REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY,
Petitioner,

-versus-

CENTRAL BOARD OF ASSESSMENT APPEALS, LOCAL BOARD OF ASSESSMENT APPEALS OF LUCENA CITY, CITY OF LUCENA, LUCENA CITY ASSESSOR and LUCENA CITY TREASURER,
Respondents.

C.T.A. EB No. 193
(CBAA CASE NO. L-33)

PRESENT:

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

Promulgated:

MAY 0 9 2007 [illegible]

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

This is a Petition for Review under Section 11 of Republic Act No. 1125, as amended by Section 9 of Republic Act No. 9282, seeking a review and reversal of the Decision dated October 5, 2005 of the

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respondent Central Board of Assessment Appeals dismissing petitioner's appeal of the Decision of the Local Board of Assessment Appeals (LBAA) of Lucena City. The LBAA ordered petitioner to pay the real property taxes imposed by the City Government of Laguna on the Lucena Fishing Port Complex (LFPC), one of the fishing port complexes that petitioner manages and operates pursuant to P.D. 977 as amended by E.O. 772.

The facts as found by the Central Board of Assessment Appeals (CBAA) are as follows:

> The records show that the Lucena Fishing Port Complex (LFPC) is one of the fishery infrastructure projects undertaken by the National Government under the Nationwide Fish Port-Package. Located at Barangay Dalahican, Lucena City, the fish port was constructed on a reclaimed land with an area of 8.7 hectares more or less, at a total cost of PHP 296,764,618.77 financed through a loan (L/A PH-25 and 51) from the Overseas Economic Cooperation Fund (OECF) of Japan, dated November 9, 1978 and May 31, 1978, respectively.
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> The Philippine Fisheries Development Authority (PFDA) was created by virtue of P.D. 977 as amended by E.O. 772, with functions and powers to "(m)anage, operate, and develop the Navotas Fishing Port Complex and such other fishing port complexes that may be established by the Authority. Pursuant thereto, Petitioner-Appellant PFDA took over the management and operation of LFPC in February 1992.
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> On October 26, 1999, in a letter addressed to PFDA, the City Government of Lucena demanded payment of realty taxes on the LFPC property for the period from 1993 to 1999 in the total amount of P39,297,880.00. This was received by PFDA on November 24, 1999.
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> On October 17, 2000 another demand letter was sent by the Government of Lucena City on the same LFPC property, this time in the amount of P45,660,080.00 covering the period from 1993 to 2000.
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> On December 18, 2000 Petitioner-Appellant filed its Appeal before the Local Board of Assessment Appeals of Lucena City, which was dismissed for lack of merit. On November 6, 2001 Petitioner-

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> Appellant filed its motion for reconsideration; this was denied by Appellee Local Board on December 10, 2001.[1]

Petitioner appealed to the Central Board of Appeals (CBAA) by way of a Memorandum on Appeal dated February 26, 2002. The issue presented by the petitioner in its appeal before the CBAA is as follows:

> WHETHER OF NOT PETITIONER-APPELLANT IS LIABLE FOR REAL PROPERTY TAX ASSESSED ON THE REAL PROPERTIES OF LUCENA FISHING PORT COMPLEX PURSUANT TO SECTION 234 OF THE LOCAL GOVERNMENT CODE OF 1991, NOTWITHSTANDING THAT THE COMPLEX IS OWNED BY THE REPUBLIC OF THE PHILIPPINES.

The CBAA ruled in favor of the respondents holding that the ownership of LFPC has been handed over to herein petitioner Philippine Fisheries Development Authority (PFDA) citing Sec. 11 of P.D. 977 (the Charter of PFDA) and the ruling of the Supreme Court in *Mactan Cebu International Airport Authority vs. Marcos* (261 SCRA 667) wherein "the transfer of existing public airport facilities and other properties" found in Section 15 of the Charter of Mactan Cebu International Airport Authority was interpreted to be "an absolute conveyance of the ownership thereof because the petitioner's authorized capital stock consists of, *inter alia*, the value of such real estate owned and/or administered by the airports." Thus, the CBAA, ruled as follows:

> Ownership of LFPC however has, before hand, been handed over to the PFDA, as provided for under Sec. 11 of P.D. 977, as amended, and declared under the MCIAA case. The allegations therefore that PFDA is not a beneficial user of LFPC and not a taxable

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1 Assailed Decision, Central Board of Assessment Appeals, CBAA CASE NO. L-33, October 5, 2005, pp. 1-2.

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person are rendered moot and academic by such ownership of PFDA over LFPC.

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The ownership of LFPC as passed on by the Republic of the Philippines to PFDA is bourne by Direct evidence: P.D. 977, as amended (supra). Therefore, Petitioner-appellant's claim for realty tax exemption on LFPC is untenable.

WHEREFORE, for all the foregoing, the herein Appeal is dismissed for lack of merit.[2]

Petitioner filed a Motion for Reconsideration of the CBAA's decision relying on the argument that the Laguna Fishing Port Complex is the property of the public domain and remains the absolute property of the Republic of the Philippines. In a Resolution dated June 7, 2006, the CBAA denied petitioner's Motion for Reconsideration for lack of merit, hence, this appeal.

STATEMENT OF THE ISSUES

The issues raised by the petitioner in its Petition for Review are the following:

(A)

WHETHER OR NOT PETITIONER IS LIABLE FOR THE REAL PROPERTY TAX ASSESSED ON THE REAL PROPERTIES OF LUCENA FISHING PORT COMPLEX CONSIDERING THAT THE SUBJECT PROPERTY IS A RECLAIMED LAND.

(B)

WHETHER OR NOT PETITIONER IS LIABLE FOR THE REAL PROPERTY TAX ASSESSED ON THE REAL PROPERTIES OF LUCENA FISHING PORT COMPLEX PURSUANT TO SECTION 234 OF THE LOCAL GOVERNMENT CODE OF 1991, NOTWITHSTANDING THAT THE COMPLEX IS OWNED BY THE REPUBLIC OF THE PHILIPPINES.

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2 *Id.*, at p. 8.

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(C)

GRANTING THAT THE SUBJECT PROPERTIES COULD BE SUBJECT TO REALTY TAXES, WHETHER OR NOT SECTION 270, CHAPTER 6, TITLE II, BOOK II OF THE LOCAL GOVERNMENT CODE OF 1991 SHOULD HAVE BEEN TAKEN INTO ACCOUNT BY BOTH THE LOCAL BOARD OF ASSESSMENT APPEALS AND THE CENTRAL BOARD OF ASSESSMENT APPEALS.

PETITIONER'S ARGUMENTS

Petitioner avers that the subject real property is a reclaimed area, more importantly, the respondent Local Board of Assessment Appeals (LBAA) of Lucena City acknowledged on page 9 of its Decision that the land in question is a reclaimed land. Such being the origin of the land, its ownership by the State as property of public domain (Article 420, Civil Code) can hardly be disputed. Moreover, for the CBAA to totally ignore the findings of the Local Board of Assessment Appeals of Lucena City that the subject property is a reclaimed land is a clear contravention of pertinent jurisprudence, specifically the case of *NDC vs Cebu City (215 SCRA 382),* wherein the Honorable Supreme Court clearly ruled that as title to a reserve land remains with the Republic, the reserved land is clearly covered by the tax exemption provision found in Sec. 234 (a) of the Local Government Code of 1991 which reads as follows:

> SEC. 234. Exemptions from Real Property Tax. – The following are exempted from payment of the real property tax:

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> (a) Real property owned by the Republic of the Philippines or any of its political subdivision except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

Petitioner argues that the subject property is a reclaimed land and as such it is a property of public dominion which is not alienable and disposable, thus, the same is not subject to real property tax. According to the petitioner, the CBAA erroneously concluded that the government has transferred ownership of the land to petitioner in 1982 pursuant to Section 11 of P.D. 977, as amended by Section 5 of EO 772 (Decision, pp. 5 & 6). Petitioner avers that nowhere in its Charter (P.D. No. 977, as amended by E.O. 772) is it provided that ownership of the LFPC is transferred to petitioner. At most, Sec. 11 of E.O. 772 only prescribes for the transfer to petitioner of exclusive jurisdiction, control, administration and supervision, but definitely not ownership of the LFPC which remains with the Republic of the Philippines.

In addition, petitioner asserts that even assuming that the transfer includes transfer of ownership, it did not automatically convert such reclaimed land into being alienable or disposable as still there is no law authorizing its disposition to private parties pursuant to the ruling of the Supreme Court in the case of *Chavez vs. Public Estates Authority, et al., (384 SCRA 152).* It argues that in law, the concept of ownership has two important attributes, namely, the right to enjoy and the right to

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dispose of the thing without limitations other than those established by law. The "transfer" did not automatically convert such reclaimed land into being alienable or disposable as still there is no law passed by Congress authorizing its disposition to private parties. Indubitably then, this reclaimed land remains property of the public domain, thus, exempt from payment of real property tax. Settled is the rule that when properties of the Republic of the Philippines including properties of various government agencies whether exercising sovereign, political, or constituent functions, or only ministerial or proprietary functions are involved, exemption is the rule and taxation, the exception *(Social Security System vs. City of Bacolod, 115 SCRA 412).* Petitioner was created solely to carry out the ministrant function of the government to deliver a basic food service to its people. Petitioner avers that its functions are undeniably public functions for the welfare of the fishing industry, accentuated further by PFDA's non-profit character. It concludes that the operation and management by petitioner of the LFPC is not for its benefit but for the benefit of the general public, thus, imbued with public interest.

Lastly, petitioner argues that prescription had set in pursuant to Section 270 of the Local Government Code of 1991 which provides that the basic property tax and other tax levied under Title II, Book II of the same Code shall be collected within five (5) years from the date they become due and no action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period.

RESPONDENTS' ARGUMENTS

Respondents aver that the lone issue raised by the petitioner when it filed its petition before the Local Board of Assessment Appeals is "[w]hether or not petitioner is liable to the real property tax assessed on the real properties of Lucena Fishing Port Complex pursuant to Section 234 of the Local Government Code of 1991, notwithstanding that the complex is owned by the Republic of the Philippines." Thus, the other issues raised by the petitioner other than the foregoing issue should not be given due course considering that an issue cannot be raised for the first time on appeal. Issues must be raised seasonably in the proceedings before the lower court, and questions raised on appeal must be within the issues framed by the parties and, consequently, issues not raised in the trial court cannot be raised for the first time on appeal.

Respondents likewise argue that even if, as claimed by the petitioner, the subject property is owned by the Republic of the Philippines, it may still be taxed when the beneficial use thereof has been granted to a taxable person. In the instant case, the beneficial use of the subject property was granted to the petitioner in connection with Section 5 of E.O. 772 amending Section 11 of P.D. 977, to wit:

> Sec. 11. The Navotas Fishing Port Complex; Other Fishing Port Complex. – The Navotas Fishing Port Complex x x x x including all lands, piers, wharves, quays, landings, anchorages, basin, breakwaters, markets and other infrastructure facilities therein, is hereby transferred to and placed under the exclusive jurisdiction, control, administration, and supervision of the Authority.
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> Other fishing port complexes and related facilities may be established by the Board, with approval of the President of the Philippines, to be governed and operated by the Authority.

Respondents contend that undeniably the *beneficial use* of the subject property belongs to the petitioner, in fact, the entire fishing port complex was actually transferred to the exclusive jurisdiction, control, administration, and supervision of the petitioner. Moreover, the petitioner is a taxable person. Section 10 of P.D. 977 provides that petitioner is exempted from the payment of income tax, which is temporary in nature considering that the same may be removed by the President of the Philippines. As regards payment of Real Property Tax, no exemption was ever granted to the petitioner. In view thereof, the petitioner is clearly a taxable entity. Even assuming that petitioner was granted Real Property Tax Exemption under P.D. 977, the same would have been withdrawn pursuant to the last paragraph of Section 234 of the Local Government Code which provides: "x x x Except as provided therein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code."

THIS COURT'S RULING

The petition is not meritorious.

The issues to be resolved in this appeal are whether or not the petitioner, as a government-owned and controlled corporation, is liable for the real property tax imposed by the City of Lucena on the Lucena Fishing Port Complex; and whether or not the petitioner is the owner thereof.

Government-owned or Controlled Corporations are Subject to Real Property Tax

The Supreme Court had already ruled in a number of cases[3] that government-owned or controlled corporations (GOCCs) are subject to

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[3] *Mactan Cebu International Airport Authority vs. Marcos, et al.,* G.R. No. 120082, September 11, 1996 (261 SCRA 667); *Light Rail Transit Authority vs. Central Board of Assessment Appeals, et al.,* G.R. No. 127316, October 12, 2000 (342 SCRA 692); *Philippine Ports Authority vs. The City of Iloilo, et al.,* G.R. No. 143214, November 11, 2004 (442 SCRA 175); *Republic of the Philippines (represented by the Department of Energy [DOE] and the Philippine National Oil Company – Energy Development Corporation [PNOC-EDC] vs. City of Kidapawan, et al.,* G.R. No. 166651, December 9, 2005 (477 SCRA 324); *Government Service Insurance System vs. The City Assessor of Iloilo City, et al.,* G.R. No. 147192, June 27, 2006 (493 SCRA 169); and *Manila International Airport Authority vs. Court of Appeals, et al.,* G.R. No. 155650, July 20, 2006, (495 SCRA 591).

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the real property tax imposed by local government units pursuant to Section 232 of the 1991 Local Government Code (LGC) in relation to Sections 193 and 234 of the same code. Section 232 reads as follows:

> SEC. 232. *Power to Levy Real Property Tax.* – A province or city or a municipality within Metropolitan Manila Area may levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvements not hereafter specifically exempted.

Sec. 193 withdrew all local tax exemptions or incentives granted to or presently enjoyed by all persons, natural or juridical, including government-owned or controlled corporations, unless otherwise provided in the LGC. With regard to exemptions from real property taxes in particular, Sec. 234 of the same code provides as follows:

> SEC. 234. Exemptions from Real Property Tax. – The following are exempted from payment of real property tax:
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> (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof had been granted for consideration or otherwise, to a taxable person;
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> (b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;
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> (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;
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> (d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and
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> (e) Machinery and equipment used for pollution control and environmental protection.

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> Except as provided herein, **any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn** upon the effectivity of this Code. *(Emphasis supplied)*

There is no dispute that a government-owned or controlled corporation is not exempt from real estate tax.[4] The second paragraph of section 234 of the LGC is explicit - any exemption from payment of real property tax, other than those expressly provided therein, have been withdrawn upon the effectivity of the LGC. Said section expressly provides that among the exemptions from payment of real property tax that have been withdrawn are those exemptions previously granted to or enjoyed by government-owned or controlled corporations.

Petitioner is a Government-owned or Controlled Corporation

Petitioner admits that it is a government-owned or controlled corporation[5]. Moreover, its status as a GOCC is defined in its Charter, Presidential Decree No. 977 as amended by Executive Order No. 772[6], thus:

> SECTION 1. Section 2 of Presidential Decree No. 977 as amended is hereby further amended to read as follows:

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4 *Manila International Airport Authority vs. Court of Appeals, et al., supra.*

5 Petition for Review, p. 4.

6 Amending Presidential Decree No. 977 creating the Philippine Fish Marketing Authority, Defining its Functions and Powers, and For Other Purposes dated February 8, 1982.

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> SECTION 2. *Creation of the Philippine Fisheries Development Authority.* – To carry out the above policy, there is hereby created **a body corporate** to be known as the Philippine Fisheries Development Authority, hereinafter referred to as the Authority, which shall be attached to the Ministry of Natural Resources.

SECTION 3. Section 5 of Presidential Decree No. 977 is hereby amended to read as follows:

> SECTION 5. *Capitalization; Sinking Fund.* – **The Authority shall have an authorized capital stock of Five Hundred Million Pesos (P500,000,000.00)** which shall be fully subscribed by the Republic of the Philippines, and the following amounts shall be paid in:
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> xxx xxx xxx

SECTION 4. Section 6 of Presidential Decree No 977 as amended is hereby further amended to read as follows:

> SECTION 6. *Board of Directors.* – **The corporate powers of the Authority shall be vested in and exercised by a Board of Directors**, hereinafter referred to as the Board, to be composed of the following or their respective deputies:

a) Minister of Natural Resources	Chairman
b) Administrator of the National Food Authority	Vice-Chairman
c) Minister of Public Works and Highways	Member
d) Minister of Trade and Industry	Member
e) Minister of Agriculture	Member
f) Two representatives of the private sector of the fishery industry	Members

> The two representatives of the private sector shall be appointed by the President upon recommendation of the Minister of Natural Resources for a term of four years; Provided, That, initially, one representative shall be appointed for a term of two years and the other one for four years.
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> In the absence of the Chairman, the Vice-Chairman shall act as the Chairman. *(Emphasis supplied)*

As stated in its Charter, petitioner is a body corporate with a fully subscribed authorized capital stock of P500,000,000.00 and vested with corporate powers that may be exercised through its Board of Directors. Thus, it is a separate legal entity apart from the Republic of the Philippines. Consequently, being a GOCC, petitioner is subject to the Real Property Tax imposed by the local government units having jurisdiction over its real properties.

Petitioner Failed to Prove That It Is Exempt From Real Property Tax

In the present appeal, petitioner failed to prove that it is exempt from the real property tax pursuant to Sec. 234 or any other provision of the LGC. Petitioner is neither the Republic of the Philippines nor a political subdivision thereof; it is not a charitable institution; it is not engaged in the supply and distribution of water or electricity; it is not a cooperative; and lastly, the real properties upon which the real property tax was imposed do not consist of machinery or equipment used for pollution control and environmental protection. Likewise, petitioner was not even able to point to a specific provision in its Charter, P.D. No. 977 as amended by E.O. No. 772, that it is exempt from real property tax. Hence, petitioner is liable for real property tax under the LGC.

Parenthetically, the Supreme Court had ruled that even if the Charter of a government-owned or controlled corporation provides that it is exempt from real property tax, said exemption is considered withdrawn upon the effectivity of the LGC, thus:

> Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly a government-owned corporation, **it necessarily follows that its exemption from such tax granted in Section 14 of its Charter, R.A. No. 6958, has been withdrawn**.[7]

Laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[8]

Petitioner is the Owner of the Real Properties Transferred to It Through Its Charter

Petitioner argues that the subject real property and all the improvements thereon subjected to real property tax by the City of Lucena are owned by the Republic of the Philippines. It avers that there was merely a transfer of jurisdiction, control, administration and

7 *Mactan Cebu International Airport Authority vs. Marcos, et al., supra.*
8 *Sea-Land Service, Inc., vs. Court of Appeals, et al.,* G.R. No. 122605, April 30, 2001 (357 SCRA 441).

supervision over the Lucena Fishing Port Complex (LFPC) but definitely not ownership.

The foregoing argument is untenable. The term "Republic of the Philippines" found in Sec. 234 (a) of the LGC has a restrictive meaning as explained by the Supreme Court, thus:

> **The terms "Republic of the Philippines" and "National Government" are not interchangeable.** The former is broader and synonymous with "Government of the Republic of the Philippines" which the Administrative Code of 1987 defines as the "corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context, the various arms through which political authority is made affective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal or barangay subdivisions or other forms of local government." These "autonomous regions, provincial, city, municipal or barangay subdivisions" are the political subdivisions.
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> On the other hand, "National Government" refers "to the entire machinery of the central government, as distinguished from the different forms of local governments." The National Government then is composed of the three great departments: the executive, the legislative and the judicial.
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> An "agency" of the Government refers to "any of the various units of the Government, including a department, bureau, office, instrumentality, or **government-owned or controlled corporation**, or a local government or a distinct unit therein;" while an "instrumentality" refers to "any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and **government-owned and controlled corporations**."
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> If Section 234(a) intended to extend the exception therein to the withdrawal of the exemption from payment of real property taxes under the last sentence of the said section to the agencies and instrumentalities of the National Government mentioned in Section 133(o), then it should have restated the wording of the latter. Yet, it did not. Moreover, that Congress did not wish to expand the scope of the exemption in Section 234(a) to include real property owned by

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other instrumentalities or agencies of the government including government-owned and controlled corporations is further borne out by the fact that the source of this exemption is Section 40(a) of P.D. No. 464, otherwise known as The Real Property Tax Code, which reads:

> SEC. 40. *Exemptions from Real Property Tax.* —The exemption shall be as follows:
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> (a) Real property owned by the Republic of the Philippines or any of its political subdivisions **and any government-owned or controlled corporation so exempt by its charter**: *Provided,* however, That this exemption shall not apply to real property of the above-mentioned entities the beneficial use of which has been granted, for consideration or otherwise, to a taxable person.

Note that as reproduced in Section 234(a), the phrase "and any government-owned or controlled corporation so exempt by its charter" was excluded. The justification for this restricted exemption in Section 234(a) seems obvious: to limit further tax exemption privileges, especially in light of the general provision on withdrawal of tax exemption privileges in Section 193 and the special provision on withdrawal of exemption from payment of real property taxes in the last paragraph of Section 234. These policy considerations are consistent with the State policy to ensure autonomy to local governments and the objective of the LGC that they enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them effective partners in the attainment of national goals. The power to tax is the most effective instrument to raise needed revenues to finance and support myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people. It may also be relevant to recall that the original reasons for the withdrawal of tax exemption privileges granted to government-owned and controlled corporations and all other units of government were that such privilege resulted in serious tax base erosion and distortions in the tax treatment of similarly situated enterprises, and there was a need for these entities to share in the requirements of development, fiscal or otherwise, by paying the taxes and other charges due from them.

The crucial issues then to be addressed are: (a) whether the parcels of land in question belong to the Republic of the Philippines whose beneficial use has been granted to the petitioner, and (b) whether the petitioner is a "taxable person."

Section 15 of the petitioner's Charter provides:

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> Sec. 15. *Transfer of Existing Facilities and Intangible Assets.* — All existing public airport facilities, runways, lands, buildings and other properties, movable or immovable, belonging to or presently administered by the airports, and all assets, powers, rights, interests and privileges relating on airport works or air operations, including all equipment which are necessary for the operations of air navigation, aerodrome control towers, crash, fire, and rescue facilities **are hereby transferred to the Authority:** Provided, however, that the operations control of all equipment necessary for the operation of radio aids to air navigation, airways communication, the approach control office, and the area control center shall be retained by the Air Transportation Office. No equipment, however, shall be removed by the Air Transportation Office from Mactan without the concurrence of the Authority. The Authority may assist in the maintenance of the Air Transportation Office equipment.

The "airports" referred to are the "Lahug Air Port" in Cebu City and the "Mactan International Airport in the Province of Cebu," which belonged to the Republic of the Philippines, then under the Air Transportation Office (ATO).

It may be reasonable to assume that the term "lands" refer to "lands" in Cebu City then administered by the Lahug Air Port and included the parcels of land the respondent City of Cebu seeks to levy on for real property taxes. This section involves a "transfer" of the "lands," among other things, to the petitioner and not just the transfer of the beneficial use thereof, with the ownership being retained by the Republic of the Philippines.

This "transfer" is actually an absolute conveyance of the ownership thereof because the petitioner's authorized capital stock consists of, *inter alia*, "the value of such real estate owned and/or administered by the airports." Hence, the petitioner is now the owner of the land in question and the exception in Section 234(a) of the LGC is inapplicable.

Moreover, the petitioner cannot claim that it was never a "taxable person" under its Charter. It was only exempted from the payment of real property taxes. The grant of the privilege only in respect of this tax is conclusive proof of the legislative intent to make it a taxable person subject to all taxes, except real property tax.

Finally, even if the petitioner was originally not a taxable person for purposes of real property tax, in light of the foregoing

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> disquisitions, it had already become, even if it be conceded to be an "agency" or "instrumentality" of the Government, a taxable person for such purpose in view of the withdrawal in the last paragraph of Section 234 of exemptions from the payment of real property taxes, which, as earlier adverted to, applies to the petitioner.[9] *(Emphasis supplied)*

From the foregoing ruling of the Supreme Court, it is clear that the limitation on the taxing powers of the local government units under Sec. 133 (o) of the LGC is further qualified by Sec. 234 (a) of the same code insofar as real property tax is concerned. Section 133, in part, provides:

> SEC. 133. **Common Limitations on the Taxing Powers of Local Government Units. -** Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
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> (a) xxx xxx xxx
>
> xxx xxx xxx
>
> (o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

On the other hand, Section 234 (a) reads as follows:

> SEC. 234. **Exemptions from Real Property Tax. –** The following are exempted from payment of the real property tax:
>
> (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except **when the beneficial use thereof has been granted**, for consideration or otherwise, **to a taxable person**; *(Emphasis supplied)*

Sec. 133 (o) is a general provision prohibiting the imposition of **all** kinds of local government taxes, fees and charges on the National Government, its agencies and instrumentalities. On the other hand, Je

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9 *Id., at pp. 688-692.*

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Sec. 234 (a) pertains to a specific limitation as regards the imposition of real property tax on the Republic of the Philippines and any of its political subdivisions. Consequently, Sec. 234 (a) being a special provision dealing with real property tax exemption shall prevail over Sec. 133 (o), a general provision dealing with all kinds of taxes, fees and charges. Therefore, the term "Republic of the Philippines" in Sec. 234 (a) shall be given a restrictive meaning and should not be used interchangeably with the term National Government as explained by the Supreme Court in the *Mactan Cebu* case. As previously stated, petitioner is not the "Republic of the Philippines" or a political subdivision thereof, hence, it cannot claim exemption from real property tax under Sec. 234 (a) of the LGC.

Similar to the above-quoted *Mactan Cebu* case, the subject real property (LFPC) was transferred by the National Government to petitioner, a GOCC having a separate legal personality distinct from the Republic of the Philippines.

According to the Supreme Court, such transfer is actually an absolute conveyance of the ownership thereof.[10] Applying the ruling of the Supreme Court in the *Mactan Cebu* case, ownership over the LFPC

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[10] *Philippine Ports Authority vs. The City of Iloilo, et al., supra.*

belongs to the petitioner. Initially, petitioner's capital[11] consisted of the existing assets of the Navotas Fish Landing and such other property existing or which may be transferred to the Authority by the Bureau of Fisheries and Aquatic Resources and other agencies of the Government. Sec. 11 of P.D. No. 977 transferred the Navotas Fish Market to the petitioner and further provides that other fish markets and related facilities that may be established by the Board, with the approval of the President of the Philippines, shall be governed and operated by the Authority. Sec. 3 of E.O. No. 772, which amended Sec. 5 of P.D. No. 977, provides that the net assets of the Authority, including the Navotas fishing port complex, shall be considered as part of the paid-in capital of the petitioner. Thus, the Navotas Fishing Port Complex and the other fishing port complexes transferred by other government agencies or established by the Board of Directors of the petitioner are therefore owned by the petitioner, said properties being considered as part of the net assets of the petitioner. This clearly shows that the petitioner is a separate entity from the Republic of the Philippines notwithstanding the fact that all of the capital stock of petitioner is fully subscribed by the Republic of the Philippines. It is well-settled in the law on corporations that the stockholders of a corporation do not own the properties of the

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[11] Section 5 of P.D. No.977 which was subsequently amended by E.O. 772 providing for a P500,000,000.00 Capital Stock.

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corporation because of the separate personality of the corporation. Being the owner of the LFPC, petitioner is liable for the real property tax imposed by the City of Lucena.

Moreover, Sec. 234 (a) of the LGC provides that the exemption of real properties owned by the Republic of the Philippines or any of its political subdivisions does not apply **if the beneficial use of such property has been granted to a taxable person** for consideration or otherwise. Indisputably, petitioner has the beneficial use of the LFPC and petitioner is a taxable person in view of Sec. 193 and 234 of the LGC removing the local tax exemptions of all persons including GOCCs.

Consequently, even if we assume for a moment that petitioner's argument - that the LFPC is owned by the Republic of the Philippines - is correct, the LFPC is still subject to real property tax considering that both requisites under the exception *proviso* of Sec. 234 (a) that removes the exemption of the Republic of the Philippines from real property tax are extant in this case, namely: the beneficial use thereof was granted to herein petitioner, a taxable person.[12] The exception found in Sec. 234 (a) destroys petitioner's theory that since the land upon which the LFPC was constructed is a reclaimed land, ownership thereof remains with the Republic of the Philippines, as such, it is exempt from real property tax. The fact that the beneficial use of

12 *Light Rail Transit Authority vs. Central Board of Assessment Appeals, et al., supra.*

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the real property was granted to a taxable person **removes the exemption** of the real property belonging to the Republic of the Philippines or any of its political subdivision from the payment real property tax. The findings of facts of the Local Board of Assessment Appeals (LBAA) in this regard deserve great weight, thus:

> During the several hearings held, the City Treasurer testified to the correctness of the assessment made, and that no payment of realty taxes has been made even under protest by PFDA; the operation manager of PFDA informed the board that they are indeed leasing or otherwise renting the port, building and other machineries and equipments of the fishing Complex to private persons and that income made during the operation were sent to the PFDA principal office at Quezon City. [T]he assigned auditor of Commission on Audit to the fishing complex affirmed the testimony of the PFDA operation manager and that indeed business transactions were made with private persons on the premises of the complex. And, no evidence was ever presented by PFDA to show the non-exemption from payment within thirty (30) days from date of declaration.[13]

The LBAA even pointed out in its Decision that the act of the petitioner of renting and leasing out the subject real properties in favor of private persons and in the process derives income from such activities constitute the beneficial use of the properties. In fine, petitioner as the owner of the LFPC or even only as the entity having the beneficial use thereof is liable to real property tax.

Issues Not Raised at the Administrative Level Cannot Be Raised on Appeal

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[13] Decision, Local Board of Assessment Appeals, PBHA CASE NO. 2001-01, September 18, 2001, p. 4.

With respect to the issue of prescription, we find merit in respondents' argument that "the lone issue raised by the petitioner when it filed its petition before the Local Board of Assessment Appeals is '[w]hether or not petitioner is liable to the Real Property Tax Assessed on the Real Properties of Lucena Fishing Port Complex Pursuant to Section 234 of the Local Government Code of 1991, notwithstanding that the complex is owned by the Republic of the Philippines.' Issues must be raised seasonably in the proceedings before the lower court, and questions raised on appeal must be within the issues framed by the parties and, consequently, issues not raised in the trial court cannot be raised for the first time on appeal." Respondents' argument is in accord with the ruling of the Supreme Court that issues not raised at the administrative level cannot be raised for the first time on appeal, thus:

> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court — which is supposed to review administrative determinations — would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.[14]

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[14] *Aguinaldo Industries Corporation (Fishing Nets Division) vs. Commissioner of Internal Revenue, et al.,* G. R. No. L-29790, February 25, 1982 (112 SCRA 136).

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In view of all the foregoing, we see no cogent reason to set aside, reverse or modify the assailed Decision of the Central Board of Assessment Appeals.

WHEREFORE, the Petition for Review filed on July 5, 2006 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision in CBAA CASE No. L-33 dated October 5, 2005 is hereby **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.,
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of this Court before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

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