REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

BENGUET ELECTRIC COOPERATIVE (BENECO), represented by GERARDO P. VERSOZA, General Manager,
Petitioner,

- *versus* -

THE MUNICIPALITY OF LA TRINIDAD BENGUET, and WILMA LINTAN, Municipal Treasurer,
Respondents.

CTA *EB* NO. 1091
(CTA AC NO. 85)
(Civil Case No. 11CV-2756)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

MAY 06 2016 3:49 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court *En Banc* is a Petition for Review filed by registered mail on November 26, 2013,[1] pursuant to *Section 2 of Rule 4*[2]

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[1] *Rollo, CTA EB Case No. 1091 (CTA AC No. 85)*, pp. 1-138, with Annexes.

[2] RULE 4 - JURISDICTION OF THE COURT

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SEC. 2. *Cases within the jurisdiction of the Court en banc.* - The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

and *Section 4(b) of Rule 8*[3] of the *Revised Rules of the Court of Tax Appeals*[4], which seeks for the Court *En Banc* to:[5]

1. Reverse and set aside the Decision[6] of the Court's Special Second Division ("Court in Division") dated June 7, 2013 and its Resolution[7] dated October 9, 2013, the dispositive portions of which respectively read as follows:

> Decision dated June 7, 2013[8]
>
> **WHEREFORE,** premises considered, the instant Petition for Review filed by Benguet Electric Cooperative (BENECO) is hereby **DISMISSED.** Accordingly, the Order dated August 31, 2011 and the Order dated December 15, 2011, rendered by the Regional Trial Court, Branch 62, La Trinidad, Benguet in Civil Case No. 11-CV-2756 entitled "BENGUET ELECTRIC COOPERATIVE, INC., represented by GERARDO P. VERZOSA, General Manager vs. THE MUNICIPALITY OF LA TRINIDAD, BENGUET, and WILMA LINTAN, Municipal Treasurer", are hereby **AFFIRMED.**
>
> **SO ORDERED.**
>
> Resolution dated October 9, 2013:[9]
>
> **WHEREFORE,** premises considered, petitioner's **"Motion for Reconsideration"** is **DENIED** for lack of merit.
>
> **SO ORDERED.**

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(d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive original jurisdiction over tax collection cases;

[3] RULE 8. PROCEDURE IN CIVIL CASES
SEC. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

[4] A.M. No. 05-11-07-CTA, approved by the Supreme Court on November 22, 2005.

[5] *Rollo*, pp. 13-14.

[6] *Records, CTA AC No. 85*, pp. 197-219; penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justice Juanito C. Castañeda, Jr., and Associate Justice Caesar A. Casanova, concurring.

[7] *Ibid.*, pp. 235-237.

[8] *Id.*, p. 218.

[9] *Id.*, p. 237.

2. Remand to the Regional Trial Court ("RTC") the original Petition for Prohibition which was dismissed by the RTC and sustained by the Court in Division, for further proceedings; and

3. Issue a Temporary Restraining Order ("TRO") and a Writ of Preliminary Injunction ("Injunction") against respondents to cease and desist from directing petitioner's depositary banks to transfer the bank deposits of petitioner to respondent .

The Parties[10]

Petitioner Benguet Electric Cooperative ("BENECO") is an electric distribution utility duly organized and existing under Philippine laws. Its principal office is located at Barangay Alapang in La Trinidad, Benguet, and it is the exclusive distributor of electric light and power service to Baguio City and the thirteen (13) municipalities of Benguet pursuant to its franchise issued by the National Electrification Administration ("NEA") on March 20, 1978.

Respondent Municipality of La Trinidad, Benguet is a duly organized public corporation pursuant to Philippine laws, headed by Mayor Gregorio Abalos, with respondent Ms. Wilma Lintan ("Ms. Lintan") as the Municipal Treasurer.

The Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision[11] dated June 7, 2013 as follows:[12]

> On February 7, 2011, petitioner received from respondents three (3) separate Notices of Assessment ["NOA"], of Local Business Tax for the years 2006, 2007, and 2008. The total amount of taxes per year, inclusive of surcharges and interests, which were based on petitioner's gross receipts of the previous years immediately preceding the years of assessments, are as follows:

[10] *Records, Decision,* pp. 198-199.
[11] *Ibid.,* pp. 197-219.
[12] *Id.,* pp. 199-203.

Year Covered	Amount Assessed	
2005	[Php]	5,445,152.36
2006		5,987,235.13
2007		6,607,061.13
Total	**[Php]**	**18,039,448.62**

In a letter dated February 21, 2011, petitioner protested said [NOA], arguing that petitioner is not engaged in business for being a non-stock, non-profit cooperative.

On April 25, 2011, petitioner received from respondents three (3) separate Amended [NOA] of Local Business Tax for years 2006, 2007, and 2008, with the same amount of business taxes.

In a letter dated May 5, 2011, petitioner protested said Amended [NOA], reiterating that petitioner is not liable for business tax since it is a non-stock, non-profit cooperative.

On May 13, 2011, petitioner received a letter of even date from respondents, denying petitioner's protest and reiterating their demand for the payment of local business taxes, including interests and surcharges, for the years 2006, 2007, and 2008. Said letter specifically states that it serves as respondents' final demand against petitioner.

In a letter dated May 30, 2011, petitioner reiterated its stand that it is not liable for local business taxes since its operations are not strictly construed as a business as defined by law and stressed that petitioner is a non-stock, non-profit cooperative.

On June 21, 2011, petitioner received a Notice of Seizure or Confiscation ["Notice of Seizure"] of petitioner's personal properties to the extent of [Php]18,039,448.63, representing petitioner's unpaid local business taxes, inclusive of penalties, interests and surcharges, for the years 2006, 2007, and 2008. Said [Notice of Seizure] was accompanied by a Certification issued by respondent Lintan attesting to the fact that petitioner has unpaid local business taxes, inclusive of penalties, in the amount of [Php]18,039,448.62.

Respondents also furnished petitioner with copies of the Notices of Garnishment and Warrant of Levy, which respondents sent to petitioner's depository banks, to wit: Banco de Oro (Abanao Branch, la Trinidad Branch, Session Road

Branch, and Luneta Hill Branch), Metrobank, and the Development Bank of the Philippines in Baguio City.

On August 9, 2011, petitioner filed a Petition for Prohibition with Urgent Prayer for a Temporary Restraining Order and a Writ of Preliminary Injunction with the RTC of La Trinidad.

On August 12, 2011, the RTC of La Trinidad issued an Order stating that the Petition for Prohibition filed by petitioner under Section 2 of Rule 65 of the Rules of Court is not the appropriate remedy under the circumstances considering that there is a plain, speedy and adequate remedy available to petitioner under Section 195 of the Local Government Code (LGC). The RTC of La Trinidad gave petitioner a period of ten (10) days from notice to explain why the Petition for Prohibition should not be dismissed outright for lack of merit.

On August 23, 2011, petitioner filed a Compliance (On Why The Court Must Give Due Course To The Petition) with the RTC of La Trinidad.

In an Order dated August 31, 2011, the RTC of La Trinidad dismissed the Petition for Prohibition, on grounds that the collection of taxes cannot be stopped and enjoined through the writ of prohibition; that the proper remedy in this case is appeal under Section 195 of the LGC, which lapsed without petitioner having availed of it; that the failure of petitioner to appeal from the denial of the protest within the period provided in Section 195 of the LGC, the assessment became conclusive and unappealable; and that the Petition for Prohibition cannot be used as substitute for the lost remedy of appeal.

Petitioner received the Order dated August 31, 2011 on September 5, 2011. Thus, on September 16, 2011, petitioner filed a Motion for Reconsideration with the RTC of La Trinidad, praying that the Order dated August 31, 2011 be set aside and that the Petition for Prohibition be reinstated.

During the hearing on petitioner's Motion for Reconsideration held on September 23, 2011, the RTC of La Trinidad granted respondents a period of five (5) days to file their Reply to petitioner's Motion for Reconsideration. However, records of the RTC of La Trinidad show that respondents failed to file their Reply or Comment within the prescribed period.

> The RTC of La Trinidad then issued the Order dated December 15, 2011, denying petitioner's Motion for Reconsideration. Said Order was received by petitioner on December 19, 2011.
>
> On January 18, 2012, petitioner filed with this Court, by registered mail, the instant Petition for Review appealing the issuances of the RTC of La Trinidad, specifically, the Order dated August 31, 2011 and the Order dated December 15, 2011. Petitioner prays therein that this Court grant the Petition for Review and give due course thereto.
>
> In the Resolution dated February 10, 2012, without necessarily giving due course to the Petition for Review, this Court directed respondents to file their Comment within ten (10) days from notice. However, respondents failed to file their Comment to the Petition for Review. Thus, in the Resolution dated April 24, 2012, this Court gave the parties a period of thirty (30) days from notice within which to file their respective Memoranda.
>
> On June 14, 2012, petitioner filed its Memorandum by registered mail, which was received by this Court on June 21, 2012. As to respondents, records show that they failed to file their Memorandum.
>
> In the Resolution dated October 29, 2012, this Court, after noting the transmittal to this Court by the Acting Branch Clerk of Court of the RTC of La Trinidad of the entire records of Civil Case No. 11-CV-2756, submitted the instant Petition for Review for decision.

On June 7, 2013, the Court in Division issued the assailed Decision,[13] denying the petition for lack of merit.

On July 1, 2013, petitioner filed, by registered mail, its "Motion for Reconsideration"[14] ("MR").

On July 17, 2013, the Court issued a Resolution[15] ordering respondent to file its Comment on petitioner's Motion for Reconsideration. On September 4, 2013, the Court's Judicial Records

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[13] *Records, Decision*, pp. 197-219.
[14] *Ibid.*, pp. 220-229.
[15] *Id.*, p. 232.

Division issued a Records Verification[16] report stating that respondents failed to file their Comment to petitioner's MR.

On October 9, 2013, the Court issued the assailed Resolution[17] upholding the Decision and denying the Motion for Reconsideration.

On November 26, 2013, petitioner filed, by registered mail, the instant Petition for Review.[18] The Court *En Banc* issued a Resolution[19] dated February 5, 2014, ordering respondents to file their comments, not a motion to dismiss, within ten (10) days from notice.

On April 8, 2014, the Court's Judicial Records Division issued a Records Verification[20] report stating that respondents failed to file their comments on the Petition for Review.

On December 22, 2014, the Court *En Banc* issued a Resolution[21] which resolved to give due course to the Petition for Review, thus, requiring the parties to submit their respective Memoranda within thirty (30) days from receipt of the Resolution.

On April 7, 2015, petitioner filed, by registered mail, its Memorandum.[22] On June 8, 2015, the Judicial Records Division issued a Records Verification[23] report stating that respondents failed to file their Memorandum.

On June 22, 2015, the Court *En Banc* resolved to submit the case for decision,[24] hence, this Decision.

The Issue[25]

WHETHER THE HONORABLE COURT'S SPECIAL SECOND DIVISION COMMITTED A GRAVE ERROR IN

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[16] *Records*, p. 233.
[17] *Ibid.*, pp. 235-237.
[18] *Rollo*, pp. 1-140, with Annexes.
[19] *Id.*, pp. 142-143.
[20] *Id.*, p. 144.
[21] *Id.*, pp. 273-274.
[22] *Id.*, pp. 274-283.
[23] *Id.*, p. 284.
[24] *Id.*, p. 286.
[25] *Id.*, *Petition for Review*, p. 3.

DISMISSING THE PETITION FOR REVIEW FILED BY THE PETITIONER, ASSAILING THE DECISION OF THE REGIONAL TRIAL COURT OF LA TRINIDAD, BENGUET.

Petitioner's Arguments

Petitioner argues that *Section 195 of the LGC* assumes that the assessment is legal; that if the assessment is not valid, a separate mode or remedy to question the same must be entertained and an action for prohibition is proper; that it has no other plain, speedy, and adequate remedy in the ordinary course of law since it can no longer appeal the legal issues against tax assessments and the notices of garnishment; and that it is not taxable pursuant to *Section 35 of Presidential Decree* ("PD") *No. 269*, it being a non-stock and non-profit corporation.

The Ruling of the Court En Banc

The Court finds no merit in the present Petition for Review.

It must be stated at the outset that petitioner raised the same issues raised in its Petition for Review before the Court in Division, which has been properly and exhaustively addressed in its Decision dated June 7, 2013, we quote:

> This Court, having jurisdiction to entertain the appeal, shall now proceed to resolve the issue on whether or not the RTC of La Trinidad committed an error when it dismissed the original Petition for Prohibition filed by petitioner.
>
> Petitioner alleges that the RTC of La Trinidad erred in stating –
>
> 1. that a Petition for Prohibition cannot be availed of as a remedy in this case in view of the lapse of the thirty (30) day period to appeal provided under Section 195 of the LGC; and
>
> 2. that a Petition for Prohibition cannot be availed of as a remedy to question the validity of a tax assessment issued by respondents.

Petitioner contends that the Petition for Prohibition was properly filed despite petitioner's failure to avail of the remedy provided under Section 195 of the LGC. Petitioner argues that Section 195 of the LGC does not proscribe the remedy of prohibition when the issue raised is the legality of the assessment. Citing the case of *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao (NPC case),* petitioner avers that Section 195 of the LGC will apply only when the taxpayer raises an issue as to the amount of the local business tax sought to be collected and not when the issue pertains to the legality of respondents' right to issue the assessment. In addition, petitioner claims that since the assessment has become final and unappealable, it is left with no other choice but to seek relief through a Petition for Prohibition, citing as basis the decision of the Supreme Court in the case of *The City Government of Quezon City, et al., vs. Bayan Telecommunications, Inc. (Bayantel case).*

Petitioner further avers that the thirty-day period under Section 195 of the LGC does not apply when the assessment itself is assailed for not having sufficient legal or statutory basis.

Petitioner's contentions are without merit.

Section 2 of Rule 65 of the Rules of Court provides:

> "SEC. 2. *Petition for prohibition.* - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are **without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law,** a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require." *(Emphasis supplied)*

In a Petition for Prohibition against any tribunal, corporation, board, or person, whether exercising judicial, quasi-judicial, or ministerial functions, who has acted without or in excess of jurisdiction or with grave abuse of discretion, the petitioner prays that judgment be rendered, commanding the respondent to desist from further proceeding in the action or matter specified in the petition. For a writ of prohibition to prosper, the requisites are:

(1) the impugned act must be that of a tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions, who has acted without or in excess of jurisdiction or with grave abuse of discretion; and

(2) there is no plain, speedy, and adequate remedy in the ordinary course of law.

The issue now is whether or not petitioner can seek the issuance of a writ of prohibition to enjoin respondents from collecting the assessments which have become final and unappealable on account of petitioner's failure to appeal the same with the RTC within the period prescribed under Section 195 of the LGC.

This Court answers in the negative.

Section 195 of the LGC states:

> "SEC. 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)*

The records show that petitioner timely protested the Notices of Assessments as well as the Amended Notices of Assessments issued by respondents. Unfortunately, petitioner failed to file an appeal with the RTC within thirty (30) days from receipt of respondents' letter dated May 13, 2011, which denied petitioner's protest, with finality. Instead of filing an appeal with the RTC, petitioner opted to write another letter dated May 30, 2011 to respondents reiterating that it is not liable for local business tax as it is a non-stock, non-profit cooperative.

Since no appeal was filed by petitioner to the RTC of La Trinidad within the thirty-day period provided under Section 195 of the LGC, the assessments for local business taxes for the years 2006, 2007, and 2008 became conclusive and unappealable. Consequently, petitioner is precluded from questioning the validity of the assessments even through a Petition for Prohibition.

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In the instant case, there is no issue on non-exhaustion of administrative remedies. In fact, records reveal that petitioner fully exhausted the administrative remedy of filing protest letters with the local treasurer within the period provided under Section 195 of the LGC. What petitioner failed to do was to timely resort to judicial action within the period provided under Section 195 of the LGC.

Section 195 of the LGC already provided for the remedy of an appeal with the court of competent jurisdiction (which is the RTC) in the event that the taxpayer's protest is denied or unacted upon by the local treasurer. The RTC, as a trial court, can decide on both factual and purely legal issues. A taxpayer should avail of this remedy of appealing the decision or inaction of the local treasurer to the RTC so that the latter can resolve whatever legal or factual issues that the taxpayer may raise in contesting the assessment.

In the instant case, if only petitioner has timely availed of this remedy of appeal to the RTC, then the RTC would have acquired jurisdiction to determine the legality or validity of the Notices of Assessment/ Amended Notices of Assessment issued by respondents.

Since the decision of respondents on petitioner's protest could have been appealed before the RTC within the period provided under Section 195 of the LGC, the remedy of prohibition cannot be resorted to by petitioner for the purpose of questioning the legality of the assessment. In the case of *Amalia Vda. De Suan, et al. vs. Eriberto A. Unson, et al.*, the Supreme Court categorically stated that [']special civil actions of certiorari and prohibition do not lie where the remedy by appeal has been lost because said special civil actions cannot take the place of an appeal.['] The pertinent portion thereof reads:

> The instant petition for prohibition was filed long after the trial court's decision had become final and executory. **Time and again We have dismissed petitions for *certiorari* and prohibition to annul decisions or orders which could have, but have not been appealed.** Where the court has jurisdiction over the subject matter as respondent Judge has in this case, the orders or decisions upon all questions pertaining to the cause are orders or decisions within its jurisdiction, and however erroneous they may be, they cannot be corrected by *certiorari* and *prohibition.* **These special civil actions do not lie where the remedy by appeal has been lost because said special civil actions cannot take the place of an appeal.** (Dela Cruz v. IAC, 134 SCRA 417; Santos, Jr. v. Court of Appeals, *supra).* Evidently, **petitioners had no valid excuse to resort to the extraordinary writs of *certiorari* and *prohibition* when appeal had been available to them** and which they, in fact, already initiated but did not pursue. (Sarmiento v. Intermediate Appellate Court, 153 SCRA 104)." *(Emphases supplied)*

Based on all the foregoing, this Court holds that the RTC of La Trinidad did not err in dismissing petitioner's Petition for Prohibition. The special civil action for prohibition cannot be availed of as a substitute for the lost appeal. Petitioner should have assailed the validity of the local tax assessments by filing an ordinary appeal with the RTC within the period specified under Section 195 of the LGC. Since petitioner failed to file a timely appeal with the RTC, petitioner lost its right to question the validity of the Notices of Assessment/ Amended Notices of Assessment, as they became conclusive and unappealable.

To stress, the right to appeal is statutory and one who seeks to avail of it must comply with the statute or rules.[26] The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays.[27] Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory.[28] Thus, petitioner's failure to follow the proper remedy provided under the LGC is fatal to its cause.

Petitioner's contention that it is not seeking exemption because it is a cooperative, but rather, it is claiming that it is not bound to pay business tax at all because its business is not included in the definition of a business that is taxable is untenable.

It is clearly stated in its Memorandum that it anchors its claim for exemption[29] on *Section 35 of PD No. 269*. The Court in Division has already discussed that the privileges granted to electric cooperatives under *PD No. 269* were already validly withdrawn, to wit:[30]

> Finally, *assuming arguendo* that the Petition for Prohibition was a proper remedy, the same will not prosper to enjoin respondents from collecting said local tax assessments as the act of respondents in imposing local business tax on petitioner was valid and legal.
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> In the recent case of *City of Iriga vs. Camarines Sur III Electric Cooperative, Inc. (CASURECO III) (Casureco III case)*, the Supreme Court, citing the case of *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) vs. The Secretary, Department of Interior and Local Government (Philreca case)*, reiterated that the tax privileges granted to electric cooperatives registered with NEA under PD No. 269 were validly withdrawn and only those registered with the Cooperative Development Authority (CDA) under RA No. 6938 may continue to enjoy the tax privileges under the Cooperative Code. The Supreme Court held that Casureco III is liable for franchise tax, which is a local tax, notwithstanding its non-

[26] *Gregorio de Leon v. Hercules Agro Industrial Corporation, et. al.*, G.R. No. 183239, June 2, 2014.
[27] *Ibid.*
[28] *Boardwalk Business Ventures, Inc., v. Elvira A. Villareal, et. al.*, G.R. No. 181182, April 10, 2013, 695 SCRA 468.
[29] *Rollo, Petitioner's Memorandum*, para. (b), p. 281.
[30] *Id., Decision*, pp. 215-217.

profit nature. Significant portions of the Supreme Court's decision in the *Casureco III case* read:

> "PD 269, which took effect on August 6, 1973, granted electric cooperatives registered with the [National Electrification Authority] NEA, like CASURECO III, several tax privileges, one of which is exemption from the payment of 'all national government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes.'
>
> On March 10, 1990, Congress enacted into law RA 6938, otherwise known as the 'Cooperative Code of the Philippines,' and RA 6939 creating the CDA. The latter law vested the power to register cooperatives solely on the CDA, while the former provides that electric cooperatives registered with the NEA under PD 269 which *opt not to register* with the CDA shall not be entitled to the benefits and privileges under the said law.
>
> **On January 1, 1992, the LGC took effect, and Section 193 thereof withdrew tax exemptions or incentives previously enjoyed by 'all persons, whether natural or juridical, including government owned or controlled corporations, *except* local water districts, *cooperatives duly registered under R.A. No. 6938,* non-stock and non-profit hospitals and educational institutions.'**
>
> In *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) v. The Secretary, Department of Interior and Local Government,* the Court held that the **tax privileges granted to electric cooperatives registered with NEA under PD 269 were validly withdrawn and only those registered with the CDA under RA 6938 may continue to enjoy the tax privileges under the Cooperative Code.**
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> xxx xxx xxx

In fine, the records show that petitioner was granted a franchise by the NEA to operate an electric light and power service for a period of fifty (50) years from March 20, 1978 in the City of Baguio and the thirteen (13) municipalities, which include the Municipality of La Trinidad. Applying the decisions of the Supreme Court in the *Casureco III case* and the *Philreca case,* since petitioner operates within the Municipality of La Trinidad, and considering that tax privileges granted to electric cooperatives registered with NEA under PD No. 269

were validly withdrawn, petitioner is liable to pay local business tax to respondent Municipality of La Trinidad, *albeit* being a non-stock, non-profit cooperative.

Finally, tax exemptions are construed strictly against the taxpayer.[31] As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[32] The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law.[33]

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED.** Accordingly, the assailed Decision of the Court in Division dated June 7, 2013, and Resolution dated October 9, 2013 are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO see concurring & dissenting opinion
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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[31] *Applied Food Ingredients Company, Inc., v. Commissioner of Internal Revenue,* G.R. No. 184266, November 11, 2013, 709 SCRA 164.

[32] *BPI- Family Savings Bank, Inc. v. Court of Appeals, et. al.,* G.R. No. 122480, April 12, 2000, 330 SCRA 507.

[33] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.,* G.R. No. 127105, June 25, 1999, 309 SCRA 87.

CAESAR A. CASANOVA Associate Justice	**ESPERANZA R. FABON-VICTORINO** Associate Justice
CIELITO N. MINDARO-GRULLA Associate Justice	**AMELIA R. COTANGCO-MANALASTAS** Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to *Section 13, Article VIII of the Constitution,* it is hereby certified that 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

BENGUET ELECTRIC COOPERATIVE (BENECO), represented by GERARDO P. VERSOZA, General Manager,
Petitioner,

- versus -

THE MUNICIPALITY OF LA TRINIDAD BENGUET, and WILMA LINTAN, Municipal Treasurer,
Respondents.

CTA EB NO. 1091
(CTA AC No. 85)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, *JJ.*

Promulgated:
MAY 06 2016 3:49 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ:

With the exception of the assessment for 2006 *(based on the gross revenue/sales realized in 2005)*,[1] I concur with the *ponencia* in affirming the assailed Decision of the Court in Division particularly in declaring that petitioner is precluded from questioning the validity of the assessments.

With due respect, upon review of records, it is disclosed that respondents had no authority to assess petitioner of local business tax for 2006 due to prescription.

[1] RTC Records, Civil Case No. 11-CV-2756, p. 36.

The period to assess local taxes is five (5) years from the date when they become due per Section 194 of the Local Government Code (LGC) which 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.
>
> (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." *(Boldfacing supplied)*

As to when the taxes become due, Sections 166 and 167 of the LGC provide:

> SECTION 166. Accrual of Tax. — Unless otherwise provided in this Code, **all local taxes, fees, and charges shall accrue on the first (1st) day of January of each year**. However, new taxes, fees or charges, or changes in the rates thereof, shall accrue on the first (1st) day of the quarter next following the effectivity of the ordinance imposing such new levies or rates.
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> xxx xxx xxx
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> Section 167. Time of Payment. - Unless otherwise provided in this Code, **all local taxes, fees, and charges shall be paid within the first twenty (20) days of January or of each subsequent quarter**, as the case may be. The sanggunian concerned may, for a justifiable reason or cause, extend the time for payment of such taxes, fees, or charges without surcharges or penalties, but only for a period not exceeding six (6) months. *(Boldfacing supplied)*

Noteworthy, the 2005 Revised Revenue Code of the Municipality of La Trinidad, Province of Benguet (Ordinance No. 12-2005) contains provisions on the accrual of tax and the time of payment of local taxes similar to Sections 166 and 167 of the LGC, to wit:

> Sec. 7A-02. *Accrual of Tax*. Unless otherwise provided in this Ordinance, all taxes and charges imposed herein shall accrue on the first (1^{st}) day of January of each year. However, new taxes, fees or charges, or changes in the rate of existing taxes, fees, or

> charges, shall accrue on the first day of the quarter next following the effectivity of the Ordinance imposing such new levies of taxes.
>
> Sec. 7A-03. *Time of Payment.* Unless specifically provided herein all taxes, fees and charges imposed in this Ordinance shall be paid within the first twenty (20) days of January or each subsequent quarter as the case may be.[2]

Otherwise stated, under the LGC and the 2005 Revised Revenue Code of the Municipality of La Trinidad, Province of Benguet, all local taxes, fees, and charges shall accrue on the first (1st) day of January of each year, and the payment thereof shall be made within the first twenty (20) days of January or of each subsequent quarter, as the case may be.

In the **Bureau of Local Government Finance Opinion dated September 4, 2013**, the Bureau of Local Government Finance made the following declaration:

> "Generally, all local taxes, fees, and charges **accrue on the first (1st) day of January of each year, but the same may also be paid in quarterly installment on or before the first twenty (20) days of each subsequent quarter**. The exception to this rule is when the Code itself provides otherwise, or when the sanggunian concerned fixes a different date whenever so authorized.
>
> The word **'accrue' means to become due**, or to begin to have existence. Hence, the **phrase 'accrual of the tax' refers to the time the tax becomes due and collectible**. On the other hand, the 'time for payment of tax' refers to the date the tax is payable without penalty, beyond which the tax due will be subjected to surcharges and penalties for late payment. *(BLGF 1st Indorsement dated August 10, 2006 - Sections 165, 166, 167 and 168 of the LGC)" (Boldfacing supplied)*

In fact, in *National Power Corporation vs. Province of Cagayan,*[3] this Court made the following pronouncement:

> "Anent the second issue on prescription, the Assessment Letter issued by respondent Iringan on March 18, 2008 covers the alleged franchise tax liability of petitioner for the years 2001 to 2007. However, the Court notes that the period for assessing and collecting franchise tax from petitioner for the periods 2001 to 2003 have already prescribed pursuant to Section 194 (a) of the LGC, which provides that local taxes, fees, or charges shall be assessed

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[2] RTC records, pp. 76, 136, 137.
[3] CTA AC No. 84, March 1, 2013.

> within five (5) years from the date they became due. **Under Section 167 of the LGC, local taxes become due within the first twenty (20) days of January or of each subsequent quarter as the case may be**. Thus, applying Section 194 (a) of the LGC in relation to Section 167 of the same Code to this case, the periods for assessing petitioner for franchise tax for the years 2001 to 2003 had already prescribed, to wit: xxx" *(Boldfacing supplied)*

Parenthetically, the due date of local taxes as opined by the Bureau of Local Government Finance appears consistent with the provisions of Sections 166 and 167 of the LGC.

In light of the foregoing, I humbly submit that prescription had already set in relative to the assessed business tax for 2006. Counting the 5-year prescriptive period from **January 1, 2006**, the Municipality of La Trinidad, Benguet had only until January 1, 2011 to assess the tax. Since the Notice of Assessment for 2006 is dated **04 February 2011**, it is apparent that the same was issued beyond the 5-year prescriptive period.

Petitioner's failure to appeal within the 30-day period pursuant to Section 195 of the LGC is inconsequential considering that a void assessment bears no fruit:

> "The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit."[4]

All told, I vote to partially grant the Petition for Review. Accordingly, the Notice of Assessment for local business tax for 2006 against petitioner must therefore be CANCELLED due to prescription.

ROMAN G. DEL ROSARIO
Presiding Justice

[4] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.