REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MUNICIPALITY OF LAGUINDINGAN AND MUNICIPAL TREASURER OF LAGUINDINGAN, MISAMIS ORIENTAL,	**CTA AC No. 106**
	Members:
Petitioners,	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
- versus -	
NATIONAL POWER CORPORATION AND THE REGIONAL TRIAL COURT BRANCH 44 OF INITAO, MISAMIS ORIENTAL, 10TH JUDICIAL REGION,	**Promulgated:**
Respondents.	FEB 25 2015 ; 2:53 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

For this Court's resolution is respondent National Power Corporation's (NPC) **Motion for Reconsideration (Of the Decision dated October 10, 2014)** filed on November 4, 2014, with petitioners' **Opposition (To the Motion for Reconsideration Filed by Respondent NAPOCOR)** filed through registered mail on November 28, 2014 and received by the Court on December 17, 2014.

Respondent NPC moves for the reconsideration of the Decision promulgated on October 10, 2014, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. The assailed Decision dated April 25, 2012 and the Order dated March 25,

2013, both rendered by the RTC-Branch 44 of Initao, Misamis Oriental in Civil Case No. 2010-930 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the appeal filed by respondent in Civil Case No. 2010-930 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED."

In the assailed Decision, the Court found that the issues pertaining to whether respondent NPC is doing business within the territorial jurisdiction of the Municipality of Laguindingan, Misamis Oriental and whether it generates revenues (that become part of its gross receipts) which may eventually subject it to business tax, as alleged by petitioners, were not properly resolved by the court *a quo*. On appeal before this Court, the issues and factual allegations raised by petitioners were evidentiary in nature which were not substantiated during the proceedings before the court *a quo*. Hence, the Court did not give due weight on said allegations in the disposition of this case. Instead, the Court found that respondent NPC's appeal with the RTC-Branch 44 of Initao, Misamis Oriental was prematurely filed. Respondent NPC's failure to comply with the 60-day mandatory period in line with Section 195 of the Local Government Code[1] renders its appeal with the RTC-Branch 44 of Initao, Misamis Oriental void.

Respondent NPC moves for the reconsideration of the assailed Decision on the following grounds:

1. The trial court did not err in holding that the petitioners have no authority to impose any tax, fee or charge of any kind on respondent NPC under the Local Government Code;

2. Assuming *ex gratia argumenti* that respondent NPC does not fall within the purview of Section 133(o) of the Local Government Code, it is still not liable for the payment of business taxes to petitioner municipality; and

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[1] **SEC. 195.** ***Protest of Assessment.*** - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling 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.

3. Respondent NPC timely filed an appeal with the trial court pursuant to Section 195 of the Local Government Code.

In their Opposition, petitioners insist that they have the authority under the Constitution, the Local Government Code (LGC), and the Local Tax Ordinance, to impose tax, fee or charge upon NPC. According to petitioners, the argument of NPC that it does not fall within the purview of Section 133(o) of the LGC, thus, not liable for the payment of business taxes to petitioner municipality is seriously misplaced as the said section of the LGC should be read in relation with Section 193[2] of the same code. Lastly, petitioners maintain that respondent NPC prematurely filed an appeal with the trial court pursuant to Section 195 of the LGC.

After a careful study of the arguments proffered by both parties in their respective pleadings, the Court finds no compelling reason to reverse or set aside the assailed Decision dated October 10, 2014.

The Court notes that the first two grounds raised in NPC's Motion for Reconsideration are mere rehash of the arguments raised in its Comment[3] filed on August 16, 2013 and Memorandum[4] filed on November 4, 2013. On the other hand, the third ground has been thoroughly threshed out in the assailed Decision.

The Court reiterates its ruling in the assailed Decision, the pertinent portion of which reads:

> The CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction. Section 7 of R.A. No. 1125, as further amended by R.A. No. 9282, provides:
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> " SEC. 7. *Jurisdiction*. - The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided :
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> xxx xxx xxx
>
> (3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or

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[2] **SEC. 193.** ***Withdrawal of Tax Exemption Privileges***. - Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

[3] Docket, pp. 58-72.

[4] Docket, pp. 121-134.

> resolved by them in the exercise of their original or appellate jurisdiction;"

In line with this, Section 195 of the Local Government Code requires that a taxpayer, who questions the validity or legality of an assessment issued by the local treasurer, may within sixty (60) days from receipt of the notice of assessment file a written protest with the local treasurer contesting the said assessment. Thereafter, the local treasurer shall decide the protest within sixty (60) days from the time of its filing. In case the local treasurer denies the protest or fails to act within the 60-day period provided for by law, the taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the 60-day period within which to appeal before a court of competent jurisdiction. Otherwise, the assessment becomes conclusive and unappealable. Section 195 of the Local Government Code reads:

> "SEC. 195. *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**" *(Emphasis supplied)*

Clearly, the three separate periods mentioned above are established for compliance as prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. For this reason the courts construe these provisions of statutes as mandatory. Failure to comply with the 60-day waiting period violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the RTC will not acquire jurisdiction over the taxpayer's petition.

In the instant case, the statutory periods were not followed. As correctly alleged by petitioners in their petition, before the lapse of the 60-day period within which petitioner treasurer may act on respondent NPC's protest, the latter abandoned its protest and filed an appeal with the RTC-Branch 44 of Initao, Misamis Oriental. In fact, as stated in its Comment, respondent NPC filed its protest with the petitioner treasurer on March 5, 2010; it further attached a copy of its letter-protest dated March 5, 2010 to substantiate its claim. Accordingly, counting the 60-day period therefrom, petitioner treasurer had until May 4, 2010 within which to resolve respondent NPC's protest. Unfortunately, respondent NPC filed its Appeal (Pursuant to Section 195, R.A. 7160, otherwise known as the Local Government Code) with the RTC-Branch 44 of Initao, Misamis Oriental on May 4, 2010, which is the last day within which petitioner treasurer may resolve the said protest. Considering that days are understood to be of twenty-four (24) hours in accordance with Article 13 of the Civil Code of the Philippines, respondent failed to observe the 60-day period specifically given to petitioner treasurer within which to resolve the protest. In other words, respondent NPC prematurely filed its appeal with the RTC.

Moreover, respondent NPC's failure to comply with the 60-day **mandatory** period renders its appeal with the RTC-Branch 44 of Initao, Misamis Oriental void. In fact, Article 5 of the Civil Code of the Philippines, as amended, provides that "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." Hence, respondent NPC's failure to comply with the 60-day **mandatory** period renders its appeal with the RTC-Branch 44 of Initao, Misamis Oriental void and as such, its subsequent Petition for Review cannot be legitimized by the RTC or by this Court since it is considered void from the start.

It is well settled in this jurisdiction that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. In other words, a right cannot spring in favor of a person from his own void or illegal act. This principle is repeated in Article 2254 of the Civil Code of the Philippines, as amended, which states that "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others. "

This Court cannot grant its imprimatur on the opinion that non-compliance with mandatory and jurisdictional conditions, such as observance of prescriptive periods and exhaustion of administrative remedies, can be excused if the claim is otherwise meritorious. Such precedent will render meaningless mandatory and jurisdictional requirements, and will open the floodgates for unscrupulous claims. *c*

Respondent NPC did not advance new matters or issues to merit reconsideration or to reverse, modify or amend the assailed Decision. Its invocation of substantial justice to excuse the premature filing of its appeal finds scant consideration.

It must be noted that in the case of *George Yao vs. Hon. Court of Appeals, et al*[5], the Supreme Court ruled that "the right to appeal is not a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. Since the right to appeal is not a natural right nor a part of due process, it may be exercised only in the manner and in accordance with the provisions of law. Corollarily, its requirements must be strictly complied with".

Likewise, in the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*[6], the Supreme Court held that:

> "xxx **perfection of an appeal** in the manner and within the period laid down by law **is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.**" (*Emphasis supplied)*

WHEREFORE, premises considered, respondent NPC's Motion for Reconsideration (Of the Decision dated October 10, 2014) is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[5] G.R. No. 132428, October 24, 2000.
[6] G.R. No. 167606, August 11, 2010.