REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

NATIONAL POWER CORPORATION, Petitioner,	C.T.A. AC CASE NO. 108
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, *and* RINGPIS LIBAN, *JJ.*
	Promulgated:
PROVINCE OF QUIRINO and FE. B. MANGACCAT, Respondents.	JUN 18 2014 3:59 p.m.

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DECISION

Fabon-Victorino, J.:

This Petition for Review[1] filed by National Power Corporation (NPC) pursuant to Section 7(a)(3) of Republic Act (RA) No. 1125, as amended, in relation to Section 4(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), assails the Decision[2] dated May 2, 2013 of the Regional Trial Court (RTC) Branch 32 of Cabarroguis, Quirino, in Civil Case No. 686-2008 entitled *"National Power Corporation vs. Province of Quirino and Fe B. Mangaccat"*. The assailed Decision adjudged petitioner liable to pay the total amount of Two Million Three Hundred Twenty-Three Thousand Five Hundred Sixty-two Pesos and 54/100 (P2,323,562. 54).

The following facts as found by the RTC remain undisputed:

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[1] Docket, pp. 5-17.
[2] Annex "A", Petition for Review, docket, pp. 22-51.

Petitioner NPC is a government owned and controlled corporation created and existing by virtue of Republic Act (R.A.) No. 6395[3], as amended, with principal office address at NPC Office Building Complex, Quezon Avenue corner BIR Road, Diliman, Quezon City.[4]

Respondent Province of Quirino is a local government unit with office address at Provincial Capitol Compound, Cabarroguis, Quirino Province.[5]

Respondent Fe B. Mangaccat is the Provincial Treasurer of Quirino Province holding office at the Provincial Capitol Compound, Cabarroguis, Quirino.[6]

On July 2, 2008, petitioner received an assessment letter dated June 23, 2008 from respondents,[7] demanding payment of franchise tax from the years 2002 to 2006 in the total amount of Php2,323,652.54.[8]

On August 14, 2008, NPC filed with Quirino Province a Protest Letter dated August 13, 2008,[9] denying tax liability for the alleged franchise tax invoking Section 6 of RA No. 9136 under which it is no longer considered as a business enjoying a franchise for the purpose of the franchise tax collection pursuant to Section 137 of the Local Government Code.

On August 11, 2008[10] and August 14, 2008,[11] respondents sent Notices of Delinquency to petitioner.

On October 10, 2008, petitioner elevated the matter to the RTC of Cabarroguis, Quirino Province alleging inaction on the part of respondents.[12] Petitioner prayed to nullify and set aside the assessment dated June 23, 2008 issued against it

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[3] An Act Revising the Charter of the National Power Corporation.
[4] The Parties, Petition for Review, docket, p. 6.
[5] The Parties, Petition for Review, docket, p. 7
[6] *Id.*
[7] Annex "B", Petition for Review, docket, p. 52.
[8] Annex "B-1", Petition for Review, docket, p. 53.
[9] Annex "C", Petition for Review, docket, p. 54.
[10] Annex "D", Petition for Review, docket, p. 55.
[11] Annex "E", Petition for Review, docket, p. 56.
[12] RTC Records, pp. 1-15.

by respondents and to declare its exemption from the payment of franchise tax. The appeal docketed as Civil Case No. 686-2008 was entitled *National Power Corporation vs. Province of Quirino and Fe B. Mangaccat*.

On May 2, 2013, the RTC rendered the assailed Decision, the dispositive portion of which reads:

> **WHEREFORE**, in the light of all the foregoing considerations, judgment is hereby rendered in favor of the Appellee, Province of Quirino and Fe Mangaccat, in her capacity as the Provincial Treasurer for the Province of Quirino and against the Appellant, National Power Corporation. The National Power Corporation is hereby declared liable for the payment franchise tax and is hereby ordered to immediately pay the Province of Quirino the sum of **TWO MILLION THREE HUNDRED TWENTY THREE THOUSAND FIVE HUNDRED SIXTY-TWO PESOS AND FIFTY-FOUR PESOS** (Php2,323,562.54) representing the franchise tax, surcharges and interest from 2002 to 2006; to pay the corresponding surcharges and interests due on the unpaid franchise tax, surcharges and interest from July, 2006 until the total amount due is fully paid; and to pay the costs of this suit.
>
> **SO ORDERED**.

Hence, petitioner filed the instant Petition for Review on June 17, 2013, assigning the following errors allegedly committed by the RTC, to wit:

> I.
>
> THE REQUISITES FOR THE IMPOSITION OF A LOCAL FRANCHISE TAX WERE NOT COMPLIED WITH.

II.
THE NOTICE OF ASSESSMENT IS INVALID; HENCE, NO COLLECTION CAN BE ENFORCED UNDER IT.

Petitioner insists that it is not liable for local franchise tax imposed upon it by respondents since the requisites for its imposition were not complied with given that it has no franchise as provided under Republic Act No. 9136,[13] otherwise known as "Electric Power Industry Reform Act of 2001" (EPIRA Law). Besides, it is not exercising any right or privilege under a franchise within the territory of the respondent Quirino Province.

Petitioner explains that to be liable for local franchise tax, the following requisites must concur: (1) that one 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 pertinent local government unit.[14]

But with the enactment of the EPIRA Law, it is no longer enjoying a franchise which may be subject of a franchise tax. Section 8 of RA No. 9136 specifically provides that its electrical transmission function, including its nationwide franchise, was transferred to National Transmission Corporation (TRANSCO), thus:

> *Section 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, and have the powers and functions hereinafter granted. The TRANSCO shall assume authority and responsibility of NPC for the planning,

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[13] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes.
[14] *City of Iriga vs. Camarines Sur III Electric Cooperative, Inc. (CASURECO III),* G.R. No. 192945, September 5, 2012., citing *National Power Corporation v. City of Cabanatuan*, G.R. No. 149110, April 9, 2003 .

> 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 nationwide franchise 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.)

Petitioner also finds erroneous the RTC's reliance on the rulings laid down by the Supreme Court in *National Power Corporation vs. Province of Isabela*[15] (Isabela case) and *National Power Corporation vs. City of Cabanatuan*[16] (Cabanatuan case). The said cases, according to petitioner, involved franchise taxes which became due prior to the effectivity of the EPIRA Law, unlike that of petitioner which were incurred 's after the effectivity of the EPIRA Law or during the years 2002 to 2006, to be exact. Apart from this, the Cabanatuan case contemplated a national franchise to which a national franchise tax may be levied. Lastly, the characterization given by the Cabanatuan case to petitioner no longer holds true since the EPIRA Law divested it of its franchise, converted it from a power generating and distributing agency to a mere power generating agency and deregulated power generation.

Respondents, however insist that petitioner is liable to pay the franchise tax citing Section 137 of the Local Government Code (LGC) which provides that Local Government Units (LGUs) can impose Franchise Tax notwithstanding any exemption granted by law or other special laws.

[15] G.R No. 165827, June 16, 2006.
[16] G.R. No. 149110, April 9, 2003.

Moreover, petitioner is exercising its rights or privileges under a franchise within the territory of Quirino Province as indicated by its receipts of payments from its customer Quirino Electric Cooperative (QUIRELCO) whose place of business is within the Province of Quirino. Further, petitioner is considered as a private enterprise for profit and mandated to generate power and sell electricity in bulk. For respondents, petitioner's activities are considered private and commercial undertakings and not sovereign functions.

Anent, the second issue, petitioner claims that it was deprived of its right to due process rendering the notice of assessment invalid and no collection can be enforced by reason thereof.

Petitioner anchors its claim on the contention that respondent's assessment letter did not satisfy the requisites of a valid notice of assessment, namely: (a) it must contain factual and legal bases; (b) it must contain a demand to pay within a stated time; and (c) it must be sent to the taxpayer within the prescribed period.

Petitioner argues that the first and second requisites were not satisfied. First, the assessment letter did not contain the law and the facts on which the assessment was based. Second, the demand to pay was on QUIRELCO and not to petitioner. Neither was there a demand to pay the franchise tax in the assessment letter sent to petitioner. There being no valid demand, the assessment letter sent was void and therefore, cannot be the basis for the payment of the franchise tax.

Despite directive, only respondents filed their Memorandum (Comments to the Petitioner's Petition for Review)[17] on July 9, 2013.

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[17] Docket, pp. 125-138.

RULING OF THE COURT

The crux of the controversy lies in the determination of whether or not petitioner is liable for franchise taxes under the LGC of 1991, in relation to Provincial Tax Ordinance No. 00-1, Series of 2002, Revenue Code of the Province of Quirino and Republic Act No. 9136.

In the assailed Decision, the RTC ruled, and the Court agrees, that the enactment of RA No. 9136 did not affect the power of local governments to impose a franchise tax on petitioner. While it may be true that upon the effectivity of the EPIRA Law, petitioner have been considered as a generation company and as such no longer required to secure a national franchise, however, the said law did not exempt petitioner from payment of franchise tax. The fact that petitioner is selling electricity in bulk to QUIRELCO, within the territory of Quirino Province makes it liable to pay the franchise tax as provided under Department of Finance, Local Finance Circular No. 1-07, which provides for the basis in computing the franchise and business taxes due on petitioner before and after the effectivity of the EPIRA Law.

The power of the LGUs to impose and collect taxes is derived from the Constitution itself which grants them "the power to create their own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitation as the Congress may provide.[18] This categorical constitutional grant of power to tax is consistent with the basic policy of local autonomy and decentralization of governance. With this power, LGUs have the fiscal mechanisms to raise the funds needed to deliver basic services to their respective constituents and break the culture of dependence on the national government. Thus, consistent with these objectives, RA No. 7160, otherwise known as the Local Government Code of 1991, was enacted,[19] granting local government units, like respondent Quirino Province, the power to impose and collect franchise tax.

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[18] Section 5, Article X, 1987 Constitution.
[19] Enacted on October 10, 1991.

The authority of respondent Province to impose a franchise tax is anchored on Section 137 of the LGC of 1991, to wit:

> 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 the 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 thereon, as provided herein. *(Emphasis supplied)*

Based on the above-cited provision, a province may impose a franchise tax on "businesses enjoying a franchise".

Corollary thereto, it is settled that a taxpayer may be covered by this imposition when the two requisites concur:

(1) [it] has a "franchise" in the sense of a secondary or special franchise; and
(2) it is exercising its rights or privileges under this franchise within the territory of the local government concerned.[20]

Section 131(m) of the same Code defines the term "franchise" in the following manner:

[20] *National Power Corporation vs. The Provincial Government of Bukidnon and Luis L. Oro, in his capacity as Provincial Treasurer of Bukidnon*, CTA AC No. 57, August 10, 2010 and Amended Decision dated December 13, 2010.

> SEC. 131. *Definition of Terms.* - When used in this Title, the term:
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> xxx xxx xxx
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> (m) 'Franchise' is a right or privilege, **affected with public interest which is conferred upon private persons or corporations**, under such terms and conditions as the government and its political subdivisions may impose in the interest of public welfare, security, and safety; *(Emphasis supplied)*

Franchise therefore refers to the special privilege conferred by the government on an individual or corporation, to do certain things, which does not belong to citizens generally of common right.[21] Therefore, LGUs have the authority to impose franchise taxes.

On the other hand, to determine whether petitioner is liable for the payment of franchise tax, the Court needs to ascertain whether petitioner enjoyed a franchise during the years 2002 to 2006.

Under Section 8 of the EPIRA Law which took effect on June 26, 2001 and upon which petitioner anchors its claim for exemption, TRANSCO shall assume the electrical transmission function of petitioner, to wit:

> SECTION 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 functions of the National Power Corporation (NPC)**, and have the powers and functions hereinafter granted. The

[21] *Land Transportation Office, et al. vs. City of Butuan*, G.R. No. 131512, January 20, 2000.

> 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 nationwide franchise 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.). (Emphasis supplied)

In addition, Section 70 of the EPIRA Law grants petitioner a missionary electrification function, to wit:

> SECTION 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 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)

In other words, even after the enactment of the EPIRA Law on June 26, 2001 and notwithstanding the transfer of petitioner's electrical transmission function to TRANSCO, petitioner may still be held liable for franchise tax for performing its missionary electrification function under Section 70 of the EPIRA Law.

On the matter, the Court finds instructive its previous ruling in *National Power Corporation vs. The Province of Nueva Vizcaya and Perfecto B. Martinez, Jr.*[22], to wit:

> "Petitioner argues that before the passage of the EPIRA, it was liable for payment of franchise tax due to the Supreme Court's ruling in the *Cabanatuan case*. However, with the passage of the EPIRA, petitioner is again exempted from payment of franchise tax under the LGC. Petitioner also asserts that being a generation company, and by virtue of Section 6 of the EPIRA, it is exempted from paying the local franchise tax inasmuch as generation of electricity is not considered as a public utility operation and exempted from securing a national franchise.
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> xxx xxx xxx
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> Petitioner's contentions are untenable.
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> While this Court is mindful of some changes in petitioner's circumstances such as the divestment of some of NPC's functions brought about by the enactment of EPIRA, **the Court cannot readily accept that petitioner is only left with the function of generating electricity**.
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> **As already explained by the Supreme Court in the *Cabanatuan***

[22] CTA AC No. 94, June 3, 2013

> ***case,* NPC is liable for franchise tax under the LGC because it satisfied the two requisites, namely: (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 respondent city government.**
>
> After a careful perusal of the EPIRA, this Court finds that **the EPIRA never repealed petitioner's above-mentioned corporate powers. And as long as NPC exercises its rights and privileges bestowed by its Charter, aside from performing its missionary electrification function through SPUG, it is considered a business enjoying a franchise that comes within the ambit of Sections 137 and 192 of the LGC.** xxx *(Emphasis supplied)*

As regards the second issue of lack of valid notice, petitioner mainly rests its argument on Section 228 of the NIRC of 1997, as amended, which enumerates the tax assessment procedure and requirements, thus:

> SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made;**

> **otherwise, the assessment shall be void.**
>
> xxx xxx xxx.
> (Emphasis supplied)

However, the instant case involves assessment issued by the local government under Section 195 of the LGC of 1991, which provides as follows:

> SEC. 195. *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, **he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties**. 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.

Evidently, there is a difference in the issuance of assessment and the filing of protest under the NIRC of 1997 and the LGC of 1991. Section 228 of the NIRC of 1997 provides the remedy for assessments issued by the Commissioner of Internal Revenue or her duly authorized representatives; while Section 195 of the LGC of 1991 pertains to assessments issued by the local treasurer of the local government unit concerned. In fact, the only condition that Section 195 of the LGC of 1991 requires with regard to the notice of assessment is that said notice should state the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Section 228 of the NIRC of 1997 requires more, i.e. the factual and legal bases of the assessment.

Further, petitioner's reliance on the requisites for a valid notice of assessment laid down in the *Pascor Realty* case and *De La Rama* case are misplaced given that the *Pascor Realty case* is a criminal case for tax evasion, while the *De La Rama case* pertains to estate tax.

Significantly, Section 195 of the LGC of 1991 provides that when the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, **he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties**.

To constitute a valid notice of assessment under Section 195 of the LGC of 1991, respondents need only state in the notice of assessment the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties,

Contrary to petitioner's claim, the assessment letter dated June 23, 2008 with the attached Computation of Franchise Tax of NPC for the period January 2002 to June 2006 states the nature of the tax, the amount of deficiency and the interests. Further, the subsequent Notices of Delinquency dated August 11, 2008 and August 14, 2008, categorically demanded settlement of petitioner's tax obligation to respondent Quirino Province.

In fine, respondents had substantially complied with the requirements of due process in the notices sent to petitioner. Petitioner's protest letter dated August 13, 2008 filed on August 14, 2008 also revealed that it was able to refute the assessment issued against it by respondents negating the claim that it was not accorded due process of law.

It has been held that the essence of due process is found in the reasonable opportunity to be heard and to submit any evidence one may have in support of one's defense. What the law proscribes is the lack of opportunity to be heard. As long as the party is given the opportunity to defend his interests in due course, he would have no reason to complain, for this is the opportunity to be heard that makes up the essence of due process.[23] Undoubtedly, petitioner was afforded due process.

All told, the Court finds no error to merit the reversal of the assailed Decision dated May 2, 2013.

WHEREFORE, the instant Petition for Review dated June 17, 2013 filed by petitioner National Power Corporation is hereby **DENIED**, for lack of merit.

The Decision dated May 2, 2013 of the Regional Trial Court of Cabarroguis, Quirino-Branch 32 in Civil Case No. 686-2008 entitled *"National Power Corporation vs. Province of Quirino and Fe B. Mangaccat"*, is hereby **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[23] *Estares, et al. vs. Court of Appeals, et al.*, G.R. No. 144755, June 8, 2005.

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's 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's Division.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice