REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION,
Petitioner,

-versus-

LUZON HYDRO CORPORATION (LHC), BANGGAY T. ALWIS, Municipal Assessor, MANUEL C. BAGAYAO, Municipal Treasurer of Bakun, Benguet, ERLINDA ESTEPA, Provincial Assessor and MAURICIO B. AMBANLOC, Provincial Treasurer of the Province of Benguet,
Respondents.

CTA EB No. 1020
(CBAA Case Nos. L-57 & L-59)

Present:

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

Promulgated:
JAN 24 2019 4:30pm

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution of this Court En Banc are National Power Corporation's (NPC) Motion for Reconsideration and Luzon Hydro Corporation's (LHC) Motion for Reconsideration (Re: Decision dated 22 May 2018) seeking for the reversal of the Decision[1] promulgated on May 22, 2018, the dispositive portion of which reads as follows:

Decision dated May 22, 2018:

"**WHEREFORE**, the petition is **DENIED** for lack of merit, additional to its respective jurisdictional

[1] En Banc Docket, Vol. IV, pp. 1517-1534

defect. The CBAA Decision dated July 13, 2012 and its Resolution dated March 22, 2013, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED."

In sum, both motions insist that the actual, direct and exclusive use of the subject machineries are with the National Power Corporation (NPC), thus, it has legal interest to pay the tax.

The Motions for Reconsideration must fail. We do not find the reasons raised by both NPC and LHC meritorious enough to warrant the attention of the members of this Court, as they are merely reiterations of the arguments raised before this Court.

As discussed in the assailed decision, it is LHC, not NPC, who is the actual user of the subject properties.

Consequently, it bears stressing that NPC is clearly not vested with the requisite legal interest to protest the tax assessment because it is not an entity having the legal title over the subject machineries in this case. To reiterate, legal interest is defined as interest in property or a claim cognizable at law, equivalent to that of a legal owner who has legal title to the property.[2] Thus, NPC has absolutely no solid claim of ownership or even of use and possession of the machineries.

The Power Purchase Agreement (PPA) between NPC and LHC was drawn under the Build-Operate Transfer (BOT) Law. This Court exhaustively discussed the nature and underlying concept in BOT Agreements, to wit:

> "Build-operate-and-transfer- A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project

[2] Black's Law Dictionary (5th ed.), pp. 805-806.

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> proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment and operating and maintenance expenses in the project. **The proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term** which shall not exceed fifty (50) years x x x.
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> Under this concept, it is the project proponent who constructs the project at its own cost and subsequently operates and manages it. The proponent secures the return on its investments from those using the project's facilities through appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated. At the end of the fixed term agreed upon, the project proponent transfers the ownership of the facility to the government agency. Thus, the government is able to put up projects and provide immediate services without the burden of the heavy expenditures that a project start-up requires."

In sum, it is a financing arrangement contemplated in the sense that the private sector proponent (*LHC in this case*) shall initially shoulder the heavy cost of constructing the project's buildings and structures and of purchasing the needed machineries and equipment.

However, the arrangement goes beyond the simple provision of funds since the private sector proponent not only constructs and buys the necessary assets to put up the project but operates and manages it as well during an agreed period that would allow it to recover its basic costs and earn profits.

In other words, the private sector proponent goes into business for itself, assuming risks and incurring costs for its account. In this sense, **a BOT arrangement is *sui generis***

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and is different from the usual financing arrangements where funds are advanced to a borrower who uses the funds to establish a project that it owns, subject only to a collateral security arrangement to guard against the non-payment of the loan.

Thus, consistent with the BOT concept and as implemented, LHC is the owner-manager-operator of the project and the actual user of its machineries and equipment. LHC's ownership and use of the machineries and equipment are ***actual, direct, and immediate***, while NPC's is contingent.

In the same vein, if NPC was truly the owner of the subject properties at the time, then it should have complied with Sections 202[3] and 206[4] of the LGC which obligate owners of real property to:

a. File a sworn statement declaring the true value of the real property, whether taxable or exempt; and

b. File sufficient documentary evidence supporting its claim for tax exemption.

While it is true that a real property owner's failure to comply with Sections 202 and 206 of the LGC does not necessarily negate its tax obligation nor invalidate its legitimate claim for tax exemption, nonetheless, NPC's omission to do so in this case can be construed as contradictory to its claim of ownership of the subject machineries. That it assumed liability for the taxes that may

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[3] Section 202. Declaration of Real Property by the Owner or /Administrator. - It shall be the duty of all persons, natural or juridical, owning or administering real property, including the improvements therein, within a city or municipality, or their duly authorized representative, to prepare, or cause to be prepared, and file with the provincial, city or municipal assessor, a sworn statement declaring the true value of their property, whether previously declared or undeclared, taxable or exempt, which shall be the current and fair market value of the property, as determined by the declarant. Such declaration shall contain a description of the property sufficient in detail to enable the assessor or his deputy to identify the same for assessment purposes. The sworn declaration of real property herein referred to shall be flied with the assessor concerned once every three (3) years during the period from January first (1st) to June thirtieth (30th) commencing with the calendar year 1992.

[4] SEC. 206. Proof of Exemption of Real Property from Taxation. - Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents. If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

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be imposed on the subject machineries similarly does not clothe it with legal title over the same. Further, We do not believe that the phrase **person having legal interest in the property in Section 226[5] of the LGC can include an entity that assumes another person's tax liability by contract**.

In the case at bar, it is without a doubt that the ownership of the properties at the time was with LHC and would only be transferred to NPC at the end of the Cooperation Period under the PPA. That was why it was LHC that filed the declaration required by the afore-mentioned provisions of the LGC. It is an accepted principle in taxation that taxes are paid by the person obliged to declare the same for taxation purposes.[6]

Under these premises, NPC and LHC cannot therefore argue that even if the subject properties are not exempt from real property taxation, they should at least be treated as falling under the "Special Classes of Real Property" defined by Section 216[7] of the LGC, and thus, become subject only to the ten percent (10%) assessment level under Section 218(d)[8] considering that NPC is neither the owner nor the user of the subject properties at the time of the assessment.

Lastly, in its futile attempt to persuade this Court, LHC would want this Court to construe the Memorandum of Agreement (MOA) as binding to the Municipality of Alilem by

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[5] Sec. 226. Local Board of Assessment Appeals. Any owner or person having legal interest in the property who is not satisfied with the action of the provinciaL city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

[6] Camp John Hay Development Corporation vs. Central Board of Assessment Appeals, et al., G.R. No. 169234, October 2, 2013.

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

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

> (d) On Special Classes: The assessment levels for all lands buildings, machineries and other improvements - GOCCs engaged in the supply and distribution of water and/ or generation and transmission of electric power,10%.

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extension to the PPA between the NPC and LHC, particularly on the assumption by the NPC of the real property tax liabilities that may be assessed against LHC. Yet there is no express provision in the MOA to this effect. Apparently, to NPC and LHC, it is sufficient that this be inferred by mere implication from the MOA. We cannot subscribe to this suggestion. The Court observed that the MOA seems to be a contract of adhesion which LHC and NPC induced the Mayor of Alilem to sign.

The basic rule is that, should there be ambiguities in a contract of adhesion, such ambiguities are to be construed against the party that prepared it.[9] In *Fortune Medicare, Inc. vs. Amorin*[10], the Supreme Court ruled as follows:

> "Settled is the rule that ambiguities in a contract are interpreted against the party that caused the ambiguity. 'Any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it'."

In view of the foregoing, this Court finds no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, National Power Corporation's Motion for Reconsideration and Luzon Hydro Corporation's Motion for Reconsideration (Re: Decision dated 22 May 2018) are hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[9] Pilipino Telephone Corporation vs Delfino Tecson, G.R. No. 156966, May 7, 2004.
[10] G.R. No. 195872, March 12, 2014, citing Garcia vs. CA, 327 Phil. 1097, 1111 (1996)

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice