REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

NATIONAL POWER CORPORATION,
Petitioner,

- versus -

THE PROVINCIAL GOVERNMENT OF BUKIDNON AND LUIS L. ORO, in his capacity as PROVINCIAL TREASURER OF BUKIDNON,
Respondents.

CTA AC NO. 57

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

DEC 1 3 2010
4:25 p.m.

x- x

AMENDED DECISION

UY, *J.*:

This resolves petitioner's **"MOTION FOR RECONSIDERATION"** filed on August 26, 2010, seeking to reconsider and set aside this Court's Decision promulgated on August 10, 2010, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant petition is hereby **DENIED** for lack of merit. Accordingly, the assailed Orders of the Regional Trial Court of the Province of Bukidnon, Branch 9, Malaybalay City in Civil Case No. 3620-06 dated May 18, 2007 and March 3, 2009, are hereby **AFFIRMED**.
>
> **SO ORDERED**."

In the instant Motion, petitioner submits the following arguments:

"a. The court erred in relying on the cases of *NPC vs. Province of Isabela*[1] and *NPC vs. City of Cabanatuan*[2] in holding that NPC is liable to pay franchise tax to the Provincial Government of Bukidnon;

b. NPC is not exercising missionary electrification function through the Small Power Utilities Group ('SPUG') in the Province of Bukidnon because Pulangui IV Hydroelectric Power Plant in Maramag, Bukidnon is connected to the main grid and not part of NPC SPUG;

c. The subject Decision of the Honorable Court defeats the spirit of the EPIRA; and

d. The imposition of a franchise tax on NPC, a generation company, would result in higher electricity rates."

In the Resolution dated August 31, 2010[3], respondents were directed to file comment to the instant Motion for Reconsideration within ten (10) days from receipt of said resolution. However, no comment was filed despite due notice. Hence this resolution.

THE COURT'S RULING

Petitioner's Motion for Reconsideration is partly meritorious.

The applicability of the cases of "NPC vs. Province of Isabela" and "NPC vs. City of Cabanatuan" would depend on the evidence presented at the trial.

Petitioner claims that this Court's reliance on the cases of *National Power Corporation vs. Province of Isabela*[4] and *National Power Corporation vs. City of Cabanatuan*[5] (hereinafter collectively referred to as the "previous NPC cases") is erroneous, because allegedly, these cases do not set as precedents with respect to

---

[1] 491 SCRA 169 (2006)
[2] 401 SCRA 259 (2003)
[3] Docket, p. 110
[4] G.R. No. 165827, June 16, 2006, 491 SCRA 169.
[5] G.R. No. 149110, April 9, 2003, 401 SCRA 259.

other local government units, and these cases did not consider the provisions of the "Electric Power Industry Reform Act of 2001" (EPIRA)[6].

After a more careful reading of the previous NPC cases vis-à-vis the EPIRA, it appears that these cases may, or may not be applicable to the case at bar. It is here noted that the taxes involved in the previous NPC cases accrued **before** the effectivity of the EPIRA on June 26, 2001. Thus, the said cases could not have considered the provisions of EPIRA.

In the said *National Power Corporation vs. City of Cabanatuan*, the Supreme Court ruled, in connection with the fulfillment of National Power Corporation of the first requisite to be covered by the franchise tax there involved, as follows:

> " Petitioner fulfills the first requisites. Commonwealth Act No. 120, as amended by Rep. Act No. 7395, constitutes petitioner's primary and secondary franchises. It serves as the petitioner's charter, defining its composition, capitalization, the appointment and the specific duties of its corporate officers, and its corporate life span. As its secondary franchise, Commonwealth Act No. 120, as amended, vest the petitioner the following powers which are not available to ordinary corporations, *viz*:
>
> xxx xxx xxx
>
> **With these powers, petitioner eventually had the <u>monopoly</u> in the veneration and distribution of electricity**. This monopoly was strengthened with the issuance of Pres. Decree No. 40, nationalizing the electric power industry. Although Exec. Order No. 215 thereafter allowed private sector participation in the generation of electricity, **the transmission of electricity remains the <u>monopoly</u> of the petitioner**." *(Emphases and underscoring supplied)*

The foregoing ruling may no longer hold true herein by virtue of the enactment and effectivity of the EPIRA. Save in the case contemplated in Section 70 of the EPIRA, Section 8 thereof has removed from petitioner its "monopoly" in the

nm

[6] Republic Act No. 9136.

transmission of electricity by virtue of the assumption of the National Transmission Corporation of petitioner's transmission function, to wit:

> SEC. 8. *Creation of the National Transmission Company.–* **There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC)**, and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
>
> **Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the <u>nationwide franchise</u> of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO.** The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.)" *(Emphases and underscoring supplied)*

However, We cannot totally ignore the doctrine or guideline laid down in the said previous NPC cases, particularly in determining whether petitioner is covered by the imposition of the franchise tax, which involve the concurrence of the following requisites: (1) that petitioner has a "franchise" in the sense of a secondary or special franchise; and, (2) that it is exercising its rights or privileges under this franchise within the territory of the local government concerned.

This must be so because petitioner may still be held liable for the subject franchise tax, since the EPIRA nonetheless gave petitioner a missionary electrification function, under Section 70 thereof, *viz*:

> "SEC. 70. *Missionary Electrification.* – Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, **NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not**

nrs

> **connected to the transmission system.** The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC." *(Emphasis supplied)*

The said Small Power Utilities Group or SPUG refers to the functional unit of petitioner created to pursue missionary electrification function,[7] the performance of which involves the provision of basic electricity service in unviable areas.[8] It is possible that this function may have been exercised by petitioner, during the period in question, *i.e.*, from 2002 to 2006, in the Province of Bukidnon or any part thereof.

While petitioner vehemently claims in the instant Motion, that it is not exercising missionary electrification function in the Province of Bukidnon because allegedly, the Pulangui IV Hydroelectric Power Plant in Maramag, Bukidnon is connected to the main grid, We cannot readily accept the said claim as an established fact. Clearly being evidentiary in nature, the presentation of evidence to substantiate petitioner's claim becomes necessary. Moreover, said allegation is not a matter of judicial notice, whether mandatory[9] or discretionary[10].

Nevertheless, We cannot impute the fault upon petitioner in failing to present evidence to substantiate its claims below, considering that the court *a quo* ordered the dismissal of the case even before it can do so.

---

[7] Section 4(tt), Republic Act No. 9136.

[8] Rule 4(a), Rules and Regulations to Implement Republic Act No. 9136, entitled "Electric Power Industry Reform Act of 2001".

[9] SECTION 1. *Judicial notice, when mandatory.*— A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (Rule 129, Rules of Court)

[10] SEC. 2. *Judicial notice, when discretionary.*— A court may take judicial notice of matters are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because their judicial functions. (supra)

Thus, We have no recourse but to remand the case to the court *a quo* for further proceedings to give petitioner the opportunity to substantiate its claims, without prejudice to respondents' right to present counter-evidence, if they so desire, subject to and in accordance with the pronouncements in this Amended Decision.

***Reversible errors of the court* a quo.**

Apart from the above-stated reason in remanding the case for reception of evidence before the court *a quo*, a closer examination of the assailed Orders would reveal that the same fail to justify the dismissal of Civil Case No. 3620 pending before Branch 9 of the Regional Trial Court of the City of Malaybalay.

For easy reference, We quote the assailed Order dated May 18, 2007:

> **"ORDER**
>
> "Records would show that Petitioner failed to make any reply to the answer of the respondent, dated December 4, 2006. It also failed to subsequently appear in any of the proceedings in this case.
>
> As aptly argued by the Respondent, there is nothing in R.A. 9136 otherwise known as the EPIRA law that expressly repealed Section 137 of the Local Government Code.
>
> The foregoing considered and further taking into account Section 218 of the National Internal Revenue Code of 1997, the Court orders the DISMISSAL of the Petition for Nullification of Assessment of Franchise Task against the Provincial Government of Bukidnon.
>
> IT IS SO ORDERED.
>
> Done this 18th day of May 2007 in the City of Malaybalay.
>
> Signed
> EVELYN GAMOTIN NERY
> Presiding Judge-Designate"

ny

The foregoing Order was sustained by the subsequent assailed Order dated March 3, 2009. The grounds, however, relied upon by the lower court are flawed and do not hold water.

Section 10 of Rule 7 of the 1997 Rules of Civil Procedure provides as follows:

> "SEC. 10. *Reply.*— A reply is a pleading, the office or function of which is to deny, or allege facts in denial or avoidance of new matters alleged by way of defense in the answer and thereby join or make issue as to such new matters. **If a party does not file such reply, all the new matters alleged in the answer are deemed controverted.**"

Based on the foregoing, it is clear that the failure to file a Reply is not a ground for the dismissal of an action. In fact, the non filing thereof has the effect only of making all new matters alleged in the answer as deemed controverted.

Anent the supposed failure of petitioner to appear in any of the proceedings in the case, petitioner, in its Motion for Reconsideration filed in Civil Case No. 3620-06 explained as follows:

> "4. The case was first set for hearing on November 22, 2006. However, counsel for the petitioner failed to appear on said day since the notice of hearing was only received on November 24, 2006. Preliminary conference was also scheduled on March 1, 2007 per order of the court dated January 17, 2007. However, another notice of hearing was issued dated January 31, 2007. Said notice cancelled the hearing previously scheduled on March 1 and 2, 2007 and instead set the hearing on March 23, 2007;
>
> 5. Again, another notice of hearing dated February 20, 2007 was issued and the same cancelled the hearing set on March 23, 2007. A new hearing was set on March 22, 2007;
>
> 6. On March 21, 2007, counsel for the petitioner has a hearing at the DENR-PENRO in Malaybalay City. Counsel decided to drop-by the Honorable Court and was informed that there will be no hearing on the 22nd day of March 2007 considering that said day is the Charter Day of Malaybalay City. Further, counsel was informed that new notice of hearing will be issued;

7. However, no new notice was received by counsels. Instead, petitioner received on May 25, 2007 copy of the order of the court dated May 18, 2007;[11]"

Notably, the foregoing explanations were not addressed nor refuted by the court *a quo* in its subsequent Order dated March 3, 2009. Thus, it can be safely presumed that the same were true.

As regards the lower court's notion that "there is nothing in R.A. 9136 otherwise known as the EPIRA law that expressly repealed Section 137[12] of the Local Government Code", the same is misplaced.

As We see it now, although the same is a correct observation, it has no significant bearing on the real issue involved in the case, *i.e.*, whether the missionary electrification function of petitioner granted by the EPIRA was performed in the Province of Bukidnon or any part thereof, during the period 2002 to 2006. The answer thereto will determine whether or not petitioner is liable to pay the subject local franchise tax.

In its Petition for Nullification of Assessment of Franchise Tax with Prayer for Temporary Restraining Order/Preliminary Injunction filed with the Court *a quo*, petitioner mainly argued that it is "not liable" for the payment of the subject franchise tax because of its claim that it no longer has a "franchise" because its transmission function has already been assumed by the TRANSCO. Petitioner further bolsters

---

[11] Motion for Reconsideration filed in Civil Case No. 3620-06 before the Branch 9, Regional Trial Court of City of Malaybalay, Docket, pp. 22-28 at pp. 23-24

[12] SEC. 137. *Franchise Tax.* Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein.

ny

this stand in its Motion for Reconsideration of the assailed Order dated May 18, 2007 of the lower court in this wise:

> "...the instant petition had sufficiently argued that petitioner is no longer required to pay franchise tax **not necessarily because R.A. 9136 had amended Section 137 of the Local Government Code but primarily because the business of herein petitioner is no longer covered by a franchise** and settled is the rule that only those utilities covered by franchises are required to pay franchise tax. In fact, Rule 5, Section 1, first paragraph, of the Implementing Rules and Regulations of R.A. 9136 specifically provides that 'pursuant to Section 6 of the Act, generation of electric power, a business affected with public interest, shall be competitive and open to all qualified Generation Companies. Generation shall not be considered a public utility operation. For this purpose, any person engaged or intending to engage in Generation of Electricity shall not be required to secure a national franchise.' It is our submission that Section 137 of the Local Government Code applies only when a business within the territorial jurisdiction of a province enjoys a franchise; hence, the need to pay franchise tax;"[13]

In effect, petitioner is claiming that it is not covered by the tax ordinance issued by the respondent province imposing the franchise tax vis-à-vis the said Section 137 of the Local Government Code of 1991. Thus, considering that petitioner is not claiming exemption from the local franchise tax imposed by the respondent province, the court *a quo* misapplied the doctrine that laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power.

As a corollary, it must be remembered that in construing a tax provision, We should be guided instead by the principle that tax statutes are strictly construed against the taxing authority. This is because taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Hence, tax laws may not

[13] RTC Records, p. 37.

be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.[14]

Lastly, with regard to the lower court's reliance on Section 218 of the National Internal Revenue Code (NIRC) of 1997, the same is erroneous. The said provision clearly refers only to the prohibition on the issuance of an injunction to restrain the collection of any **national** internal revenue tax imposed by the NIRC of 1997. Said Section reads as follows:

> " **Sec. 218.** ***Injunction not Available to Restrain Collection of Tax.*** - No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code."

In the very recent case of *Angeles City vs. Angeles City Electric Corporation, et al.*,[15] the Supreme Court clarified:

> "**The prohibition on the issuance of a writ of injunction to enjoin the collection of taxes applies only to national internal revenue taxes, and not to local taxes.**
>
> xxx xxx xxx
>
> A principle deeply embedded in our jurisprudence is that taxes being the lifeblood of the government should be collected promptly, without unnecessary hindrance or delay. In line with this principle, the National Internal Revenue Code of 1997 (NIRC) expressly provides that no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the code. An exception to this rule obtains only when in the opinion of the Court of Tax Appeals (CTA) the collection thereof may jeopardize the interest of the government and/or the taxpayer.
>
> The situation, however, is different in the case of the collection of local taxes as **there is no express provision in the LGC prohibiting courts from issuing an injunction to restrain local governments from collecting taxes**. Thus, in the case of *Valley*

[14] *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2009.
[15] G.R. No. 166134, June 29, 2010.

Trading Co., Inc. vs. Court of First Instance of Isabela, Branch II,[16] cited by petitioner, we ruled that:

> Unlike the National Internal Revenue Code, the Local Tax Code does not contain any specific provision prohibiting courts from enjoining the collection of local taxes. Such statutory lapse or intent, however it may be viewed, may have allowed preliminary injunction where local taxes are involved but cannot negate the procedural rules and requirements under Rule 58.
>
> In light of the foregoing, petitioner's reliance on the above-cited case to support its view that the collection of taxes cannot be enjoined is misplaced. **The lower court's denial of the motion for the issuance of a writ of preliminary injunction to enjoin the collection of the local taxes was upheld in that case, not because courts are prohibited from granting such injunction, but because the circumstances required for the issuance of writ of injunction were not present.**
>
> **Nevertheless, it must be emphasized that although there is no express prohibition in the LGC, injunctions enjoining the collection of local taxes are frowned upon. Courts therefore should exercise extreme caution in issuing such injunctions**." *(Emphases supplied)*

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **PARTIALLY GRANTED** and the Decision of this Court dated August 10, 2010 denying the instant Petition for Review is hereby **RECALLED** and **SET ASIDE**.

Accordingly, the assailed Orders dated May 18, 2007 and March 3, 2009 of Branch 9 of the Regional Trial Court of the Province of Bukidnon, City of Malaybalay in Civil Case No. 3620-06 entitled *"National Power Corporation, petitioner, vs. Provincial Government of Bukidnon and Luis L. Oro in his Capacity as Provincial Treasurer, respondents"*, are hereby **REVERSED** and **SET ASIDE** and the records of this case are hereby **REMANDED** to the court *a quo* for further proceedings in accordance with the pronouncements in this Amended Decision.

[16] 253 Phil. 494 (1989).

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(No Part)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice