REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL TRANSMISSION CORPORATION *Petitioner,*	CTA EB CASE No. 1250 (CTA AC No. 112)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
MUNICIPALITY OF LABRADOR, PANGASINAN, represented by the MUNICIPAL TREASURER OF LABRADOR, PANGASINAN. *Respondent.*	Promulgated: APR 08 2016 2:35 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* filed pursuant to Rule 43 of the Rules of Court, in relation to Rule 8 Section 4(b)[1] of the Revised Rules of Court of Tax Appeals, of the Decision dated September 3, 2014[2] and Resolution dated November 12,

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[1] SEC. 4. *Where to appeal; mode of appeal.* –

xxx xxx xxx

(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.

[2] Penned by Associate Justice Juanito C. Castañeda Jr., concurred in by Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas, *En Banc* Docket, pp. 42-53.

2014,[3] rendered by the Second Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated September 3, 2014:

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. The assailed **ORDER** of the RTC dated June 28, 2013 which upheld the **DECISION** dated December 26, 2012, both in Civil Case No. 19086 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Complaint filed by respondent TRANSCO in the RTC in Civil Case No. 19086 is hereby **DENIED** for lack of merit.

SO ORDERED."

Resolution dated November 12, 2014:

"**WHEREFORE,** respondent's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED."

The facts of the case as recited by the Second Division in its Decision[4] are as follows:

"Petitioner Municipality of Labrador, Pangasinan is a local government unit created by law and with capacity to sue and be sued, with its office at the Municipal Hall, Poblacion, Labrador, Pangasinan; while petitioner Office of Municipal Treasurer is a department of the Municipality of Labrador, with its office at Municipal Hall, Labrador, Pangasinan.

On the other hand, respondent National Transmission Corporation (TRANSCO) is a government-owned and -controlled Corporation

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[3] Penned by Associate Justice Juanito C. Castañeda Jr., concurred in by Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas, *En Banc* Docket, pp. 56-58.
[4] *Supra* note 2.

created under Republic Act (RA) No. 9136, with capacity to sue and be sued, with office at TRANSCO Main Building, Power Center, BIR Road corner Quezon Avenue, Quezon City.

On March 13, 2006, TRANSCO received a Notice of Assessment (1st Assessment) from the Municipal Treasurer of Labrador, Pangasinan, assessing respondent for alleged local business tax for the period covering November 1999 to December 2005 in the amount of ₱816,294,130.74.

Respondent protested the assessment in a letter dated May 9, 2006, arguing, among others, that (a) the assessment was based on mere presumptions and not on actual and true facts; (b) the local government units cannot impose taxes, fees or charges of any kind on the agencies and instrumentalities of the government; (c) the imposition of business tax amounts to double taxation; (d) the assessment was issued beyond the prescriptive period; and (e) the assessment is erroneous.

Thereafter, a collection suit was instituted against respondent for the tax for the period December 26, 2002 to December 31, 2005 amounting to ₱104,869,800.00.

Respondent received another Notice of Assessment (2nd Assessment) dated July 22, 2008 on July 24, 2008, where it was again assessed for alleged local business tax liability for taxable years 2006 to 2007 amounting to P76,283,700.00.

On September 22, 2008, respondent protested the assessment on the ground that the assessment was premature.

Another Notice of Assessment (3rd Assessment) was issued by petitioners to respondent on February 23, 2009, assessing respondent for local business tax for the year 2008 in the amount of ₱73,799,167.46.

Respondent protested the 3rd Assessment on March 16, 2009, reiterating its previous arguments that the assessment is still premature as the authority of petitioners to impose business tax on respondent is still at issue before Branch 38 of RTC Lingayen.

However, the protest was denied by petitioners, the notice of which was received by respondent on June 22, 2009.

Another collection case was instituted against respondent for the year 2008 covered by the 3rd Assessment, docketed as Civil Case No. 18931 before RTC Branch 39 of Lingayen, Pangasinan, entitled *Municipal Treasurer of Labrador, Pangasinan vs. National Transmission Corporation.*

On January 8, 2009, petitioners issued an "Order of Seizure" to Land Bank of the Philippines (LBP) where respondent maintained an account.

On February 3, 2009, petitioners issued another order to Ms. Gilda E. Pica, President of LBP, this time an "Order to Deliver Money" to the extent of ₱76,283,700.00, representing the alleged local business tax for the period 2006 to 2007.

On February 11, 2009, petitioners issued Official Receipt No. 1026801 for the payment of basic tax in the amount of ₱76,283.700.00 for the year 2006 and 2007, indicating therein that the same was "paid under protest".

A receipt was likewise issued by the Municipal Treasurer of the Municipality of Labrador, Pangasinan on July 24, 2009, stating that he received from the Office of the Legal Counsel of the Development Bank of the Philippines (DBP) a Manager's Check No. 0001304172 dated July 23, 2009 in the amount of ₱22,380,016.38 for the account of the Office of the Municipal Treasurer of Labrador, Pangasinan in compliance with the Order of Seizure/Confiscation and Order to Deliver Bank Account of respondent for the unpaid municipal business taxes for the year 2008, inclusive of surcharges and monthly interests dated May 27, 2009.

On November 3, 2010, in the case of *National Transmission Corporation vs. Municipal Treasurer of Labrador Pangasinan, represented by Edualino Casipit in his Capacity as the Municipal Treasurer*, docketed as CTA AC No. 67, involving the notice of assessment received by respondent on February 23, 2009 for its local business tax liability for taxable year 2008, this Court ordered the suspension of collection of tax while the Court is determining the power of herein petitioners to impose and collect local business tax against herein respondent.

On March 23, 2009, respondent wrote to petitioners a letter claiming the refund of the illegally collected business tax for the years 2006 to 2007, which was later denied by petitioners in their reply letter dated April 7, 2009.

Another letter was sent by respondent to petitioners on January 24, 2011 to claim the refund of the alleged illegally collected local business taxes with a total of ₱101,933,820.91, which were collected by petitioners from respondent's depositary banks.

Subsequently, a Complaint for refund was filed by respondent with RTC Branch 37 of Lingayen, Pangasinan on February 9, 2011, alleging that it is a government instrumentality not liable to pay local tax; that the municipality has no power to impose local tax upon respondent because it is enjoying a franchise since only provinces or cities are empowered to levy local business taxes; that the municipal ordinance lacks reference to the business of electric power transmission; and that the situs of taxation is lacking.

After the filing of the parties' respective Memorandum and defendant's Reply Memorandum, the case was submitted for judgment on the pleadings.

On December 26, 2012, RTC Branch 37 of Lingayen, Pangasinan issued the assailed Decision the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, judgment is hereby rendered directing defendants to refund in favor of TRANSCO the business tax collected in the total amount of ONE HUNDRED ONE MILLION NINE HUNDRED THIRTY-THREE THOUSAND EIGHT HUNDRED TWENTY AND 91/100 PESOS (P101,933,820.91).
>
> SO ORDERED."
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> Aggrieved by the Decision of the RTC, petitioners filed their Motion for Reconsideration and Supplement to the Motion for Reconsideration, which were denied by the RTC in its Order dated June 28, 2013 and was received by respondent on July 18, 2013. As a result, petitioners filed the instant Petition for Review on August 14, 2013."

The Second Division reversed the ruling of the RTC and observed that TRANSCO was not able to appeal the assessments before the court of competent jurisdiction within the time provided for by law.[5] Moreover, payments subject of the claim for refund were not made within the respective sixty-day periods to file protests, making the assessments final and unappealable. Moreover, TRANSCO's claim for refund reveals that it was actually seeking the cancellation of the assessments.[6] Such grant of refund would necessarily violate Section 195[7] of the Local Government Code (LGC), which renders the assessments final and unappealable. Since the claim for refund is on taxes

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[5] 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.

[6] Page 8 of the Assailed Decision.
[7] *Supra,* note 5.

collected based on final and unappealable assessments, such claim must necessarily fail.

TRANSCO's Motion for Reconsideration was denied *via* the assailed Resolution herein, hence, this Petition for Review.

The issue is whether the Second Division erred in denying TRANSCO's claim for refund on the ground that it is based on final and unappealable assessments under Section 195 of the LGC.

TRANSCO contends that its action for refund is based on Section 196[8] of the LGC, and not Section 195 of the same Code. Moreover, there is nothing that requires that payment should be made within the 60-day period to file protest in case of claims for refund.

We rule to deny the Petition.

The rule is settled that the perfection of an appeal in the manner and within the prescribed period fixed by law is not only mandatory but also jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.[9]

A taxpayer dissatisfied with a local treasurer's denial of or inaction on his protest over an assessment has thirty (30) days within which to appeal to the court of competent jurisdiction. Under the law, said period is to be reckoned from the taxpayer's receipt of the denial of his protest or the lapse of the sixty (60) day period within which the local treasurer is required to decide the protest, from the moment

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[8] SEC. 196. Claim for Refund of Tax Credit. - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

[9] *Yao vs. Court of Appeals*, 398 Phil. 86, 100 (2000), cited in the case of *Team Pacific Corporation vs. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, July 11, 2012.

of its filing.[10] When TRANSCO received the local treasurer's denial of its protest, its remedy is to file an appeal with the court of competent jurisdiction. It should have not ignored the thirty-day period to file an appeal and then thereafter make a claim for refund and raise its very same arguments that it should have raised during the appeal of the denial of its protest.

As stated in TRANSCO's complaint, it raised several issues, such as Municipality of Labrador has no power to tax a government instrumentality, that the same has no power to tax a business that already enjoys franchise tax, and that TRANSCO has no *situs* within the Municipality's territory. These, however, are grounds that were supposed to be raised during an appeal before the RTC, and not when such time to appeal had lapsed and now raised as grounds for refund herein by the taxpayer.

In fact, in a case involving the very same parties and the very same issues before this Court,[11] the Division ruled therein:

> "Clearly, from the foregoing, a taxpayer who disagrees with a tax assessment issued by a local treasurer, or his duly authorized representative, may file a written protest to contest the assessment. In the event that the protest is denied, in whole or in part, by the local treasurer, or after the lapse of the 60-day prescriptive period for the local treasurer to resolve the protest, the taxpayer has thirty (30) days within which to file an "appeal" with the court of competent jurisdiction, <u>otherwise the assessment becomes conclusive and unappealable.</u>" (Underlining supplied.)

This Court's En Banc,[12] affirming the above-mentioned Decision, ruled:

> "Petitioner, however, failed to elevate respondent's denial of protest for judicial review, which amount is within the jurisdiction of the RTC. As stated earlier,

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[10] Team Pacific, *Ibid*.
[11] CTA AC No. 67, June 25, 2012.
[12] CTA EB No. 948, October 7, 2013.

> petitioner received the xxx Letter of respondent denying petitioner's protest against the assessment on April 22, 2009. Counting from the said date of receipt of the Letter, petitioner has only 30 days or until May 22, 2009 to appeal the case to the RTC. For failure to make a timely appeal on May 22, 2009, the protested local tax assessment becomes conclusive and unappealable pursuant to Section 195 of the LGC." (Underlining supplied.)

Time and again, assessments not appealed within the prescribed period divest this Court of jurisdiction because said assessments were undisputed thereby allowing it to attain finality.[13] In *Zamboanga Forest Managers Corporation vs. Pacific Timber and Supply Co.,*[14] the Supreme Court ruled as follows:

> "Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court — not even the Supreme Court — has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error. The judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law."

The Supreme Court made a more specific pronouncement in the case of *Dayrit vs. Cruz:*[15]

> "(A) suit for the collection of internal revenue taxes, as in this case, where the assessment has already become final and executory, the action to collect is akin to an action to enforce the judgment. No inquiry can be made therein as to the merits of the

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[13] *Singer Finance Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 10, March 4, 2005.
[14] G.R. No. 173342, October 13, 2010.
[15] G.R. No. L-39910, September 26, 1988, 165 SCRA 571.

> original case or the justness of the judgment relied upon." (Underlining supplied.)

With the petitioner having lost the remedy of appeal, the assessment attained finality and became executory.[16]

The rule on payment and written claim for refund is as follows: [17]

> "The taxpayer may, instead of filing a written protest, opt to pay the tax xxx and then seek a refund thereof xxx. The payment, if an assessment is therefore issued, must be made before the lapse of the 60-day period from receipt thereof; otherwise, the assessment becomes final and executory and it may no longer thus be disputed."

In the first assessment, TRANSCO had until May 13, 2006 from March 13, 2006 to pay and thereafter file for a refund. In the second assessment, TRANSCO had until September 24, 2008 from July 24, 2008 to pay and thereafter file for a refund. In the last assessment, TRANSCO had until April 23, 2009 from February 29, 2009 to pay and thereafter file for a refund. However, no payment was ever made within the said 60-day periods, indicating that refund is actually not the intention of TRANSCO.

On the other hand, within these 60-day periods, TRANSCO filed its protests in the assessments thereby indicating that its intention is to protest the assessments and not to claim for a refund after payment.

Where assessment became final, the taxpayer cannot thereafter pay and ask for a refund then institute a suit for recovery.[18] It is prohibited to reopen an assessment that has already become final, executory and collectible.[19] The taxpayer is estopped from further questioning an

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[16] *Adelardo K. Pagente vs. Hon. Esmeralda M. Tabule, Hon. Nelso Aspe and Hon. Kim Jacinto Henares*, CTA EB No. 1030, June 03, 2014.
[17] *Vitug and Acosta*, Tax Law and Jurisprudence, 3rd Ed. 2006, p. 488.
[18] *Domondon, Abelardo T.* Bar Reviewer in Taxation Vol. I, 8th Ed. 2008, p. 501.
[19] *Ibid.*

assessment that has attained a state of finality, otherwise, government revenues shall suffer.[20]

When the period to protest has lapsed, the taxpayer cannot thereafter pay for the tax then ask for refund. Since the assessments had already become final on account of TRANSCO's failure to appeal with the court of competent jurisdiction within the prescribed period, to grant its prayer thereafter to reverse the ruling in the assailed Decision, to cancel the tax assessment issued against it and to issue a tax refund in its favor is to allow TRANSCO to indirectly file an appeal against the assessments which had already become final and executory. It had been ruled that what one cannot do directly, he cannot do indirectly.[21] For to grant TRANSCO's prayer will allow it to indirectly impugn the subject assessments which have become final and executory. This will allow TRANSCO to indirectly file an appeal against the final decisions of the local treasurer of the Municipality of Labrador, Pangasinan beyond the 60-day period mandated by law.

TRANSCO contends that the assessments are void, thus, cannot be the basis of the imposition of business tax.

To circumvent the unappealable character of an assessment that had attained finality, TRANSCO resorted to the ruse of assailing not the assessment itself but the adjuncts of its validity,[22] this time, in the guise of claim for refund. However, in view of the finality of the assessments, TRANSCO cannot now raise the question of its validity in its claim for refund before this Court any more than it could have done so when it should have appealed the denial of protests before the court of competent jurisdiction.[23] An assessment, whether valid or void, shall become final and executory, when the taxpayer failed to appeal denial of protest within the prescribed period from receipt thereof.

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[20] *Ibid.*
[21] *Alvarez vs. PICOP Resources, Inc.,* G.R. No. 162243, *PICOP Resources, Inc., vs. Alvarez,* G.R. No. 164516, *Reyes vs. Paper Industries Corporation*, G.R. No. 171875, December 3, 2009.
[22] *Supra,* note 16.
[23] *Ildefonso O. Elegado, as Ancillary Administrator of the Testate Estate of the late Warren Taylor Graham, vs. Court of Tax Appeals and Commissioner Of Internal Revenue,* G.R. No. L-68385. May 12, 1989.

Thus, an assessment which is contrary to law, can attain finality, if the same is not appealed.[24] Instead of now disguising its failure to appeal in a form of refund, TRANSCO should have raised its defenses by filing an appeal with the court of competent jurisdiction to prevent the assailed assessments from becoming final and executory. Failing in this regard is procedurally detrimental to TRANSCO.

On one final note, the case of *Philippine Journalist Inc. vs. Commissioner of Internal Revenue*,[25] wherein the Supreme Court ruled that the assessment therein cannot attain finality, does not apply in this case. The basis for invalidity there was that the assessment was issued beyond the prescriptive period. It must be noted also that the cited *En Banc* case of *SPC Realty Corporation vs. Municipal Treasurer of Cainta*[26] also involves assessments issued beyond the prescriptive period.

In those cases, it was correct to rule that there were no assessments to speak of since they were issued beyond the prescriptive period. Such is not the situation in this case. The assessments here were not questioned based on the period to assess. In fact, they were issued very well within the prescriptive period. TRANSCO had the opportunity to appeal and raise its arguments before the competent jurisdiction but failed to do so.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision dated September 3, 2014 and the Resolution dated November 12, 2014 are hereby **AFFIRMED**.

SO ORDERED.

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

[24] *Supra*, note 13.
[25] G.R. No. 162852, December 2004.
[26] CTA EB 985, September 29, 2015.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice