REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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CITY TREASURER OF DAVAO CITY,
Petitioner,

~*versus*~

NATIONAL POWER CORPORATION,
Respondent.

CTA EB NO. 633
(CBAA Case No. M-29)

Members:

ACOSTA, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ*.

Promulgated:
JAN 21 2011 4:20 pm

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DECISION

ACOSTA, PJ:

This case seeks to review the Decision and Resolution of the Central Board of Assessment Appeals (CBAA) as regards the real property taxes covering the years 1985 to 1991 which was paid under protest by National Power Corporation.

The facts of the case, as narrated in the assailed Decision, are as follows:

> "It appears that Respondent-Appellant[1] caused the collection of taxes on various real properties located within Davao City and owned by Petitioner-Appellee[2], National Power Corporation ("NPC" for brevity), for the period from 1985 to 2006 in the total amount of P68,468.17. NPC paid the said amount under protest, as shown by Official Receipt Nos. 0449751 to 0049765 issued by the Office of the City Treasurer on September 20, 2006. NPC claimed that it is not liable to pay for real property taxes, except those due from 2001 to 2006, on the grounds of exemption and prescription. NPC contends that prior to the effectivity of R.A. 7160, otherwise known as the Local Government Code of 1991, it was exempt from payment of the said taxes by virtue of Section 13 of its Charter, R.A. 6395, as amended. Therefore, NPC is not liable for realty taxes allegedly due from 1985 to 1991. Likewise, it assails the right of the City Treasurer to collect taxes for the years 1992 to 2000, on

[1] now the Petitioner
[2] now the Respondent

the ground of prescription for having been made beyond the five-year prescriptive period, as provided for under Section 270 of R.A. 7160.

In a resolution dated December 4, 2006, Respondent-Appellant City Treasurer denied the protest of NPC, holding that NPC is neither exempt from the payment of real property taxes due the city government for the years 1985 to 1991, nor is the City Treasurer barred by prescription to collect said taxes for the years 1992 to 2000. Thus, NPC appealed before the Local Board of Assessment Appeals (LBAA), assailing the said resolution on the same grounds of prescription and exemption.

In a comment to the appeal before the LBAA, Respondent-Appellant, by counsel, admitted that indeed, its right to collect taxes for the years 1992 to 2000 had already expired, considering that the collection was only made in 2006, which is beyond the five-year prescriptive period as provided for under Section 270 of R.A. 7160. On the other hand, Petitioner-Appellee also expressly admitted on appeal of its subsisting obligation to pay taxes for the years 2001 to 2006. Thus, what remains to be resolved is the main issue of whether or not petitioner-appellee NPC could be held liable to pay the accrued real property taxes due the City Government for the years 1985 to 1991.

On May 28, 2008, Respondent-Appellant received a copy of a Resolution issued by the LBAA on March 19, 2008, which Resolution reads as follows:

> "Premises considered, the Board hereby resolves the instant appeal in favor of petitioner-appellant. Appellee City Treasurer of Davao is hereby ordered to refund the amount of tax paid for the periods 1985 to 1991 or be credited in favor of appellant's tax obligation whether present or future."

On June 27, 2008, Respondent-Appellant filed its motion for reconsideration and, on September 4, 2008, received a copy of the Order issued by the LBAA on August 26, 2008 denying said motion.

On October 15, 2008, petitioner appealed the March 19, 2008 Resolution and August 26, 2008 Order of the LBAA to the Central Board of Assessment Appeals (CBAA). On July 24, 2009 the CBAA denied the appeal by making the following ruling:

"The Local Board said that Section 194 of RA 7160 applies to this case. However, Respondent-Appellant correctly stated that said Section 194 applies only to "Local Government Taxation" under Title One, Book II of RA 7160 and that the equivalent provision for collection of real property taxes under Title Two, Book II of RA 7160 is Section 270, which does not provide for prescriptive periods on collection of realty taxes accrued before the effectivity of RA 7160.

Granting for the sake of argument, that Petitioner-Appellee cannot enjoy its exemption granted under its charter because of its alleged failure to comply with the provisions of Section 9 of PD 464, still, Respondent-Appellant's right to collect the realty taxes allegedly due from Petitioner-Appellee for the years 1985 through 1991 - after the lapse of more than fourteen (14) years – has already prescribed pursuant to the provisions of Article 1144 of the New Civil Code, which states, thus:

> "Art. 1144. The following actions must be brought within ten years from the time the right to action accrues:
>
> xxx
>
> (2) Upon an obligation created by law;
>
> Respondent-Appellant says that Article 1144 of the New Civil Code does not find application to the subject at hand. We disagree. The New Civil Code is a general law which is resorted to when the special law, in this case, PD 464, is deficient."

The dispositive part of the assailed Decision of CBAA reads:

> "**WHEREFORE,** premises considered, the instant appeal is hereby **DENIED.** The City Treasurer of Davao City is hereby ordered to refund to National Power Corporation (NPC) the amount the latter paid for realty taxes purportedly due for the years 1985 through 1991 or to credit the same against NPC's present or future tax obligations.
>
> **SO ORDERED.**"

Disappointed, petitioner filed a Motion for Reconsideration of the decision on September 2, 2009, which was received by CBAA on September 15, 2009. Petitioner faulted the CBAA in holding that respondent's obligation to pay realty taxes for the years 1985 to 1991, being an obligation created by law, had long prescribed in accordance with Article 1144 of the New Civil Code. Accordingly, in the absence of an express prescriptive provision in tax statutes, the right to collect taxes is imprescriptible, as held by the Supreme Court in Commissioner vs. Ayala Securities Corp. L-29485, 21 November 1980.

The foregoing Motion was denied by CBAA in a Resolution dated March 1, 2010, the dispositive portion thereof reads:

> "WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby DENIED.
>
> SO ORDERED."

Hence, petitioner filed on April 12, 2010 the instant Petition for Review and asked this Court to resolve the following issues:

> 1. Whether or not the right of the petitioner City Treasurer of Davao to collect realty taxes from the National Power Corporation for the years 1985 through 1991 has prescribed pursuant to the provision of Article 1144 of the New Civil Code,

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which requires that an obligation created by law should be brought within ten (10) years from the time the right to action accrues; and

2. Whether or not the herein respondent National Power Corporation loses its exemption from payment of realty taxes for the periods 1985 to 1991, as granted by its Charter, R.A. 6395, as amended, for its failure to submit within thirty (30) days from the date of the declaration of its real properties sufficient proof of exemption, such as its corporate charter, as explicitly required under Section 9 in relation to Section 40 both of P.D. 464, the law governing real property taxation prior to 1992.

We will resolve these issues in seriatim.

The CBAA correctly sustained the argument of petitioner that Section 194 of Republic Act (RA) No. 7160, otherwise known as the Local Government Code of 1991 applies only to "Local Government Taxation" and that the equivalent provision for collection of real property taxes is Section 270 of the same Law, which unfortunately does not provide for the prescriptive periods on collection of realty taxes accrued before the effectivity of the said Law.

Likewise, the CBAA aptly ruled that petitioner's right to collect the realty taxes due from respondent covering the years 1985 to 1991 had already prescribed pursuant to Article 1144 of the New Civil Code.

The Real Property Tax Code was enacted on June 1, 1974 by virtue of Presidential Decree (PD) No. 464. Indeed, this Code does not provide for a provision regarding the prescriptive period to collect real property taxes. However, Article 18 of the New Civil Code provides that in matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code. In view of this, the provision of Article 1144 of the New Civil Code will apply. The said provision provides:

> Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> (1) Upon a written contract;
> (2) <u>Upon an obligation created by law</u>;
> (3) Upon a judgment.
>
> (Emphasis supplied)

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Considering that real property tax is an obligation created by PD 464, collection thereof should be brought within the period of ten years applying the foregoing provision of the New Civil Code. Due to the fact that petitioner made the collection only in the year 2006, which is way beyond the ten year period, it has no more right to collect the real property tax covering the periods from 1985 to 1991 due to prescription.

As far as the last issue is concerned, it is important to quote the provision of Section 40 of PD 464, which provides the exemption from real property tax, viz:

> "Sec. 40. Exemption from Real Property Tax. - The exemption shall be as follows:
>
> (a) Real property owned by the Republic of the Philippines or any of its political subdivisions and any government-owned corporation so exempt by its charter: Provided; however, That this exemption shall not apply to real property of the abovenamed entities the beneficial use of which has been granted, for consideration or otherwise, to a taxable person.
>
> (b) Non-profit cemeteries or burial grounds.
>
> (c) Charitable institutions, churches, personages or convents appurtenant thereto, mosques, and all land, buildings, and improvements actually, directly and exclusively used for religious or charitable purposes.
>
> (d) Real property in any one city or municipality belonging to a single owner the entire assessed valuation of which is not in excess of five hundred pesos: Provided, however, That the property so exempt shall be assessed and records thereof kept as in other cases.
>
> (e) Land acquired by grant, purchase or lease from the public domain for conversion into dairy farms for a period of five years from the time of such conversion; and machinery of a new and preferred industry, agricultural, the Board of Investments used or operated for industrial, agricultural, manufacturing or mining purposes, during the first three years of the operation of the machinery.
>
> (f) Perennial trees and plants of economic value, except where the land upon which they grow is planted principally to such growth.
>
> (g) Real property exempt under other laws."

Respondent at first glance appears to be covered by the exemption mentioned in Section 40(a) of PD 464. By virtue of Commonwealth Act No. 120, which became effective on November 3, 1936, respondent was created as a non-profit public corporation wholly owned by the government of the Republic of the Philippines tasked to undertake the development of

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hydraulic power and the production of power from other sources.[3] Section 13 of the Revised Charter[4] provides in detail respondent's exemptions, *viz*:

> Sec. 13. *Non-profit Character of the Corporation*; *Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities*. — The Corporation shall be non-profit and shall devote all its returns from its capital investments, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation is hereby declared exempt:
>
> (a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;
>
> (b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;
>
> (c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations' and projects; and
>
> (d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power.

The foregoing provision of the Charter should however be harmonized with PD 464 which took effect on June 1, 1974, which requires certain procedures/condition before exemption from real property tax may be allowed. Section 40(a) of PD 464 imposed the condition that the exemption shall not apply when the beneficial use of the real property has been granted, for consideration or otherwise, to a taxable person. Likewise, Section 9 of the same Code requires certain proof in order to be exempted from real property tax, viz:

> "Sec. 9. Proof of Exemption of Real Property from Taxation. – Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Code shall file with the provincial or city assessor within thirty days from the date of the declaration or real property sufficient documentary evidence in support of such claim, including corporate charters, titles or ownerships, articles of incorporation, by-laws, contracts, affidavits and certifications and mortgage deeds, and similar documents.

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[3] National Power Corporation v. Province of Lanao Del Sur, G.R. No. 96700, November 19, 1996.
[4] Republic Act No. 6395 which took effect on September 10, 1971.

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> If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, it shall be proven to be tax exempt the same shall be dropped from the roll of taxable properties."

Thus, notwithstanding the fact that respondent is a government owned corporation whose Charter grants it exemption from real property tax, still it will not benefit from the exemption of real property tax during the years 1985 to 1991 because the conditions/requirements provided in PD 464, namely: the filing of documents with the assessor and the proof that the beneficial use of the property was not granted to taxable person, were not met. The non-filing with the city assessor of the applicable documents required by Section 9 of PD 464 is fatal to respondent's claim for exemption from real property tax. The reason is that if the act creating an exemption, *like PD 464*, postpones its enjoyment until the performance of a condition precedent, then such performance is necessary before the exemption could take effect.[5] Well settled is the rule that laws granting tax exemption are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[6]

WHEREFORE, the assailed Decision and Resolution of the Central Board of Assessment Appeals dated July 24, 2009 and March 1, 2010, respectively are hereby **AFFIRMED.** While respondent failed to comply with the requirements set by PD 464 for exemption from real property tax, still it is entitled to the refund of the real property tax paid under protest, which covers the period from 1985 to 1991 since the petitioner's right to collect the same has prescribed pursuant to Article 1144 of the New Civil Code.

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[5] Real Property Taxation 2002 Annotated by Cipriano P. Cabaluna, Jr., p. 227 citing Cooley on Taxation, Vol. 2, 4th ed., Sec. 711.
[6] Philippine Fisheries Development Authority v. Central Board of Assessment Appeals, EB 193, May 9, 2007 citing Sea-Land Service, Inc. v. Court of Appeals, G.R. No. 122605, April 30, 2001.

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Accordingly, the petitioner is hereby ordered to compute and refund in respondent's favor the real property tax paid under protest for the period from 1985 to 1991.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
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
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

ERNESTO D. ACOSTA
Presiding Justice