REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

METROPOLITAN NAGA WATER DISTRICT (MNWD),
Petitioner,

-versus-

THE PROVINCIAL GOVERNMENT OF CAMARINES SUR,
Respondent.

CTA AC CASE No. 91
(Civil Case No. RTC 2010-0138)

Members:

CASTAÑEDA, JR. *Chairperson*,
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:

JUL 17 2013

1:10 p.m.

X- X

DECISION

CASANOVA, J.:

Before this Court is an appeal via a Petition for Review[1], seeking the reversal of the Decision[2] (Assailed Decision) dated December 20, 2011 denying petitioner's appeal in relation to its assessment of Provincial Franchise Tax and the Order[3] (Assailed Order) dated March 22, 2012 denying petitioner's Motion for Reconsideration, both rendered by Branch 21 of the Regional Trial Court (RTC) of Naga City in the Civil Case No. RTC 2010-0138 entitled ***METROPOLITAN NAGA WATER DISTRICT, represented herein by General Manager ENGR. REY REYES vs. THE PROVINCIAL GOVERNMENT OF CAMARINES SUR, represented by ICO-Provincial Treasurer MS LETICIA L. ALIORDE.***

[1] Petition for Review, Docket, pp. 000005-000024.
[2] "Annex A", Petition for Review, Docket, pp. 000025-000035.
[3] "Annex B", Petition for Review, Docket, p. 000036.

The facts of the case, as culled from the records, are briefly narrated as follows:

Petitioner MNWD is a government entity, organized and existing by virtue of Presidential Decree (PD) 198 or the "Provincial Water Utilities Act of 1973", holding office at 40 J. Miranda Avenue, Naga City, Camarines Sur where it may be served with notices and other processes of the Honorable Court. Its General Manager, Engr. Rey C. Reyes, represents it pursuant to Board Resolution 56, Series of 2012.[4]

Respondent CAMARINES SUR is a local government unit whose taxing authority is being exercised in its behalf by its OIC-Provincial Treasurer, Ms. Leticia L. Aliorde. It may be served with orders, notices and other processes of the Honorable Court at the Capitol Complex, Pili, Camarines Sur.[5]

On August 20, 2010, the Office of the Provincial Treasurer of the Province of Camarines Sur sent an assessment letter[6] with an attached Revised Franchise Tax Assessment[7] to MNWD requesting the settlement of an alleged franchise tax liability for the years 2004 to 2009 in the amount of PhP 1,039,100.10.

On November 3, 2010, the Office of the Government Corporate Counsel (OGCC), on MNWD's behalf, filed a protest[8] dated October 29, 2010, in accordance with Section 195 of Republic Act No. 7160 or the Local Government Code (LGC) of 1991[9] asserting its exemption and invoking the following grounds:

---

[4] Petition for Review, p. 000007.

[5] *Ibid.*

[6] "Annex C", Petition for Review, Docket, p. 000037.

[7] "Annex D", Petition for Review, Docket, p. 000038.

[8] "Annex E", Petition for Review, Docket, pp. 000039-000047.

[9]

CHAPTER VI

Taxpayer's Remedies

Section 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

GROUNDS OF PROTEST

1. That Local Water Districts Being Government Instrumentalities Are Exempt From Payment of Provincial Franchise Tax.

2. Under the Local Government Code of 1991 (RA 7160), Water Districts Continue to Enjoy Exemption from Local Government Tax.

3. Republic Act 7109 Has Been Repealed by The Local Government Code (RA 7160) Providing Continuing Exemptions of Water Districts From Local Tax Imposition.

4. That Supreme Court Decisions Support Exemption of Water Districts from Payment of Franchise Tax.

5. That MNWD Shall Not Be Made To Pay Surcharge and Interest.

In a letter[10] dated November 8, 2010 and received by petitioner on November 23, 2010, the Office of Provincial Treasurer denied MNWD's protest on the basis that Sections 1[11] and 3[12] of RA 7109 provide that the tax exemption privileges shall be enjoyed only for a period of five (5) years, that is from August 14, 1991-August 14, 1996,

---

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.

[10] "Annex F", Petition for Review, Docket, pp. 000048-000049.

[11] **Section 1.** ***Exemption from taxes.*** - A water district created pursuant to Presidential Decree No. 198, as amended, shall be exempted from the payment of (1) income taxes, except taxes on interest income from deposits and on investments that have no direct relation with water service operations; (2) franchise taxes; and (3) duties and taxes on imported machinery, equipment and materials required for its operations: provided, that such machinery, equipment and materials are not domestically manufactured at comparable and competitive prices and quality.

[12] **Section 3.** ***Period and Conditions of Exemptions.*** - The tax exemption privileges provided for in Sections 1 and 2 to all water districts shall be enjoyed only for a period of five (5) years from the effectivity of this Act: provided, that the water districts shall adopt internal control reforms that would bring about their economic and financial viability: provided, further, that, for a water district to be entitled to the tax exemption, its appropriation for personal services, as well as for travel, transportation or representation expenses and purchase of motor vehicles, shall not be increased by more than twenty-five percent (25%) a year during the period of exemption.

hence, from August 15, 1996, local water districts created pursuant to PD No. 198 cease to enjoy exemption from local taxes.

On December 21, 2010, petitioner filed an appeal, by way of Petition (To Review and Reverse the Denial by Provincial Treasurer of Petitioner's Protest Against Payment of Franchise Tax)[13] with the Regional Trial Court (RTC), Naga City (docketed as Civil Case No. 2010-0138), and prayed that the denial of its protest before the Office of the Provincial Treasurer be reversed and that it be declared exempt from the payment of Franchise Tax in accordance with the LGC of 1991. Petitioner submits the following arguments to support its Petition:

> "1. The Local Government Code of 1991 (RA 7160) itself, the source of authority of the Respondent to impose local tax, provides that water districts continue to enjoy exemption from local government tax.
>
> 2. Republic Act 7109 or "The Act Granting Tax Exemption Privileges To Local Water Districts" has been repealed by the Local Government Code of 1991 (RA 7160) providing continuing exemptions of water districts from local tax imposition.
>
> 3. Supreme Court decisions support exemption of water districts from payment of franchise tax.
>
> 4. Local water districts being government instrumentalities are exempt from payment of local government tax."

Respondent filed its Comment[14] on February 24, 2011 and moved for the dismissal of petitioner's appeal/petition on the ground that local water districts' exemption privilege under RA 7109 has already expired in 1996 and that the LGC did not expressly grant them exemption from local taxes especially the local franchise tax. Respondent further argued that the LGC did not impliedly repeal RA

---

[13] "Annex G", Petition for Review, Docket, pp. 000050-000060.
[14] "Annex H", Petition for Review, Docket, pp. 000061-000072.

7109 as these two laws are not even inconsistent with respect to tax exemptions provisions of the LWDs. Also, respondent alleged that the case of National Power Corporation vs. Province of Isabela did not specifically and expressly rule that local water districts are exempted from paying local franchise tax. Lastly, respondent posited that local water districts are government owned or controlled corporations and not an instrumentality of the government.

On August 31, 2011, petitioner filed its Memorandum[15] while respondent filed its Memorandum[16] on September 14, 2011.

On December 20, 2011, Branch 21 of the Regional Trial Court (RTC), Naga City promulgated the Assailed Decision[17] denying petitioner's appeal/petition, the pertinent parts of which are quoted below:

> "Verily, with the failure of petitioner MNWD as a local water district to point out a specific law which clearly and unequivocably extended the tax exemption privileges granted to it under RA No. 7109, there is no more reason that it should be considered beyond the reach of the provincial local taxing power to impose franchise tax.
>
> **WHEREFORE**, in the light of all the foregoing, the instant petition or appeal is hereby **DENIED**. Consequently, Metropolitan Naga Water District is ordered to pay the Provincial Government of Camarines Sur the amount of One million thirty nine thousand one hundred pesos and ten centavos (PhP1,039,100.10) representing its liability for local franchise tax for the years 2004 to 2009.
>
> **SO ORDERED.**"

---

15 "Annex I", Petition for Review, Docket, pp. 000073-000085.
16 "Annex J", Petition for Review, Docket, pp. 000086-000093.
17 See Note 2.

Petitioner filed its Motion for Reconsideration (Of the 20 December 2011 Decision)[18] on February 2, 2012 to which respondent filed its Comment[19] on March 15, 2012.

Branch 21 of the RTC, in an Order[20] dated March 22, 2012, denied petitioner's Motion for Reconsideration and stated:

> "The Court reviewed its assailed Decision once again in the light of the movant's arguments in the above motion and it finds no compelling reason to depart from its earlier disquisitions as the issues put forth have been exhaustively passed upon in the said assailed Decision.
>
> **WHEREFORE**, the petitioner's *Motion for Reconsideration* of the Decision of this Court dated December 20, 2011 is hereby **DENIED.**
>
> **SO ORDERED.**"

Hence, this Petition for Review.

In the subject petition, the following issues were raised:

A. SECTION 46 OF P.D. 198, AS AMENDED, GRANTS LWDs LOCAL TAX EXEMPTION PRIVILEGE WHILE SEC. 193 OF THE LGC CONFERS CONTINUED ENJOYMENT OF THE LOCAL TAX EXEMPTION PRIVILEGES.

B. ASSUMING THAT RA 7109 IMPLIEDLY REPEALED SECTION 46 OF P.D. 198, AS AMENDED, RA 7109 LIKEWISE IMPLIEDLY REPEALED BY SECTION 193 OF THE LGC THAT RESULTED IN THE CONTINUING EXEMPTION OF LWDs FROM LOCAL TAX TAXATION.

[18] "Annex K", Petition for Review, Docket, pp. 000099-000114.
[19] "Annex L", Petition for Review, Docket, pp. 000115-000116.
[20] "Annex B", Petition for Review, Docket, p. 000036.

C. MNWD IS NOT THE CORPORATION REFERRED UNDER SECTION 131(m) OF THE LGC.

D. AS GOVERNMENT INSTRUMENTALITIES, LWDs ARE EXEMPT FROM PAYMENT OF LOCAL GOVERNMENT TAX.

E. THE RULE OF STRICT INTERPRETATION OF STATUTORY PROVISIONS GRANTING TAX EXEMPTIONS DOES NOT APPLY TO TAX EXEMPTIONS CLAIMED BY GOVERNMENT INSTRUMENTALITIES OR AGENCIES.

F. IN CASE OF DOUBT IN MNWD'S CONTINUING EXEMPTION FROM LOCAL TAXES, SUCH DOUBT SHALL BE CONSTRUED AGAINST CAMARINES SUR AND LIBERALLY IN MNWD'S FAVOR.

In a Resolution[21] dated May 17, 2012, this Honorable Court ordered respondent to file its comment thereto. On June 25, 2012, respondent filed its Comment[22] and sought the dismissal of the subject Petition for lack of merit. In its Comment, it submitted the following arguments in support of its position:

> "Local water districts' exemption privilege under RA 7109 has already expired in 1996 and the Local Government Code did not expressly grant them exemption from local taxes especially the local franchise tax.
>
> The Local Government Code did not impliedly repeal RA 7109 as these two laws are not even inconsistent with respect to tax exemption provisions of LWDs.
>
> Local Water Districts, as admitted by petitioner, are government owned or controlled corporations and NOT an instrumentality of the government."

---

[21] Docket, p. 000124.
[22] *Ibid.*, pp. 000133-000147.

On July 27, 2012, petitioner filed its Reply (To Respondent's Comment)[23].

This Court, on August 1, 2012, issued a Resolution[24] ordering the parties to submit their respective Memorandum. On August 3, 2012, this Court ordered the Branch Clerk of Court or the Officer-In-Charge of Branch 21 of RTC Naga to elevate to it the entire original records of Civil Case No. RTC 2010-0138.

On September 5, 2012, petitioner filed its Memorandum[25] while respondent filed its Memorandum[26] on September 12, 2012.

On November 16, 2012, Branch 21 of the RTC Naga transmitted to this Court the entire original records of Civil Case No. RTC 2010-0138[27].

In a Resolution[28] dated December 6, 2012, the instant case was submitted for decision.

After a careful and thorough evaluation of the arguments of both parties, as well as the evidence each presented to support their respective position, this Court finds no merit in the present petition.

The principal issue in the instant case is hinged on whether or not petitioner MNWD is liable for local franchise tax, in view of the tax exemption privilege being claimed by petitioner under Section 193 of the LGC of 1991.

Petitioner's main argument is that Section 193 of the LGC of 1991, which has a later date of effectivity, impliedly repealed RA 7109, thereby granting continuing exemption from local franchise tax to local water districts. Respondent, on the other hand, alleged that

[23] *Id.*, pp. 000154-000162.
[24] *Id.*, p. 000163.
[25] *Id.*, pp. 000167-000184.
[26] *Id.*, pp. 000186-000203.
[27] *Id.*, pp. 000210-000211.
[28] *Id.*, p. 000208.

there was no implied repeal as the two laws are not inconsistent, particularly as regards the tax exemption privileges of local water districts.

The Supreme Court, in the case of *Antonio A. Mecano vs. Commission on Audit*[29] elucidated on the doctrine of implied repeal. It held that the repeal by implication is not favored and will not be decreed unless legislature's intention to do so is clearly manifested. We quote pertinent portions of the said Decision:

> Repeal by implication proceeds on the premise that where a statute of later date clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject, that intention must be given effect. **Hence, before there can be a repeal, there must be a clear showing on the part of the lawmaker that the intent in enacting the new law was to abrogate the old one. The intention to repeal must be clear and manifest;** otherwise, at least, as a general rule, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue so far as the two acts are the same from the time of the first enactment.
>
> **There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one**. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.
>
> **Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot be enforced without nullifying the other.**
>
> xxx xxx xxx

---
[29] G.R. No. 10398, December 11, 1992.

> xxx: '**Repeals by implication are not favored, and will not be decreed unless it is manifest that the legislature so intended**. As laws are presumed to be passed with deliberation with full knowledge of all existing ones on the subject, it is but reasonable to conclude that in passing a statute it was not intended to interfere with or abrogate any former law relating to some matter, unless the repugnancy between the two is not only irreconcilable, but also clear and convincing, and flowing necessarily from the language used, unless the later act fully embraces the subject matter of the earlier, or unless the reason for the earlier act is beyond peradventure renewed. Hence, every effort must be used to make all acts stand and if, by any reasonable construction, they can be reconciled, the later act will not operate as a repeal of the earlier." (*Emphasis supplied*)

Applying the doctrine to the case at bench, We find the contention of petitioner untenable. A closer look at the pertinent provisions of the two laws reveals that, contrary to the allegations of petitioner, there was no implied repeal between the provisions of the two laws; there was no inconsistency on the pronouncements regarding the tax exemption privileges of local water districts. RA 7109 provides that local water districts are granted exemption from franchise tax. However, such privilege shall be enjoyed only for a period of five (5) years, which is from August 14, 1991, the effectivity of RA 7109, to August 14, 1996. The relevant provisions are herein below quoted:

> "**Section 1.** ***Exemption from taxes***. – A **water district** created pursuant to Presidential Decree No. 198, as amended, shall be **exempted from the payment of** (1) income taxes, except taxes on interest income from deposits and on investments that have no direct relation with water service operations; **(2) franchise taxes;** and (3) duties and taxes on imported machinery, equipment and materials required for its operations: provided, that such machinery, equipment and materials are not domestically manufactured at comparable and competitive prices and quality.

xxx xxx xxx

> **Section 3.** ***Period and Conditions of Exemptions.*** **- <u>The tax exemption privileges provided for in Sections 1 and 2 to all water districts shall be enjoyed only for a period of five (5) years from the effectivity of this Act:</u>** provided, that the water districts shall adopt internal control reforms that would bring about their economic and financial viability: provided, further, that, for a water district to be entitled to the tax exemption, its appropriation for personal services, as well as for travel, transportation or representation expenses and purchase of motor vehicles, shall not be increased by more than twenty-five percent (25%) a year during the period of exemption. *(Emphasis supplied)*

On the other hand, Section 193 of the LGC of 1991 provides for the withdrawal of tax exemption privileges granted to all natural or juridical persons, with the exception of local water districts, duly registered cooperatives and non-stock, non-profit hospitals and educational institutions, *to wit*:

> **Section 193.** ***Withdrawal of Tax Exemption Privileges.*** - Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently 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, are hereby withdrawn upon the effectivity of this Code.

Hence, as RA 7109 grants tax exemption privileges to local water district, albeit for a limited period of time, while Section 193 of the LGC of 1991 provides for the withdrawal of tax exemption privileges, with the exception of local water districts. We find no irreconcilable conflict that can constitute an implied repeal between the two laws. The exception provided under Section 193 of the LGC, We believe, was precisely to uphold the exemption privilege granted to local water districts under RA 7109 up to August 14, 1996, the end of the five-year period, provided under Sec. 3 of RA 7109.

Anent the other issues raised by the parties in the case at bench, this Honorable Court, likewise, finds no reversible error in the resolution of the same, thus the Assailed Decision and Assailed Resolution are both affirmed and the instant Petition for Review is hereby dismissed for lack of merit.

WHEREFORE, the instant Petition for Review is hereby **DENIED** and petitioner is hereby ordered to pay the aggregate amount of ONE MILLION THIRTY NINE THOUSAND ONE HUNDRED AND 10/100 PESOS (P1,039,100.10) representing its tax liability for deficiency local franchise tax for the taxable years 2004-2009.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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 before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice