REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION, *Petitioner,*	CTA EB No. 1020 (CBAA Case Nos. L-57 & L-59)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
LUZON HYDRO CORPORATION (LHC), BANGGAY T. ALWIS, Municipal Assessor, MANUEL C. BAGAYAO, Municipal Treasurer of Bakun, Benguet, ERLINDA ESTEPA, Provincial Assessor and MAURICIO B. AMBANLOC, Provincial Treasurer of the Province of Benguet, *Respondents.*	Promulgated: MAY 22 2018 3:17 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

Submitted for decision of this Court *En Banc* is a Petition for Review filed by petitioner National Power Corporation under *Section 3(c), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1], *as amended*, assailing the Decision[2] of the Central Board of Assessment Appeals

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[1] RULE 8, Sec 3. Who may appeal; period to file petition.- xxx

> (c) A party adversely affected by a decision or ruling of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of their appellate jurisdiction may appeal to the Court by filing before it a petition for review within thirty days from receipt of a copy of the questioned decision or ruling.

[2] En Banc Docket, Volume I, CBAA Decision signed by Ofelia A. Marquez, as Chairman, Roberto D. Geotina and Camilo L. Montenegro, pp. 27-54.

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(CBAA) dated July 3, 2012 in CBAA consolidated Case Nos. L-57 and L-59 and its Resolution[3], dated March 22, 2013, the dispositive portions of which, respectively, read as follows:

> Decision dated July 13, 2012:
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> "**WHEREFORE,** premises considered, the Appeal under CBAA Case No. L-57 and the Petition for Review under CBAA Case No. L-59 are hereby **DISMISSED** for lack of merit.
>
> **SO ORDERED.**"
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> Resolution dated March 22, 2013:
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> "**WHEREFORE**, premises considered, the instant Motions for Reconsideration by both Petitioners-Appellants National Power Corporation (NPC) and Luzon Hydro Power Corporation (LHC) are hereby **DENIED**.
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> **SO ORDERED**."

The following facts of the case as established by evidence on record[4] read as follows:

> "NPC entered into a BOT scheme with Luzon Hydro Corporation ("LHC") for the construction, operation and maintenance of the Bakun AC Hydroelectric Plant (the "Power Plant"). This arrangement was defined in a Power Purchase Agreement ("PPA") dated November 24, 1996.
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> The Power Plant was built on land constituting the boundaries of two municipalities. Hence, a portion of the Power Plant, particularly the Weir, Desander and the Tunnel, are located in the Municipality of Bakun, Benguet while the rest of the Power Plant is located in the Municipality of Alilem, Ilocos Sur.

[3] *Ibid.*, CBAA Resolution, pp. 55-61.
[4] Supra note 2.

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Under the PPA and pursuant to the BOT Law, LHC undertook to construct, operate and maintain the Power Plant for NPC and to deliver to NPC **all electricity generated** by the Power Plant. In every sense of the word, NPC is the **sole beneficiary** of all electricity generated by the Power Plant.

Under the PPA, NPC acknowledged and assumed responsibility for the payment of real property taxes and rates levied on the Power Plant and its facilities. The pertinent provisions thereof read as follows:

> ***'8.6 Payment by NPC of Certain Taxes***
>
> ***'xxx In addition, NPC shall be responsible for the payment of (a) taxes, fees, duties charges and other levies including Input Value Added Tax on importation of equipment imposed by the National Government of the Republic of the Philippines or any agency or instrumentality thereof to which the Operator [LHC] may at any time be or become subject to (sic) in or in relation to the performance of its obligations under the (sic)Agreement, and (b) real estate taxes and assessments, rates and other charges in respect of the Site, the structures and improvements thereon, and the Power Station,xxx.'***

Pursuant to the foregoing PPA provision, LHC declared the real properties subject of the instant Petition in accordance with Section 202 of the Local Government Code, albeit in its name as naked owner of the properties, and informed the Provincial Assessor of Benguet regarding the arrangement (i.e., that NPC shall be liable for payment of real property taxes).

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On October 24, 2002, the Municipal Assessor of Bakun, Benguet, herein Respondent-Appellee Banggay T. Alwis, sent a Notice of Assessment of Real Property addressed to LHC, assessing the machineries comprising the Power Plant. xxx

Respondent-Appellee Alwis issued ARP Nos. 99-001-02570, 99-001-02571 and 99-001-02572, which classified the machineries and equipment as 'industrial' and assessed at 80% assessment level.

The said Notice of Assessment stated that the properties subject of the assessment were allegedly classified under Section 215 of the Local Government Code as industrial on the assumption that LHC -and not NPC- is the owner of the properties and that the same are being used by LHC. Thus, the Municipal Assessor argued that the properties cannot be classified as "Special" nor subjected to the 10% assessment level.

LHC immediately referred the matter to NPC in keeping with the PPA provisions. Consequently, Mr. Froilan A. Tampinco, then NPC's Vice President and Head of GENCO 2 wrote Respondent-Appellee Municipal Assessor Banggay Alwis, stating that NPC is willing to pay real property taxes at 10% assessment level as it was currently doing in Sual, Pangasinan pursuant to an agreement with the Pangasinan Local Government Unit (LGU) to treat the generation facilities therein as "Special Class". Further, Mr. Tampinco stated that should Respondent-Appellee Alwis find the offer unacceptable, NPC is willing to sit down with him to arrive at a mutually acceptable settlement.

In a letter dated January 2, 2003, Respondent Alwis reiterated his stand that (1) the real properties are owned and used by LHC, a private corporation; (2) these properties cannot be classified as "Special" because NPC is not the owner and user of the properties.

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The matter remained unresolved due, in part, to the reorganization of the NPC in accordance with R.A. No. 9136 which caused the separation of key personnel from NPC; and, a directive from the Office of the Solicitor General (OSG) to cease payment of real property taxes imposed by LGUs on machineries and equipment as the same are exempt under Section 234(c) of the Local Government Code. In fact, at that time, a similar case as the instant Petition was pending before the Court of Appeals. This was between the Sangguniang Panlalawigan and Provincial Treasurer of La Union, NPC and the Bauang Private Power Corporation (BPPC).

Subsequently, the Municipal Treasurer listed LHC as a delinquent taxpayer with a view to levying the subject properties. Hence, LHC filed a Petition for the Annulment of the Notice of Assessment, Injunction and Prohibition before the Regional Trial Court of Benguet, Branch 62, against the Municipal Treasurer and Assessor of Bakun and those of the Province of Benguet.

The parties later on agreed that NPC shall pay the taxes at 10% assessment level to prevent the issuance and/or enforcement of a Warrant of Levy in consideration of bringing the issues before the Honorable Board for resolution. Thus, the parties executed a Compromise Agreement and submitted the same for the approval of the court.

On October 10, 2003, LHC paid under protest the amount of Php2,643,446.40 as real property tax for calendar years 2002 and 2003.

NPC joined petitioner LHC as Petitioner-in-Intervention both in the petition filed before the Regional Trial Court and before the Local Board of Assessment Appeals (LBAA) due to its interest as beneficial owner of the properties in litigation"

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On July 13, 2004, the LBAA dismissed the protest for lack of merit and upheld the assessment by respondent municipal officials and Municipality of Bakun, Benguet.

Aggrieved, both NPC and LHC filed their respective appeals before the CBAA (CBAA Case No. L-57 and L-59), which were both dismissed for lack of merit in the assailed July 3, 2012 Decision.

Both parties separately filed motions for reconsideration of the CBAA Decision, but the CBAA denied both motions in a Resolution dated March 22, 2013.

Hence, this Petition for Review was filed on May 24, 2013 by NPC impleading LHC as respondent.

We resolve.

While NPC insists that it is entitled to the tax exemptions and privileges claimed under Section 234 (c) of the LGC, the Court *En* Banc finds it necessary to determine first a basic, but substantive issue which essentially impacts this Court's jurisdiction.

Does NPC have sufficient legal interest or the legal standing to protest the real property tax assessment?

Legal interest is defined as interest in property or a claim cognizable at law, equivalent to that of a legal owner who has legal title to the property[5].

Section 226[6] of the Local Government Code (LGC) categorically states the matter of legal interest. It limits the right to appeal the local assessor's action to the owner or the person having legal interest in the property.

Accordingly, Section 3(c) of Rule 8 of the Revised Rules of Court of Tax Appeals [7] (RRCTA), an appeal by way of

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[5] Black's Law Dictionary (5th ed.), pp. 805-806.
[6] Section 226. Local Board of Assessment Appeals. - **Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property** may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the provincial or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.
[7] A.M No. 05-11-07-CTA, November 22, 2005.

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petition for review from a decision or ruling of a CBAA in the exercise of its appellate jurisdiction, as in this case, may be filed with this Court by a ***"party adversely affected"*** by the CBAA ruling or decision. Legal interest should be one that is ***actual and material, direct and immediate, not simply contingent or expectant.*** (Emphasis supplied)

Applying this definition in the case at bar reveals that NPC lacks the legal standing to institute the instant Petition for Review.

A perusal of the records would reveal that all notices of assessment were addressed to LHC, and ***NOT*** to NPC, and it was LHC who initially paid the tax assessments under protest at the LBAA. Likewise, it was LHC, and ***NOT*** NPC who was ordered by the LBAA to pay the realty taxes. Perforce, NPC is a "stranger" to the real property tax assessments, and in fact, ***NOT a "party adversely affected"*** by such CBAA decision and resolution.

Notably, starting from the proceedings from the LBAA up to the CBAA, NPC and LHC filed separate appeals and motions for reconsideration.

To establish its legal standing, NPC relies upon its PPA with LHC, whereunder LHC retains naked ownership of the power plant and NPC has beneficial ownership.

The issue is no longer novel. This same argument was already resolved in the case of *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao*[8], wherein the Supreme Court upheld this Court's ruling that it was Mirant Pagbilao Corporation and not NPC who is the proper party to protest the realty tax assessment, to wit:

> "We found that ***Napocor did not file a valid protest against the realty tax assessment because it did not possess the requisite legal standing*** x x x."

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[8] G.R No. 171586, January 25,2010.

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The Supreme Court, in its Resolution[9] of the Motion for Reconsideration filed by Napocor, further ruled in this wise:

> "We do not believe that the phrase ***'person having legal interest in the property' in Section 226 of the LGC can't include an entity that assumes another person's tax liability by contract***. x x x"

Under the premises, this Court must adhere to the principle of *"stare decisis".*

> "The principle of *'stare decisis'* enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of its Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.
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> Thus, where the same question relating to the same event is brought by parties similarly situated as in a previous case already litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to relitigate the same issue"[10]

In view of the foregoing, this Court holds that NPC's protest against the assessment, up to its instant petition, was defective or invalid, because it did not possess the requisite legal standing.

Nonetheless, even if the Court *En* Banc were to brush aside the issue of legal interest to protest, NPC could still not successfully claim exemption under Section 234 (c) of the LGC because to be entitled to the exemption under that provision, there must be actual, direct, and exclusive use of machineries. NPC failed to satisfy these requirements.

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[9] Ibid.,
[10] Government Service Insurance System vs Maricar B. Buenviaje-Carreon, G.R. No. 189529, August 10, 2012, En Banc Resolution. Citations omitted.

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Section 234 of the LGC provides as follows:

> "Sec. 234. Exemptions from Real Property Tax. - The following are exempted from payment of the real property tax:
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> xxx xxx xxx
>
> (c) All ***machineries and equipment*** that are ***actually, directly and exclusively used b***y local water districts and ***government owned or controlled corporations engaged in the*** supply and distribution of water and/ or ***generation and transmission of electric power***;
>
> xxx xxx xxx"

As it concerns the instant case, in order for Section 234 (c) to come into play, the subject properties must be "actually, directly and exclusively used" by the NPC as a government owned and controlled corporation (GOCC) engaged in the generation and transmission of electric power. ***It is use, not ownership, that is of decisive import***. (Emphases supplied)

Accordingly, the LGC itself defines "actual use" under Section 199, as follows:

> (b) "***Actual Use***" refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof;

In defining "actual use", the actor identified by the LGC is simply and solely ***"the person in possession" of the property***. While it is undisputed that the subject properties, machineries and equipment are actually, directly, and exclusively used in the generation and transmission of electric power, the actual, direct, and exclusive user of the subject properties in the generation and transmission of electric power is LHC, which is not GOCC.

However, NPC wants to impose on this Court the unique relationship between LHC and NPC as determinative of who is the "user". Under the PPA, NPC is to assume responsibility

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for the payment of said tax, then disclaim any liability by claiming that it is the owner and has the actual, direct, exclusive use and possession of subject properties.

It further tries to persuade this Court by arguing that LHC retains naked ownership thereof as security until it is reimbursed of its capital expenses in the construction of the Power Plant, but that "beneficial ownership" of the same plant belongs to the NPC, which is also the exclusive buyer and user of all the power generated by the plant.

This argument, however, misses the point. What NPC should prove is that it has the actual, direct, exclusive use of the subject machineries and equipment- rather than of all the power generated by the plant.

NPC even contradicts its argument by admitting thereto that what LHC shall cede to it at the end of the cooperation period is the possession of the power plant, therefore admitting as well that it has no solid claim of ownership or even use and possession of the machineries until the end of the cooperation period.

In its futile attempt to convince this Court of its exemption under the law, it invokes the BOT Law. However, the BOT Law is completely silent about real property taxes. Instead, the Revised Implementing Rules and Regulations[11] of the BOT Law, as amended, provide as follows:

> "Section 13.2. Investment Incentives
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> The following Investment Incentives will be made available to Project Proponents:
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> xxx xxx xxx
>
> (d) LGUs may provide additional tax incentives, exemptions, or reliefs, subject to the provisions of the Local Government Code (LGC) of 1991 and other pertinent laws."

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[11] Revised Implementing Rules and Regulations, published March 29, 2006.

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Further, Section 13.3(c)(d) of the Revised IRR additionally provides as follows:

xxx xxx xxx

> c. Direct Government Subsidy - This shall refer to an agreement whereby the Government, or any of its Agencies/LGUs will: x x x (d) in the case of LGUs, waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; x x x

To the Court's mind, the above-cited provisions in the Revised IRR of the BOT Law, as amended, recognize rather than impair the power of LGUs under the Local Government Code to impose real property taxes, and to grant reliefs therefrom.

The PPA between the NPC and LHC was drawn under the BOT Law. The PPA made the NPC responsible for the payment of real property taxes that might be assessed against LHC. This contract, however, cannot amend the LGC's provisions on real property taxation. It is basic that the law is deemed written into every contract.

Relative thereto, the Supreme Court held in *Napocor vs. CBAA*[12] that a BOT agreement is not a mere financing agreement. The underlying concept behind a BOT agreement is defined and defined in the BOT law as follows:

> "*Build-operate-and-transfer* – A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The

[12] G.R. No. 171470, January 30, 2009.

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> project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term which shall not exceed fifty (50) years x x x.
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> Under this concept, it is the project proponent who constructs the project at its own cost and subsequently operates and manages it. The proponent secures the return on its investments from those using the project's facilities through appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated. At the end of the fixed term agreed upon, the project proponent transfers the ownership of the facility to the government agency. Thus, the government is able to put up projects and provide immediate services without the burden of the heavy expenditures that a project start up requires.

A careful scrutiny of the parties' BOT Agreement shows that it fully conforms to this concept. ***By its express terms, LHC has complete ownership – both legal and beneficial – of the project, including the machineries and equipment used, subject only to the transfer of these properties to NPC after the lapse of the period agreed upon.***

In view of the foregoing, We uphold the CBAA's finding that the subject machineries and equipment are **NOT EXEMPT** from the real property taxation.

As to whether the 10% assessment level is applicable to the subject properties, NPC contends that the subject machineries and equipment are "Special Classes" of real properties and are to be assessed at the ten percent (10%) level as provided under Sections 216 and 218(d), respectively. These sections provide as follows:

> "Section 216. Special Classes of Real Property. - All lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and

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government owned or controlled corporations rendering essential public services in the supply and distribution of water and/ or generation and transmission of electric power shall be classified as special.

Section 218. Assessment Levels. -The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

xxx xxx xxx

(d) On Special Classes: The assessment levels for all lands buildings, machineries and other improvements -

Actual Use	Assessment Level
Cultural	15%
Scientific	15%
Hospital	15%
Local water Districts	10%
Government Owned or Controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power	10%

Based on the foregoing, in order to qualify for the 10% assessment level under Section 218 (d), the properties must first qualify as part of the "Special Classes" under Section 216. For the real properties of NPC as a GOCC engaged in the generation and transmission of electric power to qualify for the special classification, the properties must be "owned and used" by NPC.

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As already discussed, the Court *En* Banc has already concluded that it is LHC, not the NPC, that is the actual user of the subject properties. This alone renders it impossible for the NPC to meet the paired standard of ownership *and* use laid down by Section 216.

Furthermore, under the terms and conditions contained in Article 2.13 of the PPA, LHC is the owner of the machineries and equipment during the Cooperation Period. To wit:

> "Article 2.13. <u>Ownership of Power station</u>. From the effective Date until Transfer Date, the Operator shall own the Power station and all the structures, fixtures, fittings, machinery and equipment on the Site or used in connection with the Project which have been supplied by it or at its cost."

To reiterate, LHC is a private entity, as contra distinguished from a GOCC. Clearly, the said machineries and equipment do not fall under the classification of "Special Classes of Real Property".

If NPC was truly the owner of the subject properties at the time, then it should have complied with Section 202 of the LGC. Section 202 mandates:

> "Section 202. Declaration of Real Property by the Owner or Administrator. - It shall be the ***<u>duty of all persons, natural or juridical, owning or administering real property</u>***, including the improvements therein, within a city or municipality, or their duly authorized representative, ***<u>to prepare, or cause to be prepared, and file with the provincial, city or municipal assessor, a sworn statement declaring the true value of their property</u>***, whether previously declared or undeclared, taxable or exempt, which shall be the current and fair market value of the property, as determined by the declarant. x x x"

On this basis, evidence on record show that ownership of the properties at the time was with LHC, and would only be transferred to the NPC at the end of the Cooperation

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Period under the PPA. This is particularly the reason why it was LHC that filed the declaration required by Section 202 of the LGC. It bears stressing that it is an accepted principle in taxation that ***taxes are paid by the person obliged to declare the same for taxation purposes***.[13] (Emphasis supplied)

In this regard, NPC being neither the owner nor the user of the subject properties at the time of their assessment, it cannot compel the respondents to include them in the "*Special Classes*" under Section 216 of the LGC, in order for them to qualify for the 10% assessment level under Section 218.

The contention that the PPA provided that NPC is the party responsible for payment of real property taxes, and that these are binding on the respondents is without merit.

Section 198(b), R.A. 7160 requires that real property shall be classified for assessment purposes on the basis of its actual use. Thus, Section 217 of the Code provides:

> "SEC. 217. Actual Use of Real Property as Basis for Assessment.- Real property shall be classified, valued and assessed on the basis of its actual use regardless of where located, whoever owns it, and whoever uses it."

In *Testate Estate of Concordia T. Lim v. City of Manila*[14], the Supreme Court ruled:

> "In real estate taxation, therefore, ***the unpaid tax attaches to the property*** and is chargeable against the taxable person who had ***actual*** or beneficial ***use*** and ***possession*** of it regardless of whether nor not he is the owner." (Emphasis supplied)

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[13] Camp John Hay Development Corporation vs. Central Board of Assessment Appeals, et. al., G.R. No. 169234, October 2, 2013.
[14] G.R. No. 90639, February 21, 1990.

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The Court *En* Banc cannot stress enough that in the case at bar, it is LHC which has the actual use and possession of the subject properties. Therefore, it is the one liable for the real property tax on the subject properties.

Indeed, under the PPA, said payment of tax is assumed by NPC, but respondents are not concerned about whether or not LHC is refunded by NPC for the real property taxes paid by the former. The PPA is a private agreement or arrangement between NPC and LHC.

Again, it does not really matter who or which entity is liable for the realty taxes considering that said tax is against, and attaches to, the real property assessed. The LGU concerned would avail of the remedies provided under the law in order to collect the tax due.

As the Supreme Court ruled in *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*[15], "The tax liability we refer to above, however, is the liability arising from law that the local government unit can rightfully and successfully enforce, not the contractual liability that is enforceable between the parties to a contract."

In view of the foregoing, We find no cogent reason to deviate from the rulings of the CBAA.

WHEREFORE, the petition is **DENIED** for lack of merit, additional to its respective jurisdictional defect. The CBAA Decision dated July 13, 2012 and its Resolution dated March 22, 2013, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

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[15] Supra note 6.

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice