

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION,
Petitioner,

E.B. No. 461
(C.T.A. AC No. 37)

Present:

-versus-

ACOSTA, P.J.
CASTAÑEDA, Jr.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, II:

MUNICIPAL GOVERNMENT OF
NAVOTAS, SANGGUNIANG BAYAN
OF NAVOTAS, AND MANUEL T.
ENRIQUEZ, IN HIS CAPACITY AS
MUNICIPAL TREASURER OF
NAVOTAS,

Promulgated:

MAR 01 2010

Ar. Apolinario
9:40 a.m.

Respondents.

X ----- X

DECISION

ACOSTA, PJ:

Before this Court is a Petition for Review *En Banc* filed through registered mail on February 19, 2009 and received by this Court on March 3, 2009, assailing the Decision of this Court's Second Division (Second Division) dated July 18, 2008 and the subsequent Resolution dated January 9, 2009, affirming the assailed Decision. The dispositive portion of the assailed Decision reads:

"WHEREFORE, premises considered, the RTC's Decision dated May 23, 2007 is **SUSTAINED**. The petition is hereby **DISMISSED**.

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SO ORDERED.”

The antecedent facts culled from the records are as follows:

Petitioner National Power Corporation (NPC) is a government-owned and-controlled corporation organized and existing under and by virtue of Republic Act (RA) No. 6395, as amended, with principal office address at NPC Office Building Complex, corner Quezon Avenue and BIR Road, East Triangle, Diliman, Quezon City.

Respondent Municipal Government of Navotas, is a local government unit, hosting petitioner’s Navotas Power Stations I and II located in the Municipality of Navotas. It may be served with summons and court processes through the Municipal Mayor, at the Municipal Hall Building, Navotas, Metro Manila.

Respondent Sangguniang Bayan of Navotas is a legislative body being sued for the purpose of enjoining it from performing any and all acts geared toward collection of the assailed taxes and/or sale of petitioner’s properties during the pendency of the instant petition. It may be served with summons and other court processes through the Vice Mayor, as the presiding officer, at the Municipal Hall Building, Navotas, Metro Manila.

Respondent Manuel T. Enriquez is being sued in his official capacity as the Municipal Treasurer of Navotas and may be served with summons and other court processes at the Municipal Hall Building, Navotas, Metro Manila.

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On the respective dates of November 16, 1988 and June 29, 1992, petitioner entered into a Build-Operate-and-Transfer Project Agreements (BOTs) with Mirant Navotas I Corporation (MNC-I), formerly known as Hopewell Energy Philippines Corporation, and Mirant Navotas II Corporation (MNC-II), formerly known as Hopewell Tileman (Philippines) Corporation. The BOTs are for the construction, operation and eventual transfer to petitioner of MNC-I's 200-MW and MNC-II's 100-MW gas turbine power stations. During the period of the agreement, the operation of the power stations shall be under the actual and direct control and supervision of petitioner. Consequently, petitioner has the obligation to pay for all taxes, except business taxes, relative to the implementation of the agreements.¹

For the 1st quarter of 2003, petitioner paid respondent Municipality, real property taxes in the amounts of P3,382,715.88 and P4,973,869.83 for the MNC-I and MNC-II power stations, respectively. After the said quarter, petitioner stopped paying the real property taxes, claiming exemption from payment thereon pursuant to Section 234(c) of the Local Government Code (LGC) of 1991.²

In a letter dated March 30, 2004³, petitioner informed the Municipal Assessor of Navotas (Municipal Assessor) of their position on the exemption from real property tax of the subject properties, pertaining to machineries and equipment which are in the name of Hopewell Tileman (Phils.) Corporation.

Pursuant to the BOTs, MNC-I and MNC-II eventually transferred to petitioner all their rights, title, and interests in and to the fixtures, fittings, plant

¹ *En Banc* records, pp. 11-12.

² *En Banc* records, p. 15.

³ *En Banc* records, p. 104.

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and equipment, and improvements comprising the power stations on March 24, 2003⁴ and August 1, 2005,⁵ respectively.

On May 25, 2005, MNC-II received four notices from respondent Municipal Treasurer informing MNC-I and MNC-II of their real property tax delinquencies for the 2nd, 3rd, and 4th quarters of calendar year 2003 and for the calendar years 2004 and 2005. Details are as follows:

First and Second Notices, addressed to Hopewell Energy (Phils.) Corp. ⁶	P59,505,580.10
First and Second Notices, addressed to Hopewell Tileman Phil. Corp. ⁷	<u>88,792,759.05</u>
Total	<u>P148,298,339.15</u>

In a letter dated July 26, 2005⁸, petitioner reiterated to the Municipal Assessor of Navotas their position that the subject properties are exempt from real property tax.

On November 21, 2005, a Warrant of Levy⁹ was received from respondent Municipal Treasurer. MNC-II also received two Notices of Sale of Delinquent Real Property, scheduling the public auction of the subject properties on December 21, 2005.¹⁰

On December 16, 2005, petitioner filed before the Regional Trial Court (RTC) of Malabon City, a *Petition for Declaratory Relief, Annulment of Notice of*

⁴ *En Banc* records, p. 105.

⁵ *En Banc* records, p. 108.

⁶ *En Banc* records, pp. 100-101.

⁷ *En Banc* records, pp. 102-103.

⁸ *En Banc* records, p. 111.

⁹ *En Banc* records, p. 112.

¹⁰ *En Banc* records, pp. 16-17.



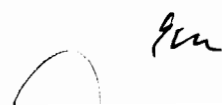
Delinquency, Warrant of Levy, and Notice of Sale with prayer for the issuance of a Writ of Preliminary Injunction and Temporary Restraining Order (TRO).

Petitioner's application for the issuance of a TRO was denied by the RTC. Respondents proceeded with the scheduled public auction. Considering that there were no bidders for the purchase of the subject properties, the same were forfeited in favor of respondent Municipality.

Petitioner filed an amended petition before the RTC seeking to declare as null and void the public auction and the forfeiture of the subject properties in favor of respondent Municipality on the ground that these actions are patently illegal because the subject properties are exempt from real property tax.

The RTC denied the petition on May 23, 2007. It ruled that although Section 234 of the LGC exempts petitioner from payment of real property tax due on the subject properties located at MNC-I and MNC-II, failure of petitioner to exhaust administrative remedies resulted in the finality of the assessment; thus, the eventual collection was in order. The RTC explained that petitioner should have appealed the assessments to the Local Board of Assessment Appeals (LBAA), pursuant to Section 226 of the LGC, within 60 days from the date of receipt of the written notice of assessment. If not satisfied with the decision of the LBAA, petitioner should appeal to the Central Board of Assessment Appeals (CBAA), pursuant to Section 229 of the same code. The RTC further went on in saying that before initiating any protest to the assessment, the tax due must first be paid.

After an extension of 30 days was granted, a Petition for Review with application for *Temporary Restraining Order and/or Order of Suspension of*

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Collection and Writ of Preliminary Injunction was seasonably filed with this Court through registered mail on July 27, 2007 and received on August 2, 2007. The Petition was raffled to the Second Division of this Court.

Respondents filed their Comment/Opposition through registered mail on October 15, 2007 and which was received by this Court on October 30, 2007.

In a Resolution dated December 17, 2007, the Second Division treated petitioner's application for TRO and/or Order of Suspension of Collection and Writ of Preliminary Injunction as a "Motion to Suspend the Collection of Taxes", considering that the ownership of the auctioned properties was not yet consolidated in the name of respondents; thus, the collection of payment of the alleged deficiency taxes was not yet consummated. The application was granted on equitable considerations, to preserve the *status quo* during the pendency of the appeal, and in order not to render ineffectual and nugatory the judgment that will be rendered. Respondents were enjoined from consolidating the ownership of the subject properties, from confiscating them, from taking possession thereof and from doing any and all acts relative thereto during the pendency of petitioner's appeal, until further ordered.

In a Resolution dated March 6, 2008, the case was considered submitted for Decision after petitioner manifested to adopt its Petition for Review as its Memorandum and after respondents failed to file their Memorandum.

In a Decision promulgated on July 18, 2008, the Second Division dismissed the Petition and sustained the RTC's Decision dated May 23, 2007. Petitioner's

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Motion for Reconsideration filed on August 6, 2008 was likewise denied in a Resolution dated January 9, 2009.

Hence, after being granted a 15-day extension period, the instant Petition was seasonably filed through registered mail on February 19, 2009 before the Court *En Banc*. It was received by the Court on March 3, 2009. The following errors were assigned for this Court's resolution:

1. In ruling that it has no jurisdiction over the instant petition; and
2. In sustaining the RTC' decision that appeals to the LBAA and CBAA, and payment under protest of the assessed real property taxes are required before its petition dated December 12, 2005 (as amended on January 5, 2006) for Declaratory Relief may be given due course.

Respondents failed to file their Comment/Opposition to the instant petition.

The case was submitted for decision in a Resolution issued on June 15, 2009 *sans* Respondents' Memorandum. The manifestation of petitioner to adopt its Petition for Review as its Memorandum was likewise noted by the Court.

FIRST ASSIGNED ERROR:
Lack of Jurisdiction

The Second Division ruled that this Court has no jurisdiction. The pertinent provision determining the jurisdiction of the Court of Tax Appeals (CTA) is Section 7(a)(5) of Republic Act (RA) No. 9282, which pertains to the appellate jurisdiction of the CTA over decisions of the CBAA on real property taxes and not Section 7(a)(3) of the same Act, referring to the jurisdiction of the

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CTA to entertain appeals over decisions of the RTC on local tax cases. The Second Division explains that although real property taxes are in the nature of local taxes, the wordings of Section 7(a)(5) of RA No. 9282 unequivocally refer to real property taxes. Section 7(a)(5), a special provision specifically pertaining to real property taxes must take precedence over Section 7(a)(3), a general provision relating to any kind of local taxes. A particular provision is favored as against a general provision.

Also, the Court *a quo* ratiocinated that it is not within the scope of the CTA's jurisdiction to rule on declaratory relief. Being a court of special and limited jurisdiction, the CTA can only act on cases that are clearly conferred by the Constitution and law, and should not be deemed to exist on mere implication. The proper forum for an action for declaratory relief should be before the RTC, and appeal thereof with the Court of Appeals in accordance with Sections 1 and 5, Rule 63 of the 1997 Rules of Civil Procedure and Section 2(a) of Rule 41 of the same Code.

Further, the Court *a quo* held that an action for declaratory relief requires that the controversy must be ripe for judicial determination, and it must be filed before there is a breach or violation. These requirements are wanting in the case. Petitioner's failure to appeal the assessment with the LBAA and CBAA made premature the action for declaratory relief and the appeal thereof. Also, there exists a violation of the law when the real property taxes assessed remained due and unpaid.

THE COURT'S RULING



The precipitating controversy here is whether the Court, particularly the Court in Division has jurisdiction to entertain an appeal from an RTC's decision involving real property taxes. To resolve the issue presented before us, an understanding of the nature of the appeal filed before the Second Division is relevant.

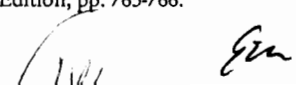
The action filed before the RTC is a Petition for Declaratory Relief. Section 1 of Rule 63 of the Rules of Court elucidates the nature of a declaratory relief, thus:

“SECTION 1. *Who may file petition.* – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule.”

In a declaratory relief, the subject matter is a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance. The issue is the validity or construction of these documents. The relief sought is the declaration of petitioner's rights and duties thereunder.¹¹ Declaratory reliefs are within the original jurisdiction of the Regional Trial Courts.

¹¹ Florenz D. Regalado, Remedial Law Compendium, , Vol. I, Ninth Revised Edition, pp. 765-766.



Undoubtedly, the petition filed by petitioner before the RTC complements the nature of a declaratory relief involving real property tax. It involves the determination of the validity of real property taxes' imposition on petitioner's subject properties, claimed to be exempted therefrom by virtue of Section 234 of the LGC. In other words, the purpose of petitioner in filing the petition is for the RTC to declare its properties exempt from real property taxes; thus, the imposition thereof is improper.

A review of the RTC's decision shows that the right of petitioner was resolved when it was declared exempted from paying real property taxes on the subject properties. Nonetheless, the petition for declaratory relief was dismissed due to lack of jurisdiction.

However, the fact that the petition was dismissed on a ground different from the issue raised does not change its nature as a "declaratory relief" case. Allegations in the complaint and the character of the relief sought determine the nature of an action¹² and not the resulting decision thereafter. Thus, the appeal made by petitioner from the RTC's decision is still an appeal from a declaratory relief judgment. Stated otherwise, the instant appeal is an appeal from a decision of the RTC involving a real property tax in the exercise of its original jurisdiction.

Does the Court of Tax Appeals have jurisdiction to review the questioned decision of the RTC?

We answer negatively.

¹² International Flavors and Fragrances (Phil.), Inc., vs. Argos, G.R. No. 130362, September 10, 2001.

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings.¹³

Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, creating the Court of Tax Appeals, did not grant this Court blanket authority to decide any and all tax disputes. Defining such special court's jurisdiction, the Act necessarily limited its authority to those matters enumerated therein.¹⁴ The Court has no power to decide its own jurisdiction as compared to courts of general jurisdiction.

Section 7 of the law enumerates the jurisdiction of the Court. The following are within the Court's jurisdiction over civil cases, to wit:

"Sec. 7. Jurisdiction. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National

¹³ Commissioner of Internal Revenue vs. Villa and The Court of Appeals, G.R. No. L-23988, January 2, 1968.

¹⁴ Ursal vs. Court of Tax Appeals, et. al., GR. Nos. L-10123 and L-10355, April 26, 1957.

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Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

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

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

6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7. Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

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(c) Jurisdiction over tax collection cases as herein provided:

1. Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: *Provided, however,* That collection cases where the

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principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.

2. Exclusive appellate jurisdiction in tax collection cases:

a. Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.

b. Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the Exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction.”

Among others, the aforequoted law vests in the Court exclusive appellate jurisdiction to review by appeal “*Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction*” and “*Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals.*” Conformably hereto, relevant sections of Rule 4 of the Revised Rules of the Court of Tax Appeals state:

“SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

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- (2) **Local tax cases** decided by the **Regional Trial Courts** in the exercise of their original jurisdiction; and

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- (b) Decisions, resolutions or orders of the **Regional Trial Courts** in **local tax cases** decided or resolved by them in the exercise of their appellate jurisdiction;

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

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SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

- (a) Exclusive original or appellate jurisdiction to review by appeal the following:

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- (3) Decisions, resolutions or orders of the **Regional Trial Courts** in **local tax cases** decided or resolved by them in the exercise of their original jurisdiction; xxx” (*Emphasis supplied.*)

It appears that the Court in Division has jurisdiction to review appeals from decisions or rulings of the Regional Trial Court over local tax cases. However, if the case concerns the taxation and assessment of real properties; the Court, this

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time, sitting *En Banc*, has the jurisdiction to review on appeal, but *only decisions of the CBAA* in the exercise of its appellate jurisdiction. *There is nothing in the law or rules giving the CTA in Division jurisdiction over cases decided by the RTC involving real property taxes.* Being so, decisions of the RTC over real property taxes are removed from the appellate jurisdiction of the Court in Division under the principle of *exclusio unius est exclusio alterius*.

We agree with the Court *a quo* when it aptly held that:

“Although real property taxes are in the nature of local taxes, the wordings of Section 7 (a) (5) of R.A. 9282 unequivocally refer to real property taxes. Where the language of the law is clear, it must be applied according to its express terms. *Absolute sententil expositore non indiget.* There is no ambiguity in the rule.

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xxx In drafting R.A. 9282, Congress would not have made a separate proviso, specifically Section 7 (a) 5, if lawmakers intended real property taxes to be within the purview of the definition of local taxes.”

Petitioner invites the attention of the Court to its argument that real property taxes are also local taxes. For this reason, petitioner asseverates that the Second Division’s jurisdiction to entertain the appeal, finds justification in Section 7(a)(3) of RA No. 9282 empowering the CTA to review “*Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction*” in relation to Section 3(a)(3) of Rule 4 of the Rules of the CTA vesting the Court in Division, jurisdiction over “*Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction*” and Section



2(a)(2) of Rule 4, giving the Court *En Banc*, jurisdiction to review decisions of the Court in Division over local tax cases decided by the RTC.

We cannot agree. Although considered as local taxes, real property taxes have been treated by our laws separately from local taxes. This is shown by the fact that there are separate chapters in the Local Government Code that are exclusively devoted for real property taxes. In the same vein, the law creating and the rules governing the CTA, made a distinct appeal procedure for real property taxes.

To reiterate, the Second Division cannot assume jurisdiction over decisions of the Regional Trial Court on cases involving real property taxes in the absence of a clear grant thereof by law. The Court's jurisdiction cannot be created by mere implication or overstretching the clear wordings of the law.

SECOND ASSIGNED ERROR:
Non-exhaustion of Administrative Remedies for
Failure of Petitioner to Appeal before
the LBAA and CBAA

The RTC assigned two procedural flaws committed by petitioner that led to the finality of the assessment: one, for failure of petitioner to appeal before the Local Board of Assessment Appeals (LBAA) and if necessary, to the Central Board of Assessment Appeals (CBAA); and second, for failure of petitioner to pay under protest.

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Relying on the case of *Ty vs. Trampe*¹⁵, petitioner asserts that payment under protest required under Section 252 of the LGC is inapplicable when what is being questioned is the taxability of a property and the legality of real property tax assessment made by a local government, and not merely its reasonableness. Likewise, appeals to the LBAA and subsequently to the CBAA, pursuant to Sections 226 and 229 of the same Code, respectively, are not necessary. Consequently in this case, the sixty (60)-day period within which to file an appeal is inapplicable.

This Court will discuss first the number one assigned procedural flaw.

The Second Division agreed with the RTC's decision and held that exhaustion of administrative remedies is mandatory and a prerequisite in availing judicial remedies. It went on citing several cases that it deemed applicable to its ruling.

THE COURT'S RULING

The available remedies of a taxpayer, as far as real property tax is concerned, are provided in Section 226, 229, and 252 of RA No. 7160, otherwise known as the Local Government Code (LGC) of 1991. Sections 226 and 229, which are relevant to the issue at hand, are quoted herein:

SECTION 226. *Local Board of Assessment Appeals.* — Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of

¹⁵ G.R. No. 117577, December 1, 1995.

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Assessment Appeals of the provincial or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

SECTION 229. *Action by the Local Board of Assessment Appeals.*

— (a) The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

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(c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board, may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory.”

The law elaborates the proper procedure for contesting a real property tax assessment. Where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to the courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts.¹⁶ Failure of a taxpayer to avail them before lodging their appeals to any court would be fatal to their cause;

¹⁶ Lopez vs. City of Manila, G.R. No. 127139, February 19, 1999.

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their action will be considered premature and not yet ripe for judicial determination.

However in the 1995 case of *Ty vs. Trampe*,¹⁷ the Supreme Court explained that a taxpayer is excused from exhausting administrative remedies before going to court when only purely questions of law are involved:

“Although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is a well-settled exception in cases where the controversy does not involve questions of fact but only of law. In the present case, the parties, even during the proceedings in the lower court on 11 April 1994, already agreed ‘that the issues in the petition are legal’, and thus, no evidence was presented in said court.

In laying down the powers of the Local Board of Assessment Appeals, R.A. 7160 provides in Sec. 229 (b) that ‘(t)he proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts . . .’. It follows that appeals to this Board may be fruitful only where questions of fact are involved.”

Then, in the 1999 case of *Figuerres vs. Court of Appeals, et. al.*¹⁸, the validity of several ordinances were attacked for having been adopted allegedly without public hearings and prior publication or posting and without compliance with the implementing rules yet to be issued by the Department of Finance. Among others, the Court of Appeals dismissed the prohibition suit filed therein for failure of petitioner to exhaust administrative remedies as provided under Section 187 of the LGC. The Supreme Court, in agreeing with the decision of the Court of Appeals concluded that even if the case involves only pure questions of law, but the

¹⁷ *Supra*, note 15.

¹⁸ G.R. No. 119172, March 25, 1999.

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resolution thereof requires evidence; there is still a need to exhaust administrative remedies:

“Although cases raising purely legal questions are excepted from the rule requiring exhaustion of administrative remedies before a party may resort to the courts, in the case at bar, the legal questions raised by petitioner require, as will presently be shown, proof of facts for their resolution. Therefore, the petitioner's action in the Court of Appeals was premature, and the appellate court correctly dismissed her action on the ground that she failed to exhaust available administrative remedies as above stated.” (Emphasis supplied.)

In light of an exhaustive inquiry of the supervening findings of the Supreme Court, we find *Figuerres vs. Court of Appeals*¹⁹ more instructive to the instant case and differ on the applicability of the ruling in the case of *Ty vs. Trampe*²⁰, as hereunder explained.

In *Ty vs. Trampe*, the main issue is whether RA No. 7160 repealed the provisions of Presidential Decree No. 921. Apparently, the resolution of the issue does not require proof of facts but only an evaluation and analysis of the laws involved. This is the reason why the parties therein agreed that the issues in the petition are legal even during the proceedings before the lower court; thus, no evidence was presented in court.

Here, the obtaining scenario is different. There was no agreement between the parties that only questions of law are to be presented for resolution to the RTC. In fact, petitioner still presented evidence *ex parte* before the RTC while respondents were declared in default for failure to file their Answer. And, more

¹⁹ *Supra*, note 18.

²⁰ *Supra*, note 15.

importantly, the resolution of the question of law submitted by petitioner requires proof of facts, similar to the case of *Figuerres vs. Court of Appeals*.

Petitioner raises a question on the legality of the real property tax assessments, pretext on its claim that the subject machineries and equipment are exempted from real property taxes in accordance with Section 234 of the LGC; a controversy that can be colorably characterized as a question of law. But petitioner's claim cannot be accepted and maintained on mere assertions. The burden is shifted upon petitioner to prove its claim with sufficient and competent evidence. On this, Section 206 of the LGC is authoritative and it provides that:

"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, by laws, 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."

It follows that any taxpayer claiming exemption from real property tax has to file a claim before the provincial, city or municipal assessor and the latter officers has the authority to determine the validity of the taxpayer's claim through pieces of evidence submitted by the taxpayer. The decision of the provincial, city or municipal assessor on the taxability of the property can be appealed to the LBAA and the CBAA.

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Records show that petitioner sent two letters²¹ to the Municipal Assessor claiming tax exemption. Petitioner also received Notice of Assessments²². When respondent Municipal Assessor proceeded with the assessment, the same was deemed a denial of petitioner's claim of exemption. What petitioner should have done is to appeal the assessment to the LBAA. And, if petitioner is not satisfied with the decision of the LBAA, it may elevate the same to the CBAA, which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits or overpayments of taxes. An appeal may be taken to the CBAA by filing a notice of appeal within thirty days from receipt thereof²³.

The last action of the local assessor on a particular assessment shall be the notice of assessment; it is this last action which gives the owner of the property the right to appeal to the LBAA.²⁴ Petitioner failed to avail this administrative mechanism. If the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due with respect to the taxpayer's property becomes absolute upon the expiration of the period to appeal.²⁵ Hence, the propriety of the Second Division's decision of affirming the RTC's ruling to the effect that availment of administrative remedies before going to court remain to be an important and mandatory procedure in this case.

***Non-exhaustion of Administrative
Remedies for Failure of Petitioner***

²¹ *En Banc* records, pp. 104 & 111.

²² *En Banc* records, pp. 100-103.

²³ *Dr. Pablo Olivares, et. al. vs. Mayor Joey Marquez*, G.R. No. 155591, September 22, 2004.

²⁴ *FELS Energy, Inc. and NPC vs. Province of Batangas, et. al.*, G.R. Nos. 168557 and 170628, February 16, 2007.

²⁵ *Id.*

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to Pay under Protest before going to court

The RTC disposed of the issue by holding that “*before initiating any protest to the assessment, the tax due must first be paid without prejudice to a later adjustment/refund pending the outcome of the appeal.*”

Petitioner posits that payment of the taxes will be tantamount to exacting a penalty in violation of due process.

We do not agree, “due process” is a very broad term, simplified as the right to be heard. We cannot find any reason why paying the assessed taxes under protest will violate one’s right to due process. Under Section 252 of the LGC, the taxes paid under protest will not be outrightly transferred to the coffers of the government and becomes the property thereof. Rather, it is held in trust by the treasurer of the province or city involved while the taxpayer is contesting the assessment. If, eventually, the assessment is found to be improper, the taxes will be refunded.

Be that as it may, the Court finds that considering the availing circumstances of the case, payment under protest is no longer necessary.

On payment under protest, Section 252 of the LGC provides that:

“SECTION 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 Manila

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Area, who shall decide the protest within sixty (60) days from receipt.

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(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 II, Book II of this Code.”

It is understood that any taxpayer desiring to contest an assessment made by a local government unit, must first pay the tax so assessed. Likewise, the taxpayer has to request the annotation of the phrase “paid under protest” on the tax receipts. Thereafter, appeal to the LBAA by filing a petition under oath together with copies of the tax declarations and affidavits or documents to support his appeal. However, it is already settled that the protest being referred in the above-provision is one that questions the excessiveness or reasonableness of the real property tax assessment.

If the legality of the real property tax assessment is at issue, the well pronounced ruling and ratiocination made by the Supreme Court in the case of *Ty vs. Trampe*²⁶ is applicable. There, the Supreme Court notes:

“Again, the protest contemplated under Sec. 252 of R.A. 7160 is needed where there is a question as to the reasonableness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to ‘first pay the tax’ under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the very validity of any increase.”

²⁶ *Supra*, note 15.

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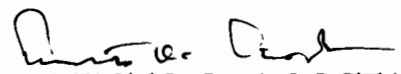
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In a similar way, as there has been an apparent admission by petitioner that it is not questioning the excessiveness or reasonableness of the real property tax assessment, but the legality thereof; there is no need for petitioner to pay the real property tax assessment before initiating a protest.

At this point, although we agree with petitioner on its stance that payment under protest is not necessary, we still maintain the view that exhausting the available remedies of lodging an appeal before the LBAA and CBAA before availing judicial intervention is still mandatory.

WHEREFORE, finding no reversible error in the assailed Decision promulgated on July 18, 2008 and the Resolution dated January 9, 2009, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

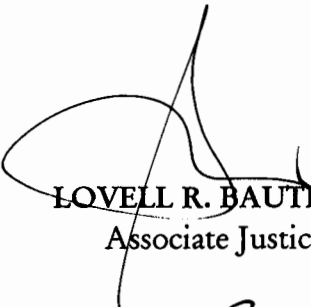
SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice

We Concur:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA F. UY
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice



See attached Dissenting Opinion
Olga Palanca-Enriquez
OLGA PALANCA-ENRIQUEZ
Associate Justice

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

Esperanza R. Fabon-Victorino
ESPERANZA R. FABON-VICTORINO
Associate Justice

Amelia R. Cotangco-Manalastas
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

NATIONAL
CORPORATION,

POWER
Petitioner,

C.T.A. EB NO. 461
(C.T.A. AC No. 37)

Present:

-versus-

MUNICIPAL GOVERNMENT OF
NAVOTAS, SANGGUNIANG
BAYAN OF NAVOTAS, AND
MANUEL T. ENRIQUEZ, IN HIS
CAPACITY AS MUNICIPAL
TREASURER OF NAVOTAS,

Respondents.

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
MINDARO-GRULLA,
FABON-VICTORINO, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

MAR 01 2010

Signature
9:40 a.m.

X ----- X

DISSENTING OPINION

PALANCA-ENRIQUEZ, J.:

With all due respect, after a careful examination of the pertinent facts of the case, in relation to applicable laws and jurisprudence, I vote to GRANT the instant Petition for Review for the following ratiocinations:

1) Records show: *See*

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On December 16, 2005, petitioner Napocor (NPC) filed before the RTC of Malabon City, Branch 74, a “Petition For Declaratory Relief, Annulment of Notice of Delinquency, Warrant of Levy, Notice of Sale and Public Auction Sale, With Prayer for the Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order”, docketed as Civil Case No. 4658-MN.

A question maybe asked “Does the RTC have jurisdiction over the Petition?”

Under *BP 129*, the RTC has exclusive original jurisdiction over civil cases, the subject matter of which is incapable of pecuniary estimation. When the allegations in the Petition for Declaratory Relief plainly show that petitioners’ cause of action is the annulment of a certain provision or action, the subject of litigation is incapable of pecuniary estimation. Hence, the jurisdiction thereof is exclusively cognizable by the RTC, pursuant to *Section 19 (1), BP 129, as amended (Halaguena, et al. vs. Philippine Airlines, Incorporated, G.R. No. 172013, October 2, 2009)*. Therefore, it is clear that the RTC has jurisdiction over the Petition filed by the Municipality of Navotas.



2) The RTC denied the application for TRO. On December 21, 2005, respondent Municipality proceeded with the scheduled public auction. Considering that there were no bidders for the purchase of the subject machinery, the same were forfeited in favor of respondent Municipality, pursuant to *Section 263 of the LGC*.

3) Thereafter, petitioner NPC filed an amended petition seeking to declare null and void the public auction and forfeiture in favor of respondent Municipality on the ground that these actions are patently illegal because the machinery located at NPC's MNC-1 and MNC-II power stations are exempt from real property tax under *Section 234 of the LGC*.

4) Despite the expiration of the reglementary period to file their Answer to the Petition, respondents failed to file their Answer. Upon motion of petitioner, on October 19, 2006, respondents were declared in default and petitioner was allowed to present its evidence *ex-parte*. During the *ex-parte* presentation of the evidence for the petitioner, it presented testimonial and documentary evidence.



5) On March 23, 2007, the RTC rendered a decision dismissing the case on the ground of non-exhaustion of administrative remedies, to wit:

“D E C I S I O N

“This is a case for ‘Declaratory Relief, Annulment of Notice of Delinquency, Warrant of Levy, Notice of Sale and Public Auction Sale.’

Petitioner’s cause of action rests mainly on the validity or invalidity of the imposition of real property taxes by the respondents over the machineries of petitioner’s power station located in the Municipality of Navotas.

Records show that, after respondents received a copy of the summons, they failed to file their answer. Petitioner then filed a motion to declare defendants in default which was, by the Order of 19 October 2006, granted and petitioner consequently was allowed to present its evidence ex-parte.

During the ex-parte hearing held on 16 November 2006, petitioner testified as follows: that petitioner and Mirant I and II Corporations, entered into a ‘Build Operate and Transfer (BOT) Agreements (Exhibit ‘A’ and ‘B’ and sub-markings) for the construction, operation and eventual transfer to petitioner of Mirant Navotas Corporation’s ‘200-mw gas turbine power station’ (MNC-1 for brevity); that eventually by virtue of a Deed of Transfer (Exhibits ‘C’ and ‘D’ and sub-markings), the said power stations are now owned, operated and in physical possession of the petitioner; that in recognition of its direct control over the power stations, the payment of any tax due on the said power stations devolved on petitioner; that on 25 May 2005,

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petitioner received Notice of Assessment (Second Notice, Exhibit 'E' and 'F') from the Municipal Treasurer of Navotas (respondent Treasurer) informing Mirant Navotas I and II Corporations of their real property tax delinquencies on the machineries located at MNC-I and MNC-II which are as follows:

- a. For Mirant I Power Station the amount of PhP59,505,580.10 for the 2nd, 3rd and 4th quarters of CY 2003, 1st to 4th quarters of CY 2004 and 1st to 4th quarters of CY 2005; and
- b. For Mirant II Power Station – the amount of PhP88,799,759.05 for the same taxable period as above-stated:

That the assessment for Mirant I Power Station for the period 3rd quarter of CY 2003 up to 4th quarter of CY 2005 and for Mirant II Power Station for the period 4th quarter of CY 2005 should not have been made considering that during this taxable period, Mirant I and II Power Stations have been transferred to the petitioner (Deeds of Transfer, 'Exhibit 'E' and 'F') thus, said machineries are exempt from payment of real property taxes under Section 234 of the Local Code of 1991.

Thereafter, petitioner formally offered its documentary evidence.

There is no dispute that Section 234 of the Local Government Code exempts petitioner from payment of real property tax due on its machineries located at MNC-I and MNC-2 power stations. However, petitioner should have appealed the subject assessment to the Local Board of Assessment Appeals (LBAA) pursuant to Section 226 of the Local Government Code within sixty (60) days from the date of receipt of the written notice of assessment and if not

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satisfied with the decision of the LBAA, petitioner may still appeal to the Central Board of Assessment Appeals pursuant to Section 229 of the same code.

Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. The failure to appeal within the statutory period shall render the assessment final and unappealable; petitioner having failed to exhaust the administrative remedies available to it, the assessment attained finality and collection would be in order (*Meralco vs. Nelia A. Barlis, et. al., G.R. No. 114231, 18 May 2001*).

Further, before initiating any protest to the assessment, the tax due must first be paid without prejudice to a later adjustment/refund pending the outcome of the appeal. 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 can not be curtailed by any 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.

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED for lack of jurisdiction.

SO ORDERED.”

6) From the dismissal of the petition by the RTC on the ground of failure to exhaust administrative remedies, what is the remedy of the aggrieved party? Was the RTC correct in dismissing the petition on said



ground? The aggrieved party's recourse is to appeal said decision of the RTC dismissing the petition. The next question is: to which appellate court will the aggrieved party appeal the RTC decision dismissing the petition, the Court of Appeals or the Court of Tax Appeals ("CTA")?

7) The Majority ruled that the CTA has no jurisdiction to review the decision of the RTC. With due respect, I cannot agree.

8) To determine which court has jurisdiction over the instant appeal, it is necessary to determine the subject matter/nature of the controversy involved in the instant case on the basis of the parties' allegations and reliefs prayed for. Settled is the rule that the jurisdiction of the court is determined on the basis of the material allegations of the complaint and the character of the relief prayed for, irrespective of whether plaintiff is entitled to such relief (*Halaguena, et al. vs. Philippine Airlines, Incorporated, supra*).

9) In its Petition before the RTC, petitioner NPC raised the validity or invalidity of the imposition of real property tax by the respondents over the machinery of petitioner's power stations in the Municipality of Navotas, and prayed that it be declared exempt from



payment of real property tax and that the Notices of Delinquency, Warrant of Levy, Notice of Sale, Auction Sale and Forfeiture be likewise declared null and void, involving as it is an issue which is purely a question of law. It is clear from the allegations of the Petition that petitioner is not questioning the correctness and reasonableness of the amount assessed. Therefore, petitioner's direct recourse to the RTC was proper. It must be emphasized that appeal to the LBAA may be availed of only when what is being questioned is the correctness of the amount assessed, which is a question of fact. But, when what is being questioned is the very validity or legality of the assessment, the taxpayer may go directly to the regular courts, the RTC.

In laying down the powers of the LBAA, *Section 229 of the LGC* provides:

“SEC. 229. Action by the Local Board of Assessment Appeals.

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(b) In the exercise of its appellate jurisdiction, the Board shall have the power to summon witness, administer oaths, conduct ocular inspection, take depositions, and issue *subpoena* and *subpoena duces tecum*. 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:

xxx xxx.”

Pursuant to the above provision, the proceedings of the LBAA shall be conducted solely for the purpose of ascertaining the facts, as ruled by the Supreme Court *En Banc* in *Ty vs. Trampe*, 250 SCRA 518, as follows:

“Respondent argue that this case is premature because petitioners neither appealed the questioned assessments on their properties to the Board of Assessment Appeals, pursuant to Sec. 226, nor paid the taxes under protest, per Sec. 252.

We do not agree. Although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is well-settled exception in cases where the controversy does not involve questions of fact but only of law. In the present case, the parties, even during the proceedings in the lower court on 11 April 1994, already agreed ‘that the issues in the petition are legal, and thus, no evidence was presented in said court.

In laying down the powers of the Local Board of Assessment Appeals, R.A. 7160 provides in Sec. 229 (b) that ‘the proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts xxx.’ It follows that appeals to this Board may be fruitful only where questions of fact are involved. Again, the protest contemplated under Sec. 252 of R.A. 7160 is needed where there is a question as to the reasonableness of the amount assessed. Hence, if a



taxpayer disputes the reasonableness of an increase in a real estate tax assessment, he is required to 'first pay the tax' under protest. Otherwise, the city or municipal treasurer will not act on his protest. In the case at bench however, the petitioners are questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment of the treasurer to collect the tax. These are not questions merely of amounts of the increase in the tax but attacks on the very validity of any increase."

The next question is "Was petitioner NPC correct in appealing the decision of the RTC dismissing the Petition to the CTA in Division?"

10) I answer in the affirmative. *Section 200 of the LCG* expressly provides that the provinces and cities including the municipalities within the Metropolitan Manila area, shall be primarily responsible for the proper, efficient and effective administration of real property tax (*Dimaampao, the Essentials of Local Government and Real Property Taxation, pp. 140-141*). Under the *LGC*, local government units are mandated to fix a uniform rate of basic real property tax applicable to their respective localities, the proceeds of which exclusively accrue to them (*Tax Law and Jurisprudence, 2nd ed., Vitug & Acosta, p. 479*). Pursuant to *Section 271 of the LGC*, the proceeds of the basic real property tax, including interest thereon, accrue exclusively to the LGU's where the real property is



located. The proceeds of the basic real property tax form part of the general funds of the said local governments. There is no question, therefore, that the realty tax is a local tax (*Law of Basic Taxation in the Philippines, Rev. ed., Aban, p. 437*).

11) Considering that the subject matter of the controversy is a real property tax, which is considered a local tax, an appeal from the decision of the RTC dismissing the Petition for Declaratory Relief, Annulment of Notice of Delinquency, Warrant of Levy, Notice of Sale and Public Auction on the ground of failure to exhaust administrative remedies, clearly falls within the exclusive appellate jurisdiction of the CTA in Division under *Section 3(a)(3), Rule 4 of the 2005 Revised Rules of the CTA*, which provides:

“SEC. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

xxx xxx

(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.”



12) However, the Majority ruled:

“It would appear that the Court in Division has jurisdiction to review appeals from the decisions or rulings of the Regional Trial Court over local tax cases. However, if the case concerns the taxation and assessment of real properties, the Court, this time, sitting *En Banc*, has the jurisdiction to review on appeal but *only decisions of the CBAA* in the exercise of its appellate jurisdiction. *There is nothing in the law or rules giving the CTA in Division, jurisdiction over cases decided by the RTC involving real property taxes.* Being so, decisions of the RTC over real property taxes are removed from the appellate jurisdiction of the Court in Division under the principle of *exclusio unius est exclusio alterius*.”

13) Again, I cannot agree.

It must be stressed that not all cases involving real property tax are appealable to the LBAA and subsequently to the CBAA, because if the taxpayer is raising the validity or invalidity of the assessment, which is purely a question of law, such as in the *Trampe Case*, then the taxpayer's recourse is to go to the regular courts, and not to the LBAA and subsequently to the CBAA. Considering that the Petition filed before the RTC raised the validity or invalidity of the assessment of real estate tax, which is a local tax, it is my considered view that the RTC decision is



appealable to the CTA in Division under *Section (3)(a)(3), Rule 4 of the 2005 Revised Rules of the CTA.*

14) Also, with due respect, I find the Majority's ruling that the "Second Division cannot assume jurisdiction over decisions of the Regional Trial Court on cases involving real property taxes in the absence of a clear grant thereof by law. The Court's jurisdiction cannot be created by mere implication or overstretching the clear wordings of the law.", misplaced.

It must be stressed that *RA 9282* (An Act Expanding the Jurisdiction of the CTA, Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership) expanded the jurisdiction of the CTA. *Section 2 of RA 9282, as amended*, provides that the CTA may sit *En Banc* or in three (3) Divisions, each Division consisting of three justices, to wit:

"SEC. 2. Sitting En Banc or Division; Quorum; Proceedings. – The CTA may sit en banc or in three (3) Divisions, each Division consisting of three (3) Justices."

Section 2 of RA 9282 further provides:

"xxx xxx





The affirmative votes of five (5) members of the Court en banc shall be necessary to reverse a decision of a Division but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level (as amended by Sec. 2, RA 9503)."

From the above provisions, it is clear that the CTA *en Banc* is higher in hierarchy than the CTA in Division.

Being the higher Court in hierarchy, the appellate jurisdiction of the CTA *En Banc* is separate and distinct from the appellate jurisdiction of the CTA in Division, as expressly provided under *Sections 2 and 3, Rule 4 of the 2005 Revised Rules of the CTA*, to wit:

"SEC. 2. Cases within the jurisdiction of the Court en banc. – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;



(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and

(3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;

(b) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their appellate jurisdiction;

(c) Decisions, resolution or orders of the Regional Trial Courts in tax collection cases decided or resolved by them in the exercise of their appellate jurisdiction;

(d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases;

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

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



Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs;

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

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

xxx xxx.”

“SEC. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal



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

(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;

xxx xxx.”

15) The jurisdiction conferred by *Section 3(a)(3), Rule 4 of the 2005 Revised Rules of the CTA*, vesting the CTA in Division exclusive



appellate jurisdiction to review decisions, resolutions or orders of the RTC in local tax cases originally decided or resolved by them in the exercise of their original jurisdiction, and *Section 2(e), Rule 4 of the 2005 Revised Rules of the CTA*, vesting the CTA *En Banc* exclusive appellate jurisdiction to review by appeal decisions of the Central Board of Assessment Appeals (CBAA) in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals, pertains to two appellate court levels in the CTA with separate and distinct jurisdictions. The former pertains to the appellate jurisdiction of the CTA in Division, while the latter pertains to the appellate jurisdiction of the CTA *En Banc*, which are specifically delineated by the *2005 Revised Rules of the CTA, as amended*. While both appellate jurisdictions were conferred by *RA 9282* to the CTA, each pertains to two Courts of different appellate levels in the CTA, with separate and different appellate jurisdictions.

16) Hence, it is my humble view that it is erroneous for the Majority to compare *Section 3(a)(3), Rule 4 of the 2005 Revised Rules of*

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the CTA with Section 2(e) of the same Rule in determining whether or not the CTA in Division has jurisdiction over the Petition for Review filed in C.T.A. AC No. 37. The jurisdiction of the Court *En Banc* under *Section 2(e), Rule 4 of the 2005 Revised Rules of the CTA* pertains to the appellate jurisdiction of the CTA *En Banc* over decisions of the CBAA in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals.

17) However, when what is being appealed to the CTA is a decision of the RTC, involving a local tax, rendered in the exercise of its original jurisdiction, such as the instant case, then jurisdiction over the same falls within the exclusive appellate jurisdiction of the CTA in Division under *Section 3(a)(3), Rule 4 of the 2005 Revised Rules of the CTA*, considering that a real property tax is a local tax.

18) Also, with due respect, I cannot agree with the Majority's reasoning that the "fact that the petition was dismissed on a ground different from the issue raised in the declaratory relief does not remove the case from being a 'declaratory relief' xxx Thus, the appeal made by



petitioner from the RTC's decision is still an appeal from a declaratory relief judgment". Further, I find it erroneous for the Majority to sustain the ruling of the CTA in Division that "it is not within the scope of the CTA's jurisdiction to rule the declaratory relief". To reiterate, the petition filed by petitioner NPC with the CTA in Division in C.T.A. AC No. 37 is not a Petition For Declaratory Relief, but a Petition for Review (With Application for Temporary Restraining Order and/or Order of Suspension of Collection and Writ of Preliminary Injunction), praying that (1) the petition be given due course; (2) an order be immediately issued enjoining the respondents from consolidating the ownership of the subject machinery and confiscating and/or taking possession of the same and from doing any and all acts relative thereto; and (3) after hearing, judgment be rendered in favor of petitioner, declaring petitioner exempt from payment of real property tax on its machinery, and further declaring that the assailed Notices of Delinquency, Warrant of Levy, Notice of Sale, Auction Sale and Forfeiture as null and void. It is clear from the allegations of the Petition that what was appealed before the CTA in Division is the decision of the RTC dismissing the Petition rendered in





the exercise of its original jurisdiction involving a local tax, which falls under the exclusive appellate jurisdiction of the CTA in Division under *Section 3(a)(3), Rule 4 of the 2005 Revised Rules of the CTA*.

19) As to the Majority's stand that the ruling in the case of *Figuerres vs. Court of Appeals, G.R. No. 119172, March 25, 1999* ("Figuerres case") is more instructive to the instant case than the ruling in the *Trampe case*, with due respect, again I cannot agree. In the case of *Figuerres*, the Supreme Court categorically ruled that in that particular case the issue raised by petitioner requires proof of fact for their resolution, hence the rule exempting from exhaustion of administrative remedies cannot be applied. More importantly, even if the *Figuerres case* is more recent than the *Trampe case*, it did not overturn the *Trampe case*, as the *Trampe case* was decided by the Supreme Court *En Banc*, whereas, the *Figuerres case* was decided by the Supreme Court in Division only. Pursuant to *Section 4(3), Article VIII of the Philippine Constitution*, no doctrine or principle of law laid down by the Supreme Court *En Banc* or in division may be modified or reversed, except by the Supreme Court sitting *En Banc*.



20) One last point, respondent's contention that petitioner must first resort to the LBAA and subsequently to the CBAA has already been rendered moot and academic in the instant case. The primary controversy in all the proceedings before the RTC, the CTA in Division, and now, before the CTA *En Banc*, boils down to the basic issue of the validity or invalidity of the imposition of real property tax by respondents over the machinery of petitioner. Simply stated, the issue is whether or not petitioner NPC is exempt from payment of real property tax on its machinery and equipment. A reading of the RTC decision shows that this principal legal issue had already been resolved by the RTC. During the *ex-parte* hearing, the RTC found that "petitioner and Mirant I and II Corporations, entered into a 'Build Operate Transfer (BOT) Agreements (*Exhibits "A" and "B" and sub-markings*) for the construction, operation and eventual transfer to petitioner of Mirant Navotas Corporation's '200-mw gas turbine power station' (*MNC-1 for brevity*); that eventually by virtue of a Deed of Transfer (*Exhibits "C" and "D" and sub-markings*), said power stations are now owned, operated and in physical possession of petitioner NPC; that in recognition of its direct control over the power stations, the





payment of any tax due on said power stations devolved on petitioner”.

The RTC further ruled that “There is no dispute that *Section 234 of the Local Government Code* exempts petitioner from payment of real property tax due on its machinery located at MNC-I and MNC-2 power stations.”

The Majority even recognized the aforesaid ruling of the RTC when it stated in the Decision that “A review of the RTC’s decision shows that the right of petitioner was resolved when it was declared exempted from paying real property taxes on the subject properties.”

In the recent case of *National Power Corporation vs. Province of Quezon and Municipality of Pagbilao*, 593 SCRA 65 (“NPC vs. Province of Quezon”), the Supreme Court ruled:

“The test of exemption is the nature of the use, not ownership, of the subject machineries

At any rate, the NPC’s claim of tax exemption is completely without merit. To successfully claim exemption under Section 234(c) of the LGC, the claimant must prove two elements:

- a. the machineries and equipment are ***actually, directly, and exclusively used*** by local water



districts and ***government-owned or controlled corporations***; and

- b. the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of water and/or the generation and transmission of electric power.

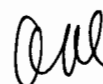
As applied to the present case, the government-owned or controlled corporation claiming exemption must be the entity actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power. Neither the NPC nor Mirant satisfies both requirements. Although the plant's machineries are devoted to the generation of electric power, by the NPC's own admission and as previously pointed out, Mirant – a private corporation – uses and operates them. That Mirant operates the machineries solely in compliance with the will of the NPC only underscores the fact that NPC does not actually, directly, and exclusively used by the government-owned or controlled corporation for the exemption under Section 234(c) to apply.”

Pursuant to the foregoing ruling, in order to be exempt from real property tax under *Section 234 (c)*, the machinery and equipment must be actually, directly, and exclusively used by the government-owned controlled corporation and the use must be devoted to the generation and transmission of electric power.



In that case, the Supreme Court ruled that NPC is not exempt from the payment of real property tax because at the time of the assessment of the real property tax, it is Mirant that has direct, actual and exclusive use over the machinery and equipment, pursuant to the BOT Agreement. NPC's ownership of the plant will accrue only after the lapse of the 25-year period. Prior to that event, NPC's real interest is only in the continued operation of the plant for the generation of electricity.

However, the factual milieu of the instant case is totally different from the case of *NPC vs. Province of Quezon*. Here, the evidence adduced *ex-parte* by petitioner NPC clearly shows that ownership over MNC I Power station, subject of the assessment, was already transferred to petitioner NPC on March 24, 2003, by virtue of a Deed of Transfer dated March 24, 2003, pursuant to the BOT Agreement executed between Mirant Navotas Corporation I and NPC on November 16, 1988; that the last day of cooperation period is March 23, 2003 and the transfer date is March 24, 2003 (*Annex "G", Petition for Review, C.T.A. AC No. 37*). The evidence adduced *ex-parte* by petitioner NPC further shows that ownership over MNC II power station, also subject of the assessment,



was transferred to petitioner NPC on August 1, 2005, by virtue of a Deed of Transfer dated August 1, 2005, pursuant to the BOT Agreement executed between Mirant Navotas Corporation II and NPC on June 29, 1992; that the last day of cooperation period is July 31, 2005 and the transfer date is August 1, 2005 (*Annex "H", Petition for Review, C.T.A. AC No. 37*).

The two Deeds of Assignment dated March 24, 2003 and August 1, 2005, respectively, provide, as follows:

“xxx xxx

WHEREAS, Clause 14.03 of the BOT Agreement provides that the Power Station shall be transferred on an ‘as is’ basis, and any warranties which would otherwise be implied by statute or otherwise, including, without limitation, warranties as to title, fitness for the purpose, the absence of patent or inherent defects, description or otherwise of whatsoever nature will be excluded and after the Transfer Date, MNC II shall be under no liability whatsoever to NPC in respect of the operation or otherwise of the Power Station by NPC or a person designated by NPC;

xxx xxx

NOW THEREFORE, for and in consideration of the foregoing premises and in compliance with Clause 14 of the BOT Agreement, MNC I (II) hereby transfers, assigns, conveys, cedes and turns over to NPC, its successors and



assigns, all its rights, title and interests in and to the fixtures, fittings, plant and equipment, and improvements comprising the Power Station as listed in Annex A hereto.”

Considering that the cooperation period between petitioner NPC and Mirant Navotas had already ceased on March 23, 2003 for MNC I and on July 31, 2009 for MNC II, operation over the entire MNC I and II power stations is now vested on petitioner NPC, and considering further that the corresponding machinery and equipment had already been transferred to petitioner NPC on March 24, 2003 and August 1, 2005, respectively, said machinery and equipment are now directly, actually and exclusively used and owned by petitioner NPC in the generation and transmission of electric power.

Thus, pursuant to the rulings of the Supreme Court in “*National Power Corporation vs. CBAA*”, 577 SCRA 419, and in “*National Power corporation vs. Province of Quezon and Municipality of Pagbilao*”, 593 SCRA 47, petitioner NPC is exempt from payment of real property tax for the 2nd, 3rd, and 4th quarters of calendar year 2003, 1st to 4th quarters of calendar year 2004, and 1st to 4th quarters of calendar year 2005 as regards MNC I machinery and equipment, for the total amount of



P59,505,580.10. As regards MNC II, since it was only on August 1, 2005 that ownership over and actual, direct and exclusive use over said machinery and equipment of MNC II was vested to petitioner NPC, petitioner is exempt from payment of real property tax only for the months of August and September (3rd quarter of 2005) and the entire 4th quarter of 2005, for the total amount of P11,421,474.95 (P27,411,539.90 x 5/12) (*Annex "D", Petition for Review, C.T.A. AC No. 37*).

However, as regards MNC II, petitioner NPC is not exempt from the real property tax for the 2nd, 3rd and 4th quarters of calendar year 2003, 1st to 4th quarters of calendar year 2004, and 1st and 2nd quarters and the month of July for calendar year 2005, for the total amount of P77,371,284.10 (P88,792,759.05–P11,421,474.95), for reasons heretofore stated.

For all the foregoing, and with due respect to the Majority, I therefore, maintain my Dissenting Opinion in C.T.A. AC No. 37, and
VOTE:

- 1) to **GRANT** the instant Petition for Review in
C.T.A. EB No. 461;



2) to **REVERSE** and **SET ASIDE**:

a) the Decision dated July 18, 2008 of the CTA Former Second Division in C.T.A. AC No. 37; and

b) the Decision dated March 23, 2007 of the RTC, Malabon City, insofar as it dismissed the petition for lack of jurisdiction;

3) to **DECLARE** petitioner NPC exempt from payment of real property tax (a) as regards MNC I machinery and equipment for the 2nd, 3rd, and 4th quarters of calendar year 2003, 1st to 4th quarters of calendar year 2004 and 1st to 4th quarters of calendar year 2005; and (b) as regards MNC II machinery and equipment for the months of August to December of calendar year 2005; and

4) to **DECLARE** the auction sale conducted on December 21, 2005, and the registration thereof null and void.


OLGA PALANCA-ENRIQUEZ
Associate Justice

