REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

CE CASECNAN WATER AND ENERGY COMPANY, INC., *Petitioner-Appellant*	**CTA *EB* NO. 1381** (CBAA Case Nos. L-60 & L-74)
- versus -	**Present:** *DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, JJ.*
THE PROVINCIAL TREASURER OF NUEVA VIZCAYA, OFFICE OF THE MUNICIPAL ASSESSOR AND TREASURER, MUNICIPALITY OF ALFONSO CASTAÑEDA, PROVINCE OF NUEVA VIZCAYA, *Respondent-Appellees,*	
NATIONAL IRRIGATION ADMINISTRATION and DEPARTMENT OF FINANCE, *As Necessary Parties.*	**Promulgated:** NOV 17 2017 4:15 p.m.

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DECISION

BAUTISTA, J.:

The Case

Submitted for decision to the Court of Tax Appeals ("CTA") *En Banc* ("Court *En Banc*") under *Section 4(c)*[1], *Rule 8 of the 2005 Revised Rules of the CTA, as amended ("RRCTA")*, is a Petition for Review[2] of the

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[1] SEC. 4. *Where to appeal; mode of appeal.* –

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(c) An appeal from a decision or ruling of the Central Board of Assessment Appeals or the Regional Trial Court in the exercise of their appellate jurisdiction shall be taken to the Court by filing before it a petition for review as provided in Rule 43 of the Rules of Court. The Court *En Banc* shall act on the appeal.

[2] *Rollo, CTA EB No. 1381, Vols. 1 and 2, Petition for Review ("PFR")*, pp. 1-649, with annexes.

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Decision[3] dated December 5, 2013 ("Assailed Decision"), and the Resolution[4] dated August 21, 2015 ("Assailed Resolution"), rendered by the Central Board of Assessment Appeals ("CBAA") in CBAA Case Nos. L-60 and L-74, praying for the Court *En Banc* to:

1. reverse and set aside the Assailed Decision;

2. partially reverse and set aside the Assailed Resolution insofar as it declares that: *(a)* the properties, machinery, and equipment subject of this case are not exempt from real property tax ("RPT"), and *(b)* petitioner-appellant CE Casecnan Water and Energy Company, Inc. ("CE Casescnan") is liable for RPT on the said properties, machinery, and equipment; and

3. render judgment *(a)* declaring that the properties, machinery, and equipment subject of this case are exempt from RPT; *(b)* declaring that, in any event, CE Casecnan is not liable for any RPT on the properties, machinery, and equipment subject of this case because the same are actually, directly, and exclusively used by National Irrigation Administration ("NIA") and not CE Casecnan; and *(c)* directing the Province of Nueva Vizcaya to return the RPT in the amount of Php250,734,306.98 paid by CE Casecnan under protest on July 25, 2005.[5]

The Parties

CE Casecnan is a Philippine corporation with office at 24th Floor, 6750 Ayala Avenue, Makati City.[6]

Respondents-Appellees are the Provincial Treasurer of Nueva Vizcaya, Office of the Municipal Assessor and Treasurer of the Municipality of Alfonso Castañeda, Province of Nueva Vizcaya (collectively referred to hereinafter as the "Province"), which issued the assessment and Warrant of Levy in their official capacities.

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[3] *Records, CBAA Case Nos. L-60 and L-74, Vol. 6, Assailed Decision,* pp. 768-793; issued by Chairman Ofelia A. Marquez, and Members Roberto D. Geotina and Camilo L. Montenegro.
[4] *Id., Vol. 7, Assailed Resolution,* pp. 838-871; issued by Chairman Manuel De Jesus Siayngco and Members Roberto D. Geotina and Thelma A. Mariano.
[5] *Rollo, CTA EB No. 1381, Vol. 1, PFR, Prayer,* p. 30.
[6] *Records, Exhibits Offered by NIA in CBAA Case Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on September 3, 2009), Vol. 1, Exhibit "C," Amended and Restated Casecnan Project Agreement By and Between CE Casecnan Water and Energy Company, Inc. and National Irrigation Administration,* p. 1.

NIA is a government-owned and -controlled corporation ("GOCC") attached to the Department of Agriculture, existing by virtue *of Republic Act ("RA") No. 3601*, as amended by *Presidential Decree No. 552, s. 1971*.[7] Its main office address is located at NIA Administration Building, NIA Road, Diliman, Quezon City.[8] NIA is included in the Petition for Review as a necessary party.

The Department of Finance ("DOF") is the government agency responsible for, among other things, the formulation, institutionalization, and administration of fiscal policies of the government in coordination with the latter's relevant subdivisions, agencies, and instrumentalities. The DOF is included as a necessary party in the instant Petition for Review.[9] CE Casecnan is not seeking any relief against the DOF.[10]

The Facts

On November 13, 1994, CE Casecnan and NIA entered into a Build-Operate-Transfer ("BOT") contract entitled "Casecnan Project Agreement" (the "Original Agreement").[11] Under the Original Agreement, the former agreed to deliver to the latter *(1)* at the Pantabangan Reservoir all water diverted from the Casecnan Watershed, and *(2)* all net electrical energy generated by the project.[12]

On June 26, 1995, CE Casecnan and NIA executed an Amended and Restated Casecnan Project Agreement (the "Amended Agreement").[13]

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[7] *Records, CBAA Case Nos. L-60 and L-74, Folder 1, Appeal filed by NIA, CBAA Case No. L-60, The Parties,* par. 1, p. 4; *Exhibits Offered by NIA in CBAA Case Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on September 3, 2009), Exhibit "C," Amended and Restated Casecnan Project Agreement By and Between CE Casecnan Water and Energy Company, Inc. and National Irrigation Administration,* p. 1.

[8] *Records, CBAA Case Nos. L-60 & L-74, Folder 1, Appeal filed by NIA, CBAA Case No. L-60, The Parties, par. 1,* p. 4.

[9] *Rollo, Vol. 1, PFR, The Parties,* p. 6.

[10] *Id.*

[11] *Records, Exhibits Offered by NIA in CBAA Case Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on September 3, 2009), Exhibit "C," Amended and Restated Casecnan Project Agreement By and Between CE Casecnan Water and Energy Company, Inc. and National Irrigation Administration, Recitals, par. 5,* p. 2.

[12] *Id.*

[13] *Id., Article 2, par. 2.1 Design, Construction and Operation of Project,* p. 7.

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Under the Amended Agreement, CE Casecnan shall, among others, *(1)* cause and be responsible for the financing, design, construction, completion, testing, commissioning, and operation of the Project,[14] which consists of "the total facilities comprising, but not limited to, the diversion structures, the tunnel, the tailrace and the power plant housing the generators, step-up transformers, switching facilities, switchyard, surgetank and valve chamber, together with housing facilities for the operating and maintenance personnel and all protective, communication, and other associated equipment and improvements necessary to produce electrical energy and to divert water from the Casecnan Watershed to the Pantabangan Reservoir;"[15] and *(2)* transport water from the Casecnan Watershed to the Pantabangan Reservoir and, in the process of such transport, generate electrical energy, which shall be accepted by NIA in exchange for fees in favor of CE Casecnan.[16] This shall be referred to as the "Project."

Pursuant to the Amended Agreement, the cooperation period is the period of twenty (20) years of commercial operation, during which, CE Casecnan shall deliver electrical power and energy, and water to NIA.[17] Said cooperation period shall commence on the first day immediately succeeding the completion date.[18]

The Project is a combined irrigation and hydroelectric power generation facility intended to harness the full potential of the Pantabangan Dam in Gapan, Nueva Ecija, by diverting waters from the rivers of Nueva Vizcaya to the Pantabangan Reservior.[19] It aims to process approximately 801 million cubic meters of water annually until 2013, and 700 million cubic meters annually thereafter until 2021. The Project irrigates at least 37,200 hectares of farmland in the service area of the NIA, covering several towns of Nueva Ecija and some 102,000 hectares of farmland in the Upper Pampanga Integrated Irrigation System in the Pampanga irrigation service of NIA.[20] Its power generation capacity supplements the energy supply to the Luzon grid and augments power generation in the existing

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[14] *Records, Exhibits Offered by NIA in CBAA Case Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on September 3, 2009), Exhibit "C," Amended and Restated Casecnan Project Agreement By and Between CE Casecnan Water and Energy Company, Inc. and National Irrigation Administration, Article 2, par. 2.1 Design, Construction and Operation of Project,* p. 7.
[15] *Id., Article 1, Definition of Terms, Project,* p. 5.
[16] *Id., Article 2, Scope of Management, par. 2.9,* p. 9.
[17] *Id. Article 1, par. 1.1 Definition of Terms, Cooperation Period,* p. 3.
[18] *Id.*.
[19] *Records, Vol. 6, Decision, Background,* pp. 769-770.
[20] *Id.* at 770.

Pantabangan and Masiway hydroelectric power plants of Nueva Ecija.[21]

The Project's commercial operation commenced on December 11, 2001;[22] and was constructed, financed and is being operated by CE Casecnan.[23]

On December 2, 2002, the Officer-in-Charge, Provincial Assessor wrote to Mr. David Baldwin ("Mr. Baldwin"), President of CE Casecnan, requesting for a duly certified and detailed estimates of the total infrastructure cost for the Casecnan dams and trans-basin tunnel, including buildings, machinery, road networks, bridges and other structures within the municipality of Alfonso Castañeda, Nueva Vizcaya, in order to enable the Provincial Assessor's Office to determine the amount of RPT due from CE Casecnan.[24] Consequently, on April 22, 2003, Mr. Baldwin furnished the Provincial Assessor's Office the requested certified and detailed estimates.[25]

On or around September 28, 2003, CE Casecnan received a letter[26] from the Provincial Assessor dated September 22, 2003, informing CE Casecnan of the initial appraisal and assessment of its properties, with the corresponding tax declarations attached thereto.[27] The Letter is quoted as follows:

> **MR. DAVID A. BALDWIN**
> President
> CE CASECNAN WATER & ENERGY CO. INC.
> 24th FLOOR 6750 AYALA AVENUE, MAKATI CITY
>
> **ATTENTION:** **MR. ROBERT G. EUGENIO**
> Vice President for Government Affairs
>
> **S I R:**
>
> Please be informed that based on the documents you furnished this office last April 10, 2003 on the infrastructure and equipment[] of the CASECNAN Project which are situated in

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[21] *Records, Vol. 6, Decision, Background,* p. 770.
[22] *Id.*
[23] *Id.* at 769.
[24] *Records, Respondents-Appellees Exhibits Folder 3, Exhibit "1,"* pp. 1-2.
[25] *Id., Exhibits "2," "2-A," and "2-B,"* pp. 3-5.
[26] *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "K."*
[27] *Records, Vol. 6, Decision, Antecedents,* p. 770.

the municipality of Alfonso Castañeda of this province and the actual findings during our ocular inspection on the site last May 14-15, 2003, our initial appraisal and assessment of said properties including the projected tax due are as follows:

A. Properties as *per* sworn statement

ARP NO. 2000	LOCATION	MARKET VALUE (MV)	ADJUSTED MARKET VALUE (AMV)	ASSESSED VALUE (AV)	TAX DUE (BASIC & SEF =2%)	PARTICULARS
06002-0280	Abuyu	P[hp] 1,406,109,500.10	P[hp] 1,406,109,500.00	P[hp] 1,054,582,130.00	P[hp] 21,091,642.60	3rd TBM Robbins, TBT, TBT Lower Drive Tunnel, Abuyu Tunnel Crssng, Steel Lining, Downstream Surge Tun., Power House Adit 3
2000-06006-0033	Pelaway	P[hp] 2,295,337,085.21	P[hp] 2,295,337,090.00	P[hp] 1,721,502,820.00	P[hp] 34,430,056.40	TBM Wirth, Connecting Tun., Coffer Dam River Div., Riv. Cont. excav. & grndg., Weir gravity struct., Wer accs. Rd. & portals[], Weir ancillaries, Desilting basin & other Structures
-0034	Pelaway	P[hp] 401,904,220.00	P[hp] 401,904,220.00	P[hp] 321,523,370.00	P[hp] 6,430,467.40	Power & Hydro Mech..Mach
-0035	Pelaway	P[hp] 5,555,762.00	P[hp] 5,166,860.00	P[hp] 3,616,800.00	P[hp] 72,336.00	Office & Guest House
-0036	Pelaway	P[hp] 2,984,781.66	P[hp] 2,775,850.00	P[hp] 1,665,510.00	P[hp] 33,310.20	Security Complex I
	Sub-Total	P[hp] 4,111,891,344.08	P[hp] 4,111,293,520.00	P[hp] 3,102,890,630.00	P[hp] 62,057,812.60	

B. Additional properties as *per* ocular inspection

ARP NO. 2000-06006-	LOCATION	MARKET VALUE (MV)	ADJUSTED MARKET VALUE (AMV)	ASSESSED VALUE (AV)	TAX DUE (BASIC & SEF =2%)	PARTICULARS
-0037	Pelaway	P[hp] 544,500.00	P[hp] 500,940.00	P[hp] 175,330.00	P[hp] 3,506.60	Control Bldg.
-0038	Pelaway	334,125.00	307,400.00	92,220.00	1,844.40	DG Bldg.
-0039	Pelaway	67,500.00	62,100.00	15,530.00	310.60	Com. Bldg.
-0040	Pelaway	554,400.00	510,050.00	178,520.00	3,570.40	Control Bldg.
-0041	Pelaway	332,640.00	306,030.00	91,810.00	1,836.20	DG Bldg.
-0042	Pelaway	334,125.00	307,400.00	92,220.00	1,844.40	Service Bldg.
-0043	Pelaway	388,500.00	357,420.00	107,230.00	2,144.60	SCOM Bldg.
-0044	Pelaway	106,875.00	98,330.00	24,580.00	491.60	RR Bldg.
-0045	Pelaway	340,200.00	312,980.00	93,900.00	1,878.00	Serv. Bldg.
	Sub Total	P[hp] 3,002,865.00	P[hp] 2,762,650.00	P[hp] 871,340.00	P[hp] 17,426.80	
	GRAND TOTAL		P[hp] 4,114,056,170.00	P[hp] 3,103,761,070.00	P[hp] 62,075,239.40	

In view hereof you are further informed that the total [RPT] due your company for the Basic and Special Educational Fund taxes amounts to SIXTY TWO MILLION SEVENTY FIVE THOUSAND TWO HUNDRED THIRTY NINE & 40/100 (P[hp]62,075,239.40) *per* annum which will commence starting this year 2003.

In this regard, please inform this office the soonest for a consultation/dialogue meeting on your comments/suggestions for further clarifications if necessary thr[ough] this office xxx. Attached herewith are the advance copies of the tax declarations and notices of tax bills.

xxx xxx xxx[28]

The attached tax declarations were jointly signed by the Municipal Assessor of Alfonso Castañeda and the Provincial Assessor of Nueva Vizcaya.[29] Printed on the face of each tax declaration is a Notice of Assessment that the property has been appraised and assessed pursuant to the rules and regulations of the DOF implementing the *1991 Local Government Code ("1991 LGC")*.[30]

On September 29, 2003, CE Casecnan and NIA executed a Supplemental Agreement Regarding the [Amended Agreement] (the "Supplemental Agreement").[31]

The Supplemental Agreement was entered into due to the disputes between CE Casecnan and NIA with respect to the Amended Agreement, which are the subject of an International Chamber of Commerce arbitration proceeding.[32] The parties "wish to document the settlement of the disputes and certain other matters related to the Project, including *inter alia,* to amend the [Amended] Agreement to eliminate the increases in the water delivery fee payable by NIA which is claimed to be due under Article 11 and to reduce the obligations of NIA in respect of Water Delivery Fees and Energy Delivery Fees thereunder."[33]

On February 27, 2004, CE Casecnan received a letter[34] from the Office of the Municipal Assessor and Treasurer of the Municipality of Alfonso Castañeda ("Municipality") dated February 4, 2004, requesting it to settle the payments of RPT for the years 2003 and 2004, to wit:

> Please be informed that your company is requested to settle the payments of the [RPT] for the years 2003 and 2004 the soonest possible time in order to avoid the continuing imposition of 2% penalty *per* month. The copies of the "Tax Declarations" of the

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[28] Emphases retained, emphases in italics ours.
[29] *Records, Vol. 6, Decision, Antecedents,* p. 770.
[30] *Id.*
[31] *Id., Background,* p. 769.
[32] *Records, Exhibits Offered by NIA in CBAA Case Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on September 3, 2009), Exhibit "J," Supplemental Agreement Regarding the [Amended Agreement], Second Whereas Clause,* p. 1.
[33] *Id., Third Whereas Clause,* p. 1.
[34] *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "M."*

> properties your company owns in the CASECNAN Project within this municipality together with the corresponding [RPT] Order of Payments has been forwarded to your office thr[ough] a letter from [the] Office of the Provincial Assessor dated September 22, 2003. The assessment could be protested within sixty (60) days upon the receipt of your tax declaration as provided for under *Sec[tion] 226 of [the 1991 LGC]* and as annotated below the issued tax declarations. The payments for 2003 should have been settled within the last quarter of 2003 to avoid penalties.
>
> Likewise, we are again furnishing you your Tax Declarations (which includes the Notice of Assessments), Notices of Delinquencies and [RPT] Billing for the same properties for [] CY2004. Please pay immediately on or before March 31, 2004 in order to avail of the 10% discount (2004 taxes only) as provided under *Sec[tion] 250 of [the 1991 LGC]* and our local tax ordinance.
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> xxx xxx xxx[35]

On March 3, 2004, CE Casecnan endorsed the matter to NIA through a letter[36] of even date, invoking the Supplemental Agreement, and stated that it shall await the latter's instructions regarding the payment of RPT.

On March 26, 2004, CE Casecnan received a letter[37] dated March 22, 2004 from the Office of the Municipal Assessor, reiterating its demand for CE Casecnan to pay the RPT due. Said letter was endorsed[38] by CE Casecnan to NIA, advising the latter that it received a request from the Municipal Assessor requesting payment of the RPT no later than March 31, 2004; and that as CE Casecnan is demonstrating a protest to the assessment and to the computation of taxes due, it can only file a formal protest or request for re-assessment if it will first settle the obligation.

Instead of giving instructions to CE Casecnan on whether to pay the assessed RPT, NIA filed its Protest through registered mail on April 27, 2004 before the Local Board of Assessment Appeals ("LBAA") of the Province of Nueva Vizcaya, entitled *"[NIA], as the*

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[35] Emphases retained, emphases in italics ours.
[36] *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "O-2."*
[37] *Id., Exhibit "N."*
[38] *Id., Exhibit "P".*

Beneficial Owner of the Casecnan Project v. Office of the Municipal Assessor and Treasurer Province of Nueva Vizcaya Municipality of A. Castañeda," docketed as LBAA Case No. 02-2004.[39]

On December 1, 2004, the LBAA promulgated a Decision[40] dismissing the Protest, and NIA was ordered to pay the corresponding taxes due. A copy of the said Decision was received by NIA on December 14, 2004.[41]

On January 19, 2005, the CBAA received NIA's Notice of Appeal[42] and on January 25, 2005, the CBAA received NIA's Appeal[43], docketed as CBAA Case No. L-60 entitled *"[NIA], as the Beneficial Owner of the Casecnan Project v. [LBAA] of the Province of Nueva Vizcaya; Office of the Municipal Assessor and Treasurer, Province of Nueva Vizcaya, Municipality of Alfonso A. Castañeda,"* sent *via* registered mail on January 13, 2005.[44]

Meanwhile, on February 1, 2005, the Office of the Provincial Treasurer, Province of Nueva Vizcaya ("Provincial Treasurer"), issued a Final Demand addressed to CE Casecnan, demanding for the payment of RPT in the total amount of Php229,680,604.27.[45] This was received by CE Casecnan on March 20, 2005.[46]

On May 25, 2005, CE Casecnan received the Notice of Delinquency in the Payment of [RPT] dated May 20, 2005, issued by the Provincial Treasurer, which states that "the [RPT] due from your company for Calendar Years 2003, 2004 and 2005 to the Province of Nueva Vizcaya have been delinquent" in the aggregate amount of Php238,368,919.33.[47]

On May 30, 2005, CE Casecnan wrote to NIA sending a copy of the Notice of Delinquency in the Payment of [RPT], and stating that

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[39] *Records, Vol. 6, Decision, Background,* p. 771; *Records, LBAA Case No. 02-2004, Protest,* pp. 1-19, with annexes.
[40] *Records, Original CBAA Case No. L-60, Folder 1, Appeal, Annex "A," Decision,* pp. 28-38.
[41] *Records, Vol. 6, Decision, Background,* p. 771.
[42] *Records, Original CBAA Case No. L-60, Folder 1, Notice of Appeal,* pp. 1-2.
[43] *Id., Appeal,* pp. 3-87, with annexes.
[44] *Records, Vol. 6, Decision, Background,* p. 771.
[45] *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "T," Final Demand.*
[46] *Records, Vol. 6, Decision, Background,* p. 771.
[47] *Records, Vol. 6, Decision, Background,* p. 771; *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "U," Notice of Delinquency in the Payment of [RPT].*

the properties of CE Casecnan will be included in the list of delinquent properties to be sold at a public auction scheduled on July 26, 2005; and that it reserves the right to make payment and obtain reimbursement unless NIA and the DOF jointly agree in writing to be responsible for such penalties.[48]

On June 17, 2005, CE Casecnan received a Warrant of Levy (Pursuant to *Section 258 of RA [No.] 7160*)[49] of even date enumerating therein the properties of CE Casecnan that will cover the total amount of tax delinquency amounting to Php238,368,919.33 for the taxable years 2003 to 2005.[50]

On July 1, 2005, a Notice of Sale of Delinquent Real Property was issued.[51]

On July 25, 2005, CE Casecnan wrote to NIA, informing the latter that due to the fact that neither NIA nor the DOF agreed to pay the RPT due, CE Casecnan already paid the Province under protest, including interests and penalties, in the aggregate amount of Php250,734,306.98.[52] Invoking *Section 11.1(c) of the Amended and Supplemental Agreements*, CE Casecnan attached an invoice to the letter, demanding reimbursement of the amount paid on or before October 24, 2005.[53]

CE Casecnan then filed a Protest on August 23, 2005 dated August 22, 2005 before the Provincial Treasurer,[54] requesting that: *(1)* the assessment against it be reviewed; *(2)* the RPT collection efforts against it be halted; and *(3)* the payment under protest made on July 25, 2005 be returned.[55]

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[48] *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "X," Nueva Vizcaya [RPT] – Notice of Delinquency and Public Auction.*
[49] *Id., Exhibit "V," Warrant of Levy (Pursuant to Section 258 of RA [No.] 7160).*
[50] *Records, Vol. 6, Decision, Background,* p. 771.
[51] *Id.*
[52] *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "Y," Casecnan Project [RPT].*
[53] *Id.*
[54] *Records, Vol. 6, Decision, Background,* p. 772.
[55] *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "Z," Protest Filed Before the Treasurer.*

On October 15, 2005, the Provincial Treasurer dismissed the Protest for lack of merit.[56] This was received by CE Casecnan on November 7, 2005.[57]

On October 20, 2005, CE Casecnan filed an Appeal[58] before the LBAA entitled *"[CE Casecnan] v. Perfecto B. Martinez, Jr., in his capacity as The Provincial Treasurer of Nueva Vizcaya,"* and docketed as LBAA Case No. 03-2005,[59] with a prayer for the LBAA to issue an order directing the Provincial Treasurer to return the RPT paid under protest in the amount of Php250,734,306.98.[60] It later filed a Supplemental Appeal[61] on December 16, 2005,[62] praying that *(1)* the Order dated October 15, 2005 issued by the Provincial Treasurer be annulled; and *(2)* the Provincial Treasurer be ordered to return the RPT paid under protest in the amount of Php250,734,306.98.

On November 17, 2006, CE Casecnan received the LBAA Decision[63] dated October 20, 2006, denying its Appeal.[64]

On December 15, 2006, the CBAA received CE Casecnan's Notice of Appeal[65] and Appeal[66], entitled *"[CE Casecnan] v. [LBAA] of the Province of Nueva Vizcaya, and Perfecto B. Martinez, Jr., in his capacity as the Provincial Treasurer of Nueva Vizcaya,"* docketed as CBAA Case No. L-74.[67]

On June 8, 2007, CE Casecnan filed a Motion to Consolidate[68] CBAA Case No. L-74 with CBAA Case No. L-60.[69]

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[56] *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "BB," Treasurer's Dismissal of Protest.*
[57] *Id., Treasurer's Dismissal of Protest, Envelope.*
[58] *Id., Exhibit "AA," Appeal with the LBAA.*
[59] *Records, Vol. 6, Decision, Background,* p. 772.
[60] *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "AA," Appeal, Prayer,* p. 25.
[61] *Id., Exhibit "CC," Supplemental Appeal.*
[62] *Records, Vol. 6, Decision, Background,* p. 772.
[63] *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "EE," LBAA Decision.*
[64] *Records, Vol. 6, Decision, Background,* p. 772.
[65] *Records, Original CBAA Case No. L-74, Folder 2, Notice of Appeal,* pp. 1-2.
[66] *Id., Appeal,* pp. 3-310, with annexes.
[67] *Records, Vol. 6, Decision, Background,* p. 772.
[68] *Records, Original CBAA Case No. L-74, Folder 3, Motion to Consolidate,* pp. 326-332.
[69] *Records, Vol. 6, Decision, Background,* p. 772.

The CBAA issued an undated Order[70], granting CE Casecnan's Motion to Consolidate CBAA Case No. L-74 with CBAA Case No. L-60, the consolidated cases were entitled, "*[NIA], as the Beneficial Owner of the Casecnan Project, and CE Casecnan Water and Energy, Co., Inc., v. The [LBAA] of the Province of Nueva Vizcaya; and The Province of Nueva Vizcaya, Perfecto B. Martinez, in his capacity as the Provincial Treasurer of Nueva Vizcaya, The Office of the Municipal Assessor and Treasurer, Municipality of Alfonso Castañeda[.]*"[71]

On December 5, 2013, the CBAA promulgated the Assailed Decision[72], the dispositive portion[73] thereof reads as follows:

> **WHEREFORE**, premises considered, the instant Appeal of [NIA], docketed as CBAA Case No. L-60, and that of CE Casecnan [], docketed as CBAA Case No. L-74, are hereby DISMISSED.
>
> **SO ORDERED.**[74]

On January 22, 2014, the CBAA received CE Casecnan's Motion for Reconsideration of the Decision dated December 5, 2013.[75] On February 5, 2014, NIA also filed a Motion for Reconsideration.[76]

On August 21, 2015, the CBAA promulgated the Assailed Resolution[77], with the following Final Summary and Conclusions[78]:

> 1. In the fulfillment of its Mandate both as a quasi-judicial appellate tribunal with a mission/vision of faithful adherence to due process and as an instrumentality of the government's program of national development, the CBAA must be consistent in its rulings with the statutory provisions setting the scope, limits, processes and objectives of the actual exercise by LGUs of the power of taxation.

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[70] *Records, Original CBAA Case Nos. L-60 & L-74, Folder 4, Order,* pp. 1-3.
[71] *Records, Vol. 6, Decision, Background,* p. 772.
[72] *Records, Original CBAA Case Nos. L-60 & L-74, Folder 6, Assailed Decision,* pp. 768-793.
[73] *Id., Dispositive Portion,* p. 793.
[74] Emphases retained.
[75] *Records, Original CBAA Case Nos. L-60 & L-74, Folder 7, CE Casecnan's Motion for Reconsideration,* pp. 794-824.
[76] *Id., NIA's Motion for Reconsideration,* pp. 825-832.
[77] *Id., Assailed Resolution,* pp. 840-871.
[78] *Id., Final Summary and Conclusions,* pp. 868-870.

N

2. The [DOF] through the Bureau of Local Government Finance (BLGF), in the exercise on its rule making power, has laid down the specific guidelines governing the exercise by the LGU's of the Power of Taxation. Those guidelines, consistent with the provisions of the [1991 LGC] particularly, Sections 212 and 214 of R.A. [No.] 7160, on appraisal, assessment and collection of [RPT] are geared to ensure compliance with the Constitutional principles of transparency, uniformity and equitability of taxation and thus, to avoid arbitrary, whimsical, excessive or confiscatory acts by individual public officers in relation to taxpayers. Since the power of taxation is principally a legislative act, the exercise of that sovereign power of the state may not be totally left to the personal discretion of individual executive officers such as the municipal, city or provincial assessor or treasurer, which may be deemed to be arbitrary, excessive or confiscatory, if unsupported by a validly enacted tax assessment, appraisal and collection ordinance by the Sangguniang Bayan, Panlungsod or Panlalawigan.

Sa RESOLUSYONG ito ay nakasalang para sa pagbabalik-tanaw ng Lupong Sentral ng Pag-apela sa Pagtatasa ([CBAA]) ang mga Mosyon na inihain ng Petitioner-Appellant CE Casecnan, Inc. sa CBAA Case No. L-74 at NIA sa CBAA Case No. L-60, kaugnay ng naging desisyon ng Lupong ito na may petsang Disyembre 5, 2013.

KAYA NGA, Alinsunod sa mga isyu at pagtalakay na nabanggit sa itaas, ang kasalukuyang Lupon ay dito at ngayo'y NAGPASIYA:

1. NA ang **"Motion for Reconsideration"** ng petitioner-appellant CE Casecnan sa CBAA Case No. L-74 ay **ITINATANGGI** ("DENIED") patungkol sa mga usaping tinalakay sa isyu Bilang I, II, III at IV ng nasabing Mosyon para sa pagbabalik-tanaw;

2. NA alinsunod sa mga probisyon ng R.A. [No.] 7160 lalo na sa Sec. 234 nito na kami ay sumasang-ayon na ang naunang Desisyon na may petsang Disyembre 5, 2013 ng Lupong Sentral ng Pag-apela sa Pagtatasa ([CBAA]) ay **PINAGTITIBAY** ("AFFIRMED"), at ang nasabing Petitioner-Appellant ay walang batayan sa batas upang maging DI-SAKLAW (EXEMPTED) sa mga buwis sa usaping ito ([RPT]); Subali't ang nasabing Petitioner-Appellant ay maaring patawan ng Buwis sa mga ari-ariang kabilang sa "Special Classes" na may Assessment Level na 10%;

3. NA batay sa mga naunang binanggit sa itaas nito ang Desisyong may petsang Disyembre 5, 2013 ay **BINABAGO** ("MODIFIED") kaugnay ng mga isyung tinalakay sa Mosyon ng Petitioner-Appellant [NIA] tungkol sa kawalan ng angkop na TAX ORDINANCE para sa taong 2003-2004 mula sa Sangguniang Panlalawigan ng Nueva Vizcaya; kaya't ang anumang ginawang pagtasa ng Tagatasang Pambayan (Municipal Assessor) para sa mga taong iyon ay **WALANG BISA** (NULL and VOID);

4. NA ang ipinatupad at ipapatupad na Pagtatasa (Assessment) Pagkwenta (Appraisal) at Pagkolekta ng buwis na ipinataw ng Respondent-Appellee laban sa CE Casecnan na hindi ibinatay sa anumang Ordinansang pinagtibay ng Sangguniang Bayan o Sangguniang Panlalawigan ng Nueva Vizcaya ay walang batayan sa batas at lumalabag sa mga patakaran ng [DOF] at ng [BLGF] na nagpapatupad sa R.A. [No.] 7160, Sek. 212 at Sek. 214, kaya't dito ay **ITINAKDA at IPINAGUUTOS**:

4.1. Na ang mga ginawang hakbang ng Respondent-Appellee, Panlalawigang Ingat-Yaman (Provincial Treasurer) laban sa Petitioner-Appellant CE Casecnan at NIA ay dinedeklarang WALANG BISA (NULL and VOID), tulad ng sumusunod:

4.1.1. Final Demand letter na may petsang Marso 10, 2005
4.1.2. Notice of Delinquency na may petsang Mayo 25, 2005
4.1.3. Warrant of Levy na may petsang Junio 7, 2005
4.1.4 Notice of Sale of Delinquent Property na may petsang Julio 1, 2005.

4.2. **Na ang pagtuos, pagtatasa at pagkolekta ng buwis sa mga kaukulang ari-arian ng CE Casecnan matapos at bukod sa mga taong 2003-2004 ay dapat isagawa [nang] may pagtupad sa mga alituntunin ng DOF Department Order No. 1-04 (Oktubre 1, 2004)** ukol sa "Manual on Real Property Appraisal and Assessment Operations[,]" na lalong pinalawak ng "Local Assessment Regulations

> No. 1-2007 (05 Nobyembre 2007) na pinamagatang "Supplemental Regulations for the Effective Implementation of Local Assessment Regulations No. 1-04[,]" na pawing batay sa R.A. [No.] 7160, Seksyon 212, 214 at 217.

IPINAPASIYA.[79]

On November 6, 2015, CE Casecnan filed the instant Petition for Review[80] with the Court *En Banc.*

On January 26, 2016, the Court *En Banc* issued a Resolution[81] requiring the Province, as well as the necessary parties, to file their respective comments.

On February 22, 2016, NIA filed, by registered mail, its Comment[82]. Meanwhile, the DOF filed by registered mail on February 23, 2016 a Motion for New Period[83]; and the Province filed by registered mail a Motion for Extension of Time to File Comment[84] on February 22, 2016. Both motions were granted by the Court *En Banc* in a Minute Resolution dated March 4, 2016.[85]

On March 8, 2016, the Province filed by registered mail a Comment/Opposition to CE Casecnan's Petition for Review[86].

After being granted an extension,[87] the DOF filed by registered mail its Comment[88] on March 29, 2016.

On May 30, 2016, the Court *En Banc* issued a Resolution[89] giving due course to the Petition for Review and ordering the parties to file their respective Memoranda.

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[79] Emphases retained.
[80] *Rollo, Vols. 1 and 2, PFR,* pp. 1-649, with annexes.
[81] *Id., Vol. 2, Resolution,* pp. 660-661.
[82] *Id., Comment,* pp. 669-675.
[83] *Id., Motion for New Period,* pp. 677-681.
[84] *Id., Motion for Extension of Time to File Comment,* pp. 683-686.
[85] *Id., Minute Resolution,* pp. 688-689.
[86] *Rollo, Vol. 2, Comment/Opposition to CE Casecnan's Petition for Review,* pp. 690-717, with annex.
[87] *Id., Motion for Extension,* pp. 719-723; *Rollo, Vol. 2, Resolution,* pp. 745-746.
[88] *Id., Comment,* pp. 725-743.
[89] *Id., Resolution,* pp. 755-756.

With the filing of the parties' Memoranda on July 15, 2016[90], July 25, 2016[91] and August 16, 2016[92], the Court *En Banc* resolved[93] to submit the case for decision on September 9, 2016. The case was initially raffled to the Office of Associate Justice Maria Belen Ringpis-Liban on September 19, 2016.[94]

On June 13, 2017, the case was re-raffled to the Office of Associate Justice Lovell R. Bautista ("OAJLRB"). Considering that there are barely three (3) months left before the case becomes due on September 2017, the OAJLRB requested for an extension period of three (3) months, which was approved by the Acting Presiding Justice Juanito C. Castañeda on June 15, 2017; hence, this Decision.

The Issues[95]

WHETHER THE CBAA ERRED IN RULING THAT THE PROPERTIES, MACHINERY, AND EQUIPMENT SUBJECT OF THE CBAA CASES ARE NOT EXEMPT FROM RPT;

WHETHER THE CBAA ERRED IN RULING THAT CE CASECNAN IS LIABLE FOR RPT; AND

WHETHER THE CBAA ERRED IN FAILING TO DIRECT THE PROVINCIAL TREASURER TO RETURN TO CE CASECNAN THE RPT ALLEGEDLY DUE FOR THE YEARS 2003 TO 2005 IN THE AMOUNT OF PHP250,734,306.98, WHICH CE CASECNAN PAID UNDER PROTEST.

CE Casecnan's Arguments[96]

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[90] *Rollo, Vol. 2, CE Casecnan's Memorandum,* pp. 762-855, with annexes; *Rollo, Vol. 2, DOF's Memorandum,* pp. 879-899.
[91] *Rollo, Vol. 2, Motion for Extension of Time to File Memorandum,* pp. 757-760; *Rollo, Vol. 2, Minute Resolution,* p. 761-B; *Rollo, Vol. 2, NIA's Memorandum,* pp. 856-873.
[92] *Rollo, Vol. 2, Ex-Parte Motion for Extension of Time to Submit Memorandum,* pp. 854-877; *Rollo, Vol. 2, Minute Resolution,* p. 878-A; *Rollo, Vol. 2, Memorandum (For Respondents-Appellees Provincial Treasurer of Nueva Vizcaya, et al.),* pp. 901-920.
[93] *Rollo, Vol. 2, Resolution,* pp. 923-924.
[94] *Id., Vol. 1 (cover).*
[95] *Id. Vol. 1, Grounds for Appeal,* p. 19.
[96] *Id., Vol. 2, CE Casecnan's Memorandum, Arguments and Discussion,* pp. 778-797.

CE Casecnan contends that the CBAA erred in ruling that the subject properties, machinery, and equipment are not exempt from RPT; and that NIA has the actual, direct, and exclusive use of the properties, machinery, and equipment which are being used in the supply and distribution of water and/or generation and transmission of electric power. CE Casecnan cites *Section 234 of the 1991 LGC* and the case of *Mactan Cebu International Airport Authority v. Marcos*[97] in claiming exemption from payment of RPT.

CE Casecnan maintains that the CBAA erred in ruling that there was no valid ordinance revising the market values for the years 2003 to 2004 only, despite the Province's categorical admission before the CBAA that there was no valid tax ordinance applicable for the years 2003 to 2005. It also avers that the CBAA erred in failing to direct the Provincial Treasurer to return the amount of Php250,734,306.98, which it paid under protest pursuant to *Section 252(c) of the 1991 LGC,* corresponding to the RPT allegedly due for the years 2003 to 2005.

Furthermore, CE Casecnan also insists that it is an independent power producer of electricity under a BOT contract, hence, the CBAA should have applied *Executive Order ("EO") No. 173* which *(1)* reduced all RPT liabilities for all years up to 2014 on properties, machineries, and equipment actually and directly used by Independent Power Producers ("IPPs") for the production of electricity under BOT contracts; and *(2)* condoned all fines, penalties and interests on any deficiency RPT liabilities.

The Province's Counter-Arguments[98]

The Province argues that the subject properties, machinery, and equipment are not exempt from RPT since they are not actually, directly and exclusively used by a local water district or by a GOCC; that pursuant to *Section 199 of the 1991 LGC,* "actual use" presupposes possession of the same; that NIA cannot be in possession of the subject facilities, as it is not the operator of the project, it is just the recipient of the water and electrical energy generated by CE Casecnan; that the *Amended and the Supplemental Agreements* executed between CE Casecnan and NIA, clearly provide that the former shall operate the project for the latter until transfer date in December 2021; and that

[97] G.R. No. 120082, September 11, 1996, 261 SCRA 667.
[98] *Rollo, Vol. 2, Memorandum (For Respondents-Appellees Provincial Treasurer of Nueva Vizcaya, et al.), Arguments/Discussion,* pp. 904-918.

assuming NIA has the beneficial ownership of the Project, it still cannot exempt CE Casecnan from paying RPT assessed on the subject facilities as the taxes are based on the use, not on the ownership, of such facilities.

The Province avers that CE Casecnan's contention, that its holding of title to the assets of the Project is akin to a security arrangement in favor of a lender to ensure recovery of its investment prior to transfer of legal title to the government, is unavailing; and that the Supreme Court has ruled that the financing scheme in BOT agreements is not similar to those in ordinary financing arrangements.

The Province also alleges that the *Supplemental Agreement* which provides that CE Casecnan shall pay the RPT, subject to reimbursement from the NIA, is binding between CE Casecnan and NIA but not to the Province since it is not privy to the agreement. The Province posits that CE Casecnan should have asked NIA for reimbursement of the RPT that it paid under protest pursuant to their *Amended and Supplemental Agreements.*

The Province contends that *EO No. 173* does not find application to the present Petition as it is prospective in application; that condonation only applies to unpaid taxes and does not apply to taxes that have been paid because payment of taxes extinguishes tax obligations, hence, condonation is no longer applicable. The Province further alleges that *EO No. 173* directs the reduction of tax liabilities, which refers to unpaid RPT; and that even assuming that CE Casecnan is entitled to the return of the taxes that it paid for the years 2003 to 2005, *EO No. 173* cannot be the proper basis for an order directing the return of amounts CE Casecnan paid to the Province through the Provincial Treasurer, for the reason that *EO No. 173* does not expressly provide for the return or refund of any tax that has already been paid.

The Province also argues that tax refunds are strictly construed against the taxpayer; that a taxpayer has the burden to show its entitlement to such tax refund; and that while there may have been a tax condonation provided under *EO No. 173*, it is still a matter of evidence under the proper procedure.

NIA's Arguments[99]

NIA submits that it is a real party in interest in this case; that it is the beneficial owner of the subject properties, machinery, and equipment; that CE Casecnan was only given authority to operate these, solely to recover all expenses it incurred in constructing and developing the Project pursuant to the *Amended and the Supplemental Agreements* dated June 26, 1995 and September 29, 2000, respectively; and that pursuant to *Article 2.4 of the Supplemental Agreement,* it is the entity liable to pay RPT.

NIA contends that assuming the February 27, 2004 Notice is an assessment, it is void and incorrect because the Castañeda Office of the Municipal Assessor and Treasurer incorrectly valued the subject real properties; that the provisional valuation submitted by CE Casecnan needs to be affirmed by it; and that the transbin underground tunnel is not taxable because it is part of the subterranean public domain under the Regalian Doctrine, and is not a property subject to the RPT jurisdiction of local government units ("LGUs")

NIA cites *Section 234 of the 1991 LGC* in claiming that CE Casecnan's beneficial use of the Project is more apparent than real, having been conferred merely to allow it to recoup the investment it made in financing the Project. It further maintains that under its Amended Charter, it is mandated to operate, maintain and administer all national irrigation systems, including the subject Project; that it is pursuant to this mandate that it entered into the BOT contract with CE Casecnan, which clearly manifests the parties' intention to confer upon NIA an actual hand in the operation of the Project; and that CE Casecnan is merely a trustee of the properties in question. NIA also insists that the remaining real properties that are not exempt should be taxed at the assessment level of ten percent (10%) as sanctioned by *Section 216 of the 1991 LGC.*

NIA states that it agrees with the CBAA's ruling upholding its position that the Province's 2003 and 2004 RPT Notices of Assessment were null and void for lack of any current tax ordinance to support such tax assessments, contrary to *Sections 188 and 212 of the 1991 LGC,* as well as BLGF's regulations on the matter.

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[99] *Rollo, Vol. 2, NIA's Memorandum, Arguments/Discussion,* pp. 866-871.

DOF's Arguments[100]

DOF emphasizes that it was impleaded as a necessary party in this case; that CE Casecnan explicitly stated that it does not seek any relief against the DOF; that a copy of the Petition for Review was served only to the DOF "out of caution;" and that while it submits that it should not have been impleaded as a party in any capacity for not having any participation in the assessment and collection of the assailed RPT, as well as the proceedings before the LBAA and the CBAA, it nevertheless complied with the directive of the Court *En Banc* for it to submit its Memorandum.

DOF argues that NIA could not have filed a valid protest against the assailed RPT assessments because it did not possess the requisite legal standing, hence the assailed RPT assessment has attained finality; and that pursuant to *Article 2.11 of the Amended Agreement* between CE Casecnan and NIA, it is CE Casecnan which owns the Project and all structure, fixtures, fittings, machinery, and equipment on the Project. DOF asserts that any agreement by and between CE Casecnan and NIA in the *Amended and the Supplemental Agreements* with regard the payment of RPT is binding only upon them following the principle of relativity of contracts under *Article 1311 of the Civil Code.*

DOF asseverates that the CBAA did not err in ruling that the subject real properties, machinery, and equipment are not exempt from RPT; and that it agrees with the finding of the CBAA that it is CE Casecnan that has actual use and possession of the properties, machinery, and equipment. Citing the Supreme Court case of *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*[101] *("2009 Pagbilao")*, the DOF maintains that the NPC in that case, and CE Casecnan are similarly situated, in terms of ownership and transfer date of the Project.

The DOF asserts that it agrees with the finding by the CBAA that the assessment made by the Province for the years 2003 to 2004 are null considering that it was not supported by any valid tax ordinance which was not refuted by the Province; and that while the Province asserts that the schedule of fair market values was embodied in *Tax Ordinance Nos. 1999-002 and 2000-003,* it did not offer the said Ordinances before the CBAA. The DOF argues that assuming that the

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[100] *Rollo, Vol. 2, DOF's Memorandum, Arguments and Discussion,* pp. 882-895.
[101] G.R. No. 171586, July 15, 2009, 593 SCRA 47.

Province was able to present a valid tax ordinance containing the fair market values, *Section 1 of EO No. 173* reduced the RPT liabilities; and that CE Casecnan, being an independent power producer, may benefit from *EO No. 173.*

The Ruling of the Court En Banc

The Court *En Banc* has jurisdiction to decide the present case.

The Court *En Banc* deems it necessary to discuss the procedure that should be followed in an instance wherein a taxpayer contests an assessment made by an LGU. This is provided under *Section 252 of the 1991 LGC,* which reads as follows:

> Section 252. *Payment under Protest.* -
>
> (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
>
> (b) xxx
>
> (c) xxx
>
> (d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code.[102]

Corollary, the above-cited *Chapter 3, Title Two, Book II of the 1991 LGC* pertains to the procedural and substantive aspects of the appeal before the LBAA and the CBAA, to wit:

> Sec. 226. *Local Board of Assessment Appeals.* - Any owner or person having legal interest in the property who is not

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[102] Underscoring ours.

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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 province 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 in support of the appeal.

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Sec. 229. *Action by the Local Board of Assessment Appeals.* –

(a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

(b) In the exercise of its appellate jurisdiction, the Board shall have the powers to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue subpoena and subpoena *duces tecum*. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

(c) The secretary of the Board shall furnish the owner of the property having legal interest therein and the provincial or city assessor with a copy of the decision if the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board may, within thirty (30) days after receipt of the decision of said Board, appeal to the CBAA, as herein provided. The decision of the CBAA shall be final and executory.

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Sec. 231. *Effect of Appeal on the Payment of Real Property Tax.* - Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal.[103]

As to the running of the sixty (60)-day period to appeal with the LBAA from the decision of the treasurer, while *Section 226 of the 1991 LGC* provides that it runs from the date of receipt of the notice of assessment ("NOA"), it must be harmonized with *Section 252(d) of the 1991 LGC* which provides that if the protest is denied or upon the lapse of the sixty (60)-day period given to the treasurer to act on the taxpayer's protest, the taxpayer may avail of the remedies in *Chapter 3, Title Two, Book II of the 1991 LGC*. Hence, in the cases of *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*[104] *("2010 Pagbilao")*[105] and *Dr. Olivarez, et. al. v. Mayor Marquez*[106] the Supreme Court has clarified that the period shall commence from the receipt of the denial of the protest.

From the foregoing, it can be deduced that when an assessment is issued, the taxpayer (owner or person with legal interest over the property) may: *(1)* question its reasonableness or correctness; or *(2)* question its legality or validity.

CE Casecnan in this case primarily claims exemption from payment of RPT under *Section 234 of the 1991 LGC*, arguing that it is NIA, a GOCC that has the actual, direct, and exclusive use of the subject properties, machinery, and equipment. By claiming that it is exempt, it is thus questioning the reasonableness, correctness, or excessiveness of the assessment. As settled in jurisprudence, a claim for exemption from the payment of RPT does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA.[107] *Section 252 of the 1991 LGC* mandates that no protest shall be entertained unless the taxpayer first pays the tax. It is settled that the requirement of payment under protest is a condition *sine qua non* before an appeal may be entertained.

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[103] Underscoring ours.
[104] G.R. No. 171586, January 25, 2010, 611 SCRA 71.
[105] The 2010 Pagbilao case is the Resolution to the Motion for Reconsideration of the 2009 Pagbilao case.
[106] G.R. No. 155591, September 22, 2004, 438 SCRA 679.
[107] *National Power Corporation v. The Provincial Treasurer of Benguet, The Provincial Assessor of Benguet, The Municipal Treasurer of Itogon, Benguet and the Municipal Assessor of Itogon, Benguet*, G.R. No. 209303, November 14, 2016.

Based on the above-cited provisions, CE Casecnan should first have paid under protest, then filed a protest with the treasurer within thirty (30) days after payment. In case of denial or upon the lapse of the sixty (60)-day period, CE Casecnan should have then filed an appeal with the LBAA within sixty (60) days from the date of receipt of the denial of the protest or from the lapse of the sixty (60)-day period within which the treasurer should act on the protest. Thereafter, the LBAA has one hundred and twenty (120) days from the date of receipt of such appeal to issue a decision. After receipt of the decision of the LBAA, CE Casecnan may file, within thirty (30) days after receipt of the decision of the LBAA, its appeal to the CBAA, whose decision shall be final and executory. Thereafter, it may file an appeal with the CTA *En Banc.*

Records reveal that CE Casecnan paid the RPT due to the Province under protest on July 25, 2005. Therefore, it had thirty (30) days or until August 24, 2005 to file a Protest with the Provincial Treasurer, which it complied with when it filed a Protest on August 23, 2005. On account of its receipt on November 7, 2005 of the denial of its Protest by the Provincial Treasurer dated October 15, 2005, it had sixty (60) days or until January 6, 2006 to file an Appeal with the LBAA. Upon receipt on November 17, 2006 of the LBAA Decision denying its Appeal, CE Casecnan had thirty (30) days or until December 18, 2006[108] to file an appeal with the CBAA, which it timely filed on December 15, 2006. Upon receipt of the Assailed Resolution dated August 21, 2015 on October 8, 2015[109], CE Casecnan had until November 9, 2015[110] to file the Present Petition for Review. Accordingly, the Petition for Review filed on November 6, 2015 was timely filed with the Court *En Banc.*

The properties, machinery, and equipment subject of the CBAA cases are not exempt from RPT.

CE Casecnan insists that NIA has actual, direct, and exclusive use of the properties, machinery, and equipment, which were used in the supply and distribution of water and/or generation and transmission of electric power; and that this is, in fact, acknowledged by NIA. According to CE Casecnan, the use of NIA is actual because the machinery and equipment are directly or proximately employed

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[108] December 17, 2006 fell on a Sunday.
[109] *Rollo, Vol. 1, PFR, Timeliness of the Petition and Compliance with Other Requirements,* p. 5.
[110] November 7, 2015 fell on a Saturday.

for the delivery of water and electricity to NIA; that it is direct because the machinery and equipment are directly or proximately employed for the delivery of water and electricity to NIA; and that the use is exclusive because the machinery and equipment are used primarily for the purpose of supplying water and generating electricity.

This contention is confirmed by NIA, in fact, it claims that it is the real party in interest and that it is the beneficial owner of the subject properties, machinery, and equipment. NIA further claims that CE Casecnan was only given authority to operate the properties, machinery, and equipment solely to recover all expenses it incurred in constructing and developing the Project pursuant to the *Amended and the Supplemental Agreements*. NIA also cites *Article 2.4 of the Supplemental Agreement* in claiming that it is the entity liable to pay the RPT.

On the other hand, the Province counter-argues that as to them, they consider CE Casecnan as the owner of the properties, machinery, and equipment. The Province cites *Section 199 of the 1991 LGC,* which provides that the term "actual use" presupposes possession of the same, and in this case, NIA cannot be in possession of the subject facilities as it is not the operator of the project, but just a recipient of the water and electrical energy generated by CE Casecnan. According to the Province, pursuant to the *Amended and the Supplemental Agreements,* CE Casecnan shall operate the Project until transfer date in December 2021; and that assuming NIA has the beneficial ownership of the Project, it still cannot exempt CE Casecnan from paying RPT as the taxes are based on the use, not on the ownership, of such facilities.

The Court *En Banc* finds for the Province.

It is worthwhile to note that on December 2, 2002, the Provincial Assessor wrote to Mr. Baldwin and requested for duly certified and detailed estimates of the properties, machineries, and equipment within the municipality of Alfonso Castañeda, Nueva Vizcaya, in order to enable the Provincial Assessor's Office to determine the amount of RPT due from CE Casecnan.[111] Mr. Baldwin complied with the request by furnishing the Provincial Assessor's Office the requested certified and detailed estimates on April 22, 2003.[112] On

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[111] *Records, Respondents-Appellees Exhibits Folder 3, Exhibit "1,"* pp. 1-2.
[112] *Id., Exhibits "2," "2-A," and "2-B,"* pp. 3-5.

September 22, 2003, CE Casecnan received a letter[113] from the Provincial Assessor informing CE Casecnan of the initial appraisal and assessment of its properties, with the corresponding tax declarations attached thereto.[114] The attached tax declarations were jointly signed by the Municipal Assessor of Alfonso Castañeda and the Provincial Assessor of Nueva Vizcaya.[115] Records further disclose that NIA filed a Protest before the LBAA instead of filing for the exemption of the properties, machinery, and equipment, as provided by the *1991 LGC.*

Section 206 of the 1991 LGC reads as follows:

> SECTION 206. *Proof of Exemption of Real Property from Taxation.* - Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents. If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.[116]

Neither CE Casecnan nor NIA did anything to prove its claim for tax exemption. The above-quoted provision categorically provides that every person by or for whom real property is declared, who shall claim exemption from payment of RPT imposed against said property, shall file with the provincial, city, or municipal assessor sufficient documentary evidence in support of such claim. The burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Thus, if the property being taxed

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[113] *Records, Exhibits offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Exhibit "K."*
[114] *Records, Vol. 6, Decision, Background,* p. 770.
[115] *Id.*
[116] Underscoring ours.

has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon.[117]

CE Casecnan then invokes *Section 234 of the 1991 LGC* in claiming that the properties, machinery, and equipment are exempt from RPT. *Section 234 of the 1991 LGC* reads as follows:

> SECTION 234. *Exemptions from Real Property Tax.* - The following are exempted from payment of the real property tax:
>
> xxx xxx xxx
>
> (c) All machineries and equipment that are actually, directly and exclusively used by 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

However, to successfully claim exemption under *Section 234(c) of the 1991 LGC,* CE Casecnan must prove two (2) elements, to wit:

1. The machineries and equipment are actually, directly and exclusively used by local water districts and GOCCs; and

2. The local water districts and GOCCs claiming exemption must be engaged in the supply and distribution of water and/or the generation and transmission of electric power.

The GOCC claiming the exemption must be the entity that is actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power.[118] In the instant case, CE Casecnan is neither a local water district nor a GOCC. On the other hand, NIA, although it is a GOCC, is not the entity that has actual, direct, and exclusive use of the

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[117] *National Power Corporation v. The Provincial Treasusrer of Benguet, The Provincial Assessor of Benguet, The Municipal Treasurer of Itogon, Benguet and The Municipal Assessor of Itogon, Benguet,* G.R. No. 209303, November 14, 2016.

[118] *National Power Corporation v. Province of Quezon and Municipality of Pagbilao,* G.R. No. 171586, July 15, 2009.

ﾉ

properties, machinery, and equipment, it is just the recipient of the electricity that is produced by the Project.

In further support of its claim for exemption, CE Casecnan cites the provision in the *Amended and Supplemental Agreements*, stating that NIA, which is a GOCC, has expressly assumed the responsibility to pay for RPT.

Article 11.1 of the Amended Agreement provides:

> 11.1 *Responsibilities.* (a) NIA shall not pay any Taxes for or on behalf of the Operator. As part of the recovery of its investment, however, the Operator, under a separate billing (except for value-added taxes and similar incremental taxes, which in accordance with Philippine practice shall be the responsibility of NIA as purchaser, but which shall be billed and paid with the fees in accordance with Article 7), shall invoice NIA for and NIA shall be responsible for as an additional fee hereunder all (i) xxx, and (ii) all real estate and personal property taxes and assessments, rates, and other charges in respect of the Project equipment, structures and improvements xxx
>
> (c) The Operator will deliver to NIA an invoice in respect of any amounts specified in paragraph (a) of this Section 11.1 which are then due and payable or which will become due and payable within the immediately succeeding thirty-day period and NIA shall pay to the Operator the amount of such invoice within thirty (30) days after the delivery of such invoice or a such earlier time as the amount specified therein may be due and payable without penalty by the Operator. xxx[119]

Further, *Article 2.2. of the Supplemental Agreement* provides as follows:

> 2.2 *Amendments to Article 11.* Article 11 of the Project Agreement is hereby amended be deleting in its entirety and replacing it with the following:
>
> ARTICLE 11
> TAXES

[119] Underscoring ours.

> 11.1 *RESPONSIBILITIES.* (a) NIA shall not pay any Article 11 Taxes for or in behalf of the Operator. As part of the recovery of its investment, however, the Operator shall invoice NIA for and NIA shall be responsible for as an additional payment hereunder an amount equal to all Article 11 Taxes. xxx

Based on the *Amended and Supplemental Agreements,* it is clear that NIA shall not pay taxes directly, but rather, CE Casecnan shall first pay the RPT and then shall send an invoice to NIA, who shall refund CE Casecnan. Therefore, the fact remains that CE Casecnan is the entity that is being assessed RPT, and without proof that it is exempt from payment of RPT, it has the obligation to pay.

Also, it must be emphasized, that the *Amended and Supplemental Agreements* were executed between CE Casecnan and NIA only, the Province was never a privy to the agreements. Pursuant to *Article 1311*[120] *of the Civil Code,* parties to a contract cannot force a third party to recognize the terms thereof. As far as the Province is concerned and in accordance with law, the assessment was made based on the actual use of the properties, machinery, and equipment.[121]

In the *2009 Pagbilao* case, which has the same factual circumstances as the case at bar, the Supreme Court held as follows:

> xxx <u>All we declare is that the stipulation is entirely between the NPC and Mirant, and does not bind third persons who are not privy to the contract between these parties.</u> We say this <u>pursuant to the principle of relativity of contracts under Article 1311 of the Civil Code which postulates that contracts take effect only between the parties, their assigns and heirs.</u> Quite obviously, <u>there is no privity between the respondent local government units and the NPC, even though both are public corporations.</u> The tax due will not come from one pocket and go to another pocket of the same governmental entity. An LGU is independent and autonomous in its taxing powers and this is clearly reflected in Section 130 of the LGC which states:
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> > SECTION 130. *Fundamental Principles.* - The following fundamental principles shall govern the

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[120] Article 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. xxx
[121] *Section 216, 1991 LGC.*

> exercise of the taxing and other revenue-raising powers of local government units:
>
> xxx xxx xxx
>
> (d) The revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to disposition by, the local government unit levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; xxx.

An exception to the rule on relativity of contracts is provided under the same Article 1311 as follows:

> If the contract should contain some stipulation in favor of a third person, he may demand its fulfilment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

The NPCs assumption of tax liability under Article 11.1 of the ECA does not appear, however, to be in any way for the benefit of the Municipality of Pagbilao and the Province of Quezon. In fact, if the NPC theory of the case were to be followed, the NPCs assumption of tax liability will work against the interests of these LGUs. Besides, based on the objectives of the BOT Law that underlie the parties BOT agreement, the assumption of taxes clause is an incentive for private corporations to take part and invest in Philippine industries. Thus, the principle of relativity of contracts applies with full force in the relationship between Mirant and NPC, on the one hand, and the respondent LGUs, on the other.

To reiterate, only the parties to the ECA agreement can exact and demand the enforcement of the rights and obligations it established only Mirant can demand compliance from the NPC for the payment of the real property tax the NPC assumed to pay. The local government units (the Municipality of Pagbilao and the Province of Quezon), as third parties to the ECA, cannot demand payment from the NPC on the basis of Article 11.1 of the ECA alone. Corollarily, the local government units can neither be compelled to recognize the protest of a tax assessment from the NPC, an entity against whom it cannot enforce the tax liability.[122]

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[122] Underscoring ours.

Anent NIA's claims that the properties, machinery, and equipment should be classified as "special" pursuant to *Section 216 of the 1991 LGC,* the Court *En Banc* holds that the same cannot be given merit. Said Section provides that "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 [GOCCs] rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special." Again, at the time the assessment was made, CE Casecnan is still the owner of the subject properties, machinery, and equipment; and it is not a GOCC which can claim the benefit of this provision.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or speech is the index of intention. Furthermore, there is the maxim - *verba legis non est recedendum*, or from the words of a statute there should be no departure.[123]

The user and possessor of the properties, machinery, and equipment is liable for RPT.

The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership.[124] The unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner.[125]

Article 2, par. 2.11 of the Amended Agreement provides that CE Casecnan shall own the Project and all structures, fixtures, fittings,

[123] *Cynthia S. Bolos v. Danilo T. Bolos,* G.R. No. 186400, October 20, 2010, 634 SCRA 429, citing several cases.
[124] *National Power Corporation v. Province of Quezon and Municipality of Pagbilao,* G.R. No. 171586, July 15, 2009, 593 SCRA 47.
[125] *Id.*

machinery, and equipment on the Site or used in connection with the Project that have been supplied by it or at its cost. Clearly, it is CE Casecnan who is the owner of the properties being assessed, and it will remain to be so until the lapse of the twenty (20)-year cooperation period with NIA.[126]

CE Casecnan insists that it is an IPP of electricity under a BOT contract, hence, the CBAA should have applied *EO No. 173*[127], which *(1)* reduced all RPT liabilities for all years up to 2014 on properties, machineries, and equipment actually and directly used by IPPs for the production of electricity under BOT contracts with GOCCs to an amount equivalent to the tax due if computed based on an assessment level of fifteen percent (15%) of the fair market value of said property, machinery and equipment depreciated at the rate of two percent (2%) *per* annum, less any amount already paid by the IPPs; and *(2)* condoned all fines, penalties and interests on such deficiency RPT liabilities.

The DOF aver that being an IPP, CE Casecnan may benefit from *EO No. 173*. The DOF emphasized that the intent of *EO No. 173* is to avoid instances wherein the forcible collection of the RPT by the LGUs will trigger massive direct liabilities on the part of the concerned GOCCs.

On the other hand, the Province allege that *EO No. 173* is not applicable as it is prospective in application; and that condonation applies to unpaid taxes and does not apply to taxes that have been paid since payment of taxes extinguishes the obligation. The Province maintain that even assuming that CE Casecnan is entitled to the return of the taxes it paid for the years 2003 to 2005, *EO No. 173* cannot be the proper basis for an order directing the return.

The Court *En Banc* finds that *EO No. 173* is inapplicable to the case at bar.

Section 1 of EO No. 173 is quoted hereunder, to wit:

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[126] *Records, Exhibits Offered by CE Casecnan in CBAA Cases Nos. L-60 & 74 (presented and marked during the hearing at the CBAA on May 18, 2010), Folder 2, Exhibit "I", Article 1 Definition of Terms par. 1.1.*
[127] Reduction and Condonation of [RPT] and Interest/Penalties Assessed on the Power Generation Facilities of Independent Power Producers Under Build-Operate-Transfer Contracts with Government-Owned and/or -Controlled Corporations, October 31, 2014.

r/

xxx xxx xxx

SECTION 1. Reduction and Condonation. All liabilities for [RPT] on property, machinery and equipment (including any special levies accruing to the Special Education Fund) actually and directly used by IPPs for the production of electricity under Build-Operate-Transfer contracts (whether denominated Power Purchase Agreements, Energy Conversion Agreements or other contractual agreements) with GOCCs, assessed by LGUs and other entities authorized to impose real property tax, for all years up to 2014, are hereby reduced to an amount equivalent to the tax due if computed based on an assessment level of fifteen percent (15%) of the fair market value of said property, machinery and equipment depreciated at the rate of two percent (2%) per annum, less any amounts already paid by the IPPs. All fines, penalties and interests on such deficiency [RPT] liabilities are also hereby condoned and the concerned IPPs are relieved from payment thereof.[128]

It must be noted that while it is true that *EO No. 173* was issued pursuant to *Section 277*[129] *of the 1991 LGC,* which provides for the president's power to condone or reduce tax, it pertains only to RPT which remains outstanding or unpaid. This is due to the wording of *Section 1* thereof, referring to "all liabilities for [RPT]." Black's Law Dictionary[130] describes "liability" as follows:

LIABILITY

liability,n.1. The quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment <liability for injuries caused by negligence>. — Also termed legal liability; responsibility; subjection. 2. (often pl.) A financial or pecuniary obligation; DEBT <tax liability> <assets and liabilities>.

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[128] Emphasis retained, underscoring ours.

[129] *Section 277 of the 1991 LGC* reads as follows:

SECTION 277. *Condonation or Reduction of Tax by the President of the Philippines.* - The President of the Philippines may, when public interest so requires, condone or reduce the real property tax and interest for any year in any province or city or a municipality within the Metropolitan Manila Area.

[130] 8th ed. 2004, p. 2910.

Therefore, due to the fact that at the time *EO No. 173* became effective, CE Casecnan has no outstanding liability for tax in view of its previous payment, *EO No. 173* does not apply to the case at bar.

There was no valid tax ordinance.

In the Assailed Resolution, the CBAA found merit in NIA's argument in its Motion for Reconsideration that no valid and legal tax ordinance exists to support the assessments made by the local assessor; and that the assessor is bereft of authority to impose RPT on CE Casecnan for the taxable years 2003 and 2004. This is due to the Province's admission before the CBAA that there are no tax ordinances applicable for the years 2003 to 2004.

The Court *En Banc* sees justifiable reason to uphold this finding, with revisions.

Relevant thereto is *Section 4, Rule 129 of the Revised Rules on Evidence,* which provides the following:

> RULE 129
> *What Need Not Be Proved*
>
> xxx xxx xxx
>
> SECTION 4. *Judicial admissions.* — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.[131]

On September 29, 2011, Engr. Jose L. Carreon ("Engr. Carreon") testified for the Province before the CBAA. During his cross-examination, when Engr. Carreon was asked if there is a valid ordinance for the years 2003 to 2005,[132] he answered in the following manner:

> ATTY. VESTIL : xxx Mr. Witness, you said that you had the tax ordinance for these

[131] Underscoring ours.
[132] *Transcript of Stenographic Notes ("TSN"), CBAA Case Nos. L-60 and L-74, Vol. 6, September 29, 2011 Hearing,* pp. 29-32.

		<u>assessments for [] CE Casecnan, is that correct? And are you referring to Tax Ordinance No. 99-002 and Tax Ordinance No. 2000-003?</u>
ENGR. CARREON	:	If I may peruse over that, Madam, I can. These are parts of the Ordinance, Madam.
ATTY. VESTIL	:	And that's your basis for the assessment?
ENGR. CARREON	:	xxx We don't have it here in this, because the Ordinance is incomplete. It's schedule of amounts, Madam.
ATTY. VESTIL	:	<u>The schedule of values? It is still for the same period of specifically for 2000 to 2002?</u>
ENGR. CARREON	:	<u>This will cover up to 2005, Madam.</u>
ATTY. VESTIL	:	<u>2005?</u>
ENGR. CARREON	:	<u>Yes.</u>
ATTY. VESTIL	:	<u>But... You are referring to Tax Ordinance 2000-003?</u>
ENGR. CARREON	:	That 2000-003 are the schedule of rates, assessment levels, Madam.
ATTY. VESTIL	:	<u>Yes. So, this is for the period covering up to 2002 only. Is that not correct?</u>
ENGR. CARREON	:	<u>Yes, Madam.</u>
ATTY. VESTIL	:	<u>So, there is no tax ordinance for the period covering 2003 and 2005.</u>
ENGR. CARREON	:	<u>2003 and 2005?</u>
ATTY. VESTIL	:	<u>Yes.</u>
ENGR. CARREON	:	<u>That is the one, Madam.</u>
COMM. CORTES	:	I think you have 2 annexes there
ATTY. GALIMA	:	Yes, because that is...
COMM. CORTES	:	The other one is...
ATTY. VESTIL	:	1999, You Honor.
ENGR. CARREON	:	We lack that, Madam. We lack the schedule. We should have included all the unit values.
ATTY. VESTIL	:	<u>You said that this applies also to calendar years 2003 to 2005?</u>
ENGR. CARREON	:	<u>Up to 2005 when the next general revision was made.</u>
ATTY. VESTIL	:	<u>Can you point to us where in this tax ordinance that you s[t]ated that this covers the calendar years 2003 to 2005?</u> Your Honor, may I request, Your Honor that the witness answer independently, Your Honor and not

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		confer with the lawyer, Your Honor. xxx
COMM. CORTES	:	Okay. What is the purpose of this question? Are you questioning the assessment of the Assessor?
ATTY. VESTIL	:	Yes, Your Honor.
COMM. CORTES	:	Is it material
ATTY. VESTIL	:	It's very material.
COMM. CORTES	:	Are you...
ATTY. VESTIL	:	Yes, Your Honor. It is one of the basis of our appeal, Your Honor. We have questioned the validity of the assessments, Your Honor, because it is not supported by proper authorities, Your Honor.
COMM. CORTES	:	Okay.
ENGR. CARREON	:	<u>This is what we used, Madam.</u>
ATTY. VESTIL	:	<u>So, you cannot point to us and there is in fact no provision in this tax ordinance which says that it shall apply to 2003 to 2005 also.</u>
ENGR. CARREON	:	<u>The provision states there that's 2000-2002.</u>
xxx	:	xxx xxx xxx[133]

From the foregoing excerpts, it is apparent that the witness was asked several times to provide the basis of the 2003 to 2005 assessments, while he would generally state that it is one of the tax ordinances, he cannot point to the one which actually covers the years 2003 to 2005. Finally, when directly asked if the ordinance he is referring to as the basis of the 2003-2005 assessments has a provision specifically stating that it applies to 2003-2005, Engr. Carreon answered that it is for 2000-2002 only. This is an admission. However, when given the chance to conduct re-direct examination, the Province's counsel failed to touch on the topic of the tax ordinance; and did not contradict the admission.[134]

In fact, this judicial admission was later on raised by NIA in its Memorandum[135] filed before the CBAA on September 26, 2013, stating that the Province's own witness Engr. Carreon admitted that there is no valid tax ordinance for 2003 and 2004. The same was likewise

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[133] Underscoring ours.
[134] *TSN, CBAA Case Nos. L-60 and L-74, Vol. 6, September 29, 2011 Hearing,* pp. 41-50.
[135] *Records, CBAA Case Nos. L-60 and L-74, Vol. 6, NIA Memorandum,* pp. 657-659.

mentioned by NIA in its Motion for Reconsideration[136] filed with the CBAA on February 5, 2014. CE Casecnan brought this matter up in its Motion for Reconsideration of the Decision dated December 5, 2013 filed with the CBAA on January 22, 2014, stating that the Province categorically admitted that there are no tax ordinances applicable to the 2003-2005 assessments.[137] In order to give the Province an opportunity to raise its counter-arguments, the CBAA issued an Order[138] dated February 12, 2014, directing it to file its comment. However, despite filing a Motion for Extension of Time to Submit Comment/Opposition to the Motion for Reconsideration[139], the Province never provided its comment. Hence, the Assailed Resolution was promulgated finding merit in NIA's argument.

Being a judicial admission by the Province itself, the same need not be proved by CE Casecnan. The Province, despite the opportunity to contradict this admission by showing that it was made through palpable mistake or that no such admission was made, chose not to conduct any re-direct, neither did it file any comment to NIA and CE Casecnan's Motions for Reconsideration. Therefore, the CBAA correctly declared that there was no valid tax ordinance to support the 2003 and 2004 assessments. However, due to the admission that the 2005 assessment likewise is not supported by any tax ordinance, the Court *En Banc* finds that the 2005 assessment should likewise be held invalid.

Even if the Court *En Banc* takes judicial notice of the three (3) ordinances in evidence to prove that the judicial admission was erroneously made, under the assumption that such ordinances are public documents pursuant to *Section 19 of Rule 132 of the Rules of Court,* hence are self-authenticating and requires no further authentication in order to be presented as evidence in court;[140] there is still no evidence that there is a valid ordinance covering the assessment levels for 2003 to 2005. *Section 218 of the 1991 LGC* provides the following:

> 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

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[136] *Id., Vol. 7, NIA Motion for Reconsideration,* pp. 829-831.
[137] *Records, CBAA Case Nos. L-60 and L-74, Vol. 7, CE Casecnan Motion for Reconsideration of the Decision dated December 5, 2013,* pp. 806-807.
[138] *Id., Order,* pp. 833-834.
[139] *Id., Motion for Extension of Time to Submit Comment/Opposition to the Motion for Reconsideration,* pp. 835-837.
[140] *Anna Lerima Patula v. People of the Philippines,* G.R. No. 164457, April 11, 2012, 669 SCRA 135.

> sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following: xxx

A cursory inspection of the ordinances submitted by the Province show that *(1) Tax Ordinance No. 99-002* dated September 13, 1999 only adopts the 1999 schedule of fair market values for the different classes of real property in Nueva Vizcaya, pursuant to *Section 214 of the 1991 LGC; (2)* while *Tax Ordinance No. 2000-003* dated January 31, 2000 fixes and adopts the assessment levels to be applied to the fair market value of real property in Nueva Vizcaya to determine the assessed value thereof for the period 2000-2002, pursuant to *Section 218 of the 1991 LGC,* it does not extend to the years 2003 to 2005; and *(3) Tax Ordinance No. 2003-001* dated June 25, 20013 is an ordinance enacting the revenue code of the Province of Nueva Vizcaya, which does not fix the assessment levels for the years 2003 to 2005 but serves as the general revenue code of the Province. The submitted ordinances, by themselves, are not enough to prove mistake in judicial admission.

Moreover, even if there is a valid ordinance covering the years 2003 to 2005, which the Province failed to refer to or provide a copy of, the Court *En Banc* is not obligated under the guise of discretional judicial notice to procure its own copy of such ordinance/s. In fact, even courts required to take judicial notice of ordinances within their territorial jurisdiction are not mandated to procure their own copy of the ordinance.

In the Supreme Court case of *Social Justice Society, et al. v. Hon. Atienza, Jr.*[141], the highest tribunal had the opportunity to rule on this matter:

> While courts are required to take judicial notice of the laws enacted by Congress, the rule with respect to local ordinances is different. Ordinances are not included in the enumeration of matters covered by mandatory judicial notice under Section 1, Rule 129 of the Rules of Court.
>
> Although, Section 50 of RA 409[74] provides that:
>
> SEC. 50 Judicial notice of ordinances. - All courts sitting in the city shall take judicial notice of the ordinances passed by the [Sangguniang Panglungsod].

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[141] G.R. No. 156052, February 13, 2008, 545 SCRA 92.

> This cannot be taken to mean that this Court, since it has its seat in the City of Manila, should have taken steps to procure a copy of the ordinance on its own, relieving the party of any duty to inform the Court about it.
>
> Even where there is a statute that requires a court to take judicial notice of municipal ordinances, a court is not required to take judicial notice of ordinances that are not before it and to which it does not have access. The party asking the court to take judicial notice is obligated to supply the court with the full text of the rules the party desires it to have notice of. Counsel should take the initiative in requesting that a trial court take judicial notice of an ordinance even where a statute requires courts to take judicial notice of local ordinances.
>
> The intent of a statute requiring a court to take judicial notice of a local ordinance is to remove any discretion a court might have in determining whether or not to take notice of an ordinance. Such a statute does not direct the court to act on its own in obtaining evidence for the record and a party must make the ordinance available to the court for it to take notice.[142]

In view of the foregoing, the Court *En Banc* finds no legal basis for the assessments against CE Casecnan for the years 2003 to 2005.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the CBAA's Assailed Decision dated December 5, 2013 is hereby **AFFIRMED IN *TOTO***; while the Assailed Resolution dated August 21, 2015 is hereby **AFFIRMED WITH MODIFICATIONS**.

This case is hereby **REMANDED** to the CBAA, which is directed to determine the amount to be refunded to CE Casecnan, if any.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[142] Underscoring ours.

WE CONCUR:

(with Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(Inhibited)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Concur with PJ's CDO)
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CE CASECNAN WATER AND ENERGY COMPANY, INC., Petitioner-Appellant,	**CTA EB No. 1381** (CBAA Case Nos. L-60 & L-74)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN *and* MANAHAN, *JJ.***
THE PROVINCIAL TREASURER OF NUEVA VIZCAYA, OFFICE OF THE MUNICIPAL ASSESSOR AND TREASURER, MUNICIPALITY OF ALFONSO CASTAÑEDA, PROVINCE OF NUEVA VIZCAYA, Respondent-Appellees,	Promulgated:
NATIONAL IRRIGATION ADMINISTRATION AND DEPARTMENT OF FINANCE, As Necessary Parties.	NOV 17 2017 4:15 p.m.

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CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

I concur with the *ponencia* of my esteemed colleague, the Honorable Associate Justice Lovell R. Bautista, in so far as it holds that there is no basis to assess petitioner-appellant CE Casecnan Water and Energy Company, Inc. for real property tax for taxable years 2003 to 2005 due to lack of a valid tax ordinance covering such period.

Section 132 of the Local Government Code of 1991 ("LGC") is categorical in stating that the imposition of a tax, fee or charge by a local government unit shall be through an appropriate ordinance, *viz.*:

> **"TITLE I**
> **LOCAL GOVERNMENT TAXATION**
>
> CHAPTER I
> General Provisions
>
> **Section 132.** *Local Taxing Authority.* - The power to impose a tax, fee, or charge or to generate revenue under this Code shall be exercised by the *sanggunian* of the local government unit concerned through an **<u>appropriate ordinance</u>**." (Emphases supplied)

Specifically, with regard to the appraisal and assessment of real property tax, Section 218 of the LGC states:

> **"TITLE II**
> **REAL PROPERTY TAXATION**
>
> **CHAPTER II**
> **Appraisal and Assessment of Real Property**
>
> **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 **<u>fixed by ordinances</u>** 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" (Emphases supplied)

No less than the Supreme Court has held that reference to a local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local Government Code alone. What determines tax liability is the tax ordinance, the LGC being the enabling law for the local legislative body.[1]

In the present case, a careful perusal of the records reveals that only the following ordinances were offered into evidence:

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[1] *Luz R. Yamane, in her capacity as the City Treasurer of Makati City vs. BA Lepanto Condominium Corporation*, G.R. No. 154993, October 25, 2005.

1. *Tax Ordinance No. 99-002 (Adopting and Authorizing the 1999 Schedule of Fair Market Values for the Different Classes of Real Property in Nueva Vizcaya);*[2] and

2. *Tax Ordinance No. 2000-003 (An Ordinance Fixing and Adopting the Assessment Levels to be Applied to the Fair Market Value of Real Property in Nueva Vizcaya to Determine the Assessed Value thereof for the Period CYs 2000-2002).*[3]

The absence of tax ordinances fixing the schedule of fair market values and assessment levels of real properties in the Province of Nueva Vizcaya for the period covering 2003 and 2005 was confirmed by Jose L. Carreon, Assistant Provincial Assessor for Nueva Vizcaya, when he testified during the hearing before the CBAA.[4]

Since there was no valid tax ordinance covering years 2003 to 2005, I am in accord with the *ponencia* that petitioner-appellant cannot be made liable for real property tax during the years 2003 to 2005.

With due respect, however, I am constrained to withhold my conformity with the *ponencia's* order to remand the case to the CBAA for the determination of the amount to be refunded to petitioner-appellant.

To my mind, in view of the finding that petitioner-appellant is not liable for real property for the years 2003 to 2005, the refund of the amount paid under protest by petitioner-appellant at this stage of the proceedings is proper.

It is undisputed that petitioner-appellant paid the alleged real property tax assessment under protest in the amount of ₱250,734,306.98 on July 25, 2005.[5] **In truth, the payment of the assessed amount was also admitted by respondent-appellees, as manifested in their Memorandum, which reads in part:**

> "xxx By reason of said demand letter, **Petitioner-Appellant paid its tax** and filed the necessary payment under protest in accordance

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[2] CBAA Case No. L-60 Records, pp. 118-120.
[3] CBAA Case No. L-60 Records, pp. 121-124.
[4] CBAA Case Nos. L-60 & 74, Transcript of Stenographic Notes, September 29, 2011, pp. 29-32.
[5] Petition for Review, CTA Docket, p. 30.

> with Section 252 of the Local Government Code. xxx"[6] (Emphases supplied)

The LGC clearly mandates that **any payment made under protest shall be refunded in the event that the protest is finally decided in favor of the taxpayer,** to wit:

> "**CHAPTER VI**
> **Collection of Real Property Tax**
>
> **Section 252.** *Payment Under Protest. –*
>
> (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
>
> (b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.
>
> **(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.**
>
> (d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code." (Emphases supplied)

Considering that petitioner-appellant is not liable to pay real property tax for the years 2003 to 2005 due to lack of a valid tax ordinance and given that petitioner-appellant's actual payment of the amount of ₱250,734,306.98 is undisputed by the parties, I submit that this Court may order the refund of the amount of ₱250,734,306.98 in favor of petitioner-appellant. The remand of the case to the CBAA for the determination of the amount to be refunded to petitioner-appellant is no longer necessary.

In *Treasurer-Assessor vs. University of the Philippines*,[7] the Supreme Court held:

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[6] Memorandum (For Respondent-Appellees Provincial Treasurer of Nueva Vizcaya, et. al.), CTA Docket, p. 903.
[7] G.R. No. L-20550, April 30, 1971.

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> "Xxx xxx xxx. **When the law vested the Court of Tax Appeals with the power to declare an assessment illegal or unreasonable, in the exercise of its appellate jurisdiction, it follows that said court is also given the power to grant the relief arising from its finding that the appealed assessment is illegal or unreasonable.** The law could not have intended that after the Court of Tax Appeals had decided that a tax assessment is invalid or unreasonable the aggrieved taxpayer would still have to go to another court to seek the refund of the realty taxes illegally collected from him on the basis of the assessment that was declared invalid or unreasonable. **To hold the view that the Court of Tax Appeals, after declaring a tax assessment invalid, cannot order the refund of the taxes illegally collected under the invalid assessment but has to order the aggrieved taxpayer to go to the regular courts to seek a refund, would be to sanction multiplicity of suits.** Certainly Congress, in enacting R.A. 1125, did not intend to promote multiplicity of suits." (Boldfacing supplied)

Moreover, in *Dr. Felisa L. Vda. San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of Jose San Agustin vs. Commissioner of Internal Revenue*,[8] which involves an assessment case for deficiency estate tax, including surcharge, interest and penalties, and which may be analogously applied to the present controversy, the Supreme Court upheld the CTA's decision granting the taxpayer therein a refund of the assessed deficiency estate tax upon reversing the CIR's decision assessing and requiring full payment from the taxpayer.

All told, I VOTE to: (i) GRANT the Petition for Review filed by petitioner-appellant CE Casecnan Water and Energy Company, Inc.; (ii) REVERSE AND SET ASIDE the Assailed CBAA Decision dated December 5, 2013 and Resolution dated August 21, 2015; (iii) CANCEL the real property tax assessment issued against petitioner-appellant for the years 2003 to 2005 due to lack of a valid tax ordinance; and, (iv) REFUND in favor of petitioner-appellant the amount of ₱250,734,306.98 representing the real property tax that it paid under protest.

ROMAN G. DEL ROSARIO
Presiding Justice

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[8] G.R. No. 138485, September 10, 2001.