

SECOND DIVISION

[G.R. No. 213157, August 10, 2016]

**NATIONAL GRID CORPORATION OF THE PHILIPPINES, PETITIONER,
VS. OFELIAM. OLIVA, IN HER OFFICIAL CAPACITY AS THE CITY
TREASURER OF CEBU CITY; RESPONDENT.**

G.R. NO. 213558

**OFELIA M. OLLVA, IN HER OFFICIAL CAPACITY AS THE CITY
TREASURER OF CEBU CITY, PETITIONER, VS. NATIONAL GRID
CORPORATION OF THE PHILIPPINES, RESPONDENT.**

DECISION

CARPIO, J.:

The Case

G.R. No. 213157 is a petition for review,^[1] filed by National Grid Corporation of the Philippines (NGCP) against Ofelia M. Oliva (City Treasurer Oliva), in her official capacity as the City Treasurer of Cebu City, assailing the Decision^[2] promulgated on 13 November 2013 as well as the Resolution^[3] promulgated on 23 June 2014 by the Court of Tax Appeals En Bane (CTA-EB) in CTA EB Case No. 849.

G.R. No. 213558 is a petition for review,^[4] filed by Diwa B. Cuevas (OIC Cuevas), the Officer-In-Charge City Treasurer of Cebu City, against NGCP, assailing the same Decision^[5] and Resolution^[6] of the CTA-EB.

The Local Board of Assessment Appeals (LBAA), in its 12 October 2010 Order^[7] in Case No. 6730 A, B, C on Tax Declaration Nos. COO-019-05574, COO-019-05581, and COO-019-05580, dismissed NGCP's petition for lack of merit because it was filed out of time.

The Central Board of Assessment Appeals (CBAA) dismissed NGCP's appeal from the LBAA's order. The CBAA, in CBAA Case No. V-31, found NGCP liable for real property taxes on the subject properties for the year 2009, and ruled that NGCP should claim from the National Power Corporation/National Transmission Corporation (NPC/TRANSCO) the amount of taxes that it paid for the years 2001 to 2008. The CBAA promulgated its Decision^[8] on 30 May 2011 and its Order^[9] on 16 November 2011.

The CTA-EB reversed and set aside the CBAA's decision and order. The CTA-EB found NGCP liable only for the real property tax incurred for the year 2009. The CTA-EB reduced NGCP's liability, and ordered the City Treasurer of Cebu City to refund NGCP its excess payment.

The Facts

The CBAA recited the facts, as summarized by NGCP, as follows:

On September 24, 2009, NGCP received from the Office of the City Treasurer of Cebu City, three (3) Final Notices of Demand, all dated September 16, 2009, addressed to National Power Corporation/Transco for the following:

TAXPAYER'S NAME	TAX DEC. NO.	CLASSIFICATION	PERIOD ASSESSED	VALUE (P)	AMOUNT DUE (P)
NPC/TRANSCO	C00-019-05574	BLDG. COMM.	2003-2009	5,010,740.00	1,456,459.68
NPC/TRANSCO	C00-019-05581	BLDG. COMM.	2001-2009	2,465,320.00	787,957.11
NPC/TRANSGO	C00-019-05580	BLDG. COMM.	2004-2009	2,552,760.00	548,445.62
TOTAL					P2,792,862.41

It was stated in the Notices of Demand that Transco/NPC was served Notices of Delinquency for all the above properties in 2008 and that failure to pay the amount demanded would result in the Public Auction of the properties above-mentioned.

Pursuant to Sec. 252 of the Local Government Code, petitioner NGCP paid the total amount demanded under protest on November 11, 2009 for P2,792,862.41. The written protest was filed on the same day at the office of, the City Treasurer of Cebu City albeit that protest-letter is dated October 6, 2009. (Records, pp. 95 to 99)

The City Treasurer of Cebu did not act on [NGCP's] written protest. Petitioner NGCP, with main office in [Quezon City], sent its appeal, by way of registered mail on March 11, 2010, to the LBAA of Cebu City. On April 22, 2010, petitioner NGCP received copies of its verified Petition from the Post Office of Diliman, [Quezon City] with notation "RTS, insufficient address, 4-14-10." On April 26, 2010, NGCP filed its Motion to Admit Petition with the LBAA of Cebu City. In July 2010[,] the LBAA directed the City Treasurer and City Assessor of Cebu City to file their Comment on [NGCP's] Motion. The City Assessor[,] on his own, did not interpose any objection. The City Attorney, however, opposed the, same in his Comment/Opposition on [the] ground that the NGCP's Petition was filed out of time and prayed the Local Board to dismiss the same accordingly. On October 12, 2010, the Local Board of Assessment Appeals of Cebu City issued the assailed Order.^[10]

The LBAA's Ruling

The LBAA ruled in favor of the City Assessor and dismissed NGCP's petition for being filed out of time. The Order reads:

On June 17, 2010, the Board issued twin orders: one addressed to [the] City Assessor's Office and the other to the City Treasurer's Office. The gist of the Order is to seek the opposition/comments of both offices as to "*whether or not this case may be given due course.*"

On July 16, 2010, respondent City Assessor filed his Comment [and] cited that the tax declarations referred to in the subject petition are properties [declared in the name of NATIONAL POWER CORPORATION/TRANSCO.

On July 27, 2010, the Office of the City Attorney, Cebu City, filed its Comment/Opposition to the Petitioner's Motion to Admit Petition, for respondent Cebu City Assessor Eustaquio B. Cesa. For grounds cited therein, it prayed that an Order be issued DISMISSING the instant Petition for being filed out of time.

After;careful examination of the pleadings filed, this Board found merit to the opposition of the respondent [City Assessor]. Hence, the Board hereby DISMISSES the instant petition, as having been filed out of time.

WHEREFORE, the Petition is hereby *DISMISSED for lack of merit*.

SO ORDERED^[11]

NGCP filed a notice of appeal with memorandum on appeal^[12] dated 9 December 2010 with the CBAA. NGCP argued that (1) its petition before the LBAA was timely filed; (2) it had the legal personality to file the petition before the LBAA; and (3) NGCP is exempt from payment of the real property taxes subject matter of the second and final notices of demand dated 16 and 21 September 2009 in the total amount of P2,792,862.41.

The CBAA's Ruling

The CBAA dismissed NGCP's appeal. The CBAA found NGCP liable for real property taxes on the subject properties for the year 2009.

The CBAA stated that the petition of NGCP mailed on 11 March 2010 in the Quezon City Post Office for the LBAA of Cebu City was timely filed. The CBAA cited the following provision of Section 229(b) of the Local Government Code: "The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings." The LBAA's Order dismissing NGCP's appeal was based on a technicality and did not resolve the merits of the case. The CBAA took notice that a postal courier would probably know the locations of the offices of the City Assessor and City Treasurer but not of the LBAA. The CBAA further stated that many people, even lawyers, do not know that LBAA offices exist.

The CBAA also stated that NGCP has the legal personality to institute an appeal. The CBAA cited Section 226^[13] of the Local Government Code and pronounced that NGCP has a legal interest in the properties of NPC/TRANSCO because NGCP is TRANSCO's concessionaire for electric transmission.

The CBAA declared that Section 9^[14] of Republic Act No. 9511 (RA 9511), NGQP's franchise, does not exempt it from payment of real property taxes on the subject properties. Section 234(a)^[15] of the Local Government Code instead states that a taxable entity like NGCP, as the beneficial user of the subject properties, is liable for the real property tax. Moreover, it is the City Treasurer's duty to collect the real property tax based on the assessment of the City Assessor. The City Assessor, not the City Treasurer, has the power to decide whether a property is exempt from real property tax.

The CBAA further declared that NGCP should claim from NPC/TRANSCO the refund of the taxes due for the years 2001 to 2008. The CBAA found that the subject properties are declared in the name of NPC/TRANSCO] and the notices of demand were addressed to NPC/TRANSCO. NPC/TRANSCO made a formal turn-over of the power transmission operation to NGCP on 15 January 2009; hence, NGCP received the notices on 24[September 2009. NGCP paid the assessed amount to City Treasurer Oliva under protest, which amount included taxes due for the years 2001 to 2008.

Finally, the! CBAA ruled that the subject properties do not qualify as a special class of real property under Sections 216^[16] and 218(d)^[17] of the Local Government Code. Although the subject properties are owned by NPC/TRANSCO,' the subject properties are used by NGCP, a taxable private entity engaged in the generation and transmission of electric power.

NGCP filed a motion for partial reconsideration^[18] on 17 June 2011 with the CBAA. NGCP prayed that (1) the CBAA declare the real properties covered by the ; Second and Final Notices of Demand dated 16 and 21 September 2009 as exempt from payment of real property tax in accordance with RA 9511; (2) the CBAA direct the reclassification of the subject properties as exempt from the payment of real property tax; (3) the CBAA direct the' cancellation of the real property tax billing on the subject properties; and (4) the CBAA direct the refund to NGCP of the payment of taxes that NGCP paid under protest. In the alternative, NGCP asked that the CBAA classify the subject properties as a special class under Section 216 of the Local Government Code, and assess the real property taxes at 10% of the fair market value as provided under Section 218(d) of the same Code. NGCP also asked for a refund of payment made in excess of the real property tax that j it paid under protest, following the reclassification of the subject properties and the corresponding reassessment of the real property tax.

The CBAA denied for lack of merit NGCP's motion for partial reconsideration in an Order^[19] promulgated on 16 November 2011.

NGCP filed a verified petition for review^[20] dated 1 December 2011 with the CTA. NGCP reiterated in its petition before the CTA the prayer in its motion for partial reconsideration before the CBAA.

The CTA-EB's Ruling

The CTA-EB partly granted NGCP's petition in its Decision promulgated on 13 November 2013. Like the CBAA, the CTA-EB found NGCP liable for real property taxes on the subject properties only for the year 2009.

The CTA-EB stated that even though Section 9^[21] of RA 9511 contains an "in lieu of all taxes" clause in its first paragraph, the succeeding paragraph states I GCP's liability to pay taxes on its "real estate, buildings, and personal property, as other corporations are now or hereby may be required by law to pay." Moreover, the Local Government Code withdrew the exemption from real property tax of NGCP's predecessors (NPC and TRANSCO). The assessed properties do not fall under the classifications under Sections 216 and 218(d) of the Local Government Code because although NGCP is engaged in the generation and transmission of electric power, it is not a government-owned or controlled corporation.

The CTA-EB, however, noted that NGCP paid real property tax on the subject properties for 2001 to 2008, when NPC and TRANSCO were the owners of record! of the subject

properties. The CTA-EB held that NGCP was liable only for the real property tax incurred for the year 2009. The CTA-EB reduced;NGCP's liability from £2,792,862.41 to £338,472.67, and ordered the City Treasurer of Cebu City to refund NGCP the amount of P2,454,389.74.

The dispositive portion of the Decision reads:

WHEREFORE, the Petition for Review is hereby PARTLY GRANTED. | Accordingly, the Decision dated May 30, 2011, and Order dated November 16, 2011 issued by the Central Board of Assessment Appeals are hereby REVERSED and SET ASIDE.

Respondent [City Treasurer of Cebu City] is hereby ORDERED TO REFUND in favor of petitioner [NGCP] the amount of P2,454,389.74.

SO ORDERED.^[22]

CTA Presiding Justice Roman G. Del Rosario (PJ Del Rosario) wrote a concurring and dissenting opinion, to which Associate Justice Ma. Belen M. Ringpis-Liban concurred. PJ Del Rosario stated that Sections 216 and 218(d) of the Local Government Code cannot be made to apply to the real properties under NGCP's control because even though NGCP is engaged in the transmission of electricity, it is not a government-owned or controlled corporation. He also concurred with the opinion that NGCP should not be made liable for real property taxes for the years 2001 to 2008.

PJ Del Rosario dissented from the CTA-EB *ponencia's* interpretation of Section 9 of R.A. 9511. When the real property is used in connection with the grantee's franchise, the grantee shall not be made liable for real property tax because the franchise tax is in lieu of all taxes due on said real property. He opined that the case be remanded to the CBAAB for a proper determination of whether the real properties are used in connection with NGCP's franchise. If the real properties are used in connection with the franchise, then they should be exempt from real property tax. If the real properties are not used in connection with the franchise, then they should be subject to real property tax.

The NGCP^[23] and the City Treasurer of Cebu City^[24] filed their respective motions for partial reconsideration.

The CTA-EB denied the motions for partial reconsideration of both parties. It found no reason to reverse or modify its decision. The CTA-EB also reminded the City Treasurer of Cebu City that taxes are not debts, and that NGCP cannot be made liable for real property taxes incurred by NPC/TRANSCO:

The Issues

In G.R. No. 213157, NGCP assigned the following errors:

1. The Honorable Court of Tax Appeals *En Banc* ruled contrary to prevailing laws and jurisprudence when it held that petitioner NGCP is not exempt from! the payment of real property taxes on the subject properties.
2. The Honorable Court of Tax Appeals *En Banc* ruled contrary to prevailing laws and jurisprudence when it held that the subject properties do not qualify as "special class" of real property under Section 216 of the Local Government Code.^[25]