Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

NATIONAL POWER CORPORATION Petitioner, - versus - **THE PROVINCIAL GOVERNMENT OF COMPOSTELA VALLEY and CARMEN R. RAZUL**, in her capacity as **PROVINCIAL TREASURER OF COMPOSTELA VALLEY,** Respondents.	EB Case No. 607 (Miscellaneous Case No. 897) Members: ACOSTA, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *J.J.* Promulgated: JUL 22 2011 5:05 p.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review filed by petitioner-National Power Corporation (NAPOCOR) from the Judgment[1] of the Regional Trial Court (RTC), 11th Judicial Region, Branch 3, Nabunturan, Compostela Valley dated January 29, 2010 in Miscellaneous Case No. 897 entitled, National Power

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[1] Annex "A" to the Petition for Review, CTA En Banc Rollo, pp. 26-28

Corporation vs. The Provincial Government of Compostela Valley and Carmen R. Razul, in her capacity as Provincial Treasurer of Compostela Valley, ordering petitioner to pay the local franchise tax from 2002 to 2007.

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

Petitioner NAPOCOR is a government-owned and controlled corporation created and existing by virtue of Republic Act (R.A.) No. 6395, as amended, with principal office address at NPC Office Building Complex, corner Quezon Avenue and BIR Road, East Triangle, Diliman, Quezon City, Philippines. It is the appellant in Miscellaneous Case No. 897. It may be served with court processes through its counsel, the Office of the Solicitor General, with address at 134 Amorsolo Street, Legaspi Village, Makati City.[2]

Respondent Provincial Government of Compostela Valley is a local government unit (LGU) organized and existing under the Philippine laws with postal address at the Office of the Governor, Nabunturan, Compostela Valley; while respondent Carmen R. Razul is impleaded herein in her capacity as Provincial Treasurer of Compostela Valley. Respondents may be served with court processes through their counsel, Provincial Legal Officer Jessie S. Villegas, at the Provincial Legal Office, Capitol Building, Cabidianan, Nabunturan, Compostela Valley.[3]

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[2] Petition for Review, par. 2,CTA En Banc Rollo, p. 11
[3]Petition for Review, par. 4, CTA En Banc Rollo, pp. 11-12

On January 29, 2007, petitioner received an Assessment Letter dated January 25, 2007 from respondent Carmen R. Razul demanding the payment of an undetermined amount as franchise tax from 2002 to 2007 including penalty and interest pursuant to Provincial Tax Ordinance No. 01, series of 1998 issued by the Province of Compostela Valley for the operation of Maco Power Barge 118 situated in Maco, Compostela Valley.[4]

Petitioner, subsequently, filed a Protest dated February 13, 2007 before the Provincial Treasurer, on the ground, *inter alia*, that upon effectivity of R.A. No. 9136 (the "EPIRA Law"), NAPOCOR is no longer considered as a public utility operation for which a franchise is required, making it exempt from payment of franchise tax pursuant to Section 6 of R.A. No. 9136.[5]

The Provincial Treasurer, however, denied NAPOCOR's protest, prompting it to file an appeal before Branch 3, RTC, Nabunturan, Compostela Valley.[6]

On January 29, 2010, the RTC promulgated a Judgment dismissing NAPOCOR's appeal. Hence, petitioner elevated the case to the Court of Tax Appeals (CTA).

The pivotal issue raised in this case is whether or not NAPOCOR is liable for the payment of franchise tax.

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[4] Petition for Review, par. 1, Ibid, p. 12
[5] Petition for Review, par. 2, Ibid, p. 12
[6] Petition for Review, par. 1,Ibid., p. 13

Petitioner argues that it is not liable for the payment of franchise tax under Section 137 of the Local Government Code (LGC)[7] since it is a government-owned and controlled generation company which is no longer required to secure a franchise pursuant to Section 6 of R.A. No. 9136 (the "EPIRA Law") which reads as follows:

> "[a]ny law to the contrary notwithstanding, power generation shall not be considered as a public utility operation. For this purpose, any person or entity engage or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise."

Hence, pursuant to the aforementioned provision, petitioner posits that it cannot be burdened with the payment of franchise tax.

In the Comment filed on July 26, 2010, respondent counter-argues that while NAPOCOR is no longer required to secure a national franchise under the "EPIRA Law", it does not necessarily follow that it is exempted for the payment of the Local Franchise Tax to the LGUs. Furthermore, CIR stressed that Section 137 of the Local Government Code was not expressly repealed by "EPIRA Law".

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[7] 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.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds that it has no jurisdiction over the instant Petition for Review.

The Court of Tax Appeals, being a court of special jurisdiction can only take cognizance of such matters as are clearly within its jurisdiction.

The 2005 Revised Rules of the Court of Tax Appeals, as amended, specifically enumerated the cases that fall within the jurisdiction of the CTA Division and *En Banc*. Section 3 of Rule 4 of the said revised rules enumerates the cases within the jurisdiction of the Court in Division, to wit:

> "**SEC. 3**. Cases within the jurisdiction of the Court in Divisions. – The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
>> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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>> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of Internal Revenue within the

one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

(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;

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures of other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

(5) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs adverse to the Government under Section 2315 of the Tariff and Customs Code; and

(6) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture, in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301

and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties;

(b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

(1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue of the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; and

(2) Appellate jurisdiction over appeals from the judgments, resolutions or orders of the Regional Trial Courts in their original jurisdiction in criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than one million pesos or where there is no specified amount claimed;

(c) Exclusive jurisdiction over tax collections cases, to wit:

(1) Original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; and

(2) Appellate jurisdiction over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them within their respective territorial jurisdiction."

On the other hand, cases within the jurisdiction of the CTA *En Banc* are found in Section 2 of Rule 4 of the 2005 Revised Rules of the CTA, as amended, to wit:

> "**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) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
>
> > (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
> >
> > (2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and
> >
> > (3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;
>
> (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;
>
> (c) Decisions, resolutions or orders of the Regional Trial Courts in tax collection cases decided or resolved by them in the exercise of their appellate jurisdiction;
>
> (d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases;

(e) Decisions of the Central Board of Assessment Appeals (CBAA) in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

(f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs;

(g) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over criminal offenses mentioned in the preceding subparagraph; and

(h) Decisions, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over criminal offenses mentioned in subparagraph."

Corollary thereto, the Court En Banc, in the case of *PLDT vs. City of Balanga, et al.*[8], fortified the doctrine laid down in the case of *Yamane vs. BA Lepanto Condominium Corporation* (Yamane case)[9], where the Supreme Court had the occasion to rule that 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, considering that such denial is not the judgment or order of a lower court, but of a local government official, to wit:

"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

[8] CTA EB Case No. 413 (CTA AC No. 27), June 3, 2009
[9] G.R. No. 154993, October 25, 2005

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 that 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 'appellate 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 court 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 original decided or resolved by them in the exercise of their originally 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." *(emphasis supplied)*

In the instant Petition, what is being appealed before the Court *En Banc* is the decision rendered by the RTC with respect to the denial of the protest by the Provincial Treasurer on the protest filed by petitioner under Section 195 of the LGC. Applying the Yamane case, the RTC's Decision in Misc. Case No. 897 was rendered in the exercise of its original jurisdiction, it being the first time that the court took cognizance of the case. Hence, said decision is appealable to CTA in Division and not to Court *En Banc*, pursuant to Section 3 (a)(3), Rule 4 of 2005 Revised Rules of the CTA, as amended.

Taken collectively, We would like to stress that the instant Petition for Review filed on April 28, 2010, does not belong to the cases within the jurisdiction of the Court *En Banc* as enumerated in Section 2, Rule 4 of 2005 Revised Rules of the CTA, as amended. The present Petition falls within the exclusive appellate jurisdiction of the Court in Division.

Well-settled is the rule that the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, leads to the loss of the right to appeal (Producers Bank of the Phil. vs. Court of Appeals, 381 SCRA 185).

WHEREFORE, premises considered, the present Petition for Review is **DENIED DUE COURSE** and, accordingly, **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 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