REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

NATIONAL POWER CORPORATION, Petitioner,	**CTA EB No. 1233** (CTA AC No. 113)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
THE PROVINCE OF PAMPANGA AND PIA MAGDALENA D. QUIBAL, Respondents.	***Promulgated:*** SEP 09 2016 2:50 p.m.

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DECISION

UY, *J.*:

Before Us is a Petition for Review filed by the National Power Corporation (NPC) on October 27, 2014[1] against the Province of Pampanga and Pia Magdalena D. Quibal, praying for the setting aside of the Decision dated August 1, 2014[2] and Resolution dated September 24, 2014,[3] both rendered by the Second Division of this Court (or "Court in Division"), in CTA AC No. 113, entitled *"National Power Corporation, Petitioner, vs. The Province of Pampanga and Pia Magdalena D. Quibal, Respondents"*, the dispositive portions of

[1] EB Docket, pp. 7 to 23.
[2] EB Docket, pp. 25 to 37; Penned by Associate Justice Caesar A. Casanova, and concurred by Associate Justices Juanito C. Castañeda and Amelia R. Contangco-Manalastas.
[3] EB Docket, pp. 39 to 40; *supra*.

which respectively read:

Decision dated August 1, 2014:

> "**WHEREFORE,** premises considered, the Assailed Decision dated July 23, 2013 of Branch 47 of the Regional Trial Court of the City of San Fernando, Pampanga is hereby **SET ASIDE** and the records of the case are hereby **REMANDED** to the court *a quo* for further proceedings in accordance with the pronouncements in this Decision.
>
> **SO ORDERED.**"

Resolution dated September 24, 2014:

> "**WHEREFORE,** petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner NPC is a government-owned and controlled corporation created and existing by virtue of Republic Act (RA) No. 6395, as amended, with principal office address at NPC Office Building Complex, corner Quezon Avenue and BIR Road, East Triangle, Diliman, Quezon City, Philippines.

On the other hand, respondent Province of Pampanga is a local government unit organized and existing under Philippine laws, with postal address at the Provincial Capitol Building, City of San Fernando, Pampanga; while respondent Pia Magdalena D. Quibal is impleaded herein in her capacity as Provincial Treasurer of Pampanga.

On June 26, 2009, petitioner received the Assessment Letter dated June 24, 2009 from respondent Provincial Treasurer of Pampanga Pia D. Quibal, demanding payment of franchise tax pursuant to Sec. 5-a, b, c and Sec. 11-c and d of Tax Ordinance No. 1 or the Provincial Tax Code of 1992 of the Province of Pampanga.

On August 24, 2009, petitioner protested the assessment through a Protest Letter arguing, among others, that upon effectivity of RA No. 9136, or the Electric Power Industry Reform Act ("EPIRA") in 2001, the power generation of NPC is no longer considered as a public utility operation for which a franchise is required. Thus, NPC can no longer be considered as a business enjoying a franchise for the purpose of the franchise tax collection under Section 137 of the Local Government Code ("LGC").

Respondent, having failed to resolve petitioner's protest within the period of sixty (60) days, petitioner filed an Appeal to the Regional Trial Court (RTC) of San Fernando City, Pampanga, on October 22, 2009, docketed as Civil Case No. 13738.

Respondents filed their *Answer* on August 24, 2010, raising certain special and affirmative defenses. Petitioner filed its *Reply (to the Answer of the Appellees)* dated September 6, 2010, to which the respondents filed their Rejoinder dated September 30, 2010.

The case was set for trial proper on January 20, 2012 and there being no factual issues to be resolved, the parties agreed to file their memoranda.

On July 23, 2013, the RTC of San Fernando City, Pampanga, rendered a Decision, ordering petitioner to pay the assessed franchise tax to the Province of Pampanga, plus surcharge and interest.

Aggrieved, petitioner filed a Petition for Review on September 5, 2013 before the Court in Division, praying that: 1) the assessment issued by respondents in the letter dated June 24, 2009 be nullified and set aside; and 2) petitioner NPC be declared exempt from payment of franchise tax.

On October 10, 2013, respondents filed their *Comment*. Subsequently, petitioner filed its Memorandum on January 14, 2014, while respondents filed their Memorandum on January 27, 2014.

In the Resolution dated January 30, 2014, the case was considered submitted for decision.

The Court in Division rendered the assailed Decision, setting aside the Decision dated July 23, 2013 of Branch 47 of the RTC of San Fernando, Pampanga, and remanding the case to the said lower court for further proceedings.

Petitioner, however, filed a *Motion for Reconsideration* on August 18, 2014,[4] to which respondents filed their *Opposition to the Motion for Reconsideration* on September 3, 2014,[5] as directed by the Court in Division in the Resolution dated August 29, 2014.[6]

In the assailed Resolution dated September 24, 2014,[7] the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

Petitioner filed a *Motion for Extension of Time to File Petition for Review* on October 10, 2014[8] before the CTA *En Banc*. In the Minute Resolution dated October 14, 2014,[9] this Court granted petitioner a final and non-extendible period of fifteen (15) days from October 10, 2014, or until October 25, 2014, within which to file its Petition for Review.

On October 27, 2014, petitioner filed the instant Petition for Review.[10] In the Resolution dated December 22, 2014,[11] the Court *En Banc* ordered respondents to file their Comment, within ten (10) days from receipt of the said Resolution. Respondents filed their *Comment* on March 10, 2015.[12]

In the Resolution dated April 7, 2015,[13] the Court *En Banc* gave due course to the instant Petition for Review and ordered the parties to file their respective memoranda. Petitioner filed its *Memorandum* on May 18, 2015,[14] while respondents filed their *Memorandum* on June 23, 2015.[15]

The Court *En Banc* submitted the case for decision in the Resolution dated September 9, 2015. [16]

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[4] Division Docket, pp. 202 to 210.
[5] Division Docket, pp. 214 to 218.
[6] Division Docket, p. 213.
[7] Division Docket, pp. 221 to 222.
[8] EB Docket, pp. 1 to 5.
[9] EB Docket, p. 6.
[10] EB Docket, pp. 7 to 23. The deadline for filing (October 25, 2014) fell on a Saturday. Thus, the instant Petition for Review was timely filed on October 27, 2014—the following work day.
[11] EB Docket, pp. 197 to 198.
[12] EB Docket, pp. 199 to 206.
[13] EB Docket, pp. 209 to 210.
[14] EB Docket, pp. 212 to 223.
[15] EB Docket, pp. 227 to 240.
[16] EB Docket, pp. 249 to 250.

Hence, this Decision.

THE ISSUE

Petitioner raises the following issue for the Court *En Banc*'s resolution, to wit:

> "WHETHER OR NOT NPC IS LIABLE FOR THE PAYMENT OF FRANCHISE TAX."[17]

Petitioner's Arguments:

Petitioner contends that the Court in Division erred in remanding the case to the trial court for further proceedings, instead of declaring that it is not liable for franchise tax.

According to petitioner, it is not liable for payment of franchise tax because only those businesses enjoying a franchise can be assessed by local government units under Section 137 of the LGC. Petitioner claims that with the effectivity of the EPIRA, petitioner is now considered only as a generation company as its transmission and sub transmission functions have been transferred to National Transmission Corporation (TRANSCO) by operation of law; thus, being a government-owned and controlled generation company under the EPIRA, it is no longer required to secure a franchise and consequently, cannot be burdened with the payment of franchise tax. Petitioner also points out that it does not have a power plant located in the Province of Pampanga.

Moreover, petitioner argues that the Supreme Court decisions in *National Power Corporation vs. Province of Isabela*[18] ("*Isabela* case") and *National Power Corporation vs. City of Cabanatuan*[19] ("*Cabanatuan* case") are only considered as "law of the case" and may not be invoked in cases after the enactment of the EPIRA on June 26, 2001, and as such, petitioner should be exempt from payment of franchise tax.

Petitioner stresses its disagreement with the Court in Division's ruling that petitioner may be held liable for franchise tax because of its missionary electrification function under EPIRA. Petitioner submits that its Small Power Utilities Group (SPUG) was not established for

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[17] EB Docket, p. 12.
[18] G.R. No. 165827, June 16, 2006.
[19] G.R. No. 149110, April 9, 2003.

the purpose of deriving profit therefrom, but for the purpose of undertaking missionary electrification as provided for under Section 70 of the EPIRA. It claims that the SPUG's gross receipt can be below the cost of producing electric supply for the area it covers within the missionary local government unit. Hence, the cost shortage is covered from other sources.

Finally, petitioner avers that by undertaking a missionary electrification, the SPUG is able to deliver electricity at a price lower than what it should actually be; and with its collection below cost, the SPUG is dependent on other sources of funding in order to fully undertake its function. Thus, according to petitioner, the imposition of franchise tax based on its gross receipts would not only defeat the benevolent purpose of missionary electrification but also seriously obstruct the SPUG from providing power generation and delivery to missionary areas/LGUs.

Respondents' Counter-arguments:

Respondents contends that by virtue of Section 137 of Republic Act (RA) No. 7160, otherwise known as the LGC of 1991, they have authority to impose franchise tax on petitioner.

According to respondents, applying the doctrine laid down in the *Isabela* case and the *Cabanatuan* case, petitioner is undeniably a corporation enjoying a franchise pursuant to its Charter and that it is exercising its rights and privileges through the sale of electricity within the territorial jurisdiction of the Province of Pampanga.

Further, respondents stress that the exemption of securing a franchise for power generation companies under Section 6 of the EPIRA refers to a general or primary franchise, and not to special or secondary franchise which is the basis of the assessment issued by the respondents. Hence, according to respondent, petitioner is still required to secure a secondary franchise and pay the requisite secondary franchise thereto for its operations in the Province.

Moreover, respondents claim that petitioner admitted on record that it is selling electricity in the Province of Pampanga and impliedly declared that it has a generation plant in the province. Thus, it is clear that petitioner is doing business within the territorial jurisdiction of the Province of Pampanga, upon its own admission, in the sale of electricity, and should therefore be held liable for franchise and business taxes.

Anent petitioner's contention that SPUG was not established for the purpose of deriving profit therefrom but for the purpose of undertaking missionary electrification, respondents maintain that the purpose of the EPIRA is to ensure the quality, security and affordability of the supply of electric power to the public end users through a regime of free and fair competition; and that it was never the legislative intent to exempt said sectors from franchise tax, for in doing so would mean undue advantage on a generation company as its price in selling electricity would be lower than a mere supplier of electricity, since the latter's price would include costs from the payment of franchise tax. In such a case, the purpose of EPIRA will be defeated as there will be no regime of free and fair competition as to ensure quality of power supply to the general public.

Finally, respondents aver that taxes are the lifeblood of the government and tax exemptions are construed strictly against the claimant.

THE COURT *EN BANC*'S RULING

The instant Petition for Review lacks merit.

NPC is subject to franchise tax on its missionary electrification function.

Petitioner avers that the Court in Division erred in not ruling that petitioner is exempt from the payment of franchise tax.

We are not persuaded.

The power of the province to impose a franchise tax is sanctioned by Section 137 of the LGC, which provides:

> "SECTION 137. *Franchise Tax* - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on **businesses enjoying a franchise**, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, with in its territorial jurisdiction.
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> xxx xxx xxx." *(Emphasis supplied)*

In view of the foregoing provision, a province may impose a franchise tax on *"business enjoying a franchise"*. We note, however, that upon the enactment of the EPIRA, the powers and general functions of petitioner have been modified.

The following are the provisions of the EPIRA relating to the transfer of the electrical transmission and subtransmission function and the national franchise of petitioner to TRANSCO as well the transfer of ownership of its generation assets to the PSALM Corp., to wit:

> "SEC. 5. *Organization.* — The electric power industry shall be divided into four (4) sectors, namely: **generation, transmission**, distribution and supply.
>
> SEC. 6. *Generation Sector.* — Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> xxx xxx xxx
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.
>
> xxx xxx xxx
>
> 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 powers 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.).

The subtransmission functions and assets shall be segregated from the transmission functions, assets 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.

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: xxx

xxx xxx xxx

SEC. 47. *NPC Privatization.* — **Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act**. xxx

xxx xxx xxx

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.

xxx xxx xxx

SEC. 80. *Applicability and Repealing Clause.* — The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the 'Public Service Act'; **Republic Act No. 6395, as amended, revising the charter of NPC; . . . shall continue to have full force and effect except insofar as they are inconsistent with this Act**.

xxx xxx xxx

Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portion thereof, inconsistent with this Act are hereby repealed or modified accordingly." *(Emphases and underscoring supplied)*

Based on the foregoing provisions, upon the effectivity of the EPIRA on June 26, 2001, petitioner ceased to engage in power transmission, and that TRANSCO assumed all of petitioner's electrical transmission function, which also includes its nationwide franchise to operate its power transmission business. Further, all of petitioner's outstanding obligations arising from loans, issuance of bonds, securities and other instruments of indebtedness were likewise transferred to PSALM Corp.

Nevertheless, while it is true that with the enactment of the EPIRA, the franchise of petitioner have been modified, such that its transmission and generation functions were transferred to TRANSCO and PSALM, respectively, a cursory perusal of the EPIRA would reveal that petitioner was not completely divested of such functions, as enunciated in Sections 47 and 70 of the EPIRA, to wit:

"SEC. 47. *NPC Privatization.* — **Except for the assets of SPUG**, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act. xxx.

xxx xxx xxx

SEC. 70. *Missionary Electrification.* — **Notwithstanding the divestment and/or privatization of NPC assets,** IPP contracts and spun-off corporations, **NPC shall remain as a National Government-owned and –controlled corporation to perform the missionary electrification function through the Small**

<u>Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system.</u> The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC." *(Emphases and underscoring supplied)*

It is clear from the foregoing provisions that petitioner retained the assets of the Small Power Utilities Group ("SPUG"). Furthermore, petitioner, through the SPUG, shall remain to be a National Government-owned and controlled corporation to perform the missionary electrification function and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system.

Plainly, petitioner may still be held liable for the subject franchise tax in so far as its missionary electrification function is concerned.

This Court, however, could not fully determine whether petitioner performs its missionary electrification function within the territory of the Province of Pampanga. The records of the case show that the court *a quo* decided the case by summary judgment in view of the fact that both parties believed that the issue involved in the case is purely a question of law. Consequently, the question as to whether respondent performed missionary electrification functions in the Province of Pampanga, and as to how much local franchise tax is involved in this case, are issues which were not fully ventilated in the lower court. Hence, We agree with the Court in Division that the case should be remanded to the court *a quo* for further proceedings, subject to and in accordance with the pronouncements made in the assailed Decision.

We are not unmindful of the Supreme Court decision in *National Power Corporation vs. Provincial Government of Bataan, et al*[20] ("*Bataan* case"), as well as Our decision in *National Power Corporation vs. Province of Nueva Vizcaya et al.*[21] ("*Nueva Vizcaya* case"), where it was held that petitioner can no longer be assessed of local franchise tax from the time the EPIRA took effect. These cases are not on all fours with the instant case. In both *Bataan* case and

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[20] G.R. No. 180654, April 21, 2014.
[21] CTA EB Case No. 1069, April 7, 2015.

Nueva Vizcaya case, there is no finding that petitioner performs missionary electrification function in the respective territorial jurisdiction. Further, the issues threshed out in these cases cover only those functions which were transferred to TRANSCO and PSALM and do not include the missionary electrification function vested to petitioner under Section 70 of the EPIRA.

As to petitioner's contention that the SPUG was not established for the purpose of deriving profit therefrom and that the imposition of franchise tax based on its gross receipts will defeat the benevolent purpose of missionary electrification and seriously obstruct the SPUG from providing power generation and delivery to missionary areas/LGUs, suffice it to say that it is hornbook doctrine that tax exemptions must be clear and unequivocal. A taxpayer claiming tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[22] In this case, petitioner failed to point out any specific provision of law or express grant of exemption from franchise tax for its missionary electrification function.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated August 1, 2014 and Resolution dated September 24, 2014 of the Court in Division in CTA AC No. 113, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

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[22] *Digital Telecommunications Philippines, Inc. vs. City Government of Batangas*, G.R. No. 156040, December 11, 2008.

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

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
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
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 POWER CORPORATION,
Petitioner,

- versus -

THE PROVINCE OF PAMPANGA AND PIA MAGDALENA D. QUIBAL,
Respondent.

CTA EB No. 1233
(CTA AC No. 113)

Present:

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

Promulgated:

SEP 09 2016 2:50 p.m.

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DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

With due respect to my esteemed colleague, I cannot assent to affirm the assailed Decision and Resolution of the Court in Division, which ruled that petitioner National Power Corporation ("NPC") may still be held liable for franchise tax on its missionary electrification function.

Section 195 of the Local Government Code of 1991 ("LGC") provides that when the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, **he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties, *viz.*:**

> "SECTION 195. Protest of Assessment. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, **he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties**. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable." (Emphasis supplied)

Section 195 of the LGC is similar to Section 228 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, which categorically requires that the taxpayers shall be informed in writing of the law and the facts on which the assessment is made. Both Section 195 of the LGC and Section 228 of the 1997 NIRC, as amended, uphold the basic constitutional mandate that *no person shall be deprived of his property without due process of law.*

The essence of due process is the *opportunity to be heard* or in this case, the opportunity to be informed of the nature of tax liability for which an assessment is based. Due process does not require that the Notice of Assessment be fully detailed; rather, and more importantly, is for the taxpayer to be informed of the assessment in such a way that it can present his case.[1]

In *Yamane vs. BA Lepanto Condominium Corporation*,[2] which also involves a local business tax assessment, the Supreme Court emphasized the importance of the notice of assessment being sufficiently informative to properly apprise the taxpayer of the basis of his tax assessment:

> "Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be **sufficiently informative to apprise the taxpayer**

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[1] *Honest Service Providers, Inc. vs. City of Makati and City Treasurer Nelia A. Barlis*, CTA AC No. 40, May 29, 2008, penned by former Presiding Justice Ernesto D. Acosta and concurred in by Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova.

[2] G.R. No. 154993, October 25, 2005.

the legal basis of the tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but **it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties.**" (Emphases supplied)

The Assessment Letter dated June 24, 2004,[3] sent by Provincial Assessor Pia Magdalena D. Quibal to petitioner NPC, was as follows:

June 24, 2009

NAPOCOR CORPORATION
Mexico, Pampanga

Dear Sir/Madam:

This is in connection with the tax imposed by the Province of Pampanga relative to the collection of the Franchise Tax.

Quoted hereunder is Sec. 5 a., b., c. / Sec. 11 c., Sec. 11 d., of Tax Ordinance No. 1 an Ordinance enacting the Provincial Tax Code of 1992 and providing penalties for the violation of any provisions thereof.

Sec. 5 FRANCHISE TAX – Notwithstanding any exemption granted by any law or other special law, the Province of Pampanga shall collect a tax on business enjoying a franchise, with the following:

a. On gross annual receipts for the preceding calendar year based on the incoming receipts or realized within the territorial jurisdiction of the Province of Pampanga at the rate of fifty percent (50%) of one percent (1%).

b. For newly started business the tax shall be one twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein.

c. Administrative regulatory fee in the conduct of business annually --- P1,500.00

Sec. 11 – COLLECTION OF TAXES

c. Time of Payment. Unless otherwise provided in this Code, all local taxes, fees and charges other than Real Property Tax shall be paid within the first twenty (20) days of January of each subsequent quarter, as the case maybe. The Sangguniang

[3] EB Docket, p. 41.

Panlalawigan may, for a justifiable reason or cause, extend the time for payment of such taxes, fees or not exceeding six (6) months.

d. Surcharges and Penalties on Unpaid Taxes, Fees or Charges. A surcharge of twenty five percent (25%) of the amount of taxes, fees, or charges not paid on time and an interest at the rate of two percent (2%) per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty six (36) months.

On the basis of the above quoted provision, we are writing you to pay your Franchise Tax due to the Province of Pampanga to the Provincial Treasurer's Office, City of San Fernando, Pampanga.

Your immediate compliance in this regard is highly requested.

Thank you and regards.

Very truly yours,

PIA MAGDALENA D. QUIBAL
I.C.O. – Provincial Treasurer

A plain reading of the Assessment Letter reveals that petitioner NPC was being assessed for franchise tax without any indication of the amount of its tax liability or the tax period covered.

Moreover, considering that Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 ("EPIRA") caused petitioner NPC's nationwide franchise to be transferred to the National Transmission Corporation ("TRANSCO"), it behooves the local government of Pampanga to specify in the Notice of Assessment which particular business operation of petitioner NPC within the Province of Pampanga would still be subject to franchise tax.

Truth to tell, the assessment is fatally infirm, more so, as its eventual execution cannot be made with certainty *sans* NPC being informed of its exact tax liability. As earlier discussed, the notice of assessment failed to provide petitioner NPC of any factual basis for the assessment, particularly the amount of NPC's franchise tax liability as well as the taxable period subject thereof.

In *Manila Electric Company vs. The City Assessor,*[4] the Supreme Court made the following pronouncement:

[4] G.R. No. 166102, August 5, 2015.

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"The exercise of the power of taxation constitutes a deprivation of property under the due process clause, and the taxpayer's right to due process is violated when arbitrary or oppressive methods are used in assessing and collecting taxes.

The Court applies by analogy its pronouncements in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, concerning an assessment that did not comply with the requirements of the National Internal Revenue Code:

> On the strength of the foregoing observations, we ought to reiterate our earlier teachings that "in balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution." **Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure**." (Emphases supplied)

Considering that the notice of assessment sent to petitioner NPC is not in compliance with Section 195 of the LGC, and thus constituting a violation of petitioner NPC's right to due process of law, said assessment must be cancelled for being void.

Finally, to remand the case, as directed by the *ponencia*, would not cure the infirmity of the notice of assessment. Needless to say, to allow the Provincial Treasurer to compute petitioner NPC's tax liability at this stage is neither sanctioned by law or jurisprudence.

For all the foregoing, I vote to grant the Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

NATIONAL POWER CORPORATION, *Petitioner,*	**CTA *EB* No. 1233** (CTA AC No. 113)
-*versus*-	Present: *Del Rosario, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Fabon-Victorino,* *Mindaro-Grulla,* *Cotangco-Manalastas, and* *Ringpis-Liban, JJ.*
THE PROVINCE OF PAMPANGA and PIA MAGDALENA D. QUIBAL, *Respondent.*	Promulgated: SEP 09 2016 2:50 p.m.

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DISSENTING OPINION

BAUTISTA, J.:

With due reverence to the *ponente,* I respectfully disagree with the denial of the Petition for Review filed by petitioner.

Section 195 of the 1991 Local Government Code ("LGC") is the relevant provision, to wit:

> SECTION 195. *Protest of Assessment.* – When the local treasurer or his[/her] duly authorized representative finds that correct taxes, fees, or charges have not been paid, he[/she] shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. xxx[1]

[1] Underscoring ours.

In sum, the assessment notice should state, among others, the amount of the deficiency tax which the local treasurer claims to remain outstanding.

While the said Section does not provide the consequence should the said amount be lacking from the assessment notice, absence thereof is in violation of *Section 1, Article III of the 1987 Philippine Constitution*, which states that no person shall be deprived of property without due process of law.

A careful reading of the Assessment Letter[2], dated June 24, 2009 and signed by respondent Treasurer, reveals that respondents only quoted the provisions of the Ordinance relating to franchise tax and collection of taxes, and did not provide the actual amount of the alleged deficiency taxes being demanded by respondents. Hence, the assessment shall be stricken down for lack of this crucial requirement. The amount is important to enable petitioner to properly inform itself of the factual basis on which the assessment was made and to allow itself to pull out from its files the relevant documents in order to prepare its defense.

Moreover, it must be noted that the *1991 LGC* provides the following:

> SECTION 5. *Rules of Interpretation.* — In the interpretation of the provisions of this Code, the following rules shall apply:
>
> xxx xxx xxx
>
> (b) In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer. Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it.[3]

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[2] *Rollo, CTA EB No. 1233, Assessment Letter,* p. 41.
[3] Underscoring ours.

Having said the foregoing, I vote to grant petitioner's Petition for Review, setting aside the Decision and Resolution of the CTA Second Division and declaring the assessment issued by respondents as null and void.

LOVELL R. BAUTISTA
Associate Justice