

REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

EN BANC

NATIONAL
CORPORATION,

POWER

Petitioner,

C.T.A. EB NO. 573

(RTC CIVIL CASE NO. II-4763)

Present:

-versus-

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

MUNICIPALITY OF
CAMALANIUGAN, CAGAYAN
AND ALEXANDER L. MIGUEL,
Respondents.

Promulgated:

AUG 23 2010

Go Apolinario
11:05 p.m.

X ----- X

DECISION

PALANCA-ENRIQUEZ, J.:

The review taken by the RTC over the denial of the tax protest by the local treasurer would fall within that court's original jurisdiction. In short, the review is the initial judicial cognizance of the matter. Labeling the said

Cele

review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not a judgment of a lower court, but of a local government official (*Yamane vs. BA Lepanto Condominium Corporation*, 474 SCRA 286).

THE CASE

This is a “Petition for Review” filed by the National Power Corporation (hereafter “NPC”), under *Section 2 (b), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, in relation to Section 4 (c), Rule 8 of the same Rules*, which seeks to set aside the Decision dated October 28, 2009, rendered by the Regional Trial Court of Aparri, Cagayan, Branch 8, in *Civil Case No. II-4763 entitled “National Power Corporation vs. Municipality of Camalaniugan, Cagayan and Alexander L. Miguel”*, the dispositive portion of which reads, as follows:

“WHEREFORE, in the light of the foregoing ratiocination, judgment is hereby rendered declaring the assessment of business tax by the appellee, Municipality of Camalaniugan against appellant, National Power Corporation
VALID AND LEGAL.

SO DECIDED.”

THE PARTIES

NPC is a government-owned and controlled corporation created and existing by virtue of *RA 6395, as amended*, with principal office address at



NPC Office Building Complex, corner Quezon Avenue and BIR Road, East Triangle, Diliman Quezon City, Philippines.

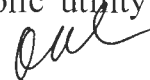
On the other hand, respondent Municipality of Camalaniugan, Cagayan, is a local government unit organized and existing under Philippine laws, with postal address at Municipal Hall Compound, Camalaniugan, Cagayan; while respondent Alexander L. Miguel is the Municipal Treasurer of the Municipality of Camalaniugan, Cagayan. Respondents may be served with court processes through their counsel, Provincial Legal Officer Romeo G. Guillermo, at the Provincial Legal Office, Capitol Hills, Tuguegarao City.

THE FACTS

The facts, as culled from the records, are as follows:

On January 9, 2009, petitioner NPC received a letter dated January 6, 2009 from respondent Miguel, ordering NPC to pay respondent Municipality business taxes, including penalties and interests due for calendar years 2003 to 2008, invoking *Section 143 of the Local Government Code of 1991 and Section 2A, Article A, Chapter II of the Municipal Ordinance No. 061-2002 of the Municipality of Camalaniugan, in relation to Local Finance Circular No. 1-97 of the Department of Finance.*

On March 9, 2009, NPC, through a letter, protested said assessment on the ground that it is no longer considered as a public utility and it is



exempt from paying franchise tax, pursuant to *RA 9136, also known as the Electric Power Industry Reform Act (EPIRA LAW)*.

However, the municipal treasurer failed to resolve petitioner's protest, within the sixty (60)-day period provided for under *Section 195 of the LGC*; thus, on May 4, 2009, petitioner appealed the subject assessment to the RTC.

On October 28, 2009, the RTC rendered its decision declaring that the assessment of business tax by the Municipality of Camalaniugan against NPC is valid and legal.

Hence, this instant petition raising the sole issue:

ISSUE

WHETHER OR NOT NPC IS LIABLE FOR THE
PAYMENT OF FRANCHISE/BUSINESS TAX.

On January 29, 2010, without necessarily giving due course to the petition, we required respondents to file a comment, not a motion to dismiss, within ten (10) days from notice; afterwhich, the petition shall be deemed submitted for decision.

On February 26, 2010, respondents filed a "Motion for Extension of Time to File Comment".

On March 8, 2010, respondents, through counsel, filed their "Comment".



On March 12, 2010, we ordered both parties to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the petition shall be deemed submitted for decision.

On April 5, 2010, we denied respondents' "Motion for Extension of Time to File Comment", for failure to comply with *Section 4, Rule 5 of the 2005 Revised Rules of the CTA, as amended*, and for having been rendered moot and academic by the Resolution dated March 12, 2010.

Meanwhile, pursuant to *A.M. No. 05-10-20-SC entitled "In Re: Exemption of the National Power Corporation from Payment of Filing/Docket Fees"*, promulgated by the Supreme Court *En Banc* on March 10, 2010, on May 27, 2010, we ordered NPC to pay the prescribed filing/docket fees, which was complied by herein petitioner on June 7, 2010.

Both parties having filed their respective memorandum and petitioner having paid the corresponding docket fees, the instant case was deemed submitted for decision on July 7, 2010.

THE COURT EN BANC'S RULING

We dismiss the petition for lack of jurisdiction.

Section 2(b), Rule 4 of the 2005 Revised Rules of the CTA, as amended, provides:



“SEC. 2. *Cases Within the Jurisdiction of the Court En Banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) xxx xxx;

(b) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their appellate jurisdiction; and

xxx xxx.”

Corollary thereto, *Section 4(c), Rule 8 of the same Rules* provides that an appeal from a decision or ruling of the Regional Trial Courts in the exercise of their appellate jurisdiction shall be taken to the Court by filing before it a petition for review as provided in *Rule 43 of the Rules of Court*. The Court *En Banc* shall act on the appeal.

A careful perusal of the instant Petition for Review readily shows that petitioner is appealing the decision of the RTC declaring the subject assessment valid and legal, over the inaction of the local treasurer on the protest filed by petitioner under *Section 195 of the LGC*, pertinent portion of which provides, as follows:

“SEC. 195. *Protest of Assessment.* – xxx Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly



meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.”

In the case of *Yamane vs. BA Lepanto Condominium Corporation*, 474 SCRA 267-271, the Supreme Court ruled that the review taken by the RTC over the denial of a tax protest by the local treasurer under *Section 195 of the LGC* would fall within the RTC’s original jurisdiction, thus:

“First, we dispose of the procedural issue, which essentially boils down to whether the RTC, in deciding an appeal taken from a denial of a protest by a local treasurer under Section 195 of the Local Government Code, exercises ‘original jurisdiction’ or ‘appellate jurisdiction.’ The question assumes a measure of importance to this petition, for the adoption of the position of the City Treasurer that the mode of review of the decision taken by the RTC is governed by Rule 41 of the Rules of Civil Procedure means that the decision of the RTC would have long become final and executory by reason of the failure of the Corporation to file a notice of appeal.

There are discernible conflicting views on the issue. The first, as expressed by the Court of Appeals, holds that the RTC, in reviewing denials of protests by local treasurers, exercises appellate jurisdiction. This position is anchored on the language of Section 195 of the Local Government Code which states that the remedy of the taxpayer whose protest is denied by the local treasurer is ‘to appeal with the court of competent jurisdiction.’



Apparently though, the Local Government Code does not elaborate on how such 'appeal' should be undertaken.

The other view, as maintained by the City Treasurer, is that the jurisdiction exercised by the RTC is original in character. This is the first time that the position has been presented to the court for adjudication. Still, this argument does find jurisprudential mooring in our ruling in *Garcia v. De Jesus*, where the Court proffered the following distinction between original jurisdiction and appellate jurisdiction: 'Original jurisdiction is the power of the Court to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law. Appellate jurisdiction is the authority of a Court higher in rank to re-examine the final order or judgment of a lower Court which tried the case now elevated for judicial review.

The quoted definitions were taken from the commentaries of the esteemed Justice Florenz Regalado. With the definitions as beacon, the review taken by the RTC over the denial of the protest by the local treasurer would fall within the court's original jurisdiction. In short, the review is the initial judicial cognizance of the matter. Moreover, labeling the said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment or order of a lower court, but of a local government official.

The stringent concept of original jurisdiction may seemingly be neutered by Rule 43 of the 1997 Rules of Civil Procedure, Section 1 of which lists a slew of administrative agencies and quasi-judicial tribunals or their officers whose decisions may be reviewed by the Court of Appeals in the exercise of its appellate jurisdiction. However, the basic law of jurisdiction, Batas Pambansa Blg. 129 (B.P. 129), ineluctably confers appellate jurisdiction on the Court of Appeals over final rulings of quasi-judicial agencies, instrumentalities, boards or commission, by explicitly using the phrase 'apellate jurisdiction'. The power to create or characterize jurisdiction of courts belongs to the legislature. While the traditional notion of



appellate jurisdiction connotes judicial review over lower courts decisions, it has to yield to statutory redefinitions that clearly expand its breadth to encompass even review of decisions of officers in the executive branches of government.

Yet significantly, the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer. On the other hand, Section 22 of B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts. Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities.

From these premises, it is evident that the stance of the City Treasurer is correct as a matter of law, and that the proper remedy of the corporation from the RTC judgment is an ordinary appeal under Rule 41 to the Court of Appeals. However, we make this pronouncement subject to two important qualifications. First, in this particular case there are nonetheless significant reasons for the Court to overlook the procedural error and ultimately uphold the adjudication of the jurisdiction exercised by the Court of Appeals in this case. Second, the doctrinal weight of the pronouncement is confined to cases and controversies that emerged prior to the enactment of Republic Act No. 9282, the law which expanded the jurisdiction of the Court of Tax Appeals (CTA).

Republic Act No. 9282 definitively proves in its Section 7(a)(3) that the CTA exercises exclusive appellate jurisdiction to review on appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally (sic) decided or resolved by them in the exercise of their original (sic) or appellate jurisdiction. Moreover, the provision also states that the review is triggered 'by filing a petition for review under a



procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure.’

xxx xxx.”

Pursuant to the aforequoted decision of the Supreme Court, the review taken by the RTC over the denial of the protest by the local treasurer under *Section 195 of the LGC* would fall within the RTC’s original jurisdiction. In short, the review of the RTC is the initial judicial cognizance of the matter, as the action of the local treasurer on the protest is not a judgment or order of a lower court, but of a local government official.

In the instant case, what is being appealed to the Court *En Banc* is the decision rendered by the RTC over the inaction of the municipal treasurer on the protest filed by petitioner under *Section 195 of the LGC*. Since the action of the municipal treasurer is not a judgment of the lower court, but of a local government official, then the RTC decision being appealed in the present petition was rendered in the exercise of its original jurisdiction, it being the first court which took cognizance of the case, pursuant to the Yamane case. The Court *En Banc*, therefore, has no jurisdiction over the present petition under *Section 2(b), Rule 4 of the 2005 Revised Rules of the CTA, as amended*.



On the other hand, *Section 3 (a)(3), Rule 4 of the 2005 Revised Rules of the CTA, as amended*, provides:

“SEC. 3. Cases within the jurisdiction of the Court in Division.

The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) xxx

(2) xxx

(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;

xxx

xxx.”

Clearly, pursuant to the above provision, the present petition falls within the exclusive appellate jurisdiction of the Court In Division.

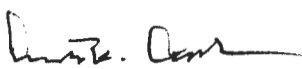
For lack of jurisdiction, the Court *En Banc*, therefore, has no alternative but to dismiss the instant petition.

WHEREFORE, premises considered, the present petition is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice

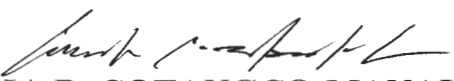

LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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 the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice