REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION,
Petitioner,

-vs-

CTA EB No. 1104
(CTA AC No. 101)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

PHILIPPINE NATIONAL BANK (PNB) and MUNICIPALITY OF SUAL, PANGASINAN,
Respondents.

Promulgated:
SEP 2 4 2015
11:00 a.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court is a Petition for Review filed on December 26, 2013, seeking the reversal of the Decision dated September 6, 2013 and Resolution dated November 27, 2013 of this Court's Second Division in CTA AC No. 101 (*National Power Corporation vs Philippine National Bank and Municipality of Sual, Pangasinan*). The petitioner prays that it be declared not liable to the respondent Municipality of Sual for local business tax for calendar year 2010 in the amount of Php48,703,713.14, with the consequence of nullifying the Notice of Assessment dated September 23, 2010 and Warrant of Distraint dated December 28, 2010.

THE PARTIES

Petitioner National Power Corporation ("NPC") is a government-owned and controlled corporation created under Republic Act No. 6395, with principal office at the NPC Building Complex, Quezon Avenue corner BIR Road, Diliman, Quezon City. It is represented in the instant case by the Office of the Solicitor General, with office address at 134 Amorsolo St., Legaspi Village, Makati City.

Respondent Philippine National Bank ("PNB") is a corporation created under Philippine laws, with principal office at the PNB Financial Center, Pres. Diosdado Macapagal Blvd., Pasay City. It may be served legal processes thru Atty. Norman R. Buena of the PNB Legal Office, at the same office address.

Respondent Municipality of Sual, Pangasinan is a local government unit organized under Philippine laws, with address at the Municipal Hall Compound, Sual, Pangasinan. It is represented in this case by Atty. Geraldine U. Banigued, with office address at the Provincial Legal Office, Kalantiao Bldg., Capitol Compound, Lingayen, Pangasinan.

JURISDICTION

The instant Petition for Review was filed "pursuant to Sections [sic] 18 of Republic Act No. 1125, as amended, otherwise known as 'An Act Creating the Court of Tax Appeals,' and Section 4(b) of the Revised Rules of the Court of Tax Appeals."[1]

There are two (2) Section 4(b)s in the RRCTA, one under Rule 6 and the other under Rule 8. The former deals with failure to comply with an order for a bill of particulars. Section 4(b) of Rule 8 states that "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." To give the petitioner the benefit of the doubt, we shall presume that it is under the latter rule that this Petition for Review was filed.

FACTUAL AND PROCEDURAL ANTECEDENTS

On September 27, 2010, the NPC received a Notice of Assessment dated September 23, 2010 from the Municipality of Sual, demanding payment of local business tax and interest thereon for calendar year 2010 based on Municipal Ordinance No. 121.

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[1] Petition for Review filed on December 26, 2013, p. 1.

On January 3, 2011, the NPC received a Notice of Seizure or Confiscation dated December 28, 2010 from the Municipality of Sual, against the NPC's personal properties to the extent of Php48,703,713.14 as of December 2010, allegedly representing unpaid local business tax for the year 2010 and accrued monthly interest thereon.

On January 27, 2011, the NPC received a letter dated January 7, 2011 from the PNB, informing the NPC of the existence of a Warrant of Distraint dated December 28, 2010 issued by the Municipality of Sual in the amount of Php48,703,713.14.

By letter dated January 28, 2011 to the PNB, the NPC explained that the alleged business tax liability for the year 2010 had no legal and factual basis.

On January 31, 2011, the NPC received another letter dated January 17, 2011 from the PNB, warning that unless the Warrant of Distraint is discharged, dissolved or lifted or its implementation and enforcement is enjoined, the PNB would be constrained to deliver the funds garnished to the Municipality of Sual.

On February 1, 2011, the NPC received a letter dated January 31, 2011 from the PNB, with the information that NPC accounts in different branches of the PNB were put on hold and that the PNB would be constrained to deliver to the Municipality of Sual, when so required, the funds garnished. The accounts and the corresponding funds garnished were enumerated as follows:

PNB Branch	Account Number	Amount (Pesos)
NPC Branch	S/A 2790366600047	51,979.06
Romblon Branch	S/A 356790100016	10,000.00
Butuan Branch	S/A 2895950500019	59,591.13
Malaybalay Branch	S/A 285109400014	3,605.73
Agusan del Sur Branch	S/A 324750100015	214,069.24
TOTAL		339,245.16

On February 9, 2011, the NPC filed before the Regional Trial Court of Quezon City, against the PNB and the Municipality of Sual, a petition for injunction with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. This was docketed as Civil Case No. Q-11-68711 and raffled to Branch 99. The petition sought to enjoin the implementation of the Notice of Assessment and Warrant of Distraint and further proceeding to collect the alleged business tax for the year 2010.

On February 21, 2011, the NPC received an Order dated February 18, 2011 from the RTC of Quezon City, Branch 99, dismissing Civil Case No. Q-11-68711 for lack of merit.

On March 1, 2011, the NPC moved for reconsideration of the RTC's Order dated February 18, 2011.

On December 6, 2012, the RTC issued a Resolution dated October 30, 2012, denying the NPC's motion for reconsideration of the Order dated February 18, 2011.

On January 7, 2013, the NPC filed a petition for review with this Court. This appeal was docketed as CTA AC No. 101 and was raffled to the Second Division.

On September 6, 2013, the Second Division promulgated its Decision affirming the RTC's Order dated February 18, 2011 and Resolution dated October 30, 2012. The Second Division of this Court held in its Decision in CTA AC No. 101, dismissing the appeal of the NPC:

> Anent the issue of validity or propriety of the assessment, appeal to this Court is not the proper remedy since the 2010 Notice of Assessment has become final and executory. As correctly pointed out by respondent Municipality in its Comment, nowhere in the instant Petition for Review did petitioner mention or allege any filing of protest for the 2010 Notice of Assessment before the municipal treasurer within the allotted period provided by law. Since petitioner failed to protest said Notice of Assessment, it became conclusive and unappealable. (Decision, p. 11)

On December 16, 2013, the NPC filed a motion for reconsideration of the Second Division Decision.

On November 27, 2013, the Second Division promulgated a Resolution denying the NPC's motion for reconsideration. A copy of this Resolution was received by the NPC's counsel, the OSG, on December 2, 2013.

On December 16, 2013, the NPC filed with the Court *En Banc* a motion for extension of time to file petition for review. This was granted by the Court on December 19, 2013; the NPC was given until January 1, 2014 to file its petition for review.

On December 26, 2013, the NPC filed the instant Petition for Review.

APPLICABLE LAWS AND JURISPRUDENCE

Pertinent in resolving the instant case is Section 195 of the Local Government Code ("LGC") of 1991 (Republic Act No. 7160), governing taxpayers' remedies against disputed assessments.

Petitioner, however, insists that it has been relieved of its local tax liabilities by Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 ("EPIRA").

ISSUES

The NPC raises a plethora of issues in its petition. But only one issue is truly profound, which this Court phrases in this manner: whether or not the EPIRA so unburdened the NPC of its tax liabilities as to render the Notice of Assessment legally baseless and Section 195 of the LGC inoperative against it. Nonetheless, the Court shall pass over the various issues posed by the NPC.

DISCUSSION

The Trial Court Erred in Dismissing Civil Case No. Q-11-68711 for Forum Shopping

We affirm the holding of the Second Division that the RTC of Quezon City, Branch 99, erred in dismissing Civil Case No. Q-11-68711 on the ground of forum shopping.

In Civil Case No. Q-11-68711, the petition for injunction was against the assessment of business tax for calendar year 2010. The RTC incorrectly surmised that forum shopping was committed by the NPC because of the pendency at the time of Civil Case No. 19076 and Civil Case No. 19070 before RTC Branches 38 and 69 of Lingayen, Pangasinan, respectively. However, the two civil cases in Pangasinan pertained to another subject matter: business taxes for the years 2006 to 2009. Thus, there could not have been forum shopping.

Nonetheless, the dismissal of Civil Case No. Q-11-68711 ought be upheld, albeit for an entirely different reason: the assessment for business tax for the year 2010 had become final and executory, and thus no longer within the jurisdiction of the trial court to adjudicate.

Action for Judicial Relief was no Longer Available when Action was Filed

The NPC does not deny that it failed to protest the Notice of Assessment within the time and according to the procedure prescribed by Section 195 of the LGC. Section 195 provides:

> **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 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.[2]

Thus, we agree with the Second Division that, by operation of law, the Notice of Assessment indeed attained finality and became executory. Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed.[3]

It is noteworthy that after receiving on September 27, 2010 the Notice of Assessment dated September 23, 2010 from the Municipality of Sual regarding business tax for calendar year 2010, the NPC took no action whatsoever to protest the assessment administratively within the 60-day period fixed by Section 195 of the LGC. That period lapsed after November 26, 2010, rendering the assessment final and executory.

It was not until January 28, 2011 that the NPC first sought to repel the assessment, thru a letter of that date to the PNB, assailing the assessment as

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[2] Underscoring added, for emphasis.

[3] *Hacienda Luisita, Inc. vs Presidential Agrarian Reform Council, et al.*, G.R. No. 171101, November 22, 2011, *en banc*, citing Ruben E. Agpalo, Statutory Construction 125 (5th Ed., 2003).

lacking legal and factual basis. The PNB, however, was not the proper party to whom such refutation of the assessment should be addressed.

And it was not until February 9, 2011 that the NPC filed a petition for injunction against the Notice of Assessment and its Warrant of Distraint, before the RTC of Quezon City. While it has been held that the prohibition on the issuance of a writ of injunction to enjoin the collection of taxes applies only to national internal revenue taxes, and not to local taxes,[4] the action in the RTC of Quezon City was very belatedly filed. By the time the petition was filed, the assessment had long become administratively final and executory as well as judicially conclusive and unappealable, by operation of Section 195 of the LGC.

It is irrelevant that the NPC has purportedly meritorious defenses against the business tax assessment; the existence of such defenses cannot excuse the NPC's failure to file a written protest with the local treasurer against the assessment; indeed, the NPC should have raised the said defenses in such a protest. Then if the local treasurer had denied or disregarded the protest, those defenses might have mattered in the courts.

EPIRA does not Expressly Confer Sweeping and Absolute Tax Exemption to the NPC.

The NPC tries to repel liability for the business tax assessed by arguing that because of the EPIRA, it was no longer engaged in the generation and distribution of electric power in the Municipality of Sual in 2010. Thus, it should not be held liable for the payment of the business tax assessed for the year 2010.

Section 195 of the LGC is a taxpayer's remedy, meant for a taxpayer to whom a notice of assessment is *addressed.* Section 195 makes no distinction as to whether or not the assessment pertains to the correct taxpayer. Thus, if the taxpayer believes that the assessment does not pertain to him, he is still bound under Section 195, as the addressee of the notice of assessment, to protest the assessment. If the taxpayer ignores the notice of assessment, he does so at his peril, for the law provides that "the assessment shall become final and executory" if the addressee taxpayer fails, declines or refuses to file a written protest with the local treasurer within sixty (60) days from the receipt of the notice of assessment.

Under the EPIRA, the NPC's assets and liabilities were supposed to have been transferred to the Power Sector Assets and Liabilities Management

[4] *Angeles City vs Angeles City Electric Corporation and Regional Trial Court Branch 57, Angeles City,* G.R. No. 166134, June 29, 2010.

(PSALM) Corporation ("PSALM Corp."). The EPIRA took effect on June 26, 2001. However, by the very terms of this statute, not all of its provisions took effect on the same date that the law took effect.

The EPIRA provided for the privatization of the assets and liabilities of the NPC.[5] The Power Sector Assets and Liabilities Management Corporation (PSALM Corp.) is the corporation organized for this purpose;[6] it is a GOCC "which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets."[7]

Section 47 of the EPIRA required the PSALM Corp. to "submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines," within six months from the law's effectivity. After approval of the said plan, the actual sale of the generation assets and IPP contracts shall be done thru public bidding.[8] Indeed, the law contemplates an *eight-year period* for the privatization, pending completion of which, "NPC may generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM Corp."[9]

Because the EPIRA itself provided for an eight-year privatization period, during which time the NPC was still allowed to "generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM Corp.," the NPC had to show to local tax authorities that it was actually no longer engaged in such business in their respective territorial jurisdictions.

At the center of the dispute is the 1,200-megawatt Sual Coal-Fired Thermal Power Plant in Barangay Pangascasan, Sual, Pangasinan. This facility was not among those transferred by the NPC to the PSALM Corp. within three (3) years of the effectivity of the EPIRA. In fact, on March 30, 2005, the NPC (not the PSALM Corp.) even awarded to Pozzolanic Philippines, Inc. the exclusive right to withdraw fly ash from this plant, for use in manufacturing cement.[10] This belies the NPC's stance that upon effectivity of the EPIRA in June 2001, the NPC no longer maintained *any* business activity within the municipality of Sual;[11] while this stance may be true *as to most power generation and transmission activities of the NPC*, which were generally transferred to PSALM by operation of law, it did not extend to all other business activities.

Indeed, the NPC emphasized in its petition that it was "no longer performing any generation and/or transmission activities within the

[5] EPIRA, Sec. 2(i).
[6] EPIRA, Sec. 4(kk).
[7] EPIRA, Sec. 49.
[8] EPIRA, Sec. 47(d).
[9] EPIRA, Sec. 47(i).
[10] See *Power Sector Assets and Liabilities Management Corp. vs Pozzolanic Philippines, Inc.*, G.R. No. 183789, August 24, 2011.
[11] See Petition for Review, p. 14.

Municipality of Sual, Pangasinan that can be made the subject of business tax."[12] It is at once apparent to this Court that the statement is a negative pregnant, with the implied admission that outside of electric power generation and transmission, the NPC had other business activities during the subject period that were subject to local business tax.

The taking effect of the EPIRA in 2001 did not make the NPC *functus officio*, dormant, inactive, non-functional or inoperative. Indeed, under Section 2(a) of Rule 3 of the Implementing Rules and Regulations ("IRR") of R.A. No. 9136, "notwithstanding the divestment and/or privatization of NPC assets, IPP [independent power producer] contracts and spun-off corporations," the NPC shall continue to be the GOCC tasked to "perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system." And under Section 2(d) of Rule 3, "NPC/PSALM may continue to generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM."

The EPIRA's IRR, dated February 27, 2002, took effect 15 days from publication in the *Official Gazette* or in two (2) newspapers of general circulation. The IRR was published in *The Philippine Star* on March 7, 2002.

Section 12 of Rule 21 of the IRR enumerates claims against the PSALM Corp., as follows: (a) NPC liabilities transferred to PSALM; (b) transfers from the National Government; (c) new loans, such as, but not limited to, those in the form of bonds, convertible instruments, warrants, leases and similar structures; (d) obligations under IPP contracts transferred by NPC to PSALM; (e) loans of ECs [electric cooperatives] that are to be assumed by PSALM under Section 60 of the Act; and (f) expenses for rehabilitation and maintenance of Agus and Pulangi Complexes. *Tax liabilities, whether national or local, are not expressly included in the enumeration.*

As to the transmission assets of the NPC, Section 1 of Rule 22 of the EPIRA's IRR states that the TRANSCO, wholly owned by the PSALM Corp., shall assume all the transmission facilities and all other transmission assets of NPC, including the NPC's nationwide franchise for the operation of the transmission system. Section 1, however, is not self-executing, but requires the NPC, PSALM Corp. and TRANSCO to "take such measures and execute such documents to effect the transfer of ownership and possession of the transmission and subtransmission facilities of NPC and all other assets related to transmission operations. Upon such transfer, the nationwide franchise of NPC for the operation of the transmission system and the Grid shall transfer from NPC to TRANSCO." Section 2(b) sets a definite deadline for the transfer

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[12] Petition for Review, p. 15.

of these assets by NPC directly to TRANSCO: on or before 26 December 2001.

The privatization of the assets of the NPC is governed by Rule 23 of the EPIRA's IRR. Section 1 of this rule states that within 180 days from the effectivity of the EPIRA, the PSALM Corp. shall submit a privatization plan for endorsement by the [Joint Congressional] Power Commission and approval by the President of the Philippines. Under Section 4 of Rule 23, the NPC shall continue to operate the Agus and Pulangi complex in Mindanao, which may be privatized not earlier than ten (10) years from the effectivity of the EPIRA; the NPC shall also operate the Caliraya-Botokan-Kalayaan (CBK) pump storage complex for ten (10) years.

The Court finds nothing in the letter of the EPIRA that expressly exempts the NPC from any tax, whether national or local. However, the definite date (December 26, 2001) of the transfer of the NPC's nationwide franchise for the operation of the transmission system to TRANSCO necessarily carries with it the transfer of the liability for franchise tax to the PSALM Corp., as the full owner of TRANSCO, after that date, there being no condition precedent laid down by the EPIRA. The same cannot be said as to local business taxes.

For tax exemption to be recognized, the grant must be clear and express; it cannot be made to rest on doubtful implications.[13] Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[14]

All that the NPC has done is to invoke the EPIRA in general, without identifying a specific provision that absolutely and unconditionally exempts it from local business taxes, whether expressly or by necessary implication. The Court thus has no choice but to conclude that the NPC cannot use the EPIRA as a shield against Section 195 of the LGC.

NPC not Without Recourse Against the PSALM Corp.

Section 4(j) of Rule 23 of the EPIRA's IRR states that "except as otherwise provided in these Rules, all appropriate existing authorizations, licenses and permits issued by the National Government, including its

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[13] *Antam Pawnshop vs Commissioner of Internal Revenue*, G.R. No. 167962, September 19, 2008.
[14] *Digital Telecommunications Philippines, Inc. vs City Government of Batangas, et al.*, G.R. No. 156040, December 11, 2008, *en banc*.

departments, bureaus and agencies, and LGUs to NPC shall automatically transfer to PSALM." This is one reason why PSALM Corp. should have been impleaded in the case below.

It is noteworthy that a copy of the subject Notice of Assessment was furnished by the Municipal Treasurer to the PSALM Corp., which received the same on September 27, 2010, on the same day that the NPC did. It appears, however, that the PSALM Corp. never sought to intervene in the matter, whether at the level of the municipal treasurer of Sual or in the courts. Equally noteworthy, the Municipality of Sual, after having copy-furnished the PSALM Corp. a copy of the assessment, apparently no longer pursued the matter with the PSALM Corp.

If it is true that the NPC's assets, which would certainly include bank deposits, had been fully transferred to the PSALM Corp. as early as 2001, then why were the PNB accounts subject of this case still in the NPC's name? That the PSALM Corp. did nothing to stop their garnishment, to our mind, shows that the bank accounts were still fully owned by the NPC. Interestingly, these bank accounts were in PNB branches outside of Sual – the NPC Branch in Quezon City, and branches in Romblon, Butuan, Malaybalay and Agusan del Sur. The existence of these bank accounts as of 2011 is further proof that not all of the NPC's assets had been transferred to the PSALM Corp. as of that year.

It thus results that while the NPC may not be held liable for business tax on the operation of the Sual power plant, it may yet be held liable for business tax on other business activities within the territory of Sual, Pangasinan. Thus, the amount of business tax assessed – which was based on the volume and value of electric power generated and the receipts derived therefrom – could have been reduced, had the NPC taken the tack by filing a timely protest as prescribed by Section 195 of the LGC. The NPC, however, believing that it was absolutely exempt from local business taxation, instead of protesting the tax assessment on this basis to obtain its reduction, allowed the assessment to attain finality and to become executory.

The sweeping tax privileges previously enjoyed by the NPC under its charter had been withdrawn by Section 193 of the LGC.[15] This was the prevailing jurisprudence until April 2014 when, in *National Power Corporation vs Provincial Government of Bataan*,[16] the Supreme Court hewed to the NPC's position that the EPIRA upon its effectivity transferred its transmission assets to the TRANSCO and generating and other assets, including IPP contracts, to the PSALM Corp., on which basis the NPC was held not liable for franchise tax. In that case, the trial court, noting that the NPC presented no evidence that it had ceased to operate its power plants in the Province of Bataan,

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[15] *Batangas Power Corporation vs Batangas City and National Power Corporation*, G.R. No. 152675, April 28, 2004, citing *National Power Corporation vs City of Cabanatuan*, G.R. No. 149110, April 9, 2003.
[16] G.R. No. 180654, April 21, 2014.

dismissed the NPC's suit to be declared exempt from the payment of local franchise tax. On the matter of the NPC's failure to present evidence, the Supreme Court held:

> The RTC found that the NPC failed to present evidence that it no longer owned or operated the business subject to local franchise tax and that the properties the Province levied on did not belong to it. But proving these things did not require the presentation of evidence in this case since these events took place by operation of law, particularly the EPIRA.

The Supreme Court's ruling in *Bataan*, however, cannot apply to the instant case. In *Bataan*, the NPC ***did not ignore*** the notice of tax delinquency that it received on March 28, 2003, but reserved its right to contest the computation pending the decision of the Supreme Court in *NPC vs City of Cabanatuan* (which would be decided on April 9, 2003). Thus the NPC had reserved its right before the provincial government sent it tax notices anew on May 12 and 14, 2003 – the reservation of the right was made well within the 60-day period for protesting a tax assessment. The provincial government, however, proceeded to levy on fourteen (14) of the NPC's properties in the province and to sell them at public auction in March 2004, prompting the NPC to go to court for the nullification of the foreclosure sale. What the NPC directly challenged at the trial court, thus, was no longer the tax delinquency assessment, but the consequent foreclosure sale.

In *Bataan*, what the NPC sought to repel was liability for local franchise tax, not business tax. In *Bataan*, the Supreme Court pointed out that under Section 8 of the EPIRA, the nationwide franchise of the NPC for the transmission of electricity was transferred to the National Transmission Corporation (TRANSCO). As this Court noted above, the definite date (December 26, 2001) for the transfer of the NPC's franchise necessarily carried with it the transfer of the liability for franchise tax to the PSALM Corp., as the full owner of TRANSCO, there being no condition precedent laid down by the EPIRA. We are thus comfortable with the Supreme Court's holding that "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" and that "such tax is collectible solely from PSALM Corp.."

In *Bataan*, the Supreme Court ruled that TRANSCO and PSALM Corp. should have been impleaded as indispensable parties; not having been impleaded, the proceedings before the trial court for the nullification of the foreclosure sale were held to be a nullity. The case was remanded to the trial court so that TRANSCO and PSALM Corp. may be impleaded as proper parties.

In the instant case, who should have impleaded the PSALM Corporation? Verily, it should have been the NPC, as the complainant in Civil Case No. Q-11-68711 at Branch 99 of the RTC of Quezon City. As the party alleging that the business tax assessed pertained not to it but to another taxpayer, it was in the NPC's interest to implead the PSALM Corp. as an indispensable party. While it is true that parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action,[17] it was most incumbent upon the NPC, as the party making the allegation, to implead the PSALM Corp.

It is noteworthy that in another case, Civil Case No. 19076, filed by the NPC on December 29, 2011 against the Municipality of Sual to contest the assessment of business taxes for the years 2006 to 2009, the NPC had already raised the argument that it "no longer operates, conducts and/or maintains any business activity in the main grid specifically within the territorial jurisdiction of the Municipality of Sual, Pangasinan because these activities were already transferred to PSALM."[18] The NPC pointed out in that case: "If there is such an entity liable for the payment of alleged business tax for the period 2006 to 2009, it should be PSALM."[19] The Court is left to wonder why the NPC did not implead the PSALM Corp., when there was nothing to stop it from doing so, and when NPC had every reason to so implead it.

Had the factual circumstances of this case been similar to those in *Bataan*, this Court would be inclined to remand the case to the trial court. However, we have already noted that in *Bataan*, the NPC had, within the 60-day period for protesting the assessment, reserved its right to contest the computation of the tax assessment. In the instant case, the NPC took no action whatsoever against the assessment for calendar year 2010, and allowed the 60-day period set by Section 195 of the LGC to lapse without any protest being filed. The assessment thus became final and executory, not by judicial action but *ipso jure*, by virtue of Section 195 of the LGC, rendering it pointless to remand the case to the trial court.

The NPC may, nonetheless, recover such payment as it shall make under the subject assessment from the PSALM Corp., should it wish to do so, thru an appropriate action in the proper court, if the NPC can prove that its liabilities for local taxes have also been transferred by the EPIRA to the PSALM Corp.

No Exceptionally Meritorious Reason to Accord NPC Liberality in the Application of the Law

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[17] *Living @ Sense, Inc. vs Malayan Insurance Company, Inc.*, G.R. No. 193753, September 26, 2012, citing *Vda. De Manguerra vs Risos*, G.R. No. 152643, August 28, 2008, 563 SCRA 499, 504.

[18] Appeal in Civil Case No. 19076, p. 5; p. 50 of the records of CTA AC No. 101.

[19] *Ibid.*, p. 8 of Appeal, p. 53 of the records of CTA AC No. 101.

The NPC, fearing the futility of judicial action arising from failure to comply with the requisites laid down by Section 195 of the LGC, raised as an issue the following ill-phrased point:

> Whether or not this Honorable Court has the power to excuse a party litigant, under exceptional and meritorious circumstances, like the case at hand, the amplest opportunity for the proper determination of his cause free from the constraints of technicalities especially so that if the assailed September 23, 2010 Notice of Assessment, Warrant of Distraint of respondent Municipality will cause absurdity and grave injustice to petitioner and the government as a whole.[20]

The NPC is begging the question by presuming as well as concluding that "the case at hand" comprises "exceptional and meritorious circumstances."

This Court cannot indulge the NPC on this point. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed.[21]

The Court finds nothing exceptional and meritorious that excuses the NPC from complying with the requisites of Section 195 of the LGC. Even if the NPC believed that it had been relieved by the EPIRA since 2001 from liability for the payment of local business taxes, that mere belief does not except the NPC from Section 195. Indeed, the NPC followed Section 195 when it protested on November 11, 2010 the Municipality of Sual's business tax assessments for the years 2006 to 2009, before it filed action on December 29, 2010 in the RTC of Lingayen, in what was docketed as Civil Case No. 19076 before Branch 38 of that court.[22] All that the NPC had to do was to similarly protest the business tax assessment for the year 2010.

The Supreme Court recently reminded:

> Suffice it to say that "concomitant to the liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules." Those who seek exemption from the application of the rule have the burden of proving the

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[20] Petition for Review, No. VII, p. 13.

[21] *Corporate Inn Hotel, et al. vs Jennevie H. Lizo*, G.R. No. 148279, May 27, 2004, citing *Arnold Ginete vs Hon. Court of Appeals*, G.R. No. 127596, September 24, 1998, 296 SCRA 38. See also *Nationwide Security and Allied Services, Inc. vs Court of Appeals, et al.*, G.R. No. 155844, July 14, 2008.

[22] See No. 4 of the NPC's Complaint in Civil Case No. 19076, p. 48 of the Records of CTA AC No. 101. The protest was filed on November 11, 2010, against four (4) Notices of Assessment received on September 17, 2010. The NPC's protest against the business tax assessments for the years 2006 to 2009 was also acknowledged by the Municipality of Sual in No. 11 of its Complaint in Civil Case No. 19070, heard by the RTC of Lingayen, Branch 69 (p. 43 of the Records of CTA AC No. 101).

existence of exceptionally meritorious reasons warranting such departure.[23]

We find the reasons given by the NPC to be far from being "exceptionally meritorious." Indeed, they deserve scant consideration, if any, and we cannot fault the Second Division for not according them the dignity of a laborious point-by-point disquisition. We dispose of them briefly, as follows:

1. The NPC claimed that the Second Division failed to take into consideration the fact that it is a GOCC whose funds are public funds that cannot be appropriated for the payment of a tax obligation.[24] The argument is but a variant of the point raised by the NPC that its stocks are wholly owned by the National Government. This line of argument employed in repelling local taxation had been discredited in 2003 in *NPC vs City of Cabanatuan*[25] and in 2006 in *NPC vs Province of Isabela*.[26] The NPC would have this Court believe that these two cases are no longer good jurisprudence just because they "were filed prior to the effectivity of the EPIRA Law [sic]."[27] While indeed the rulings of the Supreme Court in these two cases may now be deemed modified by the 2014 ruling in *NPC vs Provincial Government of Bataan*,[28] that is so only insofar as franchise tax is concerned. *Bataan* did not venture so far as to rule that GOCCs in general are exempt from the payment of all other taxes.

2. The NPC lamely posited that "there is no proof that a Municipal Ordinance has been validly passed" as basis for assessing business tax against it.[29] The Notice of Assessment clearly identifies the tax measure as Ordinance No. 121. The NPC utterly failed to show how the enactment of this ordinance was tainted by invalidity. Nor has the NPC alleged that Ordinance No. 121 is spurious. Every ordinance is presumed valid.[30] The burden of demonstrating the alleged nullity of an ordinance rests on the party assailing its infirmity, there being a presumption of its validity.[31] In accordance with the presumption of validity in favor of an ordinance, its constitutionality or legality should be upheld in the absence of evidence showing that the procedure prescribed by law was not observed in its enactment.[32]

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[23] *Alonzo Gipa, et al. vs Southern Luzon Institute*, G.R. No. 177425, June 18, 2014, citing *Enriquez vs Enriquez*, 505 Phil. 193, 201 (2005).
[24] See Petition for Review, No. 1, p. 9.
[25] G.R. No. 149110, April 9, 2003.
[26] G.R. No. 165827, June 16, 2006.
[27] See Petition for Review, p. 22.
[28] G.R. No. 180654, April 21, 2014.
[29] See Petition for Review, No. II, p. 9.
[30] *Smart Communications, Inc. vs Municipality of Malvar, Batangas*, G.R. No. 204429, February 18, 2014, *en banc*.
[31] *Elisa Samson and Angel Gavilan vs City Mayor of Bacolod City, et al.*, G.R. No. L-28745, October 23, 1974, citing *Ermita-Malate Hotel and Motel Operators Association vs City Mayor*, L-24693, July 31, 1967, 20 SCRA 849.
[32] *Romanita O. Acaac, et al. vs Melquiades D. Azcuna Jr., et al.*, G.R. No. 187378, September 30, 2013.

Doubts should be resolved in favor of municipal corporations in interpreting statutory provisions on municipal taxing powers.[33] Perforce, the Court need not further waste its time over this "issue," if it can be considered at all as such.

3. The NPC claims that upon the effectivity of the EPIRA, it no longer operated, conducted or maintained any business activity in the main grid located within the Municipality of Sual, because these activities were already transferred to PSALM.[34] The Court has already discussed that the EPIRA did not immediately and fully result in the transfer of all NPC assets and operations to the PSALM Corp. The records of this case also show that the NPC continued to do business in Sual even after the EPIRA took effect.[35]

4. The NPC asserts that under the LGC, the generation of electric power is not one of the businesses liable for business tax.[36] The fact that the generation of electric power is not among the businesses enumerated as subject to business tax under Section 143(a) to (g) of the LGC does not put this particular business beyond the reach of local taxing power. Section 143(h) allows the imposition of the tax "on any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax."

5. The NPC alleged that it "is a *government instrumentality* that is exempt from payment of business tax,"[37] based on Section 133(o) of the LGC, which states that the taxing powers of LGUs shall not extend to the levy of "taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units." However, the NPC cannot claim to be a GOCC as well as a government instrumentality at the same time. This assertion is odd, considering that the NPC even cited *MIAA vs CA*, 495 SCRA 591 (2006).[38] It was in *MIAA* that the Supreme Court exhaustively differentiated a GOCC from a national government instrumentality. By the very criteria laid down in MIAA, it may be concluded that the NPC is not a national government instrumentality but a GOCC. In

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[33] *Philippine Long Distance Telephone Company, Inc. vs City of Davao*, G.R. No. 143867, August 22, 2001.
[34] See Petition for Review, No. III, p. 9.
[35] See No. 14 of the Complaint of the Municipality of Sual in Civil Case No. 19070, p. 44 of the Records of CTA AC No. 101. Excerpt: "... official documents consisting of the schedule of payments made by NPC to TeaM Sual Corporation and official receipts of payments issued by TeaM Sual Corporation to NPC, however, show that NPC actively conducted its business activities thru its Sual Coal-Fired Power Plant even up to the year 2009. Copies of the Schedule of Payments of NPC to TeaM Sual Corporation and samples of the Official Receipts issued to NPC in the year 2009 are hereto attached and marked as Annex F and series thereof."
[36] See Petition for Review, No. 4, pp. 9-10.
[37] See Petition for Review, No. V, p. 10.
[38] *Manila International Airport Authority vs Court of Appeals, City of Paranaque, et al.*, G.R. No. 155650, July 20, 2006, *en banc*.

Section 4(ff) of the EPIRA, the NPC is identified as "a government corporation." The NPC's resort to the government instrumentality persona had been tried before, but was unsuccessful in *NPC vs Province of Isabela*.[39]

6. The NPC claimed that the business tax assessed for calendar year 2010 "has no factual basis."[40] If so, then the NPC should have protested the assessment administratively, as provided for under Section 195 of the LGC.

7. The NPC alleged that the implementation of the Notice of Assessment and Warrant of Distraint, and further distraint to collect the balance of the tax assessed, "will result in the deprivation of electric power in one or more of the provinces being presently served by the subject main grid."[41] To the Court, this sounds like an admission that the NPC, directly or indirectly, is still engaged in the electric power business to a substantial extent.

8. The NPC cannot invoke the exemption provided under Section 234 of the LGC to GOCCs engaged in the generation and transmission of electric power,[42] while at the same time insisting that it had ceased being involved in that business since 2009, or as early as 2001. Moreover, the exemption under Section 234(c) applies only to real property tax on machineries and equipment, and not to business tax.

Having found the foregoing arguments of the NPC to be without merit, we must conclude that the NPC miserably failed to discharge the burden of proving the existence of exceptionally meritorious reasons that would justify a relaxation of procedural rules in its favor.

It is hornbook doctrine that "the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner prescribed by and in accordance with the provisions of law. The party who seeks to avail himself of the same must comply with the requirements of the rules. Failing to do so, he loses the right to appeal."[43]

The power that this Court possesses extends only to the suspension or relaxation of its own rules of procedure (the Revised Rules of the CTA) and the

[39] G.R. No. 165827, June 16, 2006, 491 SCRA 169.
[40] See Petition for Review, No. VI, p. 10.
[41] See Petition for Review, No. VIII, p. 10.
[42] See Petition for Review, p. 20, second paragraph.
[43] *Hilario S. Ramirez vs Court of Appeals, et al.*, G.R. No. 182626, December 4, 2009, citing *Colby Construction and Management Corporation vs National Labor Relations Commission*, G.R. No. 170099, November 28, 2007, 539 SCRA 159, 168.

suppletory application of the Rules of Court.[44] Such power cannot be stretched to subvert any explicit and mandatory provision of a statute, such as Section 195 of the LGC.

WHEREFORE, prescinding from the foregoing discussion, the assailed Decision dated September 6, 2013 and Resolution dated November 27, 2013 of this Court's Second Division in CTA AC No. 101 are **AFFIRMED** ***in toto***, and the instant petition is **DISMISSED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO - see concurring & dissenting opinion
Presiding Justice

I join Justice Uy in her separate opinion
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

WITH SEPARATE OPINION
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[44] This may be gleaned from *Metro Manila Shopping Mecca Corp., et al. vs Liberty M. Toleda, et al.*, G.R. No. 190818, June 5, 2013.

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO – MANALASTAS
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION, *Petitioner,*	**CTA EB NO. 1104** (CTA AC No. 101)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
PHILIPPINE NATIONAL BANK (PNB) & MUNICIPALITY OF SUAL, PANGASINAN, *Respondents.*	Promulgated:
	SEP 24 2015 11:00 a.m.

x -- x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in so far as it ruled that the Regional Trial court of Quezon City, Branch 99, erred in dismissing Civil Case No. Q-11-68711 on the ground of forum shopping.

PSALM AS OWNER OF SUAL POWER PLANT IS LIABLE FOR BUSINESS TAX

With all due respect, however, I dissent on the findings that NAPOCOR is liable for local business tax in 2010 due to the fact that by operation of law, the Notice of Assessment had already become final and executory. I am of the humble view that NAPOCOR is not liable for local business tax for the year 2010 in the operation of the 1200-megawatt Sual Coal-Fired Thermal Power Plant as such facility was already transferred to the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.) with the enactment of Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA) on June 26, 2001.

In assessing NAPOCOR for the 2010 local business tax, respondent Municipality of Sual, Pangasinan invoked Section 2A.01 of Municipal Ordinance No. 121, which provides, as follows:

> "Section 2A.01. There is hereby **imposed on the following persons who establish, operate, conduct or maintain their respective business within the municipality** a graduated business tax in the amount hereafter prescribed: xxx
>
> e) On contractors and other independent contractors, in accordance with the following schedule:
>
> xxx xxx xxx

Gross sales/receipts of the preceding year	Rate of tax per annum
xxx	xxx
2,000,000.00 or more	At a rate not exceeding fifty percent (50%) of one percent (1%)"

Pursuant to the above provision, **for an entity to be liable for local business tax as a contractor or independent contractor, such entity must be a person which establishes, operates, conducts or maintains a business within the Municipality of Sual, Pangasinan**.

With the enactment of the EPIRA law, the generation assets of NAPOCOR were transferred to PSALM Corp. Section 49 of the EPIRA law expressly 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.**"

In *National Power Corporation vs. Provincial Government of Bataan (Bataan Case),*[1] the Supreme Court ruled that in view of the transfer of NAPOCOR's generation assets to PSALM Corp., NAPOCOR is not the proper party subject to the local franchise tax for operating the Sual Power Plant. Thus:

> "**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 Plan**t. Clearly, **<u>the NPC had ceased running its former power transmission and distribution business in Bataan by operation of law from June 26, 2001.</u> 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."

Although the afore-quoted case pertains to local franchise tax, the Supreme Court declared that the generation assets of NAPOCOR were transferred to PSALM Corp. pursuant to the EPIRA law. Indubitably, by virtue of the EPIRA law, the ownership and operation of the 1200-megawatt Sual Coal-Fired Thermal Power Plant was transferred from NAPOCOR to

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

PSALM Corp. Hence, NAPOCOR need not present evidence to prove the transfer of its generation assets to PSALM Corp.

Considering, therefore, that effective June 26, 2001, NAPOCOR no longer owns nor operates the said power plant, it is clear that respondent Municipality of Sual, Pangasinan has no right to assess NAPOCOR for local business tax for the year 2010.

In denying the present Petition for Review, the *ponencia* ruled that the afore-quoted *Bataan case* is not applicable, to wit:

> "**In Bataan, the NPC did not ignore the notice of tax delinquency that it received on March 28, 2003, but reserved its right to contest the computation pending the decision of the Supreme Court in *NPC vs. City of Cabanatuan* (which would be decided on April 9, 2003).** Thus the NPC had **reserved** its right before the provincial government sent it tax notices anew on May 12 and 14, 2003 – the reservation of the right was made well within the 60-day period for protesting a tax assessment. The provincial government, however, proceeded to levy on fourteen (14) of the NPC's properties in the province and sell them at public auction in March 2004, prompting NPC to go to court for the nullification of the foreclosure sale. What the NPC directly challenged at the trial court, thus, was no longer the tax delinquency assessment, but the consequent foreclosure sale."[2]

The *ponencia* is of the view that the **reservation** made by NAPOCOR in the *Bataan case* is tantamount to the filing of a protest under Section 195 of the Local Government Code (LGC) of 1991, as amended.

I submit, however, that the <u>reservation to contest the assessment is not the same as the required protest against the assessment.</u> Section 195 of the LGC of 1991, as amended, is clear that a formal protest should be filed with the municipal treasurer within sixty (60) days from receipt of the notice of assessment. Thus, in the *Bataan case*, the Province of Bataan proceeded with the levy and garnishment of NAPOCOR's property despite the purported reservation.

In other words, the reservation to contest the assessment in the *Bataan case* was not significant, nay determinative of its final outcome. Its relevance was not even mentioned by the Supreme Court when it rendered

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[2] Decision, page 12.

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the doctrine. Its applicability to the present controversy should not likely be ignored.

The *ponencia* also claims that the Sual Power Plant was not one of those assets transferred by NAPOCOR to PSALM Corp. within three (3) years from the effectivity of the EPIRA law for the reason that on March 30, 2005, NAPOCOR even entered into a contract with Pozzolanic Philippines, Incorporated to withdraw the fly ash from the Sual Power Plant, citing the case of *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines, Incorporated (Pozzolanic Case).*[3]

Again, I disagree for the following reasons:

1) The *Pozzolanic case* originated in 1999 from the complaint filed by Pozzolanic Philippines, Incorporated against National Power Corporation. Pozzolanic wants to exercise its right of first refusal (pursuant to the Long Term Agreement dated October 20, 1987 entered into by NAPOCOR and Pozzolanic Australia) to match the price and terms offered by the winning bidder for the purchase of fly ash from the Sual Power Plant. **With the enactment of EPIRA law in 2001, PSALM Corp. was impleaded as a necessary and indispensable party**;

2) **The March 30, 2005 contract was entered into by NAPOCOR and Pozzolanic to justify the dismissal of the complaint filed by Pozzolanic**. In 2008, the RTC dismissed the complaint filed against NAPOCOR and issued an order declaring that Pozzolanic's right of first refusal as valid and binding to PSALM Corp.; and,

3) The Supreme Court declared null and void the contract dated March 30, 2005, executed by NAPOCOR and Pozzolanic for being contrary to law and public policy and ordered PSALM Corp., as the owner, to conduct a bidding for the right to purchase the fly ash produced in the Sual Power Plant.

It is clear that in the *Pozzolanic case*, the Supreme Court recognized PSALM Corp. as the owner of the Sual Power Plant and not NAPOCOR.

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[3] G.R. No. 183789, August 24, 2011.

As the owner of the Sual Power Plant, PSALM Corp. is the taxpayer liable for the local business tax assessed by respondent Municipality of Sual, Pangasinan.

QC RTC HAS JURISDICTION OVER THE ACTION FOR INJUNCTION

As regards the issuance of injunction, I submit that the RTC of Quezon City has jurisdiction to issue the same.

The respondents in the Petition filed with the RTC of Quezon City involved not only the Municipality of Sual, Pangasinan but also the Philippine National Bank (PNB). NAPOCOR's prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction, thus included the plea:

1. To restrain the acts of **PNB from transmitting NAPOCOR'S deposits** in the following PNB branches: **NPC Branch**, Romblon Branch, Butuan Branch, Malaybalay Branch and Agusan Del Sur Branch amounting to ₱339,245.16 to the Municipality of Sual, Pangasinan;[4] and,

2. To restrain the Municipality of Sual, Pangasinan from further garnishing the personal properties of NAPOCOR, which necessarily include those located **in Quezon City**.

In *Dagupan Electric Co. v. Pano,*[5] the Supreme Court ruled that <u>where the principal officials of the corporation who have direct supervision and control of the acts sought to be restrained have their **principal office** within the territorial jurisdiction of the court issuing the injunction and that their subordinates outside of said territory merely carry out their official orders, the acts sought to be restrained are deemed to be within the issuing court's territory,</u> which has jurisdiction to issue the writ of preliminary injunction.

In the case at bar, since the principal office of PNB is located at Macapagal Blvd., Pasay City, which is within the National Capital Judicial

[4] Paragraphs 8 to 11 of the Petition filed in Civil Case No. Q-11-68711.
[5] G.R. No. L-49510, January 28, 1980.

Region, the RTC of Quezon City has undeniable jurisdiction to enjoin PNB from transmitting NAPOCOR's deposit to the Municipality of Sual, Pangasinan. Needless to say, the jurisdiction of the RTC of Quezon City extends to all areas within the National Capital Judicial Region.

Furthermore, in *Director of the Bureau of Telecommunications v. Aligaen, et al.,*[6] the Supreme Court opined:

> "xxx In case of Gonzales v. Secretary of Public Works, et al., G.R. No. L-21988, September 30, 1996, 18 SCRA 296, wherein the only questioned raised was whether the Court of First Instance of Davao had jurisdiction to entertain a case the main purpose of which was to prevent the enforcement of a decision of the Secretary of Public Works who was **in Manila** this Court held that, **inasmuch as the acts sought to be restrained were to be performed within the territorial boundaries of the province of Davao, the Court of First Instance of Davao had jurisdiction to hear and decide the case, and to issue the necessary injunction order**. This Gonzales case was an action for certiorari and prohibition with preliminary mandatory injunction to prevent the demolition of Gonzales' dam in Davao in compliance with the order of the Secretary of Public Works.
>
> **It follows, therefore, that since the acts to be restrained were being done in Roxas City, or within the territorial jurisdiction of respondent court, the latter had jurisdiction to restrain said acts even if the office of respondent Director of the Bureau of Telecommunications is in Manila, and that of respondent Regional Superintendent of Region IV in Iloilo City**."

Since among the acts sought to be restrained necessarily involve the garnishment of NAPOCOR's personal properties in PNB NPC Branch in Quezon City, the RTC of Quezon City has jurisdiction to entertain the action for injunction as the acts sought to be restrained are within the territorial jurisdiction of the said Court.

Truth be told, requiring NAPOCOR to file a **separate case** for injunction with the RTC of Lingayen, Pangasinan to enjoin the Municipality of Sual, Pangasinan from further garnishing the personal properties of NAPOCOR, in addition to the petition it filed in Quezon City, would encourage "splitting of cause of action" or invite "multiplicity of suits," which procedure is anathema to the sound administration of justice.

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[6] G.R. No. L-31135, May 29, 1970.

Finally, I find it proper to remand the case to the RTC of Quezon City. In the *Bataan case,* when the Provincial Government of Bataan issued a "Warrant of Levy" on fourteen (14) real properties that NAPOCOR used to own in Limay, Bataan to collect on the delinquency franchise tax of NAPOCOR, the Supreme Court held that since the subject properties now belong to PSALM Corp. and TRANSCO, they are certainly indispensable parties to the case that must be necessarily included before the case may properly go forward. The Court further nullified the ruling of the RTC in its finding that NAPOCOR was liable for franchise tax and accordingly **remanded** the case to the RTC of Mariveles, Bataan.

For all the foregoing, I vote to grant the present Petition for Review and remand the case to the Regional Trial Court of Quezon City so that the PSALM Corp., which is the owner of the Sual Power Plant and received a copy of the Notice of Assessment, may be impleaded as proper party, consistent with the relief granted in the *Bataan case.*

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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NATIONAL POWER CORPORATION,
Petitioner,

CTA EB No. 1104
(CTA AC No. 101)

- versus -

PHILIPPINE NATIONAL BANK (PNB) and MUNICIPALITY OF SUAL, PANGASINAN,
Respondents.

Promulgated:

SEP 24 2015
11:00 a.m.

x - x

SEPARATE OPINION

UY, *J.*:

With all due respect to my esteemed colleagues, while I concur with the dismissal of the instant Petition for Review for lack of merit, it is my humble submission that the affirmance of the assailed Decision and Resolution should be anchored upon different grounds, as stated below.

Petitioner is not liable for local business tax subject of the 2010 Notice of Assessment.

In the instant case, petitioner cannot be made liable to pay for the assessed local business tax for calendar year 2010 for the operation of the Sual Coal-Fired Power Plant because said generation facility, by virtue of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), which took effect on June 26, 2001, was already transferred to Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).

Based on the 2010 Notice of Assessment issued by the Municipality of Treasurer of Sual, Pangasinan, petitioner was assessed of local business tax for the operation of the Sual Coal-Fired Power Plant, located in the Municipality of Sual, Pangasinan.

However, in the case of *National Power Corporation vs. Provincial Government of Bataan*[1], the Supreme Court declared that by virtue of the EPIRA, the ownership and operation of all of petitioner's generation assets was transferred to the or PSALM Corp. Considering that petitioner no longer owns or operates its former generation facilities, which would include the Sual Coal-Fired Power Plant, petitioner is not the proper party subject to tax for operating said business within the Municipality of Sual, Pangasinan. Rather, said tax is collectible solely from PSALM Corp. on the basis of the EPIRA.

Furthermore, there is no evidence on record to show that despite the enactment of the EPIRA, petitioner NPC continued to do business in the Municipality of Sual, Pangasinan. In this connection, it must be presumed that the law, such as the EPIRA, has been obeyed.[2]

Thus, considering that petitioner is not the proper party subject to business tax, the 2010 Notice of Assessment issued by the Municipal Treasurer should be considered null and void and without legal force and effect. Such being the case, said assessment could not have become final and executory notwithstanding petitioner's failure to file a written protest within the period prescribed under Section 195 of the Local Government Code.

However, I do not agree that the Regional Trial Court (RTC) of Quezon City (Branch 99) has jurisdiction over the action for injunction. Thus, remanding the case to the said court is improper.

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

[2] This is pursuant to the provisions of Rule 131 of the Revised Rules of Evidence on Disputable presumptions, specifically, Sec. 3, paragraph (ff) thereof which reads:

> " Sec. 3. ***Disputable presumptions.*** – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx xxx xxx
>
> (ff) That the law has been obeyed;"

The RTC is without jurisdiction over the action for injunction.

To recall, the instant Petition for Review originates from a petition for injunction filed by petitioner before the RTC - Quezon City (Branch 99) against respondents, Philippine National Bank (PNB) and the Municipality of Sual, Pangasinan, docketed as Civil Case No. Q-11-68711.

Section 21 of *Batas Pambansa Blg.* 129 (B.P. 129), as amended, otherwise known as *The Judiciary Reorganization Act of 1980*, confers jurisdiction to the RTC to issue writs of injunction, which may only be enforced within their respective designated territories, to wit:

> "SEC. 21. *Original Jurisdiction in other cases.* – Regional Trial Courts shall exercise original jurisdiction:
>
> (1) In the issuance of writs of *certiorari,* prohibition, *mandamus, quo warranto, habeas corpus* and **injunction which may be enforced in any part of their respective regions**; and xxx" *(Emphasis supplied).*

In this case, the RTC - Quezon City (Branch 99) falls within the National Capital Judicial Region, while the Municipality of Sual, Pangasinan is part of the Second Judicial Region. In consonance with the aforequoted law, the said court has no jurisdiction to enjoin respondent Municipality because the writ of injunction which it may issue in Civil Case No. Q-11-68711 is enforceable and operative only within the National Capital Judicial Region. It cannot be enforced in the Municipality of Sual, Pangasinan, an area outside its judicial jurisdiction.

And while it may be true that RTC - Quezon City (Branch 99) may validly issue and enforce an injunctive writ against respondent PNB—being located with the National Capital Judicial Region, the fact remains that respondent Municipality cannot be legally deterred by the said writ. In other words, even assuming that the case is remanded and the RTC - Quezon City (Branch 99) issues an injunctive writ against respondent PNB, respondent Municipality may still proceed to collect the subject tax via other means, *e.g.*, levy and distraint, as the law does not limit the collection of taxes by means of garnishment of bank deposits.[3]

The writ must be issued by the same court to avoid splitting of jurisdiction, conflicting decisions, interference by a co-equal court and judicial instability,[4] and the proper court to issue the writ is the RTC of Lingayen, Pangasinan to enjoin respondent Municipality from collecting the subject tax. To my mind, enjoining respondent Municipality is sufficient, since once the latter is enjoined to collect the subject tax by the injunctive writ issued by the RTC of Lingayen, Pangasinan, said respondent Municipality is likewise prohibited to accept any transmittal of NPC's deposit that would come from respondent PNB.

All the foregoing considered, I vote to dismiss the instant Petition for Review for lack of merit.

ERLINDA P. UY
Associate Justice

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[3] Sections 175 and 176 of the Local Government Code provide as follows:

"SEC. 175. *Distraint of Personal Property.* The remedy by distraint shall proceed as follows:

(a) *Seizure* — **Upon failure of the person owing any local tax, fee, or charge to pay the same at the time required, the local treasurer or his deputy may, upon written notice, seize or confiscate any personal property belonging to that person** or any personal property subject to the lien in sufficient quantity to satisfy the tax, fee, or charge in question, together with any increment thereto incident to delinquency and the expenses of seizure. xxx

xxx xxx xxx

SEC. 176. *Levy on Real Property.* — **After the expiration of the time required to pay the delinquent tax, fee, or charge, real property may be levied before, simultaneously, or after the distraint of personal property belonging to the delinquent taxpayer.** xxx." *(Emphases supplied)*

[4] Refer to *Madrian vs. Madrian*, G.R. No. 159374, July 12, 2007.