REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MA. LYDIA M. ELLICA, in her capacity as PROVINCIAL TREASURER OF DAVAO DEL SUR and ALEJANDRA A. MANTO, in her capacity as ICO-MUNICIPAL TREASURER OF STA. CRUZ, DAVAO DEL SUR, *Petitioners,*	**CTA EB No. 2349** (CBAA Case No. M-44-2018) (LBAA Case No. 2017-02) Present: Del Rosario, *P.J.,* Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, and Reyes-Fajardo, *JJ.*
- versus -	
HEDCOR SIBULAN, INC., *Respondent.*	Promulgated: OCT 2 1 2021 1:30 pm

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DECISION

CASTAÑEDA, JR., *J.:*

This Petition for Review[1] filed on September 24, 2020 pursuant to Section 2(e), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) seeks the reversal of the Decision dated October 18, 2019,[2] (Assailed Decision) as well as the Resolution dated July 7, 2020[3] (Assailed Resolution) both rendered by the Central Board of Assessment Appeals (CBAA) in CBAA Case No. M-44-2018.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

[1] Court *En Banc's* Docket, pp. 4-22.
[2] *Id.*, pp. 33-56.
[3] *Id.*, pp. 17-22.

Assailed Decision:

"**WHEREFORE,** in view of all the foregoing, the instant petition is hereby **GRANTED** and the BOARD further rules the following:

1. Petitioner-Appellant HSI is only liable for Realty Taxes at the maximum rate of one and a half percent (1.5%) to the original cost less accumulated normal depreciation or net book value as provided by Section 15(c) of the Republic Act No. 9513, which covers basic RPT and SEF on the following properties bearing tax declaration numbers, to wit:

A-11-0008-00027
A-11-0008-00028
A-11-0008-00029
A-11-0014-00002
A-11-0014-00003
A-11-0014-00004
A-11-0017-00005

2. Respondent-Appellee shall refund or issue tax credits in favor of HSI in the amount representing the excess of the maximum special realty tax of one and a half percent (1.5%) on the aforementioned described properties for the third quarter of CY 2016; and

3. Respondent-Appellee shall apply a realty tax rate not higher than the one and a half percent (1.5%) provided in Section 15(c) of the Republic Act No. 9513 for the civil works, equipment, machinery and other improvements actually and exclusively used for RE facilities.

SO ORDERED."

Assailed Resolution:

"**WHEREFORE,** in view of the foregoing, the Motion for Reconsideration filed by the Respondents-Appellees is hereby DENIED.

SO ORDERED." ge

THE PARTIES

Hedcor Sibulan, Inc. (HSI) is a corporation duly organized and existing under and by virtue of the Philippine laws and engaged in the business of, among others, owning, constructing, operating, repairing, and maintaining hydro-electric power plant systems, which is a renewable energy resource under Republic Act (RA) No. 9513, also known as the Renewable Energy Act of 2008.[4] The Department of Energy has issued Certificate of Registration Nos. HOC 2016-04-627 and HOC 2016-04-628 certifying that HSI is a registered renewable energy developer (RE Developer) of hydroelectric energy resources located in Sta. Cruz, Davao del Sur.[5]

Ma. Lydia M. Ellica is suing in her capacity as the Provincial Treasurer of Davao del Sur.[6] On the other hand, Alejandra A. Manto is suing in her capacity as ICO-Municipal Treasurer of the Municipality of Sta. Cruz, Province of Davao del Sur.[7]

THE FACTS

The facts of the present case, as found by the CBAA in its Decision dated October 18, 2019, are as follows:[8]

> "HSI is engaged in the business of, among others, operating and maintaining hydro-electric power plant systems, which is a renewable energy resource. HSI then applied for registration as an RE Developer with the Department of Energy (DOE). The DOE issued Certificate of Registration Nos. HOC 2016-04-627 and HOC 2016-04-628 certifying that HSI is a registered RE Developer of the hydroelectric energy resources located in Sta. Cruz, Davao del Sur.
>
> Pursuant to Section 15 of RA No. 9513 also known as the Renewable Energy Act of 2008 (RE Law) certain incentives are provided to Renewable Energy Developers to accelerate and encourage the exploration, development, utilization of renewable energy to achieve energy self-reliance and reduce harmful emissions. In line with the said declared policy, HSI claimed for the incentives provided under the RE Law particularly for the Sta. Cruz properties consisting of buildings

[4] *Id.*, pp. 33-34.
[5] *Id.*, p. 34.
[6] *Id.*, p. 5.
[7] *Id.*
[8] *Id.*, pp. 34-35.

and machinery that comprise portions of HSI's Sibulan A and Sibulan B hydroelectric power plants located in Sta. Cruz, Davao del Sur and are actually and exclusively used for its RE facilities. The Sta. Cruz properties, subject of this petition, are covered by the following tax declarations:

Tax Declaration Nos.
A-11-0008-00027
A-11-0008-00028
A-11-0008-00029
A-11-0014-00002
A-11-0014-00003
A-11-0014-00004
A-11-0017-00005

On 30 September 2015, HSI *paid under protest* the amount of Nine Million Seventy-Eight Thousand Five Hundred Twenty-One Pesos and 86/100 (Php 9,078,521.86) in Realty Taxes on the Sta. Cruz Properties for the basic RPT and SEF due at a rate of one percent (1%) each. On the same day, HSI filed the Protest Letter with the Municipal Treasurer pursuant to Section 252 of the Local Government Code.

However, the municipal treasurer's sixty (60) day period to act on the protest lapsed on 29 November 2016. Thus, HSI filed a petition with the LBAA on 27 January 2017 which is within sixty (60) days from the lapse of the Municipal Treasurer's period to act on the Protest.

HSI stated and argued in its petition that the amount of Two Million Two Hundred Sixty-Nine Thousand Six Hundred Thirty pesos and 47/100 (Php 2,269,630.47) should be granted refund or tax credit because this amount was collected in excess of the maximum imposable Realty Tax rate of one and a half percent (1.5%) to registered RE Developers under the RE Law.

On 3 January 2018, HSI received the Resolution of the LBAA wherein it ruled that the HSI is not entitled to tax refund or credit in the total amount of Two Million Two Hundred Sixty-Nine Thousand Six Hundred Thirty pesos and 47/100 (Php 2,269,630.47) representing overpaid Realty Taxes in excess of the one and a half percent (1.5%) preferential tax rate under Section 15(c) of the RE Law." *[initials]*

On February 2, 2018, HSI filed its Memorandum of Appeal before the CBAA.[9]

On October 19, 2020, the CBAA rendered the Assailed Decision wherein it reversed LBAA's ruling and held that HSI is only liable for realty taxes at the maximum rate of 1.5% as provided under the RE Law and accordingly, granted HSI's claim for refund.

Undeterred, petitioners filed a Motion for Reconsideration of the Assailed Decision which the CBAA denied in the Assailed Resolution.

On September 24, 2020, petitioners filed the present Petition for Review. On May 31, 2021, respondent filed its Comment to the Petition for Review.[10]

In a Resolution dated June 16, 2021, the Court *En Banc* gave due course to the Petition for Review and submitted the same for decision.[11]

THE ISSUES

Petitioners raised the sole issue below for the Court *En Banc*'s decision, to wit:

> "WHETHER OR NOT THE CENTRAL BOARD OF ASSESSMENT APPEALS IS CORRECT IN RULING THAT HEDCOR SHALL PAY 1.5% REAL PROPERTY TAX."

THE COURT *EN BANC*'S RULING

In their Petition for Review, petitioners posit that the two percent (2%) tax rate imposed on HSI is valid and in accordance with the Local Government Code of 1991 (LGC) as well as RA No. 9513.[12] To buttress such argument, petitioners cited Bureau of Local Government Finance (BLGF) Letter dated August 24, 2012 addressed to the Mayor of Ormoc City as well as BLGF Letter dated November 29, 2012 addressed to the Governor of Lagawe, Ifugao.[13] Petitioners assert that in those letters, the BLGF is purportedly of the view that the one percent (1%) Special Education Fund (SEF) shall be levied separately from the special realty tax rate as provided

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[9] *Id.*, pp. 98-119.
[10] *Id.*, pp. 65-85.
[11] *Id.*, pp. 66-67.
[12] *Id.*, pp. 8-10.
[13] *Id.*

under Section 15(c) of RA No. 9513.[14] The BLGF allegedly based its position on the opinions of Senate Tax Study and Research Office (STSRO) and Senator Angara.[15]

Petitioners likewise contend that RA No. 9513 never stated that the maximum 1.5% special tax rate to be imposed on an RE Developer already includes the SEF levy.[16] On the other hand, as petitioners posit, Section 233(a) of the LGC expressly provides that a province may levy a tax of not exceeding 1% of the assessed value of the real property while Section 235 of the LGC is clear that a province may levy an additional 1% SEF.[17]

Respondent, however, maintains in its Comment that the CBAA correctly ruled that HSI is only liable for realty taxes at the maximum rate of one and a half percent (1.5%).

After careful review of the facts, the arguments of the parties as well as the applicable law and jurisprudence, the Court *En Banc* finds the present Petition for Review bereft of merit. Both the Assailed Decision and Resolution must be upheld for being in accordance with the applicable law and jurisprudence.

This is not the first time that this Court has been confronted with the present legal issue. As correctly pointed out by respondent, the Court *En Banc* unanimously ruled in *Calajate v. North Luzon Renewable Energy Corporation*[18] that the SEF is included in the phrase "other taxes" under Section 15(c) of RA No. 9513. In deciding the present case, the Court *En Banc* finds no compelling reason to deviate from its ruling in *Calajate*. Thus, the relevant discussions in the said case which are adopted in the present case are quoted below:[19]

> "R.A. No. 9513 (referred to herein as the RE Law) is entitled 'An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes.' In Section 2(b) thereof, it has been declared State policy to '[i]ncrease the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application **by providing fiscal and nonfiscal incentives** x x x.'

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[14] *Id.*
[15] *Id.*
[16] *Id.*, pp. 10-11.
[17] *Id.*
[18] CTA EB No. 1812, February 26, 2020.
[19] Citations omitted.

Section 15(c) of the RE Law is the bone of contention between both parties. It states:

> '**Section 15.** ***Incentives for Renewable Energy Projects and Activities.*** — RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
>
> x x x x x x x x x
>
> (c) *Special Real Property Tax Rates on Equipment and Machinery.* - Any law to the contrary notwithstanding, **realty and other taxes** on civil works, equipment, machinery, and other improvements of a Registered RE Developer actually and exclusively used for RES facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: Provided, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant; x x x' *(Emphasis supplied)*

In Part III, Rule 5 of the Implementing Rules and Regulations (IRR) of the RE Law, the same mandate is echoed, thus:

> 'Section 13.*Fiscal Incentives for Renewable Energy Projects and Activities.* - DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:
>
> x x x x x x x x x
>
> C. Specialty Realty Tax Rates on Equipment and Machinery
>
> **Realty and other taxes** on civil works, equipment, machinery and other improvements by a registered RE Developer actually and exclusively used for RE facilities **shall not exceed one and a half percent (1.5%)** of their original cost less accumulated normal depreciation or net book value: Provided, That in the case of an integrated RE resource development and Generation Facility as provided under Republic Act No. 9136, the real property tax shall be imposed only on the power plant. x x x' *(Emphasis supplied)* Jr

On the other hand, the LGC empowers LGUs to levy and collect real property taxes, such as, 1) basic real property tax; 2) additional levy on real property for the Special Education Fund (SEF); 3) additional ad valorem tax on idle lands; and 4) special levies by LGUs.

Of particular relevance is Section 235 of the LGC which allows LGUs to levy and collect an annual tax of 1% on the assessed value of real property in addition to the basic real property tax which exclusively accrue to the SEF. The provision reads, as follows:

> Sec. 235. *Additional Levy on Real Property for the Special Education Fund.* — A province or city, or a municipality within the Metropolitan Area, may levy and collect an annual tax of one percent (1%) **<u>on the assessed value of real property</u>** which shall be in addition to the basic real property tax. **The proceeds thereof shall exclusively accrue to the <u>Special Education Fund.</u>**

The other relevant provisions in the LGC pertaining to the SEF, are as follows:

> Section 250. *Payment of Real Property Taxes in Installments.* - The owner of the real property or the person having legal interest therein may pay **the basic real property tax and the additional tax for Special Education Fund (SEF)** due thereon without interest in four (4) installments; the first installment to be due and payable on or before March Thirty-first (31st); the second installment, on or before September Thirty (30); and **<u>the last installment on or before December Thirty-first (31st)</u>**, except the special levy the payment of which shall be governed by ordinance of the sanggunian concerned.
>
> x x x x x x x x x
>
> Sec. 272. *Application of Proceeds of the Additional One Percent SEF Tax.* - The proceeds from the additional one percent (1%) **<u>tax on real property</u>** accruing to the Special Education Fund (SEF) shall be automatically released to the local school boards: Provided, That, in case of provinces, the proceeds shall be divided equally between the provincial and municipal school boards: Provided, however, That the proceeds shall be allocated for the operation and maintenance of public schools, construction and repair of school buildings, facilities and equipment, educational research, purchase of books and periodicals, and sports development as determined and approved by the Local School Board.

x x x x x x x x x

Sec. 309. *Special Funds.* — There shall be maintained in every provincial, city, or municipal treasury the following special funds:

(a) **Special Education Fund (SEF)** shall consist of the respective shares of provinces, cities, municipalities and barangays in the proceeds of the **additional tax on real property** to be appropriated for the purposes prescribed in Section 272 of this Code;

x x x x x x x x x' *(Underscoring and emphasis supplied)*

It is apparent from the above-quoted provisions that the SEF is an additional tax on real property over and above the basic real property tax.

Pursuant to the above provisions of the LGC, the Provincial Government of Ilocos Norte (PGIN) enacted the Revised Revenue Code of 2013 of the Province of Ilocos Norte and imposed a basic real property tax equivalent to 1% of the assessed value of real property; an additional levy on real property for the SEF equivalent to an annual tax of 1% on the assessed value of real property; an annual tax on idle lands at the rate of two (2%) of the assessed value of the real property; and a special levy equivalent to 1% of the assessed value of the real property.

x x x x x x x x x

The Phrase 'Other Taxes' in the RE Law Include the SEF

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. Only when the law is ambiguous or of doubtful meaning may the Court interpret or construe its true intent.

Ambiguity is a condition of admitting two (2) or more meanings, of being understood in more than one (1) way, or of referring to two (2) or more things at the same time. A statute is ambiguous if it is admissible of two (2) or more possible meanings, in which case, the Court is called upon to exercise one (1) of its judicial functions, which is to interpret the law according to its true intent.

Given the thrust of the RE Law to provide fiscal incentives to RE Developers so that the country's Renewable Energy Sector may flourish, the Court finds no ambiguity in Section 15(c) thereof and deems the SEF included in the phrase 'other taxes.'

The repealing clause of the RE Law, Section 39 thereof, is also explicit. It states:

> '(c) Section 39. *Repealing Clause.* - **Any law, presidential decree or issuance, executive order, letter of instruction, administrative rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.**
>
> Consistent with the foregoing paragraph and Section 13 of this Act, Section 1 of Presidential Decree No. 1442 or the Geothermal Resources Exploration and Development Act, insofar as the exploration of geothermal resources by the government, and Section 10 (1) of Republic Act No. 7156 otherwise known as the 'Mini-Hydro Electric Power Incentive Act,' insofar as the special privilege tax rate of two percent (2%) are hereby repealed, modified or amended accordingly.' *(Emphasis supplied)*

The Provincial Treasurer argues that since only the Geothermal Resources Exploration and Development Act and the Mini-Hydro Electric Power Incentive Act were mentioned in the second paragraph of Section 39, that this is indicative of the intent of the legislature to give full effectivity to the provisions in the LGC relative to the SEF, especially since implied repeals are not favored. However, this argument is without merit, a conclusion arrived at by the CBAA in the assailed Decision, which this Court upholds. It is evident to this Court that those specific statutes were mentioned in order to consolidate the various existing laws on other renewable energy sources under the RE Law.

For one thing, the **RE Law** was enacted on **December 16, 2008**. While assessments of the Provincial Treasurer were based on the Revised Revenue Code of PGIN, **Provincial Ordinance No. 2013-001**, which was made effective on **April 14, 2014**, later than the RE Law, this is of no moment. The Revised Revenue Code of PGIN derives its authority to tax from the **LGC** which was enacted on **January 1, 1992**, almost 16 years prior to the RE Law. The RE Law, being the most recent legislation is viewed by the Court an express and real intention on the part of Congress to limit the LGU's delegated taxing power on renewable energy resources within their jurisdiction.

It can be argued that, ultimately, the grant of the LGU's power to tax is derived from the Constitution. Article 10, Section 5 of the Philippine Constitution grants LGUs the power to create their own sources of revenue and to levy taxes, thus:

'Article X — Local Government

General Provisions

x x x

Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges **subject to such guidelines and limitations as the Congress may provide**, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.' *(Emphasis supplied)*

xxx'

However, as is apparent from the above quoted provision, this power is not without limitations. This power is still subject to the guidelines and limitations set forth by Congress. While it is not disputed that LGUs have the power to tax, this power is still primarily vested in Congress and may be limited, and even taken away by law.

In *Mactan Cebu International Airport Authority vs. Marcos*, the Supreme Court said:

'The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution. **Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide** which, however, must be consistent with the basic policy of local autonomy.' *(Emphasis supplied; citations omitted)*

In *Philippine Long Distance Telephone Company, Inc. (PLDT) vs. City of Davao*, the Supreme Court has likewise upheld the power of Congress to grant exemptions over the power of LGUs to impose taxes, thus:

'**Indeed, the grant of taxing powers to local government units under the Constitution and the LGC does not affect the power of Congress to grant exemptions to certain persons, pursuant to a declared national policy.** The legal effect of the constitutional grant to local governments simply means that in interpreting statutory provisions on municipal taxing powers, doubts must be resolved in favor of municipal corporations.'

Indubitably, both laws currently under scrutiny - the RE Law and the LGC - cannot independently exist in a vacuum. One must be read in harmony with the other. The Court is so guided by the pronouncement in *Philippine Economic Zone Authority vs. Green Asia Construction & Development Corporation* which states that '**a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system.** The rule is expressed in the maxim, *interpretare et concordare legibus est optimus interpretandi,* or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.'

Keeping this in mind, interpreting the RE Law in a manner which allows the imposition of an additional one percent (1%) tax for SEF on top of the capped rate of one and half (1.5%) special realty tax creates a patent absurdity. This would result in allowing the Provincial Treasurer to apply the maximum special rate for RE machinery and equipment of 1.5% **separately** for the RPT and the SEF levy, thereby making NLREC liable for an aggregate property tax rate of 2% prescribed under the LGC. This effectively nullifies the incentive under the RE Law because RE Developers will end up incurring the same property tax costs for owning machinery and equipment.

A construction should be rejected that gives to the language used in a statute a meaning that does not accomplish the purpose for which the statute was enacted, and that tends to defeat the ends which are sought to be attained by the enactment. To interpret the phrase 'other taxes' in Section 15(c) of the RE Law as exclusive of the SEF runs contrary to the intent of Congress to provide fiscal incentives to RE Developers in the form of special property tax rates (on equipment and machinery that are actually and exclusively used for RE facilities) capped at 1.5% of the original cost, less accumulated normal depreciation or net book value.

Legislative Intent is to Provide Incentives to RE Developers

As previously discussed, the Court need not look beyond the wording of the RE Law to distill the intention of Congress to cap special property tax rates for RE Developers at 1.5% as a tax incentive in pursuance of the continued development of RE facilities.

However, for the guidance of bench and bar as regards this novel issue, the Court shall recount the history of the RE Law and the deliberations made by the Legislature during its crafting which also support the conclusions arrived at by the Court.

Excerpts from the transcript of the Bicameral Conference Committee (Bi-cam Conference) on the Disagreeing Provisions of Senate Bill No. 2046 and House Bill No. 4193 on October 7, 2008, are as follows:

> '**THE CHAIRMAN (SEN. EDUARDO ANGARA).** Okay. Ilagay mo sa Section 15, iha. Just concentrate on that. Okay, General Incentives, Section 15, Incentives for Renewable Energy Projects and Activities, which is the main body of the Incentives.
>
> **THE CHAIRMAN (REP. JUAN MIGUEL ARROYO).** Yes
>
> **THE CHAIRMAN (SEN. ANGARA).** Well, as you will see from the reading of this enumeration, **we try to provide as much incentives to renewable energy industry because number one this is a new industry as far as we are concerned. And, secondly, as earlier said we want to promote clean technology and lessen our dependence on imported fossil product. And that's why this package of incentives are probably greater than what is normally available under the BOI or the PEZA incentive scheme because this is a distinct, new and welcome industry that will create future jobs and investments in our country.**
>
> **THE CHAIRMAN (REP. ARROYO).** Mr. Chairman, in the House panel, we agree that we have to incentivize this industry so that there will be more investors. We just have a few comments on certain provisions.'

From the foregoing, it is clear from the remarks of Senator Eduardo Angara, Chairman of the Senate Panel, that the goal of Section 15 is to provide as much incentives as can be given to the RE industry. This was agreed to by Congressman Juan Miguel M. Arroyo, Chairman of the House Panel.

The following excerpts from the Bi-cam Conference transcript also shed light on how the SEF would be affected by Section 15 which they were then crafting. The exchange below is between former DOE Secretary, Hon. Vince Perez, who was invited as a resource person, and several Members of the House Panel, namely, Rep. Exequiel B. Javier and Rep. Luis R. Villafuerte.

> '**MR. PEREZ.** I was just informed that currently there is a pending — there is precedent in the Court of Appeals that real estate tax is limited to 1 percent so I'm trying to

get the data that we'll circulate to you that actually its currently 1 percent right now.

REP. VILLAFUERTE. One percent of what?

MR. PEREZ. On equipment — any land and other real estate permanented *(sic)* [ad]here[d] to the soil so I have to check the data.

REP. JAVIER. ***I think the rate under the Local Government Code is 1 percent 'no plus the additional assessment of 1 percent for SEF so its total, 2. So total, 2 percent.***

MR. PEREZ. This is two and half.

REP. JAVIER. That's right. Its more than 2 percent.

REP. VILLAFUERTE. No, net book value.

REP. JAVIER. Minus depreciation ito eh.

MR. PEREZ. Ah, I see. Okay Net book value.

x x x x x x x x x

MR. PEREZ. Yeah but let me explain because a lot of the renewable power assets like hydro, solar wind, they are not used to 100 percent all of the time. There are, you know, 30 percent so the value is very high upfront. And if you're gonna tax — kagaya ng 1 percent, now 2.5%, mas mabigat, eh.

REP. VILLAFUERTE. Book value. Minus, eh

REP. JAVIER: I think you better exempt them.

MR. PEREZ: Under the current Local Code, we have a provision, it's actually exempted but not implemented. There's a section called . . .

VOICE: Section 234

MR. PEREZ. Ano?

VOICE: Section 234

MR. PEREZ. Section 234(e), 'Machinery and equipment used for pollution control and environmental protection under the Local Government Code is actually exempt from the real property tax.'

REP. VILLAFUERTE: That does not include the hydroelectric dams and — that's environmental equipment. Kung gusto mo

MR. PEREZ: One percent na lang.

MR. VILLAFUERTE. O sige sige, 1 percent na lang

VOICE. Okay, Thank you.

SEN. ZUBIRI. Yes, Mr. Chair. Okay na po yong 1 percent, local government share — I mean, local government unit, 'yong real estate, real estate tax.

REP. MAGSAYSAY. The new version, 2.5.

THE CHAIRMAN (SEN. ANGARA). Maliit ba yon? Ha? You are also naman trying up the only source of the LGUs

x x x x x x x x x

REP. GUINGONA. Mr. Chairman, why don't we just exempt it na lang?

THE CHAIRMAN (SEN. ANGARA): Huwag naman, huwag naman.

REP. GUINGONA. Ha?

THE CHAIRMAN (SEN. ANGARA). Magagalit sa atin ang — magagalit ang LGU. Ito lang ang source ng income nila.

REP. VILLAFUERTE. Maybe, Mr. Chairman, compromise is 1.5% percent.

THE CHAIRMAN (SEN. ANGARA). One and a half, o sige. okay na iyon, okay na iyon. We have to-we may be favoring companies but we may be disadvantaging LGUs. Masama rin naman iyon.

REP. JAVIER. O, paano yan?

THE CHAIRMAN (SEN. ANGARA). One and a half. We will accept the 1.5. So we reduce it by .5. Okay.

x x x x x x x x x

> **REP. MAGSAYSAY.** ***Mr. Chairman, I just like to ask in the present set up of the mga-who are engaged in this business, are they paying special realty tax already on equipment and machine and how much?***
>
> **REP. VILLAFUERTE:** ***Yes, yes. Alam mo, ang mawawala diyan yung special education fund.***
>
> **REP. MAGSAYSAY:** How much? No, I mean, if they are not complaining with the present rate then — are they complaining? If they are not complaining, bakit pa natin tatanggalin ang exemption?
>
> **THE CHAIRMAN (SEN. ANGARA).** Tama na siguro 'yung compromise natin one and a half. Okay na iyon. Okay, one and a half na. x x x' *(Emphasis supplied)*

The Court finds no error in the conclusion arrived at by the CBAA in the assailed Decision that, indeed, the SEF was considered by the members of the Bicameral Committee and, more importantly, intended to be included in the applicability of Section 15(c) as one of the taxes that will be subject to the capped preferential rate. The CBAA observed, 'The SEF was mentioned twice during the Bicam Conference and none of the members of the body commented that it was not included therein. Hence, it is apparent that the intent of the law makers, is to give as much incentive as possible to RE Developers. This intent is very explicit from the transcript of their deliberations.'

We agree.

The evolution of the provision from the Senate and House versions to its current form, Section 15(c) of the RE Law, also supports the above conclusion.

The drafted provision in Senate Bill No. 2046 reads, as follows:

> 'Any law to the contrary notwithstanding, **realty and other taxes** on civil works, equipment, machinery, and other improvements of a registered RE Developer actually and exclusively used for RES facilities **shall not exceed <u>two and a half percent (2.5%)</u> of their original cost.**' *(Emphasis supplied)*

On the other hand, the draft provision in House Bill No. 4193 states:

> '*Special Real Property Tax Rates on Machinery, Equipment and Other Improvements* - Any law to the contrary notwithstanding, **real property tax** on machinery, equipment and other improvements of a

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registered RE Developer actually and exclusively used for RES facilities **shall not exceed <u>one and a half percent (1.5%)</u> of their original cost.**' *(Emphasis supplied)*

The final version of the provision that the Bicameral Committee agreed on, which subsequently became Section 15(c) of the RE Law is quoted below:

'**Section 15.** Incentives for Renewable Energy Projects and Activities. — x x x

xxx xxx xxx

(c) *Special Real Property Tax Rates on Equipment and Machinery.* - Any law to the contrary notwithstanding, **<u>realty and other taxes</u>** on civil works, equipment, machinery, and other improvements of a Registered RE Developer actually and exclusively used for RES facilities **shall not exceed <u>one and a half percent (1.5%)</u> of their original cost less accumulated normal depreciation or net book value**: Provided, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant; x x x' *(Emphasis supplied)*

The Court also agrees with the observations of the CBAA in the assailed Decision, thus:

'To compare the version of the bills and the enacted law, it can be observed that there **is a decrease in the cap from two and a half percent (2.5%) to one and a half percent (1.5%).** While both the House Bill and Senate Bill mentioned original cost as the tax base, in the enacted law, it will be the original cost less accumulated normal depreciation or net book value. Furthermore, **aside from applying the provision only on realty tax it also included other taxes imposed on civil works, equipment, machinery, and other improvements of a Registered RE Developer.** Thus, it can be surmised that **the intention of Congress is to decrease the tax amount due and to include other taxes aside from the realty taxes.** In addition, during the Sponsorship Speech of Senator Miriam Defensor Santiago on 12 February 2008, she mentioned as one of the market reforms, i.e., Reform No. 9 the Incentives for renewable energy projects and activities, **'Caps on realty tax rates.'** Hence, a limit was provided in the law. In view of the foregoing circumstances and deliberations during the Bicam Conference, it is fair to conclude that the Special Educational Fund is included to the maximum rate of one

> and half percent imposed under Section 15(c) of the RE Law.'
>
> The foregoing discussion lends to no other conclusion other than that the SEF was intended to be part and parcel of the phrase 'other taxes' subject to the capped preferential specialty realty tax rate."

It must also be pointed out that the opinion of the BLGF to the effect that the SEF should be levied separately from the special realty tax rate under RA No. 9513 is not binding on this Court and has no bearing on the resolution of the present issue. As emphatically ruled by the Supreme Court, the BLGF is not an administrative agency whose findings on questions of fact are given weight and deference in the courts.[20] The BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation, real property assessment, and other related matters, among others.[21]

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit. The Decision dated October 18, 2019 and the Resolution dated July 7, 2020 rendered by the CBAA in CBAA Case No. M-44-2018 are **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

[20] *Smart Communications, Inc. v. City of Davao*, G.R. No. 155491, September 16, 2008.
[21] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, G.R. No. 143867, March 25, 2003.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice