REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION,
Petitioner,

-versus-

CTA EB No. 1024
(CBAA CASE NOS. L-96 & L-99)

FATIMA A. TENORIO, in her official capacity as Provincial Assessor of Ilocos Sur; *et al.*,
Respondents.

x------------------------------------x

LUZON HYDRO CORPORATION and NATIONAL POWER CORPORATION,
Petitioners,

-versus-

CTA EB No. 1096
(CBAA CASE NOS. L-96 & L-99)

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

FATIMA A. TENORIO, in her official capacity as Provincial Assessor of Ilocos Sur; *et al.*,
Respondents.

Promulgated:
MAR 09 2016 2:09p.m.

x--x

RESOLUTION

RINGPIS-LIBAN, J.

Before the Court En Banc are two (2) *Motions for Reconsideration* against this Court's *Decision* promulgated on January 7, 2015, and a *Motion to Take Judicial Notice of Executive Order No. 173 and Suspend Proceedings.*

Luzon Hydro Corporation ("LHC", for brevity), petitioner in CTA EB No. 1096, filed its *Motion for Reconsideration* ("MR", for brevity) dated February 10, 2015 on February 23, 2015, stating that it received on January 26, 2015 its copy of the subject *Decision.*

The National Power Corporation ("NPC", for brevity), petitioner in CTA EB No. 1024, filed its MR dated February 17, 2015 on February 26, 2015, without stating when it received its copy of the said *Decision.*

Through its *Motion for Reconsideration*, the NPC prays that this Court –

1. Declare the subject machineries and equipment as exempt from real property taxes under Section 234(c) of the Local Government Code;
2. Declare the Notices of Assessment subject of the instant case as null and void; and
3. Order respondents to issue new Notices of Assessment indicating the tax exemptions of the subject machineries and equipment.[1]

LCH, in its Motion for Reconsideration, prays that this Court set aside the subject *Decision* and render a new one: (1) reversing and setting aside the CBAA's September 26, 2012 *Decision* and March 21, 2013 *Resolution*; (2) absolving LHC from any liability to pay real property tax; (3) declaring the notices of assessment null and void; (4) declaring the subject real property as exempt from taxation or, in the alternative, classifying the same as Special Classes of Property; and (5) declaring that respondents are bound to assess and collect real property taxes on the real property from the NPC, not LHC.[2]

On March 17, 2015, the Court resolved to order the parties to file their respective *Comments* on the *Motions for Reconsideration*, within ten (10) days from notice. LHC filed its *Comment* on May 4, 2015, and the respondents filed theirs on May 14, 2015, while NPC did not comply with the order.

---

[1] NPC *Motion for Reconsideration*, p. 13.
[2] LHC *Motion for Reconsideration*, pp. 11-12.

The *Motion to Take Judicial Notice of Executive Order No. 173 and Suspend Proceedings*, on the other hand, was filed by LHC on May 13, 2015. Thru this pleading, LHC prays that the Court: (1) take judicial notice of E.O. No. 173, and (2) suspend the proceedings to allow the parties to negotiate an amicable settlement.[3]

DISCUSSION

We have traversed the *Motions for Reconsideration*. They merely rehash the issues and arguments already discussed by the Court in its Decision.

The only "new" item raised was not by way of Motion for Reconsideration, but by LHC's *Motion to Take Judicial Notice of Executive Order No. 173 and Suspend Proceedings*, which the Court shall address first, because if the suspension is granted then the discussion and resolution of the Motions for Reconsideration will be held in abeyance.

Court can take judicial notice of E.O. No. 173

LHC has asked this Court to take judicial notice of E.O. No. 173 dated October 31, 2014, entitled "Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on the Power Generation Facilities of Independent Power Producers under Build-Operate-Transfer Contracts with Government Owned and/or Controlled Corporations."

Sec. 1, Rule 129 of the Rules of Court states that courts shall take judicial notice, "without the introduction of evidence," of the *existence* of the official acts of the executive and other departments of the Philippines. Thus this Court may take judicial notice of E.O. No. 173.

Insufficient ground to suspend proceedings.

The latter half of LHC's *Motion to Take Judicial Notice of Executive Order No. 173 and Suspend Proceedings* – *i.e.*, the suspension of proceedings – has no

[3] Page 5, *Motion to Take Judicial Notice of Executive Order No. 173 and Suspend Proceedings.*

logical connection to E.O. No. 173, which does not decree the suspension of pending tax cases.

LHC seeks the suspension "to give the parties a reasonable opportunity to amicably settle this case and other related disputes."[4] According to LHC, "The parties are discussing the implementation of EO No. 173 as well as the possibility of an amicable settlement of all pending issues relating to the subject matter of this case."[5]

LHC invoked Article 2030 of the Civil Code in support of its motion to suspend the proceedings in these cases. Article 2030 is applicable to a civil action or proceeding. Inasmuch as, under R.A. No. 7160, judicial action is one of the civil remedies for the collection of local taxes (Sec. 174 [b] and Sec. 266), it would appear that the invocation of Article 2030 is proper – if the conditions precedent laid down by that law are extant.

The Court notes, however, that the last pleading filed in these cases by the common respondent – the *Comment to the Motions for Reconsideration*, filed on May 14, 2015, a day after LHC filed its *Motion to Take Judicial Notice of Executive Order No. 173 and Suspend Proceedings* – did not mention any possibility of an amicable settlement, and in fact sought the denial of the motions for reconsideration.

The granting or denial of a motion for postponement rests upon the sound and reasonable discretion of the Court.[6] Under the circumstances, although LHC's unilateral expression of willingness to discuss a possible compromise seems sufficient for the suspension of proceedings under Art. 2030 of the Civil Code, the Court remains mindful that "postponements, particularly those manifestly intended to delay the proceedings, should be discouraged."[7] The Court is not inclined to grant the suspension of proceedings that LHC seeks, for a suspension at this stage is more certain to result in delay rather than in a compromise agreement.

In any event, the parties may agree on a compromise at anytime, even after final judgment.[8] The non-suspension of proceedings is not a bar to a compromise agreement and the negotiations therefor. If the compromise

---

[4] No. 5, Page 4, LHC's *Motion to Take Judicial Notice of Executive Order No. 173 and Suspend Proceedings.*
[5] No. 4, Page 4, LHC's *Motion to Take Judicial Notice of Executive Order No. 173 and Suspend Proceedings.*
[6] See *Philippine National Bank vs Isidoro de la Cruz*, G.R. No. L-11002, April 17, 1958, *en banc.*
[7] *Ibid.*
[8] See *Atty. Emmanuel D. Agustin, et al. vs Alejandro Cruz-Herrera*, G.R. No. 174564, February 12, 2014.

agreement is found to be in order and not contrary to law, morals, good customs and public policy, its judicial approval is in order.[9]

The Court shall now proceed to the resolution of the *Motions for Reconsideration.*

LHC's denial that its Petition for Review was filed way out of time is not credible.

In its Motion for Reconsideration, the LHC scantily addressed this Court's finding that it filed its *Petition for Review* way out of time. LHC denied that its counsel received the CBAA's *Resolution* dated March 21, 2013 on 22 May 2013 based on the Registry Return Receipt, and insisted that it was only on November 6, 2013 that it got a copy of the CBAA *Resolution.*[10] With November 6, 2013 as the reference point for the thirty-day period within which to file an appeal against the CBAA *Resolution*, under Sec. 11 of R.A. No. 1125 as amended by R.A. No. 9282, LHC's filing of its *Petition for Review* on December 6, 2013 would have been timely.

However, the Court cannot give credence to LHC's allegation that, on May 22, 2013, "LHC and the undersigned law firm[11] did not receive the CBAA's Resolution and were not aware it [sic]."[12]

This Court cannot so lightly disregard established jurisprudence that mere denial cannot prevail over positive evidence. It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law.[13]

Where receipt of mail matter is denied by the addressee, "what is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card."[14] In the instant case, given the existence in the records of both the registry receipt and the return card, the presumption that mail matter sent by registered mail was received in the regular course of mail was effectively raised from being merely disputable to being conclusive.

---

[9] *Czarina T. Malvar vs Kraft Foods Phils., Inc., et al.*, G.R. No. 183952, September 9, 2013, citing *Republic vs Court of Appeals*, G.R. No. 143108-09, September 26, 2001, 366 SCRA 87, 90.
[10] See Page 11, Nos. 38-39, LHC's *Motion for Reconsideration* filed on 10 February 2015.
[11] Puno and Puno.
[12] No. 38, Page 11, LHC's *Motion for Reconsideration.*
[13] *People vs Romeo Bustamante*, G.R. No. 189836, June 5, 2013.
[14] *Barcelon, Roxas Securities, Inc. vs Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.

Indeed, LHC has neither challenged the existence and genuineness of the registry return card, nor imputed any defect to the return card dated May 22, 2013.

Perforce, the Court must stand by its finding that LHC had only until June 22, 2013 within which to file its *Petition for Review* with this Court, and that when LHC filed the said petition on December 6, 2013, the filing was **167 days late**, way beyond the reglementary period. Thus, LHC's *Petition for Review* warranted peremptory dismissal for having been filed out of time. That this Court nonetheless proceeded to resolve the petition on the merits did not at all mean that it was condoning or waiving the grossly tardy filing of the petition. The fact remained that at that point in time, LHC had already lost the remedy of an appeal to this Court by way of petition for review.

Ordinarily, the Court need not comment beyond this finding. However, the circumstances by which LHC sought to mislead the Court call for further commentary.

In its *Petition for Review*, LHC declared that "LHC obtained a copy of the CBAA *Resolution* on November 6, 2013," without explaining why it "obtained" rather than "received" "a copy" instead of "its copy" (or, more properly, its counsel's copy) and from whom or where. In its instant Motion for Reconsideration, LHC now admits that it "secured a copy" of the CBAA *Resolution*, not from the CBAA itself, but from this very Court,[15] to which the CBAA *Decision* dated September 26, 2012 and the *Resolution* were appealed by the NPC on June 6, 2013.

In its *Petition for Review*, LHC thru its lawyers gave this Court the impression that it was in fact only on November 6, 2013 when they received the CBAA *Resolution*, seemingly thru no fault of theirs. In truth – if we are to believe the narration in LHC's instant MR and make inferences therefrom – they were grossly negligent in ascertaining the status of their Motion for Reconsideration against the CBAA *Decision*, such that by the time they followed it up with the CBAA sometime in early November 2013, the CBAA had already long resolved the matter, way back March 2013, and the NPC had already filed an appeal in this Court via a petition for review.

Thus now, LHC's failure to surmount the defect of late filing of its petition should be sufficient to preclude this Court from proceeding to consider anew the merits of its *Motion for Reconsideration.*

[15] No. 40, Page 11, LHC's *Motion for Reconsideration.*

NPC is devoid of legal standing to challenge the CBAA *Decision* and *Resolution* subject of these cases

In its Motion for Reconsideration, the NPC insisted that it has the legal standing to file a petition for review against the CBAA *Decision* and *Resolution* subject of these cases. This issue was amply discussed in our *Decision.*

To establish its legal standing, NPC in its MR relies upon its Power Purchase Agreement (PPA) with LHC, whereunder LHC retains naked ownership of the power plant and NPC has beneficial ownership.

As we pointed out in our Decision, however, the NPC had unsuccessfully used this argument before in 2000, in a futile attempt to shield the Mirant Pagbilao Corporation from real property taxes. The NPC also unsuccessfully used the same ploy in 1998, in favor of the Bauang Private Power Corporation in La Union.

These two instances comprised the landmark cases that produced in 2009 the prevailing jurisprudence on this issue: *National Power Corporation vs Central Board of Assessment Appeals, et al.*,[16] and *National Power Corporation vs Province of Quezon and Municipality of Pagbilao.*[17] The NPC's MR failed to cite any subsequent jurisprudence to the contrary.

LHC, in its *Comment* on NPC's MR, tries to come to NPC's rescue, by citing the PPA, Sec. 22 of R.A. No. 7160, and jurisprudence on the word "or" as used in the Comprehensive Agrarian Reform Law (CARL) of 1988 (R.A. No. 6657).[18]

LHC's rescue attempt fails. In *NPC vs Province of Quezon, supra*, the Supreme Court in 2009 already considered that Sec. 226 of R.A. No. 7160 "lists down the two entities vested with the personality to contest an assessment: the owner and the person with legal interest in the property." Under Sec. 226, because of the conjunction "or," either of these two persons may appeal the assessment made by the local assessor to the Local Board of Assessment Appeals. The Supreme Court emphasized: "In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of

---

[16] G.R. No. 171470, January 30, 2009.

[17] G.R. No. 171586, *Decision* promulgated on July 15, 2009, and the *Resolution* on the motion for reconsideration on January 25, 2010.

[18] The jurisprudence cited was "*Haceinda Luisita, Inc. vs Presidential Agrarian Reform Council, Inc.*" [sic] G.R. No. 171101, November 22, 2011.

whether or not that person is the owner." The Supreme Court, however, determined that "the NPC, contrary to its claims, is neither the owner nor the possessor/user of the subject machineries." The high tribunal held that NPC's insistence that it is the "beneficial owner" of the power plant is "not sufficient to vest the NPC the personality to protest the assessment."

In the instant case, LHC repeats the claim that under the PPA, NPC has beneficial ownership of the property and thus has "legal interest to pay the tax xxx as well as the requisite standing to file its Petition." This Court cannot countenance this claim in view of the Supreme Court's pertinent rulings in *NPC vs CBAA*, *supra*, and *NPC vs Province of Quezon*, *supra.*

WHEREFORE, premises considered, the instant *Motions for Reconsideration* are **DENIED**.

The *Motion to Take Judicial Notice of Executive Order No. 173 and Suspend Proceedings* is **PARTLY GRANTED**, insofar as the Court takes judicial notice of E.O. No. 173. However, the suspension of proceedings is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen S —

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

I maintain my Separate Concurring Opinion.
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Official Business)
AMELIA R. COTANGCO – MANALASTAS
Associate Justice