REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION, Petitioner,	CTA EB No. 1440 (CTA AC No. 126)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
THE PROVINCIAL GOVERNMENT OF COMPOSTELA VALLEY and CARMEN R. RAZUL, in her capacity as PROVINCIAL TREASURER OF COMPOSTELA VALLEY, Respondents.	Promulgated: NOV 13 2018 3:52 p.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review[1] filed on April 1, 2016, petitioner National Power Corporation assails the Decision[2] dated November 25, 2015, as well as the Resolution[3] dated March 1, 2016, both promulgated by the Court in Division in CTA AC No. 126.

THE PARTIES

Petitioner National Power Corporation (NPC) is a government-owned and controlled corporation (GOCC) created and existing by virtue of Republic Act (R.A.) No.

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[1] *En Banc* Docket, pp. 8-20.
[2] *Ibid.*, pp. 24-39.
[3] *Ibid.*, pp. 41-44.

6395, as amended, with principal office address at NPC Office Building Complex, corner Quezon Avenue and BIR Road, East Triangle, Diliman, Quezon City.

Respondent Provincial Government of Compostela Valley is a local government unit (LGU) created by law, while co-respondent Carmen R. Razul, is impleaded in her official capacity as the Provincial Treasurer of Compostela Valley. Both may be served with summons and other court processes at the Office of the Governor, Nabunturan, Compostela Valley.

THE FACTS AND THE PROCEEDINGS

The facts, as culled from the record, are as follows:

On January 29, 2007, petitioner received from respondent Provincial Treasurer of Compostela Valley Razul an Assessment Letter dated January 25, 2007 demanding the payment of an undetermined amount as franchise tax covering taxable years (TY) 2002 to 2007, with penalty and interest pursuant to Provincial Tax Ordinance No. 01, series of 1998 issued by respondent Provincial Government of Compostela Valley. The assessment was issued in relation to petitioner's operation of Power Barge 118 which was moored at the Municipality of Maco, Compostela Valley.

Petitioner filed a Protest dated February 13, 2007, claiming that under the EPIRA Law[4] (R.A. No. 9136), it is no longer required to secure a national franchise and that its business within the territorial jurisdiction of respondent Province is no longer covered by a franchise.

Petitioner's Protest was denied by respondent Razul in a letter dated May 23, 2007 with attached collection letter of even date reiterating the demand to pay franchise tax covering the period 2002-2007.

On October 30, 2007, petitioner elevated the denial of its protest to the the Regional Trial Court (RTC) of

[4] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes.

Nabunturan, Compostela Valley with prayer for Temporary Restraining Order/Preliminary Injunction. The case docketed as Miscellaneous (MISC) Case No. 897 was raffled to RTC Branch 3.

On November 29, 2007, respondents filed their Answer with Opposition to the Application for Temporary Restraining Order/Preliminary Injunction.

On January 29, 2010, the RTC dismissed the appeal and ordered petitioner to pay the local franchise tax assessed by respondent Razul.

On April 28, 2010, petitioner filed a Petition for Review with the Court of Tax Appeals (CTA) *En Banc* docketed as CTA EB No. 607 impugning the adverse decision rendered by the RTC.

On July 22, 2011, the Court *En Banc* dismissed the Petition for Review on jurisdictional ground[5].

On August 22, 2011, petitioner filed a Motion for Reconsideration[6] of the July 22, 2011 Decision. Despite directive, respondents failed to file their Comment per Records Verification dated November 21, 2011[7].

In a Resolution dated January 5, 2012[8], the Court *En Banc* denied petitioner's Motion for Reconsideration for lack of merit.

On February 29, 2012, petitioner filed a Petition for Review on *Certiorari* docketed as G.R. No. 200100 against respondents assailing the *En Banc* Decision of July 22, 2011 and the Resolution of January 5, 2012.

On April 23, 2014, the Supreme Court issued a Resolution[9] granting petitioner's Petition for Review on Certiorari in the following manner:

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[5] EB No. 607 Docket, pp. 107-120.
[6] *Ibid.,* pp. 121-130.
[7] *Ibid.,* p. 137.
[8] AC No. 126 Docket, pp. 162-167.

> **WHEREFORE,** premises considered, the instant petition is **GRANTED.** The Decision dated July 22, 2011 and Resolution dated January 5, 2012, of the Court of Tax Appeals *En Banc* in E.B. Case No. *607,* are hereby **REVERSED** and **SET ASIDE.** The petition is **REMANDED** to the Court of Tax Appeals to be raffled to any of its Division for its immediate resolution.
>
> **SO ORDERED.**

The foregoing Decision became final and executory on June 23, 2014 per Entry of Judgment dated September 11, 2014[10].

As directed by the Supreme Court, the case was remanded to the Court in Division and raffled to its Second Division on December 22, 2014 and docketed as CTA AC No. 126.

On February 16, 2015, respondent Province through respondent Razul filed through registered mail, its Comment to the Petition for Review[11] in compliance with the Court's Resolution dated January 7, 2015[12].

In the Resolution dated June 9, 2015, the case was submitted for decision with petitioner's Memorandum[13] filed on April 23, 2015, without any from respondents[14], despite the opportunity granted.

In the assailed Decision promulgated on November 25, 2015, the Court in Division set aside the Judgment dated January 29, 2010 rendered by the RTC Branch 3 of Nabunturan, Compostela Valley and ordered the remand of the case to the court a *quo* to determine the factual issues and the amount of petitioner's franchise tax liability for the period from 2002 to 2007. The Court in Division disposed the case as follows:

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[9] AC No. 126 Docket, pp. 10-11.
[10] *Ibid.*, p. 14.
[11] *Ibid.*, pp. 172-177.
[12] *Ibid.,* pp.170-171.
[13] *Ibid.,* pp. 185-194.
[14] Records Verification dated June 9, 2015, *ibid.,* p. 203.

> **WHEREFORE**, the Assailed Judgment dated January 29, 2010 of Branch 3, Regional Trial Court, Nabunturan, Compostela Valley in Miscellaneous Case No. 897 – (National Power Corporation vs. The Provincial Government of Compostela Valley and Carmen Razul, in her capacity as Provincial Treasurer of Compostela Valley) 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.**

On December 9, 2015[15], petitioner moved to reconsider the adverse decision to which respondents registered their objection[16].

In the equally assailed Resolution of March 1, 2016[17], the Court in Division denied petitioner's Motion for Reconsideration for lack of merit.

Hence, the instant Petition for Review filed on April 1, 2016.

In compliance with the Court's directive, petitioner filed its Memorandum on December 7, 2016[18], respondents however did not[19], thus, the Petition for Review was submitted for decision on November 29, 2017.[20]

THE ISSUE

Petitioner submits the following lone issue for the resolution of the Court:

> WHETHER OR NOT NPC IS LIABLE FOR THE PAYMENT OF FRANCHISE TAX

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[15] AC No. 126 Docket, pp. 222-229.
[16] *Ibid.*, pp. 234-240.
[17] *Ibid.*, pp. 246-249.
[18] *Ibid.*, pp. 194-208.
[19] Records Verification Report dated October 26, 2017, *ibid*, p. 213.
[20] *Ibid.*, pp. 215-216.

Petitioner's arguments

Petitioner states that it is not liable to pay franchise tax, explaining that the LGU's authority to assess and collect franchise tax stems from the "franchise" issued by the state or any of its subdivisions in favor of an individual or entity enjoying a particular right or privilege. Thus, without the "franchise", an individual or entity cannot be burdened with the payment of franchise tax. Under the EPIRA Law, petitioner is exempt from the payment of franchise tax as it is now primarily considered as a government-owned and controlled generation company which is no longer required to secure a franchise.

Further, Section 137 of the Local Government Code (LGC) of 1991 limits the imposition of franchise tax to businesses enjoying a franchise, which petitioner is not. While petitioner's power generation may be considered as a business, it is not however, a "business enjoying a franchise" to come under the definition of businesses liable to pay franchise tax.

Petitioner also argues that the ruling in the cases of NPC v. Province of Isabela[21] and NPC v. City of Cabanatuan[22] that the LGC of 1991 authorizes the province to impose a tax on businesses enjoying a franchise within its territorial jurisdiction, may not be applied to the present case as they were filed before the EPIRA Law was enacted on June 26, 2001.

In addition, if LGUs will impose franchise tax, petitioner's tax liabilities will be inflated to the limits adversely affecting the privatization efforts of the government and negating the very purposes of the EPIRA Law in not requiring the "power generation and supply of electricity" business to secure a franchise as it will be burdened with so many liabilities in relation thereto.

Even assuming that petitioner is performing missionary electrification in respondent Province, it is still not liable to

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[21] 491 SCRA 169 (2006).
[22] 402 SCRA 259 (2003).

pay franchise tax as it is not engaged in business for profit. In fact, its Small Power Utilities Group (SPUG) was not established for the purpose of deriving profit therefrom but for the purpose of undertaking missionary electrification as provided under Section 70 of the EPIRA Law. A SPUG's gross receipts may even be below the cost of producing electric supply for the area it covers with the missionary local government unit.

Finally, by undertaking its missionary electrification, the SPUG is able to deliver electricity at a price lower than its actual price. With its collection below cost, the SPUG is dependent on other sources of funding in order to fully embark on its function. Thus, the imposition of franchise tax based on its gross receipts will not only defeat the benevolent purpose of missionary electrification but also seriously hinder the SPUG from providing power generation and delivery to missionary LGUs.

Respondents' counter-arguments

Respondents, on the other hand, strongly believe that petitioner is not exempt from the payment of Local Franchise Tax as ruled by RTC Branch 3, Nabunturan, Compostela Valley. Admittedly, petitioner is solely a generation company not required to secure a local or national franchise under Section 6 of the EPIRA Law, it nevertheless continues to operate under a secondary or special franchise which serves as its charter.

Further, petitioner satisfies two (2) requisites making it liable for franchise tax. Firstly, Commonwealth Act No. 120, as amended by R.A. No. 7395, which constitutes as its primary and secondary franchises and charter, defines its composition, capitalization, appointment and specific duties of its corporate officers and its corporate life span. Secondly, petitioner is operating within respondent Province's territorial jurisdiction as its Power Barge 118 is moored within in its territory. Thus, petitioner cannot contend that it does not have a franchise being a generation company when it continues to operate under a secondary and special franchise despite the EPIRA Law providing the contrary.

Contrary to petitioner's claim, the cases of NPC v. Province of Isabela and NPC v. City of Cabanatuan are applicable to the present case as they are considered as authority since they were decided by the Supreme Court years after EPIRA Law took effect.

Anent petitioner's stance that it is exempt from any tax liability under the EPIRA Law, suffice it to say that the Supreme Court itself ruled in the case of *NPC v. Province of Isabela* that franchise tax may still be imposed upon petitioner despite exemption enjoyed under special laws.

Lastly, petitioner cannot escape payment of franchise tax on the ground that it is an entity imbued with public interest and established not for profit or gain since it is in fact performing purely private and commercial undertakings, albeit imbued with public interest, which does not remove it from its true nature as a commercial enterprise, as held in the cited case of *NPC v. Province of Isabela*.

RULING OF THE COURT *EN BANC*

The primary issue to be resolved in the instant case is whether petitioner is liable to pay the franchise tax assessment issued by respondents in relation to its operation of Power Barge No. 118 which is moored at the Municipality of Maco, Compostela Valley.

On the matter under consideration, the discussion of the Supreme Court on the nature of the power to tax of LGUs in the case of *Pelizloy Realty Corporation, represented by its President, Gregory K. Loy v. The Province of Benguet*,[23] is instructive, thus:

> The power to tax "is an attribute of sovereignty," and as such, inherent in the State. Such, however, is not true for provinces, cities, municipalities and barangays as they are not the sovereign; rather, they are mere "territorial and political subdivisions of the Republic of the Philippines". Therefore, the power of a province

[23] G.R. No. 183137, April 10, 2013.

to tax is limited to the extent that such power is delegated to it either by the Constitution or by statute. Section 5, Article X of the 1987 Constitution is clear on this point:

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

Per Section 5, Article X of the 1987 Constitution, "the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges." Nevertheless, such authority is "subject to such guidelines and limitations as the Congress may provide".

In conformity with Section 3, Article X of the 1987 Constitution, Congress enacted RA No. 7160, otherwise known as the Local Government Code of 1991.

From the foregoing, it is clear that the power of an LGU to impose and collect taxes is derived from the Constitution itself which grants it "the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitation as the Congress may provide".[24] This categorical constitutional grant of power to tax is consistent with the basic policy of local autonomy and decentralization of governance. With this power, LGUs have the fiscal mechanisms to raise the funds needed to deliver basic services to their constituents and break the culture of dependence on the national government. Thus, consistent with these objectives, R.A. No. 7160 (The Local Government Code of 1991) was enacted[25], granting LGUs, like herein respondent Province, the power to impose and collect

[24] Section 5, Article X, 1987 Constitution.
[25] Enacted on October 10, 1991.

franchise tax. Specifically, the authority of respondent Province to impose a franchise tax is anchored on Section 137 of the LGC of 1991, to wit:

> SEC. 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, within its territorial jurisdiction. In the case of a newly started business, the tax shall not exceed 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 thereon, as provided herein. *(Emphasis supplied)*

Plain from the cited provision that a province may impose a franchise tax on "businesses enjoying a franchise".

Corollarily, it is settled that a taxpayer may be covered by this imposition when the two following requisites are present:

> (1) [it] has a "franchise" in the sense of a secondary or special franchise; and
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> (2) it is exercising its rights or privileges under this franchise within the territory of the local government concerned.[26]

Section 131(m) of the same Code defines the term "franchise" in the following manner:

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[26] *National Power Corporation v. The Provincial Government of Bukidnon and Luis L. Oro, in his capacity as Provincial Treasurer of Bukidnon*, CTA AC No. 57, August 10, 2010 and Amended Decision dated December 13, 2010.

> SEC. 131. *Definition of Terms.* - When used in this Title, the term:
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> xxx xxx xxx
>
> (m) 'Franchise' is a right or privilege, **affected with public interest which is conferred upon private persons or corporations**, under such terms and conditions as the government and its political subdivisions may impose in the interest of public welfare, security, and safety; *(Emphasis supplied)*

Thus, a franchise refers to the special privilege conferred by the government on an individual or corporation, to do certain things, which does not belong to citizens generally of common right.[27] Therefore, LGUs have the authority to impose franchise taxes.

On the other hand, petitioner anchors its claim for exemption on R.A. No. 9136 or the EPIRA Law, which took effect on June 26, 2001. The pertinent provisions read as follows:

> SEC. 5. Organization. — The electric power industry shall be divided into four (4) sectors, namely: generation, transmission, distribution and supply.
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> SEC. 6. Generation Sector. — Generation of electric power, a business affected with public interest, shall be competitive and open.
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> xxx xxx xxx
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> 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

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[27] *Land Transportation Office, et al. v. City of Butuan*, G.R. No. 131512, January 20, 2000.

shall not be required to secure a national franchise.

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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 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: . . .

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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

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.

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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.

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> Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portion thereof, inconsistent with this Act are hereby repealed or modified accordingly.

Thus, upon the effectivity of the EPIRA Law on June 26, 2001, petitioner ceased to engage in power transmission, and TRANSCO assumed all of petitioner's electrical transmission function, which also included 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 Law, petitioner's franchise had been modified, *i.e.,* its transmission and generation functions were transferred to TRANSCO and PSALM, respectively, a careful reading of the EPIRA Law reveals that petitioner was not completely divested of such functions, as provided under Sections 47 and 70 of the same law, 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.
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> xxx xxx xxx
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> 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 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. 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.

Clear from the foregoing provisions that petitioner retained the assets of the SPUG and through the SPUG, shall remain to be a National Government-owned and controlled corporation to perform its missionary electrification function, which shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. Hence, even after the effectivity of the EPIRA Law on June 26, 2001 and notwithstanding the transfer of petitioner's electrical transmission function to TRANSCO, petitioner may still be held liable for franchise tax for performing its missionary electrification function under Section 70 of the EPIRA Law.

However, as held in the assailed Decision of November 25, 2015, the Court cannot fully determine whether the operation of petitioner's Power Barge No. 118 moored at the Municipality of Maco, Compostela Valley, is attributable to petitioner's missionary electrification function within the territory of respondent Province. While petitioner admitted before the Court a *quo* that it is operating a Power Barge and generating and supplying electricity in the Municipality of Maco, Compostela Valley, the Court a *quo* did not rule on whether the said function is part of petitioner's missionary electrification function. Besides, the amount of local franchise tax involved covering the period from 2002 to 2007, including penalty and interest pursuant to Provincial Tax Ordinance No. 01, series of 1998 is undetermined. Hence, the Court *En Banc* is one with the Court in Division in ruling 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.

WHEREFORE, the Petition for Review filed by petitioner National Power Corporation on April 1, 2016, is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision of November 25, 2015 and the Resolution of March 1, 2016, are **AFFIRMED**.

Let this case be **REMANDED** to the Court of origin for further proceedings in accordance with the pronouncements in this Decision.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this 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 PROVINCIAL GOVERNMENT OF COMPOSTELA VALLEY and **CARMEN R. RAZUL,** in her capacity as **PROVINCIAL TREASURER OF COMPOSTELA VALLEY,**
Respondents.

CTA EB No. 1440
(CTA AC No. 126)

Members :

DEL ROSARIO, *P.J.*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
NOV 13 2018
3:52 p.m.

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CONCURRING AND DISSENTING OPINION

MANAHAN, J.:

I express my concurrence to the majority view that National Power Corporation (NPC) is still liable to pay the franchise tax under its modified franchise where it retained its electric transmission functions through the Small Power Utilities Group (SPUG). I also concur in the proposition that the Provincial Government of Compostela Valley has the power to impose a franchise tax under the 1987 Philippine Constitution and Section 137 of the Local Government Code of 1991 (LGC of 1991).

In taking the above legal position, my esteemed colleagues proceeded to remand the case to Branch 3 of the Regional Trial Court (RTC) of Nabunturan, Compostela Valley for further proceedings to determine the amount of the local franchise tax covering the period 2002 to 2007 and to ascertain whether the Power Barge owned and operated by NPC is performing its missionary electrification function. I quote the pertinent portions of the *ponencia* below:

> "However as held in the assailed Decision of November 25, 2015, the Court cannot fully determine whether the operation of petitioner's Power Barge No. 118 moored at the Municipality of Maco, Compostela Valley, is attributable to petitioner's missionary electrification function within the territory of respondent Province. While petitioner admitted before the Court *a quo* that it is operating a Power Barge and generating and supplying electricity in the Municipality of Maco, Compostela Valley, the Court *a quo* did not rule on whether the said function is part of petitioner's missionary electrification function. Besides, the amount of local franchise tax involved covering the period from 2002 to 2007, including penalty and interest pursuant to Provincial Tax Ordinance No. 01, series of 1998 is undetermined. **Hence the Court *En Banc* is one with the Court in Division in ruling 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."** (emphasis supplied)

I humbly offer a different view.

Section 7 (a) (3) of Republic Act (RA) 1125, as amended by RA 9282 and implemented by Section 3 (a) (3) of Rule 4 of the Revised Rules of the Court of Tax Appeals grants this Court the jurisdiction to review, by appeal, decisions orders or resolutions of the Regional Trial Courts in local tax cases originally decided by them in the exercise of their original or appellate jurisdiction.[1]

In reviewing decisions on appeal, this Court has the authority to rule not only on the merits of the appealed decision itself but on all matters that may not have been ruled upon by the court of origin, which in this case is Branch 3 of the RTC of Compostela Valley.

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[1] "Section 7. Jurisdiction. – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in their exercise of their original or appellate jurisdiction."

An appeal throws the entire case open for review.[2] I specifically point to the Assessment Letter dated January 25, 2007 issued by the Provincial Treasurer of Compostela Valley, Ms. Carmen R. Razul.

The *ponencia* correctly affirmed the factual findings of the Court in Division that the alleged local franchise tax liability of petitioner is undetermined or was not specified in the said assessment notice. This to my mind, is a clear violation of the requirements of Section 195 of the LGC of 1991 which requires that the assessment notice should specify, not only the nature of the tax but also the amount of deficiency, surcharges, interest and penalties. I quote the pertinent portion, thus:

> "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, interest and penalties." (emphasis supplied)**

It is part of the taxpayer's right to due process to be informed of the nature and amount of tax deficiencies to properly apprise him of the findings of the examiners so that it could also be better prepared to answer or dispute said findings. I believe that the principle governing tax assessments of national internal revenue taxes equally applies to local business taxes, i.e., that assessments must be based on facts and not on mere presumptions. No less than the Supreme Court has recognized this in its ruling in the case of *Yamane vs. BA Lepanto Condominium Corporation*[3], to wit:

> "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, interest and penalties." xxx xxx

Clearly, the Notice of Assessment issued by the provincial treasurer of Compostela Valley is infirmed and does not pass the test to make it a valid assessment pursuant to Section 195 of the LGC of 1991. The requirement that a tax assessment must indicate the legal and factual bases is a main ingredient of the due process

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[2] Edilberto L. Barcelona vs. Dan Joel Lim and Richard Tan,, G.R. No. 189171, June 3, 2014.
[3] G.R. No. 154993, October 25, 2005.

requirements accorded by the Constitution. The reason for this is succinctly but clearly explained by the Supreme Court in the case of *CIR vs. Azucena T. Reyes*[4] when it ruled in this manner:

> "Even a cursory review of the preliminary assessment notice, as well as the demand letter sent reveals the lack of basis for – not to mention the insufficiency of – the gross figures and details of the itemized deductions indicated in the notice and letter. **This Court cannot countenance an assessment based on estimates that appear to have been arbitrarily or capriciously arrived at**. Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself." (emphasis supplied)

In CIR vs. *Enron Subic Power Corporation*,[5] the Supreme Court also emphasized the importance of apprising the taxpayer of the legal and factual bases of the findings of the examiner as embodied in an assessment letter, to wit:

> "We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. **In view of the absence of a fair opportunity to be informed of the legal and factual bases of the assessment against it, the assessment in question was void."** (emphasis supplied)

We as an appellate court have the authority to strike down such an assessment for being invalid and without any effect. The fact that the local tax examiners/treasurer were not able to substantiate whether the Power Barge owned by NPC was generating and supplying electricity in relation to their missionary electrification function is another reason to cancel the assessment.

We no longer have to remand this case to the court of origin because we have the power to declare the cancellation and withdrawal of the local tax assessment issued against NPC, here and now. This is also in fulfillment of the constitutional mandate to provide litigants a speedy disposition of their cases. I opine that remanding the case to the court of origin after the Supreme Court has already remanded the same to the court *a quo* is tantamount to the non-observance of this constitutional mandate.

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[4] G.R. Nos. 159694 and 163581, January 27, 2006.
[5] G.R. No. 166387, January 19, 2009.

Once again, I am guided by the ruling of the Supreme Court in the *Yamane* case, thus:

> "Indeed, there are disturbing aspects in both procedure and substance that attend the attempts by the City of Makati to flex its taxing muscle. Considering that the tax imposition now in question has utterly no basis in law, judicial relief is imperative. **There are fewer indisputable causes for the exercise of judicial review over the exercise of the taxing power than when the tax is based on whim, and not on law." (emphasis supplied)**

Accordingly, I vote to grant the Petition for Review but on the ground that the Notice of Assessment issued by the Provincial Treasurer of Compostela Valley for local franchise tax for the period 2002-2007 is invalid in clear violation of Section 195 of the LGC of 1991 and for lack of factual basis, hence should be **CANCELED AND WITHDRAWN.**

CATHERINE T. MANAHAN
Associate Justice