



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**NATIONAL GRID CORPORATION
OF THE PHILIPPINES,**

Petitioner,

G.R. No. 213157

- versus -

**OFELIA M. OLIVA, in her official
capacity as the CITY TREASURER
OF CEBU CITY,**

Respondent.

X -----X

**OFELIA M. OLIVA, in her official
capacity as the CITY TREASURER
OF CEBU CITY,**

Petitioner,

G.R. No. 213558

Present:

CARPIO, *J.*, Chairperson,
BRION,*
DEL CASTILLO,
MENDOZA,** and
LEONEN, *JJ.*

- versus -

**NATIONAL GRID CORPORATION
OF THE PHILIPPINES,**

Respondent.

Promulgated:

10 AUG 2016

X -----X

DECISION

CARPIO, *J.*:

The Case

G.R. No. 213157 is a petition for review,¹ filed by National Grid Corporation of the Philippines (NGCP) against Ofelia M. Oliva (City

* On leave.
** On official leave.
¹ Under Rule 45 of the 1997 Rules of Civil Procedure.

Treasurer Oliva), in her official capacity as the City Treasurer of Cebu City, assailing the Decision² promulgated on 13 November 2013 as well as the Resolution³ promulgated on 23 June 2014 by the Court of Tax Appeals En Banc (CTA-EB) in CTA EB Case No. 849.

G.R. No. 213558 is a petition for review,⁴ filed by Diwa B. Cuevas (OIC Cuevas), the Officer-In-Charge City Treasurer of Cebu City, against NGCP, assailing the same Decision⁵ and Resolution⁶ of the CTA-EB.

The Local Board of Assessment Appeals (LBAA), in its 12 October 2010 Order⁷ in Case No. 6730 A, B, C on Tax Declaration Nos. COO-019-05574, COO-019-05581, and COO-019-05580, dismissed NGCP's petition for lack of merit because it was filed out of time.

The Central Board of Assessment Appeals (CBAA) dismissed NGCP's appeal from the LBAA's order. The CBAA, in CBAA Case No. V-31, found NGCP liable for real property taxes on the subject properties for the year 2009, and ruled that NGCP should claim from the National Power Corporation/National Transmission Corporation (NPC/TRANSCO) the amount of taxes that it paid for the years 2001 to 2008. The CBAA promulgated its Decision⁸ on 30 May 2011 and its Order⁹ on 16 November 2011.

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

² *Rollo* (G.R. No. 213157), pp. 39-59. Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas concurring. Presiding Justice Roman G. Del Rosario penned a Concurring and Dissenting Opinion, with Associate Justice Ma. Belen M. Ringpis-Liban concurring.

³ *Id.* at 60-63. Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban concurring. Presiding Justice Roman G. Del Rosario and Associate Justice Esperanza R. Fabon-Victorino were on leave.

⁴ Under Rule 45 of the 1997 Rules of Civil Procedure.

⁵ *Rollo* (G.R. No. 213558), pp. 139-159. Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas concurring. Presiding Justice Roman G. Del Rosario penned a Concurring and Dissenting Opinion, with Associate Justice Ma. Belen M. Ringpis-Liban concurring.

⁶ *Id.* at 183-186. Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban concurring. Presiding Justice Roman G. Del Rosario and Associate Justice Esperanza R. Fabon-Victorino were on leave.

⁷ *Rollo* (G.R. No. 213157), p. 131; *id.* at 44. Signed by Registrar of Deeds Emmanuel M. Gimarino as Chairman, and City Prosecutor II Alexander N.V. Acosta as Member. OIC-City Engineer Kenneth Carmelita Enriquez, another Member, was absent.

⁸ *Rollo* (G.R. No. 213157), pp. 170-186; *rollo* (G.R. No. 213558), pp. 80-96. Signed by Chairman Ofelia A. Marquez and Members Rafael O. Cortes and Roberto D. Geotina.

⁹ *Rollo* (G.R. No. 213157), pp. 200-201; *rollo* (G.R. No. 213558), pp. 111-112.

The Facts

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

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

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

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

Pursuant to Sec. 252 of the Local Government Code, petitioner NGCP paid the total amount demanded under protest on November 11, 2009 for ₱2,792,862.41. The written protest was filed on the same day at the office of the City Treasurer of Cebu City albeit that protest-letter is dated October 6, 2009. (Records, pp. 95 to 99)

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

¹⁰ *Rollo* (G.R. No. 213157), pp. 171-172.

The LBAA's Ruling

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

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

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

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

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

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

SO ORDERED.¹¹

NGCP filed a notice of appeal with memorandum on appeal¹² dated 9 December 2010 with the CBAA. NGCP argued that (1) its petition before the LBAA was timely filed; (2) it had the legal personality to file the petition before the LBAA; and (3) NGCP is exempt from payment of the real property taxes subject matter of the second and final notices of demand dated 16 and 21 September 2009 in the total amount of ₱2,792,862.41.

The CBAA's Ruling

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

The CBAA stated that the petition of NGCP mailed on 11 March 2010 in the Quezon City Post Office for the LBAA of Cebu City was timely filed. The CBAA cited the following provision of Section 229(b) of the Local Government Code: "The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to

¹¹ Id. at 131; *rollo* (G.R. No. 213558), p. 44.

¹² *Rollo* (G.R. No. 213157), pp. 132-163; *rollo* (G.R. No. 213558), pp. 45-76.

technical rules applicable in judicial proceedings.” The LBAA’s Order dismissing NGCP’s appeal was based on a technicality and did not resolve the merits of the case. The CBAA took notice that a postal courier would probably know the locations of the offices of the City Assessor and City Treasurer but not of the LBAA. The CBAA further stated that many people, even lawyers, do not know that LBAA offices exist.

The CBAA also stated that NGCP has the legal personality to institute an appeal. The CBAA cited Section 226¹³ of the Local Government Code and pronounced that NGCP has a legal interest in the properties of NPC/TRANSCO because NGCP is TRANSCO’s concessionaire for electric transmission.

The CBAA declared that Section 9¹⁴ of Republic Act No. 9511 (RA 9511), NGCP’s franchise, does not exempt it from payment of real property taxes on the subject properties. Section 234(a)¹⁵ of the Local Government Code instead states that a taxable entity like NGCP, as the beneficial user of the subject properties, is liable for the real property tax. Moreover, it is the City Treasurer’s duty to collect the real property tax based on the assessment of the City Assessor. The City Assessor, not the City Treasurer, has the power to decide whether a property is exempt from real property tax.

The CBAA further declared that NGCP should claim from NPC/TRANSCO the refund of the taxes due for the years 2001 to 2008. The CBAA found that the subject properties are declared in the name of NPC/TRANSCO, and the notices of demand were addressed to NPC/TRANSCO. NPC/TRANSCO made a formal turn-over of the power

¹³ Sec. 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 Local Board of Assessment Appeals of the province 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.

¹⁴ Section 9. *Tax Provisions.* – In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: *Provided*, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: *Provided, further*, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).

¹⁵ Section 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

transmission operation to NGCP on 15 January 2009; hence, NGCP received the notices on 24 September 2009. NGCP paid the assessed amount to City Treasurer Oliva under protest, which amount included taxes due for the years 2001 to 2008.

Finally, the CBAA ruled that the subject properties do not qualify as a special class of real property under Sections 216¹⁶ and 218(d)¹⁷ of the Local Government Code. Although the subject properties are owned by NPC/TRANSCO, the subject properties are used by NGCP, a taxable private entity engaged in the generation and transmission of electric power.

NGCP filed a motion for partial reconsideration¹⁸ on 17 June 2011 with the CBAA. NGCP prayed that (1) the CBAA declare the real properties covered by the Second and Final Notices of Demand dated 16 and 21 September 2009 as exempt from payment of real property tax in accordance with RA 9511; (2) the CBAA direct the reclassification of the subject properties as exempt from the payment of real property tax; (3) the CBAA direct the cancellation of the real property tax billing on the subject properties; and (4) the CBAA direct the refund to NGCP of the payment of taxes that NGCP paid under protest. In the alternative, NGCP asked that the CBAA classify the subject properties as a special class under Section 216 of the Local Government Code, and assess the real property taxes at 10% of the fair market value as provided under Section 218(d) of the same Code. NGCP also asked for a refund of payment made in excess of the real property tax that it paid under protest, following the reclassification of the subject properties and the corresponding reassessment of the real property tax.

¹⁶ Section 216 of the Local Government Code reads: *Special Classes of Real Property*. – All lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and government-owned or controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special.

¹⁷ Section 218(d) of the Local Government Code provides:

Assessment Levels. - The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

x x x x

(d) On Special Classes: The assessment levels for all lands buildings, machineries and other improvements:

Actual Use	Assessment Level
Cultural	15%
Scientific	15%
Hospital	15%
Local water districts	10%
Government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power	10%

¹⁸ *Rollo* (G.R. No. 213157), pp. 187-199; *rollo* (G.R. No. 213558), pp. 98-110.

The CBAA denied for lack of merit NGCP's motion for partial reconsideration in an Order¹⁹ promulgated on 16 November 2011.

NGCP filed a verified petition for review²⁰ dated 1 December 2011 with the CTA. NGCP reiterated in its petition before the CTA the prayer in its motion for partial reconsideration before the CBAA.

The CTA-EB's Ruling

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

The CTA-EB stated that even though Section 9²¹ of RA 9511 contains an "in lieu of all taxes" clause in its first paragraph, the succeeding paragraph states NGCP's liability to pay taxes on its "real estate, buildings, and personal property, as other corporations are now or hereby may be required by law to pay." Moreover, the Local Government Code withdrew the exemption from real property tax of NGCP's predecessors (NPC and TRANSCO). The assessed properties do not fall under the classifications under Sections 216 and 218(d) of the Local Government Code because although NGCP is engaged in the generation and transmission of electric power, it is not a government-owned or controlled corporation.

The CTA-EB, however, noted that NGCP paid real property tax on the subject properties for 2001 to 2008, when NPC and TRANSCO were the owners of record of the subject properties. The CTA-EB held that NGCP was liable only for the real property tax incurred for the year 2009. The CTA-EB reduced NGCP's liability from ₱2,792,862.41 to ₱338,472.67, and ordered the City Treasurer of Cebu City to refund NGCP the amount of ₱2,454,389.74.

The dispositive portion of the Decision reads:

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

Respondent [City Treasurer of Cebu City] is hereby ORDERED TO REFUND in favor of petitioner [NGCP] the amount of ₱2,454,389.74.

SO ORDERED.²²

¹⁹ *Rollo* (G.R. No. 213157), pp. 200-201; *rollo* (G.R. No. 213558), pp. 111-112.

²⁰ *Rollo* (G.R. No. 213157), pp. 202-224; *rollo* (G.R. No. 213558), pp. 113-135.

²¹ *Supra* note 14.

²² *Rollo* (G.R. No. 213157), p. 54; *rollo* (G.R. No. 213558), p. 154.

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

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

The NGCP²³ and the City Treasurer of Cebu City²⁴ filed their respective motions for partial reconsideration.

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

The Issues

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

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

²³ *Rollo* (G.R. No. 213157), pp. 275-288; *rollo* (G.R. No. 213558), pp. 160-173.

²⁴ *Rollo* (G.R. No. 213157), pp. 289-296; *rollo* (G.R. No. 213558), pp. 174-181.

²⁵ *Rollo* (G.R. No. 213157), pp. 17-18.

In G.R. No. 213558, OIC Cuevas raised one issue:

The Court of Tax Appeals committed reversible error in ruling that the City of Cebu should refund in favor of NGCP the amount of ₱2,454,389.74.²⁶

To our mind, we consider the following: whether NGCP is liable for the payment of real property taxes on the subject properties and whether the correct amount of taxes was paid and collected.

The Court's Ruling

The petition has merit.

We remand the case to the CBAA for the assessment and computation of the correct amount of real property taxes on the subject properties for two different periods: the years 2001 to 2008 for NPC/TRANSCO, and the year 2009 for NGCP.

For the years 2001 to 2008, the CBAA should determine whether NPC/TRANSCO owned and used the subject properties in connection with the transmission of electricity, and assess the subject properties in accordance with the Local Government Code. For the year 2009, the CBAA should determine whether the subject properties are used in connection with NGCP's franchise. Properties used in connection with NGCP's franchise are exempt from tax, in accordance with NGCP's franchise. Properties not used in connection with NGCP's franchise should be assessed and subjected to real property tax, in accordance with the Local Government Code.

NGCP's Tax Liabilities

Prior to the enactment of Republic Act No. 9136 (RA 9136), or the Electric Power Industry Reform Act of 2001 (EPIRA), the NPC was responsible for the development, production, and transmission of electric power on a nationwide basis.²⁷

²⁶ *Rollo* (G.R. No. 213558), p. 9.

²⁷ Section 2 of RA 6395 provides:

The National Power Corporation; Its Corporate Life; "Corporation" and "Board" Defined. To carry out the above-stated policy, specifically to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis, the public corporation created under Commonwealth Act Numbered One hundred twenty and known as the "National Power Corporation" shall continue to exist for fifty years from and after the expiration of its present corporate existence.

NPC enjoyed exemption from real property taxes from 1936 until the effectivity of Republic Act No. 7160 or the Local Government Code. The effectivity of the Local Government Code on 1 January 1992 limited NPC's exemption from real property tax to "machineries and equipment that are actually, directly and exclusively used by x x x government owned or controlled corporations engaged in the x x x generation and transmission of electric power."²⁸ The Local Government Code stated that the assessment level for this class should not exceed the rate of 10% of the property's fair market value.²⁹

With the passage of EPIRA, TRANSCO assumed NPC's transmission function.³⁰ RA 9511, enacted on 1 December 2008, granted NGCP a legislative franchise as TRANSCO's concessionaire.³¹

²⁸ Section 234(c) of RA 7160 provides:

Exemptions from Real Property Tax. – The following are exempted from payment of the real property tax:

x x x x

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

x x x x

²⁹ Supra note 17.

³⁰ Section 8 of RA 9136 provides:

Creation of the National Transmission Company. – There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

x x x x

³¹ Section 1 of RA 9511 provides:

Nature and Scope of Franchise. - Subject to the provisions of the Constitution and applicable laws, rules and regulations, and subject to the terms and conditions of the concession agreement and other documents executed with the National Transmission Corporation (TRANSCO) and the Power Sector Assets and Liabilities Management Corporation (PSALM) pursuant to Section 21 of Republic Act No. 9136, which are not inconsistent herewith, there is hereby granted to the National Grid Corporation of the Philippines, hereunder referred to as the Grantee, its successors or assigns, a franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines, The Grantee shall continue to operate and maintain the subtransmission systems which have not been disposed by TRANSCO. Likewise, the Grantee is authorized to engage in ancillary business and any related business which maximizes utilization of its assets such as, but not limited to, telecommunications system, pursuant to Section 20 of Republic Act No. 9136. The scope of the franchise shall be nationwide in accordance with the Transmission Development Plan, subject to amendments or modifications of the said Plan, as may be approved by the Department of Energy of the Republic of the Philippines.

NGCP's tax provisions in RA 9511 contained an "in lieu of all taxes" clause. We reproduce Section 9 of RA 9511, the tax provisions of NGCP's franchise, below:

Section 9. *Tax Provisions.* – In consideration of the franchise and rights hereby granted, the Grantee [NGCP], its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee [NGCP] from its operation under this franchise. Said tax shall be in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: *Provided*, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: *Provided, further*, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).

Back in 2003, this *ponente* discussed the "in lieu of all taxes" clause in a separate opinion in *PLDT v. City of Davao*.³² The Court struck down PLDT's argument that the "in lieu of all taxes" clause in Smart's franchise exempts PLDT from the payment of the local franchise tax imposed by the City of Davao. At first glance, it may seem that the "in lieu of all taxes" clause in Smart's franchise is similarly worded to that of NGCP. Smart's tax provisions in Section 9 of Republic Act No. 7294 read as follows:

Tax provisions. – The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof: *Provided*, that the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue.

³² 447 Phil. 571, 588-598 (2003).

Under Republic Act No. 7294, Smart was liable to pay the following taxes: (1) the same taxes on real estate, buildings, and personal property exclusive of the franchise, as other persons or corporations are required by law to pay; (2) a franchise tax, which shall be in lieu of taxes on franchise or earnings; and (3) income taxes under the National Internal Revenue Code.

Part of the discussion in the separate opinion went as follows:

Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer. Tax exemptions cannot arise by mere implication, much less by an implied re-enactment of a repealed tax exemption clause.
x x x.

x x x x

Smart's franchise states that the 3 percent "*franchise tax*" shall be "in lieu of all taxes." Clearly, it is the *franchise tax* that shall be in lieu of all taxes referred to in Section 9, and not the VAT or any other tax. Following the rule on strict interpretation of tax exemptions, the "in lieu of all taxes" clause cannot apply when what is paid is a tax other than the franchise tax. Since the franchise tax on telecommunications companies has been abolished, the "in lieu of all taxes" clause has now become *functus officio*, rendered inoperative for lack of a franchise tax. Revenue Memorandum Circular No. 5-96 issued by the Commissioner of Internal Revenue stating that the VAT shall be "in lieu of all taxes" since it merely replaced the franchise tax is void for lack of a legal basis.

x x x [T]he "in lieu of all taxes" clause in Smart's franchise refers only to taxes, other than income tax, imposed under the National Internal Revenue Code. The "in lieu of all taxes" clause does not apply to local taxes. The proviso in the first paragraph of Section 9 of Smart's franchise states that the grantee shall "continue to be liable for income taxes payable under Title II of the National Internal Revenue Code." Also, the second paragraph of Section 9 speaks of tax returns filed and taxes paid to the "Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code." Moreover, the same paragraph declares that the tax returns "shall be subject to audit by the Bureau of Internal Revenue." Nothing is mentioned in Section 9 about local taxes. The clear intent is for the "in lieu of all taxes" clause to apply only to taxes under the National Internal Revenue Code and not to local taxes. Even with respect to national internal revenue taxes, the "in lieu of all taxes" clause does not apply to income tax.

If Congress intended the "in lieu of all taxes" clause in Smart's franchise to also apply to local taxes, Congress would have expressly mentioned the exemption from municipal and provincial taxes. Congress could have used the language in Section 9 (b) of Clavecilla's old franchise, as follows:

x x x in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, *municipal, provincial* or national, from which the grantee is hereby expressly exempted, x x x.

However, Congress did not expressly exempt Smart from local taxes. Congress used the “in lieu of all taxes” clause only in reference to national internal revenue taxes. The only interpretation, under the rule on strict construction of tax exemptions, is that the “in lieu of all taxes” clause in Smart’s franchise refers only to national and not to local taxes.

PLDT cites *Philippine Railway Co. v. Nolting* [34 Phil. 401 (1916)] to support its claim that the “in lieu of all taxes” clause includes exemption from local taxes. However, in *Philippine Railway* the franchise of the railway company expressly exempted it from *municipal and provincial taxes*, as follows:

Such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature – *municipal, provincial* or central - upon its capital stock, franchises, right of way, earnings, and all other property owned or operated by the grantee, under this concession or franchise.

If anything, *Philippine Railway* shows the need to avoid ambiguity by specifying the taxing authority - municipal, provincial or national - from whose jurisdiction the taxing power is withheld to create the tax exemption. This is not the case in Smart’s franchise, where the “in lieu of all taxes” clause refers only to national internal revenue taxes.³³

We take note of the pronouncements made in the separate opinion, and apply them to the present set of facts.

First. Tax exemptions must be clear and unequivocal, and must be directly stated in a specific legal provision.

In the present case, Section 9 of RA 9511 provided for NGCP’s tax liabilities and exemptions.

Second. The “in lieu of all taxes” clause is strictly limited to the kind of taxes, taxing authority, and object of taxes specified in the law.

Section 9 of RA 9511 states that NGCP’s payment of franchise tax is in lieu of payment of “income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, **local or national**, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise.” Thus, in contrast to Smart’s franchise as

³³ Id. at 591-595. Underscoring supplied, boldfacing and italicization in the original.

quoted above, Section 9 of RA 9511 clearly stated that the NGCP's "in lieu of all taxes" clause includes taxes imposed by the local government on properties used in connection with NGCP's franchise.

We now proceed to the determination of NGCP's tax liabilities.

Determination of NGCP's Tax Liabilities

All parties are in agreement that NGCP paid real property taxes on the subject properties for the years 2001 to 2009. From 2001 to 2008, the subject properties were under the control and supervision of NPC/TRANSCO. It was only in 2009 that NGCP took control of the subject properties.

The CTA-EB summarized the amount of taxes paid by NGCP³⁴ as follows:

RPT-DS-FNOD0909-16-020				
Year	Tax Due	Interest	Discount	Total Amount Due
2003	₱108,486.00	₱78,109.92	-	₱186,595.92
2004	108,486.00	78,109.92	-	186,595.92
2005	108,486.00	78,109.92	-	186,595.92
2006	150,322.20	108,231.98	-	258,554.18
2007	150,322.20	102,219.10	-	252,541.30
2008	150,322.20	66,141.77	-	216,463.97
2009	150,322.20	22,548.33	₱3,758.06	169,112.47
Total	₱926,746.80	₱533,470.94	₱3,758.06	₱1,456,459.68
RPT-DS-FNOD0909-21-030				
Year	Tax Due	Interest	Discount	Total Amount Due
2001	₱40,324.20	₱29,033.42	-	₱69,357.62
2002	40,324.20	29,033.42	-	69,357.62
2003	40,324.20	29,033.42	-	69,357.[62]
2004	40,324.20	29,033.42	-	69,357.[62]
2005	40,324.20	29,033.42	-	69,357.[62]
2006	73,959.60	53,250.91	-	127,210.51

³⁴ *Rollo* (G.R. No. 213157), pp. 52-53; *rollo* (G.R. No. 213558), pp. 152-153.

2007	73,959.60	50,292.53	-	124,252.13
2008	73,959.60	32,542.22	-	106,501.82
2009	73,959.60	11,093.94	₱1,848.99	83,204.55
Total	₱497,459.40	₱292,346.70	₱1,848.99	₱787,957.11
RPT-DS-FNOD0909-21-002				
Year	Tax Due	Interest	Discount	Total Amount Due
2004	₱26,636.40	₱19,178.21	-	₱45,814.61
2005	26,636.40	19,178.21	-	45,814.61
2006	76,582.80	55,139.62	-	131,722.42
2007	76,582.80	52,076.30	-	128,659.10
2008	76,582.80	33,696.43	-	110,279.23
2009	76,582.80	11,487.42	₱1,914.57	86,155.65
Total	₱359,604.00	₱190,756.19	₱1,914.57	₱548,445.62
GRAND TOTAL				₱2,792,862.41

Taxes are not debts; but NGCP's payment of NPC/TRANSCO's tax liabilities made NPC/TRANSCO indebted to NGCP. Article 1236 of the Civil Code is applicable in the present situation: NGCP has an interest in the payment of NPC/TRANSCO's real property taxes from 2001 to 2008. NGCP will not be able to exercise its franchise should the local government auction the subject properties. The City Treasurer of Cebu City, on the other hand, is bound to accept NGCP's payment of the taxes due from NPC/TRANSCO. NGCP's remedy then, is to demand, not from the City Treasurer of Cebu City, but from NPC/TRANSCO the amount of taxes which redounded to its benefit. Article 1236 provides in part:

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

However, the City Treasurer of Cebu City may collect real property taxes only in the proper amount. The City Treasurer of Cebu City should refund to NGCP any excess in its payment.

Applicable Taxes from 2001 to 2008

The subject properties were under the control of NPC/TRANSCO from 2001 to 2008. NPC/TRANSCO was not exempt from real property tax during this period. The applicable laws on real property taxes on the subject properties from 2001 to 2008 are Sections 216³⁵ and 218(d)³⁶ of the Local Government Code.

The CBAA should determine whether the subject properties belong to the special classes of real property defined in Section 216: whether they are “owned and used by x x x government-owned or controlled corporations rendering essential public services in the x x x generation and transmission of electric power.” If the subject properties belong to the special classes of real property, then the assessment level should not exceed 10%, in accordance with Section 218(d). If the subject properties do not belong to the special classes of real property, then the assessment level should be based on actual use,³⁷ in accordance with Section 218(a-c).³⁸

³⁵ Supra note 16.

³⁶ Supra note 17.

³⁷ Section 217 of the Local Government Code reads: *Actual Use of Real Property as Basis for Assessment*. – Real property shall be classified, valued and assessed on the basis of its actual use regardless of where located, whoever owns it, and whoever uses it.

³⁸ Section 218 of the Local Government Code reads: *Assessment Levels*. - The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

(a) On Lands:

Class	Assessment Levels
Residential	20%
Agricultural	40%
Commercial	50%
Industrial	50%
Mineral	50%
Timberland	20%

(b) On Buildings and Other Structures:

(1) Residential
Fair Market Value

Over	Not Over	Assessment Levels
	₱ 175,000.00	0%
₱ 175,000.00	300,000.00	10%
300,000.00	500,000.00	20%
500,000.00	750,000.00	25%
750,000.00	1,000,000.00	30%
1,000,000.00	2,000,000.00	35%
2,000,000.00	5,000,000.00	40%
5,000,000.00	10,000,000.00	50%
10,000,000.00		60%

Applicable Taxes for 2009

NGCP took control of the subject properties in 2009. Although laws on real property taxes are prescribed by the Local Government Code, it is imperative to examine the applicable tax provisions in NGCP's franchise.

Section 9³⁹ of RA 9511 provides that NGCP shall pay "a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise." This franchise tax is "**in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national,** on its franchise, rights, privileges, receipts,

(2) Agricultural
Fair Market Value

Over	Not Over	Assessment Levels
	₱ 300,000.00	25%
₱ 300,000.00	500,000.00	30%
500,000.00	750,000.00	35%
750,000.00	1,000,000.00	40%
1,000,000.00	2,000,000.00	45%
2,000,000.00		50%

(3) Commercial / Industrial
Fair Market Value

Over	Not Over	Assessment Levels
	₱ 300,000.00	30%
₱ 300,000.00	500,000.00	35%
500,000.00	750,000.00	40%
750,000.00	1,000,000.00	50%
1,000,000.00	2,000,000.00	60%
2,000,000.00	5,000,000.00	70%
5,000,000.00	10,000,000.00	75%
10,000,000.00		80%

(4) Timberland
Fair Market Value

Over	Not Over	Assessment Levels
	₱ 300,000.00	45%
₱ 300,000.00	500,000.00	50%
500,000.00	750,000.00	55%
750,000.00	1,000,000.00	60%
1,000,000.00	2,000,000.00	65%
2,000,000.00		70%

(c) On Machineries

Class	Assessment Levels
Agricultural	40%
Residential	50%
Commercial	80%
Industrial	80%

³⁹ Supra note 14.

revenues and profits, and **on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted.**”

It is very clear that NGCP’s payment of franchise tax exempts it from payment of real property taxes on properties used in connection with its franchise. However, NGCP’s tax exempt status on real property due to the “in lieu of all taxes” clause is qualified: NGCP shall be liable to pay the same tax as other corporations on real estate, buildings and personal property exclusive of their franchise. The phrase “exclusive of this franchise” means that real estate, buildings, and personal property used in the exercise of the franchise are not subject to the same tax as other corporations.

The CBAA should determine whether the subject properties are properties used in connection with NGCP’s franchise. If the subject properties are used in connection with NGCP’s franchise, then NGCP is exempt from paying real property taxes on the subject properties. If the subject properties are not used in connection with NGCP’s franchise, then the assessment level should be based on actual use,⁴⁰ in accordance with Section 218(a-c) of the Local Government Code.⁴¹

Correctness of the Amount of Taxes Collected and Paid

Given our explanation above, the amount of taxes assessed by the City Assessor of Cebu City, collected by the City Treasurer of Cebu City, and paid by NGCP was incorrect. The correct assessment, as well as its corresponding amount, is subject to the determination by the CBAA.

After the CBAA’s determination of the real property tax due, done in accordance with the guidelines we set forth above, the City Treasurer of Cebu City should refund the excess payment, if any, to NGCP. NGCP, in turn, should seek relief from NPC/TRANSCO to the extent that NPC/TRANSCO has benefited from NGCP’s payment to the City Treasurer of Cebu City.

WHEREFORE, we GRANT the petition. The Decision promulgated on 13 November 2013 and the Resolution promulgated on 23 June 2014 by the Court of Tax Appeals En Banc in CTA EB Case No. 849 are SET ASIDE.

⁴⁰ Supra note 37.

⁴¹ Supra note 38.

We **REMAND** this case to the Central Board of Assessment Appeals which is directed to determine the following:

1. whether the properties covered by RPT-DS-FNOD0909-16-020, RPT-DS-FNOD0909-21-030, and RPT-DS-FNOD0909-21-002 belong to the special classes of real property described in Section 216 of the Local Government Code, and assess the appropriate amount of real property taxes for the years 2001 to 2008; and
2. whether the properties covered by RPT-DS-FNOD0909-16-020, RPT-DS-FNOD0909-21-030, and RPT-DS-FNOD0909-21-002 are used by the National Grid Corporation of the Philippines in connection with its franchise. If the subject properties are not used in connection with NGCP's franchise, then the CBAA should assess the appropriate amount of real property taxes for the year 2009.

The City Treasurer of Cebu City shall refund to the NGCP any payment which it made in excess of the correct amount.

SO ORDERED.



ANTONIO T. CARPIO
Associate Justice

WE CONCUR:

(on leave)
ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice

(on official leave)
JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice