REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MUNICIPALITY OF ITOGON, BENGUET, and ANGELA C. CARIÑO,
Petitioners,

- versus –

NATIONAL POWER CORPORATION (NPC), & POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM),
Respondents.

CTA AC No. 238
(RTC Civil Case No. 10-CV-2608)

Members:

CASTAÑEDA, JR., *Chairperson,*
and
BACORRO-VILLENA, *JJ.*

Promulgated:

FEB 16 2021
11:x a.m.

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DECISION

CASTAÑEDA, JR., ***J.:***

THE CASE

This is a *Petition for Review*[1] filed by Municipality of Itogon, Benguet and Angela C. Cariño against National Power Corporation (NPC) and Power Sector Assets and Liabilities Management Corporation (PSALM) via registered mail on July 2, 2020, praying that judgment be rendered reversing and setting aside the Decision dated March 16, 2020 rendered by the Regional Trial Court of La Trinidad, Benguet, Branch 63 (RTC) in Civil Case No. 10-CV-2608.

[1] Docket, pp. 6-12.

THE PARTIES

Petitioner Municipality of Itogon, Benguet, is a political subdivision and a local government unit within the Province of Benguet, while petitioner Angela C. Cariño is the Municipal Treasurer of the Municipality of Itogon.[2]

Respondent NPC is a government owned and controlled corporation created under Commonwealth Act No. 120, as amended,[3] while PSALM is a government owned and controlled corporation created under Republic Act No. 9136 (EPIRA Law), for the purpose of managing the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.[4]

THE FACTS

The facts of the present case, as found by the RTC in the Assailed Decision, are as follows:[5]

> "The Municipality of ITOGON through its Municipal Treasurer, ANGELA C. CARINO (CARINO) sent a letter of assessment to the NPC received by the latter on 8 January 2010. In that letter of assessment, NPC was required to pay its business taxes from 2004 to 2008 in the amount of PhP30,843,426.99.
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> NPC filed its letter protest on 3 February 2010 before the Municipal Treasurer of Itogon, Benguet stating that the alleged business taxes of NPC are illegal and improper because NPC is not classified in any of the businesses enumerated in Section 143 of the LGC liable for business taxes. However, on 22 February 2010, ITOGON through its Municipal Treasurer denied NPC's protest.
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> To prevent the assessment from becoming final and executory, NPC filed this case on 16 March 2010 pursuant

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[2] *Id.*, p. 6.
[3] *Id.*
[4] *Id.*
[5] *Id.*, p. 25.

> to Section 195 of the LGC. Four years later or on 29 October 2014, NPC moved to implead PSALM pursuant to Republic Act No. 9136 otherwise known as the EPIRA LAW. NPC argued that based on Sections 49, 50, 51, 55 and 56 of the EPIRA LAW, PSALM was mandated to take "ownership of all existing NPC generation assets, liabilities and IPP contracts, real estate, and all other disposable assets." This court, through Branch 8, granted the motion and ordered that PSALM be impleaded." *(Citations omitted)*

On March 16, 2020, the RTC rendered the Assailed Decision.

On July 2, 2020, petitioners filed via registered mail their Petition for Review docketed as CTA AC No. 238.

Within the extended period granted by this Court,[6] respondent PSALM filed its Comment (With Formal Entry of Appearance) on September 24, 2020[7] while respondent NPC filed via registered mail its Comment on October 5, 2020.[8]

In a Resolution dated September 28, 2020, this Court granted the parties a period of thirty (30) days from notice within which to file their respective memoranda.[9] This Court likewise ordered the RTC to elevate the entire original records of Civil Case No. 10-CV-2608.

On November 4, 2020, PSALM filed via registered mail its Memorandum.[10] On November 16, 2020, NPC filed its Memorandum[11] also via registered mail. On the other hand, petitioners filed their Memorandum via registered mail on November 25, 2020.[12]

Meanwhile, on December 4, 2020, the RTC forwarded to this Court the entire original records of Civil Case No. 10-CV-2608.[13]

In a Resolution dated January 4, 2021,[14] this Court submitted the present case for decision.

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[6] *Id.*, p. 48.
[7] *Id.*, pp. 49-59.
[8] *Id.*, pp. 64-82.
[9] *Id.*, pp. 62-63.
[10] *Id.*, pp. 161-175
[11] *Id.*, pp. 178-197.
[12] *Id.*, pp. 277-287.
[13] Resolution dated January 12, 2021, Docket, p. 290.
[14] Docket, p. 289.

THE ISSUES

Petitioners submitted the following assignment of errors for this Court's decision, to wit:[15]

"ASSIGNMENT OF ERRORS

I.

THE HONORABLE RTC ERRED IN RULING THAT NPC'S ASSETS AND BUSINESS, BY OPERATION OF LAW, WERE TRANSFERRED TO PSALM UPON THE EFFECTIVITY OF THE EPIRA LAW ON 21 JUNE 2001 AND HENCE NPC IS NOT LIABLE TO PAY BUSINESS TAX

II.

THE HONORABLE RTC ERRED IN RULING THAT PETITIONERS ARE BARRED BY PRESCRIPTION TO COLLECT BUSINESS TAX FROM PSALM"

THE COURT'S RULING

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, this Court finds that the present Petition for Review should be denied for lack of merit. There is no substantial matter much less compelling reason to disturb the findings of the RTC in the Assailed Decision.

NPC is not liable to pay business taxes to petitioners for the years 2004 to 2008.

In their Petition for Review, petitioners insist that they are correct in assessing respondent NPC with business taxes for the latter's operations within their territorial jurisdiction for the years 2004 to 2008.[16] In support thereof, petitioners basically argue that while the EPIRA Law mandates that PSALM shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate, and all

[15] *Id.*, p. 8.
[16] *Id.*, pp. 8-10.

other disposable assets, as well as all of NPC's outstanding obligations, the same is not automatic because the law also decrees that both respondents shall execute the necessary documents to effect the transfer of ownership and possession of all the assets, rights, privileges and liabilities required by EPIRA Law to be transferred by NPC to PSALM.[17] To buttress their position, petitioners invoked the case of *NPC Drivers and Mechanics Association (NPC DAMA), et. al. v. The National Power Corporation (NPC), et. al.*[18]

Moreover, petitioners surmise that the ownership of assets and operation of business remain with the NPC during the period in question allegedly because NPC failed to mention in its series of communications with the petitioners from 2007 to 2010 that it no longer operates, conducts, and/or maintains any business activity within the territorial jurisdiction of Itogon, Benguet.[19] Petitioners assert that NPC merely repeatedly contended that the undertaking the latter is engaged in is not one contemplated under Section 131 of the Local Government Code (LGC). Instead of invoking the EPIRA Law, respondent NPC merely brought forth its supposed exemption from all forms of taxes under its charter, according to petitioners.[20]

Petitioners' position is untenable.

To decide the present controversy, it is important to bear in mind that the particular tax involved here is a business tax. In *Mobil Philippines, Inc. v. The City Treasurer of Makati et. al.*,[21] the Supreme Court defined business tax as follows:

> "**Business taxes imposed in the exercise of police power for regulatory purposes are paid <u>for the privilege of carrying on a business in the year the tax was paid</u>**. It is paid at the beginning of the year as a fee to allow the business to operate for the rest of the year. It is deemed a prerequisite to the conduct of business." *(Emphasis and underscoring supplied)*

Veritably, a perusal of the Letter of Assessment dated January 8, 2010 issued by petitioner Angela C. Cariño to respondent NPC shows that the business taxes sought to be collected by petitioners in the total 9z

[17] *Id.*
[18] G.R. No. 156208, November 21, 2017, 845 SCRA 487.
[19] *Id.*, pp. 9-10.
[20] *Id.*
[21] G.R. No. 154092, July 14, 2005, 463 SCRA 384.

amount of ₱30,843,426.99 was due to the alleged operation by respondent NPC of the Binga Hydro-Electric Plant at Tinongdan, Itogon, Benguet for the years 2004 to 2008.[22]

As correctly ruled by the RTC, however, respondent NPC had ceased to operate its businesses, including power generation, by operation of law by virtue of the enactment of the EPIRA Law on June 26, 2001. This has been the ruling of the Supreme Court in *National Power Corporation v. Provincial Government of Bataan et. al.*[23] which is applicable, *mutatis mutandis*, to the present case. The said decision, in relevant part, provides:

> "The RTC found that the NPC failed to present evidence that it no longer owned or operated the business subject to local franchise tax and that the properties the Province levied on did not belong to it. **But proving these things did not require the presentation of evidence in this case since these events took place by operation of law, particularly the EPIRA.** Thus, Section 8 of the EPIRA provides:
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>> SEC. 8. *Creation of the National Transmission Company.* — There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the power and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
>>
>> Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).
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>> The subtransmission functions and assets shall be segregated from the transmission functions, assets

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[22] RTC Records, Vol. I, p. 19.
[23] G.R. No. 180654, April 21, 2014, 722 SCRA 40-42.

> and liabilities for transparency and disposal: *Provided*, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.
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> TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of this act or the start of open access, whichever comes earlier:...
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> xxx xxx xxx

The above created the TRANSCO and transferred to it the NPC's electrical transmission function with effect on June 26, 2001. **The NPC, therefore, ceased to operate that business in Bataan by operation of law. Since the local franchise tax is imposed on the privilege of operating a franchise, not a tax on the ownership of the transmission facilities, it is clear that such tax is not a liability of the NPC.**

Nor could the Province levy on the transmission facilities to satisfy the tax assessment against the NPC since, as Section 8 above further provides, the latter ceased to own those facilities six months from the effectivity of the EPIRA. Those facilities have since belonged to TRANSCO.

The legislative emasculation of the NPC also covered its former power generation function, which was the target of the Province's effort to collect the local franchise tax for 2001, 2002, and 2003. Section 49 of the EPIRA provides:

> SEC. 49. *Creation of Power Sector Assets and Liabilities Management Corporation.* — There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation," hereinafter referred to as the "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities

> and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

> Section 49 above created the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.) and transferred to it all of the NPC's 'generation assets' which would include the Bataan Thermal Plant. Clearly, the NPC had ceased running its former power transmission and distribution business in Bataan by operation of law from June 26, 2001. It is, therefore, not the proper party subject to the local franchise tax for operating that business. Parenthetically, Section 49 also transferred 'all existing . . . liabilities' of the NPC to PSALM Corp., presumably including its unpaid liability for local franchise tax from January 1 to June 25, 2001. Consequently, such tax is collectible solely from PSALM Corp." *(Emphasis supplied and citations omitted)*

Petitioners' argument that the transfer of ownership of NPC's existing assets and liabilities to PSALM not being automatic because the law still requires the execution of the necessary transfer documents is completely irrelevant. What is being taxed here is the purported privilege of doing business by respondent NPC within the territorial jurisdiction of Itogon, Benguet and not the latter's supposed ownership and possession of power generation assets situated within such place.

In the same vein, this Court finds as unmeritorious petitioners' argument that ownership of assets and operation of business remain with respondent NPC during the period in question simply because the latter failed to mention in its series of communications with the petitioners from the years 2007 to 2010 that it no longer operates, conducts, and/or maintains any business activity within the territorial jurisdiction of Itogon, Benguet.

As stated above, NPC's power generation business had ceased by operation of law upon the enactment of the EPIRA Law on June 26, 2001. Respondent NPC has no more business activity within the territorial jurisdiction of Itogon, Benguet that may be subject to business taxes during the period in question for the same had already been transferred to PSALM pursuant to the EPIRA Law.

Petitioners are barred from assessing and collecting from PSALM the business taxes for the years 2004 to 2008.

In the Assailed Decision, the RTC ruled that respondent PSALM cannot be held liable for the business taxes subject of the present case due to three (3) reasons, namely: (1) PSALM was not issued any assessment notice; (2) PSALM was not a party to the original proceedings involving petitioners and respondent NPC; and (3) the business taxes against PSALM are barred by prescription.[24]

This Court fully agrees with the RTC.

It is important to note that petitioners never dispute that respondent PSALM was not served with assessment notice and that it was never a party to the original proceedings. They merely contend that the assessment notice they sent to respondent NPC shall also be considered as notice to PSALM allegedly because the latter has the obligation to settle the former's liabilities pursuant to the EPIRA Law.[25] Petitioners are likewise invoking Section 5(q), Rule 21 of the Implementing Rules and Regulations (IRR) of the EPIRA Law which states that PSALM may operate the generation assets, directly or through NPC, prior to privatization thereof.[26]

Petitioners' arguments are not well-taken.

This Court concurs with the RTC's finding that while respondents NPC and PSALM are both GOCCs, they nevertheless have separate and distinct personalities duly granted by their respective charters. Accordingly, this Court cannot validly treat the assessment notice sent to NPC as a notice to PSALM because to rule as such is to violate PSALM's due process rights. While it may be true that the IRR of the EPIRA Law apparently states that PSALM may operate its generation assets directly or through NPC, this Court is not inclined to engage in speculation and to hastily conclude in the present case that the notice sent to NPC amounted to notice to PSALM without any proof that PSALM is actually operating its generation assets through NPC. *gc*

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[24] Docket, pp. 35-36.
[25] *Id.*, pp. 10-11.
[26] *Id.*

Given that PSALM was not duly served with an assessment notice and was not a party to the original proceedings, this Court now holds that petitioners are barred by prescription from assessing and collecting from PSALM the subject business taxes. Section 194 of the LGC states:

> Section 194. *Periods of Assessment and Collection.* — (a) **Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period**: *Provided,* That, taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.
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> (b) In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.
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> (c) **Local taxes, fees, or charges may be collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period**: *Provided, however,* That, taxes, fees or charges assessed before the effectivity of this Code may be collected within a period of three (3) years from the date of assessment.
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> (d) The running of the periods of prescription provided in the preceding paragraphs shall be suspended for the time during which:
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> (1) The treasurer is legally prevented from making the assessment of collection;
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> (2) The taxpayer requests for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect; and
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> (3) The taxpayer is out of the country or otherwise cannot be located. *(Emphasis supplied)*

Under the above provision, the prescriptive period for the assessment of local taxes is five (5) years counted from the date the said local taxes became due. On the other hand, the prescriptive period for the collection of local taxes is also five (5) years reckoned from the date of assessment of such local taxes. ge

In the present case, it is clear that petitioners are barred from assessing respondent PSALM with the subject business taxes given that petitioners never issued any notice of assessment to it.

Even assuming that the notice of assessment issued to respondent NPC can be validly treated as a notice to respondent PSALM, petitioners are still barred from collecting the subject business taxes from PSALM as it never appears on record that petitioners have ever instituted any action for collection of the subject business taxes from the date of assessment thereof.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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