



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

PANASIA ENERGY HOLDINGS, INC.,
Petitioner-Appellant,

CBAA CASE NO. L-119

LBAA Case No. 11-01
Province of Bataan

- versus -

THE LOCAL BOARD OF
ASSESSMENT APPEALS OF THE
PROVINCE OF BATAAN,
Appellee,

- and -

PROVINCIAL GOVERNMENT OF
BATAAN, ENGR. RICARDO C.
HERRERA, IN HIS CAPACITY AS
PROVINCIAL ASSESSOR OF THE
PROVINCE OF BATAAN,
Respondent-Appellees.

X-----X

DECISION

This is an appeal filed by petitioner-appellant Panasia Energy Holdings, Inc. (“Panasia”) against respondents Local Board of Assessment Appeals of the Province of Bataan; the Provincial Government of Bataan and Engr. Ricardo C. Herrera, in his capacity as Provincial Assessor of the Province of Bataan, in connection with respondent LBAA’s Order dated August 18, 2011 which dismissed petitioner-appellant’s appeal on ground that the petition is insufficient in form and substance (Annex “A”).

In its instant appeal, petitioner-appellant alleges that on December 9, 2010, it received from respondent Provincial Assessor a Notice of Assessment of Real Property regarding the buildings and machineries of appellant Panasia located in the Limay Combined Cycle Power Plant (Annex “B”); that the buildings and machineries covered by the Tax Declarations mentioned in the

Notice of Assessment has an aggregate market value of ₱19,179,135,008.00; and that on February 7, 2011, petitioner-appellant filed its Petition before respondent-appellee LBAA of Bataan docketed as LBAA Case No. 11-01, questioning the legality, validity and correctness of the Notice of Assessment issued by respondent Herrera.

Appellant further states that on August 18, 2011, respondent LBAA issued the assailed Order which dismissed petitioner's petition; that the ground for dismissal is that:

"An examination of the said Secretary's Certificate will show that the resolution which was approved by the Board of Directors of the corporation granted the authority to 'any one Group A, B, C, or F signatory.' The resolution however, **did not designate or name the persons constituting the Group A, B, C or F signatory.**

xxx

xxx

xxx

This Board believes, and so holds, that the aforementioned certification by the corporate secretary will not suffice. **What is required is a certification that the corporation, by resolution duly approved by its Board of Directors, has named Mr. Rafael C. Bueno, Jr., as a Group B signatory.** (*Emphasis supplied*)

Hence, this appeal with petitioner-appellant enumerating the grounds to allow the appeal, namely:

- I. THE PETITION IS SUFFICIENT IN FORM AND SUBSTANCE. MR RAFAEL C. BUENO, JR. IS A DULY AUTHORIZED REPRESENTATIVE OF THE PETITIONER-APPELLANT AS EVIDENCED BY THE SUBMITTED SECRETARY'S CERTIFICATE DATED FEBRUARY 7, 2011.
- II. THE FAIR MARKET VALUE USED BY THE RESPONDENTS-APPELLEES IN THE NOTICE OF ASSESSMENT IS UNJUST, ERRONEOUS AND IS NOT IN ACCORDANCE WITH THE PROVISIONS OF THE LOCAL GOVERNMENT CODE.

On November 8, 2011, this Board received a Joint Motion from the parties, assisted by their respective lawyers, submitting their Compromise Agreement dated November 3, 2011, terminating their dispute amicably and praying that the same be approved and judgment rendered in accordance

therewith. A copy of the Resolution from the Sangguniang Panlalawigan of Bataan ratifying the Compromise Agreement is also attached.

The text of the Compromise Agreement is as follows:

“COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This **Compromise Agreement** made and entered into this 3rd day of November 2011, by and between:

The **PROVINCIAL GOVERNMENT OF BATAAN (“BATAAN”)**, represented herein by its Governor, **HON. ENRIQUE T. GARCIA JR.** and **RICARDO C. HERRERA**, in his capacity as OIC Provincial Assessor of the Province of Bataan (**“Provincial Assessor”**), both with official address at Capitol Compound, Balanga City, Bataan, as authorized under Sangguniang Panlalawigan Resolution No. 109 dated November 3, 2011, copy of which is attached hereto and made an integral part hereof as *Annex ‘A’*;

- and -

PANASIA ENERGY HOLDINGS INC., a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 808 Building, Meralco Avenue corner Gen. Lim Street, San Antonio Village, Pasig City, Metro Manila, represented herein by **MESSRS. RAFAEL C. BUENO, JR.** and **MIGUEL JOSE C. VALENCIA**, whose authority to sign this Compromise Agreement is set out in the Special Power of Attorney and Secretary’s Certificate, copies of which are collectively attached hereto and made an integral part hereof as *Annex ‘B’*, and hereinafter referred to as **“PANASIA”**;

WITNESSETH, That:

WHEREAS, on December 9, 2010, the Province of Bataan, through its Provincial Assessor, issued a Notice of Assessment of Real Property covering the machineries and buildings of the Limay Combined Cycle Power Plant located in Limay, Bataan with the new assessment level of 80% based on their undepreciated fair market value as of 1997;

WHEREAS, BATAAN assessed PANASIA transfer taxes for the transfer of ownership of the Limay Combined Cycle Power Plant from the Power Sector Assets and Liabilities Management Corporation (‘PSALM’) based also on the undepreciated fair market value of said properties as of 1997;

WHEREAS, PANASIA appealed the Notice of Assessment of Real Property to the Local Board of Assessment Appeals (‘LBAA’) which was docketed as LBAA Case No. 11-01;

WHEREAS, the LBAA dismissed the appeal of PANASIA in its Order dated August 18, 2011;

WHEREAS, on October 12, 2011, PANASIA appealed the dismissal of LBAA Case No. 11-01 to the Central Board of Assessment Appeals (‘CBAA’) docketed as CBAA Case No. 119;

WHEREAS, the resolution of protests on, and appeals of, assessments of real property taxes ordinarily takes several years and such cases may eventually reach the Supreme Court before they are finally resolved;

WHEREAS, RA 7160 or the Local Government Code of 1991 (the ‘Local Government Code’) provides in Section 225 that, ‘[F]or purposes of assessment, a depreciation allowance shall be made for machinery at a rate not exceeding five percent (5%) of its original cost or its replacement or reproduction cost, as the case may be, for each year of use; Provided, however, That the remaining value for all kinds of machinery shall be fixed at not less than twenty percent (20%) of such original, replacement, or reproduction cost for so long as the machinery is useful and in operation.’

WHEREAS, to buy peace and put an end to a protracted litigation, the parties have agreed on a compromise settlement;

WHEREAS, the signatories of this Compromise Agreement are duly authorized for this purpose;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties herein have agreed to settle their disputes with respect to the assessment of the fair market value and the corresponding assessed value of the Limay Combined Cycle Power Plant and the transfer taxes due thereon as a result of the transfer of ownership from PSALM to PANASIA as of November 30, 2011 and hereby mutually agree as follows:

Section 1. Approval by the CBAA. – This Compromise Agreement shall be valid and effective only upon approval by the CBAA and its determination that the same is not contrary to law, morals, public policy and public order in the case pending before it. The parties shall exert their best efforts in securing the CBAA approval including the filing of the necessary joint motions, manifestations or pleadings with the CBAA which the parties may reasonably deem appropriate or necessary for the approval by the CBAA of this Compromise Agreement.

Section 2. Fair Market Value and Assessed Value of the Limay Combined Cycle Power Plant. – Upon approval of this Compromise Agreement by the CBAA, the Provincial Assessor shall issue new tax declarations over the machineries and buildings which consist the Limay Combined Cycle Power Plant applying thereto the allowable depreciation for machineries in accordance with the provisions of the Local Government Code, particularly Section 225 thereof, on allowable depreciation of machineries, as follows:

PROPERTY/ TAX DECLARATION NUMBER	ORIGINAL MARKET VALUE (1997)	NEW MARKET VALUE	NEW ASSESSED VALUE
Machinery under TD No. 23188	P8,030,721,004.00	P1,606,144,200.80	P1,284,915,360.64
Machinery under TD No. 23189	P8,030,721,004.00	P1,606,144,200.80	P1,284,915,360.64
Building under TD No. 23186	P1,500,000,000.00	P300,000,000.00	P240,000,000.00
Building under TD No. 23187	P1,500,000,000.00	P300,000,000.00	P240,000,000.00

The description of property as buildings in Tax Declaration Nos. 23186 and 23187 shall be corrected and incorporated as machineries under the new tax declarations to be issued by the Provincial Assessor under this Compromise Agreement, considering that the same are appurtenant physical structures and therefore integral parts of the machineries covered by Tax Declaration Nos. 23188 and 23189.

Section 3. Settlement of Real Property Taxes and Transfer Taxes Due on the Properties which Consist the Limay Combined Cycle Power Plant. –

Upon approval of this Compromise Agreement by the CBAA, PANASIA shall pay to BATAAN the total amount of ONE HUNDRED THREE MILLION SEVEN HUNDRED ELEVEN THOUSAND FOUR HUNDRED EIGHTY FOUR AND 57/100 PESOS (P103,711,484.57) in full settlement and satisfaction of the real property taxes of the properties which consist the Limay Combined Cycle Power Plant for the period covering the second half of 2010 to 2011, inclusive of interests, penalties and surcharges as of November 30, 2011. The Provincial Treasurer shall remit the respective shares of the other local government units from the said real property taxes in accordance with the provisions of the Local Government Code.

PANASIA shall likewise pay the transfer taxes due on the said properties amounting to TWENTY NINE MILLION FIVE HUNDRED FORTY FIVE THOUSAND TWO HUNDRED THIRTY FIVE AND 11/100 PESOS (P29,545,235.11) to BATAAN, inclusive of interests and penalties as of November 30, 2011, for the transfer of ownership of said properties from PSALM to PANASIA.

Section 4. Dismissal of the CBAA Case. – The parties shall submit this Compromise Agreement to the CBAA within fifteen (15) days from execution hereof to seek the dismissal with prejudice of CBAA Case No. 119 and approval of this Compromise Agreement by the CBAA subject to compliance by each of the parties of their respective obligations under this Compromise Agreement.

Section 5. Mutual Release and Discharge. – Upon compliance by each of the parties of their respective obligations under this Compromise Agreement:

(a) Each of the parties hereby irrevocably and forever, absolutely and unconditionally waive, release, quitclaim, discharge and hold free and harmless each of the other parties, and any of their respective officials, directors, officers, agents, assigns, representatives, or successors-in-interest, from any and all suits, actions, sums of money, damages, claims or demands of whatever nature and kind, disclosed or undisclosed, pending or potential, arising out of or in connection with the controversy arising from the same facts, incident, claim, cause or causes of action, including but not limited to claims for any deficiency or back real property taxes and transfer taxes, interests and/or penalties of whatever nature.

(b) The parties hereby undertake and warrant that they will not directly or indirectly, institute or cause the institution of any complaint, action, suit, claim or demand whatsoever of whatever nature and kind, whether civil, criminal or administrative, against each other, including their respective officials, officers, directors, agents, assigns or successors-in-interest, in any court of law, prosecutor's office, administrative body or any other forum, body or tribunal in connection with the controversy arising from the same facts, incident, claim, cause or causes of action in LBAA Case No. 11-01 and CBAA Case No. 119, the real property taxes and transfer taxes due on the buildings and machineries of the Limay Combined Cycle Power Plant, and other related taxes or assessments on these properties.

(c) The parties hereby warrant that each have all the requisite legal power and authority to execute this Compromise Agreement and to carry out the terms, conditions and provisions herein set out:

(d) The execution, delivery and performance by the parties have been duly authorized by all requisite corporate actions, and will not contravene any provision of, or constitute a default under, any agreement or instrument to which it is a party or by which it or its property may be bound.

Section 6. Non-Admission. – The execution of this Compromise Agreement and/or the performance of the obligations and actions provided herein shall not be deemed, nor constitute an admission, express or implied, by either party of any claim or demand whatsoever of the other, it being understood that the parties have mutually and freely entered into and performed these acts in the spirit of good faith and understanding and to avoid or terminate protracted and expensive litigations.

Section. 7. Good Faith. – The parties have voluntarily and in good faith entered into this Compromise Agreement in order to settle any and all liability with respect to real property taxes and transfer taxes due on the subject properties as of November 30, 2011. The parties further confirm that the execution of this Compromise Agreement is not tainted by any mistake, fraud, violence, undue influence or falsity of documents on the part of any party.

IN WITNESS WHEREOF, the parties hereto have caused this Compromise Agreement to be signed by their authorized signatories on the date above written.

THE PROVINCE OF BATAAN

Represented By:

(Sgd.)
RICARDO C. HERRERA
 In his capacity as Provincial Assessor
 of the Province of Bataan

(Sgd.)
ENRIQUE T. GARCIA, JR.
 Governor
 of the Province of Bataan

PANASIA ENERGY HOLDINGS INC.

Represented By:

(Sgd.)
RAFAEL C. BUENO, JR.
 Authorized Signatory

(Sgd.)
MIGUEL JOSE C. VALENCIA
 Authorized Signatory

SIGNED IN THE PRESENCE OF:

(Sgd.)
 Aurelio C. Angeles, Jr.

(Sgd.)
 Ramon U. Agay, Jr.

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
Balanga City, Bataan) S.S.

BEFORE ME, a Notary Public for and in Balanga City, this 03 NOV 2011, at Bataan, personally appeared:

<u>Name</u>	<u>Competent Evidence of Identity</u>	<u>Date/Place Issued</u>
Province of Bataan Represented by: RICARDO C. HERRERA , in his capacity as OIC Provincial Assessor of the Province of Bataan	Voter's ID No. 08030162BL2763RCH10000	December 9, 2003/ Balanga City
ENRIQUE T. GARCIA JR , in his capacity as Provincial Governor of the Province of Bataan	Voter's ID No. 08030165AI1340ETG10000	November 7, 2003/ Balanga City

identified by me through competent evidence of their identities bearing their photographs and signatures to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their own free act and voluntary deed and the free act and voluntary deed of the Province of Bataan they represent, they being duly authorized to execute the foregoing instrument.

This instrument refers to a Compromise Agreement, which consists of six (6) pages, including the pages whereon this acknowledgment is written, but excluding the Annexes.

WITNESS MY HAND AND NOTARIAL SEAL on the date, year and place first above written.

Doc. No. 334;
Page No. 68;
Book No. II;
Series of 2011.

(Sgd.)
Atty. Jenny Vi C. Trinidad-Laygo
NOTARY PUBLIC
NC-284-10 Until December 31, 2011
PTR No. 0480488
01/03/2011; Balanga City, Bataan
IBP No. 662041; 01/03/2011
Roll No. 53850 Bataan

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
MANDALUYONG CITY) S.S.

BEFORE ME, a Notary Public for and in MANDALUYONG CITY, this NOV 3 2011, at _____, personally appeared:

<u>Name</u>	<u>Competent Evidence of Identity</u>	<u>Date/Place Issued</u>
Panasia Energy Holdings Inc. Represented By:		
Rafael C. Bueno, Jr.	Passport No. EB0973708	17 Sept. 2010/Manila
Miguel Jose C. Valencia	Passport No. EB2611598	04 June 2011/Manila

identified by me through competent evidence of their identities bearing their photographs and signatures to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their own free act and voluntary deed and the free act and voluntary deed of the corporation they represent, they being duly authorized to execute the foregoing instrument.

This instrument refers to a Compromise Agreement, which consists of six (6) pages, including the pages whereon this acknowledgment is written, but excluding the Annexes.

WITNESS MY HAND AND NOTARIAL SEAL on the date, year and place first above written.

Doc. No. 363;
Page No. 74;
Book No. IV;
Series of 2011.

(Sgd.)
MARY ROSE S. TAN
NOTARY PUBLIC
Commission No. 0252-11
Notary Public for Mandaluyong City
Until December 31, 2012
SMC 40 San Miguel Ave. Mandaluyong City
Roll No. 47144
PTR No. 0980247, 01/03/11, Mandaluyong City
Lifetime Member No. 09449; 01/04/11 Makati City

After an examination of the Compromise Agreement, this Board finds the same to be in order, fair, equitable and not contrary to existing laws, morals, good customs, public order and public policy.

WHEREFORE, premises considered and in the interest of sound and speedy disposition of cases, the Compromise Agreement is hereby approved

and the parties are enjoined to comply with the terms and conditions of the same.

SO ORDERED.

Manila, Philippines, November 14, 2011.

(Signed)

OFELIA A. MARQUEZ
Chairman

(Signed)

RAFAEL O. CORTES
Member

(Signed)

ROBERTO D. GEOTINA
Member