Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
M a n i l a

NATIONAL IRRIGATION ADMINISTRATION,
Petitioner-Appellant,

-versus-

LOCAL BOARD OF ASSESSMENT APPEALS (LBAA) OF THE PROVINCE OF IFUGAO,
Appellee,

-and-

SAMUEL A. MARINAY, Provincial Treasurer of Ifugao and ESTRELLA S. ALIGUYON, Municipal Treasurer of Alfonso Lista, Ifugao,
Respondents-Appellees.
X - X

CBAA CASE NO. L-118
(LBAA Case Nos. 3-10)
Province of Ifugao

D E C I S I O N

This is an Appeal from the Resolution rendered by the Appellee Local Board of Assessment Appeals of Ifugao ("LBAA") on August 12, 2011 in LBAA Case No. 3-10, the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, the petition is **DENIED**. NIA's dam and land located at Susok, Sto. Domingo, Alfonso Lista, Ifugao covered by Tax declaration Nos. 1999-03020-00260 and 1999-03020-00263 is*(sic)* declared subject to payment of real property taxes.
>
> **SO ORDERED."**

Alleging that it received a copy of the assailed Resolution on August 23, 2011, Petitioner-Appellant National Irrigation Administration ("NIA") filed the instant Appeal on September 22, 2011.

ANTECEDENTS

1. On May 5, 2009, a certain person acting for and in behalf of Engr. Pelagio S. Gamad, Jr.of NIA, received from the Office of the Municipal Assessor of Alfonso Lista, Province of Ifugao a copy of the "Notice of Assessment" dated May 4, 2009 (Annex "1" to Respondents' Answer, p. 153, Records), together with copies of Tax Declaration Nos. 1999-03020-00260 (Land, Annex "4", Respondents' Answer, p. 161, Records) and 1999-03020-00263 (Machinery, Annex "5", Respondents' Answer, p. 162, Records) which were made effective the year 2008. The Notice of Assessment stated that the properties indicated thereunder were assessed for the year 2008.

2. On September 28, 2009, NIA of Cawayan City, Isabela received a collection letter dated September 28, 2009 (with copies of TDs and Statement of Account as of September, 2009) from Municipal Treasurer of Alfonso Lista, Ifugao (pp. 45-48, Records).

3. On October 9, 2009, NIA's Engr. Mariano G. Dancel wrote the Municipal Treasurer of Alfonso Lista informing that "We reiterate our previous position in our letter dated May 25, 2009 that we are exempt from payment of Real Property Tax." (pp. 49-50, Records)

4. On November 11, 2009, the Municipal Treasurer wrote the Provincial Treasurer of Ifugao requesting for the latter's intercession in the collection of taxes from NIA. (p. 51, Records)

5. On December 23, 2009, a certain "JOHN D. LIMOS" received, presumably for and in behalf of NIA, a copy each of two (2) Notices of Assessment, both dated December 8, 2009, from the Office of the Municipal Assessor of Alfonso Lista, Ifugao. The said Notices of Assessment stated that the properties indicated thereunder were assessed for the year 2009 (Annexes "1-A" and "1-B", respectively, Respondents' Answer, pp. 154-155, Records.)

6. On January 26, 2010, NIA, Cawayan City, Isabela, received a collection letter dated January 22, 2010 from Provincial Treasurer of Ifugao (p. 43, Records).

7. On March 8, 2010, NIA's Legal Department receivedthe"1st Endorsement" (dated March 1, 2010) by NIA's Operations Manager forwarding the letter dated January 22, 2010 from the Provincial Treasurer of Ifugao to NIA's Legal Department (p. 41, Records).

8. On March 18, 2010, NIA filed its "Protest" with the LBAA by registered mail (pp. 1-9, LBAA Records).

9. On August 26, 2010, Respondents filed with the LBAA a Motion to Dismiss dated August 24, 2010 (pp. 30-35, LBAA Records).

10. On September 24, 2010, NIA filed with the LBAA its Comment (To The Motion to Dismiss) dated September 7, 2010 (pp. 37-43, LBAA Records).

11. On October 4, 2010, Respondents filed with the LBAA its Reply (to Petitioner's Comment) dated September 24, 2010 (pp. 44-47, LBAA Records).

12. On October 26, 2010, the LBAA denied Motion to Dismiss and ordered respondents to file their answer (p. 48, LBAA Records).

13. On December 9, 2010, Respondents filed with the LBAA their Answer dated November 30, 2010 (pp. 51-59, LBAA Records).

14. On February 3, 2011, Respondents filed with the LBAA their Position Paper dated January 31, 2011 (pp. 72-80, LBAA Records).

15. On February 4, 2011, NIA filed with the LBAA its Position Paper dated February 1, 2011.

16. On August 12, 2011, the LBAA issued Resolution dismissing the appeal (pp. 92-96, LBAA Records).

17. On September 22, 2011,NIA filed with the CBAA its Appeal dated September 20, 2011 (pp. 4-25, Records).

18. On January 17, 2012,Respondents filed with the CBAA their Answer dated January 9, 2012 (pp. 144-152, Records).

Petitioner-Appellant NIA raised the following issues:

"1. Whether or not irrigation canals, dams, land and buildings of NIA are owned by the national government. Thus, real property tax cannot be imposed thereon;

"2. Whether or not the final remedy of the respondents *(sic)* Provincial Treasurer which is to levy the subject property and sell it for *(sic)* public auction in the event of non-payment of local tax can be applied to NIA'(s) dams and canals, which is the true test as to whether or not Dams and Canals are owned by the National Government;

”3. Whether or not NIA is not a government-owned and controlled corporation in contemplation of law, but an instrumentality of the government; hence, it is exempted from the payment of real property tax;

“4. Whether or not the Local Assessment Board of Appeals of the Province of Ifugao merely resorted to pure technicalities to defeat substantial justice.”

DISCUSSION

1st Issue:
WHETHER OR NOT IRRIGATION CANALS, DAMS, LAND AND BUILDINGS OF NIA ARE OWNED BY THE NATIONAL GOVERNMENT. THUS, REAL PROPERTY TAX CANNOT BE IMPOSED THEREON.

2nd Issue:
WHETHER OR NOT THE FINAL REMEDY OF THE RESPONDENTS *(SIC)* PROVINCIAL TREASURER WHICH IS TO LEVY THE SUBJECT PROPERTY AND SELL IT FOR *(SIC)* PUBLIC AUCTION IN THE EVENT OF NON-PAYMENT OF LOCAL TAX CAN BE APPLIED TO NIA’(S) DAMS AND CANALS, WHICH IS THE TRUE TEST AS TO WHETHER OR NOT DAMS AND CANALS ARE OWNED BY THE NATIONAL GOVERNMENT.

Petitioner-Appellant NIA Argues:

1. That NIA’s irrigation canals, dams, land and buildings cannot be subject to real property taxation because these properties are owned by the national government and are properties of public dominion, citing Articles 419, 420, 421 and 422 of the Civil Code of the Philippines.

2. That “By sheer common sense, the final remedy of the respondents which is to levy and execute the subject dam and canals and sell it *(sic)* for *(sic)* public auction absolutely contradicts laws, rules, public order and public policies.” NIA could not imagine a scenario where the dam and irrigation canals are owned by private individuals, quoting the Supreme Court’s ruling in *Philippine Fisheries Development Authority v. Court of Tax Appeals* (G.R. No. 150301, October 02, 2007), thus:

> ***"The port built by the State in the Iloilo fishing complex is a property of public dominion and cannot therefore be sold at public auction. Article 420 of the Civil Code provides:***
>
> ***ARTICLE 420. The following things are property of public dominion:***
>
> ***(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;***
>
> ***(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.***
>
> ***The Iloilo [F]ishing [P]ort [C]omplex/IFPC] which was constructed by the State for public use and/or public service falls within the term "port" in the aforesaid provision. <u>Being a property of public dominion the same cannot be subject to execution or foreclosure sale. …</u> Whether there are improvements in the fishing port complex that should not be construed to be embraced within the term 'port' involves evidentiary matters that cannot be addressed in the present case. As of now, considering that the Authority is a national government instrumentality, any doubt on whether the entire IFPC may be levied upon to satisfy the tax delinquency should be resolved against the City of Iloilo.***
>
> ***Similarly, for the same reason, the IFPC cannot be sold at public auction in satisfaction of the tax delinquency assessments made by the Municipality of Navotas on the entire complex."*** **(Emphasis NIA's)**

CBAA'S RULING
<u>On Issue Nos. 1 and 2</u>

<u>The Subject Properties of NIA are not Properties of Public Dominion.</u>

Petitioner-Appellant posits that subject properties belong to the State and form part of public dominion, with Petitioner-Appellant merely holding such properties in trust on behalf of or for the benefit of the Republic of the Philippines.

In *Philippine Ports Authority vs. City of Iloilo*[1], the Supreme Court said:

[1] G.R. No. 109791, July 14, 2003.

"Now before us, petitioner contradicts its earlier admission by claiming that the subject warehouse is a property of public dominion. This inconsistency is made more apparent by looking closely at what public dominion means. Tolentino explains this in this wise:

> 'Private ownership is defined elsewhere in the Code; but the meaning of public dominion is nowhere defined. From the context of various provisions, it is clear that *public dominion* does not carry the idea of ownership; property of public dominion is not owned by the State, but pertains to the State, which as territorial sovereign exercises certain judicial prerogatives over such property. The *ownership of such property,* which has the special characteristics of a collective ownership for the general use and enjoyment, by virtue of their application to the satisfaction of collective needs, *is in the social group,* whether national, provincial, or municipal. Their purpose is not to serve the State as a juridical person, but the citizens; *they are intended for the common and public welfare, and so they cannot be the object of appropriation, either by the State or by private persons.'* (2 A. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE 30 [1994], citing Manresa 66-69)

Following the above, **properties of public dominion are owned by the general public and <u>cannot be declared to be owned by a public corporation, such as petitioner</u>**."

Following the above, properties of public dominion are owned by the general public and cannot be declared to be owned by a public corporation, such as Petitioner-Appellant (PPA vs. City of Iloilo, supra).

The properties subject of this case are owned by the Petitioner-Appellant. The contention of Petitioner-Appellant that it merely holds these properties in trust for the Republic is without any basis either in fact or in law.

Accordingly, the Petitioner-Appellant's properties are not properties of public dominion.

<u>3rd Issue:</u>
WHETHER OR NOT NIA IS NOT A GOVERNMENT-OWNED AND CONTROLLED CORPORATION IN CONTEMPLATION OF LAW, BUT AN INSTRUMENTALITY OF THE GOVERNMENT; HENCE, IT IS EXEMPTED FROM THE PAYMENT OF REAL PROPERTY TAX."

Petitioner-Appellant NIA Argues:

1. That NIA is not a government-owned or –controlled corporation as defined under Section 2(13) of the Introductory Provisions of the Administrative Code of 1987, which provides:

> ***"SEC. 2. General Terms Defined.***
>
> ***x x x x***
>
> ***(13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x."*** **(Emphasis NIA's)**

2. That NIA is not a government-owned or controlled corporation because: Firstly, NIA's capitalization is subscribed and paid entirely by the national government, citing Section 3, Article II of R.A. No. 3601, NIA's Charter; and, Secondly, under BP Blg. 68 or the Corporation Code of the Philippines, NIA cannot be qualified either a sa stock corporation because NIA's capital is not divided into shares of stock and NIA has no stockholders or voting shares or as a non-stock corporation because it has no members.

3. That NIA is a government **"instrumentality"** as the term is defined under Section 2(10) of the Introductory Provisions of the Administrative Code and, therefore, like MIAA, is exempted from payment of the real property tax by virtue of Section 133(o) of the Local Government Code.

4. That the provisions of Sections 193 and 234 of the Local Government Code are ineffectual as far as NIA is concerned.

Respondents Argues:

1. That NIA is a government-owned and controlled corporation as shown by the provisions of Section 3 of RA 3601 (NIA's Charter), as amended by Presidential Decree (PD) No. 1702, Section 1 of which provides:

> *"Section 1. Section 3 of Republic Act No. 3601, as amended by Section 3, Presidential Decree No. 552, is hereby amended to read:*
>
> *"Sec. 3. (a) Capitalization.- The authorized capital stock of the National Irrigation Administration shall be ten billion pesos, which shall be subscribed and paid entirely by the Government of the Republic of the Philippines. The amount is hereby appropriated for the purpose out of any funds in the Treasury not otherwise appropriated: Provided, That*

only such amounts as are actually necessary for the implementation of projects of the Administration shall be released as payments on capital subscriptions, subject to approval of the President and as provided by pertinent budget laws.

"(b) Operating Capital. –All amounts collected by the National Irrigation Administration as irrigation fees, administration charges, drainage fees, equipment rentals, proceeds from the sale of unserviceable equipment and materials, sale of all reparation goods allocated to the defunct Irrigation Service Unit and the National Irrigation Administration, and all other income shall be added to its operating capital."

2. That, being a government-owned and controlled corporation, NIA's realty tax exemption, if any, were withdrawn upon the effectivity of the LGC, Sections 193 and 234 of which provide:

"Section 193. Withdrawal of Tax Exemption Privileges. – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. 6938, non-stock and non-profit hospital and educational institutions, are hereby withdrawn upon the effectivity of this Code."

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

a xxxxxxxxxx
b.xxxxxxxxxxxx
xxxxxxxxxxx
e.xxxxxxxxxxx

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code."

CBAA'S RULING
On Issue No. 3

As held in the MIAA case[2], citing Sec. 2(10) of the Introductory Provisions of the Administrative Code and quoted by the Petitioner-Appellant, a government instrumentality is defined as follows:

"SEC. 2 *General Terms Defined.* – x x x

[2] G.R. No. 18125, July 20, 2006.

> "(10) *Instrumentality* refers to any agency of the National Government, **not integrated within the department framework,** vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government owned or controlled corporations."*(Emphasis supplied).*

For a government agency to be considered an instrumentality it must NOT be INTEGRATED within a department framework, meaning it must not be included, incorporated or attached to any department under the executive branch of the government. In the case of Petitioner-Appellant, it is a government corporation attached to the Department of Public Works and Highways. Section 25, Chapter 6, Title V, Book IV of Executive Order No. 292, provides:

> **"Sec. 25.** *Attached Agencies and Corporation.* – Agencies and corporation attached to the Department shall continue to operate and function in accordance with their respective charters/laws/executive orders creating them. Accordingly, Metropolitan Waterworks and Sewerage System, the Local Water Utilities Administration, the **National Irrigation Administration**, and the National Water Resources Council, among others, **shall continue to be attached to the Department. x x x"*(Emphasis supplied)***

However, on June 06, 2011, the President of the Philippines signed into law R.A. 10149, Section 3(n) of which provides:

> **"Government Instrumentalities with Corporate Powers (GICP)/Government Corporate Entities (GCE) refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the Metropolitan Waterworks and Sewerage System (MWSS), the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Valley Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO)."** (Emphasis supplied)

It may be argued that Petitioner's contention that it is a government instrumentality have been reinforced by the above-quoted Section 3(n) of R.A. 10149. This contention, however, is not relevant to or pertinent in this case. This case pertains **not** to immunity from local taxes, fees or charges, but to Petitioner's alleged exemption from payment of real property taxes.

Section 133 of the LGC deals with exemption from payment of local taxes, fees and charges, not from payment of the real property tax.

On June 28, 1973, then President Ferdinand E. Marcos, in the exercise of his law-making powers, signed Presidential Decree (P.D.) 231 and promulgated the "Local Tax Code" which took effect on July 1, 1973. This "Local Tax Code" became, with certain modifications, the "Title One" of Book II of the LGC and is titled "LOCAL GOVERNMENT TAXATION" comprising Sections 128-196, inclusive, of the LGC.

On May 20, 1974, then President Marcos promulgated P.D. 464, the "Real Property Tax Code" which took effect on June 1, 1974. The "Real Property Tax Code", also with some modifications, became "Title Two" of Book II of R.A. 7160, known as the "REAL PROPERTY TAXATION" comprising Sections 197-283, inclusive, of the LGC.

Section 5 of the Local Tax Code under PD 231, as amended by Section 2 of P.D. 426 which took effect upon its approval by then President Marcos on March 30, 1974, provides:

"Sec. 5. Common limitations on the taxing powers of local governments. The exercise of the taxing powers of provinces, cities, municipalities and barrios shall not extend to the imposition of the following:

xxx xxx xxx

"(o) Taxes of any kind on the national and local governments."

The limitations on the taxing powers of the LGUs under said Sec. 5 of the Local Tax Code is now provided in Section 133(o) of the Local Government Taxation (Title One, Book II) of R.A. 7160, thus:

> **"SEC. 133. Common Limitations on the Taxing Powers of Local Government Units. Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:**
>
> **"x x x**
>
> **"(o) Taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities and local government units."**

The provisions of Section 5(o) of the Local Tax Code under P.D. 231 and Section 133(o) of the Local Government Taxation under R.A. 7160 are "limitations" on the part of the LGUs to impose local taxes, fees and charges vis-à-vis the National Government, its agencies and instrumentalities. Conversely, the same provisions exempt the National Government, its agencies and instrumentalities from said local taxes, fees and charges.

On the other hand, the government's exemption from real property tax was provided for under P.D. 464, the Real Property Tax Code, Section 40(a) of which stated:

> **"Sec. 40. Exemptions from Real Property Tax. — The exemption shall be as follows:**
>
> **"(a) Real property owned by the Republic of the Philippines or any of its political subdivisions and any government-owned corporation so exempt by its charter: Provided; however, That this exemption shall not apply to real property of the abovenamed entities the beneficial use of which has been granted, for consideration or otherwise, to a taxable person."**

The said government's exemption is now embodied under Section 234(a) of the LGC, thus:

> **"SEC. 234. *Exemptions from Real Property Taxation.* – The following are exempted from payment of the real property tax:**
>
> **"(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;"**

As their titles imply, the "Local Tax Code" under P.D. 231 governed local government taxation, while the "Real Property Tax Code" (P.D. 464) governed real property taxation. While these two decrees were both in effect, no one ever thought that the provisions of P.D. 231 had any application to real property taxation, or that the provisions of P.D. 464 had any application to local government taxation. Since P.D. 231 was never intended to govern real property taxation cases, there is no reason why Title One, Book II of R.A. 7160 should now be made applicable to real property taxation.

Section 133(o) prohibits the LGUs from imposing local taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities and other LGUs. It may be argued that the phrase "charges of any kind" includes real property taxes. However, such interpretation would be stretching the meaning of the phrase too far.

If Section 133(o) is applicable not only to local taxes, fees and other charges, but also to real property taxes, the inclusion of Section 234(a) by the legislature would have been an absurdity. In fact, it would have been unnecessary to include Title Two, Book II of R.A. 7160 (Real Property Taxation) since Title One, Book II (Local Government Taxation) of the same Code would have sufficed.

As in the Local Tax Code under P.D. 231, as amended, Chapter 2, Title One, Book II of the LGC specifically enumerates the local taxes, fees or charges which the LGUs may levy. Real property tax is neither mentioned anywhere in that chapter, nor in the entire Title One, Book II. Since, in the first place, no real property or owner thereof or person having legal interest therein is subject to real property tax under Title One, Book II of the LGC, there is, therefore, absolutely no reason why the National Government, its agencies and instrumentalities should be especially mentioned in Sec. 133(o) as immune from realty taxes.

The real property tax has always been imposed by the National Government, through the legislature. In contrast, local taxes, fees and other charges are imposed by the LGUs, through their respective councils or *sanggunians.* The LGUs are charged certain functions under Real Property Taxation, like fixing the rates of real property taxes, but these functions are to be done within the parameters set by the legislature. The LGUs are but administrators of the real property tax as embodied under Sec. 200 of R.A. 7160.

Thus, the Supreme Court, in *Benguet Corporation vs. Central Board of Assessment Appeals, et al.*[3], ruled:

> "Petitioner argues that realty taxes are local taxes because they are levied by local government units, citing Sec. 39 of P.D. 464, which provides:
>
> 'Sec. 39. *Rates of Levy.* – The provincial, city or municipal board or council shall fix a uniform rate of real property tax applicable to their respective localities x x x x'
>
> "While local government units are charged with fixing the rate of real property taxes, it does not necessarily follow from that authority the determination of whether or not to impose the tax. In fact, local governments

[3] G.R. No. 100959. June 29, 1992, First Division.

have no alternative but to collect taxes as mandated in Sec. 38 of the Real Property Tax Code, which states:

> 'Sec. 38. *Incidence of Real Property Tax.* – There shall be levied, assessed and collected in all provinces, cities and municipalities an annual *ad valorem* tax on real property, such as land, buildings, machinery and other improvements affixed or attached to real property not hereinafter specifically exempted.'

"**It is thus clear from the foregoing that it is the national government, expressing itself through the legislative branch, that levies the real property tax.** Consequently, when local governments are required to fix the rates, they are merely constituted as agents of the national government in the enforcement of the Real Property Tax Code. The delegation of the taxing power is not even involved here because the national government has already imposed realty tax in Sec. 38 above-quoted, leaving only the enforcement to be done by local governments.

"The challenge of petitioner against the applicability of *Meralco Securities Industrial Corporation v. Central Board of Assessment Appeals, et al.* (199 Phil. 453; G.R. No. L-46245, May 31, 1982), is unavailing, absent any cogent reason to overturn the same. Thus –

> 'Meralco Securities argues that the realty tax is a local tax or levy and not a tax of general application. This argument is untenable because the realty tax has always been imposed by the lawmaking body and later by the President of the Philippines in the exercise of his lawmaking powers, as shown in Sections 342 *et seq.* of the Revised Administrative Code, Act No. 3995, Commonwealth Act No. 470 and Presidential Decree No. 464.
>
> **'The realty tax is enforced throughout the Philippines and not merely in a particular municipality or city but the proceeds of the tax accrue to the province, city, municipality and barrio where the realty taxed is situated (Sec. 86, P.D. No. 464). In contrast, a local tax is imposed by the municipal or city council by virtue of the Local Tax Code, Presidential Decree No. 231, which took effect on July 1, 1973 (69 O.G. 6197).**'

"**Consequently, the provisions of** Sec. 52 of the Mineral Resources Development Decree of 1974 (P.D. 463), and **Secs. 5 (m), 17 (d) and 22 (c) of The Local Tax Code (P.D. 231) cited by petitioner are mere limitations on the taxing power of local government units; they are not pertinent to the issue before Us and, therefore, cannot and should not affect the imposition of real property tax by the national government."** (Emphasis supplied)

Therefore, if it is truly a government instrumentality, Appellant is exempt from payment of **local taxes, fees and charges of any kind**, but not from payment of the real property tax.

Respondents argued that, being a government-owned and controlled corporation, NIA's realty tax exemption, if any, were withdrawn upon the effectivity of the LGC, as provided for under Sections 193 and 234 thereof. Petitioner-Appellant argued that the provisions of said Sections 193 and 234 are ineffectual as far as NIA is concerned.

We fully agree with Appellant as far as Section 193 is concerned. Section 193 is part of Title One, Book II of the LGC which deals solely on local taxes, fees and charges. However, as far as Section 234 is concerned, we disagree with Appellant. The last paragraph of said Section 234 of the LGC, which took effect on January 01, 1992, explicitly provides:

> **"Except as provided herein, <u>any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including government-owned or –controlled corporations are hereby withdrawn upon the effectivity of this Code</u>."** (Emphasis supplied)

<u>4th Issue:</u>
WHETHER OR NOT THE LOCAL ASSESSMENT BOARD OF APPEALS OF THE PROVINCE OF IFUGAO MERELY RESORTED TO PURE TECHNICALITIES TO DEFEAT SUBSTANTIAL JUSTICE."

<u>Petitioner-Appellant NIA Argues</u>:

1. That NIA is a public corporation and, therefore, notice to it should be effected on its executive head who is the Administrator of the Petitioner-Appellant NIA holding office at NIA-Central Office, EDSA, Diliman, Quezon City.

2. That "said letter dated January 22, 2010 from the Office of the Provincial Treasurer, Province of Ifugao for the collection of Real Property Taxes by the Municipality of Alfonso Lista, Ifugao, with the attached Statement of Account dated January 25, 2010, which was received by Petitioner-Appellant NIA field office at Cawayan City, Isabela on January 26, 2011 *(sic; should be 2010)* is the notice received by the Executive Head or Administrator, thru its Legal Department, of the Petitioner-Appellant NIA holding office at EDSA, Diliman, Quezon City on March 8, 2011*(sic; should be*

2010).Hence, on March 18, 2011*(sic; should be 2010)* Petitioner-Appellant NIA filed its Protest dated March 8, 2011 *(sic; should be 2010)* which is within the sixty (60) day period provided under RA 7160, Section 226 thereof."

3. That "To ignore and neglect the above significant issues by resolving the case through rigid application of the rules is frowned upon in our jurisdiction", citing the Supreme Court ruling in *Vette Industrial Sales v. Sui Soan S. Cheng,* G.R. No. 170232, G.R. No. 170301, December 5, 2006, thus:

> ***"It is the policy of the Court to afford party-litigants the amplest opportunity to enable them to have their cases justly determined, free from the constraints of technicalities. It should be remembered that rules of procedure are but tools designed to facilitate the attainment of justice, such that when rigid application of the rules tend to frustrate rather than promote substantial justice, this Court is empowered to suspend their application."***

<u>Respondents Argue</u>:

1. That NIA's Protest was not timely filed with the LBAA and the LBAA had no jurisdiction over the case for the following reasons: (a) NIA failed to claim for tax exemption as provided under Section 206 of the Local Government Code of 1991 (LGC) and (b) Petitioner NIA failed to pay its realty tax liability under protest and thereafter file the protest before the Provincial Treasurer's Office of Ifugao as provided under Section 252 of the LGC, citing the case of *Napocor vs. Province of Quezon,* G.R. No. 171586, January 25, 2010, where the Supreme Court said:

> *"Like Olivarez, Napocor, by claiming exemption from realty taxation, is* ***simply raising a question of the correctness of the assessment. A claim for tax exemption, whether full of (sic) partial, does not question the authority of the local assessor to assess real property tax.*** *This may be inferred from Section 206 which states:*
>
> > *SEC. 206. Proof of exemption of Real Property form (sic) Taxation. – Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents.* ***If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.*** *[emphasis supplied]*
>
> *"By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above-quoted provision implies that the local assessor has the authority to assess the*

property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Since Napocor was simply questioning the correctness of the assessment, ***it should have first complied with Section 252, particularly the requirement of payment under protest. Napocor's failure to prove that this requirement has been complied with thus renders its administrative protest under Section 226 of the LGC without any effect. No protest shall be entertained unless the taxpayer first pays the tax.***

It was an ill-advised move for Napocor to directly file an appeal with the LBAA under Section 226 without first paying the tax as required under Section 252. *Sections 252 and 226 provide successive administrative remedies to a taxpayer who questions the correctness of an assessment. Section 226, in declaring that "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 this property may x x x appeal to the Board of Assessment Appeals x x x," should be read in conjunction with Section 252 (d), which states that "in remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Section 226 to 231]. The "action" referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessor's act of denying the protest filed pursuant to Section 252.* ***Without the action of the local assessor, the appellate authority of the LBAA cannot be invoked. Napocor's action before the LBAA was thus prematurely filed.***

For the foregoing reasons, we ***DENY*** *the petitioner's motion for reconsideration."* ***(emphasis NIA's)***

CBAA'S RULING
On Issue No. 4

Petitioner-Appellant NIA's "protest" with the LBAA was filed beyond the reglementary period.

At the outset, Respondents' position that, pursuant to the provisions of Section 252 of the LGC, NIA should have paid the assessed taxes under protest and, thereafter, should have filed a protest with the Office of the Provincial Treasurer is without merit.

Although NIA's Appeal with the LBAA was labelled as a protest and directed against the Provincial Treasurer of Ifugao and the Municipal Treasurer

of Alfonso Lista, Ifugao, the allegations therein clearly state that the same is an appeal under the provisions of Section 226 of the LGC.

The records show that the Notice of Assessment dated May 4, 2009 from the Office of the Municipal Assessor of Alfonso Lista, Ifugao, was received by NIA on "May 5, 2009 for ENGR. PELAGIO S. GAMAD, JR., DRD, MANAGER" as noted by someone whose signature is illegible.[4] Since then, various collection letters, with statements of accounts attached thereto, were sent by the Municipal Treasurer of Alfonso Lista, Ifugao, to Engr. Mariano G. Dancel, Acting Operations Manager, Magat River Irrigation System, Minante 1, Cauayan City, Isabela.

In answer to the collection letters of the Municipal Treasurer, Engr. Dancel in two letters - dated May 25, 2009 and October 9, 2009 -informed the Municipal Treasurer that "we are exempt from payment of Real Property Tax."

Again, on December 23, 2009, a certain "JOHN D. LIMOS" of NIA received a copy each of two Notices of Assessment both dated December 8, 2009, from the Office of the Municipal Assessor of Alfonso Lista, Ifugao. The said Notices of Assessment stated that the properties indicated therein were assessed for the year 2009.[5]

In a letter dated November 11, 2009, the Municipal Treasurer of Alfonso Lista asked the Provincial Treasurer of Ifugao for help in collecting the real property taxes assessed on NIA's properties. The Provincial Treasurer of Ifugao, in turn, sent a letter dated January 22, 2010, attaching thereto the

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[4] Annex "1" to Respondents' Answer, p. 153, Records.
[5] Annexes "1-A" and "1-B", respectively, Respondents' Answer, pp. 154-155, Records.

Statement of Account dated January 25, 2010, to Engr. Dancel, whose office in Cauayan City received the said letter on January 26, 2010.

The Office of Engr. Dancel, in a "1st Endorsement" dated March 1, 2010, forwarded the Provincial Treasurer's letter dated January 22, 2010 to NIA's Legal Department which received said "1st Endorsement" on March 8, 2010.

Petitioner-Appellant claims that, in this case, the sixty-day period for filing appeals to the LBAA prescribed under Section 226 of the LGC should start from the date NIA's Legal Department received from NIA's Operations Manager, or March 8, 2010, and not May 5, 2009, the date NIA received the written Notice of Assessment.

NIA contends that, since it is a public corporation, notice to it should be effected on its executive head; that "said letter dated January 22, 2010 from the Office of the Provincial Treasurer, Province of Ifugao for the collection of Real Property Taxes by the Municipality of Alfonso Lista, Ifugao, with the attached Statement of Account dated January 25, 2010, which was received by Petitioner-Appellant NIA field office at Cawayan City, Isabela on January 26, 2011 is the notice received by the Executive Head or Administrator, thru its Legal Department, of the Petitioner-Appellant NIA holding office at EDSA, Diliman, Quezon City on March 8, 2011. Hence, on March 18, 2011 Petitioner-Appellant NIA filed its Protest dated March 8, 2011 which is within the sixty (60) day period provided under RA 7160, Section 226 thereof."

We do not agree.

Section 223 of the LGC provides:

> "SEC. 223. *Notification of New or Revised Assessment.* – When real property is assessed for the first time or when an existing assessment is increased or decreased, the provincial, city of municipal assessor shall within thirty (30) days give written notice of such new or revised assessment to the person in whose name the property is declared. The notice may be delivered personally or by registered mail or through the assistance of the punong barangay in the last known address of the person to be served."

Section 9(b) of the Local Assessment Regulations No. 1-92 issued by the Department of Finance on October 6, 1992 pursuant to Sections 201 and 219 of the LGC provides:

> "b. To whom and to where the notice shall be delivered –
>
> "The written notice together with the owner's copy of the tax declaration shall be addressed to the person in whose name the property is declared. It may be delivered to him personally, or to the occupant in possession of the property, or by mail to the last known address of the owner or thru the assistance of the barangay captain.
>
> "If personally delivered to the owner or person in possession of the property, the person serving the notice shall secure the signature of the owner or occupant on the duplicate copy of the notice, with a notation of the date when notice was served and identification, whether recipient is the owner or occupant of the property. If the assistance of the barrio captain is secured, he should be requested to place his signature on the duplicate copy of the notice.
>
> "If the notice of assessment is coursed thru the mail, the notice of assessment and owner's copy of the tax declaration shall be registered with return card.
>
> "For obvious reasons, the duplicate copies of the notice of assessments signed by owners or occupants of property and the return card shall be filed in the office of the provincial, city or municipal assessor. Those are important in ascertaining whether appeals filed by owners of real property are filed within the reglementary period of sixty (60) days from date of receipt of such notice.
>
> "The notice of assessment and owner's copy of the tax declaration shall be delivered or mailed to property owners within thirty (30) days from entry of tax declarations covering assessments of property in the Record of Assessments."

Neither the provisions of Section 223 of the LGC, nor those of Section 9(b) of Local Assessment Regulations No. 1-92 provide that the service of the written notice of assessment should be effected on the "Executive Head of a Public Corporation". It is sufficient that the written notice of assessment is

delivered to the occupant in possession of the property, or by mail to the last known address of the owner.

The January 26, 2010 letter from the Provincial Treasurer of Ifugao, which NIA claims as "the Notice", does not qualify as the "written Notice of Assessment from the assessor" required under the provisions of Section 226 of the LGC.[6]

NIA believes that the LBAA, by ruling that NIA's appeal thereat was filed out of time, resorted to technicalities and that "To ignore and neglect the above significant issues by resolving the case through rigid application of the rules is frowned upon in our jurisdiction", citing the Supreme Court ruling in *Vette Industrial Sales v. Sui Soan S. Cheng.*[7]

We agree with Petitioner-Appellant that Rules of Procedure should be liberally construed to the end that substantial justice may be served. Technical rules of procedure should be used to promote, not frustrate justice.[8]

In a number of cases, however, the Honorable Supreme Court set the conditions when the rules of procedure may not be unduly relaxed, thus:

> "The liberal construction of the Rules of Court is resorted to only to promote substantial justice, not to delay or undermine the legal processes. The Rules are designed to assure the orderly and predictable course of justice. Unduly relaxing them would be an injustice to the innocent parties who honor and obey them, and unfairly reward those who neglect or fail to follow them." *(Boaz International Trading Corporation and F. R. Cement Corporation vs. Woodward Japan, Inc. and North Front Shipping Services, Inc.,* G.R. No. 147793, December 11, 2003.)
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> "Rules of procedure must be followed except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a

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[6] Filipinas Synthetic Fiber Corp. v. Provincial Assessor or Batangas, CBAA Case No. 123; Leticia B. Agawin v. City Assessor of Manila, CBAA Case No. 192.
[7] G.R. No. 170232, G.R. No. 170301, December 5, 2006.
[8] See *Antonio T. Donato vs. Court of Appeals, et al.,* G.R. No. 129638, December 8, 2003.

liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules." *(Cresenciano Duremdes vs. Agustin Duremdes*, G.R. No. 138256, November 12, 2003.)

"Rules of procedure are intended to insure the orderly administration of justice and the protection of substantive rights in judicial and extra-judicial proceedings. It is a mistake to suppose that substantive law and adjective law are contradictory to each other or, as has often been suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give effects to both kinds of law, as complimenting each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive rights is equally guaranteed by due process whatever the source of such rights, be it the constitution itself or only a statute or a rule of court." *(Limpot v. Court of Appeals, 170 SCRA 367 [1989]; Lim Tupaz v. Court o Appeals, G.R. No. 89571, Feb. 6, 1991, 193 SCRA 597; Santos v. Court of Appeals, G.R. No. 92862, July 04, 1991, 198 SCRA 806; Sps. Ruben and Luz Galang v. Court of Appeals, G.R. No. 76221, July 29, 1991, 199 SCRA 683; cited in Herrera, Remedial Law, 2000 Ed., p. 277).*

*"*Strict observance of the Rules indispensable to the prevention of needless delays and to the orderly and speedy dispatch of judicial business is an imperative necessity." *(Manila RR Co. v. Attorney General, 20 Phil. 523; cited in Herrera, Remedial Law, 2000 Ed., p. 278)*

Section 226 of R.A. 7160, otherwise known as the Local Government Code of 1991 ("LGC"), provides as follows:

> "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 province or city by filing a petition under oath in the from prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal." (Emphasis supplied)

On May 5, 2009, a certain person received, for and in behalf of Engr. Pelagio S. Gamad, Jr. of NIA, a copy of the written Notice of Assessment dated May 4, 2009 from the Office of the Municipal Assessor of Alfonso Lista, Ifugao. The Notice stated that the subject properties were assessed for the year 2008.

Again, on December 23, 2009, a certain "JOHN D. LIMOS" of NIA received a copy each of two Notices of Assessment both dated December 8, 2009, from the Office of the Municipal Assessor of Alfonso Lista, Ifugao. The

said Notices of Assessment stated that the properties indicated therein were assessed for the year 2009.[9]

The sixty-day period from May 5, 2009ended on July 4, 2009; that from December 23, 2009, on February 21, 2010. The LBAA received Petitioner-Appellant's Appeal on March 18, 2010 or three hundred seventeen (317) days after May 5, 2009 and ninety-nine (99) days after December 23, 2009.

Settled is the principle that the requirement regarding the perfection of appeals within the reglementary period is not only mandatory but also jurisdictional.[10]

The collection of taxes should not be left to uncertainty for an indefinite period of time. As the Honorable Supreme Court said in *Jose B.L. Reyes, et al. v. Pedro Almanzor, et al.*[11], "Verily, taxes are the lifeblood of the government and so should be collected without unnecessary hindrance."

WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit.

SO ORDERED.

Manila, Philippines, February 27, 2013.

SIGNED
OFELIA A. MARQUEZ
Chairman

SIGNED
ROBERTO D. GEOTINA
Member

SIGNED
CAMILO L. MONTENEGRO
Member

[9] Annexes "1-A" and "1-B", respectively, Respondents' Answer, pp. 154-155, Records.
[10] Roman Catholic Bishop vs. Director of Lands, 34 Phil. 623 (1916)/.
[11] G.R. No. L-49839-46, April 26, 1991.