REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

NATIONAL POWER CORPORATION,
Petitioner,

-*versus*-

THE CITY GOVERNMENT OF TUGUEGARAO, AND BUENAVENTURA LAGUNDI, IN HIS CAPACITY AS CITY TREASURER OF TUGUEGARAO,
Respondents.

CTA EB CASE NO. 696
(RTC Civil Case No. 7240)

Present:

Acosta, *P.J.*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, *and*
Cotangco-Manalastas, *JJ.*

Promulgated:

JUN 05 2012 Cabpohoano 2:02 p.m.

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D E C I S I O N

BAUTISTA, J.:

The present case is an appeal by way of "Petition for Review," seeking for the Court *En Banc* to set aside the Decision issued in Civil Case No. 7240, entitled "*National Power Corporation v. City of Tuguegarao and Buenaventura Lagundi,*" by the Regional Trial Court ("RTC") - Branch 05 of Tuguegarao City, which dismissed the case on appeal on the ground of its lack of appellate jurisdiction.[1] Petitioner's appeal to the RTC sought to nullify the assessment made upon it by the Tuguegarao City Treasurer, and to declare it exempt from payment of Franchise Tax in the amount of *Eight Million Four Hundred Thirteen Thousand Five Hundred Fifty Nine and 11/100 Pesos* (P8,413,559.11) for years 2004 to 2008, inclusive of interest and surcharges.

The Parties[2]

Petitioner National Power Corporation ("NPC") is a government-owned and controlled corporation created and existing under and by virtue of Republic Act No. 6395, as amended.

Respondent City of Tuguegarao ("City") is a local government unit clothed by law with a right to sue and be sued.

Respondent Buenaventura F. Lagundi ("Lagundi") is of legal age and is herein sued in his official capacity as the City Treasurer of Tuguegarao City.

The Facts[3]

On December 18, 2009, petitioner NPC received an Assessment Letter dated December 3, 2008 from respondent City, through respondent Buenaventura Lagundi, demanding payment of franchise tax from the years 2004 to 2008 in the total amount of *Eight Million Four Hundred Thirteen Thousand Five Hundred Fifty Nine and 11/100 Pesos* (P8,413,559.11).

On January 12, 2009, petitioner filed a Protest Letter with the Office of the City Treasurer of Tuguegarao.

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[1] *Rollo*, pp. 1-23, *with Annexes*.
[2] *Id.*, pp. 12-13.
[3] *Id.*, pp. 13-14.

However, respondent City failed to resolve the protest letter filed by petitioner.

Thus, on January 23, 2009, petitioner, filed with the RTC, an Appeal docketed as Civil Case No. 7240, entitled "*National Power Corporation v. City of Tuguegarao and Buenaventura Lagundi*," seeking to nullify the subject assessment dated December 3, 2008, and to declare petitioner exempt from payment of Franchise Tax.

Respondents filed their Answer with Counterclaim on June 19, 2009. Subsequently, the RTC issued the assailed Decision dated August 9, 2010, the dispositive portion of which states:

> "**WHEREFORE**, for lack of appellate jurisdiction of this court over the appeal, the same is dismissed without prejudice.
>
> **SO ORDERED**."

Hence, on November 5, 2010, petitioner filed the present Petition for Review before this Court *En Banc*.

Issues

I

WHETHER OR NOT THE TRIAL COURT GRAVELY ERRED IN DISMISSING THE CASE FOR LACK OF ITS APPELLATE JURISDICTION; and

II

WHETHER OR NOT PETITIONER IS LIABLE TO PAY FRANCHISE TAX TO THE CITY OF TUGUEGARAO NOTWITHSTANDING THAT REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA), HAS EFFECTIVELY RELIEVED PETITIONER FROM PAYING FRANCHISE TAX.

Petitioner argues that the RTC has jurisdiction over the issues, pointing to Section 195 of Local Government Code of 1991 ("LGC of 1991"), which states that:

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

Petitioner avers that the Assessment Letter was received on December 18, 2009, with the Protest letter being filed on January 12, 2009. As the respondent City failed to act on the case within the sixty day period, petitioner filed an appeal with RTC, pursuant to the above cited provision. [4]

As for the issue on the franchise tax, petitioner explains that a franchise is a particular privilege or right granted by a sovereign or legislative body to an individual or a corporation.[5] By virtue of that franchise issued, it serves as the basis and authority of the Local Government Unit ("LGU") to assess and collect franchise taxes, and thus, without a franchise granted, it cannot be burdened to pay said tax.

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[4] *Id.*, pp. 16-17.
[5] *Id.*, p. 17.

Petitioner cites Section 137 of the LGC of 1991, wherein franchise tax is imposed upon a business enjoying a franchise.[6]

Petitioner also relies on Section 8 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act ("EPIRA Law"), stating that since it is only a generation company under said definition,[7] it is no longer required to secure a national franchise.[8] In addition, petitioner points to Part II, Rule 5, Sections 1 and 2 of the Implenting Rules and Regulation of the EPIRA Law, which states that a generation company is not considered a public utility and thus not required to get a franchise.[9]

The Court denied the admission into the records of respondent's Comment.[10]

The Ruling of the Court En Banc

After thoroughly evaluating the records of the case, the Court *En Banc* finds that it has no jurisdiction over the present Petition for Review.

Section 195 of LGC of 1991 provides the regulatory periods in relation to protesting an assessment by the local treasurer. The provision provides that when a protested assessment is denied or upon the lapse of the sixty-day period wherein which the local treasurer may decide, the taxpayer shall be allowed a thirty-day period to appeal to a court of competent jurisdiction. While the LGC of 1991 is silent as to the specific court where a taxpayer may file an appeal to the decision or inaction of the local treasurer, it will be prudent to point out Republic Act No.

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[6] *Id.*, p. 18.
[7] *Id.*, p. 19.
[8] *Id.*, p. 20.
[9] *Id.*
[10] *Id.*, pp. 112-114.

1125,[11] as amended by Republic Act No. 9282[12] and 9503,[13] specifically Section 7 which pertains to the Court's expanded jurisdiction.

This Court, being a court of special jurisdiction can only take cognizance of such matters as are clearly within its jurisdiction. The 2005 Revised Rules of the Court of Tax Appeals, as amended, specifically enumerates the cases that fall within the jurisdiction of the Court sitting in Division and *En Banc*. Section 3 of Rule 4 of the said Revised Rules enumerates the cases within the jurisdiction of the Court in Division, to wit:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division*. - The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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>> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>>
>> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commission of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall

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[11] Otherwise known as "An Act Creating the Court of Tax Appeals."
[12] Otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and For Other Purposes."
[13] Otherwise known as "An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and For Other Purposes."

be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

(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;

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

(5) Decisions of the Secretary of Finance on customs cases elevated for automatic for review from decisions of the Commissioner of Customs adverse to the Government under Section 2315 of the Tariff and Customs Code; and

(6) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture, in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties;

(b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

(1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and

Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; and

(2) Appellate jurisdiction over appeals from the judgments, resolutions or orders of the Regional Trial Courts in their original jurisdiction in criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than one million pesos or where there is no specified amount claimed;

(c) Exclusive jurisdiction over tax collection cases, to wit:

(1) Original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; and

(2) Appellate jurisdiction over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them within their respective territorial jurisdiction."

As for the jurisdiction of the CTA *En Banc*, Section 2 of Rule 4 of the 2005 Revised Rules of the CTA, as amended, states that:

"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:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies-Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and

(3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;

(b) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their appellate jurisdiction;

(c) Decisions, resolutions or orders of the Regional Trial Courts in tax collection cases decided or resolved by them in the exercise of their appellate jurisdiction;

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

(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;

(f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs;

(g) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over criminal offenses mentioned in the preceding subparagraph; and

(h) Decisions, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over criminal offenses mentioned in subparagraph (f)."

In the cases of *PLDT v. City of Balanga, et al.,*[14] *Yamane v. BA Lepanto Condominium Corporation,*[15] and *National Power Corporation v. The Provincial Government of Compostela Valley,*[16] it has been held that the review taken by the RTC over the denial of the protest by the local treasurer under Section 195 of the LGC of 1991 would fall within the RTC's original jurisdiction, considering that such denial is not the judgment or order of a lower court, but of a local government official, to wit:

> "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 Local Government Code, exercises 'original jurisdiction' or 'appellate jurisdiction.' The question assumes a measure of importance to this petition, for the adoption of the position of the City Treasurer that the mode of review of the decision taken by the RTC is governed by Rule 41 of the Rules of Civil Procedure means that the decision of the RTC would have long become final and executory by reason of the failure of the Corporation to file a notice of appeal.
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> 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.
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> 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, 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

[14] CTA EB Case No. 413, June 3, 2009.
[15] G.R. No. 154993, October 25, 2005, 474 SCRA 258.
[16] CTA EB Case No. 607, July 22, 2011.

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.'

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.

The stringent concept of original jurisdiction may seemingly be neutered by Rule 43 of the 1997 Rules of Civil Procedure, Section 1 of which lists a slew of administrative agencies and quasi-judicial tribunals or their officers whose decisions may be reviewed by the Court of Appeals in the exercise of its appellate jurisdiction. However, the basic law of jurisdiction, Batas Pambansa Blg. 129 (B.P. 129), ineluctably confers appellate jurisdiction on the Court of Appeals over final rulings of quasi-judicial agencies, instrumentalities, boards or commission, by explicitly using the phrase 'appellate jurisdiction.' The power to create or characterize jurisdiction of courts belongs to the legislature. While the traditional notion of appellate jurisdiction connotes judicial review over lower court decisions, it has to yield to statutory redefinitions that clearly expand its breadth to encompass even review of decisions of officers in the executive branches of government. **Yet significantly, the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer.** On the other hand, Section 22 of B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts. Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities. From these premises, it is evident that the stance of the City Treasurer is correct as a matter of law, and that the proper remedy of the Corporation from the RTC judgment is an ordinary appeal under Rule 41 to the Court of Appeals. However, we make this pronouncement subject to two important qualifications. First, in this particular case there are nonetheless significant reasons for the Court

> to overlook the procedural error and ultimately uphold the adjudication of the jurisdiction exercised by the Court of Appeals in this case. Second, the doctrinal weight of the pronouncement is confined to cases and controversies that emerged prior to the enactment of Republic Act No. 9282, the law which expanded the jurisdiction of the Court of Tax Appeals (CTA).
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> Republic Act No. 9282 definitively proves in its Section 7(a)(3) that the CTA exercises exclusive appellate jurisdiction to review on appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases original decided or resolved by them in the exercise of their originally or appellate jurisdiction. Moreover, the provision also states that the review is triggered 'by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure."

In the instant Petition, what is being appealed before the Court *En Banc* is the decision rendered by the RTC in exercise of its original jurisdiction, since the basis of the filing was the inaction of the City Treasurer on the protest filed by petitioner under Section 195 of the LGC. The review of the RTC is the initial judicial cognizance of the matter, as the action of the local treasurer on the protest is not a judgment or order of a lower court, but of a local government official.[17] Since the action of the municipal treasurer is not a judgment of the lower court, but of a local government official, then the Decision rendered by the RTC being appealed in the present petition was rendered in the exercise of its original jurisdiction, it being the first court which took cognizance of the case, pursuant to the Yamane case.[18] Thus, the reliance of petitioner on Rule 8, Section 4 (c) of the Revised Rules of Court of Tax Appeals cannot be accepted, as this contemplates that the Regional Trial Court

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[17] *National Power Corporation v. Municipality of Camalaniugan, Cagayan and Alexander L. Miguel*, CTA EB Case No. 573, August 23, 2010.
[18] *Id.*

exercised its appellate powers before the Petition for Review is filed with the Court *En Banc*, which is clearly not the applicable in the present case.

The Court *En Banc*, therefore, has no jurisdiction over the present petition under Section 2(b), Rule 4 of the 2005 Revised Rules of the CTA, as amended. On the other hand, Section 3(a)(3), Rule 4 of the 2005 Revised Rules of the CTA, as amended, provides that this case falls within the exclusive appellate jurisdiction of the Court in Division. For lack of jurisdiction, the Court *En Banc*, therefore, has no alternative but to dismiss the Petition for Review.

Well-settled is the rule that the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, leads to the loss of the right to appeal.[19]

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[19] *Producers Bank of the Phil. v. Court of Appeals*, G.R. No. 126620, 17 April 2002, 381 SCRA 185.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice