REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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NATIONAL POWER CORPORATION, Petitioner,	**CTA EB No. 1069** (CTA AC No. 94)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
THE PROVINCE OF NUEVA VIZCAYA AND PERFECTO B. MARTINEZ, JR., Respondents.	**Promulgated:** FEB 11 2016 2:15 p.m.

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RESOLUTION

UY, *J.*:

For resolution is the **"MOTION FOR RECONSIDERATION"**[1] filed by respondents on May 13, 2015, with petitioner's **"COMMENT (Re: Motion for Reconsideration dated May 11, 2015)"**[2] filed on December 16, 2015, seeking the reconsideration and setting aside of Our Decision promulgated on April 7, 2015[3], the dispositive portion of which reads:

> **"WHEREFORE,** all the foregoing considered, the instant Petition for Review is hereby **GRANTED.** The assailed Decision dated June 3, 2013 and assailed

[1] EB Docket, pp. 206 to 211.
[2] EB Docket, pp. 235 to 243.
[3] EB Docket, pp. 174 to 193.

Resolution dated September 11, 2013, both rendered by the Special Second Division of this Court in CTA AC No. 94 are hereby **REVERSED AND SET ASIDE**.

Accordingly, the Assessment Letter dated November 8, 2007 from respondent Perfecto B. Martinez, Jr. the Provincial Treasurer of Nueva Vizcaya, demanding payment of local franchise tax from petitioner National Power Corporation for the years 2002 to 2006 in the aggregate amount of ₱8,776,271.35 is hereby **CANCELLED AND SET ASIDE.**

SO ORDERED."

In the alternative, respondents pray for the Court *En Banc* to remand the case to the court of origin for the proper determination as to who among TRANSCO, PSALM or petitioner is liable for the payment of the assessed local franchise tax contained in the Assessment Letter dated November 8, 2007 issued by respondent Perfecto B. Martinez, Jr.

In support of their Motion, respondents argue that the Court *En Banc* erred in basing its decision on the pronouncements of the Supreme Court in the case of *National Power Corporation vs. Provincial Government of Bataan et al.*[4] (*"Bataan case"*) because of the following reasons: (1) the issue in the *Bataan* case is not the liability of petitioner to pay local franchise tax but whether or not petitioner is no longer the owner or operator of the business subject to local franchise and whether respondents therein cannot execute former properties of petitioner that had been taken from it and transferred to other government corporations; (2) petitioner's claim that it is no longer required to secure a franchise by virtue of Section 6 of the EPIRA does not apply in the case of a local franchise; and (3) petitioner is the only company engaged in the generation of electric power in the province of Nueva Vizcaya and not TRANSCO, hence, it is petitioner that is subject to local franchise tax.

Furthermore, respondents maintain that the Court *En Banc*'s finding that petitioner is not performing missionary electrification in Nueva Vizcaya was made without factual and legal bases.

Finally, respondents aver that considering that the Supreme Court in the *Bataan* case failed to categorically state that petitioner is

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[4] G.R. No. 180654, April 21, 2014.

totally EXEMPT from the payment of local franchise tax, it is improper for this Court to order the cancellation of the assessment issued by respondents. To the very least, the Court *En Banc* should remand the case to the court of origin for the proper determination as to who among petitioner, TRANSCO or PSALM Corporation is legally accountable to the subject franchise tax.

For its part, petitioner contends that after the effectivity of the EPIRA in 2001, petitioner is now considered only as a generation company as its transmission and sub transmission functions have been transferred to TRANSCO by operation of law. As a government-owned and controlled generation company, it follows that petitioner is no longer required to secure a franchise and, consequently, cannot be burdened with the payment of franchise tax.

Petitioner likewise points out pursuant to Sections 8 and 49 of the EPIRA; petitioner ceased to engage in power transmission and, as such, is no longer liable for local franchise tax. As the Court *En Banc* emphatically emphasized, considering the pertinent provisions of the EPIRA, the issue of whether petitioner is liable for local franchise tax has already been resolved by the Supreme Court in the *Bataan* case.

Moreover, petitioner avers that there is no merit to respondent's claim that the Court *En Banc* erred in ruling that petitioner is not performing missionary electrification function in Nueva Viscaya.

As to respondents' alternative prayer that the case be remanded to the court of origin, petitioner claims that the same is without bases because PSALM and TRANSCO are not parties to the case in the court of origin.

THE COURT *EN BANC*'S RULING

Respondents' Motion for Reconsideration lacks merit.

The Supreme Court's ruling in the Bataan case applies to the case at bar.

Respondents aver that the Court *En Banc* erred in applying the pronouncements of the Supreme Court in the *Bataan* case because the issue in the said case is not the liability of petitioner for local franchise tax but whether petitioner no longer owned or operated the business subject to local franchise tax. Moreover, respondents contend that in the present case, it is beyond contention that petitioner is the only company engaged in the generation of electric power in the province of Nueva Vizcaya and not TRANSCO; hence, it is petitioner that is subject to local franchise tax.

Respondents' reasoning is specious.

Owning or operating a business subject to local franchise tax is tantamount to being liable for the said tax. Thus, the issue resolved by the Supreme Court in the *Bataan* case essentially answers the question of whether or not petitioner can be held liable to pay the assessed local franchise tax.

In the *Bataan* case, petitioner was assessed for local franchise tax by the Provincial Government of Bataan for ₱45.9 million covering the years 2001, 2002, and 2003, based on petitioner's alleged sale of electricity generated from two power plants in Bataan. Petitioner denied liability on the basis of the EPIRA, claiming that said law relieved the petitioner of the function of generating and supplying electricity beginning 2001; consequently, the Provincial Government of Bataan has no right to further assess it for the years 2001, 2002, and 2003.

Similarly, in the present case, petitioner was assessed by respondents for local franchise tax for the years 2002 to 2006 in the aggregate amount of ₱8,776,271.35 because petitioner is allegedly engaged in the business of transmission and selling of electricity in Nueva Vizcaya.[5] Petitioner denies liability for such tax invoking as well the provisions of the EPIRA.

Ruling in favor of petitioner, the Supreme Court held in the *Bataan* case that, upon effectivity of the EPIRA on June 26, 2001, petitioner ceased to operate the business subject to local franchise tax by operation of law; thus, said tax is not a liability of petitioner. The High Court said:

> "xxx Thus, Section 8 of the EPIRA provides:
>
> > SEC. 8. Creation of the National Transmission Company. There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power

[5] Appellee's Memorandum, RTC Docket, pp. 136 to 137.

> Corporation (NPC), and have the power and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
>
> Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).
>
> The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: Provided, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.
>
> TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later that two (2) years from the effectivity of this act or the start of open access, whichever comes earlier: x x x.
>
> x x x x

<u>The above created the TRANSCO and transferred to it the NPC's electrical transmission function with effect on June 26, 2001</u>. **The NPC, therefore, ceased to operate that business in Bataan by operation of law. Since the local franchise tax is imposed on the privilege of operating a franchise, not a tax on the ownership of the transmission facilities, it is clear that such tax is not a liability of the NPC.**

Nor could the Province levy on the transmission facilities to satisfy the tax assessment against the NPC since, as Section 8 above further provides, the latter ceased to own those facilities six months from the effectivity of the EPIRA. Those facilities have since belonged to TRANSCO.

The legislative emasculation of the NPC also covered its former power generation function, which was the target of the Province's effort to collect the local franchise tax for 2001, 2002, and 2003. Section 49 of the EPIRA provides:

> SEC. 49. Creation of Power Sector Assets and Liabilities Management Corporation. - There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation," hereinafter referred to as the "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

Section 49 above created the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.) and transferred to it all of the NPC's "generation assets" which would include the Bataan Thermal Plant. Clearly, the NPC had ceased running its former power transmission and distribution business in Bataan by operation of law from June 26, 2001. **It is, therefore, not the proper party subject to the local franchise tax for operating that business**. Parenthetically, Section 49 also transferred "all existing xx x liabilities" of the NPC to PSALM Corp., presumably including its unpaid liability for local franchise tax from January 1 to June 25, 2001. Consequently, such tax is collectible solely from PSALM Corp." *(Emphasis and underscoring supplied).*

By tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[6]

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[6] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003 and *Dante Nacuray, et al., vs. National Labor Relations*

Considering that it has been established by no less than the Supreme Court that petitioner can no longer be assessed of local franchise tax from the time the EPIRA took effect, the Court *En Banc* has no other option but to uphold and apply the same. Therefore, the Assessment Letter dated November 8, 2007 issued by respondent Provincial Treasurer[7], demanding payment of local franchise tax from petitioner for the years 2002 to 2006 in the aggregate amount of ₱8,776,271.35 was appropriately cancelled and set aside.

PSALM and TRANSCO are not parties to the case filed before the court a quo.

Respondents, in the alternative, pray for the Court *En Banc* to remand the case to the court of origin for the proper determination as to who among TRANSCO, PSALM or petitioner is liable for the payment of the assessed local franchise tax.

We cannot grant respondents' plea.

To recall, the instant Petition for Review originates from an Appeal filed pursuant to Section 195 of the Local Government Code, before the Regional Trial Court of Bayombong, Nueva Vizcaya (RTC of Bayombong), docketed as Civil Case No. 6887 entitled *National Power Corporation, Appellant, vs. Province of Nueva Vizcaya and Perfecto B. Martinez, Appellees.*[8] Neither PSALM nor TRANSCO was a party to the said case. Thus, for the court *a quo* to rule on the franchise tax liabilities of PSALM or TRANSCO would be an exercise in futility since any judgement or resolution rendered in the said case will not be binding upon them.

Furthermore, the Assessment Letter issued by respondent Provincial Treasurer, which was the subject matter of the Appeal filed with the RTC of Bayombong, was addressed specifically to petitioner and not to PSALM or TRANSCO. It must be remembered that under Section 195 of the LGC, a taxpayer is given the opportunity to file a written protest with the local treasurer, within sixty (60) days from the receipt of the notice of assessment. Therefore, if PSALM or

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Commission, G.R. Nos. 114924-27, March 18, 1997.

[7] Annex "C", Petition for Review, EB Docket, p. 44; Division Docket (CTA AC No. 94), p. 36; RTC Docket, p. 18.

[8] Petitioner's Appeal (Pursuant to Section 195, R.A. 7160, otherwise known as Local Government Code), RTC Docket, pp. 1 to 31.

TRANSCO is made liable to pay for the assessed local franchise tax, the court will be violating the generally accepted principle of due process because no notice of assessment was sent to them and that their right to protest the assessed tax under the law will be defeated.

In view of the foregoing, the Court *En Banc* finds it improper to remand the case to the court of origin for the purpose of determining who shall be liable for the subject assessment.

WHEREFORE, premises considered, the instant **"Motion for Reconsideration"** filed by respondents Province of Nueva Vizcaya and Perfecto B. Martinez, Jr. on May 13, 2015 is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice