REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

NATIONAL POWER CORPORATION,
Petitioner-Appellant,

- versus -

C.T.A. E.B. NO. 51
(CBAA Case No. L-32)

CENTRAL BOARD OF ASSESSMENT APPEALS (CBAA), LOCAL BOARD OF ASSESSMENT APPEALS OF LA UNION, (LBAA) PROVINCIAL ASSESSOR, and TREASURER of LA UNION and MUNICIPAL ASSESSOR, BAUANG, LA UNION,
Respondents-Appellees.

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IN RE: PETITION TO DECLARE NATIONAL POWER CORPORATION EXEMPT FROM THE REVISED AND RETROACTIVE REAL PROPERTY TAX ASSESSMENT ON THE PROPERTY COVERED BY TAX DECLARATION NOS. 30026 TO 30033 ISSUED BY THE MUNICIPAL/ PROVINCIAL ASSESSORS OF THE MUNICIPALITY OF BAUANG, PROVINCE OF LA UNION

BAUANG PRIVATE POWER CORP.,
Petitioner,

C.T.A. E.B. CASE NO. 58
(CBAA Case No. L-32)

- versus -

Present:

SANGGUNIANG PANLALAWIGAN LA UNION, PROVINCIAL TREASURER, LA UNION, MUNICIPAL ASSESSOR, BAUANG, LA UNION, PROVINCIAL ASSESSOR, LA UNION, LOCAL BOARD OF ASSESSMENT APPEALS (LBAA) OF LA UNION, and THE CENTRAL BOARD OF ASSESSMENT APPEALS (CBAA),
Respondents.

Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:

FEB 13 2006

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DECISION

CASANOVA, *J.*:

These are Petitions for Review before the Court of Tax Appeals *en banc* filed by petitioner-appellant National Power Corporation and petitioner Bauang Private Power Corporation on December 15, 2004 and January 3, 2005, respectively, under Republic Act No. 9282, seeking for reversal of the Decision and subsequent Resolution rendered by the Central Board of Assessment Appeals in CBAA Case No. L-32, of the same titles, to wit:

> 1. Decision dated January 29, 2004 dismissing petitioner-appellant's Appeal and petitioner's Appeal-In-Intervention for lack of merit and accordingly confirmed the assailed Decision of the Local Board of Assessment Appeals in LBAA Case No. 01-99 which denied petitioner NAPOCOR's petition; and
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> 2. Resolution dated October 20, 2004 denying petitioners' Motions for Reconsideration of the aforementioned Decision.

The undisputed facts as culled from the records of the case are briefly narrated as follows:

On January 11, 1993, petitioner-appellant National Power Corporation (NAPOCOR) and First Private Power Corporation (FPPC) entered into a contract under the Build Operate and Transfer (BOT) Agreement, wherein FPPC, as the Contractor, "shall cause the formation of a subsidiary or Philippine Corporation to be called as Bauang Private Power Corporation (hereinafter "BPPC") for the purpose of undertaking certain works in respect of the building and operating of the Power Station and perform other undertakings specified in this Agreement." The Agreement or contract was for the construction of a 215 Megawatt Bauang Diesel Power Plant, situated in Payocpoc Sur, Bauang, La Union, for the period commencing from July 25, 1994 and to end upon the transfer date thereof, with BPPC undertaking the designing, building and operating the said power plant. *(Annex C, Petition for Review, CTA E.B. Nos. 51 & 58)* Accordingly, the operation of the power plant is for the purpose of converting the fuel supplied by petitioner-appellant NAPOCOR to petitioner BPPC into electricity, with the former taking in back all the electricity generated by BPPC, as required by petitioner-appellant.

In 1995, the Municipal Assessors of Bauang, La Union, issued Tax Declaration Nos. 2506 and 25022 to 25029 in the name of BPPC, declaring all machineries and equipment as exempt from real property taxes. However, in a letter dated July 22, 1997 addressed to the Provincial and Municipal Assessors of Bauang, La Union, the then Acting Mayor of Bauang, La Union questioned the legality of the exemption of BPPC from the payment of real property taxes.

On February 6, 1998, the then Regional Director of the Bureau of Local Government Finance (BLGF), Ms. Carmelita Reyes, through her 6th Indorsement, opined that petitioner BPPC is a private corporation. Subsequently, in July 16, 1998, the BLGF Deputy Executive Director and OIC Ms. Angelina M. Magsino, issued her 7th Indorsement ruling that the machineries and equipment of BPPC are subject to real property taxes and ordered that the assessors take action to the same.

In view of the ruling issued by the BLGF, and in accordance with Article 314 of the Rules and Regulations Implementing the Local Government Code of 1991, the Provincial/Municipal Assessors then issued the assailed revised assessment retroactive to 1995 Tax Declaration Nos. 30026 to 30033 and 30037, which cancelled the earlier issued Tax Declarations of Real Property of BPPC and, in effect, re-assessed the subject machineries and equipment as liable for real property taxes. Consequently, a Notice of Assessment and Tax Bill was issued against Bauang Private Power Corp. assessing it of real property taxes for the machineries and equipment, as stated under the new tax declarations, in the amount of **Two Hundred Eighty Eight Million Five Hundred Eighty Two Thousand Eight Hundred Forty Five Pesos (P288,582,845.00)** for the years 1995 to 1998, exclusive of the 2% interest per month on unpaid amounts.

In this regard, on October 5, 1998, petitioner-appellant National Power Corporation, filed a petition before the Local Board of Assessment Appeals (LBAA) entitled "In Re: Petition to Declare Exempt from Payment of Property Tax on the Revised and Retroactive to 1995 Tax Declaration Nos. 30026, 30027, 30028, 30029, 30030, 30031, 30032, 30033 and 30037, National Power Corporation, petitioner." NAPOCOR claimed that the machineries and equipment covered under the tax declarations are actually, directly, and exclusively used by it and therefore, by the provisions of law, are exempt from the payment of real property taxes.

On November 19, 1999, a Motion to Withdraw Petition was granted by the LBAA due to a series of conferences and meetings between the petitioner-appellant and petitioner and the Local Government Units of Bauang, La Union, for the purpose of arriving at a possible amicable settlement of the case. However, the failure to arrive at an agreeable settlement caused the reinstatement of the original petition.

On the other hand, petitioner Bauang Private Power Corporation filed a Petition for Prohibition with the Regional Trial Court of La Union, which issued an Order dated December 11, 2000 granting the Writ of Preliminary Injunction. In view of this, respondents-appellees challenged the said Order and filed a Petition for Certiorari with the Court of Appeals, docketed as C.A.-G.R. SP No. 66937.

On October 26, 2001, the LBAA rendered a decision denying the petition for exemption, and holding therein that NAPOCOR does not own nor does it actually or exclusively use the subject machineries and equipment. Accordingly, what determines the liability of a person or entity in the payment of real property taxes is the ownership and use of the property subject of taxation, which cannot be determined by mere agreement of the parties.

Petitioner-appellant NAPOCOR then appealed the LBAA's decision to the Central Board of Assessment Appeals (CBAA).

On March 31, 2003, the Court of Appeals 10th Division rendered its Decision in C.A. – G.R. SP No. 66937, dismissing the Petition for Certiorari filed by the respondents-appellees, Sangguniang Panlalawigan of La Union and the Provincial Treasurer of La Union. A Motion for Reconsideration was likewise denied.

On May 23, 2003, or almost two (2) years after the LBAA rendered its decision, petitioner BPPC filed its Appeal-in-Intervention with the CBAA, alleging that it has a real interest in the outcome of the matter in litigation between petitioner-appellant NAPOCOR and respondents-appellees because Tax Declaration Nos. 30026 to 30033 and 30037 covering the subject machineries and equipment are all issued in its name.

On January 29, 2004, the CBAA rendered the assailed Decision dismissing petitioner NAPOCOR's appeal.

Hence, these Petitions for Review *en banc* filed by petitioner-appellant NAPOCOR on December 15, 2004 and petitioner BPPC on January 3, 2005.

In its petition, petitioner-appellant NAPOCOR submits the following arguments:

1. The CBAA erred in ruling that petitioner is not the actual, direct, and exclusive user of the Bauang Diesel Power Plant;

2. The CBAA erred in ruling that petitioner's real property tax exemption was withdrawn by the Local Government Code (LGC);

3. The CBAA erred in ruling that petitioner must be engaged in both generation and transmission of power before exemption under Section 234 (c) of the LGC applies;

4. The CBAA erred in not construing the exemptions with petitioner's charter and the BOT Law; and

5. Assuming the 215 Megawatts Bauang Diesel Power Plant is taxable, the CBAA nonetheless erred in refusing to remand the case to the LBAA for the purpose of determining the adjustments on the real estate taxes due on the account of the use of the 10% assessment level and the exclusion of pollution reducing machines.

On the other hand, petitioner BPPC in CTA En Banc Case No. 58 raised the following arguments:

1. The CBAA committed reversible error and/or grave abuse of discretion in not finding that the machinery and equipment subject of the assessment are exempt from taxation;

2. The CBAA committed reversible error and/or grave abuse of discretion in finding the petitioner liable for real property tax by adopting an improper interpretation of the terms "actual, direct and exclusive use";

3. The CBAA committed reversible error and/or grave abuse of discretion in ruling that the machinery and equipment are not "actually and directly used" by NAPOCOR; and

4. The CBAA committed reversible error and/or grave abuse of discretion in not finding that, assuming arguendo that the properties are subject to taxation, the rate applied should only be ten percent (10%).

By way of Comment, respondents-appellees, assign the following as their Counter-Arguments, thus:

1. Petitioner has no legal personality to file petition to declare tax exempt properties registered in the name of BPPC and to institute the instant petition as well;

2. CBAA had no jurisdiction to entertain the appeal of petitioner NAPOCOR;

3. CBAA correctly ruled that NAPOCOR is not the actual, direct and exclusive user of the Bauang Diesel Power Plant;

4. Contrary to petitioner's assertions, CBAA did not rule or even mention that NPC's real property tax exemption was withdrawn by the Local Government Code;

5. CBAA correctly ruled that petitioner NPC must be engaged in both the generation and transmission of power to be exempted under Section 234 (c) of the Local Government Code;

6. CBAA correctly construed the exemptions in the Local Government Code vis-à-vis NPC's charter and the BOT Law; and

7. There was no need to remand the case back to the LBAA for purpose of determining the adjustments of the real estate tax due.

Based on the pleadings of the parties, the issues in this case may be summed up as follows:

1. Whether or not petitioner BPPC has seasonably filed its protest to the questioned Revised and Retroactive to 1995 Tax Assessments for the machineries and equipment issued in its name to the LBAA and subsequently to this Court; and

2. Whether or not the subject machineries and equipment covered under Revised Tax Declaration Nos. 30026 to 30033 and 30037 are actually, directly and exclusively used by petitioner-appellant NAPOCOR in the generation and transmission of electric power and thus, are not subject to real property taxes.

Anent the first issue, it is not disputed that respondents-appellees issued Revised Tax Declarations No. 30026 to 30033 and 30037 in the name of petitioner Bauang Private Power Corporation (BPPC), and subsequently issued a Notice of Assessment to BPPC assessing it of real property taxes for the machineries and equipment being used in the Build, Operate and Transfer Agreement (BOT Agreement) with petitioner-appellant NAPOCOR, in the total amount of P288,582,845.00 for the period covering 1995 to 1998. The subject Notice of Assessment was admittedly received by petitioner BPPC on August 7, 1998.

However, instead of filing an appeal with the LBAA, as provided for by law, petitioner BPPC formally notified NAPOCOR of the notice on August 18, 1998. On October 5, 1998, petitioner-appellant filed a "Petition to Declare NAPOCOR Exempt from the Revised and Retroactive to 1995 Real Property Tax Assessment on the Property Covered by Tax Declaration Nos. 30026 to 30033 and 30037 Issued by the Municipal/Provincial Assessors of the Municipality of Bauang, La Union" with the LBAA.

Section 226 of the Local Government Code of 1991 provides:

> "**SEC. 226. Local Board of Assessment Appeals**. – Any owner or person having legal interest in the property who is not 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 in 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 submitted in support of the appeal." *(Emphasis supplied)*

Verily, the owner or the person having a legal interest in the property subject of the assessment is given a period of sixty (60) days from receipt of the written notice of assessment within which to file its appeal with the Local Board of Assessment Appeals (LBAA).

When petitioner BPPC received the notice of assessment on August 7, 1998, it had until October 6, 1998 (not October 3, 1998 as alleged by the respondents) within which to file an appeal with the LBAA on the ground that it does not agree with the findings of real property tax assessments by the provincial/municipal assessors. However, petitioner BPPC did not file any appeal with the LBAA, as required by law, but instead merely informed petitioner-appellant NAPOCOR of the said assessment notice.

In this regard, on October 5, 1998, petitioner-appellant NAPOCOR filed a petition to declare itself exempt from the real property taxes covered under the subject tax declarations which were issued in the name of petitioner BPPC.

The law is very clear. It specifically provides that, when the **owner or any person having a legal interest in the property** who is **not satisfied with the assessment**, may **file an appeal within a period of sixty (60) days** to the LBAA. Under the provisions of the Rules of Procedure before the Local Board of Assessment Appeals, it is also provided that the owner, administrator or person who is not satisfied with the assessment of his property may, within sixty (60) days from the date of **receipt of the written notice of assessment**, **appeal** to the LBAA *(Section 2 (a), Rule V)*. Likewise, Section 4 of the same Rules provides that "any action of the Provincial, City or Municipal Assessor in the assessment of real property, and any action or inaction of the Provincial or City Treasurer, or Municipal Treasurer, on taxpayer's claim for refund of taxes paid under protest, or on claims for reduction or adjustment of taxes paid or for tax credits on illegally or erroneously collected realty taxes and such other real property taxes or special levies under Title Two, Book II of R.A. 7160", may be appealed to the LBAA. Thus, an appeal to the LBAA must necessarily involve the questioning of the correctness of the assessment of the property. In this regard, an assessment is defined as "the act or process of determining the value of a property, or proportion thereof subject to tax, including the discovery, listing, classification and appraisal of the property" *(Section 199 (f), Local Government Code of 1991).*

In the instant case, petitioner BPPC, against whom the tax declarations were issued and the notice of assessment addressed, did not file an appeal to contest or question the assessment made by the provincial/municipal assessors. It was instead through the intervention of petitioner-appellant NAPOCOR that an alleged appeal was made. Although it appears that there was a recourse made within the sixty (60) day period allowed by law, the requisites as to the proper party and appeal were not substantially complied with.

First and foremost, petitioner-appellant is not the registered owner of the subject machineries and equipment. It is clear from the pleadings of the petitioner BPPC that the tax declarations were issued in its name. It has likewise been admitted by BPPC that it received the Notice of Assessment and Tax Bill issued against it. While tax declarations are not conclusive proofs of ownership, however, in the absence of any other convincing evidence to prove otherwise, the same may be considered.

Admittedly therefore, petitioner BPPC is the registered owner of the subject machineries and equipment. This is further confirmed by Section 2.08 of the BOT Agreement, which provides that "From the date hereof until the Transfer Date, **Contractor shall, directly or indirectly, own the Power Station and all the fixtures, fittings, machinery and equipment on the Site or used in connection with the Power Station** which have been supplied by it or at its costs and it shall operate and manage the Power Station for the purpose of converting the fuel of NAPOCOR into electricity." Likewise, Section 14.01 provides that "On Transfer Date, Contractor (BPPC) **shall transfer to NAPOCOR free from any lien and encumbrances** all its right, title and interest in and to the fixtures, fittings, plant, and equipment (including testing equipment and special tools) and all improvements comprising the Power Station."

Accordingly, until the Transfer Date of the power station, NAPOCOR does not own any of the subject properties and equipment. Hence, NAPOCOR has no legal right, title or interest in the subject real properties. Unless and until there is a transfer of all the real properties in the name of NAPOCOR, petitioner-appellant has no cause of action and no legal personality to question the assessment issued against BPPC in the guise of a Petition for Exemption and to file this case. As correctly pointed out by respondents-appellees, petitioner-appellant NAPOCOR, is at the least, an interloper in this case.

By express mandate of law, the owner or the person having a legal interest in the property subject of the assessment, should have filed an appeal with the LBAA to question the assessment received, which, petitioner BPPC failed to do. In this instant case, petitioner BPPC merely filed an Appeal-In-Intervention when the case was already elevated to the Central Board of Assessment Appeals (CBAA). Although, petitioner BPPC intervened in the case, it still failed to follow the correct processes as required by the Rules Governing the Appeals to the CBAA, more specifically, Section 7 of Rule IV, which provides that "if the corresponding realty taxes are not paid, the Central Board may nevertheless entertain an appeal by requiring the appellant to file a bond to guarantee the payment of the said taxes if found to be due, subject to the approval by the Central Board."

Assuming, for the sake of argument, that petitioner-appellant has a legal interest in the property subject of the assessment as to fall within the provisions of the law, it still failed to file the correct appeal before the LBAA. The petition filed by petitioner-appellant NAPOCOR is not the appeal contemplated by law, rather, it was an effort on its part to enforce an alleged legal right under the provisions of the BOT Agreement which makes it liable to pay the real property taxes, as well as, the provisions of the Local Government Code of 1991 granting exemptions to machineries and equipment actually, directly and exclusively used by a government-owned or controlled corporation, such as itself, in the generation and transmission of electric power. It must be emphasized that the existence of the fact of exemption is not for the LBAA to decide, but rather, should be proven by competent and sufficient evidence before the Provincial, City or Municipal Assessor within thirty (30) days from the declaration of real property *(Section 206, Local Government Code of 1991)*, whose action is appealable to the LBAA and the CBAA, if necessary.

Petitioner-appellant cannot simply bypass the authority granted to concerned administrative agencies. When the law provides for remedies against the action of an administrative board, body, or officer, as in the case at bar, relief to the courts can be made only after exhausting all remedies provided therein *(Lopez vs. City of Manila, 303 SCRA 448)*. Thus, for failure of the petitioner BPPC to seasonably file its appeal before the LBAA, it has lost its right to appeal. "Perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional, and failure to perfect an appeal legally required has the effect of rendering final and executory the judgment of the court below and deprives the appellate court of jurisdiction to entertain the appeal" *(Government of the Philippines [Director of Lands] vs. Antonio, et. al., 15 SCRA 119)*.

As regards the issue on the taxability of the machineries and equipment in question, this Court considers it necessary to discuss the same to enlighten the parties as to the nature of the subject machineries and equipment, without declaring, however, that petitioner-appellant NAPOCOR has the personality to bring this case before Us.

Anent this issue, petitioner-appellant relies on the case of Mactan Cebu International Airport Authority vs. Marcos (261 SCRA 667), where the Honorable Supreme Court classified the exemptions from real property taxes according to:

1. *Ownership exemptions* – Exemptions from real property taxes on the basis of ownership are real properties owned by (i) the Republic, (ii) a province, (iii) a city, (iv) a municipality, (v) a barangay, and (vi) registered cooperatives.

2. *Character exemptions* – Exempted from real property taxes on the basis of their character are (i) charitable institutions, (ii) houses and temples of prayer like churches, parsonages or convents appurtenant thereto, mosques, and (iii) non-profit or religious cemeteries.

3. *Usage exemptions* – Exempted from real property taxes on the basis of the actual, direct and exclusive use to which they are devoted are (i) all lands, buildings and improvements which are actually, directly and exclusively used for religious, charitable or educational purposes; (ii) all machineries and equipment actually, directly and exclusively used by local water districts or by government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power; and (iii) all machinery and equipment used for pollution control and environmental protection.

Accordingly, petitioner-appellant submits that under Sections 198 (b) and 234 (c) of the Local Government Code, the determination of both who is the taxable entity and who is exempt from real property taxation revolves on who is the "actual user". The entity in actual use of a given real property is considered the entity liable for real property taxes. However, if the machineries and equipment taxed are actually, directly and exclusively used by a GOCC in the generation and transmission of electric power, such properties are exempted from taxation. Verily, Section 199 (b) of the same Code defines "actual use" as "the purpose for which the property is principally or predominantly utilized by the person in possession thereof."

Petitioner-appellant further submits that in the case of The Sangguniang Panlalawigan of La Union & the Provincial Treasurer of La Union vs. Honorable Presiding Judge Rosemary Molina Alim, La Union Bauang Private Power Corporation (BPPC) & National Power Corporation (NAPOCOR), C.A.-G.R. SP No. 66937 (March 31, 2003), the Court of Appeals had ruled that the NPC is the actual, direct and exclusive user of real properties under a BOT Agreement.

This Court is not convinced.

It is not disputed that petitioner BPPC was organized pursuant to the Fast Track Build, Operate and Transfer Agreement (BOT Agreement) between petitioner-appellant NAPOCOR and the First Private Power Corporation (FPPC) on January 11, 1993. Its organization was primarily to engage in the business of generating electrical power which the company sells to the petitioner-appellant NAPOCOR on a wholesale basis *(7th Indorsement dated July 16, 1998 to the Provincial Assessor of La Union).*

Under the said BOT Agreement, the Contractor (herein BPPC) is "given the opportunity to inspect the site, if he finds it physically suitable for the construction and operation of a bunker-fired diesel generating power station, shall cause the design, development, construction, completion, testing and commissioning of a bunker-fired diesel generating power station with Black Start capability, capable of operating at a level within the Operating Parameters and in accordance with Specifications and the Project Scope."

To reiterate, Section 2.08 of the BOT Agreement provides that "From the date hereof until the Transfer Date, Contractor shall, directly or indirectly, **own** the Power Station and all the fixtures, fittings, machinery and equipment on the Site or used in connection with the Power Station which have been supplied by it or at its costs and it shall operate and manage the Power Station for the purpose of converting the fuel of NAPOCOR into electricity", while, Section 14.01 provides that "On Transfer Date, Contractor (BPPC) **shall transfer to NAPOCOR free from any lien and encumbrances** all its right, title and interest in and to the fixtures, fittings, plant, and equipment (including testing equipment and special tools) and all improvements comprising the Power Station."

Further, the provisions of Section 17 on Buyout gives a clear picture of the nature of the agreement, and that is, petitioner BPPC and not NAPOCOR owns the real properties.

Verily, under the provisions of the BOT Agreement, it is petitioner BPPC which owns the subject machineries and equipment in the construction of the Power Station.

The foregoing express provisions of the BOT Agreement disprove petitioner-appellant and petitioner's arguments that the machineries and equipment are actually, directly and exclusively used by NAPOCOR. To emphasize, the BOT Agreement clearly stipulated that petitioner-appellant NAPOCOR shall have a right over the machineries and equipment only after the same have been transferred upon the Transfer Date, or at the end of the cooperation period of fifteen (15) years. By the nature of the agreement and work of petitioner BPPC, the properties in question are actually, directly and exclusively used by it in the conversion of bunker fuel to electricity for petitioner-appellant for a fee (Sections 11, BOT Agreement).

Moreover, the law is clear. Section 234 (c) of the Local Government Code of 1991 provides that:

> "SEC. 234. **Exemptions from Real Property Tax.** - The following are exempted from payment of real property tax:
> (a) x x x
> (b) x x x
> (c) All machineries and equipment that are **actually, directly and exclusively used** by local water districts and **government-owned and controlled corporations engaged** in the supply and distribution of water and/or **generation and transmission of electric power**;
> xxx xxx xxx"
>
> *(Emphasis and underscoring Ours)*

Therefore, contrary to the averments of the petitioners that NAPOCOR need not be engaged in both the generation and transmission of electric power for the exemption to apply, the law categorically exempts from the payment of real property taxes only all machineries and equipment which are actually, directly and exclusively used by a GOCC in the generation and transmission of electric power. In other words, to be exempt from the real property taxes, the following must concur:

1. all machineries and equipments are actually, directly and exclusively used;
2. by a GOCC
3. in the generation **AND** transmission of electric power.

It is admitted that petitioner BPPC is engaged in the generation of electric power for the exclusive supply to petitioner-appellant NAPOCOR. However, BPPC can not fall under the provisions of the law considering that petitioner BPPC is not a government-owned or controlled corporation. BPPC is an independent power station currently operating and maintaining the Power Station pursuant to the BOT Agreement, subject to the transfer of the same after upon the Transfer Date *(pars. 3.2 & 3.3, Petitioner BPPC's Petition for Review).*

The argument of petitioner BPPC, that its exemption from the payment of the real property taxes on the subject properties had been agreed upon by the provisions Section 2.03 of the BOT Agreement, calls for a better reading and understanding of the laws.

It must be emphasized that tax exemptions cannot be agreed upon by a mere contract between the parties. It must be expressly granted by the Constitution, statute or franchise. A tax exemption, once granted, may likewise not be transferred or assigned for the same is a personal privilege granted to the grantee (*Manila Gas Corp vs. Collector, 71 Phil 513*). As held in the case of Philippine Long Distance Company vs. City of Davao, G.R. No. 143867, March 25, 2003, to wit:

> "Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference. Thus, it was held in Home Insurance & Trust Co. v. Tennessee 25 that a law giving a corporation all the "powers, rights reservations, restrictions, and liabilities" of another company does not give an exemption from taxation which the latter may possess. In Rochester R. Co. v. Rochester, 26 the U.S. Supreme Court, after reviewing cases involving the effect of the transfer to one company of the powers and privileges of another in conferring a tax exemption possessed by the latter, held that a statute authorizing or directing the grant or transfer of the "privileges" of a corporation which enjoys immunity from taxation or regulation should not be interpreted as including that immunity. Thus:
>
> > *We think it is now the rule, notwithstanding earlier decisions and dicta to the contrary, that a statute authorizing or directing the grant or transfer of the "privileges" of a corporation which enjoys immunity from taxation or regulation should not be interpreted as including that immunity. We, therefore, conclude that the words "the estate, property, rights, privileges, and franchises" did not embrace within their meaning the immunity from the burden of paving enjoyed by the Brighton Railroad Company. Nor is there anything in this, or any other statute, which tends to show that the legislature used the words with any larger meaning than they would have standing alone. The meaning is not enlarged, as faintly suggested, by the expression in the statute that they are to be held by the successor "fully and entirely, and without change and diminution," — words of unnecessary emphasis, without which all included in "estate, property, rights, privileges, and franchises" would pass, and with which nothing more could pass. On the contrary, it appears, as clearly as it did in the Phoenix Fire Insurance Company Case, that the legislature intended to use the words "rights, franchises, and privileges" in the restricted sense. . ."*

"Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. But since taxes are what we pay for a civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim for exemption from tax payments must be clearly shown and based on the language of the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception." *(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667)*

For all the reasons above discussed and inasmuch as petitioner BPPC failed to properly appeal the assessment within the time and manner prescribed by law, then the assessment had already attained finality.

WHEREFORE, both Petitions for Review are hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice