petitioner filed a Petition with the LBAA on June 3, 2011[49] praying[50] that a decision be rendered: *(1)* cancelling Tax Declaration Nos. 13243, 23244 and 13245 issued in its name as the ownership over the real properties involved is retained by TRANSCO; *(2)* declaring the real properties covered by Tax Declaration Nos. 13243, 23244 and 13245 as exempt from the payment

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[45] *Records, Petition with the LBAA, Annex B, First NOA,* p. 77.
[46] *Id., Annex B-2,* p. 78.
[47] *Id., Annexes B-3 and B-4,* pp. 79-80.
[48] *Id., Annexes B-5 and B-6,* pp. 81-82.
[49] *Id., Petition with the LBAA,* pp. 54-69.
[50] *Id., Prayer,* pp. 64-65.

of RPT; and *(3)* directing that the subject real properties be re-classified in the assessment roll as exempt from the payment of RPT.

After being issued a Second NOA, a Notice of Delinquency of Payment of Real Estate Tax, and being informed that respondents served upon its banks a Warrant of Distraint/Garnishment, petitioner filed a Complaint before the RTC docketed as Civil Case No. Q11-70148[51] on October 17, 2011, which prayed[52] for the following: *(1)* Upon filing of the Complaint, a three (3)-day *ex parte* temporary restraining order ("TRO") be issued restraining and enjoining respondent acting through the Municipal Treasurer and the Municipal Assessor or any official acting in his behalf, from collecting, levying, and taking any action in connection with the Second NOA, Notice of Delinquency and Warrant of Distraint/Garnishment, and restraining and enjoining defendant banks[53] from: *(a)* seizing and/or confiscating the money or bank deposit of petitioner; *(b)* delivering the money or bank deposit of petitioner to the Office of the Municipal Treasurer; *(c)* issuing manager's/cashier's or certified check or in any manner payable to the Municipal Treasurer; and *(d)* performing any other act in compliance with the Warrant of Distraint/Garnishment issued by the Municipal Treasurer; *(2)* Issue a writ of preliminary injunction during the proceedings of the case; and *(3)* After hearing, judgment be rendered making the preliminary injunction permanent until the resolution of LBAA Case No. P-11-002.

From the foregoing, it is clear that petitioner is questioning the correctness of the assessment issued by respondent before the RTC. A claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess RPT, but merely raises a question of the reasonableness or correctness of such assessment. Such argument, which may involve a question of fact, should be resolved at the first instance by the LBAA.[54] Hence, it must pursue and continue the LBAA case and follow the procedure laid down by *Sections 252, 226, 229 and 231 of the 1991 LGC*, instead of filing a Complaint with the RTC.

The Court *En Banc* finds that the RTC, instead of taking cognizance of the case, should have dismissed it for lack of jurisdiction. At the level of the Court in Division, while it is true that it has

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[51] *Records, Complaint with the RTC,* pp. 35-49.
[52] *Id., Prayer,* pp. 45-46
[53] Banco de Oro, Metrobank and Landbank.
[54] *Camp John Hay Development Corporation v. CBAA,* G.R. No. 169234, October 2, 2013, 706 SCRA 547.

jurisdiction over the case, instead of ruling on the issue of whether petitioner is exempt from payment of RPT, it should have declared that the RTC has no jurisdiction over the case and that the February 14, 2014 Decision and the August 11, 2014 Order of the RTC are null and void for lack of jurisdiction.

As to the issue of whether petitioner is liable for RPT, the Court *En Banc* finds it proper not to rule on the same for it has been rendered moot and academic, in view of the above discussion.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED**. Accordingly, the June 24, 2015 Decision and the October 7, 2015 Resolution of the Court in Division are hereby **AFFIRMED WITH MODIFICATION**; and the February 14, 2014 Decision and the August 11, 2014 Order of the RTC are hereby set aside and declared **NULL AND VOID** for having been rendered without jurisdiction.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(Join PJ's Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(Join PJ's Concurring Opinion)
ERLINDA P. UY
Associate Justice

(Join PJ's Concurring Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Join PJ's Concurring Opinion)
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Petitioner,

- versus -

MUNICIPALITY OF LABRADOR PANGASINAN,
Respondent.

CTA EB NO. 1373
(CTA AC No. 123)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

APR 27 2017 4:15 p.m.

x- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia's* conclusion that the Regional Trial Court (RTC) should have dismissed the Complaint filed by National Grid Corporation of the Philippines (NGCP) for lack of jurisdiction; and that the Court in Division should have declared the RTC's February 24, 2014 Decision and August 11, 2014 null and void for having been rendered by the RTC without jurisdiction.

In the recent case of *National Power Corporation vs. The Provincial Treasurer of Benguet, et al.*,[1] the Supreme Court reiterated that a claim for tax exemption from the payment of real property taxes neither involves the legality of the assessment nor the

[1] G.R. No. 209303, November 14, 2016.

assessor's authority to assess and collect taxes, but relates to the reasonableness or correctness of the assessment, a question of fact that should have been raised before the Local Board of Assessment Appeals (LBAA). Pertinent parts of the Supreme Court pronouncement read:

> "At the outset, settled is the rule that should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 of the LGC of 1991 directs that the taxpayer should first pay the tax due before his protest can be entertained, thus:
>
> xxx xxx xxx.
>
> There shall be annotated on the tax receipts the words 'paid under protest.' It is only after the taxpayer has paid the tax due that he may file a protest in writing within 30 days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid. Relevant thereto, Chapter 3, Title Two, Book II of the LGC of 1991, Sections 226 to 231, provides for the administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected, particularly, the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes.
>
> NPC alleges that payment under protest under Section 252 of the LGC is required when the reasonableness of the amount assessed is being questioned. Challenging the very authority and power of the assessor to impose the assessment and of the treasurer to collect the tax is an attack on the very validity on any increase and not merely on the amounts of increase in tax. Thus, such payment is not a condition *sine qua non* for the LBAA to entertain the NPC's challenge on the validity of the tax imposed on its tax- exempt properties.
>
> We are not persuaded. **As settled in jurisprudence, a claim for exemption from the payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA**. The same may be inferred from Section 206 of the LGC of 1991, to wit:
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> Xxx xxx xxx.
>
> Section 206 of the LGC categorically provides that every person by or for whom real property is declared, who shall claim exemption from payment of real property taxes imposed against said property, shall file with the provincial, city or municipal

> assessor sufficient documentary evidence in support of such claim. The burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Thus, **if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon**.
>
> Xxx xxx xxx.
>
> Xxx xxx xxx, it is evident that NPC's failure to comply with the mandatory requirement of payment under protest in accordance with Section 252 of the LGC was fatal to its appeal. **We note that it is not the first occasion where this Court ruled that the NPC, in claiming tax exemption, questions the reasonableness or correctness of the assessment by the local assessor and not the legality of the assessment or his authority to assess real property tax. As such, petitioner should have first complied with Section 252. Its failure to prove that this requirement has been complied with renders its administrative protest under Section 226 of the LGC without any effect**. No protest shall be entertained unless the taxpayer first pays the tax." (Boldfacing supplied)

In the case at bar, the notice of assessment demands the payment of real property tax on petitioner. Since petitioner is questioning the correctness and reasonableness of the assessment on the ground that petitioner is exempt from payment of real property tax, petitioner should have followed the procedures under Sections 252, 226, 229 and 231 of Republic Act (RA) No. 7190 or the Local Government Code of 1991 (LGC), instead of filing a complaint with the RTC. Its failure to comply therewith is fatal to its cause.

It is well-settled that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional[2] and a party's failure to comply with the procedure regarding appeal will render the subject matter thereof final, executory and unappealable.[3] If the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due becomes absolute upon the expiration of such period, with respect to

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[2] *Jaime L. Yaneza vs. The Honorable Court of Appeals, et al.*, G.R. No. 149322, November 28, 2008.

[3] *Felisa L. Peña vs. Government Service Insurance System (GSIS)*, G.R. No. 159520, September 19, 2006.

the taxpayer's property.[4] For failure of petitioner to "first pay under protest" and "file a protest" against the assessment before the Municipal Treasurer and eventually question the inaction or denial of said protest, as the case may be, before the LBAA, within the reglementary period, the notice of assessment issued against it became final and unappealable.

At this juncture, I wish to expound on the reckoning of the 60-day period to file an appeal with the LBAA.

In the event that the local treasurer denies the protest or fails to act upon it within the 60-day period provided for in Section 252 of the LGC, **the taxpayer or real property owner may appeal with the LBAA within sixty (60) days from denial of the protest**. Stated differently, **the 60-day period to file an appeal with the LBAA should be counted from the date of the taxpayer or real property owner's receipt of the treasurer's decision denying the protest**, and not from its receipt of the notice of assessment.

Section 252 of the LGC provides:

> "SEC. 252. Payment Under Protest. — (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words 'paid under protest'. The protest in writing must be filed within thirty (30) days from payment of the tax of the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
>
> (b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.
>
> (c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.
>
> (d) **In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code."**

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[4] *Manila Electric Company vs. Nelia A. Barlis, et al.*, G.R. No. 114231, Resolution dated June 29, 2004.

Relative thereto, Sections 226, 229 and 231 of Chapter 3 (entitled 'Assessment Appeals'), Title II, Book II of the LGC on the appellate procedures before the LBAA and the CBAA state:

> "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.
>
> SEC. 229. Action by the Local Board of Assessment Appeals. —
>
> Xxx xxx xxx.
>
> (c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory.
>
> SEC. 231. Effect of Appeal on the Payment of Real Property Tax. — Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal."

In *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao,*[5] the Supreme Court discussed the application of Sections 252 and 226 of the LGC as available administrative remedies to a taxpayer or real property owner who desires to question the correctness of a real property tax assessment, *viz.*:

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

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> "Xxx xxx xxx. Sections 252 and 226 provide successive administrative remedies to a taxpayer who questions the correctness of an assessment. Section 226, in declaring that '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 x x x appeal to the Board of Assessment Appeals x x x,' should be read in conjunction with Section 252 (d), which states that in the event that the protest is denied x x x, the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231]. **The 'action' referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessor's act of denying the protest filed pursuant to Section 252. Without the action of the local assessor, the appellate authority of the LBAA cannot be invoked. Napocor's action before the LBAA was thus prematurely filed.**" (Boldfacing supplied)

In *Dr. Pablo R. Olivarez, et al. vs. Mayor Joey Marquez, et al.,*[6] the Supreme Court clarified the reckoning point of the 60-day period within which to appeal before the LBAA, viz.:

> "Thus, should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 directs that the taxpayer should first pay the tax due before his protest can be entertained. There shall be annotated on the tax receipts the words "paid under protest." It is only after the taxpayer has paid the tax due that he may file a protest in writing within thirty days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.
>
> **If the local treasurer denies the protest or fails to act upon it within the 60-day period provided for in Section 252, the taxpayer/real property owner may then appeal or directly file a verified petition with the LBAA <u>within sixty days from denial of the protest</u> or receipt of the notice of assessment**, as provided in Section 226 of R.A. No. 7160 xxx:
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> Xxx xxx xxx."

Otherwise stated, in a case where the taxpayer or real property owner is questioning the correctness or reasonableness of the assessment by paying under protest and filing a protest before the treasurer, and the local treasurer denies the protest or fails to act

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[6] G.R. No. 155591, September 22, 2004.

upon it within the 60-day period provided for in Section 252(a) of the LGC, **the 60-day period within which to appeal to LBAA under Section 252 (d), in relation to Section 226, shall be reckoned from the receipt of the denial of the protest or from the lapse of the 60-day period within which the treasurer should act on the protest**. It would be absurd to reckon the 60-day period to appeal to LBAA from the date of the receipt of the notice of assessment as the same would necessarily have lapsed even before the expiration of the 60-day period for the treasurer to decide the protest.

On the other hand, in a scenario where the taxpayer or real property owner questions the authority and power of the assessor to assess the realty taxes, the filing of an appeal with the LBAA under Section 226 of the LGC shall be reckoned from the date of receipt of the notice of assessment as in such scenario, no payment under protest and protest before the treasurer is required as a condition *sine qua non* before the appeal questioning the very authority and power of the assessor to assess may be entertained by the LBAA.

All told, I **VOTE** to **DENY** the Petition for Review filed by National Grid Corporation. The assailed Decision and Resolution of the Court in Division should be modified such that the RTC's February 24, 2014 Decision and August 11, 2014 Order should be set aside and declared void for having been rendered without jurisdiction.

ROMAN G. DEL ROSARIO
Presiding Justice