Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

MUNICIPALITY OF LAGUINDINGAN AND MUNICIPAL TREASURER OF LAGUINDINGAN, MISAMIS ORIENTAL,
Petitioners,

-versus-

NATIONAL POWER CORPORATION AND THE REGIONAL TRIAL COURT BRANCH 44 OF INITAO, MISAMIS ORIENTAL, 10TH JUDICIAL REGION,
Respondents.

CTA AC No. 106
For: Local Business Tax Assessment

Members:

DEL ROSARIO, PJ,
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

OCT 10 2014 ; 3:56 p.m.

x- -x

D E C I S I O N

MINDARO-GRULLA, J.:

This is an appeal pursuant to Section 7(a)(3) of Republic Act (R.A.) No. 1125, as amended,[1] in relation to Section 4(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[2] seeking to reverse and set aside the

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[1] REPUBLIC ACT NO. 1125,
AN ACT CREATING THE COURT OF TAX APPEALS, as amended
SEC. 7. *Jurisdiction*. - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx
(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

[2] RULE 8
PROCEDURE IN CIVIL CASES
SEC. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner

Decision dated April 25, 2012 and the Order dated March 25, 2013, both rendered by Regional Trial Court (RTC)-Branch 44 of Initao, Misamis Oriental in Civil Case No. 2010-930, which nullified and set aside the business tax assessment issued by the Municipal Treasurer of Laguindingan against National Power Corporation (NPC) for taxable years 2003 to 2009.

Petitioners are the Municipality of Laguindingan (petitioner municipality) and the Municipal Treasurer of Laguindingan (petitioner treasurer), all of Misamis Oriental, with official address at the Municipal Hall, Barangay Poblacion of said local government unit. Petitioners are the appellees in Civil Case No. 2010-930.

Public respondent is the RTC-Branch 44 of Initao, Misamis Oriental, Tenth Judicial Region, with office address at the Hall of Justice Building, Barangay Poblacion, Initao, Misamis Oriental.

Private respondent National Power Corporation is a government-owned and -controlled corporation existing under R.A. No. 6395.[3] Respondent NPC is the appellant in Civil Case No. 2010-930.

The factual antecedents[4] as found by the lower court are as follows:

> "The appellant averred in its Appeal that on January 11, 2010, it received an Assessment Letter from Laguindingan demanding payment of the Business Taxes from '2003 to present' in the amount of Pesos: 12,586,691.75. The NPC through its General Counsel Melchor P. Ridulme replied in a letter dated

of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[3] An Act Revising the Charter of the National Power Corporation

[4] Decision, Annex "A" of the Petition For Review, Docket, pp. 38-39

March 5, 2010 and sent by registered mail on the same date protesting the imposition of 'Franchise Tax'. In its Prayer, NPC prayed that the assessment issued by the appellees on January 11, 2010 be nullified and set-aside and that NPC be declared exempt from payment of Franchise Tax in the Municipality of Laguindingan, Misamis Oriental. It also prayed for such other relief just and equitable under the premises.

Summons was duly served, and Laguindingan filed its 'Answer to the Complaint' attaching thereto a copy of Municipal Ordinance No. 117 Series of 2006. In its 'Answer', Laguindingan asserted *inter alia,* that it is not demanding payment of the Franchise Tax; it is demanding payment of the Business Tax. It then prayed that the appeal be set aside or dismissed for being prematurely filed, or in the alternative, that the merit of the assessment be resolved, and that NPC be held liable to pay its business tax to the Municipality of Laguindingan, Misamis Oriental.

The appellant then filed its 'Reply'. The case was referred to the Philippine Mediation Center for mediation. But the case was returned to the Court, after which Hon. Denis Alcantar referred the case for further preliminary conference [Judicial Dispute Resolution] to the Municipal Circuit Trial Court of Guitagum-Laguindingan, Misamis Oriental. The Presiding Judge of the Municipal Circuit Trial Court of Guitagum-Laguindingan, Judge Teofilo T. Adilan however returned the case to this Court as the case involves purely legal issues.

On January 12, 2011, a preliminary conference for the marking of evidence was conducted. Thereafter, the Pre-Trial Conference was conducted on August 19, 2011, presided by Acting Presiding Judge Judy A. Sia-Galvez, wherein the Parties agreed on the following issues:

- *Whether or not National Power Corporation is doing business in Laguindingan, Misamis Oriental;*
- *Whether or not National Power Corporation is liable to pay business tax to Laguindingan;*
- *Whether or not National Power Corporation is liable to pay business tax for the years 2003 to 2009; and*
- *Whether or not the right of Laguindingan to collect the business tax for the years 2003 to 2004 has not prescribed.*

The Court received the Position Paper of Laguindingan on October 20, 2011, while the Position Paper of NPC was received by the Court on November 3, 2011. Laguindingan submitted its 'Compliance' to the Order of this Court requiring it to resolve the Protest of NPC. Then the case was heard on March 9, 2012, and in its Order the parties finally submitted the case for resolution." *(Emphases Omitted)*

RTC-Branch 44 of Initao, Misamis Oriental issued a Decision[5] on April 25, 2012, which granted herein respondent NPC's appeal, thereby nullifying the assessment issued against it, and stating that herein petitioners do not have the authority to impose business tax on respondent NPC. The *fallo* of the lower court's Decision reads as follows:

Decision dated April 25, 2012:

"**WHEREFORE**, premises considered, finding the Municipality of Laguindingan to be without lawful authority to impose Business Tax on the Appellant NPC, this Court hereby **GRANTS** the appeal. Consequently, the Assessment issued by Laguindingan through its Municipal Treasurer on January 11, 2010 is hereby **NULLIFIED AND SET ASIDE**.

SO ORDERED.

[5] Annex "A" of the Petition For Review, Docket, pp. 38-43

Thereafter, on May 31, 2012, herein petitioners filed their motion for reconsideration of the said Decision. On March 25, 2013, the RTC-Branch 44 of Initao, Misamis Oriental issued an Order[6] denying the said motion, as follows:

Order dated March 25, 2013:

"**WHEREFORE**, premises considered, the Motion for Reconsideration is hereby **DENIED**.

SO ORDERED."

Undaunted, petitioners filed a Petition for Review[7] on June 24, 2013 with the Court of Tax Appeals (CTA).

This Court issued a Resolution[8] on July 5, 2013, stating that without necessarily giving due course to the Petition for Review, respondent NPC is ordered to file its Comment, and not a Motion to Dismiss, within ten (10) days from receipt of notice.

Respondent NPC filed its Comment on August 16, 2013.[9]

As per Resolution on September 24, 2013[10], this Court gave due course to the instant petition and ordered the parties to submit their memoranda within thirty (30) days from receipt of the Resolution.

Respondent NPC filed its Memorandum[11] on November 4, 2013; while petitioners filed their Memorandum on

[6] Order, Annex "B" of the Petition For Review, Docket, pp. 44-45
[7] Docket, pp. 20-45
[8] Docket, p. 48
[9] Docket, pp. 58-118
[10] Docket, p. 120
[11] Docket, pp. 121-134

January 24, 2014, but which was denied inclusion into the case records. Accordingly, this Court deemed the case submitted for decision on March 20, 2014.[12]

In their Petition for Review, petitioners raised the following issues[13] for this Court's resolution:

> "1. Whether or not respondent NPC is doing business in the Municipality of Laguindingan, Misamis Oriental;
>
> 2. Whether or not respondent NPC is liable to pay business tax to petitioner Municipality of Laguindingan, Misamis Oriental;
>
> 3. Whether or not respondent NPC is liable to pay business tax to for the years 2003 to 2009;
>
> 4. Whether or not the right of petitioner municipality to collect business tax for the years 2003 to 2004 has prescribed;
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> 5. Whether or not petitioner-appellee Municipality of Laguindingan, Misamis Oriental is prohibited from levying business tax on NPC under par. (e) of Section 142 *(should be Section 133)* of the Local Government Code;
>
> 6. Whether or not petitioner-appellee Municipality of Laguindingan, Misamis Oriental is prohibited from levying business tax on NPC under par. (o) of Section 142 *(should be Section 133)* of the Local Government Code;"

[12] Resolution, Docket, pp. 166-167
[13] Issues, Petition for Review, Docket, pp. 23-24

Anent the first and second issues, petitioners assert that respondent NPC is doing business in the Municipality of Laguindingan, Misamis Oriental since the electric power company, Misamis Oriental Electric Service Cooperative (MORESCO-Uno), regularly remits to respondent NPC its share in the gross receipts for the generated electric power. Considering that MORESCO-Uno has its principal office at Laguindingan, Misamis Oriental, petitioner municipality is thus granted the power to assess respondent NPC for business tax for having the tax *situs* thereof located within the said territory in accordance with Sections 143(b)[14] and 150(a)[15] of R.A. No. 7160, otherwise known as the "Local Government Code of 1991".

With regard to the third and fourth issues, petitioners claim that since it is only MORESCO-Uno which has records of respondent NPC's gross receipts for the years 2003 to 2009, petitioner treasurer cannot be faulted for belatedly assessing respondent NPC because MORESCO-Uno has repeatedly failed to furnish petitioners with the data of respondent NPC's gross receipts despite repeated demands. It was only in 2009 when MORESCO-Uno finally furnished petitioner treasurer the said information.

Finally, petitioners aver that public respondent RTC erred in relying on paragraphs (e)[16] and (o)[17] of Section 133

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[14] SEC. 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:
xxx
(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule: xxx

[15] SEC. 150. *Situs of the Tax.* – (a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.

[16] SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

of R.A No. 7160 as basis for granting respondent NPC's appeal. Petitioners argue that the prohibition mentioned in paragraph (e) of Section 133 is not applicable with respect to the imposition of business tax by petitioner municipality. Likewise, government instrumentalities are no longer exempt from local taxes under paragraph (o) thereof.

On the other hand, respondent NPC claims that being created by virtue of Commonwealth Act No. 120 on November 3, 1936, it is an agency of the national government. It argues that by express mandate of the LGC of 1991, specifically under paragraph (o) of Section 133, local governments cannot impose any kind of tax on the national government, its agencies and instrumentalities. However, assuming *ex gratia argumenti* that it does not fall within the purview of said section, respondent NPC asserts that it is still not liable to pay business taxes to petitioners because Laguindingan, Misamis Oriental is not the appropriate *situs* of tax. Since it has no power plant, branch, or sales outlet located in Laguindingan, Misamis Oriental, the second sentence of paragraph (a) of Section 150 of the Local Government Code applies, which provides that the city or municipality where its principal office is located, which is in Quezon City, is the one authorized to collect business taxes and not petitioners. Moreover, respondent NPC argues that petitioners' authority to assess and collect taxes for taxable years 2003 and 2004 had already prescribed given the five (5)-year prescriptive period provided under Section 194[18] of the Local Government Code.

After due consideration of the arguments presented by the parties, this Court finds merit in the instant petition.

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(e) Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;

[17] (o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

[18] SEC. 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. xxx

Perusal of the records of the case shows that the RTC-Branch 44 of Initao, Misamis Oriental summarized the issues raised therein into whether or not NPC is liable to pay business tax to the Municipality of Laguindingan, Misamis Oriental, and further stating that all other issues are corollaries which are dependent on the affirmative resolution of the said fundamental issue. In resolving the controversy, the RTC reached its conclusion in view of the opinion that the issues involved therein are purely legal,[19] to wit:

> "xxx The case was referred to the Philippine Mediation Center for mediation. But the case was returned to the Court, after which Hon. Denis Alcantar referred the case for further preliminary conference [Judicial Dispute Resolution] to the Municipal Circuit Trial Court of Guitagum-Laguindingan, Misamis Oriental. The Presiding Judge of the Municipal Circuit Trial Court of Guitagum-Laguindingan, Judge Teofilo T. Adilan however **returned the case to this Court as the case involves purely legal issues**." *(Emphasis supplied)*

However, on the present appeal, the issues raised by petitioners as well as the factual allegations made by them are evidentiary in nature. In other words, petitioners should have substantiated the same with evidence during the proceedings before the court *a quo.* Since said factual allegations are not matters of judicial notice under Rule 129 of the Revised Rules of Court, whether mandatory[20] or discretionary,[21] this Court cannot give due weight on said allegations in the disposition of this case. The Supreme

[19] Page 2 of the RTC Decision, Annex "A" of the Petition For Review, docket, p. 39

[20] SECTION 1. *Judicial notice, when mandatory.* - A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

[21] SEC. 2. *Judicial notice, when discretionary.* - A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Court has stressed time and again that allegations must be proven by sufficient evidence. The settled rule is that mere allegation is not evidence[22] or proof.[23]

Consequently, the issues pertaining to whether respondent NPC is doing business within the territorial jurisdiction of the Municipality of Laguindingan, Misamis Oriental and whether it generates revenues (that become part of its gross receipts) which may eventually subject it to business tax, as alleged by petitioners, were not properly resolved.

On a different note, a scrutiny of the parties' pleadings reveals a procedural defect that was overlooked by the court *a quo*.

It must be emphasized that jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by the consent of the parties. It can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex mero motu*.[24]

The CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[25] Section 7 of R.A. No. 1125, as further amended by R.A. No. 9282, provides:

"SEC. 7. *Jurisdiction*. - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided: C

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[22] *Romulo Coronel, et al. vs. The Court of Appeals, et al.*, G.R. No. 103577, October 7, 1996, citing *Ng Cho Cio vs. Ng Diong*, 110 Phil. 882 (1961); *Recaro vs. Embisan*, 2 SCRA 598 (1961); *Lagasca vs. De Vera*, 79 Phil. 376 (1947)

[23] *Malayan Insurance Co. Inc. vs. Philippines First Insurance Co., Inc., et al.*, G.R. No. 184300, July 11, 2012

[24] *Commissioner of Internal Revenue vs. Leonardo Villa, et al.*, G.R. No. L-23988, January 2, 1968

[25] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007

xxx xxx xxx

> (3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

In line with this, Section 195 of the Local Government Code requires that a taxpayer, who questions the validity or legality of an assessment issued by the local treasurer, may within sixty (60) days from receipt of the notice of assessment file a written protest with the local treasurer contesting the said assessment. Thereafter, the local treasurer shall decide the protest within sixty (60) days from the time of its filing. In case the local treasurer denies the protest or fails to act within the 60-day period provided for by law, the taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the 60-day period within which to appeal before a court of competent jurisdiction. Otherwise, the assessment becomes conclusive and unappealable. Section 195 of the Local Government Code reads:

> "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)*

Clearly, the three separate periods mentioned above are established for compliance as prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. For this reason the courts construe these provisions of statutes as mandatory.[26] Failure to comply with the 60-day waiting period violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the RTC will not acquire jurisdiction over the taxpayer's petition.

In the instant case, the statutory periods were not followed. As correctly alleged by petitioners in their petition, before the lapse of the 60-day period within which petitioner treasurer may act on respondent NPC's protest, the latter abandoned its protest and filed an appeal with the RTC-Branch 44 of Initao, Misamis Oriental. In fact, as stated in its Comment,[27] respondent NPC filed its protest with the petitioner treasurer on March 5, 2010;[28] it further attached a copy of its letter-protest[29] dated March 5, 2010 to substantiate its claim. Accordingly, counting the 60-day period therefrom, petitioner treasurer had until May 4, 2010 within which to resolve respondent NPC's protest. Unfortunately, respondent NPC filed its Appeal (Pursuant to Section 195, R.A. 7160, otherwise known as the Local Government Code)[30] with the RTC-Branch 44 of Initao,

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[26] *Jardine Davies Insurance Brokers, Inc. vs. Hon. Erna Aliposa, et al.*, G.R. No. 118900, February 27, 2003
[27] Docket, pp. 58-118
[28] The Factual and Juridical Antecedents, Comment, docket, p. 59
[29] Annex "2" of Comment, Docket, pp. 75-76
[30] Annex "3" of Comment, Docket, pp. 77-91

Misamis Oriental on May 4, 2010, which is the last day within which petitioner treasurer may resolve the said protest. Considering that days are understood to be of twenty-four (24) hours in accordance with Article 13[31] of the Civil Code of the Philippines, respondent failed to observe the 60-day period specifically given to petitioner treasurer within which to resolve the protest. In other words, respondent NPC prematurely filed its appeal with the RTC.

Moreover, respondent NPC's failure to comply with the 60-day **mandatory** period renders its appeal with the RTC-Branch 44 of Initao, Misamis Oriental void. In fact, Article 5 of the Civil Code of the Philippines, as amended, provides that "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." Hence, respondent NPC's failure to comply with the 60-day **mandatory** period renders its appeal with the RTC-Branch 44 of Initao, Misamis Oriental void and as such, its subsequent Petition for Review cannot be legitimized by the RTC or by this Court since it is considered void from the start.

It is well settled in this jurisdiction that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. In other words, a right cannot spring in favor of a person from his own void or illegal act. This principle is repeated in Article 2254 of the Civil Code of the Philippines, as amended, which states that "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others."[32]

This Court cannot grant its imprimatur on the opinion that non-compliance with mandatory and jurisdictional

[31] Art. 13. When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.
If months are designated by their name, they shall be computed by the number of days which they respectively have.
In computing a period, the first day shall be excluded, and the last day included.

[32] *Alcantara vs. Department of Environment and Natural Resources, et al.*, G.R. No. 161881, July 31, 2008.

conditions, such as observance of prescriptive periods and exhaustion of administrative remedies, can be excused if the claim is otherwise meritorious. Such precedent will render meaningless mandatory and jurisdictional requirements, and will open the floodgates for unscrupulous claims.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The assailed Decision dated April 25, 2012 and the Order dated March 25, 2013, both rendered by the RTC-Branch 44 of Initao, Misamis Oriental in Civil Case No. 2010-930 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the appeal filed by respondent in Civil Case No. 2010-930 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division