REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Petitioner,

-versus -

MUNICIPALITY OF LABRADOR, PANGASINAN,
Respondent.

CTA *EB* NO. 1373
(CTA AC No. 123)

Present:

DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, JJ.

Promulgated:
NOV 28 2017 2:57p.m.

x -- x

RESOLUTION

BAUTISTA, J.:

For resolution is petitioner's Motion for Reconsideration, filed on May 30, 2017, without comment from respondent despite notice, *per* Records Verification Report dated September 15, 2017.

On April 27, 2017, the Court of Tax Appeals ("CTA") *En Banc* promulgated a Decision[1] (the "Assailed Decision"), the dispositive portion of which states:

> **WHEREFORE,** premises considered, the Petition for Review is hereby **DENIED.** Accordingly, the June 24, 2015 Decision and the October 7, 2015 Resolution of the Court in Division, are hereby **AFFIRMED WITH MODIFICATION;**

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[1] *Rollo, CTA EB No. 1373 (CTA AC No. 123),* pp. 190-214.

> and the February 14, 2014 Decision and the August 11, 2014 Order of the [Regional Trial Court ("RTC")] are hereby set aside and declared **NULL AND VOID** for having been rendered without jurisdiction.
>
> **SO ORDERED.**[2]

In its Motion for Reconsideration, petitioner avers that the CTA *En Banc* erred when it ruled that the RTC has no jurisdiction on its claim for exemption from payment of real property tax ("RPT"), which is a question of law since it involves the interpretation of *Section 9 of Republic Act ("R.A.") No. 9511*, thus, within the jurisdiction of the RTC. Petitioner avers that it filed a petition before the Local Board of Assessment Appeals ("LBAA") of Pangasinan questioning the assessment made by respondent municipality on the ground that NGCP is exempt from paying RPT on properties used in connection with its legislative franchise; that it was constrained to bring the case before the RTC in order to restrain and enjoin respondent municipality from illegally distraining and garnishing NGCP's bank accounts and to question the legality of respondent municipality's imposition of RPT on properties used by petitioner in connection with its franchise.

Petitioner maintains that the CTA *En Banc* gravely erred when it held that a claim for tax exemption merely raises a question of reasonableness and correctness of an RPT assessment, citing the cases *Maricel S. Nonay vs. Bahia Shipping Services, Inc., Fred Olsen Lines and Cynthia Mendoza*[3] *("Nonay Case"), Province of Nueva Ecija vs. Imperial Mining Company, Inc.*[4], and *The City of Davao, City Treasurer and the City Assessor of Davao City vs. The Regional Trial Court, Branch XII, Davao City and the Government Service Insurance System*[5] *("City of Davao Case").* Petitioner insists that it is exempt from the payment of RPT on properties used in connection with its franchise under *R.A. No. 9511,* as ruled by the Supreme Court in the cases of *National Grid Corporation of the Philippines vs. Ofelia M. Oliva, in her official capacity as the City Treasurer of Cebu City*[6] *and Ofelia M. Oliva, in her official capacity as City Treasurer of Cebu City vs. NGCP*[7] *("Oliva Case").* According to petitioner, it is expressly exempt from paying RPT on properties used in connection with its franchise; that as interpreted by the Supreme Court, the phrase "exclusive of this franchise" only means that it is

[2] Emphasis retained.
[3] G.R. No. No. 206758, February 17, 2016.
[4] G.R. No. L-59463, November 19, 1982.
[5] G.R. No. 127383, August 18, 2005.
[6] G.R. No. 213157, August 10, 2016.
[7] G.R. NO. 213558, August 10, 2016.

liable to pay RPT on properties not used in connection with its franchise; and that because of the Oliva Case, the LBAA case has already become moot.

The CTA *En banc* will now resolve.

After considering the arguments raised by petitioner in its Motion for Reconsideration, the CTA *En Banc* finds no cogent reason to deviate from its previous decision.

In the Assailed Decision, the CTA *En Banc* held that the CTA in Division has jurisdiction to review by appeal the February 24, 2014 Decision and the August 11, 2014 Order of the RTC pursuant to *Section 7(a)(3) of RA No. 1125* and *Section 3(a)(3), Rule 4 of the Revised Rules of the CTA*. However, since petitioner failed to comply with the requirement of payment upon protest, the CTA *En Banc* ruled to set aside the February 14, 2014 Decision and the August 11, 2014 Order of the RTC for being null and void for having been rendered without jurisdiction.

Petitioner cites the Oliva Case as basis for its claim that it is exempt from the payment of RTC. The CTA *En banc* is not unaware of the Supreme Court decision in the Oliva Case, however, it did not discuss the said case in view of its finding that the RTC had no jurisdiction for failure of petitioner to follow the procedure laid down by *Sections 252, 226, 229 and 231 of the 1991 Local Government Code.*

The Court *En Banc* would like to point out that the Supreme Court, in the Oliva Case, did not rule that petitioner is 100% exempt from RPT. Thus we quote:

> xxx For the year 2009, the CBAA should determine whether the subject properties are used in connection with NGCP's franchise. <u>Properties used in connection with NGCP's franchise are exempt from tax, in accordance with NGCP's franchise. Properties not used in connection with NGCP's franchise should be assessed and subjected to real property tax, in accordance with the Local Government Code.[8]</u>

[8] Underscoring ours.

From the foregoing, petitioner's payment of franchise tax exempts it from payment of RPT on properties used in connection with its franchise. However, its tax exempt status on real property due to the "in lieu of all taxes" clause is qualified: petitioner shall be liable to pay the same tax as other corporations on real estate, buildings and personal property exclusive of their franchise. The phrase "exclusive of this franchise" means that real estate, buildings and personal property used in the exercise of the franchise are not subject to the same tax as other corporations.[9] Thus, there is no merit in petitioner's argument that the LBAA case has already become moot and academic, as there is a need to determine whether the subject properties are properties used in connection with its franchise.

To reiterate, a claim for tax exemption, whether full or partial, does not question the authority of the local assessor to assess RPT, but merely raises a question of the reasonableness or correctness of such assessment, which requires compliance with *Section 252 of R.A. No. 7160.* Such argument which may involve a question of fact should be resolved at the first instance by the LBAA.[10]

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated April 27, 2017 is **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

I reiterate my Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

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[9] *NGCP vs. Ofelia M. Oliva, in her official capacity as the City Treasurer of Cebu City* and *Ofelia M. Oliva, in her official capacity as City Treasurer of Cebu City vs. NGCP,* G.R. No. 213157, August 10, 2016.
[10] *Camp John Hay Development Corporation vs CBAA,* G.R. No. 169234, October 2, 2013, 706 SCRA 547.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice