REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION, *Petitioner,*	**CTA EB NO. 1723** (CTA AC No. 117)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
PROVINCE OF DINAGAT ISLANDS AND ERMILINDA C. BIOL, *Respondents.*	Promulgated: SEP 19 2023 1:55 p.m.

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D E C I S I O N

MANAHAN, *J.*:

This resolves the *Petition for Review*[1] filed by petitioner National Power Corporation (NPC) on October 25, 2017 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[2], seeking for the reversal and setting aside of the *Decision* dated November 16, 2015[3] (Assailed Decision) and the *Amended Decision* dated September 14, 2017[4] (Assailed Amended Decision) rendered by the Third Division of the Court of Tax Appeals (CTA) in CTA AC No. 117, entitled "*National Power Corporation vs. Province of Dinagat Islands and Ermilinda C. Biol*", and the promulgation

[1] *Rollo*, CTA EB No. 1723, pp. 8-24.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp. 30-38.
[4] *Id.*, pp. 40-51.

of a new judgment declaring petitioner's Small Power Utilities Group (SPUG) as exempt from franchise tax.

The Facts

Petitioner NPC is a government-owned and controlled corporation created and existing by virtue of Republic Act (RA) No. 6395,[5] as amended, with principal office address at NPC Office Building Complex, corner Quezon Avenue and BIR Road, East Triangle, Diliman, Quezon City, Philippines.[6]

Respondents are the Province of Dinagat Islands, a local government unit organized and existing under Philippine laws with postal address at Provincial Hall Compound, San Jose, Dinagat Islands and Ermilinda C. Biol, the provincial treasurer of the Province of Dinagat Islands, respectively.[7]

On June 19, 2009, NPC received an Assessment Letter dated June 4, 2009 from respondents, demanding payment of franchise tax by petitioner's SPUG for the years 2006 to 2008 pursuant to Article G, Section 2G.02 of the Revenue Code of the Province of Dinagat Islands.[8]

On August 12, 2009, NPC filed a Protest Letter dated August 10, 2009 before the Provincial Treasurer pursuant to Part 1, Chapter VI, Section 195 of the Local Government Code (LGC) on the ground that upon effectivity of RA No. 9136 Electric Power Industry Reform Act (EPIRA) Law on June 26, 2001, NPC, a generation company, is no longer required to secure a franchise from the government, and that its SPUG is a functional unit of NPC which is not engaged in business as provided in Section 137 of the LGC.[9]

For failure of the Provincial Treasurer to resolve the protest filed by NPC within the period of sixty (60) days and to stop the subject Assessment from becoming final and executory in accordance with Section 195 of the LGC, NPC filed an Appeal with the Regional Trial Court (RTC), Branch 32 of Dinagat Islands ("RTC"), docketed as Civil Case No. 556,

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[5] An Act Revising the Charter of National Power Corporation.
[6] *Rollo*, p. 31.
[7] *Id.*
[8] *Id.*
[9] *Id.*

entitled "*National Power Corporation v. Province of Dinagat Islands and Ermilinda C. Biol.*"[10]

The RTC Branch 32 of Dinagat Islands denied petitioner NPC's appeal and affirmed respondents' right to assess petitioner of franchise tax. The dispositive portion of the Judgment states:[11]

> "**WHEREFORE**, for lack of merit the appeal is **DISMISSED**.
>
> **SO ORDERED**."

Hence, petitioner filed an appeal before the Court in Division which subsequently rendered the Assailed Decision where the dispositive portion reads as follow:

> "**WHEREFORE**, premises considered, the Assailed Judgment dated April 2, 2014 of Branch 32 of the Regional Trial Court of the Dinagat Islands, Surigao City is hereby **SET ASIDE** and the records of the case are hereby **REMANDED** to the court *a quo* for further proceedings in accordance with the pronouncements in this Decision.
>
> **SO ORDERED**."

Petitioner then moved for the reconsideration of the Assailed Decision which was partially granted, the dispositive portion of which reads as follows:

> "In view of the foregoing, petitioner's Motion for Reconsideration is hereby **PARTIALLY GRANTED**, but only insofar as its prayer for the Court to reconsider its Decision dated December (sic) 16, 2015 is concerned.
>
> **WHEREFORE**, premises considered, the Assailed Judgment dated April 2, 2014 of Branch 32 of the Regional Trial Court of the Dinagat Islands, Surigao City is hereby **SET ASIDE** and the records of the case are hereby **REMANDED** to the court *a quo* for further proceedings in accordance with the pronouncement in this Amended Decision.
>
> **SO ORDERED**."

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[10] *Rollo*, Decision dated November 16, 2015, p. 32; Annex "C" Judgment dated April 2, 2014, p. 55.
[11] *Id.*, *Judgment* dated April 2, 2014, p. 55.

Thus, the instant Petition for Review was filed by petitioner on October 25, 2017 after its Motion for Extension of time to file Petition for Review[12] was granted.[13]

On November 16, 2017, respondents were ordered to submit their comment on said petition.

However, per Records Verification dated June 29, 2022, respondents failed to file their comment on the instant petition.[14] Thus, the case was submitted for decision on August 30, 2022.[15]

The Issue

Whether the NPC-SPUG is exempt from payment of the local franchise tax (LFT).

Arguments of Petitioner[16]

Petitioner argues that the SPUG, being a component of petitioner NPC, does not likewise operate under a franchise and is only performing its missionary electrification function, a service not considered a business engagement. Hence, the SPUG is not subject to franchise tax.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b), Rule 8 of the RRCTA provide that:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
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> xxx xxx xxx

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[12] *Rollo*, CTA EB No. 1723, pp. 1-4.
[13] *Id.*, Minute Resolution dated October 18, 2017, p. 7.
[14] *Id.*, pp.
[15] *Id.*, Resolution dated August 30, 2022, pp. 173 to 175.
[16] *Supra*, Note 1.

> SEC. 3. *Who may appeal; period to file petition.-*
>
> (a) xxx xxx xxx
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the assailed *Amended Decision* dated September 14, 2017 was received by petitioner on September 26, 2017. Thus, petitioner had fifteen days from September 26, 2017 or until October 11, 2017 to file its petition.

Petitioner filed a Motion for Extension of time to file Petition for Review on October 11, 2017 which was granted under the Minute Resolution dated October 18, 2017 giving it until October 26, 2017 to file its Petition for Review. Thus, the filing of the instant petition on October 25, 2017 was on time.

Going now to the substantive aspect of the case, Section 195 of RA No. 7160, otherwise known as the LGC of 1991, provides:

> "SECTION 195. *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he **shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties**. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day

> period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable." (*Emphasis supplied*)

As shown in the aforesaid provision, the notice of assessment that will be issued by a local government unit against its taxpayers must not only contain the nature of the tax, fee or charge but also the amount of deficiency, the surcharges, interests and penalties.

In the instant case, petitioner grounded its judicial action against respondents on the Letter dated June 4, 2009, demanding payment of NPC's franchise obligation without specifying the amount due and due date. Thus, there was no amount of deficiency tax assessment yet issued against petitioner since an assessment must contain a fixed tax due as held in *Lucas G. Adamson, et al. v. Court of Appeals, et al.*,[17] to wit:

> "In the context in which it is used in the NIRC, **an assessment is a written notice** and demand made by the BIR on the taxpayer **for the settlement of a due tax liability that is** there definitely set and **fixed**. A written communication containing a computation by a revenue officer of the tax liability of a taxpayer and giving him an opportunity to contest or disprove the BIR examiner's findings is not an assessment since it is yet indefinite." (*Emphasis supplied*)

Further in *National Power Corporation v. The Province of Pampanga, et al.*,[18] the Supreme Court ruled that assessment is void if such did not contain the amount of deficiency tax, surcharges, interest, penalties, and the due date, to wit:

> "A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, **due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest**. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations "that taxpayers should be able to present their case and adduce supporting evidence." (Emphasis supplied; citations omitted)

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[17] G.R. Nos. 120935 and 124557, May 21, 2009.
[18] Resolution, G.R. No. 230648, October 06, 2021.

> Without doubt, the mandate of providing the taxpayer with notice of the facts and laws used as bases for the assessment is not to be mechanically applied. The purpose of this requirement is to adequately inform the taxpayer of the basis of the assessment to enable him to prepare for an intelligent or 'effective' protest or appeal of the assessment or decision. Thus, substantial compliance with the law is allowed if the taxpayer is later fully apprised of the basis of the deficiency taxes assessment, which enabled him to file an effective protest.
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> Here, the Assessment Letter hardly complies with the requirements of Section 195 of the LGC and implementing rules that will enable NPC to file an effective protest. The letter quoted provisions of the Tax Ordinance of the Province of Pampanga imposing franchise tax and penalties for non-payment or late payment. Glaringly absent, however, are the amount of the alleged deficiency tax, surcharges, interest, and penalties. The period covered by the assessment was not also indicated. Although Section 195 of the LGC does not expressly require the taxable period to be stated in the notice of assessment, the period is important to determine compliance with the prescriptive period when the Provincial Treasurer is authorized by law to assess and collect deficiency taxes." (*Underscoring ours*)

The absence of an assessment containing a fixed tax due is tantamount to an assessment without definite amount which is null and void. Hence, there is no basis to remand the case to the court a quo for the substantiation of the parties' respective claim as an assessment that is null and void, bears no valid fruit.[19]

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the *Decision* dated November 16, 2015 and the *Amended Decision* dated September 14, 2017 are hereby **REVERSED** and **SET ASIDE**. Respondent's assessment against petitioner for deficiency franchise tax for the years 2006 to 2008 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[19] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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EN BANC

NATIONAL POWER CORPORATION,
Petitioner,

- versus -

PROVINCE OF DINAGAT ISLANDS AND ERMILINDA C. BIOL,
Respondents.

CTA EB NO. 1723
(CTA AC No. 117)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
SEP 19 2023 1:55 p.m.

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DISSENTING OPINION

***BACORRO-VILLENA, J.*:**

With all due respect to the *ponencia* of our esteemed colleague, Associate Justice Catherine T. Manahan, it is my opinion that the Court *En Banc* cannot grant the relief sought by petitioner National Power Corporation (**petitioner/NPC**) for the reasons essayed below.

After a careful review of the records, with due respect, I am of the humble opinion that the case filed before the Regional Trial Court, Branch 37, of Dinagat Islands (**RTC**) was filed prematurely as there was actually no assessment letter or notice to speak of (that could have been the proper subject of an appeal before it).

As the records bear, the legal controversy all stemmed from a Letter dated 19 February 2009 (**first letter**) that respondent Ermilinda Biol (**respondent Biol**) sent to petitioner National Power Corporation (**NPC**)(**petitioner**) requesting copies of the latter's financial statements in connection with the imposition of a local franchise tax by respondent Province of Dinagat Islands (**respondent province**). The Letter reads, in part:

> ...
>
> **National Power Corporation's Small Power Utilities Group (NPC-SPUG)**, a government owned and controlled corporation, granted a franchise and is mandated by law to undertake the electrification of areas not connected to the main transmission grid, just like Dinagat Province is covered by the imposition of Franchise tax.
>
> In this connection, we would like to ask for your financial statement indicating total gross receipts derived from the sale and distribution of electricity in Dinagat Province from 2006 up to 2008, to serve as our basis in the billing of the said tax obligation.[1]
>
> ...

Since petitioner did not comply nor heed the above request, respondent Biol, in another Letter dated 04 June 2009 (**second letter**), reiterated the said request for petitioner's financial statements, demanding payment, and threatening legal action to force compliance with the respondent province's tax ordinance. Petitioner received the second letter on 19 June 2009.

Later, in a Letter dated 10 August 2009 (**protest letter**) addressed to respondent Biol, petitioner stated that it is no longer considered a public utility upon enactment of the Electric Power Industry Reform Act of 2001[2] (**EPIRA**) or Republic Act (**RA**) No. 9136 and, thus, it does not enjoy the benefit of a franchise for its operation. Furthermore, petitioner stated that it pursues a "missionary electrification function" within Dinagat Province and that the expenses it incurs in generating electricity is significantly higher than the amounts paid by its consumers within the province.

Petitioner received no further communication from respondents thereafter hence, treating respondent's first and second letters as a form of tax assessment and respondents' inaction on its letter as something

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1 Emphasis in the original text.

2 AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES.

appealable to the courts, it brought a judicial action before the RTC on the basis of Section 195 of the Local Government Code (**LGC**) of 1997, which reads:

> ...
> *SEC. 195. Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.
> ...

Similarly, the *ponencia* treated both letters (but more particularly the first letter of 19 February 2009) as assessment notices. Treated as such, they were struck down as void and invalidated as they do not contain the amount of tax due.

In invalidating the actions of respondent Biol, the *ponencia* relied on the principle laid down in the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[3] (**Fitness by Design**) as cited in the case of *National Power Corporation v. The Province of Pampanga, et al.*[4] (**Pampanga**) where the Supreme Court held, thusly:

> ...
> A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative

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3 G.R. No. 215957, 09 November 2016; Citations omitted.
4 G.R. No. 230648, 06 October 2021.

> investigations "that tax[p]ayers should be able to present their case and adduce supporting evidence."
> ...

In *Pampanga*, the letter sent by the Province of Pampanga to NPC contained the following demand:

> ...
> "[o]n the basis of the above quoted provision, we are writing you to pay your Franchise Tax due to the Province of Pampanga to the Provincial Treasurer's Office, City of San Fernando, Pampanga."
> ...

In the case at bar, admittedly, respondent Biol's second letter of 04 June 2009 contained a similar demand after reiterating petitioner's failure to comply with its request for submission of financial statements as basis for the calculation of local franchise tax. The said letter further stated that if petitioner failed to voluntarily pay, respondents would be "**compelled to take legal action to obtain compliance**".

With all due respect, to my mind, a distinction must necessarily be carved out between *Pampanga* and the present case.

In *Pampanga*, the local government unit (**LGU**) made an immediate demand for the payment of local franchise tax based on a local ordinance. In contrast thereto, in the case at bar, respondent Biol's first letter of 19 February 2009 merely requested for the submission of financial documents to serve as basis for the computation of local franchise taxes. It was only after petitioner failed to comply with such request that respondent Biol (in its second letter) demanded payment of the local franchise tax on the basis of the formula indicated in Article G, Section 2G.02 of its local revenue code which is "50% of 1% of the annual gross receipts" of the taxpayer.

The lack of any amount due stated in the second letter is understandable as the information needed as basis for its computation has yet to be submitted by petitioner. Furthermore, there is nothing final in the tenor of the demand made by respondent Biol as the second letter states that respondents will be forced take legal action unless the tax is voluntarily paid. This then clearly shows that the second letter is strictly *not* an assessment in itself but a threat to petitioner that an assessment shall be made in case of petitioner's failure to comply with its local tax ordinance.

To curtail an LGU's attempt to compel obedience to its local ordinances at such an early a stage unjustly infringes on the LGU's right to impose taxes within its territorial jurisdiction.

As the records bear clearly, the first letter honors petitioner's due process rights by giving it an opportunity to be heard through the request of its financial documents prior to enforcing any payment of its foreseen unpaid tax obligations. As earlier stated, it was only after such failure to comply did respondent Biol make an attempt or attempts to demand payment. To invalidate such attempts would leave the LGU in a sort of legal limbo wherein, on one hand, its demand for voluntary payment after a taxpayer's failure to submit its financial records shall be seen as an invalid demand for lacking a fixed amount; while, on the other hand, a demand for a fixed amount due at this time (when the documents necessary for the computation thereof have been denied the LGU) would likewise be stricken down as a violation of the taxpayer's due process rights on the ground of lack of factual basis.

Considering the tenor of respondent Biol's first and second letters to petitioner, it is my humble opinion that there was yet no assessment to speak of that petitioner, in turn, can dispute or appeal to the RTC. This is even made clear by respondent Biol's *threat* of legal action in the event that petitioner fails to comply with its local ordinance or if petitioner continuously refuses to supply respondents with the needed financial statements for the calculation of the local franchise tax. It is also worth of note that there was also no threat of *finality* of the demand to pay which, to my mind, leaves petitioner with nothing to appeal to the RTC (or to this Court).

With the foregoing, I vote to **DISMISS** the present petition for lack of merit. Petitioner National Power Corporation's action or appeal before the Regional Trial Court, Branch 37, Dinagat Islands appears to have been filed prematurely.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice