REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

NATIONAL POWER CORPORATION,
Petitioner,

-*versus*-

MUNICIPALITY OF LAGUINDINGAN AND MUNICIPAL TREASURER OF LAGUINDINGAN, MISAMIS ORIENTAL,
Respondents.

CTA *EB* NO. 1293
(CTA AC No. 106)

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

Promulgated:
AUG 02 2016 11:15 a.m.

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DECISION

BAUTISTA, J:

The Case

This is a Petition for Review[1] under *Section 2(d)*[2], *Rule 4* and *Section 4(b)*[3], *Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")* seeking the nullification of the Decision promulgated on

[1] *Rollo, CTA EB No. 1293, Petition for Review,* pp. 64-79, with annexes.

[2] "SECTION 2. *Cases Within the jurisdiction of the Court En Banc.* - The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following: xxx

(d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases; xxx"

[3] "SECTION 4. *Where to Appeal, Mode of Appeal.* - xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for consideration or new trial shall be taken to the Court by petition for review as provided in Rule 13 of the Rules of Court. The Court en banc shall act on the appeal. xxx"

October 10, 2014[4] ("Assailed Decision") and the Resolution promulgated on February 25, 2015[5] ("Assailed Resolution"), of the First Division of the Court of Tax Appeals ("Court in Division") in the case of *"Municipality of Laguindingan and Municipal Treasurer of Laguindingan, Misamis Oriental v. National Power Corporation and the Regional Trial Court Branch 44 of Initao, Misamis Oriental, 10th Judicial Region"* docketed as CTA AC No. 106, involving the Business Tax assessment issued by the Municipal Treasurer of Laguindingan against National Power Corporation ("NPC") for taxable years 2003 to 2009.[6]

The Parties[7]

Petitioner NPC is a government-owned and -controlled corporation ("GOCC") existing under *Republic Act ("R.A.") No. 6395*[8].

Respondents are the Municipality of Laguindingan and the Municipal Treasurer of Laguindingan, all of Misamis Oriental, with official address at the Municipal Hall, Barangay Poblacion of said Local Government Unit ("LGU").

The Facts

On January 11, 2010, NPC received an Assessment Letter from respondent Treasurer demanding payment of Business Taxes from "2003 to present" in the amount of Php12,586,691.75.[9]

On March 5, 2010, NPC, through its General Counsel Melchor P. Ridulme replied in a letter protesting the imposition of Franchise Tax.[10]

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[4] *Records, CTA AC No. 106, Assailed Decision,* pp. 174-187; penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. del Rosario and Associate Justice Erlinda P. Uy concurring; the Court in Division granted the Petition for Review, and reversed and set aside the Decision and the Order of the Regional Trial Court ("RTC").
[5] *Id., Assailed Resolution,* pp. 221-226; penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. del Rosario and Associate Justice Erlinda P. Uy concurring.
[6] *Id., Assailed Decision,* p. 175.
[7] *Id.*
[8] *"An Act Revising the Charter of the National Power Corporation,"* approved and effective September 10, 1971.
[9] *Records, RTC Decision,* p. 38.
[10] *Id.*

On May 4, 2010, NPC filed its appeal with the Regional Trial Court, Tenth Judicial Region, Branch 44, Initao, Misamis Oriental ("RTC") praying that the assessment be nullified and set aside; that it be declared exempt from payment of Franchise Tax in the Municipality of Laguindingan, Misamis Oriental; and for such other relief just and equitable under the premises.[11]

Summons was duly served, and respondent Treasurer filed an Answer to the Complaint, clarifying that it is demanding payment of Business Tax and not Franchise Tax.[12] Hence, respondents prayed that the appeal be set aside or dismissed for being prematurely filed, or in the alternative, that the merit of the assessment be resolved; and that NPC be held liable to pay Business Tax to respondent Municipality.[13]

After NPC filed its Reply, the case was referred to the Philippine Mediation Center for mediation.[14] It was later returned to the RTC, after which, the judge referred the case for Judicial Dispute Resolution to the Municipal Circuit Trial Court of Guitagum-Laguindingan, Misamis Oriental, which likewise returned the case to the RTC as the case involves purely legal issues.[15]

During the Pre-Trial Conference held on August 19, 2011, the parties agreed on the following issues:[16]

1. Whether or not NPC is doing business in Laguindingan, Misamis Oriental;

2. Whether or not NPC is liable to pay Business Tax to respondents;

3. Whether or not NPC is liable to pay Business Tax for the years 2003 to 2009; and

4. Whether or not the right of respondents to collect Business Tax for the years 2003 to 2004 has not prescribed.

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[11] *Records, RTC Decision,* p. 38.
[12] *Id.*
[13] *Id.*
[14] *Id.* at p. 39.
[15] *Id.*
[16] *Id.*

On April 25, 2012, RTC issued a Decision[17], which granted NPC's appeal. The assessment was nullified and it was declared that respondents do not have the authority to impose Business Tax on NPC. The dispositive portion of the RTC Decision reads as follows:[18]

> **WHEREFORE,** premises considered, finding the Municipality of Laguindingan to be without lawful authority to impose Business Tax on the Appellant NPC, this Court hereby **GRANTS** the appeal. Consequently, the Assessment issued by Laguindingan through its Municipal Treasurer on January 11, 2010 is hereby **NULLIFIED AND SET ASIDE.**

On May 31, 2012, respondents filed their Motion for Reconsideration,[19] which was denied in an Order[20] dated March 25, 2013, in the following manner:

> **WHEREFORE,** premises considered, the Motion for Reconsideration is hereby **DENIED.**

Respondents filed a Petition for Review[21] with the Court of Tax Appeals ("CTA") on June 24, 2013, which was raffled to the Court in Division.

On October 10, 2014, the Court in Division promulgated the Assailed Decision,[22] the dispositive portion thereof reads as follows:[23]

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** The assailed Decision dated April 25, 2012 and the Order dated March 25, 2013, both rendered by the RTC-Branch 44 of Initao, Misamis Oriental in Civil Case No. 2010-930 are hereby **REVERSED** and **SET ASIDE.** Accordingly, the appeal filed by respondent in Civil Case No. 2010-930 is hereby **DISMISSED** for lack of jurisdiction.

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[17] *Records, RTC Decision,* pp. 38-43.
[18] *Id.* at 42; emphases omitted, emphases ours.
[19] *Id., Assailed Decision,* p. 178; emphases omitted, emphases ours.
[20] *Id., RTC Order,* pp. 44-45.
[21] *Id., Petition for Review,* pp. 20-46, with annexes.
[22] *Id., Assailed Decision,* pp. 174-187.
[23] *Records, Assailed Decision,* p. 187.

SO ORDERED.

Not satisfied with the Assailed Decision, NPC filed a Motion for Reconsideration (On the Decision dated October 10, 2014) on November 4, 2014.[24] Respondents filed by registered mail their corresponding Opposition (To the Motion for Reconsideration filed by Respondent NAPOCOR) on November 28, 2014.[25]

On February 25, 2015, the Court in Division issued the Assailed Resolution[26], where it held:[27]

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

Upon the denial and on April 10, 2015, petitioner filed by registered mail its Motion for Extension of Time To File Petition with the Court *En Banc*, asking for an extension of fifteen (15) days,[28] which was granted through a Resolution[29] dated June 28, 2015.

On April 13, 2015, petitioner raised the instant case to the Court *En Banc* when it filed a Petition for Review[30] *via* registered mail.

On July 14, 2015 and by registered mail, respondents filed their Comment On The Petition for Review.[31]

On October 28, 2015, the Court *En Banc* issued a Resolution ordering the parties to file their respective Memoranda within thirty (30) days.[32] A Motion for Extension[33] was filed by petitioner, which was granted in a Minute Resolution[34] dated December 27, 2015.

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[24] *Records, Motion for Reconsideration (On the Decision dated October 10, 2014)*, pp. 188-198.
[25] *Id., Opposition (To the Motion for Reconsideration filed by Respondent NAPOCOR)*, pp. 203-216.
[26] *Id., Assailed Resolution*, pp. 221-226.
[27] *Id.* at 226.
[28] *Rollo*, pp. 95-101, with annexes; see p. 92.
[29] *Id.* at 104-106.
[30] *Id., Petition for Review*, pp. 64-79, with annexes.
[31] *Id., Comment On The Petition for Review*, pp. 108-124.
[32] *Id.* at 131-132.
[33] *Id.* at 133-136.
[34] *Rollo*, p. 187.

On December 28, 2015, petitioner filed its Memorandum[35], followed by Respondent's Memorandum[36] on January 12, 2016 filed by registered mail.

On February 4, 2016, the Court *En Banc* promulgated a Resolution submitting the case for decision; hence, this Decision.[37]

The Issues

Based on the Petition for Review filed by petitioner, the grounds and issues of the case are the following:[38]

GROUNDS FOR THE ALLOWANCE OF THE PETITION

I

THE CTA FIRST DIVISION ERRED IN CONCLUDING THAT THE TRIAL COURT SHOULD NOT HAVE RESOLVED THE RESPONDENTS' APPEAL ON A PURE QUESTION OF LAW.

(a) Respondent Municipality has no authority to impose any tax, fee, or charge of any kind on the petitioner under the Local Government Code.

(b) Even assuming that respondent Municipality has the authority to impose any tax, fee, or charge of any kind on the petitioner, the latter is not liable for the payment of business taxes to the respondents.

(c) Even assuming that respondent Municipality has the authority to impose business taxes to the petitioner, its authority to impose such tax for the years 2003 and 2004 already prescribed in 2009.

II

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[35] *Rollo, Petitioner's Memorandum,* pp. 138-163, with annexes.
[36] *Id., Respondents' Memorandum,* pp. 164-188.
[37] *Id.,* at 191-192.
[38] *Id., PFR,* pp. 24-25; emphases retained.

THE CTA FIRST DIVISION ERRED IN CONCLUDING THAT THE PETITIONER PREMATURELY FILED ITS APPEAL WITH THE TRIAL COURT PURSUANT TO SECTION 195 OF THE LOCAL GOVERNMENT CODE.

The Ruling of the Court En Banc

Petitioner's arguments[39]

Petitioner claims that the RTC did not err in resolving respondents' appeal on a pure question of law, which is whether respondents have the authority to impose any kind of tax, fee, or charge against NPC; that the *Local Government Code of 1991 ("1991 LGC")*[40] prohibits respondent Municipality from imposing any tax, fee, or charge on NPC; that *Section 133(o) of the 1991 LGC* sets limitations on LGUs, that is, the exercise of taxing powers of municipalities shall not extend to the levy of taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and LGUs; that LGUs may only do so if the *1991 LGC* expressly so provides; and that the Supreme Court clarified in the case of *MIAA v. Court of Appeals*[41] that *Section 193 of the 1991 LGC,* which withdrew tax exemption privileges granted and previously enjoyed by all persons, does not conflict with *Section 133(o) of the 1991 LGC* since the latter admits subordination to other provisions of the *1991 LGC* and limits the grant to LGUs of the power to tax and not merely the exercise of a delegated power to tax.

Further, petitioner insists that on November 3, 1936, pursuant to *Commonwealth Act No. 120*[42], NPC was created as a public corporation for the purpose of undertaking the development of hydraulic power, the production of power from other sources and for other purposes; that on September 10, 1971, *R.A. No. 6395* was enacted expanding NPC's functions to include the transmission of electric power on a nationwide basis, which power was transferred to National Transmission Corporation ("TRANSCO") when *R.A. No. 9136*[43] was

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[39] *Rollo, Petitioner's Memorandum,* pp. 138-155.
[40] *"An Act Providing for a Local Government Code of 1991," Republic Act No. 7160,* dated October 10, 1991, effective January 1, 1992.
[41] G.R. No. 155650, July 20, 2006, 495 SCRA 591.
[42] *"An Act Creating the [']National Power Corporation,['] Prescribing its Powers and Activities, Appropriating the Necessary Funds Therefor, and Reserving the Unappropriated Public Waters for its Use,"* approved and effective November 3, 1936.
[43] *"An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and and For Other Purposes,"* June 8, 2001; the Electric Power Industry Reform Act ("EPIRA Law").

enacted in 2001; that by reason of its nature and functions and the Supreme Court case of *Maceda v. Macaraig*[44], NPC is an agency of the Government under *Section 2(4) of the 1987 Administrative Code*[45]; that as an agency of the Government, it is represented by the Office of the Solicitor General pursuant to *Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code;* and that, therefore, NPC falls within the purview of *Section 133(o) of the 1991 LGC.*

Petitioner avers that even if it does not fall within the purview of *Section 133(o) of the 1991 LGC,* respondent Municipality is not the appropriate *situs* of the tax under *Section 150(a) of the 1991 LGC;* that it is not claimed that NPC has a plant, branch or sales outlet located in respondent Municipality; that the generation of electric power by an agency of the Government is not one of the business activities expressly enumerated under *Section 143 of the 1991 LGC;* and that respondents' authority to impose Business Tax for the years 2003 and 2004 has already prescribed in 2009, pursuant to *Section 194 of the 1991 LGC.*

Lastly, petitioner alleges that the Court in Division erred in concluding that it prematurely filed its appeal with the RTC; that *Section 195 of the 1991 LGC* states that a taxpayer dissatisfied with a local treasurer's denial or inaction on his protest over an assessment has thirty (30) days [from the receipt of denial or lapse of the sixty (60)-day period for the local treasurer to decide] to file its appeal to the court of competent jurisdiction; and that due to respondents' refusal to resolve the protest alleging no jurisdiction over it, its appeal on May 4, 2010 was proper.

Respondents' arguments[46]

Respondents counter argue that the Court in Division correctly held that NPC prematurely filed its appeal with the RTC; that NPC filed its protest with respondent Treasurer on March 5, 2010, hence it had until May 4, 2010 to resolve the same; that NPC abandoned its protest and appealed with the RTC on May 4, 2010; that said appeal was premature and RTC has no jurisdiction over the case, hence, RTC's decision in favor of NPC is null and void; that *Sections 195 and 196 of the 1991 LGC* are prerequisites for seeking redress in a competent court;

[44] G.R. No. 88291, May 31, 1991, 197 SCRA 771.
[45] *"Instituting the [']Administrative Code of 1987,[']" Executive Order No. 292,* signed on July 25, 1987.
[46] *Rollo, Respondents' Memorandum,* pp. 170-186.

and that premature resort to the court is fatal to one's cause of action, hence, the assessment has become final and executory.

Respondents contend that while NPC is a GOCC, *Section 193 of the 1991 LGC* withdrew all tax exemption privileges or incentives granted thereto; that following the legal maxim *"expression unius est exclusion alterius,"* NPC, not being a local water district, a cooperative registered under *R.A. No. 6938*[47] or a non-stock non-profit hospital or educational institution, is not an exception to the rule; that the Supreme Court case of *NPC v. City of Cabanatuan*[48] rejected NPC's claim of exemption; and that, therefore, there is basis for respondents to assess NPC of Business Tax under *Section 143(b)* in relation to *Section 142 and 146 of the 1991 LGC* and *Section 2A.02B of Municipal Ordinance No. 117* of respondent Municipality.

Respondents added that their imposition of Business Tax is the exemption to *Section 133(o) of the 1991 LGC*, which is different from *Section 133(e) of the 1991 LGC*; that Business Tax is imposed on the privilege of engaging in trade or commercial activity with an end in view of earning profit; and that the imposition of Business Tax is among the taxing powers granted to petitioner.

Moreover, respondents allege that *Section 193 of the 1991 LGC* prevails over *Section 133(o) of the 1991 LGC* since the former treats the subject matter with particularity and is given greater binding effect than the latter. As to the issue of *situs*, respondents assert that since the sale of generated electric power is made by NPC to MORESCO-UNO at respondent Municipality, NPC is liable to pay taxes; and that contrary to NPC's claim, *Section 150 of the 1991 LGC* states that *situs* should be where the sale was made.

As to NPC's claim of prescription, respondents only received information on NPC's gross receipts from MORESCO-UNO in 2009, despite several demands; that respondents had no other way to determine the tax liabilities of NPC; and that since information was only received in 2009, the prescriptive period should only be counted therefrom.

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[47] *"An Act to Ordain a Cooperative Code of the Philippines," Republic Act No. 6938*, dated March 10, 1990.
[48] G.R. No. 149110, April 9, 2003, 401 SCRA 259.

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The Court *En Banc* finds no merit in the instant Petition for Review.

The RTC has no jurisdiction to decide NPC's appeal.

Before a local assessment case is elevated to a court of competent jurisdiction, it is mandatory for the taxpayer to first file a protest against the deficiency assessment, in accordance with *Section 195 of the 1991 LGC*, to wit:[49]

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

The above provision gives the local treasurer a period of sixty (60) days, from the time the protest was filed, within which to decide the same. Thereafter, the taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period within which to file an appeal with the court of competent jurisdiction.

Looking into the Decision of the RTC, which granted NPC's appeal and nullified the assessment of respondents, it failed to pass

[49] Underscoring ours.

upon the issue of jurisdiction.[50] Hence, it did not consider the prescriptive periods provided under *Section 195 of the 1991 LGC.*

As explained by the Court in Division in the Assailed Decision, the three (3) separate periods mentioned above are mandatory and failure to comply with the sixty (60)-day waiting period violates the doctrine of exhaustion of administrative remedies, rendering the petition premature and without a cause of action, with the effect that the RTC will not acquire jurisdiction over NPC's petition.[51]

The Court in Division found that the statutory periods were not followed.[52] NPC filed its protest on March 5, 2010, hence, respondent Treasurer had sixty (60) days or until May 4, 2010 within which to resolve the same.[53] However, NPC filed an appeal with the RTC on the sixtieth (60th) day, which is on May 4, 2010.[54] Considering that days are understood to be of twenty-four (24) hours in accordance with *Article 13*[55] *of the New Civil Code*[56], NPC prematurely filed its appeal with the RTC.[57]

The Court in Division went on to explain that *Article 5 of the New Civil Code,* provides that "[a]cts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."[58] Hence, NPC's failure to comply with the mandatory period renders its appeal with the RTC void.[59]

The Court *En Banc* finds no reason to reverse the Court in Division's Assailed Decision and Resolution.

As explained by the Supreme Court in the recent case of *China Banking Corporation v. City Treasurer of Manila*[60], it has been consistently

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[50] *Records, RTC Decision,* pp. 39-42.
[51] *Id., Assailed Decision,* p. 185.
[52] *Id.*
[53] *Id.*
[54] *Id.* at 185-186.
[55] "Art. 13. When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise. If months are designated by their name, they shall be computed by the number of days which they respectively have. In computing a period, the first day shall be excluded, and the last day included."
[56] *"An Act to Ordain and Institute the Civil Code of the Philippines," Republic Act No. 386,* approved June 18, 1949.
[57] *Records, Assailed Decision,* p. 186.
[58] *Id.*
[59] *Id.*
[60] G.R. No. 204117, July 1, 2015.

held that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.

Failure to perfect an appeal, as required by the rules, defeats the right to appeal of a party and precludes the appellate court from acquiring jurisdiction over the case.[61] The right to appeal is not a natural right nor a part of due process, it is a mere a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law.[62]

Considering the foregoing, the Court *En Banc* finds it unnecessary to discuss the other remaining issues for being moot and academic.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the First Division's Decision promulgated on October 10, 2014 and Resolution promulgated on February 25, 2015 are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[61] *China Banking Corporation v. City Treasurer of Manila,* G.R. No. 204117, July 1, 2015.
[62] *Id.,* citing *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation,* G.R. No. 167606, August 11, 2010, 628 SCRA 96.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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