REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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THE PROVINCE OF BATANGAS as represented by its Provincial Treasurer, FORTUNATA G. LAT, Petitioner,	**CTA AC Case No. 145** (Civil Case No. 9403)
	Members:
- versus -	**DEL ROSARIO,** P.J., **UY,** and **MINDARO-GRULLA,** JJ.
NATIONAL TRANSMISSION COMMISSION, Respondent.	***Promulgated:*** MAR 27 2017 2:59 pm

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DECISION

UY, J.:

Before the Court is a *Petition for Review* filed on August 18, 2015 by the Province of Batangas, as represented by its Provincial Treasurer, Fortunata G. Lat, against the National Transmission Corporation, praying for the reversal and setting aside of the Decision dated September 25, 2014 issued by the Regional Trial Court, Branch 7, Batangas City (RTC of Batangas City) in Civil Case No. 9403, entitled *National Transmission Corporation, Petitioner, vs. Province of Batangas, represented by its Provincial Treasurer Fortunata B. Lat, Respondent*, the dispositive portion of which reads:

> "**WHEREFORE**, the appeal is **GRANTED**. The assessment and collection of franchise tax in the amount of **₱6,794,414.60** dated September 12, 2012 issued by the provincial treasurer of the Province of Batangas based on gross receipts from BATELEC II for the calendar years 2007 to 2009 are hereby **declared null and void**. Consequently, the Notice of Assessment/Revised

Statement of Account dated September 12, 2012 issued by the provincial treasurer of the Province of Batangas based on gross receipts from BATELEC II for the calendar years 2007 to 2009 are hereby **ordered cancelled and withdrawn**.

SO ORDERED."[1]

THE FACTS

Petitioner, Province of Batangas, is a local government unit (LGU) duly created and organized under the laws of the Philippines, with capacity to sue and be sued. It is represented by Fortunata G. Lat, the Provincial Treasurer, with office address at the Provincial Capitol, Capitol Site, Batangas City.[2]

On the other hand, respondent, National Transmission Corporation (or TRANSCO) is a government instrumentality, created pursuant to Republic Act (RA) No. 9136, also known as the *"Electric Power Industry Reform Act of 2001"* (EPIRA), with principal office address at Power Center, EDSA corner Quezon Avenue, Diliman, Quezon City.[3] Under the said law, respondent TRANSCO assumed the electrical transmission function of the National Power Corporation (NPC) in the major Philippine Grids. Respondent TRANSCO was responsible for the operation and maintenance of the Philippines' only electric transmission network.

Respondent TRANSCO's direct customers include power plants owned by NPC and independent power producers (IPPs) nationwide which supply electricity to power distributors, electric cooperatives, and other utilities. It does not deal with individual households. As a transmission corporation, respondent TRANSCO derived gross receipts from its transmission of electricity to Batangas Electric Cooperative, Inc. (BATELEC) I and BATELEC II. It has no control over where BATELEC I and BATELEC II distribute the electricity that TRANSCO transmits to them.

On June 13, 2012, respondent TRANSCO received a Statement of Account dated June 5, 2012 issued by the Office of

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[1] Annex "A", Petition for Review, Docket, pp. 23 to 32; RTC Records, pp. 168 to 178.
[2] Par. 4.1, IV. The Parties, Petition for Review, Docket, p. 15.
[3] Par. 4.2, IV. The Parties, Petition for Review, Docket, p. 15.

the Provincial Treasurer of Batangas[4], billing respondent TRANSCO for franchise tax in the total amount of ₱14,916,224.96 covering the periods 2004 to 2009. The said amount is broken down as follows: (1) For BATELEC I, ₱8,022,637.56 for the periods 2004 to 2009; and (2) For BATELEC II, ₱6,893,587.40 for the periods 2007 to 2009.

TRANSCO protested the assessment through the letter dated July 18, 2012.

On September 12, 2012, respondent TRANSCO met with Provincial Treasurer Lat and Local Treasury Operations Officer Leticia L. Sawyer, to discuss the assessment and its protest of the same. On the same date, Provincial Treasurer Lat issued a revised Statement of Account, assessing respondent TRANSCO for franchise tax for 2007 to 2008 as follows: (1) For BATELEC I, ₱2,808,039.64 for the periods 2007 to 2008; and (2) For BATELEC II, ₱6,794,414.60 for the periods 2007 to 2008.

On October 5, 2012, respondent TRANSCO paid the franchise tax in the amount of ₱2,808,039.64 based on gross receipts from BATELEC I, but reiterated its protest of the assessment and collection of franchise tax particularly on respondent TRANSCO's gross receipt from BATELEC II. Respondent TRANSCO received the partial denial of its protest on September 12, 2012.

On October 12, 2012, respondent TRANSCO filed an *Appeal/Complaint* before Branch 7 of the Regional Trial Court (or RTC) of Batangas City, praying that an order be rendered annulling the assessment and the collection of franchise tax in the amount of ₱6,794,414.60 by petitioner based on the gross receipts from BATELEC II. The case was docketed as Civil Case No. 9403.

In said case, respondent argued that petitioner's assessment/ collection of franchise tax based on the gross receipts of respondent TRANSCO from BATELEC II lacks basis, considering that petitioner cannot impose franchise tax on gross receipts by respondent TRANSCO outside of petitioner's territorial jurisdiction. Respondent TRANSCO cited Section 137 of RA No. 7160 (Local Government Code) and Article 226 of the Implementing Rules and Regulation (IRR) of R.A. No. 7160 as legal bases.

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[4] Annex A, Appeal/Complaint, RTC Records, p. 12.

Petitioner filed a *Comment/Answer (Re: Plaintiff Transco's Appeal/Complaint dated October 12, 2012)* on November 27, 2012,[5] contending that the ruling of the Court of Tax Appeals (CTA) in the case of *National Transmission Corporation vs. Province of Agusan del Norte*[6] is applicable in the instant case; and that the fact that BATELEC II's head office is in Lipa City does not prevent the province of Batangas from exercising the *situs* of taxation on franchise tax. Petitioner also argued that franchise tax may be imposed on respondent based on the annual gross receipts of the provincial operations made and reported by BATELEC II from the municipalities within the territorial jurisdiction of the Province of Batangas.

In its *Reply* filed on January 24, 2013,[7] respondent TRANSCO argued that the case cited by petitioner is still the subject of an appeal and is not yet final. Respondent TRANSCO cited the case of *National Transmission Corporation vs. Province of Bataan, et al.*[8], wherein this Court ruled that respondent TRANSCO is liable for franchise tax to the city where the distribution company is located. Respondent TRANSCO pointed out that BATELEC II is located in Lipa City and its substation that transmits electricity to BATELEC II is located at Mahabang Parang, Batangas City; thus, the Province of Batangas has no authority/power to asses and collect franchise tax for respondent's gross receipts from BATELEC II.

On September 25, 2014, the RTC of Batangas City issued the assailed Decision[9] granting respondent TRANSCO's appeal, and declaring the nullity of the assessment and collection of the subject franchise tax, as well as, ordering the cancellation and withdrawal of the Notice of Assessment/Revised Statement of Account dated September 12, 2012 issued by the provincial treasurer of the Province of Batangas.

Petitioner filed a Motion for Reconsideration on October 20, 2014,[10] asserting that the Court erred in holding that respondent TRANSCO was not guilty of forum-shopping that would warrant a dismissal of the case. Respondent TRANSCO filed an *Opposition/*

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[5] RTC Records, pp. 27 to 30.
[6] CTA AC No. 75, June 5, 2012.
[7] RTC Records, pp. 67 to 71.
[8] CTA AC No. 78, December 16, 2011.
[9] Annex "A", Petition for Review, Docket, pp. 23 to 32; RTC Records, pp. 168 to 178.
[10] RTC Records, pp. 182 to 186.

Comment (Re: Defendant's Motion for Reconsideration dated 20 October 2014) on January 5, 2015.[11]

On April 6, 2015, the RTC of Batangas City issued an Order[12] denying petitioner's Motion for Reconsideration.

Subsequently, on August 3, 2015, petitioner filed with this Court a *Motion for Extension of Time to File Petition for Review*[13]. Said motion was granted in the Resolution dated August 28, 2015[14] and petitioner was given until August 18, 2015 within which to file its *Petition for Review.*

On August 18, 2015, petitioner filed the *instant Petition for Review,*[15] through registered mail, and was received by the Court on August 28, 2015.

In the Resolution dated September 17, 2015, respondent was directed to file its comment, not a motion to dismiss, within ten (10) days from receipt thereof. Respondent, through counsel, filed an *Entry of Appearance with Motion for Extension of Time to File Comment*[16] on October 1, 2015 and a *Second Motion for Extension of Time to File Comment* on October 16, 2015.[17] These motions were granted by the Court in the Resolutions dated October 12, 2015[18] and October 28, 2015[19], respectively.

Respondent TRANSCO filed its *Comment,*[20] through registered mail, on October 23, 2015 and was received by the Court on November 2, 2015.

On January 27, 2016, the Court received the entire original records of Civil Case No. 9403 from Branch 7 of the Regional Trial Court of Batangas City.[21]

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[11] RTC Records, pp. 188 to 191.
[12] RTC Records, p. 191.
[13] Docket, pp. 8 to 11.
[14] Docket, pp. 36 to 37.
[15] Docket, pp. 12 to 22.
[16] Docket, pp. 41 to 43.
[17] Docket, pp. 47 to 49.
[18] Docket, p. 46.
[19] Docket, p. 53.
[20] Docket, pp. 54 to 61.
[21] Docket, p. 64.

In the Resolution dated February 10, 2016,[22] the Court directed the parties to submit their Memoranda within thirty (30) days from receipt of the said Resolution. Respondent TRANSCO filed a *Motion for Extension of Time to File Memorandum* on March 18, 2016.[23] This was granted by the Court in the Resolution dated April 1, 2016.[24]

Respondent filed its *Memorandum* on March 30, 2016;[25] while petitioner failed to file its memorandum as per Records Verification dated April 27, 2016 issued by the Judicial Records Division of this Court.[26] Thereafter, the instant case was submitted for decision on May 2, 2016.[27]

Hence, this Decision.

ASSIGNMENT OF ERROR

Petitioner assigns the following error, supposedly committed by the Court *a quo*, to wit:

> "THE HONORABLE REGIONAL TRIAL COURT ERRED IN HOLDING THAT THE PETITIONER HAS NO AUTHORITY TO IMPOSE FRANCHISE TAX ON TRANSCO'S GROSS RECEIPTS FROM BATELEC II WHEN CLEARLY RESPONDENT'S GROSS RECEIPTS (AT LEAST A PORTION THEREOF) FROM BATELEC II WERE REALIZED IN MUNICIPALITIES WITHIN THE PROVINCE OF BATANGAS WHERE BATELEC II DISTRIBUTES ELECTRICITY."[28]

Petitioner's arguments:

Petitioner argues that the phrase "based on incoming receipt, or realized, within its territorial jurisdiction" contained in Section 137 of the Local Government Code (LGC), which is the basis for the

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[22] Docket, p. 71.
[23] Docket, pp. 72 to 74.
[24] Docket, p. 87.
[25] Docket, pp. 76 to 84.
[26] Docket, p. 88.
[27] Docket, p. 90.
[28] Docket, p. 17.

imposition of franchise tax by an LGU, should not be equated to strictly mean “the place where payments are actually received”.

Moreover, petitioner contends that while it may be true that under the corporation law the principal residence of a corporation is the place where its principal office is located, still for purposes of assessment/collection of franchise tax, it should not be limited to the place where such principal office is located, but should include **all places** where the privilege is exercised and where income is realized.

According to petitioner, while it is undeniable that BATELEC II has its principal office in Lipa City, BATELEC II has satellite/unit offices spread throughout the territorial jurisdiction of petitioner.

Lastly, petitioner points out that it is not assessing/collecting franchise tax from respondent in its operations in Lipa City or Batangas City but only for its operations in the municipalities within its jurisdiction.

Respondent TRANSCO's counter-arguments:

Respondent TRANSCO counter-argues that the one authorized to impose the franchise tax on its gross receipts from BATELEC II is Lipa City pursuant to Article 226(a) and (b) of the IRR of R.A. No. 7160. It contends that petitioner cannot impose franchise tax on its gross receipts from BATELEC II.

According to respondent TRANSCO, it derives its gross receipts in transmitting electricity directly from BATELEC II and not from the latter's individual customers. It avers that since its gross sale transactions from its electricity transmission activities occur and are realized in BATELEC II's principal office in Lipa City, the latter, and not petitioner has jurisdiction to impose franchise tax.

THE COURT'S RULING

The power to tax of local government units emanates from Section 5, Article X of the Constitution which empowers them to create their own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide.[29] One of such power to tax granted to provinces, particularly in imposing franchise tax, and its corresponding limitation, are embodied in Section 137 of the LGC of 1991, to wit:

> "SEC. 137. *Franchise Tax.* – Notwithstanding any exemption granted by any law or other special law, the **province may impose a tax on businesses enjoying a franchise**, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year **based on the incoming receipt, or realized, <u>within its territorial jurisdiction</u>**. xxx" *(Emphases and underscoring supplied)*

In this connection, Article 226(a) and (b) of the IRR of the LGC of 1991 reads:

> "ARTICLE 226. *Franchise Tax.* – (a) Notwithstanding any exemption granted by any law or other special law, the **province may impose a tax on businesses enjoying a franchise**, at a rate not exceeding fifty percent (50%) of one percent (1%) **of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year <u>within its territorial jurisdiction, excluding the territorial limits of any city located in the province</u>**.
>
> (b) **The province shall not impose the tax on business enjoying franchise operating <u>within the territorial jurisdiction of any city located within the province</u>**." *(Emphasis and underscoring supplied)*

Based on the foregoing provisions, petitioner, as a province, is authorized to impose a tax on "businesses enjoying a franchise" based on the incoming receipt, or realized, within its territorial jurisdiction. However, by way of a limitation, it cannot impose a tax on business enjoying a franchise operating within the territorial jurisdiction of any city located within the province.

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[29] *Smart Communications, Inc. vs. City of Davao, et al.*, G.R. No. 155491, July 21, 2009.

In this case, it is without doubt that respondent TRANSCO is engaged in a business enjoying a franchise. This is clear under Section 8 of the EPIRA, which provides as follows:

> "SEC. 8. *Creation of the National Transmission Company.* – **There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the powers and functions hereinafter granted.** The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
>
> **Within six (6) months from the effectivity of this Act,[30] the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO.** The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).
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> xxx xxx xxx. *(Emphases and underscoring supplied)*

Based on the foregoing provisions, respondent TRANSCO assumed the electrical transmission function of the NPC. Furthermore, on the basis of the same provisions, the nationwide franchise of NPC for the operation of the transmission system and the grid, *inter alia*, was transferred to respondent TRANSCO. In other words, the franchise that was inherited by respondent TRANSCO from NPC refers to the transmission of electricity (not the distribution thereof)[31].

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[30] The EPIRA took effect on June 26, 2001 (*Manila Electric Company, Inc. v. Lualhati*, G.R. Nos. 166769 and 166818, December 6, 2006; *Gerochi, et al. vs. Department of Energy*, G.R. No. 159796, July 17, 2007; and *NPC Drivers and Mechanics Association, et al. vs. National Power Corporation, et al.*, G.R. No. 156208, June 30, 2014).

[31] According to Section 5 of the EPIRA, the electric power industry is divided into four (4) sectors, namely: generation, **transmission**, distribution and supply

Having identified the franchise being enjoyed by respondent TRANSCO, We shall now determine whether the assailed franchise tax assessed by petitioner against respondent TRANSCO falls within the limitation on the taxing powers of petitioner as provided under Section 137 of the LGC of 1991, in relation to Article 226(a) and (b) of the IRR of the same law.

Relative thereto, petitioner argues, in effect, that it has the authority to impose franchise tax on respondent TRANSCO's gross receipts from BATELEC II because the latter realized the same (or at least, a portion thereof) from municipalities within the province of Batangas where BATELEC II distributes electricity.

We disagree with petitioner as its reasoning is specious.

It must be emphasized that the subject local franchise tax is being imposed on the gross receipts of respondent TRANSCO, which is enjoying the nationwide franchise for the operation of the transmission system and the grid; and **<u>not</u>** on the gross receipts of BATELEC II, which is enjoying a separate franchise granted by the National Electrification Commission. [32] The franchise granted to BATELEC II is distinct and different from that of respondent TRANSCO. To be clear, BATELEC II is granted the authority to operate electric service in the City of Lipa and in certain municipalities in the province of Batangas, pursuant to Presidential Decree No. 269, as amended, which was given as early as May 28, 1980;[33] while respondent TRANSCO, as already stated, was granted the nationwide electrical transmission franchise, pursuant to the earlier quoted Section 8 of the EPIRA.

As a corollary, it is of no consequence that the electricity transmitted to BATELEC II is subsequently distributed to end-users located in certain municipalities of the province of Batangas, considering that respondent TRANSCO derives its gross receipts from its transmission of electricity to BATELEC II, a distribution utility, and not from the end-users.

Correspondingly, the gross receipts of respondent TRANSCO

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[32] See BATELEC II's Certificate of Franchise, RTC Records, pp. 106 to 107.
[33] *Supra*; N.B.: Section 57 of the EPIRA provides in part: "*...Nothing contained in this Act shall deprive electric cooperatives of any privilege or right granted to them under Presidential Decree No. 269, as amended, and other existing laws.*"

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cannot be treated as the same as the gross receipts of BATELEC II. The former were realized by respondent TRANSCO in transmitting electricity to BATELEC II; while the latter's gross receipts were realized by BATELEC II in distributing electricity to the City of Lipa and in certain municipalities.

Clearly therefore, the RTC of Batangas City did not err in declaring the nullity of petitioner's assessment of franchise tax on respondent's gross receipts from BATELEC II.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision dated September 25, 2014 issued by the Regional Trial Court of Batangas City, Branch 7, in Civil Case No. 9403, is hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
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
Chairperson
Presiding Justice