REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MUNICIPALITY OF LABRADOR PANGASINAN REPRESENTED BY THE MUNICIPAL TREASURER,
Plaintiff,

-versus-

NATIONAL TRANSMISSION CORPORATION,
Defendant.

CTA OC No. 15

Present:

Castañeda, Jr., Chairperson
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:
APR 0 5 2013 4:30 p.m.

x- -x

DECISION

CASTAÑEDA, JR., J.:

This case involves a Complaint filed on April 5, 2011 by plaintiff Municipality of Labrador, Pangasinan, as represented by the Municipal Treasurer, against defendant National Transmission Corporation (Transco) pursuant to Section 7(c)(1) of Republic Act (R.A.) No. 9282[1] and Section 3(c)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals, praying that Transco be ordered to pay P41,065,397.87 representing its local business tax for calendar year 2009, plus monthly interest of P458,831.27 from February 2009.

THE FACTS

Plaintiff Municipality of Labrador, Pangasinan is a local government unit created under the laws of the Philippines, with office address at Municipal Hall, Barangay Poblacion, Labrador, Pangasinan. It is represented herein by the Municipal Treasurer who is mandated

---

[1] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes

It is represented herein by the Municipal Treasurer who is mandated by Section 170 of the Local Government Code to collect taxes due the municipality.[2]

Defendant National Transmission Corporation (Transco) is a government-owned and -controlled corporation created under Section 8 of R.A. No. 9136 (Electric Power Industry Reform Act of 2001), with principal office address at Power Center, Quezon Avenue corner BIR Road, Diliman, Quezon City.[3] Transco under Section 8 of R.A. No. 9136, which took effect on June 26, 2001, assumed the electrical transmission functions of the National Power Corporation.[4]

On January 10, 2011, Transco was served at its principal office a Notice of Assessment for Local Business Tax, Surcharge and Monthly Interests for the Taxable Year 2009 in the amount of P39,688,904.09[5], inclusive of surcharge and monthly interest. The pertinent portions of the said notice are herein quoted, to wit:

> "Based on the Transmission Development Plan of the National Grid Corporation of the Philippines (NGCP), it shows that your transmission station situated in our Municipality of Labrador, Pangasinan was the one that exclusively transmitted the electricity generated by the power plant situated in the Municipality of Masinloc, Zambales. Transco from the effectivity of RA 9136 (Electricity Power Industry Reform Act) on June 2001 is the only entity that has the government authority to transmit electricity all through out the country.
>
> What has been assessed you so far were your gross receipts derived in transmitting the quantity of electricity generated by the power plant situated in the Municipality of Sual, Pangasinan.
>
> It shows on our records that you have not yet paid the local business tax levied under Section IIA.01 9(m) of our municipal tax revenue ordinance providing among others the following:

---
[2] Par. 2, Complaint, docket, p. 4.
[3] Par. 3, Complaint, docket, pp. 4-5.
[4] Par. 2, Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 163.
[5] Exhibits "C" and "C-1".

> '(m) on any business, not otherwise specified in the preceding sections, the rate on tax shall be two percent (2%) of gross sales or receipts of the preceding calendar years.'

for the gross receipts you derived in the year 2008 in transmitting electricity generated by the Masinloc. Zambales power plant.

xxx xxx xxx

According to the records of the Department of Energy, this Masinloc Power Plant generated electricity sales of 1,546,761,265.50 kWh in the year 2008. Based on your official documents that were then posted in your website, the transmission rate in the year 2008 in Luzon was Php0.7416 per kWh. Thus, Transco is liable for the local business tax, surcharges and monthly interests in peso, computed as follows:

Preceding Year	Number of kWh transmitted by Transco[6]	Transmission Rate per kWh	Amount of gross receipts in year 2008	Tax due (multiplied by tax rate of 2% of gross receipts)	Surcharge of 25% of the tax due	Monthly interest[7] of 2% of the tax due
2008	1,546,761,265.50	0.7416	1,147,078,154.49	22,941,563.08	5,735,390.77	11,011,950.24
Total						**P39,688,904.09**

Thus, for the taxable year 2009, you are hereby assessed for local business tax of Php22,941,563.08; one time surcharge of Php5,735,390.77 and accrued monthly interest of Php11,011,950.24 or a total of THIRTY NINE MILLION SIX HUNDRED EIGHTY EIGHT THOUSAND NINE HUNDRED FOUR AND 09/100 PESOS **(Php39,688,904.09)** as of January 7, 2011.

Kindly settle immediately all your tax obligations mentioned above to our municipality to avoid further legal interests."

---

[6] DOE Certification.
[7] Under Section 168 of the Local Government Code and Ordinance.

According to plaintiff, defendant did not file any protest either personally, by registered mail or by any other manner. Thus, for failure to protest, the Notice of Assessment has become "final and executory".[8]

As a result, on April 5, 2011, plaintiff filed the instant Complaint, praying that defendant Transco be ordered to pay its local business tax for calendar year 2009 in the amount of P41,065,397.87 as of April 2011 plus monthly interest of P458,831.27 for not more than 36 months from February 2009 to the Office of the Municipal Treasurer of the Municipality of Labrador, Pangasinan.

On April 29, 2011, defendant filed its Answer (With Special and Affirmative Defenses with Counterclaim and Motion to Suspend Collection of Tax)[9], interposing the following special and affirmative defenses:

> "TransCo repleads the foregoing insofar as they are applicable here:
>
> 1. Section 142 of the Local Government Code (LGC) defines the scope of the taxing power of the municipalities to those are not otherwise levied by the provinces. Interestingly, however, the power to tax businesses enjoying a franchise such as TransCo is already conferred to the provinces under Section 137 and to cities under Section 151 of the same code. Thus, municipalities, like Plaintiff, can no longer impose tax on TransCo which assumed the franchise of NPC as regards the electrical transmission function, as this power is within the realm of the provinces and cities.
>
> 2. Section 143 of the LGC enumerates the businesses which are subject to business tax by municipalities. The business of TransCo which pertains to the transmission of electricity in bulk and a business that enjoys a franchise are not among those enumerated businesses under Section 143 that can be the subject of business tax by municipalities.

[8] Par. 8, Complaint, docket, p. 8.
[9] Docket, pp. 32-54.

Thus, it is submitted that the alleged assessment and attempt by the plaintiff to collect business tax from TransCo amount to illegal imposition and collection.

3. In a Resolution dated 07 April 1993 issued by the Department of Justice (DOJ) in the consolidated cases of *Manila Electric Company (Meralco) v. Municipalities of Navotas, Marikina, Parañaque, Pasig and Valenzuela*, the DOJ struck down as null and void and without legal effect the ordinances of said municipalities insofar as they impose business tax and franchise tax to Meralco, a holder of business enjoying a franchise. The DOJ reasoned:

> 'Regarding the imposition of business tax, said tax cannot likewise be levied upon holders of a franchise since businesses enjoying a franchise are not among those enumerated in Section 143 of the 1991 Local Government Code. Neither can we construe the general provision of paragraph (h) of said Article 143 so as to include businesses enjoying a franchise. The aforesaid paragraph reads:
>
>> '(h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.
>>
>> 'The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.' (Emphasis supplied)

> 'The aforequoted paragraph must be read in relations to section 137, empowering the province (and the city under Section 151) to impose tax on business enjoying a franchise; and Section 142 providing that 'Except as otherwise provided in the Code, municipalities may levy taxes, fees and charges' *not otherwise levied by provinces'.*
>
> 'The said provision should not be given a strained and broad interpretation as to give the appellees municipalities within Metro Manila unlimited power to impose tax on any business to the extent of including therein businesses enjoying a franchise which are subject to the taxing power of provinces. Legislative intent must be ascertained from a consideration of the statute as a whole and not on an isolated part or provision alone (Aboitiz Shipping Corporation, et al., vs. the City of Cebu, et al. G.R. No. L-14526, March 31, 1965) Thus, Section 143(h) of R.A. 7160 must be harmonized with the specific provisions of Section 137 of the said law.'

4. Further, while Section IIA.01 9(m) of Tax Ordinance 97-001, the 'Revenue Code of Labrador,' states that it can tax 'on any business, not otherwise stated in the preceding sections,' it is followed by enumeration of businesses from Accounting Office to Trucking Service. It can be observed that there was no express mention or categorical reference to a business enjoying a franchise or a business engaged in the transmission of electricity in bulk. Thus, under the principle of statutory construction, **an express mention is an implied exclusion**.

5. The rule of *expressio unius est exclusio alterius* is formulated in a number of ways. One variation of the rule is the principle that what is expressed puts an end to that which is implied. *Expressium facit cessare tacitum*. Thus, where a statute, by its terms, is expressly limited to certain matters, it may

not, by interpretation or construction, be extended to other matters.

6. Tax laws should not be construed as imposing a tax unless it does so clearly, expressly and unambiguously. It is an established rule that a tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws, and the provisions of a taxing act are not to be extended by implications. Tax laws are construed *strictissimi juris*. In short, **in case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer**. This is because taxes, as burdens which must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares.

7. The imposition of local business tax by the Plaintiff violates the common limitations on the taxing powers of local government units, particularly Section 133(e) thereof which provides:

> 'SEC. 133. Common Limitations on the Taxing Powers of the Local Government Units. – Unless otherwise provided herein, **the exercise of the taxing powers** of provinces, cities, **municipalities and barangays shall not extend to the levy of the following:**
>
> (a)
>
> xxx
>
> (e) **taxes, fees and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government**

units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees or charges in any form whatsoever upon such goods or merchandise.

xxx'

8. According to Plaintiff, TransCo derived gross receipts within Labrador for transmitting electricity generated by the power plant in Masinloc, Zambales. However, the assessment is utterly preposterous because TransCo's substation situated in Labrador merely transmits the electric power generated by different power plants to various distribution utilities and electric cooperatives. The electric power merely passes through within the territory of Labrador. In fact, TransCo does not have a direct power customer within the territory of the Plaintiff. Thus, pursuant to Section 133 (e), taxes cannot be imposed on the power or electricity that merely passes through within the territory of the Municipality of Labrador.

9. Plaintiff also violated the basic principle on the *situs* of taxation. It is basic that taxation can only be exercised within the territorial jurisdiction of the taxing authority. However broad it may be as to its character and no matter how searching it is in its extent, this power is necessarily limited only to persons, property or businesses within its jurisdiction. If no constitutional provisions are violated, the power of the legislature to fix its *situs* is undoubted.

10. Thus, Congress fixed the tax *situs* of business tax under Section 150 of the LGC as follows:

'SEC. 150. Situs of the Tax. – (a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, gr repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet marking the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.'

11. It is absolutely clear from this provision that the tax *situs* of the business tax is the place where the sale is effected. If there is a branch or sales office located in the place of the sales transaction, the sale shall be recorded in the said branch or sales office and tax shall accrue to the municipality having jurisdiction on the branch or sales outlet. On the other hand, if there is no branch or sales office within the place where the sales transaction happened, the sale shall be recorded on the principal office of the taxpayer but the taxes shall accrue and be paid in the municipality where the sale is effected.

12. A branch or sales office is defined under Section 243(a)(2) of the Rules and Regulations Implementing the LGC, as follows:

'ARTICLE 243. Situs of the Tax. - (a) Definition of Terms –

'(2) Branch or Sales Office – a fixed place in a locality which conducts operations of the business as an extension of the principal

> office. Offices used only as display areas of the products where no stocks or items are stored for sale, although orders for the products may be received thereat, are not branch or sales offices as herein contemplated. A warehouse which accepts orders and/or issues sales invoices independent of a branch with sales office shall be considered as a sales office.'

13. From this definition, TransCo's substation, whose function is only to transmit electric power from the generators to various distribution utilities and electric cooperatives, is not a branch or sales office that accepts orders or issues sales invoice nor does it record sales transactions. As stated earlier, TransCo has no customers within the territory of the Plaintiffs; thus, no sales transactions were effected that can be the basis of gross receipts realized within its territory.

14. Further, the methodology used by Plaintiff in computing TransCo's alleged tax liability is likewise clearly erroneous and contrary to the provision of the LGC. It will be noted in the alleged assessment letter that TransCo's gross receipts were computed by multiplying the kilowatthour allegedly transmitted by the TransCo's substation to the transmission rate per kilowatthour. The product is then multiplied by the tax rate of 2% in order to arrive at the supposed tax liability.

15. However, it must be emphasized that the electricity generated by Masinloc Coal Fired Thermal Power Plant as certified by the Department of Energy is not 100% transmitted by the TransCo's substation due to system losses inherent in the business of transmitting electricity. Further, TransCo's charges are not based on kilowatthour but on kilowatt or per demand. Also, TransCo's rate varies depending on the classification of its customer, that is whether firm or non-firm.

16. TransCo reiterates that it has no customer within the territory of the Plaintiff. The figures presented by the Plaintiff are ludicrous; how can TransCo obtain such skyrocketing gross sales/receipts from a fourth class municipality? Even granting that their data is correct, the entire municipality cannot certainly consume the number of kilowatts appearing in its assessments.

17. Assuming *ex gratia argumenti* that TransCo derived gross sales receipts within the territory of the Plaintiff and, concomitantly is liable for business tax, it is interesting to note that Plaintiff did not bother to exclude from the computation the discounts, sales return, excise tax and value added tax required to be deducted pursuant to Section 131(n) of the LGC. Even the universal charge mandated by law to be remitted by TransCo to the Power Sector Assets and Liabilities and Management Corporation (PSALM) under Section 34 in relation to Section 55 of the EPIRA was also not deducted from its computation.

18. Finally, TransCo cannot be taxed by Plaintiff because it is a government instrumentality. Under Section 133 (o) of the LGC, 'provinces, cities, municipalities and barangays shall not extend to the levy of taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.'

19. An **'agency'** of the Government refers to any of the various units of the Government, including a department bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein. An **'instrumentality'** on the other hand, refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. **The latter term**

includes regulatory agencies, chartered institutions and government-owned and controlled corporations.

20. In the case of *Manila International Airport Authority (MIAA) vs. Court of Appeals* the Supreme Court applied Sec. 133 (o) of the LGC to MIAA and held that it is a government instrumentality exempt from real property tax. MIAA represented itself as a GOCC but premised its claimed exemption on the ground that it was performing a governmental function. In resolving the petition, the Supreme Court ruled that MIAA was exempt from the real estate taxes because it was not a GOCC as it represented itself to be but was a mere instrumentality vested with corporate powers. Essentially the Court reasoned that:

(a) MIAA is not a GOCC under Section 2(10) of the Introductory Provisions of the Revised Administrative Code of 1987 because it was not organized either as a stock or non-stock corporation.

(b) Neither is MIAA required to meet the test of economic viability.

(c) MIAA is a government instrumentality vested with corporate powers and performing essential public services.

(d) As such government instrumentality, MIAA is not subject to any kind of tax by local governments under Section 133(o) of the Local Government Code.

(e) The exception to the exemption in Section 234 (a), LGC does not apply to MIAA because MIAA is not a taxable entity under the LGC. Such exception applies only if the beneficial use of real property owned by the Republic is given to a taxable entity. Thus, only the portions of the Airport Lands and Buildings which are leased to taxable persons like private parties are subject to real estate tax by the City of Parañaque.

21. Guided by these definitions, as well as the ruling of the Supreme Court in *MIAA* case, TransCo, while exercising corporate powers, is a government instrumentality that cannot be subject to the taxing power of the Plaintiffs for the following reasons:

a. TransCo is a government instrumentality created by virtue of Republic Act No. 9136 or the Electric Power Industry Act of 2001 ('EPIRA') to assume the electrical transmission function of National Power Corporation ('NPC') and the authority and the responsibility of the latter for the planning, construction, and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services;

b. Like MIAA, TransCo is a government instrumentality vested with corporate powers to perform efficiently the special functions vested upon it by law from the time of is creation until lately where the operation and maintenance of the transmission facilities were transferred to a private entity the National Grid Corporation of the Philippines ('NGCP').

c. TransCo is not organized as a stock corporation because it does not have a capital stock divided into shares and distributed to the holders of such shares as dividends. In fact under the EPIRA, its profits, if there are any, shall be remitted to PSALM which is mandated to privatize TransCo and NPC.

d. TransCo is also not a non-stock corporation because it has no members and it is not organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculuture and like chambers;

22. Plaintiff already assessed TransCo for the years 2002, 2003, 2004, 2005, 2006, 2007, and 2008 for alleged gross receipts derived by TransCo for transmitting the electric power generated by Sual Power Plant situated in Sual, Pangasinan. The collection case for the years 2002 to 2005 filed by the Plaintiff against TransCo was already dismissed by the Regional Trial Court (RTC), Branch 38, of Lingayen, Pangasinan. The other collection case for the year 2008 filed by the Plaintiff was likewise dismissed by RTC Branch 39 Lingayen, Pangasinan.

23. While plaintiff was able to garnish the alleged tax liability of TransCo for the years 2006 and 2007, the same is now the subject of a case for refund filed by TransCo before RTC Branch 37 pursuant to Section 196 of the LGC.

24. With the latest assessments of Plaintiff, all based from the power generated by Masinloc Coal Fired Thermal Power Plant, for the years 2006, 2007 and 2008 as well as the alleged assessment for the year 2009 which was not received by TransCo, it appears that Plaintiff is keen to destroy the so called 'hen that lays the golden egg.' Thus, TransCo humbly beseeches this Court to exercise the pronouncement of Justice Oliver Wendell Holmes to the effect that 'the power to tax is not the power to destroy while the court sits." *(Citations omitted)*

On June 23, 2011, this Court issued a Resolution[10] granting defendant's Motion to Suspend Collection of Tax provided that

[10] Docket, pp. 156-162.

defendant posts a surety bond in the amount of P50,000,000.00, as well as submit the required supporting documents specified in Supreme Court A.M. No. 04-7-02-SC. Subsequently, on August 3, 2011, this Court issued a Resolution [11] enjoining plaintiff from undertaking any and all remedies to collect the subject deficiency taxes, including the enforcement, execution and/or implementation of the "Warrant of Distraint/Garnishment/Order of Seizure/Confiscation and Order to Deliver the Bank Deposit or Money or Personal Property of National Transmission Corporation (TRANSCO)".

On June 28, 2011, this Court issued a Resolution[12] approving the "Joint Stipulation of Facts and Issues" filed by both parties on June 24, 2011, as well as terminating the Pre-Trial.

During trial, both parties presented their testimonial and documentary evidence to prove their respective case.

In a Resolution dated July 11, 2012, this Court ordered the parties to file their respective Memorandum within thirty (30) days from receipt of the said Resolution.[13]

In a Resolution dated September 3, 2012, the case was submitted for decision, taking into consideration defendant's Memorandum filed on August 16, 2012[14] and plaintiff's Memorandum filed on August 24, 2012[15].

THE ISSUES

The plaintiff raised the following issues for the Court's consideration:[16]

> "1. Whether or not this Assessment became final and executory. *gr*

---

[11] Docket, pp. 274-275.
[12] Docket, p. 169.
[13] Docket, pp. 761-762.
[14] Docket, pp. 763-791.
[15] Docket, pp. 793-818.
[16] Docket, p. 164.

> 2. Whether or not defendant's transmission station in Labrador, Pangasinan exclusively transmitted the power generated by Masinloc Power Plant from the year 2001 to December 31, 2008."

On the other hand, defendant interposed the following issues[17] for resolution:

> "1. Whether or not TransCo actually received the Notice of Assessment for the year 2009 on 10 January 2011.
>
> 2. Whether or not this Assessment became final and executory.
>
> 3. Whether or not the Municipality of Labrador is authorized under its Revenue Code and the Local Government Code to impose, assess, and collect local business tax from Transco.
>
> 4. Assuming TransCo is liable for business tax, whether or not the computation of gross receipts and tax liabilities are correct."

The issues boil down to whether or not defendant Transco can be held liable to pay plaintiff P41,065,397.87, representing its local business tax for calendar year 2009, plus monthly interest of P458,831.27 from February 2009.

THE COURT'S RULING

Before addressing the other issues presented by both parties, this Court will first resolve the issue of whether or not Transco

---

[17] Docket, p. 165.

actually received the Notice of Assessment for the year 2009 on January 10, 2011.

Plaintiff contends that the assessment it issued against defendant Transco is already final and executory considering that defendant received the assailed assessment on January 10, 2011 but the latter failed to file its protest within sixty (60) days from receipt as provided under Section 195 of the Local Government Code.

In support of its contention, plaintiff alleges that the Notice of Assessment for 2009[18] was personally served upon defendant on January 10, 2011 at its principal office, particularly at the office of its general counsel and points out that said Notice of Assessment bears the signature of Ms. Pilar Bigornia as proof of receipt thereof.[19]

On the other hand, defendant avers that it did not receive a copy of the Notice of Assessment for taxable year 2009; therefore, the said assessment cannot attain finality. In support thereof, defendant argues that it only received the three (3) Notices of Assessment, covering taxable years 2006, 2007 and 2008[20] on January 10, 2011, which defendant protested on March 2, 2011, through a letter dated February 22, 2011[21]. Then on April 5, 2011, Municipal Treasurer Edualino C. Casipit denied its protest and called its attention to the Notice of Assessment for taxable year 2009; which according to Mr. Casipit was not protested by defendant.[22]

A perusal of the records shows that the Notice of Assessment for local business tax for the year 2009 was received by respondent as evidenced by the stamp received by "TRANSCO Legal Row and Land Mgmt Services Group" dated January 10, 2011, bearing the signature of Ms. Maria Pilar Bigornia, defendant's Records Management Officer.[23] Such fact of receipt was admitted by defendant's witness, Ms. Bigornia, during the hearing held on February 22, 2012, to wit:

---

[18] Exhibits "C" and "C-1".
[19] Docket, p. 797.
[20] Exhibits "1", "1-A", "2", "2-A", "3", and "3-A".
[21] Exhibit "7".
[22] Exhibit "8".
[23] Exhibit "C-1".

"ATTY. NIÑO:
Q. Madame Witness, do you affirm that you're the only employee of TRANSCO who receive legal documents from the Municipality of Labrador. Am I correct?

MS. BIGORNIA:
A. Yes, your Honor.

ATTY. NIÑO:
Q. On January 10, at about 10:00 a.m. to 10:39, you were the only person in your office receiving legal documents from the Municipality. Am I correct?

MS. BIGORNIA:
A. I the one but there are other people in the office.

xxx xxx xxx

ATTY. NIÑO:

xxx xxx xxx

Q. What about in Exhibit 'C'? There is a, with marker receiving stamp here, received by and an initial similar to the initial for Notices of the same as those Notices of Assessment on other year. Now, Madame Witness, kindly confirm if this is your signature?

MS. BIGORNIA:
A. Yes, that is my signature.

ATTY. NIÑO:
Your Honors, we mark the signature as appearing in Exhibit 'C' parallel or just opposite, close to the 'received by', identified by the Witness as her signature as Exhibit 'C-1'.

JUSTICE CASTAÑEDA:
Mark it.
(And the Executive Clerk so marks.)

ATTY. NIÑO:
Q. Madame Witness, by affixing your signature in this Notice of Assessment for 2009, that signature is an acknowledgement that you received a copy of that Notice of Assessment. Yes or no?

MS. BIGORNIA:
A. Yes, your Honor, as per our record."[24]

Clearly, from the statements of Ms. Bigornia, defendant received a copy of the 2009 Notice of Assessment for local business taxes from the plaintiff. Such admission, together with the presentation of the document itself showing the stamp received, contradicts defendant's mere denial. There is no better proof of receipt than the actual document itself bearing the signature of defendant's authorized representative, corroborated by her admission that the signature appearing on the document is her signature.

Section 13 of Rule 13 of the Rules of Court provides:

> "SEC. 13. *Proof of service*. - Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee."

[24] Transcript of Stenographic Notes (TSN), February 22, 2012, pp. 14 and 25-26.

Thus, as provided by the foregoing rule, the fact that the defendant's employee affirmed that the signature appearing below the stamp received is her own signature sufficiently proves that defendant was personally served of a copy of the Notice of Assessment for the year 2009.

Having proven that the 2009 Notice of Assessment was actually received by defendant, this Court will now resolve whether or not the assessment has become final and executory.

In cases involving protest against assessments, Section 195 of the Local Government Code (LGC) of 1991 is the relevant provision to be considered, to wit:

> "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." *(Emphasis supplied)*

Plaintiff contends that the Notice of Assessment that it issued against defendant for local business tax for taxable year 2009 has become final and executory considering the failure of defendant to protest the said notice.

Based on the records, an assessment was issued by plaintiff against defendant on January 10, 2011 for deficiency local business tax, including interests and surcharges, for taxable year 2009. As earlier mentioned, this Court finds that plaintiff was able to prove that the 2009 Notice of Assessment was actually received by defendant. Counting sixty (60) days from the said date, petitioner had until March 11, 2011, within which to file its protest on the subject assessment. However, petitioner failed to file any protest.

In the case *of Romulo D. San Juan vs. Ricardo L. Castro, in his capacity as City Treasurer of Marikina City*[25], the Supreme Court ruled that a taxpayer who disagrees with a tax assessment made by a local treasurer may file a written protest thereof in accordance with Section 195 of the 1991 LGC.[26] Section 195 of the LGC of 1991 clearly provides that "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". Therefore, having failed to file a protest within the time specified by Section 195 of the LGC of 1991, the said assessment against defendant is already final and executory.

In the case of *SPC Realty Corporation vs. Municipal Treasurer of Cainta*[27], this Court explained the effects of a final and executory assessment in this wise:

> "Accordingly and as correctly maintained by petitioner, Section 195 of the 1991 LGC provides for the following remedies, to quote:
>
> > SECTION 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, *Jc*

[25] G.R. No. 174617, December 27, 2007, 541 SCRA 526.
[26] Ernesto D. Acosta and Jose C. Vitug, Tax Law and Jurisprudence, 2nd Edition, Rex Book Store, Manila, Philippines, 2000, p. 463.
[27] CTA AC No. 77, November 15, 2012.

> 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.

The above-quoted provision states that the taxpayer has sixty (60) days from receipt of the notice of assessment to file a written protest; while the local treasurer, on the other hand, has sixty (60) days from the date of filing of the protest within which to decide the same. The provision, further, provides that the taxpayer has thirty (30) days, either from the receipt of the denial of the protest, or from the lapse of the sixty (60)-day period prescribed for the local treasurer to decide on the protest, within which to appeal with the court of competent jurisdiction.

Based on the records of the case, an assessment was issued by respondent against petitioner for deficiency taxes, including interests and surcharges for the period covering years 1999 to 2005, in the aggregate amount of P1,945,202.97, on September 12, 2005; counting sixty (60) days from said date, petitioner had until November 11, 2005, within which to file its protest on the subject assessment.

However, petitioner failed to file any protest, and it was only on December 29, 2005, that Finance and Accounting Manager, Emiliano L. Gutierrez, Jr., of Alcan Packaging Starpack Corporation, the lessee of the subject property of petitioner, who filed a letter addressed to respondent, in response to the assessment.

In accordance with Section 195 of the 1991 LGC, that '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,' as a result therefore, for failure of petitioner to timely contest the assessment, the same has become final and executory.

In the case of *Romulo San Juan v. Ricardo Castro, in his capacity as City Treasurer of Marikina City*, the High Court ruled that a taxpayer who disagrees with a tax assessment made by a local treasurer may file a written protest thereof in accordance with Section 195 of the 1991 LGC. It is of no consequence that respondent issued a Denial of Protest and Ultimate Demand to Settle Delinquency Taxes against petitioner on July 4, 2006, that petitioner received a revised computation of deficiency taxes in the increased amount of P2,346,781.32 on July 7, 2006, 20 and that petitioner timely filed a Petition for Review before the RTC of Antipolo City, docketed as Civil Case No. 06-7957, elevating the said assessment on August 2, 2006; **for the assessment issued by respondent dated September 12, 2005 had become final and executory, due to petitioner's failure to observe the sixty (60)-day period within which to file a protest**.

It may not be amiss to note that **petitioner should have been more mindful of the remedies prescribed by Section 195 of the 1991 LGC before claiming that it had duly complied therewith; it cannot conveniently raise that it had complied with the thirty (30)-day period from receipt of the denial of its protest within which to elevate its**

> **appeal with the court of competent jurisdiction, without**, first and foremost, **complying with the sixty (60)-day period to file a protest on the assessment.**
>
> **Therefore, while petitioner timely filed the present Petition for Review before this Court, in accordance with Sections 3 and 4 of Rule 8 of the Revised Rules of the Court of Tax Appeals, from its receipt of the Order rendered by the RTC, the assessment has become final and executory, and this Court has no recourse but to uphold the same.**" *(Emphasis supplied)*

The Highest Tribunal made the following similar pronouncements in the case of *Dayrit, et al. vs. Cruz, et al.*[28]:

> "(A) suit for the collection of internal revenue taxes, as in this case, where the assessment has already become final and executory, the action to collect is akin to an action to enforce the judgment. No inquiry can be made therein as to the merits of the original case or the justness of the judgment relied upon."

To reiterate, defendant's failure to file its protest on the assessment within the reglementary period under Section 195 of 1991 LGC, despite receipt of the assessment notice, the assessment on the 2009 local business tax has now become final and executory. This being the case, the amount of P22,941,563.08[29] as indicated in the assessment notice, and not the amount of P41,065,397.87 plus monthly interest[30] referred to in the complaint should be the basis of defendant's liability on its 2009 basic local business tax due.

We also find defendant liable to pay surcharge and interest under the limitations specified in Section 168 of the 1991 LGC, reading:

---

[28] G.R. No. L-39910, September 26, 1988, 165 SCRA 571.
[29] Exhibits "C" and "C-1".
[30] Rollo, p.10

> SECTION 168. *Surcharges and Penalties on Unpaid Taxes.* – The sanggunian may impose a **surcharge not exceeding twenty-five percent (25%) of the amount of taxes, fees or charges not paid on time and an interest at the rate not exceeding two percent (2%) per month of the unpaid taxes, fees or charges including surcharges until such amount is fully paid but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months**. (Emphasis supplied.)

In view of the foregoing findings and discussions, the other issues raised will no longer be addressed.

WHEREFORE, PREMISES CONSIDERED, defendant National Transmission Corporation is ordered to pay Plaintiff Municipality of Labrador, Pangasinan as represented by the Municipal Treasurer the amount of P22,941,563.08 representing basic local business tax for calendar year 2009 plus surcharge of 25% of the tax due and interest of 2% per month (on the basic tax due and surcharge) pursuant to Section 168 of the 1991 Local Government Code.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice