REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

NATIONAL TRANSMISSION CORPORATION,
Petitioner,

- versus -

MUNICIPAL TREASURER OF LABRADOR, PANGASINAN represented by EDUALINO CASIPIT in his capacity as MUNICIPAL TREASURER,
Respondent.

CTA AC NO. 67

Members:

Acosta, *Chairperson*
Uy, *and*
Fabon-Victorino, *JJ.*

Promulgated:

JUN 2 5 2012 ; 1:00 p.m.

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D E C I S I O N

UY, *J.*:

The instant Petition for Review (With Motion for Suspension of Collection of Tax) seeks to set aside the following Omnibus Resolutions issued in Civil Case No. 18931 entitled *"Municipal Treasurer of Labrador, Pangasinan, plaintiff, vs. National Transmission Corporation, defendant"*, by the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 39, in a *Complaint* for Collection of Municipal Business Tax, Surcharges, and Monthly Interests, to wit:

1) **Omnibus Resolution dated March 9, 2010** [1], dismissing without prejudice herein respondent's Complaint for Collection of Municipal Business Tax, Surcharges, and Monthly Interests (as plaintiff therein), filed against herein petitioner (as defendant therein) for want of authority of the former's counsel Atty. Dennis Niño; and disqualifying both parties' counsel, Atty. Dennis Niño and Atty. Nyerson Dexter Tualla; and

2) **Omnibus Resolution dated June 4, 2010**[2], denying petitioner's Partial Motion for Reconsideration filed on March 30, 2010 and respondent's Motion for Reconsideration To Reinstate the Complaint filed on March 22, 2010 which both seek the reconsideration of the assailed Omnibus Resolution dated March 9, 2010.

THE FACTS

Culled from the records of this case, the factual antecedents are as follows:

Petitioner National Transmission Corporation (TransCo) is a government-owned and controlled corporation created and existing under and by virtue of Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law), and a government instrumentality, with principal office address at the TransCo Main Building, BIR Road corner Quezon Avenue, Diliman, Quezon City.[3]

On the other hand, respondent Municipal Treasurer of Labrador, Pangasinan, represented by the incumbent officer Edualino C. Casipit, in his official capacity as the Municipal Treasurer thereof, is a local government official under the Local Government Code (LGC) of 1991.

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[1] Annex "A", Petition for Review; Docket, pp. 30-36.
[2] Annex "B", Petition for Review; Docket, pp. 37-39.
[3] Petition for Review, pp. 2-3; Docket, pp. 2-3.

On February 23, 2009, petitioner TransCo received a Notice of Assessment dated February 20, 2009 from respondent Municipal Treasurer, directing the former to pay municipal business tax for the year 2008 amounting to P73,799,167.64. In the computation made by the Municipal Treasurer, he multiplied the electricity (kilowatt/hour) transmitted by petitioner through its Kadampat Substation to its transmission rate in order to obtain its gross receipts. Respondent then used the tax rate of two percent (2%) in order to get the tax due, the computation of which is as follows:

Year	Number of Kwh Transmitted	Trans-mission Rate	Amount of Gross Receipts	Tax due (Multiplied by tax rate of 2%)	Surcharge of 25% of the tax due	Monthly interest of 2% of the tax due
2008	3,917,852,000	0.7416	2,905,479,043.20	58,109,580.86	14,527,395.00	1,162,191.60
TOTAL					**73,799,167.46**	

Thereafter, petitioner filed its protest thereto on March 16, 2009[4], arguing, among others, that the municipality's authority to impose business tax is still being questioned and pending resolution before the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 38, in Civil Case No. 18717, entitled "*Municipality of Labrador, represented by the Municipal Treasurer vs. National Transmission Corporation.*" In said case, the Municipality of Labrador sought to collect business tax against herein petitioner for the period 2002 to 2005. Allegedly, respondent cannot issue the subject assessment and those prior ones for being premature, while said case is still pending.

[4] Civil Case No. 18931, RTC Records, Volume I, pp. 16-21.

In a letter dated April 7, 2009[5], respondent denied petitioner's protest on the ground that Civil Case No. 18717 pending with the RTC of Lingayen, Pangasinan pertains to municipal business taxes for the years 2002 to 2005, while the notice of assessment subject of the protest pertains to year 2008 only. Hence, the said cited civil case is allegedly not relevant, and that in the case of NAPOCOR vs. City of Cabanatuan, the Supreme Court ruled that the undertakings or activities of transmitting electric power are not sovereign functions but purely private and commercial undertakings.

While petitioner had until May 22, 2009 to file an appeal on erroneous tax assessment pursuant to Section 195 of Republic Act (R.A.) No. 7160 or the Local Government Code (LGC) of 1991, respondent Municipal Treasurer filed a *Complaint for Collection of Municipal Business Tax, Surcharges and Monthly Interests* before the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 39, docketed as Civil Case No. 18931, entitled *"Municipal Treasurer of Labrador, Pangasinan, plaintiff, vs. National Transmission Corporation, defendant"*[6], on April 20, 2009.

On May 28, 2009, petitioner filed its *Answer*[7] *(to Amended Complaint*[8] *with Special and Affirmative Defenses and Counterclaim)* praying, among others, that its *Answer* be treated as its appeal to a court of competent

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[5] Civil Case No. 18931, RTC Records, Volume I, pp. 22-24.
[6] Civil Case No. 18931, RTC Records, Volume I, pp.1-7.
[7] Civil Case No. 18931, RTC Records, Volume I, pp. 42-57.
[8] On May 15, 2009, a Motion to Amend Complaint was filed by plaintiff (respondent herein) in Civil Case No. 18931, but the same was denied by the RTC of Lingayen, Pangasinan, Branch 39, in the Order dated May 18, 2009 (for failure to comply with Sections 4 and 5, Rule 15, of the Rules of Court, i.e., no notice of hearing); Civil Case No. 18931 Records, Volume I, pp. 37-38.

jurisdiction of the denial of its letter-protest as provided under Section 195 of the LGC of 1991.

In the *interim*, respondent filed on January 21, 2010 a *Motion for Issuance of Writ of Preliminary Attachment*[9] before the lower court in Civil Case No. 18931, seeking to attach petitioner's properties due to non-payment of Transco's outstanding business taxes in the amount of P86,583,274.00 for the year 2008. Pursuant thereto, petitioner filed its *Comment/Opposition*[10] to said *Motion*, seeking the disqualification of respondent's counsel, Atty. Dennis V. Niño, on the ground that said lawyer was not the municipality's duly appointed Municipal Legal Officer but a private lawyer, and is thus prohibited by law and existing regulations to represent the municipality in all courts.

On February 8, 2010, a *Motion to Declare Defendant in Default*[11] was filed by respondent praying that petitioner be declared in default in Civil Case No. 18931 due to its failure to file an *Answer* to the original complaint.

In response thereto, petitioner posted its *Comment/Opposition*[12] thereto on February 26, 2010 stating that it had already previously filed on June 25, 2009 a *Manifestation and Compliance* before the trial court stating that its *Answer* to the amended complaint be treated as its *Answer* to the original complaint, since there was no substantial difference between the two complaints.

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[9] Civil Case No. 18931, RTC Records, Volume I, pp. 233-244.
[10] Ibid., pp. 428-437.
[11] Id., pp. 401-407.
[12] Id., pp. 467-474.

Meanwhile, on February 24, 2010, the trial court received respondent's *Opposition*[13] to the disqualification filed against the municipality's counsel, with a motion to disqualify petitioner's counsel on the ground that petitioner's lawyer did not have any authority from the Office of the Government Corporate Counsel (OGCC) to represent petitioner in courts.

In response, petitioner posted its Opposition on March 4, 2010[14] arguing that while the OGCC acts as the official legal counsel of all government corporations, the exigency of the service allows permissible delegation of authority to lawyers of government corporations. To support its claim, petitioner presented a letter from the OGCC deputizing petitioner's lawyers to handle cases involving the latter in the first level courts.

Subsequently, on March 9, 2010, the RTC issued the assailed *Omnibus Resolution*, resolving the respective counsel's Motions to Disqualify each other as counsel therein; the plaintiff's (respondent in this case) Motion for the Issuance of Writ of Preliminary Attachment; and plaintiff's Motion to Declare Defendant in Default. The dispositive portion thereof states:

> "**WHEREFORE**, the foregoing premises duly considered, the Court resolves:
>
> 1. To **DISMISS** the instant case without prejudice for want of authority of its counsel Atty. Dennis Niño;
>
> 2. To **DISQUALIFY** Atty. Dennis Niño as plaintiff's respondent herein) counsel; and
>
> 3. To **DISQUALIFY** Atty. Nyerson Dexter Tualla as defendant's (petitioner herein) counsel.

[13] Id., 442-446.
[14] Id., 509-523.

SO ORDERED."[15]

Consequently, petitioner filed a *Partial Motion for Reconsideration* on March 30, 2010,[16] while respondent filed a *Motion for Reconsideration to Reinstate the Complaint* on March 22, 2010[17] against said *Omnibus Resolution*. The court *a quo* issued the second assailed *Omnibus Resolution* dated June 4, 2010 denying both motions, the dispositive portion of which reads:

> "WHEREFORE, the plaintiff's Motion for Reconsideration and the defendant's Partial Motion for Reconsideration are both DENIED for lack of merit.
>
> SO ORDERED."[18]

In said resolution, the court *a quo* ruled, as regards respondent's *Motion for Reconsideration*, that respondent's lawyer had no authority to represent the Municipality of Labrador; that a private lawyer may represent a municipality provided that the latter does not pay the former any compensation. And considering that respondent's lawyer was paid for the services he rendered, he therefore had no authority to represent the municipality.

On the other hand, as regards petitioner's *Partial Motion for Reconsideration*, the court *a quo* explained that petitioner's *Answer to the*

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[15] Assailed Omnibus Resolution dated March 9, 2010, p. 7; supra., see note 1.
[16] Civil Case No. 18931, RTC Records, Volume I, pp. 596-604.
[17] Ibid., pp. 580-583.
[18] Assailed Omnibus Resolution dated June 4, 2010, p. 3; supra., see note 2.

Amended Complaint cannot be treated as an appeal from the notice of assessment because "Appeal" and "Answer" are different pleadings and have their own different requirements.

Thereafter, petitioner filed the instant *Petition for Review (With Motion for Suspension of Collection of Tax)* on July 14, 2010[19] to assail the foregoing Omnibus Resolutions of the RTC of Lingayen, Pangasinan, Branch 39, in Civil Case No. 18931, under the procedure analogous to that provided under Rule 42 of the 1997 Rules of Civil Procedure in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals and Section 7 (a)(3) of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282.

Respondent filed on August 12, 2010, by registered mail, and duly received by this Court on August 20, 2010, his *Comment* thereto arguing, among others, as follows:

> "In the case of OGCC however, there is no law granting it the power to deputize GOCC counsels or appoint them in its stead. OGCC can not appoint or deputize because that would be tantamount to abandoning its functions and responsibilities. It is very clear in the authorization of OGCC that Transco's counsels should always be under its direct control and supervision.
>
> OGCC cannot be said to be in **direct control** when it is only Atty. Tualla or any lawyer from Transco for that matter is appearing in court. Under the Administrative Code, 'control', means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. With this, how could the OGCC exercise direct control when OGCC is not in court? More importantly, there is another condition that the Transco lawyer ***'shall be assisted by the OGCC Team assigned to Transco'***.

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[19] Docket, pp. 1-29.

In any case, Atty. Tualla is not at all times disqualified to appear in court but he must be with the OGCC counsels as dictated by OGCC who grants his authority.

On the second issue that the trial court erred in not considering its Answer as an appeal, never in the history of the Honorable Supreme Court since its creation and to our knowledge, no lower courts ever considered an Answer with Counterclaim as an appeal without complying with the requirements of an appeal. In appeal, Transco should have paid docket fee for the purported appeal and should have been named as appellant. Worth noting in its pleading which was captioned as 'Answer (To Amended Complaint with Special and Affirmative Defenses and Counterclaim)'. Also, Transco should have been the one who filed the initiatory pleading. By all indications, the Answer it filed is a plain Answer and not an appeal.

A party is not at liberty to consider or to dictate upon the courts to consider its pleading as an appeal when it is not an appeal. The rules on appeal must be complied.

As regards Transco's asseveration that the Municipal Treasurer pre-empted it from availing the remedy of appeal when the treasurer filed a complaint, no one could have prevented Transco from availing the remedy of appeal as provided by law. Transco itself was the one who did not appeal. On its claim of 'multiplicity of suits' should it have filed the appeal, Transco could have filed in Lingayen, Pangasinan and sought for the consolidation of its appeal with the complaint for collection of tax. But, Transco did not do this and what it did was a legally impossible posture by dictating upon the trial court to consider its Answer as an appeal.

On the cited case of Yamane vs. BA Lepanto Condominium Corp., never the Supreme Court said that an answer should be considered as an appeal. The case simply explain which procedure of appeal should be taken whether ordinary appeal or petition for review to which the Supreme Court ruled that it should be ordinary appeal."[20]

[20] Ibid., pp. 176-177.

Petitioner filed its *Reply (To Respondent's Comment Dated 12 August 2010)* on August 23, 2010 alleging, among others that respondent's attempt to cause the dismissal of the instant Petition on pure ground of technicality should be given scant consideration in order to avoid serious miscarriage of justice and therefore, its action in incorporating its appeal against the denial of the protest by respondent treasurer in the answer to the complaint for collection of business tax is proper as they are allowed under the Rules of Court.

In the meantime, petitioner filed a *Motion (To Set the Case for Hearing on its Motion for Suspension of Collection of Tax)*[21]. After oral arguments and submission of required relevant documents, the Court granted the *Motion for Suspension of Collection of Tax* in the Resolution dated November 3, 2010[22], subject to the posting of the required surety bond. Subsequently, in the Resolutions dated January 6, 2011[23] and February 2, 2011[24], the Court noted petitioner's submission of relevant documents recognizing its compliance to the required surety bond.

Additionally, the Court gave due course to the instant Petition for Review and granted both parties a period of thirty (30) days from notice, within which to file their simultaneous memoranda.[25] Respondent filed his Memorandum on March 1, 2011,[26] while petitioner filed its Memorandum on

[21] Id., pp. 203-209.
[22] Id., pp. 266-272.
[23] Id., pp. 381-383.
[24] Id., pp. 397-398.
[25] Resolution dated February 2, 2011, Docket, p. 397-398.
[26] Respondent's Memorandum dated February 28, 2011, Docket, pp. 402-415.

March 11, 2011[27]. Upon elevation of the entire original records of Civil Case No. 18931, this case was submitted for decision in the Resolution dated July 5, 2011[28].

Hence, this Decision.

THE ISSUES

Petitioner submits the following issues for the Court's consideration:

(1) Whether or not the court *a quo* erred in not considering petitioner's *Answer* as an appeal under Section 195 of the Local Government Code (LGC) of 1991; and

(2) Whether or not the court *a quo* erred in disqualifying Atty. Nyerson Dexter Tito Q. Tualla to appear as counsel for TransCo despite proper deputization from the Office of the Government Corporate Counsel (OGCC).

Petitioner's Arguments

Petitioner claims that the trial court gravely erred in ruling that an "appeal" from the denial of the protest under Section 195 of the LGC of 1991 is the same as the remedy of appeal from the decision of a judicial or quasi-judicial body. Otherwise stated, to the mind of the trial court, the word "appeal" connotes the remedy of appeal in its strictest sense and, as such, cannot be incorporated in the Answer by way of counterclaim because appeal follows different requirements from that of an answer.

Petitioner points out that when TransCo received the denial of its protest from respondent treasurer on April 22, 2009, it had thirty (30) days or until May 22, 2009 within which to appeal the same pursuant to Section 195

[27] Petitioner's Memorandum dated March 10, 2011, Docket, pp. 475-498.
[28] Docket, p. 508.

of the LGC of 1991. However, prior to the expiration of the said thirty-day period, respondent prematurely filed a complaint for collection of local business tax against TransCo before the trial court on April 20, 2009, which complaint was received by petitioner on May 5, 2009. Thus, instead of separately pursuing two (2) cases against the same adverse party, i.e., one for "appeal" over denial of its protest to the assessment and the other one for defending against the collection of local business tax, TransCo deemed it wise to meet the case prematurely filed by the respondent by filing an Answer and incorporating therein, by way of counterclaim, its "appeal" over the denial of its protest.

Petitioner further submits that "appeal" in Section 195 of the LGC of 1991 is not and should not be equated to the remedy of appeal in its strictest sense and should be treated as an ordinary action because the aggrieved party is invoking the court's jurisdiction for the first time. Therefore, being an ordinary action, petitioner's appeal of respondent's denial of its protest can be incorporated in its counterclaim in the *Answer* to respondent's *Complaint*.

As to the authority of petitioner's counsel, Atty. Nyerson Dexter Tito Q. Tualla, to represent it before the lower court, although petitioner does not dispute the fact that it is the OGCC who must act as its principal legal counsel under Section 10, Book IV, Title III, Chapter 3 of the Administrative Code of 1987, there exists permissible levels of delegation of authority that the OGCC may cede to the legal departments it supervises, such as the letter-authority[29] issued by the OGCC authorizing numerous lawyers to represent TransCo in court litigation in the lower courts and other administrative levels. And on March 2, 2010, the OGCC allegedly issued a letter with the title: "Legal Confirmation of Authority of TRANSCO's Lawyers to Handle All Cases of TransCo in the Lower Courts and Other Administrative Bodies". Such letter allegedly includes Atty. Nyerson Dexter Tito Q. Tualla as one of the TransCo's lawyers authorized to represent it in court litigation in the lower courts and other administrative levels. Thus, while it is true that one of the conditions found in said letter-authority is that such lawyers shall be under the direct control and supervision of the OGCC, this does not mean that the OGCC must actually be present in court hearings. Otherwise, it will allegedly defeat the purpose of the delegation authority.

Moreover, petitioner contends that TransCo, being a government instrumentality created by virtue of Republic Act (R.A.) No. 9136, is allegedly excluded from the coverage of Section 133 of the Local Government Code in the payment of taxes, fees or charges of any kind; and the Local Government Code did not give the municipal treasurer the blanket authority to assess business tax on any business.

Respondent's Counter-arguments

According to respondent, the only substantive issue raised by the petitioner in this petition for review is whether or not the Regional Trial Court

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[29] Opinion No. 247, Series of 2007, dated November 20, 2007, issued by Alberto C. Agra, Government Corporate Counsel, OGCC, Civil Case No. 18931, Records, Volume I, pp. 472-474.

erred in ruling that the dismissal of the Complaint for the collection of local business tax carries with it the dismissal of the petitioner's counterclaim incorporated in its Answer to the Complaint.

Further, respondent counter-argues that an *Answer with Counterclaim* to a *Complaint* is not an appeal as there is a big difference between an Answer and Appeal. Allegedly, under our Rules of Court, an answer is a pleading by which a defendant sets forth his defenses against the Complaint, whereas, an appeal is a resort to superior (i.e. appellate) court to review the decision of an inferior (i.e. trial) court or administrative agency. An appeal is allegedly directed against a decision of a court or administrative agency.

In the Answer filed by the petitioner in Civil Case No. 18931, it is directed against the allegations in the complaint. Thus, the procedure sought to be introduced by the petitioner in the annals of jurisprudence, by dictating upon courts to consider its Answer as an appeal, has allegedly not gained recognition in any jurisdiction and will not serve any improvement for the speedy, orderly, and inexpensive administration of justice.

On petitioner's claim that the assessment has yet to become final and therefore the local business tax is not yet due for collection, respondent emphasizes that the collection of local business taxes may proceed even if the notice of assessment is allegedly not yet "final and executory". In support thereof, respondent cites Section 175 (a) of the Local Government Code (LGC) of 1991 authorizing the treasurer to seize the personal property of the taxpayer if tax is not paid on time required by law, and to wait for the notice of assessment to first become "final and executory" before the treasurer can proceed with the institution of the administrative action or judicial action to collect the local business tax, of which for respondent, is allegedly a LEGALLY IMPOSSIBLE CONDITION.

THIS COURT'S RULING

The petition is bereft of merit.

The issues raised are procedural. The first pertains to the correct remedial measure in assailing a denial of a protest to an assessment issued by a local government official, the Municipal Treasurer in the instant case. The second assails the disqualification of Atty. Nyerson Dexter Tualla to represent defendant, a government owned and controlled corporation, in Civil Case No. 18931.

Notably, Civil Case No. 18931 was dismissed without prejudice by the *court a quo* due to the want of authority of plaintiff's counsel (herein respondent), Atty. Dennis Niño; and the disqualification of Atty. Nyerson Dexter Tualla to appear as defendant's (herein petitioner's) counsel in said case. Apparently, these are the principal grounds for the dismissal of Civil Case No. 18931, while the dismissal of the counterclaim raised in the Answer as a result of the dismissal of the main case, is merely secondary.

Nevertheless, We shall resolve both issues raised, in the order that it is presented in the instant case.

Appeal under Section 195 of the Local Government Code of 1991

Section 195 of the Local Government Code (LGC) of 1991 provides the manner by which a taxpayer may protest an assessment issued by the Local Treasurer or his duly authorized representative, and it reads:

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

Clearly, from the foregoing, a taxpayer who disagrees with a tax assessment issued by a local treasurer, or his duly authorized representative, may file a written protest to contest the assessment. In the event that the protest is denied, in whole or in part, by the local treasurer, or after the lapse of the 60-day prescriptive period for the local treasurer to resolve the protest, the taxpayer has thirty (30) days within which to file an "**appeal**" with the court of competent jurisdiction, otherwise the assessment becomes conclusive and unappealable.

In the instant case, from petitioner's receipt on February 23, 2009 of the Notice of Assessment dated February 20, 2009 sent by the respondent Municipal Treasurer, the former filed a protest thereto on March 16, 2009 assailing said assessment. The protest was denied in the Letter dated April 7, 2009, and petitioner allegedly had until May 22, 2009 to file an appeal thereto pursuant to Section 195 of the LGC of 1991. But before any direct action could be undertaken thereon by petitioner to assail the denial of its protest, respondent filed a collection case before the Regional Trial Court of Lingayen, Pangasinan, Branch 39 on April 20, 2009, docketed as Civil Case No. 18931, entitled *"Municipal Treasurer of Labrador, Pangasinan, plaintiff, vs. National Transmission Corporation, defendant"*, in a *Complaint for Collection of Municipal Business Tax, Surcharges, and Monthly Interests* pertaining to the same taxes covered under the assailed Notice of Assessment dated February 20, 2009 issued by herein respondent.

Because of this development, petitioner incorporated its supposed "appeal" as a compulsory counterclaim in the Answer that it filed in Civil Case No. 18931. Petitioner vehemently insists that instead of separately pursuing two (2) cases against the same adverse party, i.e., one for "appeal" over denial of its protest to the assessment, and another one for defending against the collection of the local business tax subject of the assailed assessment, petitioner allegedly deemed it wise to meet the case prematurely filed by the respondent, by filing an *Answer* and incorporating therein, by way of counterclaim, its "appeal" over the denial of its protest, in said case. In doing so, petitioner maintains that it never lost its remedy under Section 195.

According to petitioner, the word "appeal" in Section 195 of the LGC is not and should not be equated to the remedy of appeal in the strictest sense which was allegedly the logical import of the ruling in ***Yamane v. BA Lepanto Condominium Corporation*** *(Yamane case).*[30] In said case, the Supreme Court allegedly explained that the review taken by the RTC over the denial of the protest by the local treasurer would fall within that court's original jurisdiction, as the review is the initial judicial cognizance of the matter.

Notably, the word "appeal" was used loosely in Section 195 of the LGC of 1991 to mean to refer to a "judicial action". Even the very author of the Local Government Code of 1991, the former Senator Aquilino Q. Pimentel, Jr., observed that Section 195 "does not elaborate on how appeal is to be made from the denial by a local treasurer of a protest of assessment made by a taxpayer"[31].

The ***Yamane case*** cited by petitioner explained the import of the word "appeal" mentioned in Section 195 of the LGC of 1991, and We quote:

> "First, we dispose of the procedural issue, which essentially boils down to whether the RTC, in deciding an appeal taken from a denial of a protest by a local treasurer under Section 195 of the

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[30] G.R. No. 154993, October 25, 2005.
[31] The Local Government Code Revisited, 2007 Ed., Aquilino Q. Pimentel, Jr., p. 413.

Local Government Code, exercises 'original jurisdiction' or 'appellate jurisdiction.' xxx xxx xxx

There are discernible conflicting views on the issue. The first, as expressed by the Court of Appeals, holds that the RTC, in reviewing denials of protests by local treasurers, exercises appellate jurisdiction. This position is anchored on the language of Section 195 of the Local Government Code which states that the remedy of the taxpayer whose protest is denied by the local treasurer is '**to appeal** with the court of competent jurisdiction.' Apparently though, the Local Government Code does not elaborate on how such 'appeal' should be undertaken.

The other view, as maintained by the City Treasurer, is that the jurisdiction exercised by the RTC is original in character. This is the first time that the position has been presented to the court for adjudication. Still, this argument does find jurisprudential mooring in our ruling in *Garcia v. De Jesus (G.R. Nos. 88158 & 97108-09, 4 March 1992, 206 SCTA 779)*, where the Court proffered the following distinction between original jurisdiction and appellate jurisdiction: 'Original jurisdiction is the power of the Court to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law. Appellate jurisdiction is the authority of a Court higher in rank to re-examine the final order or judgment of a lower Court which tried the case now elevated for judicial review *(Ibid)*.'

The quoted definitions were taken from the commentaries of the esteemed Justice Florenz Regalado. With the definitions as beacon, the review taken by the RTC over the denial of the protest by the local treasurer would fall within that court's original jurisdiction. **In short, the review is the initial judicial cognizance of the matter. Moreover, labeling the said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment or order of a lower court, but of a local government official**." *(Emphasis supplied)*

In light of the foregoing elucidation of the Supreme Court, the "appeal" referred to in Section 195 of the LGC pertains to an action wherein a court of competent jurisdiction (the Regional Trial Court in this case) takes <u>initial judicial cognizance</u> of a case assailing an assessment rendered by a local government official, who is the Municipal Treasurer of Labrador, Pangasinan in this case. Being initial in nature, such review by the court of competent jurisdiction falls under its original jurisdiction, and not in exercise of its appellate jurisdiction.

This must be so because only judgments or orders rendered by a lower court may be legally reviewed, on appeal, by the Regional Trial Court. Clearly, the Municipal Treasurer is not a judicial court. In fact, the provisions of Section 22 of Batasan Pampansa Blg. 129 confines the appellate jurisdiction of the Regional Trial Courts to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts, clearly excluding therefrom, appellate jurisdiction of Regional Trial Courts over rulings made by non-judicial entities.

It is thus settled that the "appeal" referred to in Section 195 of the LGC is an original action assailing respondent's denial of its protest filed on March 16, 2009, and not an appellate review contemplated under our rules of procedure.

The question now is whether or not it was erroneous for the court *a quo* not to consider petitioner's *Answer* as the "appeal" referred to in Section 195 of the LGC of 1991, more specifically, the compulsory counterclaim incorporated in the Answer filed by petitioner in Civil Case 18931.

Ideally, petitioner should have filed a separate, original action before the appropriate Regional Trial Court to assail the denial of its protest by respondent within the prescribed period, instead of incorporating the same in its Answer (as a compulsory counterclaim) to the Complaint for the collection of the same subject taxes. However, the Supreme Court, also in the ***Yamane case***, had this to say in instances that a litigant would fail to strictly comply with procedural rules, to wit:

> "Be that as it may, characteristic of all procedural rules is adherence to the precept that they should not be enforced blindly, especially if mechanical application would defeat the higher ends that animates our civil procedure—the just, speedy and inexpensive disposition of every action and proceeding. Indeed, we have repeatedly upheld—and utilized ourselves—the discretion of courts to nonetheless take cognizance of petitions raised on an erroneous mode of appeal and instead treat these petitions in the manner as they should have appropriately been filed. The Court of Appeals could very well have treated the Corporation's petition for review as an ordinary appeal."

Clearly, the High Court manifests a liberal interpretation of our procedural rules, in order not to defeat the higher ends of our civil procedure. With this, We take it to mean that the court *a quo,* should not be faulted had it opted to treat the counterclaim as the "appeal" contemplated under Section 195 of the LGC of 1991, under the principles of liberality. Sadly for petitioner however, the court *a quo* opted otherwise, and must therefore bear the legal consequences of its exercised option, the dismissal of its supposed appeal incorporated in its Answer.

Even assuming *arguendo* however that We take the position of petitioner that its *Answer with Counterclaim* may be considered as an "appeal" contemplated under Section 195 of the LGC of 1991, it appears that the justification in setting up its alleged appeal, as a "compulsory counterclaim" in said Answer, is defective.

In ***Manuel C. Bungcayao, Sr., represented in this case by his Attorney-in-fact Romel R. Bungcayao vs. Fort Ilocandia Property Holdings, and Development Corporation, G.R. No. 170483, April 19, 2010***, the High Court distinguished between compulsory and permissive counterclaims as follows:

> "A compulsory counterclaim is any claim for money or any relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of the plaintiff's complaint. <u>It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and will be barred in the future if not set up in the answer to the complaint in the same case</u>. Any other counterclaim is permissive.
>
> The Court has ruled that the compelling test of compulsoriness characterizes a counterclaim as compulsory if there should exist a logical relationship between the main claim and the counterclaim. The Court further ruled that there exists such a relationship when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties.
>
> The criteria to determine whether the counterclaim is compulsory or permissive are as follows:
>
> (a) Are issues of fact and law raised by the claim and by the counterclaim largely the same?
>
> (b) Would *res judicata* bar a subsequent suit on defendant's claim, absent the compulsory rule?
>
> (c) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?

(d) Is there any logical relations between the claim and the counterclaim?

A positive answer to all four questions would indicate that the counterclaim is compulsory.

xxx xxx xxx

xxx The only counterclaim that remained was for the recovery of possession of the subject property. While this counterclaim was an offshoot of the same basic controversy between the parties, it is very clear that it will not be barred if not set up in the answer to the complaint in the same case. Respondent's second counterclaim, contrary to the findings of the trial court and the Court of Appeals, is only a permissive counterclaim. It is not a compulsory counterclaim. It is capable of proceeding independently of the main case.

The rule in permissive counterclaim is that for the trial court to acquire jurisdiction, the counterclaimant is bound to pay the prescribed docket fees. Any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. In this case, respondent did not dispute the non-payment of docket fees. Respondent only insisted that its claims were all compulsory counterclaims. As such, the judgment by the trial court in relation to the second counterclaim is considered null and void without prejudice to a separate action which respondent may file against petitioner." *(Underscoring supplied)*

Applying the foregoing in the case at bench, it seems that petitioner's alleged appeal of its protest pursuant to Section 195 of the LGC of 1991, by incorporating the same in its *Answer with Counterclaim*, does not legally qualify as a compulsory counterclaim considering that the appeal from the denial of a protest under Section 195 of the LGC of 1991 is definitely capable of proceeding independently from the main case, the collection case docketed as Civil Case No. 18931 before Branch 39 of the RTC of Lingayen, Pangasinan.

Thus, at most, the counterclaim may only be considered as a permissive counterclaim, subject to the payment of the prescribed docket fees, for the court to acquire jurisdiction over the same. Failing in this regard, petitioner's counterclaim cannot remain for independent adjudication.

Authority of Atty. Nyerson Dexter Tito Q. Tualla, in-house counsel, to represent National Transmission Corporation as respondent in Civil Case No. 18931.

In the proceedings before the lower court, Atty. Nyerson Dexter Tito Q. Tualla was disqualified to appear as counsel for the defendant, herein petitioner, National Transmission Corporation, a government owned and controlled corporation created by virtue of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA LAW).

In this regard, We adhere to the findings of the court *a quo* expressed in the assailed Omnibus Resolution dated March 9, 2010, citing the provision of Section 10, Book IV, Title III, Chapter 3 of the Administrative Code of 1987 and the case of *Land Bank of the Philippines vs. Martinez, 530 SCRA 158,* the pertinent portion of which states:

> "Thus, it is incumbent that lawyers of TRANSCO must be under the direct control and supervision of the OGCC. In the case of Atty. Tualla, there is no showing that he acts under the control and supervision of the OGCC insofar as this case is concerned. More glaring also is the fact that under Opinion No. 247 dated November 20, 2007 of the OGCC RE: REQUEST FOR LEGAL CONFIRMATION OF AUTHORITY OF TRANSCO'S LAWYERS TO HANDLE ALL CASES OF TRANSCO IN THE LOWER COURTS AND OTHER ADMINISTRATIVE BODIES, containing the list of duly confirmed and authorized lawyers of TRANSCO, the name of Atty. Tualla does not appear therein. Thus, absent any

showing of his authority to appear in behalf of TRANSCO duly confirmed by the OGCC, Atty. Tualla is hereby disqualified to appear as counsel for TRANSCO."[32]

Although there appears a Letter dated March 2, 2010 entitled "Re: Legal confirmation of Authority of TRANSCO's lawyers to Handle All Cases of Transco in the Lower Courts and other Administrative Bodies"[33] presented by petitioner which now allegedly shows that Atty. Tualla is among the in-house counsel of TransCo authorized to represent petitioner in the instant case, this does not justify his previous appearances and representation before Branch 39 of the Regional Trial Court of Lingayen, Pangasinan, in Civil Case No. 18931, entitled *"Municipal Treasurer of Labrador, Pangasinan, plaintiff, vs. National Transmission Corporation, defendant".* There is no showing that Atty. Tualla was already legally authorized to act for and to represent petitioner during the proceedings before the lower court.

As a matter of fact, a mere letter from the Office of the Government Corporate Counsel (OGCC) that authorizes any private/in-house counsel of any government-owned and controlled corporations (GOCCs), such as petitioner herein, to handle their cases and legal matters, will not suffice considering the strict rules set forth in the provisions of Executive Order (E.O.) No. 292, otherwise known as the Administrative Code of 1987, with Administrative Order No. 130 and Memorandum Circular No. 9 issued thereafter, providing the exclusive mandate of the OGCC to handle all legal

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[32] Docket, p. 36.
[33] Attachment to Annex "N" (marked as Annex "B" thereof, a Letter dated March 2, 2010 issued by Government Corporate Counsel Alberto C. Agra), Petition for Review, Docket, pp. 130-131.

matters pertaining to GOCCs, their subsidiaries, other corporate offsprings and government acquired asset corporations.

In ***Phividec Industrial Authority and Atty. Cesilo Adaza vs. Capitol Steel Corporation and Cheng Han Sui, G.R. No. 155692, October 23, 2003***, the historical background and rationale of such exclusive mandate of the OGCC were explained and emphasized in the following manner:

> "In 1987, the President Aquino issued Executive Order No. 292 (E.O. No. 292), otherwise known as the Administrative Code of 1987, in the exercise of her transitory legislative powers under the aegis of the 1987 Constitution. This Code remains to this day as the governing law on the role and functions of the OGCC in relation to GOCCs. Section 10, Book IV, Title III, Chapter 3 thereof provides:
>
> > 'Section 10. *Office of the Government Corporate Counsel.* — The Office of the Government Corporate Counsel (OGCC) shall act as the **principal law office** of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall **exercise control and supervision over all legal departments or divisions** maintained separately and such powers and functions as are now or may hereafter be provided by law. Xxx' (Emphasis supplied)
>
> Noteworthy in the law is the deletion of the phrase 'without exception' employed in P.D. No. 1415 which theretofore rendered exclusive and absolute the authority of the OGCC to represent GOCCs. So, it should be asked: What is the significance of the elimination of the phrase?
>
> Certainly, the amendatory deletion did not alter the mandate of the OGCC to handle the cases of the GOCCs nor did it signal the abandonment of the policy not to engage private lawyers for the GOCCs. Not only has the aforequoted Section 10 retained the explicit key provision that the OGCC 'shall act as not principal law office of all government-owned or controlled

corporations', it has even expanded the reach of the OGCC by conferring on it 'control and supervision over all legal departments or divisions' of the GOCCs, as well as their 'subsidiaries, other corporate offsprings and government acquired asset corporations.'

With the change it effected, however, the new Administrative Code has made the powers of the President come into play as regards the inter-relationship between the GOCCs and the OGCC. Under the Constitution, it is the President who exercises both executive and administrative powers. As administrative head, the President's duty is to see that every government office is managed and maintained properly by the persons in charge of it in accordance with pertinent laws and regulations. Corollary to these powers is the power to promulgate rules and issuances that would ensure a more efficient management of the executive branch, for so long as such issuances are not contrary to law.

President Aquino, however, did not promulgate any issuance on the matter. It was President Fidel V. Ramos who did so, through Administrative Order No. 130 which he issued in 1994. Section 1 thereof reads:

> 'Section 1. All legal matters pertaining to government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations (hereinafter collectively referred to as 'GOCCs') **shall be exclusively referred to and handled by the Office of the Government Corporate Counsel** (hereinafter referred to as 'OGCC'), unless their respective charters expressly name the Office of the Solicitor General (hereinafter referred to as 'OSG') as their legal counsel. When authorized by the President, or by the head of the office concerned and approved by the President, the OSG shall also represent GOCCs.' (emphasis supplied)

The above-quoted provision not only reaffirmed but strengthened the exclusive mandate of the OGCC. Moreover, it effectively removed from the GOCCs the opportunity to engage the services of private lawyers. Under its terms, the President may authorize only the Office of the Solicitor General to represent the GOCCs in place of or in addition to the OGCC.

Then came Memorandum Circular No. 9 issued by President Joseph Estrada on 27 August 1998. Section 3 thereof states:

> 'GOCCs are likewise enjoined to refrain from hiring private lawyers or law firms to handle their cases and legal matters. But in exceptional cases, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm.' (Emphasis supplied)

It was only with the enactment of Memorandum Circular No. 9 in 1998 that an exception to the general prohibition was allowed for the first time since P.D. No. 1415 was enacted in 1978. However, indispensable conditions precedent were imposed before any hiring of private lawyer could be effected. First, private counsel can be hired only in **exceptional cases**. Second, the GOCC must **first** secure the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, before any hiring can be done. And third, the written concurrence of the COA must also be secured prior to the hiring.

There are strong reasons behind this public policy. One is the need of the government to curtail unnecessary public expenditures, such as the legal fees charged by private lawyers against GOCCs. Precisely, the two *whereas clauses* of Memorandum Circular No. 9 recite this particular concern, *viz:*

> WHEREAS, there is a need to reduce government expenditures by minimizing the expenses of government-owned or controlled corporations (GOCCs) which hire private lawyers and law firms, considering the high cost of retainers, fees and charges that are paid to said private lawyers and law firms;
>
> WHEREAS, one way of realizing savings on the part of government-owned or controlled corporations (GOCCs) is to implement and enforce pertinent laws and regulations which prohibit GOCCs from hiring private retainers and law firms to handle their cases and legal matters, and those which direct GOCCs to refer their

> cases and legal matters to the Office of the Government Corporate Counsel (OGCC) for proper handling.
>
> The other factor is anchored on the perceived strong ties of the OGCC lawyers to their client government corporations. Thus, compared to outside lawyers the OGCC lawyers are expected to be imbued with a deeper sense of fidelity to the government's cause and more attuned to the need to preserve the confidentiality of sensitive information.
>
> Evidently, OGCC is tasked by law to serve as the law office of GOCCs to the exclusion of private lawyers. Evidently again, there is a strong policy bias against the hiring by GOCCs of private counsel." *(Underscoring supplied)*

Clearly from the foregoing, only the OGCC may handle all legal matters of GOCCs, as it is the entity conferred by law with the control and supervision over all legal departments or divisions of the GOCCs, and expanded to cover their subsidiaries, other corporate offsprings and government acquired asset corporations.

Thus, in the instant case, without any showing that the hiring of Atty. Nyerson Dexter Tito Q. Tualla, as private counsel for the respondent National Transmission Corporation (a GOCC) in Civil Case No. 18931, was justified and done in strict compliance with the requirements set forth by applicable laws and existing jurisprudence, such representation is considered void.

All the foregoing considered, We find no reversible error committed by Branch 39, Regional Trial Court (RTC), Lingayen, Pangasinan, that would merit a reversal of the assailed Omnibus Resolutions dated March 9, 2010 and June 4, 2010, both rendered in Civil Case No. 18931.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice