

**REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY**

**EN BANC**

**IMELDA MACANES, in her capacity as the Provincial Treasurer of Benguet and MERLITA G. TOLITO, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet,**

*Petitioners,*

-versus-

**LUZON HYDRO CORPORATION,**  
*Respondent.*

**CTA EB NO. 2407**  
(CBAA Case No. L-141-2018)

*Present:*

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

Promulgated:

**NOV 07 2022**

*Y: 10 pm*

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X

**DECISION**

**CUI-DAVID, J:**

Before Us is a Petition for Review filed by petitioners Imelda Macanes and Merlita G. Tolito in their respective capacities as the Provincial Treasurer of Benguet and the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet under Section 4(c), Rule 8,<sup>1</sup> in relation to Section 2(e), Rule 4<sup>2</sup> of the Revised Rules of the Court of Tax Appeals (RRCTA), assailing the Central Board of Assessment Appeals (CBAA) Decision dated May 29, 2020 (assailed Decision) and the

<sup>1</sup> SEC. 4. *Where to appeal; mode of appeal.* – ...

(c) An appeal from a decision or ruling of the Central Board of Assessment Appeals or the Regional Trial Court in the exercise of their appellate jurisdiction shall be taken to the Court by filing before it a petition for review as provided in Rule 43 of the Rules of Court. The Court *En Banc* shall act on the appeal.

<sup>2</sup> 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: ...

(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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**DECISION**

CTA *EB* No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 2 of 25

x-----x

Resolution dated November 25, 2020 (assailed Resolution) in CBAA Case No. L-141-2018.

**THE PARTIES**

Petitioners Imelda Macanes and Merlita G. Tolito are the Provincial Treasurer of Benguet and the Officer-in-Charge of the Municipal Treasury Office (OIC Municipal Treasurer) of Bakun, Benguet, respectively. They may be served with notices and other court processes through counsel Benguet Provincial Legal Office at the Benguet Provincial Capitol Building, Poblacion, La Trinidad, Benguet.

Respondent Luzon Hydro Corporation (LHC) is a domestic corporation organized and existing under the laws of the Republic of the Philippines with its principal office located at Alilem, Ilocos Sur. It may be served with orders, resolutions, and other legal processes through its counsel Puno and Puno situated on the 33<sup>rd</sup> floor, The Podium West Tower, 12 ADB Avenue, Ortigas Center, 1550 Mandaluyong City.

**THE FACTS**

On November 24, 1996, the National Power Corporation (NPC) entered into a Power Purchase Agreement (PPA) for the design, construction, and operation of the Bakun Hydroelectric Powerplant (BHP), under a Build Operate Transfer (BOT) agreement with the consortium composed of Northern Mini Hydro Corporation, Ever Electrical Manufacturing, Inc., Aboitiz Equity Ventures, Inc., and Pacific Hydro Limited (Consortium).<sup>3</sup> LHC became a party to and acceded to the rights and obligations of the Consortium under the PPA by means of an Accession Undertaking.<sup>4</sup>

On December 3, 1997, before the construction of the BHP, the NPC, LHC, the Province of Benguet, and the Municipality of Bakun entered into a Memorandum of Agreement (1997 MOA) defining their respective commitments and obligations in respect of the BHP.<sup>5</sup>

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<sup>3</sup> *EB* Docket, p. 26.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

**DECISION**

CTA *EB* No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 3 of 25

x-----x

Under the provisions of the PPA and the 1997 MOA, the BHP was constructed. The weir, desander, and tunnel were built within the Municipality of Bakun, while the powerplant house, power station, turbine inlet, and other equipment and machinery were built within the Municipality of Alilem, Ilocos Sur.<sup>6</sup>

In December 2007, NPC, the Province of Benguet, and the Municipality of Bakun entered into a Compromise Agreement (2007 Compromise Agreement), wherein the Province of Benguet and the Municipality of Bakun agreed to waive their claim of realty tax payment on the properties forming part of the BHP facility based on an eighty percent (80%) assessment level and NPC agreed to waive its claim for exemption from payment of realty tax. It shall assume payment based on a ten percent (10%) assessment level, effective from the commercial operation of BHP in 2002 up to 2012.<sup>7</sup>

On January 18, 2008, LHC, the Province of Benguet, and the Municipality of Bakun entered into an MOA (2008 MOA), wherein they agreed to waive their right to assess and collect realty taxes on the properties forming part of the BHP facility for the years 2002 to 2015.<sup>8</sup>

On December 20, 2012, LHC and the Province of Benguet entered into an MOA (2012 MOA), wherein the Province of Benguet confirmed the waiver of its right to assess and collect realty taxes on the properties forming part of the BHP facility for the period covering January 1, 2016, to February 5, 2026.<sup>9</sup>

On January 14, 2013, NPC and the Province of Benguet entered into a Compromise Agreement (2013 Compromise Agreement), wherein the Province of Benguet confirmed the waiver of its right to assess and collect realty taxes on the properties forming part of the BHP facility based on an eighty percent (80%) assessment level and NPC agreed to waive its claim for exemption from payment of realty tax. It shall assume payment based on a ten percent (10%) assessment level, effective from January 1, 2002, until February 5, 2026.<sup>10</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *EB* Docket, p. 27.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 4 of 25

x-----x

Under the 2013 Compromise Agreement, the Province of Benguet likewise agreed to adopt and apply the special assessment level of ten percent (10%) to “Future Assets” or “any and all properties classified as real property to be acquired, installed, built or constructed and are required to be declared ... forming an integral part of BHP facility.”<sup>11</sup>

On November 24, 2015, LHC declared its machineries consisting of the tunnel, anchor blocks, HDPE pipes, and rock bolts with the Municipal Assessor’s Office of Bakun, Benguet. The machineries are located at Mangta, Sinacbat, Bakun, and Benguet (Bakun property).<sup>12</sup>

In 2016, after LHC declared the Bakun property, it was required to pay the assessed real property tax (RPT) based on an assessment level of 80% in the amount of Four Hundred Eighty-Six Thousand Nine Hundred Seventy-Three and 72/100 centavos (₱486,973.72), covering the back taxes from 2002 to 2015 and the amount due for 2016.<sup>13</sup>

On January 8, 2016, LHC paid under protest the said assessed RPT with the Office of the Municipal Treasurer of Bakun, Benguet.<sup>14</sup>

On February 5, 2016, LHC filed its protest on the said assessed RPT with the Office of the Provincial Treasurer of Benguet *via* registered mail, copy furnished the Municipal Treasurer and Assessor, respectively, of Bakun, Benguet.<sup>15</sup> LHC demanded the refund of the RPT it paid since the subject properties should have been subjected to an assessment level of 10% based on the 2013 Compromise Agreement instead of the 80% assessment level imposed.<sup>16</sup>

As the 60-day period prescribed under Section 226<sup>17</sup> of the Local Government Code (LGC) for the Provincial Treasurer of Benguet to decide on LHC’s protest lapsed, LHC filed its Petition

<sup>11</sup> *Id.*

<sup>12</sup> *EB Docket*, p. 14.

<sup>13</sup> *Id.* and pp. 27-28.

<sup>14</sup> *EB Docket*, pp. 14 and 28.

<sup>15</sup> *EB Docket*, p. 14.

<sup>16</sup> *Id.*

<sup>17</sup> 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 Board of 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.

**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 5 of 25

x-----x

for Review with the Local Board of Assessment Appeals (LBAA) on June 6, 2016.<sup>18</sup>

On June 17, 2016, the LBAA received LHC's Petition for Review dated June 6, 2016, *via* registered mail.<sup>19</sup> It reiterated in the petition its arguments on its protest earlier filed with the Provincial Treasurer of Benguet. It also added that NPC must pay the RPT under the PPA dated November 4, 1996. Petitioner further contends that NPC is exempt from paying the RPT under Section 234(c)<sup>20</sup> of the LGC.<sup>21</sup>

On September 7, 2017, during the proceedings before the LBAA, the parties stipulated that the subject assessment or assessed back taxes shall cover only the years 2005 to 2015 and 2016 and shall not cover assessments before 2005.<sup>22</sup>

On April 5, 2018, the LBAA partially granted LHC's petition. It declared that LHC is liable to pay the subject RPT and not NPC; the 2013 Compromise Agreement does not include future properties and does not cover the subject Bakun Property; the 80% assessment level should be imposed on the subject Bakun property; and petitioners make the necessary correction on their assessment and not to include years 2002, 2003 and 2004 as per the parties' stipulation.<sup>23</sup>

Aggrieved by the Decision of the LBAA, LHC filed its appeal before the CBAA.

On May 29, 2020, the CBAA promulgated the assailed Decision partially denying LHC's appeal, in this wise:

**WHEREFORE**, premises considered, Petitioner-Appellant's partial Appeal is **DENIED** with the exception that the Respondents-Appellees are hereby ordered to re-compute the real property taxes on the subject properties based on the provisions of Executive Order No. 88, Series of 2019.



<sup>18</sup> EB Docket, p. 15.

<sup>19</sup> *Id.*

<sup>20</sup> SEC. 234. *Exemptions from Real Property Tax.* - The following are exempted from payment of the real property tax:

...  
(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; ...

<sup>21</sup> EB Docket, p. 15.

<sup>22</sup> EB Docket, p. 16.

<sup>23</sup> EB Docket, p. 20.

**DECISION**

CTA *EB* No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 6 of 25

x-----x

**SO ORDERED.**<sup>24</sup>

There is no showing that respondent appealed the assailed Decision. Petitioner filed a Motion for Partial Reconsideration<sup>25</sup> upon receipt of the assailed Decision, which the CBAA denied in the assailed Resolution dated November 25, 2020:

**WHEREFORE**, the Respondents-Appellees' Motion for Partial Reconsideration dated August 19, 2020 is hereby **DENIED** for lack of merit.

**SO ORDERED.**<sup>26</sup>

Hence, petitioners filed this Petition for Review on January 21, 2021.

**THE ISSUE**

Petitioners submit the following lone error for this Court's resolution:

THE HONORABLE CENTRAL BOARD OF ASSESSMENT APPEALS ERRED WHEN IT ORDERED THE RESPONDENTS-APPELLEES TO RE-COMPUTE THE REAL PROPERTY TAXES ON THE SUBJECT PROPERTIES BASED ON THE PROVISIONS OF EXECUTIVE ORDER NO. 88, SERIES OF 2019.

***Petitioners' arguments:***

In their Petition for Review, petitioners claim that the applicability of Executive Order (EO) No. 88, Series of 2019<sup>27</sup> was never raised as an issue before the proceedings in the LBAA and the CBAA. The issues submitted during the pre-trial before the CBAA should govern the trial proper. Hence, the CBAA should have limited its assailed Decision on the issues identified by the parties.

  
<sup>24</sup> *EB* Docket, pp. 68-69.

<sup>25</sup> *EB* Docket, pp. 70-76.

<sup>26</sup> *EB* Docket, p. 79.

<sup>27</sup> REDUCTION AND CONDONATION OF REAL PROPERTY TAXES AND INTEREST/PENALTIES ASSESSED ON THE POWER GENERATION FACILITIES OF INDEPENDENT POWER PRODUCERS UNDER BUILD-OPERATE-TRANSFER CONTRACTS WITH GOVERNMENT-OWNED OR-CONTROLLED CORPORATIONS, August 13, 2019.

**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 7 of 25

x-----x

Petitioners submit that the assailed Decision is incongruent with *NPC v. Luzon Hydro Corporation, et al.*<sup>28</sup> (*NPC*) and *Luzon Hydro Corporation v. Banggay T. Alwis, Municipal Assessor, et al.*,<sup>29</sup> where the properties involved therein are the properties under the same PPA. LHC prayed therein for their alleged exemption in paying realty taxes where the Supreme Court held that the subject properties are neither exempt from RPT nor can they be classified as “special,” subject to a 10% assessment level. At the time, it was EO No. 60 that was in effect, not EO No. 88. The Supreme Court, however, did not make a ruling on the applicability of EO No. 60 or any other executive issuances and limited its decision on the taxability of LHC and the exemptions it invoked as those are the issues that were raised.

Petitioners further emphasize that nowhere in the provisions of EO No. 88 does it specifically identify LHC as one of the Independent Power Producers (IPPs) covered by such issuance, citing Section 1 of the said EO. The assailed Decision is premature for precociously determining the applicability of EO No. 88, which should only be raised as an issue by LHC if they choose to invoke EO No. 88 so that petitioners can deny the same. Said issue should be ventilated in a separate case where both parties will be given a chance to submit their arguments on the matter.

***Respondent’s counter-arguments:***

Respondent, in its Comment, counter-argues that petitioners failed to show authority to file the Petition; the Petition was filed out of time; the Petition merely rehashed petitioners’ Motion for Partial Reconsideration on the assailed Resolution, and the CBAA correctly applied EO No. 88; hence, the Petition must be denied.

It claims that CBAA correctly applied EO No. 88 in the assailed Decision under Section 8, Rule 51 of the Rules of Court. It adds that its Petition for Review before the LBAA raised an issue as to “whether it is entitled to a tax refund or credit in the total amount of Four Hundred Eighty-Six Thousand Nine Hundred Seventy-Three Pesos and 72/100 (₱486,972.71) [sic]

<sup>28</sup> G.R. No. 244450, June 10, 2019.

<sup>29</sup> G.R. No. 244659, June 10, 2019.



**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 8 of 25

x-----x

representing overpaid realty taxes on the Bakun Property.”<sup>30</sup> The application of EO No. 88 is closely related and intertwined with the afore-quoted issue. Thus, its application was necessary to completely dispose of the issue on the correct assessment level to be imposed on the Bakun property.

**THE COURT EN BANC’S RULING**

Before We determine the applicability of EO No. 88, We shall first rule on the timeliness of the filing of the present Petition and the authority of the petitioners to file the same, as both issues may warrant the outright dismissal of this case.

**The instant Petition for Review was timely filed.**

Respondent argues that petitioners lack the authority to file the Petition before this Court. Even if they were authorized to file, the Petition should still be dismissed for being filed beyond the reglementary period.

Under Section 11<sup>31</sup> of Republic Act (RA) No. 1125, as amended, and Section 3(c), Rule 8<sup>32</sup> of the RRCTA, a petition for review must be filed with this Court within thirty (30) days from receipt of the copy of the questioned decision or ruling of the CBAA in the exercise of its appellate jurisdiction.

Petitioners allege that the assailed Resolution dated November 25, 2020, was received through their counsel on December 29, 2020.<sup>33</sup>

<sup>30</sup> EB Docket, Comment, par. 32, p. 129.

<sup>31</sup> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. xxx ... Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *En Banc*. (Emphasis supplied)

<sup>32</sup> SEC. 3. *Who may appeal; period to file petition.* - (c) A party adversely affected by a decision or ruling of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of their appellate jurisdiction may appeal to the Court by filing before it a petition for review within thirty days from receipt of a copy of the questioned decision or ruling. (Emphasis supplied)

<sup>33</sup> EB Docket, p. 2.



**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 9 of 25

x-----x

As observed by the Court *En Banc*, petitioners alleged in the instant Petition for Review under the heading “Timeliness of the Petition” that they received a copy of the CBAA Resolution dated November 25, 2020, through counsel, on *December 29, 2020*. However, the Court *En Banc* noted that the upper right portion of the “Notice of Resolution” attached as Annex “P-5” of the Petition bears a stamped date of *December 17, 2020*, with a signature. The same signature appears in the upper right portion of the “Order” attached as Annex “P-6” of the Petition, below the stamped words “Provincial Legal Office Received.” Given the noted discrepancy between petitioners’ allegation that they received the assailed CBAA Resolution on *December 29, 2020*, and the date *December 17, 2020*, stamped on the “Notice of Resolution,” petitioners were directed to explain and submit proof of the actual date of receipt of the assailed CBAA Resolution.<sup>34</sup>

In their Compliance filed on April 29, 2021,<sup>35</sup> petitioners clarified that the assailed CBAA Resolution was received through counsel on *December 29, 2020*; that the date *December 17, 2020*, on the Notice of Resolution, was inadvertently stamped by the Benguet Provincial Legal Office’s receiving clerk when she was able to pick a dater stamp with an un-updated date (December 17, 2020) among the several dater stamps at the office; and that the actual receipt entered in the log book of the Provincial Legal Office was on December 29, 2020.

Respondent points out that petitioners failed to submit concrete proof of receiving the Resolution on *December 29, 2020*. They never submitted a copy of the logbook’s relevant page nor secured an affidavit from the receiving clerk who allegedly committed such inadvertence.<sup>36</sup> Thus, it may be presumed that *December 17, 2020*, is the date of receipt of the CBAA Resolution and not *December 29, 2020*. Petitioners had thirty (30) days from December 17, 2020, or until January 18, 2021, to file the Petition since the 30<sup>th</sup> day, January 16, 2021, fell on a Saturday. The Petition was filed only on January 21, 2021; thus, it should be dismissed outright as it was filed out of time.<sup>37</sup>



<sup>34</sup> EB Docket, Resolution dated March 2, 2021, pp. 87-90.

<sup>35</sup> *Id.*, Compliance dated April 29, 2021, pp. 92-95.

<sup>36</sup> *Id.*, Respondent’s Comment to the Petition for Review, pp. 115-137.

<sup>37</sup> *Id.*

**DECISION**

CTA *EB* No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 10 of 25

x-----x

The Court *En Banc* finds petitioners' explanation acceptable and constitutes sufficient compliance with the Court's directive to explain the noted discrepancy. Further, the Court's Judicial Records Division verified and confirmed from the CBAA that petitioner's date of receipt of the CBAA Resolution was indeed December 29, 2020.

The CBAA, through its Board Secretary II, Ms. Anna Maria A. Oliva, wrote:

...[P]er Manifestation dated January 4, 2021 filed by the Province of Benguet and received by this Agency on January 26, 2021, it was stated that the 25 November 2020 Resolution by the CBAA was received by them on December 29, 2020. Said Manifestation was signed by Richard S. Antero, Asst. Provincial Legal Officer and Jake A. Sagpaey, Attorney IV.

Counting thirty (30) days from December 29, 2020, petitioners had until January 28, 2021, to file their Petition for Review. The instant Petition was filed on January 21, 2021, or within the 30-day reglementary period, giving the Court *En Banc* the jurisdiction to decide the present case.

Having settled that the Petition was timely filed, We likewise rule that the Court *En Banc* has jurisdiction to take cognizance of this Petition under Section 2(e), Rule 4<sup>38</sup> of the RRCTA.

**Petitioners are not empowered to file the instant Petition for Review and to sign the requisite Verification and Certification of Non-Forum Shopping.**

Respondent claims that petitioners lack the authority to represent the Province of Benguet and the Municipality of Bakun, Benguet in filing the Petition for Review and to execute the Verification and Certification Against Forum Shopping attached to the Petition. Respondent relied on Sections 22

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<sup>38</sup> 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: ...

(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:...

**DECISION**

CTA *EB* No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 11 of 25

x-----x

(a)(2),<sup>39</sup> 468 (a)(1)(vii),<sup>40</sup> and 470(d) and (e)<sup>41</sup> of the LGC to support its claim that the Provincial and/or the Municipal Treasurer are not empowered to initiate an appeal before this Court. It further claims that the ruling on the fatal defect of the Certification of Non-Forum Shopping in the case of *Makati City Treasurer and City of Makati v. Mermac, Inc.*<sup>42</sup> applies on all fours in this case. Hence, this Court has sufficient ground to dismiss the instant Petition outright.

When directed by this Court to submit proof of their authorities to cause the filing of the instant Petition for Review issued by their respective *sanggunian*,<sup>43</sup> petitioners explained that the *sanggunian* authority is not necessary considering that the LGC expressly authorized local government units through their *local treasurers* to enforce the collection of the basic RPT in any court of competent jurisdiction.<sup>44</sup> Petitioners cited Sections 183 and 266 of the LGC, *viz.:*

SEC. 183. Collection of Delinquent Taxes, Fees, Charges or other Revenues through Judicial Action. — The local government unit concerned may enforce the **collection** of delinquent taxes, fees, charges or other revenues by civil action in any court of competent jurisdiction. The civil action

<sup>39</sup> SEC. 22. *Corporate Powers.* -

(a) Every local government unit, as a corporation, shall have the following powers:

...

(2) To sue and be sued;

<sup>40</sup> SEC. 468. *Powers, Duties, Functions and Compensation.*

(a) The *sangguniang panlalawigan*, as the legislative body of the province, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the province and its inhabitants pursuant to Section 16 of this Code in the proper exercise of the corporate powers of the province as provided for under Section 22 of this Code, and shall:

(1) Approve ordinances and pass resolutions necessary for an efficient and effective provincial government and, in this connection, shall:

...

(vii) Subject to the provisions of this Code and pertinent laws, determine the powers and duties of officials and employees of the province;

<sup>41</sup> SEC. 470. *Appointment, Qualifications, Powers, and Duties.*

(d) The treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall:

(1) Advise the governor or mayor, as the case may be, the *sanggunian*, and other local government and national officials concerned regarding disposition of local government funds, and on such other matters relative to public finance;

(2) Take custody of and exercise proper management of the funds of the local government unit concerned;

(3) Take charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority;

(4) Inspect private commercial and industrial establishments within the jurisdiction of the local government unit concerned in relation to the implementation of tax ordinances, pursuant to the provisions under Book II of this Code;

(5) Maintain and update the tax information system of the local government unit;

(6) In the case of the provincial treasurer, exercise technical supervision over all treasury offices of component cities and municipalities; and

(e) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

<sup>42</sup> CTA *EB* Case No. 2131 (CTA AC No. 193), September 2, 2020.

<sup>43</sup> *EB* Docket, Resolution dated March 2, 2021, pp. 87-90.

<sup>44</sup> *Id.*, Compliance dated April 29, 2021, pp. 107-110.

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**DECISION**

CTA *EB* No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 12 of 25

x-----x

shall be filed by the **local treasurer** within the period prescribed in Section 194 of this Code. (*Boldfacing and underscoring supplied*)

SEC. 266. Collection of Real Property Tax Through the Courts. — The local government unit concerned may enforce the **collection** of the basic real property tax or any other tax levied under this Title by civil action in any court of competent jurisdiction. The civil action shall be filed by the **local treasurer** within the period prescribed in Section 270 of this Code. (*Boldfacing and underscoring supplied*)

Petitioners further explained that this Petition is a continuation of the case originally filed by the respondent before the LBAA, which seeks to refund the RPT it paid under protest. In the said case, petitioners were impleaded as respondents and ordered to file their respective answers and comments. Requiring authorization from the *sanggunian* before filing their answer would be impractical.

The Court *En Banc* agrees with respondent.

Although Sections 183 and 266 of the LGC authorize the local treasurer to collect delinquent taxes, fees, charges, or other revenues and real property tax through judicial action, said provisions show that such authority applies specifically to a collection case. The instant Petition does not involve collecting delinquent taxes or real property tax by the Provincial and OIC Municipal Treasurers. This case emanated from respondent’s claim for refund or credit of the subject RPT before the LBAA and was appealed by petitioners before the CBAA. The present Petition assails the decision of the CBAA, which denied petitioners’ appeal. The discharge of any other powers may only be made by authority of law or by an ordinance.

The following provisions of the LGC empower the Provincial Governor to sue and cause the province to be defended against all suits, *viz.*:

ARTICLE I

The Provincial Governor

SEC. 465. *The Chief Executive: Powers, Duties, Functions, and Compensation.*

... ..

**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 13 of 25

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(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives, and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress and, relative thereto, shall:

**(vi) Institute or cause to be instituted administrative or judicial proceedings for violation of ordinances in the collection of taxes, fees or charges, and for the recovery of funds and property, and cause the province to be defended against all suits to ensure that its interests, resources and rights shall be adequately protected.**

ARTICLE III  
The Sangguniang Panlalawigan

(a) The sangguniang panlalawigan, as the legislative body of the province, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the province and its inhabitants pursuant to Section 16 of this Code in the proper exercise of the corporate powers of the province as provided for under Section 22 of this Code, and shall:

... ..

(5) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

ARTICLE II  
The Treasurer

SEC. 470. *Appointment, Qualifications, Powers, and Duties.*

... ..

(e) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

From the foregoing, it is the Provincial Governor who has the authority to file suits on behalf of the province. As the Provincial and OIC Municipal Treasurers filed the Petition in their official capacity, the filing thereof should be supported by a valid authorization from the Sangguniang Panlalawigan.

**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 14 of 25

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Records show that petitioners did not present an ordinance, resolution, or any other written proof of their authority to file the present Petition for Review.

Thus, petitioners Imelda Macanes and Merlita G. Tolito, as the Provincial Treasurer of Benguet and the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet, respectively, are *not* empowered to file the instant Petition for Review and to sign the requisite Verification and Certification of Non-Forum Shopping.

At any rate, even if the Court was to disregard petitioners' lack of authority and adjudicate this case on the merits, the instant petition still fails, as will be further discussed below.

**The Petition merely rehashed petitioners' Motion for Partial Reconsideration.**

Respondent claims that an examination of the issues raised in the Petition readily reveals that the same merely rehashed the matters raised in the Motion for Partial Reconsideration (Partial MR), which the CBAA exhaustively considered and passed upon in the Decision and Resolution. Petitioners merely copied and pasted their arguments in the Partial MR into the Petition.

We agree.

The Court likewise observed that the arguments and discussions petitioners relied upon for review in the instant Petition are mere reiterations if not repetitions (quoted verbatim) of the very same arguments and discussions they had already raised in their Partial MR filed before the CBAA.<sup>45</sup>

**The CBAA did not err in ordering petitioners to re-compute the real property taxes based on the provisions of EO No. 88.**



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<sup>45</sup> EB Docket, Annex "P-4", Motion for Partial Reconsideration, pp. 70-76.

**DECISION**

CTA *EB* No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 15 of 25

x-----x

**The applicability of EO No. 88 can be passed upon despite not being raised as an issue before the LBAA and assigned as one of the errors before the CBAA.**

Petitioners claim that the applicability of EO No. 88, or any other executive issuance that would exempt or reduce its tax liability, was never raised as an issue in the proceedings before the LBAA nor an assigned error in the appeal before the CBAA. On the contrary, respondent consistently insisted on its exemption from tax liability.<sup>46</sup> The issues submitted during the pre-trial before the CBAA should govern the trial proper. The CBAA should have limited its Decision on the issues identified by the parties. Hence, the CBAA erred in ordering them to re-compute the real property taxes based on the provisions of EO No. 88.

Petitioners assert that it would be the height of injustice and inequality if the present case is decided based on the provisions of EO No. 88, considering that petitioners were not given a chance to argue or even comment on whether or not the said EO is applicable in this case.

Respondent counter-argues that CBAA correctly applied EO No. 88. In its Petition for Review before the LBAA, respondent raised an issue as to “whether it is entitled to a tax refund or credit in the total amount of Four Hundred Eighty-Six Thousand Nine Hundred Seventy-Three Pesos and 72/100 (Php486,972.71) [*sic*] representing overpaid realty taxes on the Bakun Property.” It further argued that assuming its Bakun Property is subject to RPT, it can only be subject to an assessment level of ten percent (10%). The application of EO No. 88, which deals with the assessment level imposable on properties used to produce electricity, is a closely related and dependent issue intertwined with the afore-quoted issue on the proper assessment level for computing the tax liability raised by respondent. Thus, its application was necessary to completely dispose of the issue on the correct assessment level to be imposed on the Bakun property.

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<sup>46</sup> *EB* Docket, pp. 4-6.



**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 16 of 25

x-----x

Respondent cites the case of *LCK Industries, Inc., et al. v. Planters Development Bank*,<sup>47</sup> where the Supreme Court held that issues impliedly included in or inferable from issues raised during the pre-trial are integral parts of the pre-trial order as much as those that are expressly stipulated. It also invoked Section 1, Rule 129<sup>48</sup> of the Revised Rules of Evidence that a court shall mandatorily take judicial notice of the official acts of the executive department of the National Government of the Philippines, such as an EO of the President, without the need for the introduction of evidence. It concluded that CBAA, as a quasi-judicial body, merely took judicial notice of EO No. 88 in determining the appropriate assessment level.

Petitioners' arguments are bereft of merit.

In *Sesbreño v. CBAA, et al. (Sesbreño case)*,<sup>49</sup> the Supreme Court squarely addressed the concern raised by the petitioners as to whether the CBAA may take up and consider issues not raised and errors not assigned for review before the LBAA and the CBAA, respectively. Thus:

Petitioner argues that the issue of back taxes has never been raised before the Local Board of Assessment Appeals or the Central Board of Assessment Appeals. Hence, respondents are barred by due process and fair play from alleging them before Respondent CBAA and now before this Court.

As a rule, no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration. The Court has held in several cases, however, that an appellate court has an inherent authority to review unassigned errors (1) which are closely related to an error properly raised, or (2) upon which the determination of the error properly assigned is dependent, or (3) where the Court finds that consideration of them is necessary in arriving at a just decision of the case.

Thus:

. . . . In line with the modern trends of procedure, we are told that, "while an assignment of error which is required by law or rule of court

<sup>47</sup> G.R. No. 170606, November 23, 2007.

<sup>48</sup> SEC. 1. *Judicial notice, when mandatory.* – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, official acts of the legislative, executive and judicial departments of the National Government of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

<sup>49</sup> G.R. No. 106588, March 24, 1997.

W

**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 17 of 25

x-----x

has been held essential to appellate review, and only those assigned will be considered, there are a number of cases which appear to accord to the appellate court a broad discretionary power to waive the lack of proper assignment of errors and consider errors not assigned. And an unassigned error closely related to the error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error. (4 C.J.S., 1734; 3 C.J., 1341, footnote 77).

At any rate, the Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary in arriving at a just decision of the case . . .

Although the foregoing citations specifically referred to “**appellate courts,**” there appears **no reason why these should not apply to appellate administrative agencies,** where rules of procedure are liberally construed.

In the present case, we hold that **Respondent CBAA did not err in considering the issue of back taxes, the same being closely related to an error properly raised.** Petitioner himself assailed the subject assessment before the Respondent CBAA for being “excessive and unconscionable.” In resolving this issue, **Respondent CBAA was duty-bound to review the factual antecedents of the case and to apply thereon the pertinent provisions of law.** In the process, Respondent CBAA applied Section 25 of PD 464 which had authorized the imposition of back taxes. In any event, consideration of the question of the back taxes is essential to a just decision on the case, as will be shown below.

To reiterate, as a rule, no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration.<sup>50</sup> However, the Supreme Court has held in several cases, that an appellate court has an inherent authority to review matters, even if they are not assigned as errors in their appeal (1) which are closely related to an error properly raised, or (2) upon which the determination of the error properly assigned is dependent, or (3) where the Court finds that

<sup>50</sup> *Chinatrust (Phils.) Commercial Bank v. Turner*, G.R. No. 191458, July 3, 2017; *Vitug v. Abuda*, G.R. No. 201264, January 11, 2016; *Maxicare PCIB Cigna Healthcare v. Contreras*, G.R. No. 194352, 702 Phil. 688, 696, January 30, 2013; *Manila Bay Club Corporation v. Court of Appeals*, G.R. No. 110015, 249 SCRA 303, 307, October 13, 1995; *Lopez Realty, Inc. v. Fontecha*, G.R. No. 76801, 247 SCRA 183, 191, August 11, 1995, citing *Anchuelo v. IAC*, G.R. No. 71391, 147 SCRA 434, January 29, 1987.

**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 18 of 25

x-----x

consideration of them is necessary in arriving at a just decision of the case.<sup>51</sup>

Although the foregoing citations expressly referred to “appellate courts,” there appears no reason why these should not apply to appellate administrative agencies, like the CBAA, where rules of procedure are liberally construed.<sup>52</sup>

Similarly, the Court *En Banc* is not precluded from ruling on the applicability of EO No. 88 in the instant case, even if it was not raised as an issue nor an assigned error by the parties before the LBAA and the CBBA. Under Section 1, Rule 14<sup>53</sup> of the RRCTA, in deciding the case, the Court of Tax Appeals may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.<sup>54</sup>

In the instant case, the issue of the applicability of EO No. 88, which provides for an assessment level of *fifteen percent (15%)*, is inextricably intertwined with the issue of whether the assessment level to be imposed on the Bakun Property is *ten percent (10%)* or *eighty percent (80%)*.

As held in *Sesbreño*, the CBAA was duty-bound to review the factual antecedents of the case and apply the pertinent provisions of law. Here, the CBAA used the *fifteen percent (15%)* assessment level under EO No. 88, Series of 2019, to completely dispose of the issue of what assessment level shall be applied on the Bakun Property.

Given the foregoing jurisprudential pronouncements, the CBAA did not err in applying EO No. 88 in the present case.

<sup>51</sup> *Holy Trinity Realty & Development Corporation v. Victorio Dela Cruz, et al.*, G.R. No. 200454, October 22, 2014, citing *Carbonilla v. Board of Airlines Representatives*, G.R. No. 193247, September 14, 2011; *St. Michael's Institute v. Santos*, G.R. No. 145280, 371 SCRA 383, 394, December 4, 2001; *Heirs of Ramon Durano, Sr. v. Uy*, G.R. No. 136456, 344 SCRA 238, 257, October 24, 2000; *M/V "Don Martin" Voy 047 and its Cargoes of 6,500 Sacks of Imported Rice, et al. v. Hon. Secretary of Finance, et al.*, G.R. No. 160206, July 15, 2015, citing *Comilang v. Burcena*, G.R. No. 146853, February 13, 2006; *Sesbreño v. Central Board of Assessment Appeals (CBAA) and the City Assessor of Cebu City*, G.R. No. 106588, March 24, 1997.

<sup>52</sup> *Sesbreño v. CBAA, et al.*, G.R. No. 106588, March 24, 1997.

<sup>53</sup> SEC. 1. *Rendition of judgment.* — ... In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. (*Emphasis supplied*)

<sup>54</sup> *CIR v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

**DECISION**

CTA *EB* No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 19 of 25

x-----x

Anent petitioners' claim that they were not given a chance to argue or even comment on the applicability of the said EO in the present case, the Court *En Banc* is not persuaded.

Records reveal that petitioners were duly heard through the position paper, exhibits, and documents they submitted before the CBAA. Petitioners were also heard during the clarificatory hearing conducted after the submission of the position paper.<sup>55</sup>

In the proceedings before the CBAA, the parties were directed to submit their verified position papers and replies. Under the 2016 CBAA Rules of Procedure (CBAA Rules), the verified position paper with supporting documents and affidavits is filed within fifteen (15) days from the termination of the preliminary conference. A reply may be filed within ten (10) days from receipt of the position paper to prove the fact or any cause of action raised in the position paper.<sup>56</sup>

Here, respondent served petitioners a copy of its Position Paper dated December 20, 2019, which detailed its argument that the realty taxes on the Bakun Property should be assessed at an assessment level of fifteen percent (15%) under EO No. 88, Series of 2019. It prayed that the CBAA orders petitioners to recompute the realty taxes on the Bakun Property based on the provisions of EO No. 88.<sup>57</sup> Petitioner did not file a Reply to dispute respondent's argument anent the applicability of EO No. 88.<sup>58</sup>

Indeed, petitioners made no credible showing of the supposed violation of their right to due process.

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<sup>55</sup> *EB* Docket, CBAA Decision dated May 29, 2020, p. 36.

<sup>56</sup> RULE IV: APPEALS TO THE LOCAL BOARDS OF ASSESSMENT APPEALS

SEC. 11. Submission of Position Papers – (a) The Local Board shall direct the parties to submit simultaneously their verified position papers with supporting documents and affidavits, if any, on a date set within fifteen (15) days from the date of termination of the preliminary conference.

(b) No additional evidence nor amendment of petition shall be allowed after the filing of position papers, unless with leave of the Local Board.

(c) The position papers of the parties shall cover only those claims and causes of action stated in the petition or amended petition, accompanied by all supporting documents, including the judicial affidavits of witnesses, which shall be considered as their direct testimony.

(d) **Within ten (10) days from receipt of the position paper of the parties, a reply may be filed.** The reply shall not allege and/or prove facts and any cause(s) of action not referred to or included in the original or amended petition or answer or raised in the position paper. (*Emphasis supplied*)

<sup>57</sup> *EB* Docket, p. 211-216.

<sup>58</sup> *Id.*, par. 2, p. 36.

**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 20 of 25

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Finally, the said EO No. 88, Series of 2019, and the executive issuances prior and subsequent thereto<sup>59</sup> were promulgated pursuant to Section 277 of the LGC of 1991, which refers to the authority of the President of the Philippines to condone or reduce the RPT and interest for any year in any province, city, or municipality, viz.:

*SEC. 277. Condonation or Reduction of Tax by the President of the Philippines.* – The President of the Philippines may, when public interest so requires, condone or reduce the real property tax and interest for any year in any province or city or a municipality within the Metropolitan Manila Area.

The above provision is clear and categorical as to the power of the President to condone or reduce RPT and interest such that there is no longer any room for interpretation — only application.<sup>60</sup> The exercise of this power requires no concurrent action from either or both branches of government as the LGC expressly recognized the existence of said executive power under Section 277.<sup>61</sup>

*hw*

<sup>59</sup> The presidential prerogative to condone or reduce real property taxes assessed on power generation facilities of IPPs has been exercised on the following occasions:

<b>Executive Orders</b>	<b>Covered calendar year (CY)</b>
Executive Order No. 157, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on the Power Generation Facilities of IPPs under Build-Operate-Transfer Contracts with GOCCs, December 16, 2021	for all years up to CY 2021
Executive Order No. 126, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on the Power Generation Facilities of Independent Power Producers Under Build- Operate-Transfer Contracts with Government-Owned Or -Controlled Corporations, March 4, 2021	for all years up to CY 2020
Executive Order No. 117, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on Power Generation Facilities of IPPs under BOT Contracts with GOCCs, July 24, 2020	for all years up to CY 2019
Executive Order No. 88, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on Power Generation Facilities of IPPs under BOT Contracts with GOCCs, August 13, 2019	for all years up to CY 2018
Executive Order No. 60, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on Power Generation Facilities of IPPs under BOT Contracts with GOCCs, July 25, 2018	for all years up to CY 2017
Executive Order No. 19, Reduction and Condonation of Real Property Taxes and Interests/Penalties Assessed on the Power Generation Facilities of Independent Power Producers under Build-Operate Transfer Contracts with Government-Owned or -Controlled Corporations, April 27, 2017	for the years 2015 and 2016
Executive Order No. 173, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on the power Generation Facilities of Independent Power Producers Under Build-Operate-Transfer Contracts with Government-Owned and/or -Controlled Corporations, October 31, 2014	for all years up to 2014
Executive Order No. 27, Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on the Power Generation Facilities of Independent Power Producers Under Build-Operate-Transfer Contracts with Government-Owned or Controlled Corporations in the Province of Quezon, February 28, 2011	for all years up to 2011

<sup>60</sup> Interpretation of Sec. 277 of RA 7160 Re: Condonation or Reduction of Tax by the President of the Phil., DOJ Opinion No. 009, s. 2011, February 15, 2011.

<sup>61</sup> *Id.*

**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 21 of 25

x-----x

In *The Province of Nueva Vizcaya, Provincial Treasurer of Nueva Vizcaya, Office of The Municipal Assessor and Treasurer Municipality of Alfonso Castañeda Province of Nueva Vizcaya v. CE Casecnan Water and Energy Company, Inc.*<sup>62</sup> (CE Casecnan), the Supreme Court decreed that the determination of the amount to be refunded to CE Casecnan should take into consideration the provisions of EO No. 173, which also reduces and condones RPT and interest/penalties assessed on the power generation facilities of IPPs under BOT contracts with government-owned and/or controlled corporations (GOCCs) for all years up to 2014:

[T]he provisions of EO No. 173 which reduces and condones real property taxes and interest/penalties assessed on the power generation facilities of independent power producers under build-operate transfer contracts with government-owned and/or -controlled corporations is applicable in this case. The pertinent provisions of EO No. 173 are reproduced below:

WHEREAS, under Section 234 of Republic Act No.7160 (Local Government Code of 1991), Government Owned and/or -Controlled Corporations (GOCCs) engaged in the generation and transmission of electricity enjoy a number of exemptions/privileges with respect to real property taxes, including an assessment level of 10% on all its lands, buildings, machineries and other improvements (Sections 216 and 218), as well as an exemption for all machinery and equipment that are actually, directly and exclusively used in the generation and transmission of electric power and machinery and equipment used for pollution control and environmental protection;

...

WHEREAS, the payment of said real property taxes by the affected IPPs, some of which obligation have been contractually assumed by the GOCCs and carries the full faith of the National Government, threatens the financial stability of the GOCCs, the government's fiscal consolidation efforts, and the stability of energy prices;

...



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<sup>62</sup> G.R. No. 241302, February 1, 2021.

**DECISION**

CTA *EB* No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page **22** of **25**

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WHEREAS, under Section 277 of Republic Act No. 7160, “the President of the Philippines may, when public interest so requires, condone or reduce the real property tax and interest for any year in any province or city or a municipality within the Metropolitan Manila area”; and

WHEREAS, Article VII, Section 17 of the Philippine Constitution provides that the President shall have control of all the executive departments, bureaus, and offices.

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

**SECTION 1. Reduction and Condonation. All liabilities for real property tax on property, machinery and equipment** (including any special levies accruing to the Special Education Fund) **actually and directly used by IPPs for the production of electricity under Build-Operate-Transfer contracts** (whether denominated Power Purchase Agreements, Energy Conversion Agreements or other contractual agreements) with GOCCs, assessed by LGUs and other entities authorized to impose real property tax, **for all years up to 2014**, are hereby **reduced to an amount equivalent to the tax due if computed based on an assessment level of fifteen percent (15%) of the fair market value of said property, machinery and equipment depreciated at the rate of two percent (2%) per annum, less any amounts already paid by the IPPs.** All fines, penalties and interests on such deficiency real property tax liabilities are also hereby condoned and the concerned IPPs are relieved from payment thereof. (*Emphasis on the original*)

In this case, it is undisputed that CE Casecan is an independent power producer (IPP) that entered into a build-operate-transfer contract with NIA, a GOCC. Hence, the provisions of EO No. 173 should be applied in its favor. xxx Section 1 of EO No. 173 is clear that the reduced amount of RPT under the executive order should be deducted from whatever is paid by the IPP. Hence, **the CTA *En Banc* correctly remanded the case to the CBAA for the computation of the amount to be refunded to CE Casecan, if any, taking into consideration the provisions of EO No. 173.** (*Emphasis supplied*)

MW



**DECISION**

CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page 23 of 25


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Applying the foregoing, We find EO No. 88, which contains substantially the same provisions as EO No. 173 except the calendar years covered, applicable in the present case.

In fine, the CBAA did not err in applying EO No. 88 and in ordering petitioners to re-compute the RPT based on EO No. 88.

**WHEREFORE**, premises considered, the instant Petition for Review is **DISMISSED** for petitioners' lack of authority to file the same.


**SO ORDERED.**

  
**LANEE S. CUI-DAVID**  
Associate Justice

*WE CONCUR:*

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

  
**ERLINDA P. UY**  
Associate Justice

  
*(With due respect, please see my Dissenting Opinion)*  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice

**DECISION**

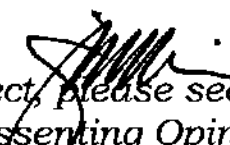
CTA EB No. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page **24** of **25**


x-----x

  
**CATHERINE T. MANAHAN**  
Associate Justice

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

**ON LEAVE**

**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice

  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice

**ON OFFICIAL BUSINESS**  
**CORAZON G. FERRER-FLORES**  
Associate Justice

*hw*

**DECISION**

CTA *EB* No. 2407 (CBAAs Case No. L-141-2018)

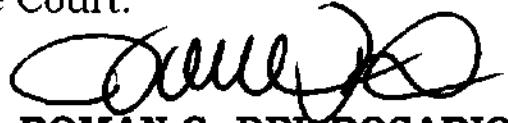
Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet vs. Luzon Hydro Corporation

Page **25** of **25**

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**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.



**ROMAN G. DEL ROSARIO**

Presiding Justice

*dn*

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

EN BANC

IMELDA MACANES, in her capacity  
as the Provincial Treasurer of  
Benguet and MERLITA G. TOLITO,  
in her capacity as the Officer-in-  
Charge of the Municipal Treasury  
Office of Bakun, Benguet,

Petitioners,

CTA EB NO. 2407  
(CBA Case No. L-141-2018)

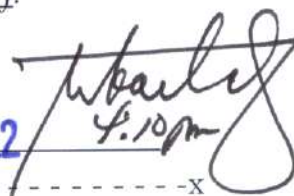
Present:  
DEL ROSARIO, P.J.,  
UY,  
RINGPIS-LIBAN,  
MANAHAN,  
BACORRO-VILLENA,  
MODESTO-SAN PEDRO,  
REYES-FAJARDO, and  
CUI-DAVID, II.

- versus -

LUZON HYDRO CORPORATION,  
Respondent.

Promulgated:

NOV 07 2022

  
4:10pm

x-----x

**DISSENTING OPINION**

**RINGPIS-LIBAN, J.:**

With due respect, I dissent from the majority decision that Petitioners, the Provincial Treasurer of Benguet and Municipal Treasurer (OIC) of Bakun, Benguet, have no valid authority to file the instant Petition for Review and to sign the requisite Verification and Certification of Non-Forum Shopping, without any prior ordinance or resolution from their respective sanggunian.

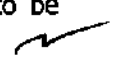
The local treasurer is the official charged under the Local Government Code (“LGC”) of 1991<sup>1</sup> to collect taxes with the corresponding duty to ensure that all taxes and other revenues of the city are collected. Section 470 thereof

<sup>1</sup> Republic Act No. 7160, October 10, 1991.

states that “the treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code”. Book II refers to Local Taxation and Fiscal Matters, which consists of Local Government Taxation (Title I) and Real Property Taxation (Title II), among others.

When it comes to real property tax (“RPT”), the LGC of 1991 categorically discharges collection functions to the local treasurer, as follows:

- 1) Section 239<sup>2</sup> - notify the owner of the property or person having legal interest of idle lands of the imposition of the additional tax;
- 2) Sections 247<sup>3</sup>, 254<sup>4</sup>, 258<sup>5</sup>, 260<sup>6</sup>, 263<sup>7</sup>, 266<sup>8</sup> – collect RPT and enforce remedies for its collection;
- 3) Section 279<sup>9</sup> – post the notice of time for collection of RPT;

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- <sup>2</sup> Section 239. Listing of Idle Lands by the Assessor. - The provincial, city or municipal assessor shall make and keep an updated record of all idle lands located within his area of jurisdiction. For purposes of collection, the provincial, city or municipal assessor shall furnish a copy thereof to the provincial or city treasurer who shall notify, on the basis of such record, the owner of the property or person having legal interest therein of the imposition of the additional tax.
  - <sup>3</sup> Section 247. Collection of Tax. - The collection of the real property tax with interest thereon and related expenses, and the enforcement of the remedies provided for in this Title or any applicable laws, shall be the responsibility of the city or municipal treasurer concerned...
  - <sup>4</sup> Section 254. Notice of Delinquency in the Payment of the Real Property Tax. -  
(a) When the real property tax or any other tax imposed under this Title becomes delinquent, the provincial, city or municipal treasurer shall immediately cause a notice of the delinquency to be posted at the main hall and in a publicly accessible and conspicuous place in each barangay of the local government unit concerned. The notice of delinquency shall also be published once a week for two (2) consecutive weeks, in a newspaper of general circulation in the province, city, or municipality.
  - <sup>5</sup> Section 258. Levy on Real Property. - After the expiration of the time required to pay the basic real property tax or any other tax levied under this Title, real property subject to such tax may be levied upon through the issuance of a warrant on or before, or simultaneously with, the institution of the civil action for the collection of the delinquent tax. The provincial or city treasurer, or a treasurer of a municipality within the Metropolitan Manila Area, as the case may be, when issuing a warrant of levy shall prepare a duly authenticated certificate showing the name of the delinquent owner of the property or person having legal interest therein, the description of the property, the amount of the tax due and the interest thereon...
  - <sup>6</sup> Section 260. Advertisement and Sale. - Within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale...
  - <sup>7</sup> Section 263. Purchase of Property By the Local Government Units for Want of Bidder. - In case there is no bidder for the real property advertised for sale as provided herein, the real property tax and the related interest and costs of sale the local treasurer conducting the sale shall purchase the property in behalf of the local government unit concerned to satisfy the claim and within two (2) days thereafter shall make a report of his proceedings which shall be reflected upon the records of his office. It shall be the duty of the Registrar of Deeds concerned upon registration with his office of any such declaration of forfeiture to transfer the title of the forfeited property to the local government unit concerned without the necessity of an order from a competent court.
  - <sup>8</sup> Section 266. Collection of Real Property Tax Through the Courts. - The local government unit concerned may enforce the collection of the basic real property tax or any other tax levied under this Title by civil action in any court of competent jurisdiction. The civil action shall be filed by the local treasurer within the period prescribed in Section 270 of this Code.
  - <sup>9</sup> Section 249. Notice of Time for Collection of Tax. - The city or municipal treasurer shall, on or before the thirty-first (31st) day of January each year, in the case of the basic real property tax and the additional tax for the Special Education Fund (SEF) or any other date to be
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- 4) Section 252<sup>10</sup> – receive and decide on taxpayer’s payment under protest;
- 5) Section 253<sup>11</sup> – receive and decide on taxpayer’s claim for refund or credit for RPT and interests;
- 6) Sections 261<sup>12</sup> and 262<sup>13</sup> – return property to taxpayer upon redemption; and
- 7) Section 269<sup>14</sup> – certify delinquencies remaining uncollected.

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prescribed by the sanggunian concerned in the case of any other tax levied under this title, post the notice of the dates when the tax may be paid without interest at a conspicuous and publicly accessible place at the city or municipal hall. Said notice shall likewise be published in a newspaper of general circulation in the locality once a week for two (2) consecutive weeks.

<sup>10</sup> 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 Area, who shall decide the protest within sixty (60) days from receipt.

<sup>11</sup> Section 253. Repayment of Excessive Collections. - When an assessment of basic real property tax, or any other tax levied under this Title, is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment.

The provincial or city treasurer shall decide the claim for tax refund or credit within sixty (60) days from receipt thereof. In case the claim for tax refund or credit is denied, the taxpayer may avail of the remedies as provided in Chapter 3, Title II, Book II of this Code..


<sup>12</sup> Section 261. Redemption of Property Sold. - Within one (1) year from the date of sale, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have the right to redeem the property upon payment to the local treasurer of the amount of the delinquent tax, including the interest due thereon, and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two percent (2%) per month on the purchase price from the date of sale to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the local treasurer or his deputy.

From the date of sale until the expiration of the period of redemption, the delinquent real property shall remain in possession of the owner or person having legal interest therein who shall be entitled to the income and other fruits thereof.

The local treasurer or his deputy, upon receipt from the purchaser of the certificate of sale, shall forthwith return to the latter the entire amount paid by him plus interest of not more than two percent (2%) per month. Thereafter, the property shall be free from lien of such delinquent tax, interest due thereon and expenses of sale.

<sup>13</sup> Section 262. Final Deed to Purchaser. - In case the owner or person having legal interest fails to redeem the delinquent property as provided herein, the local treasurer shall execute a deed conveying to the purchaser said property, free from lien of the delinquent tax, interest due thereon and expenses of sale. The deed shall briefly state the proceedings upon which the validity of the sale rests.

<sup>14</sup> Section 269. Treasurer to Certify Delinquencies Remaining Uncollected. - The provincial, city or municipal treasurer or their deputies shall prepare a certified list of all real property tax delinquencies which remained uncollected or unpaid for at least one (1) year in his jurisdiction, and a statement of the reason or reasons for such non-collection or non-payment, and shall submit the same to the sanggunian concerned on or before December thirty-first (31st) of the year immediately succeeding the year in which the delinquencies were incurred, with a request for assistance in the enforcement of the remedies for collection provided herein.



Simply put, anything that has to do with collection of RPT is given by law to the local treasurer, for that is his or her sole responsibility by the very nature of the position.

Parenthetically, Section 2<sup>15</sup>, Rule 3 of the Revised Rules of Civil Procedure mandates that “[e]very action must be prosecuted or defended in the name of the real party in interest”. The Supreme Court defined real party in interest, as follows:

“The real party-in-interest is the party who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit. ‘Interest’ within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.”<sup>16</sup>

Only a real party in interest can institute a case (*i.e.*, as plaintiff) or defend itself against a court action (*i.e.*, as defendant). A real party in interest-plaintiff is one who has a legal right while a real party in interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal right of the former.<sup>17</sup>

On that note, the real party in interest is the signatory of the Verification and Certification against forum shopping in initiatory pleadings.

Under Rule 7, Section 4<sup>18</sup> of the new Revised Rules of Civil Procedure, a verification serves to attest three (3) things: the truthfulness of the allegations in

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<sup>15</sup> Section 2. *Parties in interest.* - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

<sup>16</sup> Edith Sustiguer and Isabel Aposaga v. Jose Tamayo and City of Bacolod, G.R. No. 29341, August 21, 1989.


<sup>17</sup> Walter Ascona Lee, Et. Al. v. Hon. Manuel V. Romillo, Jr., Et. Al., G.R. No. L-60937, May 28, 1988.

<sup>18</sup> Section 4. *Verification.* - Except when otherwise specifically required by law or rule, pleadings need not be under oath or verified.

A pleading is verified by an affidavit of an affiant duly authorized to sign said verification. The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading, and shall allege the following attestations:

- (a) The allegations in the pleading are true and correct based on his or her personal knowledge, or based on authentic documents;
- (b) The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and
- (c) The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

The signature of the affiant shall further serve as a certification of the truthfulness of the allegations in the pleading.





the pleading, the pleading was filed in good faith, and the allegations in the pleading are supported by evidence. Verification, when required, is intended to secure an assurance that the allegations of a pleading are true and correct, are not speculative or merely imagined, and have been made in good faith<sup>19</sup> and the real party in interest-plaintiff is the best person to execute the same.

On the other hand, Section 5<sup>20</sup> of Rule 7 requires that the plaintiff must certify under oath that he or she has not commenced any other action involving the same issue in the court or any other tribunal or agency. The rule on certification against forum shopping is rooted in the principle that a party-litigant should not be allowed to pursue simultaneous remedies in different forums, as this practice is detrimental to orderly judicial procedure.<sup>21</sup> Similar to verification, the real party in interest-plaintiff knows better than anyone else whether a petition has previously been filed involving the same case or substantially the same issues. Accordingly, he or she is the one who signs the certification.

Of course, the real party in interest-plaintiff may delegate the signing of the Verification and Certification against forum shopping in initiatory pleadings but that person must be clothed with special authority from the former to do so.

In the case of the local treasurer, the LGC of 1991 dictates that the filing of protest/refund (of RPT collection) by the taxpayer must be made to the

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A pleading required to be verified that contains a verification based on information and belief, or upon knowledge, information and belief, or lack of a proper verification, shall be treated as an unsigned pleading. (4a)

<sup>19</sup> Spouses Alfredo D. Valmonte and Maria Lourdes A. Valmonte v. Clarita Alcala, Et. Al., G.R. No. 168667, July 23, 2008 *citing* Bank of the Philippine Islands v. Court of Appeals, G.R. No. 146923, April 30, 2003.

<sup>20</sup> Section 5. *Certification against forum shopping.* - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he [or she] has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his [or her] knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he [or she] should thereafter learn that the same or similar action or claim has been filed or is pending, he [or she] shall report that fact within five (5) calendar days therefrom to the court wherein his [or her] aforesaid complaint or initiatory pleading has been filed.

The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his [or her] counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (5a)

<sup>21</sup> Republic of the Philippines represented by the Department of Education, Culture and Sports v. Carmel Development, Inc., G.R. No. 142572, February 20, 2002 *citing* Robern Development Corporation v. Judge Jesus V. Quitain, G.R. No. 135042, September 23, 1999.

former. The local treasurer is then given sixty (60) days within which to decide the protest<sup>22</sup> or refund<sup>23</sup>. This denotes that, by provision of law, the real party in interest on behalf of the local government unit in appeals of protest/refund of RPT collection is the local treasurer. Logically, he or she is the proper party to defend the local government unit in the event the taxpayer decided to appeal the denial of protest/refund to the Local Board of Assessment Appeals (“LBAA”), and eventually to the Central Board of Assessment Appeals (“CBAA”), as provided for in Chapter 3, Title II, Book II of the LGC of 1991. By the same token, the local treasurer is also the proper party to institute the appeal to the CBAA in case the LBAA rules in favor of the taxpayer.

In fact, in several cases decided by the Supreme Court, the authority of the local treasurer to be impleaded (as the real party in interest) and to be sued on behalf of the local government unit in lawsuits regarding RPT, was never questioned.<sup>24</sup>

The interpretation of the *ponencia* that only the governor (or the mayor as the case may be) has the authority to file suits on behalf of the local government unit without need for a prior ordinance is not only too narrow but also restrictive.

*Ut res magis valeat quam pereat.* It is a basic rule in statutory construction that because a statute is enacted as a whole and not in parts or sections, the statute should be construed and given effect as a whole. A provision or section which is unclear by itself may be made clear by reading and construing it in relation to the whole statute.<sup>25</sup> Otherwise stated, care should be taken that every part of a statute be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions.<sup>26</sup>

To be sure, Sections 444, 455 and 465 of the LGC of 1991 confers authority upon the municipal mayor, city mayor and provincial governor to institute administrative or judicial proceedings for violation of ordinances in the collection of taxes and for the recovery of funds and property. However, these chief executives are not granted the sole power to do so.

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<sup>22</sup> The Local Government Code of 1991, Section 252.

<sup>23</sup> The Local Government Code of 1991, Section 253.

<sup>24</sup> *University of the Philippines v. City Treasurer of Quezon City*, G.R. No. 214044, June 19, 2019; *Herarc Realty Corporation v. The Provincial Treasurer of Batangas, The Provincial Assessor of Batangas, The Municipal Assessor and Municipal Treasurer of Calatagan, Batangas, Dr. Rafael A. Manalo, Grace Oliva, and Freida Rivera Yap*, G.R. No. 210736, September 05, 2018; *National Power Corporation v. The Provincial Treasurer of Benguet, The Provincial Assessor of Benguet, The Municipal Treasurer of Itogon, Benguet and The Municipal Assessor of Itogon, Benguet*, G.R. No. 209303, November 14, 2016; *Manila Electric Company v. The City Assessor and City Treasurer of Lucena City*, G.R. No. 166102, August 05, 2015 and *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila*, G.R. No. 186242, December 23, 2009.

<sup>25</sup> Ruben E. Agpalo, *Statutory Construction*, Sixth Edition (2009).

<sup>26</sup> *JMM Promotions & Management, Inc. v. National Labor Relations Commission and Ulpiano L. De Los Santos*, G.R. No. 109835, November 22, 1993.

Section 247 of the LGC of 1991 states that a local treasurer is duty bound to collect all RPT levied under the jurisdiction of the local government unit, to wit:

**“Section 247. Collection of Tax. - The collection of the real property tax with interest thereon and related expenses, and the enforcement of the remedies provided for in this Title or any applicable laws, shall be the responsibility of the city or municipal treasurer concerned.**

The city or municipal treasurer may deputize the barangay treasurer to collect all taxes on real property located in the barangay: Provided, That the barangay treasurer is properly bonded for the purpose: Provided, further, That the premium on the bond shall be paid by the city or municipal government concerned.”<sup>27</sup>

To collect RPT, Section 256 authorizes the use of civil remedies, which include the institution of judicial action, *viz.*:

**“Section 256. Remedies For The Collection Of Real Property Tax. - For the collection of the basic real property tax and any other tax levied under this Title, the local government unit concerned may avail of the remedies by administrative action thru levy on real property or by judicial action.”**<sup>28</sup>

This may be done even without the prior authorization from the sanggunian, which is bolstered by the fact that nowhere in the enumerated powers and duties of the sanggunian<sup>29</sup> can one find the requirement of such prior authorization in favor of the local treasurer for the purpose of filing suits on behalf of the local government unit.

More importantly, Sections 252 and 253 in relation to Section 226<sup>30</sup> explicitly allows the local treasurer to justify or defend his or her denial of protest/claim for refund of RPT in the LBAA.

Taking all the relevant provisions of the LGC of 1991 together, by express provision of law, there is only one conclusion – the local treasurer is granted the


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<sup>27</sup> *Emphasis and underscoring supplied.*

<sup>28</sup> *Emphasis supplied.*

<sup>29</sup> The Local Government Code of 1991, Sections 447, 458 and 468.

<sup>30</sup> 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 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.



power both to sue and defend on behalf of the local government unit it represents.

The power to file a collection suit includes the authority to file a suit or defend against a court case questioning the validity of the collection, just as the duty of the local treasurer to collect RPT carries with it the authority to determine liability for RPT and validity of refund of RPT. To conclude that the LGC of 1991 only allows a local treasurer to file a civil action to collect tax and not to represent the local government unit when it is being sued on RPT matters will curtail and render nugatory Section 247 which clearly and expressly vested collection functions of RPT to the local treasurer.

Assuming without conceding that it is the governor/mayor who has authority to sue and/or defend on behalf of the local government unit in refund cases, it begs the question – why did the Respondent in the instant case sue the Petitioners, as local treasurers, in the LBAA and CBAA? Why was the case in the LBAA and CBAA not dismissed since Petitioners supposedly did not have any authority to defend for and in behalf of their local government units?

Additionally, it must be emphasized that the instant case is but a continuation of the case originally filed by Respondent before the LBAA, where herein Petitioners were impleaded as Respondents, in order to question Petitioners' denial of Respondent's protest under payment. Essentially, Respondent paid under protest the RPT assessed, and then filed a protest to the local treasurer under Section 252 of the LGC of 1991 in order to question the assessment and at the same time refund the RPT collected.

Since the appeal to this Court involves collection of RPT (and the taxpayer's challenge to the validity of such collection), it is within the province of the local treasurer to act upon. More importantly, if the Petitioners were allowed to represent their local government units in the proceedings in the LBAA and CBAA even without a prior ordinance or resolution, it follows that they should be the one to file an appeal on the adverse ruling against them. Substitution of party from the local treasurer to the governor/mayor is not allowed under the Rules of Court.

One last point. Section 2, Rule IV of the Consolidated and Revised Rules of Procedure Before the Local Boards of Assessment Appeals (LBAA) and the Central Board of Assessment Appeals (CBAA)<sup>31</sup> expressly provides that the local treasurer be the one named as respondent in cases lodged in the LBAA, to wit:

“SEC. 2. When to Appeal to the Local Boards – Appeals shall be filed with the said Boards within the periods prescribed as follows:

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<sup>31</sup> May 02, 2016.

XXX XXX XXX

b. If the subject matter of the appeal is the denial by the treasurer of a claim for refund or credit of realty taxes paid under protest under Section 252 of R.A. 7160, without questioning the validity or correctness of the assessment made by the assessor.

(i) the appeal shall be filed with the Local Board  
– with the treasurer as the respondent...


XXX XXX XXX

c. If the appeal refers to the denial by the treasurer of a claim under Section 253 of R.A. 7160 for refund or credit of realty taxes, or any other tax levied under Title Two, Book II of R.A. 7160, paid but later found to be illegal or erroneous by competent authority.

(i) the appeal shall be filed with the Local Board  
– with the treasurer as the respondent...<sup>32</sup>

The provision above is a recognition of the inherent authority of local treasurers under the LGC of 1991, without any authorization from their respective sanggunians, to sue and/or defend against a suit for collection of RPT.

All told, I vote that the Petition for Review filed with the Court *En Banc* be decided on the merits.

  
MA. BELEN M. RINGPIS-LIBAN  
Associate Justice

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<sup>32</sup> *Emphasis supplied.*

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
Quezon City

EN BANC

IMELDA MACANES, in her capacity as the Provincial Treasurer of Benguet and MERLITA G. TOLITO, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet,

Petitioners,

- versus -

CTA EB NO. 2407  
(CBAA Case No. L-141-2018)

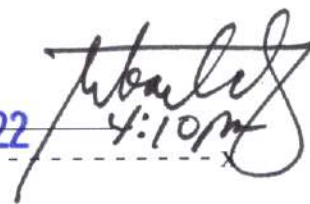
Present:

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

LUZON HYDRO CORPORATION,  
Respondent.

Promulgated:

NOV 07 2022



CONCURRING AND DISSENTING OPINION

**BACORRO-VILLENA, J.:**

I concur with the *ponencia* of my esteemed colleague, Associate Justice Lanee S. Cui-David, that Executive Order (EO) No. 88, series of 2019<sup>1</sup> is applicable herein and as a result, respondent Luzon Hydro Corporation's (**respondent's**) real property tax (RPT) must be recomputed based thereon, notwithstanding the fact that the same was not raised as an issue before the Local Board of Assessment Appeals (LBAA) and the Central Board of Assessment Appeals (CBAA).

<sup>1</sup> REDUCTION AND CONDONATION OF REAL PROPERTY TAXES AND INTEREST/PENALTIES ASSESSED ON THE POWER GENERATION FACILITIES OF INDEPENDENT POWER PRODUCERS UNDER BUILD-OPERATE-TRANSFER CONTRACTS WITH GOVERNMENT-OWNED OR-CONTROLLED CORPORATIONS.

**CONCURRING AND DISSENTING OPINION**

CTA EB NO. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun Benguet v. Luzon Hydro Corporation  
Page 2 of 4

x.....x

With all due respect, however, I agree with the thorough discussion of another esteemed colleague, Associate Justice Ma. Belen M. Ringpis-Liban, that local treasurers are inherently authorized under the relevant provisions of the Local Government Code (LGC) of 1991, as amended, to sue and/or defend a suit for collection of RPT even without authorization from their respective *sanggunians*.

To my mind, the LGC of 1991, as amended, has given plenary powers to the local treasurer on matters relative to local and real property taxation. I, thus, find no reason to construe the law to have withheld from the local treasurer the power to appeal an adverse decision against him or her, in relation to the RPT paid under protest.

In *The Bureau of Customs, et al. v. Jade Bros. Farm and Livestock, Inc.*<sup>2</sup>, the Supreme Court recognized that “appealed cases are a continuation of the original case and treated as only one case”. Hence, when petitioners Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet (**petitioners**), were sued as respondents in the LBAA (following the *Consolidated and Revised Rules of Procedure Before the Local Boards of Assessment Appeals and the Central Board of Assessment Appeals*), they were simply continuing the case filed against them as a result of an adverse decision of the LBAA and CBAA.

Also, the fact that the local treasurer is empowered to file an action at his or her instance is further impliedly recognized by Article 371 of the *Rules and Regulations Implementing the Local Government Code of 1991 (IRR)* which reads as follows:

...

**ART. 371. Fees in Court Actions.** — All court actions, criminal or civil, instituted at the instance of the provincial, city, or municipal treasurer or assessor under the provisions of this Rule, shall be exempt from the payment of court and sheriff's fees.<sup>3</sup>

...

In my humble submission that, in the absence of clear requirement under the LGC of 1991, as amended, that the local treasurer must be authorized by the *sanggunian* concerned before he or she may file an appeal against an adverse decision against him or her (or defend a suit for that matter), the interpretation that local treasurers are inherently authorized as

<sup>2</sup> G.R. No. 246343, 18 November 2021.

<sup>3</sup> Emphasis supplied.



**CONCURRING AND DISSENTING OPINION**

CTA EB NO. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun Benguet v. Luzon Hydro Corporation

Page 3 of 4

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such is in more keeping with the rules of interpretation as provided in Section 5 of LGC of 1991, as amended, which reads as follows:


...  
**SEC. 5. Rules of Interpretation.** - In the interpretation of the provisions of this Code, the following rules shall apply:

(a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned[.]

...

As to the issue on the proper execution of the necessary verification and certification of non-forum shopping, the Supreme Court, in the case of *Philippine Heart Center v. The Local Government of Quezon City et al.*<sup>4</sup>, accepted as signatories persons who were in a position to verify the truthfulness and correctness of the allegations in their respective petitions, viz:

...  
Cagayan Valley Drug Corporation cited cases like *Mactan-Cebu International Airport Authority v. Court of Appeals*, *Pfizer v. Galan*, *Novelty Philippines, Inc. v. Court of Appeals*, and *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd.* Where the Court invariably recognized the authority of some corporate officer to sign the verification and certificate against forum shopping, albeit they had not even presented any proof of their authority to represent the company. In all these cases, the Court accepted as proper the signatories' verification and certification against forum shopping because these signatories were in a position to verify the truthfulness and correctness of the allegations in their respective petitions. This is the Court's standard in gauging whether there was substantial compliance with Rule 7, Sections 4 and 5 of the Rules of Court.

Here, although the PHC did not expressly authorize Dr. Manzo to sign the petition's verification and certificate against forum shopping in its behalf, Dr. Manzo, as Officer-in-Charge Executive Director of the PHC pursuant to DOH Order No. 2016-2359-A dated August 5, 2016, is indubitably in a position to verify the truthfulness of the allegations in the petition. Too, considering further the substantive issues involved here, liberal application of the rules is warranted so the ends of justice may be served. 

...

<sup>4</sup> G.R. No. 225409, 11 March 2020; Citations omitted and emphasis supplied.

**CONCURRING AND DISSENTING OPINION**

CTA EB NO. 2407 (CBAA Case No. L-141-2018)

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun Benguet v. Luzon Hydro Corporation

Page 4 of 4

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In sum, I vote to: (1) rule that local treasurers are authorized to file the present appeals and to sign the necessary verification and certification of non-forum shopping; and, (2) affirm and the Decision and the Resolution dated 29 May 2020 and 25 November 2020, respectively, of the CBAA in CBAA Case No. L-141-2018.

  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice