

## THIRD DIVISION

**[ G.R. No. 209303, November 14, 2016 ]**

**NATIONAL POWER CORPORATION, PETITIONER, VS. THE  
PROVINCIAL TREASURER OF BENGUET, THE PROVINCIAL  
ASSESSOR OF BENGUET, THE MUNICIPAL TREASURER OF  
ITOGON, BENGUET AND THE MUNICIPAL ASSESSOR OF ITOGON,  
BENGUET, RESPONDENTS.**

### D E C I S I O N

**PERALTA, \*\* J.:**

For this Court's resolution is a petition for review on *certiorari* filed by petitioner National Power Corporation (NPC) seeking to reverse and set aside the Decision<sup>[1]</sup> dated September 12, 2013 of the Court of Tax Appeals (CTA) *En Banc* in E.B. No. 891.

Below are the facts of the case.

NPC is a government-owned and controlled corporation created and existing under and by virtue of Republic Act (R.A.) No. 6395 with principal office address at NPC Office Building Complex, corner Quezon Avenue and BIR Road, East Triangle, Diliman, Quezon City. NPC was created to undertake the development of power generation and production from hydroelectric or other sources, and may undertake the construction, operation and maintenance of power plants, dams, reservoirs, and other works. It operates and maintains the Binga Hydro-Electric Power Plant.<sup>[2]</sup>

Respondents Provincial Treasurer, Provincial Assessor, Municipal Treasurer and Municipal Assessor of Itogon are representatives of the province of Benguet, a local government unit. Respondents issued the subject assessment in their official capacities.<sup>[3]</sup>

Sometime in May 2000, the Municipal Assessor of Itogon, Benguet assessed NPC the amount of P62,645,668.80 real property tax for the following properties located within the Binga Hydro-Electric Power Plant:

Tax Declaration No.	Classification
99-006-01448	Home Economics Building
99-006-01457	Nursery School
99-006-01458	Elem. School Bldg.
99-006-01505	Power House
99-006-01506	Industrial Road
99-006-01516 (N)	High School Building
99-007-02221	Equipment/ Structure
99-008-01509	Machineries/ Equipment

On March 17, 2006, NPC received a letter dated February 16, 2006 from OIC-Provincial Treasurer of Benguet demanding the payment of real property tax delinquency in the amount of P62,645,668.80.<sup>[4]</sup>

On April 20, 2006, NPC challenged before the Local Board of Assessment Appeals (LBAA) the legality of the assessment and the authority of the respondents to assess and collect real property taxes from it when its properties are exempt pursuant to Section 234 (b) and (c) of Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code (LGC) of 1991. In the letters dated September 3, 2000 and April 19, 2001, NPC filed its requests for exemption, which the respondent Municipal Treasurer of Itogon, Benguet has not acted upon.<sup>[5]</sup>

In their Answer dated June 30, 2006, respondents alleged that NPC's properties were not exempt from tax since the properties were classified in their tax declarations as "industrial," "for industrial use," or "machineries" and "equipment." There was no evidence that the properties were being used for generation and transmission of electric power. Respondents alleged that the period to assess had not prescribed as the demand letter in 2006 was for collection of delinquency taxes, and not an initial assessment which was issued in 2003 but was not settled by NPC. Respondents also alleged that the appeal to the LBAA was filed out of time.<sup>[6]</sup>

In an Order dated July 28, 2006, the LBAA deferred the proceedings upon NPC's payment under protest of the assessed amount, or upon filing of a surety bond to cover the disputed amount of tax. NPC moved to reconsider the Order on the ground of lack of legal basis, but the same was denied in a Resolution dated October 3, 2006.<sup>[7]</sup>

NPC filed a petition for review before the Central Board of Assessment Appeals (CBAA) claiming that payment under protest was not required before it could challenge the authority of respondents to assess tax on tax exempt properties before the LBAA.<sup>[8]</sup>

In their Answer, respondents reiterated their contentions about the taxability of the subject properties. They added that, pursuant to Section 252 of the LGC, payment under protest was a necessary condition to a protest against the assessment issued by respondents.<sup>[9]</sup>

On July 28, 2011, the CBAA dismissed the appeal for being filed out of time, thus:

IN VIEW THEREOF, the instant appeal is hereby dismissed for having filed out of time. (Petitioner) is advised to proceed under Section 206 of R.A. No. 7160 (the Local Government Code of 1991) and take the necessary steps in support of its claim for exemption (sic) to be dropped from the assessment roll.

SO ORDERED.<sup>[10]</sup>

The CBAA, in an Order dated February 23, 2012, denied NPC's motion for reconsideration. It ruled that it is incumbent upon NPC to pay under protest before the LBAA could entertain its appeal as provided under Section 252 of the LGC. It also stressed that the meetings and ocular inspection during the pendency of the

case were all pursuant to R.A. 9285<sup>[11]</sup> or the Alternative Dispute Resolution Act of 2004.

Undaunted, NPC appealed to the CTA *En Banc* by filing a Petition for Review dated April 13, 2012. The CTA *En Banc* denied the same for lack of merit.<sup>[12]</sup> It ruled that as expressly provided in Section 252 of the LGC, a written protest against the assessment may be filed before the LBAA within thirty (30) days from payment under protest. NPC failed to pay under protest the contested assessment, a condition *sine qua non* for invocation of LBAA's appellate authority.<sup>[13]</sup>

Hence, NPC filed the instant petition raising the sole issue:

THE CTA *EN BANC* ERRED IN DISMISSING THE PETITION BASED ON PRESCRIPTION AS SAID ISSUE WAS NEVER RAISED IN THE LBAA. IN FACT, WHEN PETITIONER ELEVATED THE CASE BEFORE THE CBAA, THE LATTER EVEN CONCLUDED THAT THE ONLY ISSUE TO BE RESOLVED THEREIN WAS WHETHER THE QUESTIONED PROPERTIES ARE MACHINERIES AND EQUIPMENT THAT ARE ACTUALLY, DIRECTLY AND EXCLUSIVELY USED BY NPC IN THE GENERATION AND TRANSMISSION OF ELECTRIC POWER. THUS, THE CTA *EN BANC* SHOULD HAVE RESOLVED THE CASE BASED ON THE ISSUE PRESENTED AND ON THE MERITS CONSIDERING THE FAR-REACHING IMPLICATIONS OF ITS DECISION ON THE OTHER PROPERTIES OF NPC WHICH ARE SIMILARLY SITUATED AS THE SUBJECT PROPERTIES HEREIN, INSTEAD OF DENYING THE PETITION BASED ON PRESCRIPTION.<sup>[14]</sup>

This Court finds the instant petition without merit.

At the outset, settled is the rule that should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 of the LGC of 1991 directs that the taxpayer should first pay the tax due before his protest can be entertained, thus:

SEC. 252. *Payment Under Protest.* — (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be **annotated on the tax receipts the words "paid under protest"**. The **protest in writing must be filed within thirty (30) days from payment of the tax** to the provincial, city treasurer, or municipal treasurer, in the case of a municipality within Metropolitan Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credits against his existing or future tax liability.

(d) In the **event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer**

**may avail of the remedies as provided for in Chapter 3, Title Two, Book II of this Code.**<sup>[15]</sup>

There shall be annotated on the tax receipts the words "paid under protest." It is only after the taxpayer has paid the tax due that he may file a protest in writing within 30 days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.

<sup>[16]</sup>

Relevant thereto, Chapter 3, Title Two, Book II of the LGC of 1991, Sections 226 to 231,<sup>[17]</sup> provides for the administrative remedies available to a taxpayer or real property owner who does not agree with the assessment of the real property tax sought to be collected, particularly, the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes.

NPC alleges that payment under protest under Section 252 of the LGC is required when the reasonableness of the amount assessed is being questioned. Challenging the very authority and power of the assessor to impose the assessment and of the treasurer to collect the tax is an attack on the very validity on any increase and not merely on the amounts of increase in tax. Thus, such payment is not a condition *sine qua non* for the LBAA to entertain the NPC's challenge on the validity of the tax imposed on its tax-exempt properties.<sup>[18]</sup>

We are not persuaded. As settled in jurisprudence, a claim for exemption from the payment of real property taxes does not actually question the assessor's authority to assess and collect such taxes, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA.<sup>[19]</sup> The same may be inferred in Section 206 of the LGC of 1991, to wit:

SEC. 206. *Proof of Exemption of Real Property from Taxation.* — Every person by or for whom real property is declared, **who shall claim tax exemption for such property** under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

**If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.**

<sup>[20]</sup>

Section 206 of the LGC categorically provides that every person by or for whom real property is declared, who shall claim exemption from payment of real property taxes imposed against said property, shall file with the provincial, city or municipal assessor sufficient documentary evidence in support of such claim. The burden of proving exemption from local taxation is upon whom the subject real property is

declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Thus, if the **property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon.**<sup>[21]</sup>

As held in *Camp John Hay Development Corp. v. Central Board of Assessment Appeals*:<sup>[22]</sup>

x x x the restriction upon the power of courts to impeach tax assessment without a prior payment, under protest, of the taxes assessed is consistent with the doctrine that taxes are the lifeblood of the nation and as such their collection cannot be curtailed by injunction or any like action; otherwise, the state or, in this case, the local government unit, shall be crippled in dispensing the needed services to the people, and its machinery gravely disabled. The right of local government units to collect taxes due must always be upheld to avoid severe erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of RA No. 7160 or the LGC of 1991 that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.

x x x<sup>[23]</sup>

Records reveal that the petitioner sent a letter dated September 5, 2000 to the respondent Municipal Treasurer seeking clarification on the assessment levels used by the Assessor in the billing taxes, as well as claiming tax exemption on certain properties. It reiterated its claim of exemption in its letter dated April 19, 2001. NPC received the final demand for payment of tax delinquency issued by the Provincial Treasurer in a letter dated February 16, 2006. Thereafter, petitioner filed a petition purportedly questioning the authority of the respondents to assess and to collect taxes against some of its properties before the LBAA, without payment under protest of the assessed real property taxes.

Nothing in the said petition before the LBAA supports petitioner's claim regarding the respondents' alleged lack of authority. Instead, it raises the following issues, which involve a question of fact: 1.) the properties such as reservoir, machineries and equipment which are actually, directly and exclusively used by NPC in the generation and transmission of electricity, and the school buildings are exempt from taxation; and 2.) regarding the escape revision which was made retroactive from 1994, said taxes could no longer be assessed and collected since they should have been assessed within five (5) years from the date they became due.<sup>[24]</sup> Though couched in terms which challenge the validity of the assessment and authority of the respondents, NPC, as a government-owned and controlled corporation engaged in the generation and transmission of electric power, essentially anchors its petition based on a claim of exemption from real property tax.

Records are bereft of evidence which proves that, within 30 days from the filing of