REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

***EN BANC***

**NATIONAL GRID CORPORATION OF THE PHILIPPINES,**
Petitioner,

**- versus -**

**THE CENTRAL BOARD OF ASSESSMENT APPEALS, THE LOCAL BOARD OF ASSESSMENT APPEALS OF CABANATUAN CITY,**

**-and**

**HEIDE D. PANGILINAN, in her official capacity as the CITY ASSESSOR OF CABANATUAN CITY,**
Respondents.

**CTA EB CASE NO. 1052**
**(CBAA Case No. L-120**
**LBAA Case No. 2011-001**
**City of Cabanatuan)**

x-----------------------------------------------x

**NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP),**
Petitioner,

**- versus -**

**CENTRAL BOARD OF ASSESSMENT APPEALS, THE LOCAL BOARD OF ASSESSMENT APPEALS OF CABANATUAN CITY,**

**-and**

**FLORIDA R. OCA, in her official capacity as the CITY TREASURER OF CABANATUAN CITY,**
Respondents.

**CTA EB CASE NO. 1053**
**(CBAA Case No. L-121**
**LBAA Case No. 2011-002**
**City of Cabanatuan)**

Present:
DEL ROSARIO, *PJ.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *JJ.*

**Promulgated:**

JAN 28 2015
1:55 p.m.

X- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -X

# DECISION

**CASANOVA, *J.*:**

These are appeals, by way of Petitions for Review, filed by petitioner National Grid Corporation of the Philippines (NGCP) assailing the Decisions (the "Assailed Decisions") dated January 30, 2013 and Resolution dated June 18, 2013 (the "Assailed Resolution"), all rendered by respondent Central Board of Assessment Appeals (CBAA) of Cabanatuan City and praying:

CTA Case No. 1052 (CBAA Case No. L-120)

"xxx xxx xxx.

xxx that a Decision be rendered **REVERSING, SETTING ASIDE AND/OR CANCELLING** the Assessment dated 22 December 2010 rendered and issued by the Respondent Heide D. Pangilinan, City Assessor of Cabanatuan City, and concomitantly (sic) **GRANTING** Petitioner NGCP's prayer for reliefs, as follows:

1. Declaring Petitioner NGCP and the properties mentioned in the Notice of Assessment dated 22 December 2010 and Real Property Field Appraisal and Assessment Sheet-Machinery and covered by Tax Declaration No. 06-09081-07381 and ARP No. 06-09081-07360 as **Exempt** from the payment of real property tax pursuant to Section 9 of R.A. No. 9511;

2. Directing that the subject real properties be re-classified in the Assessment Roll as **Exempt** from the payment of real property tax;

**OR IN THE ALTERNATIVE**:

3. Declaring the real property covered by Tax Declaration No. 06-09081-07381 (land where the Petitioner NGCP's Cabanatuan

Substation is located) as Special Class and the assessed value be computed using the rate not exceeding ten percent (10%) of the fair market value as what had been previously applied to compute the value during the operation of TRANSCO and pursuant to Section 216 and 218 (d) of the Local Government Code; and,

4. Declaring that the property covered by ARP No. 06-09081-07360 (100 MVA Transformer) as **Exempt** from the payment of real property tax in the same manner that it was previously classified as **exempt** under Section 234( c ) of the LGC during the operation of TRANSCO.

xxx xxx xxx."

CTA Case No. 1053 (CBAA Case No. L-121)

"xxx xxx xxx.

xxx. That a Decision be rendered **REVERSING AND SETTING ASIDE** the Decision dated 3 January 2011 rendered and issued by Respondent Oca, the Treasurer of Cabanatuan City, which denied the written protest of herein Petitioner NGCP, and concomitantly *(sic)* **GRANTING** Petitioner NGCP the following measures of relief, thus:

1. Declaring the real properties under the Notices of Real Tax Delinquencies all dated 11 October 2010 and covered by **Tax Declaration Nos. 06-09081-07323 to 06-09081-07335** as well as the real properties covered by Tax **Declaration Nos. 06-10025-00525, 06-09084-00267 and 06-09081-04104** as **Exempt** from the payment of real property tax pursuant to Section 9 of R.A. No. 9511;

2. Directing that the subject real properties be re-classified in the Assessment Roll as **Exempt** from the payment of real property tax;

3. Directing the cancellation of the Real Property Tax Billing attached to Respondent

Oca's Notices of Real Tax Delinquencies all dated 11 October 2010;

4. Directing that the payment under protest made by Petitioner NGCP on 29 October 2010 as per Official Receipt Nos. **CBN-0050882** to **0050892**, be **Refunded** to Petitioner NGCP.

**OR IN THE ALTERNATIVE**:

5. Declaring the subject real properties classified as Machinery, as **Exempt** from the payment of real property tax pursuant to Sec. 234( c ) of the LGC, and classifying the lands and buildings as special class under Section 216 of the LGC, and assessed at ten percent (10%) of the fair market value pursuant to Sec. 218(d) of the LGC;

6. Directing the **Refund** to Petitioner NGCP of the amount paid under protest on 29 October 2010 per Official Receipt Nos. **CBN-0050882-0050892** that amount in excess of the real property tax that would have been properly due after considering the machineries as **exempt** from the payment thereof and after **re-classifying** the lands and buildings as Special Class with applicable 10% level of assessment.

xxx xxx xxx."

Petitioner NGCP is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at the NGCP Building, Quezon Avenue corner BIR Road, Diliman Quezon City.[1]

Respondent CBAA is a public office with principal address at 7th Floor, EDPC Building, BSP Complex, Roxas Blvd., Manila.[2]

[1] Par. 1, The Parties, Petition for Review, Rollo (CTA EB Case No. 1052), p.2
[2] Par.2, Ibid

Respondent Local Board of Assessment Appeals (LBAA) of Cabanatuan City is a public office with principal address at Office of the Register of Deeds, City Hall Compound, Cabanatuan City.[3]

Respondent Heide D. Pangilinan, who is being sued in her official capacity as the City Assessor of Cabanatuan City, holds office at the City Hall, Cabanatuan City, Nueva Ecija.[4]

Respondent Florida R. Oca, who is being sued in her official capacity as the City Treasurer of Cabanatuan City, holds office at the City Hall Compound, Cabanatuan City, Nueva Ecija.[5]

As narrated in the Assailed Decision, the facts of the case are as follows:

<u>CTA *En Banc* Case No. 1052</u>:

> "14. Pursuant to the mandate of Republic Act (RA) 6395 (Republic Act No. 6395, Revised Charter of the National Power Corporation, 2 (1971), the National Power Corporation (hereinafter referred to as 'NPC' for brevity) undertook the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal, and the needs of rural electrification. All properties in connection with such utilization, including properties for power generation and transmission, are owned and operated by NPC.
>
> '15. NPC was exempt from real property taxation from the time of its creation in 1936 until 31 December 1991. Upon the effectivity of the Local Government Code of 1991 ('LGC') on 01 January 1992, however, NPC's exemption from real property tax was withdrawn, except that which pertains to machineries and equipment actually, directly and exclusively used in the generation and transmission of electric power pursuant to Section 234 (c) of the LGC. As regards other lands, buildings and improvements that are owned and used by NPC in the generation and transmission of electric power, these

[3] Par.3, Id
[4] Par. 4,Id.
[5] Par. 4, The Parties, Petition for Review, Rollo (CTA Case No. 1053), p.2

properties were classified as Special Class and were assessed at a ten percent (10%) assessment level, in accordance with Sections 216 and 218 of the LGC.

'16. With the effectivity of RA No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 ('EPIRA'), the National Transmission Corporation (hereinafter referred to as 'TRANSCO' for brevity) assumed the electrical transmission function(s) of NPC (*Republic Act No. 9136, Electric Power Industry Reform Act, 8 par. 2(2001)*). All the assets owned by NPC relative to the power transmission operation, including its franchise for the operation of the transmission system and grid, were accordingly transferred to TRANSCO. The real property tax exemption and privileges under Sections 234(c) and 216 and 218 (Special Class) of the LGC were similarly applied to TRANSCO.

'17. The power transmission operation of TRANSCO was subsequently privatized and formally turned-over to petitioner NGCP on 15 January 2009. R.A. No. 9511, enacted on 01 December 2008, granted a legislative franchise to NGCP to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected power transmission lines, substations and related facilities, and for other purposes (**ANNEX 'D' hereof**).

'18. On December 30, 2010, petitioner received the Notice(s) of Assessment dated 22 December 2010 and Real Property Field Appraisal and Assessment Sheet-Machinery from Ms. Heide D. Pangilinan, City Assessor of Cabanatuan City, Nueva Ecija, pertaining to the two (2) properties of the petitioner located in Sumacab Este, Cabanatuan City, Nueva Ecija (**ANNEXES 'E'** and **'F'**, *(sic)* respectively, of the Petition).

'19. The Notice of Assessment is for the real property tax on the land located at petitioner NGCP's Cabanatuan City substation, which is covered by Tax Declaration No. 06-09081-07381 (**ANNEX 'G'** hereof), while the property referred to in the Real Property Field Appraisal and Assessment Sheet-Machinery is the 100 MVA Transformer located within the substation and covered by ARP No. 06-09081-07360.

'20. It bears stressing that Tax Declaration No. 06-09081-07381 was formerly covered by Tax Declaration No. 06-09081-04104 with a market value of Five Million Seven Hundred Twenty Four Thousand Pesos (PhP5,724,000.00) and an assessed value of Two Million Eight Hundred Sixty Two Thousand Pesos (PhP2,862,000.00) at assessment level of ten percent (10%) (**ANNEX 'H'** hereof).

'21. Likewise, the 100 MVA Transformer covered by ARP No. 06-09081-07360 was formerly covered by Tax Declaration No. 06-09081-07334 and described as 30 MVA with a market value of Eighteen Million Pesos (PhP18,000,000.00) and with an assessed value of Fourteen Million Four Hundred Thousand Four Hundred Pesos at assessment level of Eighty Percent (80%) (**ANNEX 'I'** of the Petition).

'22. Based on the aforesaid Tax Declaration No. 06-09081-07381 (Annex 'G' hereof), the property is now classified as INDUSTRIAL with an assessment level of FIFTY PERCENT (50%) but it was previously at the ten percent (10%) level only. Moreover, the Real Property Field Appraisal Assessment Sheet-Machinery provides that the 100 MVA Transformer is now also classified as INDUSTRIAL with an assessment level of EIGHTY PERCENT (80%) but from the period of 2001 to first quarter of 2009, the same was declared as exempt from the payment of real property tax.

'23. Moreover, both of the aforesaid properties were included in the written protest which herein petitioner sent to and duly filed before the Office of the Treasurer of the City of Cabanatuan on 30 November 2010 (**ANNEX 'J'** hereof).

'24. On 02 February 2011, petitioner sent a correspondence to respondent in response to both the Notice of Assessment dated 22 December 2010, as well as the Property Field Appraisal Assessment Sheet-Machinery. It is the petitioner's contention that the real property covered by Tax Declaration No. 06-09081-07381 (land at petitioner NGCP's Cabanatuan Substation) is exempt from the payment of real property tax or in the alternative, be classified as 'Special Class' and the assessed value be computed using the rate not exceeding ten percent (10%)

of the fair market value as what had been previously applied to compute the value during the operation of TRANSCO. It was likewise invoked that the property covered by Tax Declaration No. 06-9081-07360 *(sic)* (100 MVA Transformer) be classified as exempt from the payment of real property tax in the same manner that it was previously classified as exempt during the operation of TRANSCO (**ANNEX 'K'** hereof).

'25. However, the petitioner has neither received any response whatsoever from respondent Heide Pangilinan or from the City Treasurer's Office of Cabanatuan City relative to the aforementioned protest sent by petitioner to respondent.

'26. Pursuant to the explicit provisions of Chapter 3, Title II, Book II, particularly Section 226 of the LGC, herein petitioner filed before the Local Board of Assessment Appeals of Cabanatuan City, Nueva Ecija the necessary 'appeal' pursuant to the following rules, thus:

> 'Section 226. Local Board of Assessment Appeals - **Any owner or person having legal interest in the property who is not satisfied with the action of the Provincial City, and (sic) Municipal Assessor in the Assessment of his property may, within sixty (60) days from the date of receipts (sic) of the written notice of assessment, appeal to the Board of Assessment Appeals of the provincial (sic) or city by filing a petition under oath in the form prescribed for the purpose**, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.'

'27. Said 'appeal/petition' was, however, denied as per the 'Joint Resolution' dated 25 July 2011 rendered by the Honorable Local Board of Assessment Appeals of Cabanatuan City, Nueva Ecija.

'28. The 'Motion for Reconsideration' filed by petitioner-appellant NGCP was likewise denied as per the 'Order' dated 14 September 2011 rendered by the Honorable Local Board of Assessment Appeals of

Cabanatuan City, Nueva Ecija, which Order was received by the undersigned counsel for petitioner-appellant NGCP on **September 22, 2011**.

'29. The instant appeal is therefore filed with the Honorable Central Board of Assessment Appeals within the mandated/reglementary period explicitly provided by the rules."

CTA *En Banc* Case No. 1053:

"18. On October 11, 2010, petitioner-appellant NGCP received Notices of Real Tax Delinquencies from the Officer-in-Charge (OIC) – City Treasurer of Cabanatuan City for the various properties located in Sumacab Este, Cabanatuan City assessed either at 30%, 35%, 50%, 70% and 80% assessment levels, copies of which are hereto attached as **Annexes 'E' and Series**. Moreover, to further illustrate the erroneous assessment for the various properties located in Cabanatuan City, a copy of the 'Schedule of Real Property Taxes for the period of 2009 to 2010' is attached hereto as **Annexes 'F' and 'F-1'**, respectively.

'19. On October 29, 2010, petitioner-appellant NGCP paid under protest with the Office of the City Treasurer of Cabanatuan City the alleged real property taxes due from January 15, 2009 to 2010 in the amount of Three Million Eight Hundred Seventeen Thousand Eight Hundred Ninety Eight Pesos and Seventy Centavos (Php3,817,898.70) for the various properties subject matter of the Notice of Real Tax Delinquencies, hereto attached as **Annexes 'G' and Series**.

'20. Petitioner-appellant NGCP filed its written protest on November 30, 2010 against the Notices of Real Tax Delinquencies all dated October 11, 2010 in the total amount of Four Million Nine Hundred Seventy Six (Thousand) Eight Hundred Twenty Nine Pesos and Ninety Centavos (Php4,976,829.90) involving properties declared in the name of National Transmission Commission (TRANSCO for brevity) and National Power Corporation (NPC for brevity) located in Cabanatuan City, province of Nueva Ecija, pursuant to Section 252(a) of the Local Government Code (LGC) of 1991 which provides that the same must be filed within thirty (30) days after payment under protest was complied with the Treasurer's office **(Annexes 'H' and Series hereof)**. Moreover, the Notice of Assessment for the subject Real Properties prepared by the City Assessor of Cabanatuan City are likewise attached hereto as **Annexes 'I' and Series** and made integral parts hereof.

'21. A summary of the properties alleged subject to Notices of Real Tax Delinquencies all dated October 11, 2010 is set forth below, as follows:

| KIND OF PROPERTY CLASSIFICATION | TAX DEC ARP NO. | MARKET VALUE | ASSESSED VALUE | ASSESS-MENT LEVEL | AMOUNT DUE(P) | DECLARED OWNER |
|---|---|---|---|---|---|---|
| Industrial Bldg. (Warehouse) | 07323/06-09081 | 3,738,000.00 | 2,616,600.00 | 70% | 165,140.17 | NATIONAL TRANSMISSION CORPORATION |
| Commercial Bldg. | 07324/06-09081 | 308,700.00 | 108,050.00 | 35% | 5,360.65 | NATIONAL TRANSMISSION CORPORATION |
| Industrial Bldg. (Old Control Bldg/Bodega) CORPORATION | 07325/06-09081 | 201,160.00<br>363,030.00 | 80,460.00<br>145,210.00 | 40%<br>40% | 15,156.68 | NATIONAL POWER |
| Industrial (New Control Building) | 07326/06-09081 | 2,538,250.00 | 1,776,780.00 | 70% | 135,621.53 | NATIONAL TRANSMISSION CORPORATION |
| Commercial (Administration) Bldg. | 07327/06-09081 | 924,710.00 | 462,360.00 | 50% | 30,179.33 | NATIONAL TRANSMISSION CORPORATION |
| Industrial Building (Repair Bay/ Stockroom) | 07328/06-09081 | 153,260.00<br>114,950.00 | 45,980.00<br>34,490.00 | 30%<br>30% | 5,658.32 | NATIONAL POWER CORPORATION |
| Industrial (Lineman's Quarter/ Stockroom) | 07329/06-09081 | 71,000.00<br>139,850.00 | 21,300.00<br>41,960.00 | 30%<br>30% | 4,448.09 | NATIONAL POWER CORPORATION |
| Commercial Building | 07330/06-09081 | 572,440.00 | 228,980.00 | 40% | 17,598.86 | NATIONAL POWER CORPORATION |
| Machinery | 07331/06-09081 | 2,500,000.00 | 2,000,000.00 | 80% | 109,139.08 | NATIONAL TRANSMISSION CORPORATION |
| Industrial/ Machinery | 07332/06-09081 | 2,749,790.00 | 2,199,830.00 | 80% | 254,410.97 | NATIONAL POWER CORPORATION |
| 50 MVA Transformer/ Machinery | 07333/06-09081 | 30,000,000.00 | 24,000,000.00 | 80% | 1,190,700.00 | NATIONAL POWER CORPORATION |

| | | | | | | |
|---|---|---|---|---|---|---|
| 30 MVA Transformer/ Machinery | 07334/06-09081 | 18,000,000.00 | 14,400,000.00 | 80% | 714,420.00 | NATIONAL TRANSMISSION CORPORATION |
| | | | | | | |
| 50 MVA Transformer/ Machinery | 07335/06-09081 | 30,000,000.00 | 24,000,000.00 | 80% | 1,190,700.00 | NATIONAL TRANSMISSION CORPORATION |
| | | | | | | |
| Land/ Residential | 06-10025-00525 RL | 37,100.00 | 3,710.00 | 10% | 354.38 | NATIONAL POWER CORPORATION |
| | | | | | | |
| Land/ Residential | 06-10053-00336 SL | | | | 516.50 | NATIONAL POWER CORPORATION |
| | | | | | | |
| Land/ Residential | 06-09084-00267 | 5,724,000.00 | 2,862,000.00 | 50% | 753,314.17 | NATIONAL POWER CORPORATION |
| | | | | | | |
| Land/ Residential | 06-09081-04104 | 5,724,000.00 | 2,862,000.00 | 10% | 384,116.17 | NATIONAL POWER CORPORATION |
| | | | | | | |
| | | | | TOTAL | 4,976,829.90 | |

'22. It bears stressing that the written protest was filed within the aforementioned thirty (30) day period as November 28, 2010 fell on a Sunday and November 29, 2010 was declared as an official holiday (**<u>Annex 'H'</u>** hereof).

'23. Respondent Florida R. Oca, in her capacity as the OIC Treasurer of Cabanatuan City, had a period of sixty (60) days from such date of filing the written protest or until January 29, 2010, within which to act on the protest.

'24. On January 27, 2011, petitioner-appellant NGCP received the Decision rendered by the Office of the City Treasurer, Cabanatuan City in relation to the written protest of the former on the payment of the realty taxes (**<u>Annex 'I'</u>** hereof).

'25. In the abovementioned Decision, the Office of the City Treasurer of Cabanatuan held that 'since it is a matter of dissatisfaction affecting the assessment of real property made by the City Assessor, it is therefore, recommended that this issue be addressed to the Local Board of Assessment Appeals of Cabanatuan City.

'26. The said Decision further enunciated that it disagrees to the petitioner-appellant NGCP's contention that the machineries and equipment used in the operational activities of NGCP referring to the above properties are actually, directly, and exclusively used in the generation and transmission of electric power are exempted from real property *(sic)* due invoking Section 234 of the Local Government Code which provides as follows:

> 'Section 234. Exemptions from Real Property Tax - The following are exempted from the payment of real property tax.
>
> 'xxx xxx xxx.
>
> (c) All machineries and equipment that are actually, directly and exclusively used by local water district *(sic)* and government owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power.'

'27. The Office of the City Treasurer further ruled that the 'National Grid Corporation of the Philippines is not a government owned or controlled corporation but a franchisee which is governed (by) Republic Act No. 9511. Although National Power Corporation and National Transmission Corporation are GOCC's were covered by the exemption proviso of Section 234 (c) of the code, the exemption on its machineries and equipment cannot be extended to NGCP, treating similar subject matter'.

'28. The Office of the City Treasurer of Cabanatuan City pronounced that the claim of the petitioner-appellant NGCP for real property tax exemption has no basis and it is liable for payment of real property tax.

'29. Thus, pursuant to the explicit provisions of Chapter 3, Title II, Book II, particularly Section 226 of the LGC, herein petitioner-appellant NGCP filed the corresponding 'appeal/petition' before the Local Board of Assessment Appeals of Cabanatuan City, Nueva Ecija, thus:

> **NATURE OF PROTEST/APPEAL; WHEN APPEAL FILED**
>
> 'Section 226. Local Board of Assessment Appeals - **Any owner or person having legal**

> **interest in the property who is not satisfied with the action of the Provincial, City and Municipal Assessor in the Assessment of his property may, within sixty (60) days from the date of receipts *(sic)* of the written notice of assessment, appeal to the Board of Assessment Appeals of the provincial *(sic)* or city by filing a petition under oath in the form prescribed for the purpose**, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.'

'30. Said 'appeal/petition' was, however, denied as per the 'Joint Resolution' dated 25 July 2011 rendered by the Honorable Local Board of Assessment Appeals of Cabanatuan City, Nueva Ecija.

'31. The 'Motion for Reconsideration' filed by petitioner-appellant NGCP was likewise denied as per the 'Order' dated 14 September 2011 rendered by the Honorable Local Board of Assessment Appeals of Cabanatuan City, Nueva Ecija, which Order was received by the undersigned counsel for petitioner-appellant NGCP on **September 22, 2011**."

On January 30, 2013, respondent-CBAA rendered the Assailed Decisions. Not satisfied with the Assailed Decisions, petitioner-NGCP filed a Joint Motion for Reconsideration (for CBAA Case No. L-120 & CBAA Case No. L-121)[6] on March 27, 2013.

On June 18, 2013, respondent- CBAA promulgated the Assailed Resolution[7] denying petitioner- NGCP's Motion.

Hence, the instant Petitions for Review.

On September 11, 2013, the Court promulgated a Resolution[8] directing respondents to file their respective comments within ten (10) days from receipt of the resolution.

[6] Annex "B" to Petition for Review, Rollo (CTA EB Case No. 1052) pp. 50-68
[7] Annex "C" to Petition for Review, Ibid, pp.71-77
[8] Id., pp. 80-81

On October 7, 2013, the Office of the Solicitor General (OSG) filed a Manifestation and Motion[9] stating that, while the OSG received a copy of this Court's Resolution dated September 11, 2013, requiring the respondents to file their respective comments to the Petition for Review, the OSG, however, has not been furnished with a copy of the Petition for Review and its annexes which would enable it to comply with this Court's directive. Thus, the OSG prays that this Court : (1) note its Manifestation and Motion ; (2) direct petitioner to furnish the OSG with a copy of the petition and its annexes for its appropriate action; and (3) grant the OSG a period of thirty days from receipt of the petition and its annexes within which to file the required comment.

On November 11, 2013, this Court promulgated a Resolution[10] directing petitioner NGCP to furnish the OSG with a copy of the Petition for Review and its Annexes within five (5) days from notice and granting the OSG a period of thirty (30) days from receipt of the Petition for Review and its Annexes to file required Comment.

On November 29, 2013, CTA EB No. 1053 was consolidated with CTA EB No. 1052, the case bearing the lower docket number, per Minute Resolution[11] promulgated on the same date. Respondents Heide D. Pangilinan and Florida R. Oca filed their Joint Comment and/or Opposition[12] thru registered mail on October 18, 2013. Respondents CBAA and LBAA, on the other hand, filed a Manifestation and Motion[13] on January 28, 2014, requesting an extension of fifteen (15) days from February 1, 2014 or until February 16, 2014 to file their Comment, which request was subsequently granted by the Court. On February 21, 2014, respondents CBAA and LBAA filed their Comment[14] thru registered mail.

Petitioner-NGCP filed its Memorandum[15] (for CTA EB No. 1052 & CTA EB No. 1053) both on February 21, 2014 while the Memorandum for the Respondents (City Assessor and City Treasurer of Cabanatuan City)[16] was filed thru registered mail on March 10, 2014. In a Manifestation[17] filed thru registered mail on April 8, 2014, respondents

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[9] Id, pp.86-91
[10] Id., pp. 117-118
[11] Id., pp. 121-122
[12] Id., pp. 95-105
[13] Id., pp.129-135
[14] Id., pp. 177-202
[15] Rollo (CTA EB Case No. 1052), pp. 150-171; Rollo (CTA EB Case No. 1053), pp. 91-113
[16] Rollo, (CTA EB Case No. 1052), pp.209-220
[17] Id., pp. 222-227

CBAA and LBAA of Cabanatuan City manifested that they are adopting their Comment dated February 21, 2014 as their Memorandum.

The cases were deemed submitted for decision on April 23, 2014.[18]

The issues raised, in both appealed cases, for resolution of this Court are the following:

a. Whether or not petitioner NGCP is exempt from the payment of real property tax on the subject properties pursuant to Section 9 of R.A. No. 9511, NGCP's legislative franchise.

b. Whether or not the subject real properties, specifically those described as "Land" and "Building" should continue to be classified as "Special Class" of real property, while those identified as "Machinery" should continue to be considered as "Exempt" from the payment of real property tax under 234 ( c ) of the LGC.

Petitioner–NGCP contends that respondent-CBAA's Decision dated January 30, 2013, where it held that the phrase "exclusive of this franchise" does not exempt petitioner- NGCP from real estate taxes, was anchored in the Digitel vs. Batangas[19] case which is not on all fours with the instant case. Digitel's Charter (R.A. 7678) only has the "exclusive of this franchise" proviso while petitioner- NGCP's Charter (R.A. 9511) has both the "exclusive of this franchise" and "in lieu of all taxes" proviso. Thus, petitioner-NGCP concludes, it is very clear that its tax exemption is wider in scope, broader in extent and more encompassing in nature than the exemption granted to Digitel. Petitioner, therefore, posits that it is liable only for the 3% franchise tax and no other, whether demanded by national or local authorities.

Petitioner-NGCP further argues that the imposition of real property tax by the Local Government Unit of Cabanatuan City will be ultimately borne by the consumers because of the additional expense for payment of real property taxes by petitioner-NGCP.

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[18] Id., Resolution, pp. 231-232
[19] Digital Telecommunications Philippines, Inc. vs. City Government of Batangas, G.R. No. 156040, December 11, 2008.

Petitioner, likewise, points out that when it commenced operation on January 15, 2009, TRANSCO retained ownership over the subject lands, buildings and machineries while petitioner-NGCP was given franchise to operate and assume the electric power transmission functions of TRANSCO. Hence, the subject real properties, to date, are still GOCC-owned and still used in rendering essential public services, i.e. transmission of electric power. Petitioner further posits that, as beneficial user of subject properties, it is exempt from the payment of real property tax under its franchise effective January 15, 2009 when it assumed the transmission function of TRANSCO. That ownership of subject properties having been retained by TRANSCO, the properties described as land and buildings should be assessed at 10% level only pursuant to Sections 216 and 218 (d) of the LGC and the machineries should be classified as exempt pursuant to Section 234 (c) of the LGC.

Respondents, on the other hand, in their Joint Comment and/or Opposition, maintain that petitioner is not exempt from the payment of the real property taxes on their properties pursuant to Section 9 of its legislative franchise; that the real properties subject matter of the petitions are not exempted from the payment of real property tax under Section 234(c) of the Local Government Code of 1991; that the said real properties cannot, likewise, be classified as "Special Class of Real Properties" under Sections 216 and 218 of the Local Government Code; and lastly, that petitioner NGCP's Petitions for Review warrant outright denial on the ground that the same were both filed beyond the reglementary period.

We shall first resolve respondents' contention that petitioner's Petitions for Review were filed beyond the reglementary period thus warranting an outright denial.

Respondents contend that under Section 1, Rule V of the Rules of Procedure Before the Central Board of Assessment Appeals and Section 4, Rule 43 of the Revised Rules of Court, petitioner's Petitions for Review, filed before this Court on August 22, 2013, were filed out of time or beyond the reglementary period provided under the aforementioned laws/rules.

We find no merit in respondents' contention.

Respondents Pangilinan and Oca, in their Memorandum for the Respondents (City Assessor and City Treasurer of Cabanatuan City), allege that the CBAA Resolution dated June 18, 2013, denying the Joint Motion for Reconsideration of the Decision dated January 30, 2013, in both appealed cases, was received by petitioner thru counsel on July 19, 2013. This allegation was confirmed by petitioner-NGCP in its Joint Reply dated November 12, 2013.

Records show that petitioner-NGCP's Petitions for Review (CTA EB Case No. 1052 & CTA EB Case No. 1053) were both filed on August 22, 2013.

Sections 7(a)(5) and 11 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), which are herein below respectively quoted, enumerate the cases over which this Court has appellate jurisdiction.

> "Sec. 7. Jurisdiction- the CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (5) Decisions of the Central Board of Assessment Appeals 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;
>
> "Sec.11. Who May Appeal; Mode of Appeal; Effect of Appeal.- Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the <u>Central Board of Assessment Appeals</u> or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein." (Underscoring supplied)
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided,

> however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc.
>
> xxx xxx xxx."

Thus, pursuant to the above provisions, petitioner-NGCP's period to appeal the Assailed Decision to this Court is until August 18, 2013 which fell on a Sunday.

However, petitioner-NGCP correctly pointed out in its Joint Reply dated November 12, 2013 that its Petitions for Review were timely filed proferring the following arguments which We hereunder quote with approval, to wit:

> "3.6 Since August 18, 2013 fell on a Sunday; while August 19, 2013 (Monday) was declared a holiday in Quezon City (Quezon City Day) where this Honorable Court holds office; and the national government declared a "work stoppage" due to typhoon "Maring" on the following day of August 20, 2013 (Tuesday); and finally, August 21, 2013 (Wednesday) was likewise declared a special non-working holiday (Ninoy Aquino Day) as per Proclamation No. 459; xxx xxx xxx".

Petitioner's aforequoted arguments find legal basis in Section 1, Rule 22 of the Rules of Court which provides:

> "RULE 22
>
> COMPUTATION OF TIME
>
> Section 1. How to compute time. - In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance

> included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday or a legal holiday in the place where the court sits, the time shall not run until the next working day."

Clearly, petitioner-NGCP's Petitions for Review were, therefore, filed within the reglementary period of thirty (30) days pursuant to the above-quoted provision.

We now go to petitioner NGCP's other arguments that it is exempt from payment of real property tax on the subject properties i.e. NGCP's Cabanatuan City[20] substation and the 100 MVA Transformer[21] located within the substation, pursuant to Section 9 of R.A. No. 9511, its legislative franchise. Petitioner NGCP points out that the tax exemption granted to it is wider in scope, broader in extent and more encompassing in nature than the exemption granted to Digitel since Digitel's Charter only has the "exclusive of this franchise proviso" while petitioner-NGCP's Charter has the "in lieu of all taxes" proviso in addition to the "exclusive of this franchise" proviso. Thus, the Assailed Decision of the CBAA Cabanatuan City, which was anchored solely on the Supreme Court decision in the Digitel vs. Batangas City case,[22] should be set aside as the present case is not on all fours with the Digitel case.

Respondents, on the other hand, insist that petitioner-NGCP is not exempt from payment of real property taxes on the subject properties by clear and unequivocal language in the second paragraph of Section 9 of R.A. No. 9511.

We agree with the respondents.

Section 9 of R.A. No. 9511, the legislative franchise or Charter of petitioner-NGCP provides:

> "Section 9. Tax Provisions. – In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax

[20] Covered by Tax Declaration No. 06-09081-07381
[21] Covered by ARP No. 06-09081-07360
[22] Supra note 19

> shall be in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, or its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: <u>Provided, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay:</u> Provided, further, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT)." (Underscoring supplied)

xxx

In a number of cases[23] involving the same petitioner and the same/similar issues, this Court has consistently ruled that petitioner is not exempt from the payment of real property tax on its real estate, buildings and personal property pursuant to the second paragraph of Section 9 of its Charter (R.A. No. 9511).

The "exclusive of this franchise" proviso in Section 9, R.A. No. 9511, relied upon by petitioner in claiming the exemption, has been interpreted by the Supreme Court in the case of *Digital Telecommunications Philippines, Inc., vs. City Government of Batangas et.al.*, in this wise:

> "The issue in this case involves the interpretation of the phrase 'exclusive of this franchise' in the first sentence of Section 5 of RA 7678.
>
> Section 5 of RA 7678 states:
>
> "**Sec.5. Tax Provisions.-** <u>**The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property,**</u>

[23] National Grid Corporation of the Philippines vs. Central Board of Assessment Appeals, et al., CTA EB Case No. 801 (CBAA Case No. M-32), January 29, 2013; National Grid Corporation of the Philippines vs. Ofelia M. Oliva, in her capacity as the City Treasurer of Cebu City, CTA EB Case No. 849 (CBAA Case No. V-31), November 13, 2013

> ***exclusive* of this franchise as other persons or corporations are now or hereafter may be required by law to pay.** In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; Provided, That the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.
>
> The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue.
>
> xxx xxx xxx.

The first sentence of Section 5 clearly states that the legislative franchisee shall be liable to pay the following taxes: (1) 'the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay'; (2) 'franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise'; and (3) 'income taxes payable under Title II of the National Internal Revenue Code.'

The crux of the controversy lies in the interpretation of the phrase 'exclusive of this franchise' in the first sentence of Section 5. Petitioner interprets the phrase to mean that its real properties that are used in its telecommunications business shall not be subject to realty tax. Respondent interprets the same phrase to mean that the term 'personal property' shall not include petitioner's franchise, which is an intangible personal property.

We rule that the phrase 'exclusive of this franchise' simply means that petitioner's franchise shall not be subject to the taxes imposed in the first sentence of Section 5. The first sentence lists the properties that are subject to taxes, and **the list excludes the franchise**. Thus, the first sentence provides:

> "The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay. (Emphasis supplied)
>
> xxx xxx xxx."

"Section 5 can be divided into three parts. First is the first sentence which imposes taxes on real and personal properties, excluding one property that is, the franchise. This puts in parity the franchisees and non-franchisees in the taxation of real and personal properties. Second is the second sentence which imposes the franchise tax, which is applicable solely to the franchisee. And third is the proviso in the second sentence that imposes the income tax on the franchisee, the same income tax payable by non-franchisees.

Petitioner claims that the first sentence refers only to real properties, and that the phrase 'exclusive of this franchise' exempts petitioner from realty tax on its real properties used in its telecommunications business. This claim has no basis in the language of the law as written in the first sentence of Section 5. First, the first sentence expressly refers to taxes on 'real estate' and on 'personal property'. Clearly, the first sentence does not refer only to taxes on real properties, but also to taxes on personal properties. The trial court correctly observed that petitioner pays taxes on its motor vehicles, which are personal properties, that are used in its telecommunication business. There is also the documentary stamp tax on transactions involving real and personal properties, which petitioner and other tax payers are liable for.

xxx xxx xxx.

Second, there is no language in the first sentence of Section 5 expressly or even impliedly exempting petitioner from the realty tax. The phrases 'exemption from real estate tax', 'free from real estate tax' or 'not subject to real estate tax' do not appear in the first sentence. No matter how one reads the first sentence, there is no grant of exemption, express or implied, from realty tax. In fact, the first sentence expressly imposes taxes on both real and personal properties, excluding only the intangible personal property that is the franchise.

A tax exemption cannot arise from vague inference. The first sentence of Section 5 does not grant any express or even implied exemption from realty tax. On the contrary, the first sentence categorically states that the franchisee is subject to the '**same taxes** currently imposed, and those taxes that may be subsequently imposed, on other persons or corporations', taxpayers that admittedly are all subject to realty tax. The first sentence does not limit the imposition of the 'same taxes' to realty tax only but even to 'those taxes' that may in the future be imposed on other taxpayers, which future taxes shall also be imposed on petitioner. Thus, the first sentence of Section 5 imposes on petitioner not only realty tax but also other taxes.

The phrase 'personal property exclusive of this franchise' merely means that 'personal property' does not include the franchise even if the franchise is an intangible personal property. Stated differently, the first sentence of Section 5 provides that petitioner shall pay tax on its real properties as well as on its personal properties but the

> franchise, which is an intangible personal property, shall not be deemed personal property.
>
> The historical usage of the phrase 'exclusive of this franchise' in franchise laws enacted by Congress indubitably shows that the phrase is not a grant of tax exemption, but an exclusion of one type of personal property subject to taxes, and the excluded personal property is the franchise. xxx xxx xxx."

While admittedly not on all fours, the pronouncements of the Supreme Court in the Digitel case, with regard to the definition and interpretation of the "exclusive of this franchise" clause, may, however, be applied by analogy in the case at bench.

We have ruled in the case of National Grid Corporation of the Philippines vs. Ofelia M. Oliva, in her capacity as the City Treasurer of Cebu City[24] that, while petitioner claims exemption under the "in lieu of all taxes "clause provided under the first paragraph of R.A. No. 9511, it is still, nonetheless, liable to pay real property tax under the second paragraph thereof.

We quote the pertinent portion of Our ruling in the aforementioned case which ruling we still sustain in the instant case, viz:

> "A plain reading of the foregoing provision shows that petitioner is liable for a franchise tax equivalent to three percent (3%) on its gross receipts derived from its operation; the same is in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise. However, the second paragraph expressly provides that petitioner 'shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay. Thus, while the first paragraph may have stated the 'in lieu of all taxes' clause in favor of petitioner, the second paragraph provided the exception thereof by qualifying that

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[24] CTA EB Case No. 849 (CBAA Case No. V-31), November 13, 2013.

petitioner shall be liable to pay taxes on its real estate buildings and personal property, as other corporations are now or hereby may be required by law to pay. The phrase 'exclusive of this franchise' is an affirmation further that in addition to the three percent (3%) franchise tax, petitioner is also liable for taxes on its real estate, buildings and personal property.

xxx xxx xxx.

Hence, while it claims exemption under the 'in lieu of all taxes' clause provided under the first paragraph, petitioner should also take note of the succeeding paragraph which states its liability to pay taxes on its real estate, buildings and personal property, as other corporations are now or hereby may be required by law to pay. With this, petitioner is clearly liable to pay taxes on its real estate, buildings and personal property, as other corporations are now or hereby may be required by law to pay."

Going now to petitioner-NGCP's argument that if the subject properties are not exempt from the payment of real property tax, alternatively, it must be classified as "Special Class" and the assessed value to be used shall not exceed ten percent (10%) of the fair market value as what had been previously applied to compute the value during the operation of TRANSCO, and the 100 MVA transformer should be classified as EXEMPT since TRANSCO retained the ownership of subject properties and petitioner-NGCP is only the beneficial user thereof.

Petitioner's argument is misplaced.

Sections 216 and 218 (d) of the Local Government Code (LGC) of 1991, respectively states thus:

"SEC. 216. **Special Classes of Real Property**. - All lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and government-owned and controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special."

"SEC. 218. **Assessment Levels**. - The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panglungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

xxx xxx xxx

(d) One Special Classes: The assessment levels for all lands, buildings, machineries and other improvements:

| Actual Use | Assessment level |
| --- | --- |
| xxx | xxx |
| Government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power. | 10% |

Clearly, under the afore-quoted provisions, petitioner-NGCP cannot avail of the Special Tax Rate of 10% as the same can only be availed of by government-owned or controlled corporations (GOCC) engaged in the generation <u>and</u> transmission of electric power. Petitioner is not a GOCC but a privately owned corporation and is engaged in the transmission of electricity only and not in the generation thereof.

The use of the conjunctive word "and" shows the intent of the law in granting the tax exemption. Thus, GOCC cannot claim tax exemption if it performs only one of these two functions. The "generation" and "transmission" functions must both be present.

By the very language of its franchise, it is clear that petitioner-NGCP performs only the transmission and not the generation of electricity, to wit:

"**Republic Act No. 9511**.

xxx xxx xxx

**Section 1. Nature and Scope of Franchise**. - Subject to the provision of the Constitution and applicable laws, rules and regulations, and subject to the terms and conditions of the concession agreement and other documents executed with the National Transmission Corporation (TRANSCO) and the Power Sector Assets and Liabilities Management Corporation (PSALM) pursuant to Section 21 of Republic Act No. 9136, which are not inconsistent herewith, there is hereby granted to the National Grid Corporation of the Philippines, hereunder referred to as the Grantee, its successors or assigns, a franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage backbone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of the transmission system and to construct, install, finance, manage, improve, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines. The Grantee shall continue to operate and maintain the subtransmission system which have not been disposed by TRANSCO. Likewise, the Grantee is authorized to engage in construct, install, finance, improve expand, rehabilitate and repair the nationwide transmission system and the grid of the Republic of the Philippines, ancillary business and any related business which maximizes utilization of its assets such as, but not limited to, telecommunications system pursuant to Section 20 of Republic Act No. 9136. The scope of the franchise shall be nationwide in accordance with the Transmission Development Plan, subject to amendments or modifications of the said Plan, as may be approved by the Department of Energy of the Republic of the Philippines."[25]

Petitioner further contends that its 100 MVA transformer should be classified EXEMPT since it is only the beneficial user while TRANSCO

[25] Section 1 of R.A 9511.

retained ownership thereof. And, during the operation of TRANSCO, the same was classified as EXEMPT.

We do not agree with petitioner's contention.

In the case of *Government Service Insurance System vs. City Treasurer and City Assessor of the City of Manila*[26] the Supreme Court explained the "beneficial use" principle under Section 234(a) of the LGC in this wise:

> "The foregoing notwithstanding, the leased Katigbak property shall be taxable pursuant to the 'beneficial use' principle under Sec. 234(a) of the LGC.
>
> It is true that said Sec. 234(a), quoted below, exempts from real estate taxes real property owned by the Republic, unless the beneficial use of the property is, for consideration, transferred to a taxable person.
>
> xxx xxx xx
>
> Thus, read together, the provisions allow the Republic to grant the beneficial use of its property to an agency or instrumentality of the national government. Such grant does not necessarily result in the loss of the tax exemption. The tax exemption the property of the Republic or its instrumentality carries ceases only if, as stated in Sec. 234(a) of the LGC of 1991, 'beneficial use thereof has been granted, for a consideration or otherwise, to a taxable person'. GSIS, as a government instrumentality, is not a taxable juridical person under Sec. 133(o) of the LGC. GSIS, however, lost in a sense that status with respect to the Katigbak property when it contracted its beneficial use to MHC, doubtless a taxable person. xxx
>
> The High Court, in the same case, further ruled, thus:
>
> "As we declared in Testate Estate of Concordia T. Lim, 'the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner.' Of the same tenor is the Court's holding in the

[26] G.R. No. 186242, December 23, 2009.

subsequent *Manila Electric Company v. Barlis* and later in *Republic vs. City of Kidapawan.* Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof." (Citations omitted)

All told, We find no cogent reason to modify or reverse the Assailed Decisions, both dated January 30, 2013, and the Assailed Resolution dated June 18, 2013.

**WHEREFORE**, premises considered, the Petitions for Review are hereby both **DENIED**. The CBAA Decisions dated January 30, 2013 and Resolution dated June 18, 2013 are **AFFIRMED**.

**SO ORDERED.**

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Separate Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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
Presiding Justice

REPUBLIC OF THE PHILIPPINES
**Court of Tax Appeals**
QUEZON CITY

*EN BANC*

**NATIONAL GRID CORPORATION OF THE PHILIPPINES,**
Petitioner,

**- versus -**

**THE CENTRAL BOARD OF ASSESSMENT APPEALS, THE LOCAL BOARD OF ASSESSMENT APPEALS OF CABANATUAN CITY,**
**-and**
**HEIDE D. PANGILINAN, in her official capacity as the CITY ASSESSOR OF CABANATUAN CITY,**
Respondents.

**CTA EB CASE NO. 1052**
*(CBAA Case No. L-120*
*LBAA Case No. 2011-001*
*City of Cabanatuan)*

x- - - - - - - - - - - - - - - - - - - - - - - - x

**NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP),**
Petitioner,

**- versus -**

**THE CENTRAL BOARD OF ASSESSMENT APPEALS, THE LOCAL BOARD OF ASSESSMENT APPEALS OF CABANATUAN CITY,**

**-and**

**FLORIDA R. OCA, in her official capacity as the CITY TREASURER OF CABANATUAN CITY,**
Respondents.

**CTA EB CASE NO. 1053**
*(CBAA Case No. L-121*
*LBAA Case No. 2011-002*
*City of Cabanatuan)*

*Present:*

**DEL ROSARIO,** ***PJ,***
**CASTAÑEDA, JR.,**
**BAUTISTA,**
**UY,**
**CASANOVA,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**COTANGCO-MANALASTAS**
**RINGPIS-LIBAN,** ***JJ.***

Promulgated: JAN 28 2015

1:55 p.m.

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

# CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, PJ:***

I agree in the *ponencia* of Justice Caesar A. Casanova in ruling that the consolidated Petitions for Review were timely filed before the Court *En Banc* pursuant to Section 11 of Republic Act No. 1125, as amended by RA 9282 in relation Rule 22 of the Rules of Court.

The point of my dissent, however, is the opinion in the *ponencia* that petitioner is not exempt from payment of real property taxes on the subject properties pursuant to the second paragraph of Section 9 of RA 9511 as the *"exclusive of this franchise"* proviso found therein has been interpreted by the Supreme Court in Digital Telecommunications Philippines, Inc. vs. City Government of Batangas[1] *(Digital case)*, which interpretation finds application by analogy to the case at bar.

With utmost respect, it is my humble view that the interpretation in the *Digital* case is inapplicable to the instant case since the tax provision involved therein refers to Sec. 5, RA 7678 *(Digital Charter)* which is not entirely similar with that of Sec. 9, RA 9511 *(NGCP Charter)*, the tax provision in petitioner's legislative franchise.

The tax provisions of RA 7678 and RA 9511 are hereunder reproduced for easy reference and for comparison purposes:

| RA 7678<br>*(Digital Charter)* | RA 9511<br>*(NGCP Charter)* |
|---|---|
| **Section 5.** ***Tax Provisions***. — The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property **exclusive of this franchise** as other persons or corporations are now or hereafter may be required by law to pay. In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee: provided, that the grantee shall continue | **Section 9.** ***Tax Provisions.*** - In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a **franchise tax** equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall **in lieu of** income tax and **any and all taxes**, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, **local or national**, on its franchise, rights, privileges, receipts, revenues and profits, and **on properties used in connection with its franchise**, **from which taxes**, duties and charges, **the Grantee is hereby** |

[1] G.R. No. 156040, December 11, 2008.

| | |
|---|---|
| to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.<br><br>The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. | **expressly exempted**: *Provided*, That the Grantee, its successors or assigns, shall be liable to pay the same **taxes on their real estate, buildings and personal property**, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: *Provided, further*, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT). |

*(Emphasis supplied)*

The first part of Sec. 9, RA 9511 clearly provides that the grantee shall pay **a franchise tax, which shall be in lieu of all taxes** of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and **on properties used in connection with its franchise**, from which taxes the grantee is **expressly exempted**. Followed by this provision is a *proviso* which states *"Provided, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay."* On the other hand, Sec. 5 of RA 7678 simply provides *"the grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay."*

In view of the presence of the *"franchise tax shall* ***'in lieu of*** *xxx* ***all taxes' . . . properties used in connection with the franchise"*** provision in the first part of Sec. 9, RA 9511 and the absence of similar provision in Sec. 5 of RA 7678, makes the interpretation in the *Digital* case inapplicable to the present case. Otherwise stated, **the franchise tax imposed under Sec. 9 of RA 9511 is in lieu of all taxes, local or national, including real property tax on grantee's properties used in connection with its franchise**, from which tax the grantee is expressly exempted. **The succeeding *proviso* that imposes tax liability on the grantee for its real estate, buildings and personal property must reasonably refer to those that are not used in connection with its franchise**.

I submit that the foregoing is the logical interpretation of Section 9 of RA 9511. A different or contrary interpretation will render meaningless its first part which imposes franchise tax in lieu of all taxes which includes taxes on properties used in connection with the franchise.

Absence an appropriate determination from the CBAA and the Local Board of Assessment Appeals on whether the concerned properties are used in connection with petitioner's franchise, there is a need to remand the case to the CBAA to determine whether or not those properties were used in connection with petitioner's franchise. As aforediscussed, properties used in connection with petitioner's franchise is exempt from real property tax pursuant to the first part of Sec. 9 of RA 9511, while those properties not used in relation to its franchise is subject to real property tax pursuant to the second part of Sec. 9 of RA 9511 in relation to RA 7160.

**IN VIEW OF THE FOREGOING**, I vote to remand the consolidated cases to the CBAA for its determination of whether or not the concerned properties, which are the subject matter of these consolidated Petitions for Review were used in connection with petitioner's franchise, and for the CBAA to make an appropriate declaration whether those properties are exempt or subject to real property tax in accordance with the above discussions.

**ROMAN G. DEL ROSARIO**
Presiding Justice