REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION, Petitioner,	**CTA EB NO. 1104 (CTA AC No. 101)**
-versus-	**Present:**
	Del Rosario, *P.J.,* **Castañeda, Jr. Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, Ringpis-Liban,** *JJ.*
PHILIPPINE NATIONAL BANK (PNB) AND MUNICIPALITY OF SUAL, PANGASINAN, Respondents.	**Promulgated:** AUG 12 2016 2:28 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J*.:

For resolution is the petitioner's "Motion for Reconsideration"[1] of the Decision promulgated on September 24, 2015 dismissing the present petition for lack of merit. Petitioner prays that the Court *En Banc* reconsider and set aside the Decision and a new one be rendered granting the instant petition; that the Court *En Banc* reverse and set aside the CTA Second Division's Decision dated September 6, 2013 and the Resolution dated November 27, 2013 promulgated in CTA AC No. 101; that the Court *En Banc* declare that petitioner is not liable to respondent Municipality of Sual, Pangasinan for the payment of local business tax for calendar year 2010; that the Court *En Banc*

[1] Filed on October 28, 2015.

nullify the Notice of Assessment dated September 23, 2010 and the Warrant of Distraint dated December 28, 2010 for lack of factual and legal bases; and that the Court *En Banc* permanently enjoin respondents Philippine National Bank (PNB) and Municipality of Sual, Pangasinan from enforcing/implementing the Notice of Assessment dated September 23, 2010, its Warrant of Distraint and conducting further distraint, levy and/or proceeding to collect the alleged business tax for year 2010.

On December 15, 2015, the Court *En Banc* issued a Resolution ordering the respondents to file their respective Comments within ten (10) days from notice.

On January 8, 2016, respondent PNB filed its "Comment To The Motion for Reconsideration."

As per Records Verification Report[2] of the Judicial Records Division of this Court, respondent Municipality of Sual, Pangsinan failed to file its Comment.

Petitioner argues that the Court *En Banc* committed serious error when it held that judicial recourse was no longer available to petitioner because it failed to protest the Notice of Tax Assessment of respondent Municipality of Sual, Pangasinan, thus, making the assessment final and executory; the Court *En Banc* committed grave error when it refused to apply the decision rendered by the Supreme Court in the case of NPC vs. Provincial Government of Bataan, et al. despite the substantial similarity of its facts and issues to the instant case; that the Court *En Banc* committed reversible error when it applied or cited the case of PSALM Corp. vs. Pozzolanic Philippines, Inc. case to support its findings that the Sual Coal-Fired Thermal Power Plant in Sual, Pangasinan was not among those assets transferred by petitioner to the PSALM Corp. within three (3) years from the effectivity of the Electric Power Industry Reform Act of 2001 (EPIRA) and that petitioner is no longer maintaining any business activity within the Municipality of Sual, Pangasinan upon the effectivity of the EPIRA in June 2001; and that the Court *En Banc* committed grave error when it found no meritorious reason to accord petitioner the liberality of the application of the law, when there are facts on record to warrant its application.

On the other hand, respondent PNB avers that the petitioner's Motion for Reconsideration contains allegations and arguments which were already considered and ruled upon by the Court in the assailed Decision.

After careful evaluation of the petitioner's arguments, this Court finds no merit in the instant Motion for Reconsideration.

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[2] Docket, p. 628.

The Court *En Banc* agrees with respondent PNB that the contentions raised by petitioner are a rehash of its previous arguments which have been extensively passed upon in the assailed Decision. Thus, the Motion for Reconsideration deserves to be denied for failing to present any legitimate argument which could warrant reconsideration of the Court's Decision dated September 24, 2015.

In *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.*[3], the Supreme Court emphasized that "in all motions for reconsideration, the burden is upon the movants, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court." Petitioner, however, did not satisfy this burden.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(I join Justice Uy with her Separate Opinion in September 24, 2015 Decision)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(I maintain my Separate Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[3] *Marcos vs. Manglapuz,* G.R. No. 88211, October 27, 1989.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(With Separate Opinion)
AMELIA R. COTANGCO – MANALASTAS
Associate Justice

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NATIONAL POWER CORPORATION, *Petitioner,*	**CTA EB NO. 1104** (CTA AC No. 101)
-versus-	Present: **DEL ROSARIO**, *PJ*, **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **COTANGCO-MANALASTAS**, *and* **RINGPIS-LIBAN**, *JJ.*
PHILIPPINE NATIONAL BANK (PNB) AND MUNICIPALITY OF SUAL PANGASINAN, *Respondents.*	Promulgated: AUG 12 2016 2:28 p.m.

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CONCURRING & DISSENTING OPINION

DEL ROSARIO, PJ.:

With due respect to my esteemed colleague, I maintain my Concurring and Dissenting Opinion on the Decision dated September 24, 2015. I, however, wish to expound on the issue of whether the Notice of Assessment dated September 23, 2010 issued against National Power Corporation (NPC) by the Municipality of Sual became final and executory.

The majority holds that the assessment had long become final and executory for NPC's failure to file an administrative protest with the local treasurer of the Municipality of Sual within the period prescribed by Section 195 of the Local Government Code of 1991(LGC). On the other hand, I am of the view that the assessment has not attained finality and that the NPC correctly sought judicial action to restrain its collection.

To be sure, it has been my consistent position that the remedies available to an aggrieved taxpayer depends on whether the assessment was illegal or erroneous. Thus, as correctly pointed out by NPC in its Motion for Reconsideration, [1] it is important to make a distinction if the tax assessment in issue is being questioned for being erroneous or illegal. An assessment is illegal if it was made without authority under the law while an erroneous assessment presupposes that the taxpayer is subject to tax but is disputing the correctness of the amount assessed.[2]

In the case at bar, I submit that the assailed assessment is an **illegal assessment** since it was issued to a party who is not liable for the assessed tax. As I extensively explained in my aforementioned Concurring and Dissenting Opinion:

> With the enactment of the EPIRA law, the generation assets of [NPC] were transferred to PSALM Corp. Section 49 of the EPIRA law expressly provides:
>
> xxx xxx xxx
>
> In *National Power Corporation vs. Provincial Government of Bataan (Bataan case),* the Supreme Court ruled that in view of the transfer of [NPC]'s generation assets to PSALM Corp, [NPC] is not the proper party subject to local franchise tax for operating the Sual Power Plant. Thus:
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>> **The legislative emasculation of the NPC also covered its former power generation function,** which was the target of the Province's effort to collect the local franchise tax for 2001, 2002, and 2003. Section 49 of the EPIRA provides:
>>
>> SEC. 49. Creation of Power Sector Assets and Liabilities Management Corporation. — There is hereby created a government-owned and - controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation," hereinafter referred to as the "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be

[1] Docket, pp.572-596.
[2] City of Lapu-Lapu v. Philippine Economic Zone Authority, G.R. No. 184203 & 187583, November 26, 2014.

> transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.
>
> **Section 49 above created the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.) and transferred to it all of the NPC's "generation assets" which would include the Bataan Thermal Plant.** Clearly, **the NPC had ceased running its former power transmission and distribution business in Bataan by operation of law from June 26, 2001. It is, therefore, not the proper party subject to the local franchise tax for operating that business.** Parenthetically, Section 49 also transferred "all existing . . . liabilities" of the NPC to PSALM Corp., presumably including its unpaid liability for local franchise tax from January 1 to June 25, 2001. Consequently, such tax is collectible solely from PSALM Corp.
>
> Although the afore-quoted case pertains to local franchise tax, the Supreme Court declared tha the generation assets of [NPC] were transferred to PSALM Corp. pursuant to the EPIRA law. Indubitably, by virtue of the EPIRA law, the ownership of the 1,200-megawatt Sual Coal-Fired Thermal Power Plant was transferred from [NPC] to PSALM Corp. Hence, [NPC] need not present evidence to prove the transfer of its generation assets to PSALM Corp. *(citations omitted)*

Given that the assessment is illegal, the pronouncement in *City of Lapu-Lapu v. Philippine Economic Zone Authority*[3] is instructive as to the remedy available to NPC :

> **The remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to impose real property taxes**
>
> The proper remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to collect real property taxes. **For the guidance of the members of the bench and the bar, we reiterate the taxpayer's remedies against the erroneous or illegal assessment of real property taxes.**
>
> Exhaustion of administrative remedies under the Local Government Code is necessary in cases of erroneous assessments where the correctness of the amount assessed is assailed. The taxpayer must first pay the tax then file a protest

[3] *Supra* Note 2.

with the Local Treasurer within 30 days from date of payment of tax. If protest is denied or upon the lapse of the 60-day period to decide the protest, the taxpayer may appeal to the Local Board of Assessment Appeals within 60 days from the denial of the protest or the lapse of the 60-day period to decide the protest. The Local Board of Assessment Appeals has 120 days to decide the appeal.

If the taxpayer is unsatisfied with the Local Board's decision, the taxpayer may appeal before the Central Board of Assessment Appeals within 30 days from receipt of the Local Board's decision.

The decision of the Central Board of Assessment Appeals is appealable before the Court of Tax Appeals En Banc. The appeal before the Court of Tax Appeals shall be filed following the procedure under Rule 43 of the Rules of Court.

The Court of Tax Appeals' decision may then be appealed before this court through a petition for review on *certiorari* under Rule 45 of the Rules of Court raising pure questions of law.

In case of an illegal assessment where the assessment was issued without authority, exhaustion of administrative remedies is not necessary and the taxpayer may directly resort to judicial action. The taxpayer shall file a complaint for injunction before the Regional Trial Court to enjoin the local government unit from collecting real property taxes.

The party unsatisfied with the decision of the Regional Trial Court shall file an appeal, not a petition for *certiorari*, before the Court of Tax Appeals, the complaint being a local tax case decided by the Regional Trial Court. The appeal shall be filed within fifteen (15) days from notice of the trial court's decision.

The Court of Tax Appeals' decision may then be appealed before this court through a petition for review on *certiorari* under Rule 45 of the Rules of Court raising pure questions of law.

In case the local government unit has issued a notice of delinquency, the taxpayer may file a complaint for injunction to enjoin the impending sale of the real property at public auction. In case the local government unit has already sold the property at public auction, the taxpayer must first deposit with the court the amount for which the real property was sold, together with interest of 2% per month from the date of sale to the time of the institution of action. The taxpayer may then file a complaint to assail the validity of the public auction. The decisions of the Regional Trial Court in these cases shall be appealable before the Court of Tax Appeals, and the latter's decisions appealable before this court through a petition for

> review on *certiorari* under Rule 45 of the Rules of Court. *(boldfacing supplied)*

In the present case, to question the illegal assessment, NPC did exactly what the afore-cited *City of Lapu-Lapu* prescribed --- **NPC filed before the Regional Trial Court of Quezon City a petition for injunction with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction seeking to enjoin the implementation of the Notice of Assessment, Warrant of Distraint and from conducting further proceeding to collect the alleged business tax for the year 2010.** Unsatisfied by the assailed Decision and Resolution of the Regional Trial Court of Quezon City on its petition and motion for reconsideration, NPC correctly filed an appeal before the CTA in Division which has jurisdiction over a local tax case decided by the Regional Trial Court in the exercise of its original jurisdiction.

Moreover, since the Notice of Assessment issued against NPC is illegal, void and without force and effect, said Notice of Assessment could not attain finality. Indeed, a void assessment bears no fruit.[4] Thus, the Regional Trial Court of Quezon City should have enjoined or restrained its collection.

In view of the foregoing discussions, I VOTE to grant NPC's Motion for Reconsideration and remand the case to the Regional Trial Court of Quezon City so that PSALM Corp., which is the owner of the Sual Power Plant, may be impleaded as proper party consistent with the relief granted in the *Bataan case.*[5]

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.
[5] G.R. No. 180654, April 21, 2014.

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Respondent.

Promulgated:
AUG 12 2016 2:28 p.m.

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SEPARATE OPINION

COTANGCO-MANALASTAS, J.:

Upon review of the factual circumstances of the abovementioned case, and the points raised by the Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy, I clarify my vote, as follows:

Petitioner is not liable for local business tax subject of the 2010 Notice of Assessment following the recent pronouncement of the Supreme Court in the Bataan case

I concur with the position that petitioner cannot be made liable to pay for the assessed local business tax for calendar year 2010 for the operation of the Sual Coal-Fired Power Plant considering that such facility was already transferred to the Power Sector Assets and Liabilities Management Corporation

(PSALM) with the enactment of R.A. No. 9136 entitled Electric Power Industry Reform Act (EPIRA) on June 26, 2001.

Therefore, the assessment against petitioner NPC was a void assessment and could not have become final and executory, despite petitioner's failure to protest the same.

The Quezon City RTC has no jurisdiction to issue a Writ of Injunction to enjoin respondent Municipality from collecting the local business tax

I also concur with the position that the Quezon City RTC has no jurisdiction to issue the injunctive writ considering that the injunction prayed for is ultimately directed against the Municipality of Sual, Pangasinan and its proceedings to collect local business tax pursuant to the 2010 Notice of Assessment.

This is consistent with my position in the Decision, dated July 11, 2014, in *Philippine Long Distance Telephone Co., Inc. vs City of Tuguegarao, et al,* (CTA AC No. 103), wherein it was held that the RTC of Makati had no jurisdiction to enjoin, restrain or control the acts of the respondent City Treasurer located in the City of Tuguegarao. Applying the same ruling to the instant case, the Quezon City RTC has no jurisdiction to enjoin, restrain or control the acts of respondent Municipality of Sual, Pangasinan.

PSALM cannot be impleaded in the action before the Quezon City RTC

Assuming *arguendo* that the Court decides that the Quezon City RTC has jurisdiction over the Civil Case No. Q-11-68711, it is my humble opinion that PSALM cannot be impleaded therein.

The Notice of Assessment was issued against petitioner NPC, and not PSALM. I do not believe that an assessment issued against a first taxpayer may validly be enforced against a second taxpayer. Hence, the notice of assessment issued against petitioner cannot be used as the basis to implead PSALM in the case before the Quezon City RTC. As far as PSALM is concerned, there is no assessment against it.

In *National Power Corporation vs Province of Quezon et al*, (G.R. No. 171586, July 15, 2009), the Supreme Court stated that NPC did not have personality to protest the assessment for real property taxes issued against Mirant, neither can the local government unit be compelled to recognize the protest of a tax assessment from NPC, an entity against whom it cannot enforce the tax liability.

By reverse analogy, I believe that an assessment against NPC cannot thus be enforced against PSALM which is a separate entity from NPC. Absent a prior issuance of tax assessment against PSALM, there is no valid reason to implead PSALM in the case before the Quezon City RTC.

WHEREFORE, I vote that the instant Motion for Reconsideration be GRANTED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice