



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

LUZON HYDRO CORPORATION
and **NATIONAL POWER**
CORPORATION,
Petitioners-Appellants,

-versus-

CBAA CASES NOS. L-96 & L-99
(LBAA Case No. 08-01-03)
Province of Ilocos Sur

LOCAL BOARD OF ASSESSMENT
APPEALS OF THE PROVINCE OF
ILOCOS SUR,
Appellee,

-and-

FATIMA A. TENORIO, IN HER
OFFICIAL CAPACITY AS
PROVINCIAL ASSESSOR OF
ILOCOS SUR; **ANTONIO A.**
GUNDRAN, IN HIS OFFICIAL
CAPACITY AS THE PROVINCIAL
TREASURER OF ILOCOS SUR;
REYNALDO BOTERES, IN HIS
OFFICIAL CAPACITY AS THE
MUNICIPAL ASSESSOR OF
ALILEM, ILOCOS SUR; AND
CRISTINA MONDERIN, IN HER
OFFICIAL CAPACITY AS THE
MUNICIPAL TREASURER OF
ALILEM, ILOCOS SUR,
Respondents-Appellees.
X- -----/

DECISION

This Decision pertains to both CBAA Cases Nos. L-96 and L-99, which were consolidated pursuant to a verbal agreement among the Petitioners-Appellants and Respondents-Appellees during the joint hearing of both cases on November 27, 2009.

ANTECEDENTS

On March 16, 2009, in LBAA Case No. 08-01-03 entitled "IN RE: PROTEST OF THE NOTICES OF TAX ASSESSMENTS OF REAL PROPERTY BY THE MUNICIPALITY OF ALILEM, PROVINCE OF ILOCOS SUR, LUZON HYDRO CORPORATION, Petitioner, and NATIONAL POWER CORPORATION, Intervenor-Co-Petitioner", the Local Board of Assessment Appeals for the Province of Ilocos Sur (the "LBAA") issued a Resolution, the dispositive portion of which reads:

"WHEREFORE, premises considered, the instant Petition is hereby DISMISSED for lack of merit, and Petitioner Luzon Hydro Corporation is hereby ORDERED to pay the realty taxes due on the subject real property to be computed based on the amount of Fair Market Value stated in the Tax Declaration Nos. 002-00510; 002-00511; 002-00512; 002-00513; and 002-00444 and with an Assessment Level at the rate of Eighty Percent (80%) thereon, and after deducting the payments made, by virtue of their Compromise Agreement, LHC is ordered to pay the deficiency taxes due on the subject property, plus the surcharges, penalties and interest from the fourth quarter of the year 2002 until it is fully paid, pursuant to and in accordance with the pertinent provisions of the Local Government Code (Republic Act No. 7160)."

Both Luzon Hydro Corporation (LHC") and National Power Corporation ("NPC") appealed: LHC's Appeal/Petition for Review (dated April 29, 2009) was received by this Board on April 30, 2009 and docketed as CBAА Case No. L-96; NPC's Appeal/Petition for Review (dated August 10, 2009) was received by this Board on August 26, 2009 and docketed as CBAА Case No. L-99.

LHC admitted that it received a copy of the assailed resolution on April 2, 2009; NPC alleged that it received the assailed Resolution on April 3, 2009, that it filed a Motion for Reconsideration and that it received the order of denial of said motion only on July 28, 2009.

In its Appeal/Petition for Review (CBAА Case No. L-96), LHC alleges:

"1. Petitioner-Appellant Luzon Hydro Corporation ("LHC" for brevity) is a corporation organized and existing under the laws of the Philippines with principal office address at Poblacion, Alilem, Ilocos Sur. It may be served with orders, notices, resolutions and other court processes through the undersigned counsel.

"2. National Power Corporation ("NPC" for brevity) is a government-owned and controlled corporation created pursuant to Republic Act No. 6395, as amended, with principal office address at NPC Building, Quezon Avenue corner Agham Road, Quezon City.

"4. On November 24, 1996, under the build, operate, transfer arrangement, NPC entered into a Power Purchase Agreement ("PPA") with the consortium composed of --- (a) Aboitiz Ventures, Inc.; (b) Pacific Hydro Limited; (c) Ever Electrical Manufacturing Corporation; and (d) Northern Mini Hydro Corporation, a subsidiary of Aboitiz Equity Ventures --- for the design, construction, and operation of the Bakun AC Hydroelectric Power Plant ("Bakun Power Plant") under a build-operate and transfer arrangement, of which certain machinery/infrastructure/real properties of the Bakun Power Plant, i.e., Power Station, Turbine Inlet, Mechanical and Electrical Equipment and Prime Equipment are located in the Municipality of Alilem, Ilocos Sur. Likewise, on the same date, an Accession Undertaking was executed pursuant to which, LHC became a party to the PPA and assumed all the rights and obligations of the consortium under the PPA.

"5. The execution of the PPA and the approval of the build-operate-and-transfer of the Bakun Power Plant by the Philippine Government, no doubt, was part of the latter's vigorous efforts to attract independent power producers in order to solve the then crippling power crisis. Hence, as part of the incentives granted by the Philippine Government, it was provided in Article 8.6 of the Power Purchase Agreement that NPC shall assume responsibility for the payment of applicable taxes, duties, charges, real property taxes, etc., to wit:

'8.6 Taxes: All fees payable to the Operator pursuant to this Agreement shall be paid in Dollars and Pesos in accordance with the eight Schedule of this Agreement with the Value Added Tax thereon (which shall be separately stated in all the invoices), if any. In addition, NPC shall be responsible for the payment of (a) taxes, fees, duties, charges and other levies including input Value Added Tax on importation of equipment imposed by the National Government of the Philippines or any agency or instrumentality thereof to which the Operator may at any time be or become subject in or in relation to the performance of its obligations under this Agreement, and (b) real estate taxes and assessments, rates and other charges in respect of the Site the structures and improvements thereon, and the Power Station other than (i) taxes imposed or calculated on the basis of net income of the Operator, its personnel, subcontractors and their personnel, and (ii) input Value Added Tax, (other than input Value Added Tax on importation of equipment and accompanying spares) and (iii) construction permits, environmental permit fees and other similar fees and charges.'

"6. Prior to the construction of the Power Plant, NPC as mandated by law to generate electric power, LHC as the Project Proponent and the Municipality of Alilem, Ilocos Sur as host of the proposed Power Station, entered into and executed a Memorandum of Agreement (MOA; see Annex "B"), which defined the responsibilities and commitments of the parties, one of which is the Municipality of Alilem, with regard to the Bakun Project.

(Nota bene: In paragraph No. 7 of its Appeal/Petition, LHC outlined the 'benefits' that the Municipality of Alilem, Ilocos Sur would derive from the implementation of the Bakun Project, as provided for under 'Responsibilities of the Parties' of that Memorandum of Agreement (Records, p. 56, Folder No. 1), made and entered into in Alilem, Ilocos Sur by and among the Municipality of Alilem, Ilocos Sur, LHC and NPC and acknowledged before Notary Public May G. Saga-Aguilar on November 18, 1998 in Quezon City.)

"9. In due course, LHC submitted the Sworn Declarations with the proper and respective local government units of Ilocos Sur (see Annex "E") and La Trinidad, Benguet involving the real properties used in the production of power for real property taxation purposes. In submitting the sworn declarations, LHC in its letter dated September 5, 2002 addressed to the Provincial Assessor's Office of Alilem, Ilocos Sur, advised the Provincial Assessor's (*sic*) of the applicable provisions of the PPA between LHC and NPC (see , Annex "F").

"10. On July 2, 2003, LHC received two (2) Notices of Assessment from the Municipal Assessor of Alilem assessing certain industrial machinery/equipment and the buildings of the Bakun Power Plant used in the generation of power, which are all situated within the Municipality of Alilem. The first Notice of Assessment (see Annex "G") required LHC to pay the amount of P4,303,953.80, which purportedly represents real property taxes for the fourth (4th) quarter of the year 2002. The second notice of assessment (see Annex "H") required petitioner to pay the amount of P17,233,175.00 for the real property taxes for the year 2003.

"11. Since under Article 8.6 of the PPA, NPC is liable for the payment, among others, of real property taxes, and **because the Municipality of Alilem had consented to such arrangement as contained in the PPA and adhered to by the Municipality through the MOA**, Petitioner referred the letters/notices of public respondents to NPC. Worth noting in the Notices of Assessment is the additional imposition of forty percent (40%) of the Acquisition Cost representing purported Installation Cost and another fifteen (*sic*) (15%) of the Acquisition Cost purportedly representing freight charges. On December 9, 2002, NPC's Vice President and Head for GENCO 2, Froilan A. Tampinco, wrote a letter addressed to the Municipal Assessor reiterating NPC's responsibility for real property taxes and stating its willingness to pay real property taxes at ten percent (10%) assessment level. (See Annex "I") The Municipal Assessor responded to NPC's letter justifying the assessment and stating that he will refer the matter to the Bureau of Local Government Finance of the Department of Finance. On July 23, 2003, NPC wrote a letter to LHC to categorically state and confirm that NPC undertook to assume the obligation to pay the real property tax assessments on Bakun Hydroelectric Power Project. (See Annex "J")

"12. On August 18, 2003, LHC filed a protest with the LBAA (see Annex "K") and NPC intervened thereafter. While the proceedings of the instant case in the LBAA were on going, LHC received on April 1, 2005, a Notice of Billing from the Municipal Treasurer of Alilem requiring LHC to pay the total sum of P77,184,226.24. (See annex "L") For the same reasons cited in its earlier Petition, LHC accordingly filed a Protest thereto.

"13. On September 22, 2005, LHC, NPC, the Province of Ilocos Sur and the Municipality of Alilem, Ilocos Sur executed a Compromise Agreement (see Annex "M"; Pp 99-112, Folder I, Records) wherein the parties agreed to refer the matter/case with the LBAA after payment by petitioner/NPC of the real property tax computed at ten percent (10%) assessment level without prejudice

to the payment of a higher tax or refund, as the case may be, depending on the final resolution of the case, and likewise without prejudice to the issue of prompt payment and advance payment discounts and with the undertaking that the public respondents shall not issue or refrain from, desist, avoid issuing a warrant of levy. Thus on the same date, petitioner/NPC paid under protest the amount of P4,749,274.00 as payment for real property taxes for the 4th quarter of 2002 up to the entire year of 2005 as evidenced by the Official Receipt No. 1232393 issued by the Office of the Treasurer, Province of Ilocos Sur. (See Annex "N")

The Statement of Facts enumerated in NPC's Appeal/Petition for Review (CBAA Case No. L-99) are substantially the same as those mentioned in LHC's Appeal/Petition for Review (CBAA Case No. L-96).

Grounds raised by LHC (CBAA CASE NO. L-96):

- "I. THE LBAA COMMITTED GRAVE AND PALPABLE ERROR, CLEARLY ACTING, CONTRARY TO LAW AND EXISTING FACTS, IN HOLDING AND IN REASONING THAT PETITIONER-APPELLANT IS LIABLE FOR THE PAYMENT OF REAL PROPERTY TAXES ON THE GROUND THAT: (I) NEITHER PETITIONER-APPELLANT NOR NPC ARE EXEMPT FROM PAYMENT OF REALTY TAXES; (II) THAT THE PROVINCE OF ILOCOS SUR AND MUNICIPALITY OF ALILEM ARE NOT PRIVY TO THE MEMORANDUM OF AGREEMENT ("MOA") AS FAR AS THE PAYMENT OF REALTY TAXES IS CONCERNED AND THAT THERE IS NO CONCRETE AGREEMENT IN THE MOA THAT THE MUNICIPALITY OF ALILEM SHOULD COLLECT FROM NPC THE PAYMENT OF REALTY TAXES OVER THE REAL PROPERTY ACQUIRED AND DECLARED IN THE NAME OF LHC.**
- "II. THE LBAA GRAVELY ERRED IN CONCLUDING THAT THE VALUATION OF THE FAIR MARKET VALUE OF THE SUBJECT REAL PROPERTY AS STATED IN ITS CORRESPONDING TAX DECLARATIONS PREVAILS OVER THE VALUATION MADE BY PETITIONER-APPELLANT IN ITS SWORN STATEMENT.**
- "III. THE LBAA GRAVELY ERRED IN HOLDING THAT THE SUBJECT REAL PROPERTY SHOULD NOT BE CLASSIFIED AS SPECIAL CLASS OF REAL PROPERTY, BUT RATHER, AS AN INDUSTRIAL PROPERTY SUBJECT TO AN ASSESSED VALUE (SIC) OF EIGHTY PERCENT (80%) UNDER PARAGRAPH (C) SECTION 218 OF THE LOCAL GOVERNMENT CODE.**
- "IV. THE LBAA COMMITTED GRAVE AND SERIOUS ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN ORDERING PAYMENT OF INTEREST, SURCHARGES AND PENALTIES AND IN HOLDING THAT PETITIONER-APPELLANT OR NPC CANNOT CLAIM DISCOUNTS FOR ADVANCED AND PROMPT PAYMENTS."**

ISSUES RAISED BY NPC (CBAA CASE NO. L-99):

- “I. THE LBAA COMMITTED PALPABLE ERROR IN HOLDING THAT THE SUBJECT MACHINERIES AND EQUIPMENT ARE NOT ACTUALLY, DIRECTLY AND EXCLUSIVELY USED BY NPC, HENCE NOT EXEMPT FROM REAL PROPERTY TAXES.**
- “II. THE LBAA ERRED IN ORDERING PAYMENT OF INTERESTS, SURCHARGES AND PENALTIES.**
- “III. THE LBAA ERRED IN AFFIRMING THE IMPOSITION BY THE MUNICIPAL ASSESSOR OF AN ADDITIONAL AMOUNT OF FIFTY-FIVE PERCENT (55%) ON THE VALUE OF THE MACHINERIES AND EQUIPMENT AS STATED IN THE SWORN DECLARATION PURPORTEDLY REPRESENTING INSTALL-ATION COST AND FREIGHT CHARGES IN ORDER TO DETERMINE THE ASSESSED VALUE IS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

Respondents-Appellees filed with this Board their Memorandum dated May 25, 2012 on June 15, 2012. The contents thereof are, more or less, similar to those contained in their Comment/Answer to the Appeal.

Appellant National Power Corporation (NPC) did not file its Memorandum. Co-Appellant Luzon Hydro Corporation (“LHC”) submitted its Memorandum dated July 3, 2012 to this Board on July 4, 2012.

Appellant LHC’s Memorandum raised the following issues, to wit:

- A. WHETHER THE REAL PROPERTY SUBJECT OF THE DISPUTED ASSESSMENTS ARE EXEMPT FROM REAL PROPERTY TAX, OR ASSUMING ARGUENDO THAT REAL PROPERTY TAX IS DUE ON THE REAL PROPERTY, WHETHER THE APPLICABLE ASSESSMENT LEVEL IS 10% AND NOT 80%.
- B. WHETHER THE VALUATION OF THE FAIR MARKET VALUE OF THE REAL PROPERTY CAN PROPERLY BE BASED ON THE CORRESPONDING TAX DECLARATIONS AND NOT ON THE SWORN STATEMENT OF LHC.
- C. ASSUMING REAL PROPERTY TAXES ARE DUE, WHETHER LHC IS THE PARTY RESPONSIBLE FOR THE PAYMENT OF THE SAME.
- D. WHETHER LHC/NPC CAN PROPERLY BE MADE LIABLE FOR INTEREST, SURCHARGES AND PENALTIES.

DISCUSSION

ISSUE NO. 1:

WHETHER THE REAL PROPERTY SUBJECT OF THE DISPUTED ASSESSMENTS ARE EXEMPT FROM REAL PROPERTY TAX, **OR** ASSUMING ARGUENDO THAT REAL PROPERTY TAX IS DUE ON THE REAL PROPERTY, WHETHER THE APPLICABLE ASSESSMENT LEVEL IS 10% AND NOT 80%.

LHC's Arguments:

LHC says that the subject machinery and equipment are exempt from real property tax under Section 234(c) of R.A. 7160, otherwise known as the Local Government Code of 1991 ("LGC"), because the Real Property are actually, directly and exclusively used by NPC. In support of this contention, LHC argues that:

1. Under the build-operate-transfer (BOT) scheme, LHC, as financier-contractor, retains the naked ownership of the Bakun Plant, while the beneficial use and ownership thereof remained with NPC ;
2. The water permits needed for the operation of the Bakun Plant are in the name of NPC, the entity, not LHC, which is authorized to draw water from the Bakun River;
3. The special land use permits for certain portions of the Bakun Power Plant, particularly the area where the weir and the tunnel are located are likewise in the name of NPC, not LHC;
4. The Bakun Power Plant is clearly under the control and supervision of the NPC, which, during the construction of the Power Station, had full authority to monitor the progress of the construction;
5. The operation and maintenance of the Bakun Power Plant are subject to the instructions and directions of NPC; and
6. Whatever electricity is generated from the Bakun Power Plant inures to the sole and exclusive benefit of NPC.

On matter of the applicability of the 10% Assessment Level, LHC states that, assuming that the exemption under Section 234(c) of the LGC does not apply, “the Real Property are subject only to a 10% assessment level for being a special class of real property” and argues that:

1. Unlike Section 234(c) which requires **actual, exclusive and direct use** of the subject property by a government-owned and controlled corporation engaged in the generation and transmission of electricity, Section 216 requires only **ownership and use**;

2. Again, by virtue of the BOT arrangement, beneficial ownership of the Bakun Power Plant is retained by NPC. LHC is vested only with naked ownership of the Real Property, to serve as security until such time as it is fully paid for its capital expenses, or up to the end of the cooperation period as specified under the BOT arrangement;

3. After the cooperation period of 25 years, LHC will transfer to NPC all its rights, title and interest in and to the fixtures, fittings, spare parts, plant equipment and machineries of the Bakun Power Plant **without any compensation**.

CBAA's Findings/Ruling

Briefly stated, Petitioners-Appellants are claiming that LHC is not liable for the payment of the real property tax on subject properties for the following reasons, *viz*:

1. LHC is just a financier, a contractor for the construction, operation and maintenance of the subject facilities;
2. NPC, as the owner and user of the subject facilities, assumed the responsibility of paying for the said tax;
3. The Province of Ilocos Sur and the Municipality of Alilem, Ilocos Sur, being privy to the Memorandum of Agreement (wherein the assumption by NPC to pay for the realty taxes on subject properties is mentioned), should collect the realty tax on subject properties directly from NPC, not LHC;

NPC, on the other hand, states that it is the actual, direct and exclusive user and beneficial owner of the subject properties, hence, exempted from payment of the real property tax pursuant to Section 234(c) of the LGC.

The law which governs exemptions from real property tax is Section 234 of R.A. 7160, otherwise known as the "Local Government Code of 1991" (the "LGC"), thus:

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

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

"(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

"(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**;

"(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

"(e) Machinery and equipment used for pollution control and environmental protection." (emphasis supplied)

As it concerns the instant case, Section 234(c) of the LGC clearly requires that, in order to be exempt from real property tax, the machineries and equipment must be **actually, directly, and exclusively used in the generation and transmission of electric power by a government-owned or –controlled corporation.**

There is no question that the subject machineries and equipment are **actually, directly, and exclusively used in the generation and transmission of electric power.** However, the **actual, direct, and exclusive user** of the subject properties **in the generation and transmission of electric power** is LHC, which is **not a government-owned or –controlled corporation.**

In order to avoid the realty tax on subject properties, the strategy of NPC is to assume responsibility for the payment of said tax, then disclaim any liability therefor by claiming that it is the owner and has the actual, direct, exclusive use and possession of subject properties, hence, exempted from payment of the real property tax under Section 234(c) of the LGC. In *National Power Corporation vs. Province of Quezon*¹, the Supreme Court said:

“From the points of view of fairness and the integrity of our tax system, we find it essentially wrong to allow the NPC to assume in its BOT contracts the liability of the other contracting party for taxes that the government can impose on that other party and at the same time allow NPC to turn around and say that no taxes should be collected because NPC is tax exempt as a government owned and controlled corporation. We cannot be a party to this kind of arrangement; for us to allow it without congressional authority is to intrude into the realm of policy and to debase the tax system that the legislature established.”

The subject machineries and equipment are **NOT EXEMPT** from the real property taxation.

As to whether the 10% assessment level is applicable to the subject properties, appellants herein argue that the subject machineries and equipment are “Special Classes” of real properties and are to be assessed at the ten percent (10%) level as provided under Sections 216 and 218(d), respectively, of the Code, thus:

“SEC. 216. *Special Classes of Real Property.* – All lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and **those owned and used by** local water districts, and **government-owned or –controlled corporations rendering essential public services in the** supply and distribution of water and/or **generation and transmission of electric power shall be classified as special.**”(emphasis supplied)

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

¹ G.R. No. 171586, July 15, 2009

x x x

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

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

As in the case of Section 234(c) of the LGC, Section 216 of the Code requires that, in order to be classified as “Special Classes” of real property, the lands, buildings, **machineries and other** improvements thereon must be:

- (a) **actually, directly and exclusively** used for hospitals, cultural, or scientific purposes; or
- (b) owned and **actually, directly and exclusively** used by local water districts in the supply and distribution of water; or
- (c) **owned and actually, directly and exclusively used by government-owned or –controlled corporation in the generation and transmission of electric power.**

As in the first part of this issue, there is also no question that the subject machineries and equipment are **actually, directly, and exclusively used in the generation and transmission of electric power.** However, Section 216 and, for that matter, Section 218, require that the machineries and equipment must be **owned and used by a government-owned or –controlled corporation in the generation and transmission of electric power.**

The corporation which is **actually, directly and exclusive using** the same machineries and equipment is Luzon Hydro Corporation (LHC). In addition, under the terms and conditions contained in Article 2.13 of the Power Purchase Agreement entered into by and between the NPC and LHC, the latter (LHC) is the **owner** of the subject machineries and equipment during the “Cooperation Period”. As stated, LHC is a private entity, as contra-distinguished from a government-owned or –controlled corporation.

Therefore, the said machineries and equipment do not fall under the classification of “Special Classes of Real Property”.

ISSUE NO.2:

WHETHER THE VALUATION OF THE FAIR MARKET VALUE OF THE REAL PROPERTY CAN PROPERLY BE BASED ON THE CORRESPONDING TAX DECLARATIONS AND NOT ON THE SWORN STATEMENT OF LHC.

LHC’s Arguments:

LHC avers that the valuation of the fair market value of LHC’s real property was not properly determined because the Provincial Assessor failed to comply with the requirements of Section 213 of the Local Government Code. The assistance sought by the Municipal Assessor from the municipal engineer and private engineers does not meet the requirements of the said Section 213.

CBAA’s Findings/Ruling

Respondent Municipal Assessor valued the subject machinery and equipment at the amount stated in the sworn declaration plus fifty-five percent

(55%) thereof representing installation cost (40%) and freight charges (15%). In their appeals to this Board, LHC and NPC questioned this act by the Assessor.

Prior to the actual assessment by Respondent Assessor of the subject properties, the following events or transactions transpired:

1. A letter dated June 1, 2001 signed by the Municipal Assessor, addressed to Mr. Crisferando Faelnar, Operations Manager, Bakun AC Hydro Power Project, Amilongan, Alilem, Ilocos Sur, reminding of the provisions of Section 203 of the LGC and asking for receipts or documents showing the true value of the subject properties;
2. A letter dated September 5, 2001 signed by the Municipal Assessor, addressed to the President, National Power Corporation, informing of the letter-quest to LHC and of the verbal response of Vice President at Beckel, La Trinidad, Benguet that they are not the ones responsible for granting the request;
3. A letter dated October 4, 2001 signed by the Municipal Assessor, addressed to Mr. Crisferando Faelnar, Operations Manager, Bakun AC Hydro Power Project, Amilongan, Alilem, Ilocos Sur, requesting for documents needed for the assessment;
4. A letter dated November 22, 2001 signed by the Municipal Assessor, addressed to Mr. Rene B. Ronquillo, VP HEDCOR, Beckel, La Trinidad, Benguet.

In compliance with the requirements of Sections 202 and 203 of R.A. 7160, Mr. Robert B. Guest, Operations Director of LHC, signed a "SWORN STATEMENT OF THE TRUE CURRENT AND FAIR MARKET VALUE OF REAL PROPERTIES". The sworn statement was signed on July 25, 2002 but subscribed and sworn to only on September 5, 2002 in Makati City. The statement disclosed the following "costs", viz:

DESCRIPTION	DATE COMMENCED OPERATION	ORIGINAL ACQUISITION COST	COST OF INSTALLATION ON SITE	TRUE CURRENT & FAIR MARKET VALUE
Turbine Inlet	2001	P 23,045,475.00		P 23,045,475.00
Mechanical and Electrical Equipment	2001	600,987,365.00		600,987,365.00
Prime Equipment	2001	3,841,700.00		3,841,700.00

Since his repeated requests for copies of documents needed to determine the costs of the subject properties were not heeded by LHC, Respondent Municipal Assessor did his best to appraise and assess the same properties based on the provisions of Section 224 of the LGC which provides:

“SEC. 224. *Appraisal and Assessment of Machinery.*— (a) The fair market value of a brand-new machinery shall be the acquisition cost. In all other cases, the fair market value shall be determined by dividing the remaining economic life of the machinery by its estimated economic life and multiplied by the replacement or reproduction cost.

“(b) If the machinery is imported, the acquisition cost includes freight, insurance, bank and other charges, brokerage, arrastre and handling, duties and taxes, plus cost of inland transportation, handling, and installation charges at the present site. The cost in foreign currency of imported machinery shall be converted to peso cost on the basis of foreign currency exchange rates as fixed by the Central Bank.”

The costs of the machinery and equipment appearing on the Statement subscribed and sworn to by Mr. Guest of LHC on September 5, 2002 must have been arrived at basing on the documents surrounding the acquisitions. To establish and prove that said costs of the subject machinery and equipment include freight, insurance, bank and other charges, brokerage, arrastre and handling, duties and taxes, plus cost of inland transportation, handling, and installation charges at the present site, LHC should not have had any reservations in furnishing the Respondent Assessor with copies of the supporting documents.

Granting that Petitioners-Appellants simply forgot about the assessor's letters-requests, the Petitioners-Appellants could have refuted the assessment by presenting to the LBAA, or even to this Board, documents to prove that the figures appearing on the Sworn Statement represent the true, current and fair market value of the machinery and equipment involved. Petitioners-Appellants did not do so. Instead, Petitioners-Appellants argue that Respondent Assessor

has the burden to prove that the assessment is correct or, more likely to the point, to prove that the figures appearing on the Sworn Statement do not represent the true, current and fair market values of the subject machinery and equipment. The failure of the Petitioner-Appellant to comply with the assessor's legal and reasonable requests left him no choice but to exercise his powers under Section 224 of R.A. 7160.

Therefore, we believe that the Respondent Assessor did not commit any error in the valuation of subject properties.

ISSUE NO.3:

ASSUMING REAL PROPERTY TAXES ARE DUE, WHETHER LHC IS THE PARTY RESPONSIBLE FOR THE PAYMENT OF THE SAME.

LHC's Arguments:

LHC says that "both the PPA and the MOA provided that NPC is the party responsible for the payment of real property taxes" and these "provisions are binding on the Municipality and the Province" and states that:

1. Under Article 8.6 of the PPA, "NPC shall be responsible for the payment of all real estate taxes and assessments, rates and other charges in respect of the Site, the structures and improvements thereon, and the Power Station";
2. In a letter dated 23 July 2003 addressed to LHC, NPC confirmed "that under Article 8.6 of the Power Purchase Agreement that was entered into by and between NPC and Luzon Hydro Corporation, the former undertook to assume the obligation to pay the real property tax assessments on Bakun Hydroelectric Power Project;
3. This assumption of liability by NPC is a contractual arrangement between the government and NPC, which must be respected and given binding effect. The Municipality should have sought payment of the assessed real property taxes not from LHC, but from NPC;

4. The contractual arrangement in the PPA on NPC's liability for real property taxes is akin to a contractual tax exemption for which LHC may rightfully invoke the non-impairment clause in Section 10, Article III of the 1987 Constitution, citing *Manila Electric Company vs. Province of Laguna* (G.R. No. 131359, 5 May 1999);

5. The Municipality and the Province are estopped from questioning the MOA and NPC's liability for the assessed real property taxes, citing *Apex Mining Co., Inc. vs. Southeast Mindanao Gold Mining Corp.* (G.R. Nos. 152613 & 152628, 20 November 2009); *Global Holiday Ownership Corporation vs. Metropolitan Bank & Trust Company* (G.R. No. 184081, 19 June 2009); and *Toledo vs. Hyden* (G.R. No. 172139, 8 December 2010);

6. While it is not aware of the cases of *Fels Energy, Inc.* (G.R. Nos. 168557 and 170628, 16 February 2007; *NPC vs. CBAA* (G.R. No. 171470, 30 January 2009); and *NPC vs. Province of Quezon* (G.R. No. 171586 25 January 2010), LHC submits that these "cases cannot apply in this case" because "the Supreme Court did not intend such decision (*sic*) to be binding on all cases; instead the Supreme Court recognized that a different outcome is possible, given different circumstances;

7. In this case, the MOA among LHC, NPC and the Municipality, which was knowingly and voluntarily signed by all parties, sets it apart from the abovementioned cases, unlike "in *NPC*, the Supreme Court, citing *FELS Energy*, noted the lack of privity of contract between the province and FELS which made the agreement between FELS and NPC unenforceable against the province;

CBAA's Findings/Ruling

Section 198(b), R.A. 7160 requires that real property shall be classified for assessment purposes on the basis of its actual use. Thus, Section 217 of the Code provides:

"SEC. 217. *Actual Use of Real Property as Basis for Assessment.*-Real property shall be classified, valued and assessed on the basis of its actual use regardless of where located, whoever owns it, and whoever uses it."

In *Testate Estate of Concordia T. Lim v. City of Manila*², the Supreme Court ruled:

"In real estate taxation, therefore, **the unpaid tax attaches to the property** and is chargeable against the taxable person who had **actual** or beneficial **use** and **possession** of it regardless of whether or not he is the owner." (emphasis supplied)

² 182 SCRA 482, 1990.

In the instant case, it is the Luzon Hydro Corporation (LHC) which has the **actual use** and **possession** of the subject properties. LHC, therefore, is the one liable for the real property tax on the subject properties. Of course, under the provisions of Article 8.6 of the Power Purchase Agreement (PPA) between the NPC and the LHC, NPC obligates itself to reimburse LHC for “real estate taxes and assessments, rates and other charges in respect of the Site, the structures and improvements thereon, and the Power Station. The PPA is a private agreement or arrangement between the NPC and the LHC.

NPC portrays itself as the actual, direct and exclusive user of the Power Plant and the beneficial owner thereof. This portrayal is contradicted by the provisions of Article 2.13 of the PPA, thus:

“Article 2.13. Ownership of Power Station. From the Effective Date until the Transfer Date, the Operator shall own the Power Station and all the structures, fixtures, fittings, machinery and equipment on the Site or used in connection with the Project which have been supplied by it or at its cost.”

The words “actual,” “direct,” and “exclusive,” seem plain enough. In any case, Webster’s Third New International Dictionary defines these words, thus:

“Actual” means “existing or taking place at the time.”
“Direct” means “proceeding from one point to another in time or space without deviation or interruption.”
“Exclusive” means “excluding or inclined to exclude others.”

Except for the monitoring activities of NPC personnel in certain phases of LHC’s operations, LHC has the **actual, direct and exclusive and uninterrupted use and possession** of the Power Plant during the “Cooperation Period” as provided by the said PPA.

The relationship between NPC and LHC under the PPA is that of Supplier and Exclusive Distributor, with LHC as the supplier and NPC, the exclusive distributor. Thus, Article 8.1 of the PPA states:

“Article 8.1. Supply. NPC agrees to take and pay for all electricity available from the Power Station in accordance with the procedures set out in the Sixth Schedule and the Operating Parameters. The Operator shall dedicate the entire Power Station output (net of Power Station usage) to NPC.”

In *National Power Corporation v. Province of Quezon and Municipality of Pagbilao (supra)*, The Supreme Court ruled:

“The NPC contends that it should nevertheless be regarded as the beneficial owner of the plant, since it will acquire ownership thereof at the end of 25 years. The NPC also asserts, by quoting portions of the ECA, that it has the right to control and supervise the construction and operation of the plant, and that Mirant has retained only naked title to it. These contentions, unfortunately, are not sufficient to vest the NPC the personality to protest the assessment.

In *Cariño v. Ofilado*, we declared that legal interest should be an interest that is actual and material, direct and immediate, not simply contingent or expectant. The concept of the directness and immediacy involved is no different from that required in motions for intervention under Rule 19 of the Rules of Court that allow one who is not a party to the case to participate because of his or her direct and immediate interest, characterized by either gain or loss from the judgment that the court may render. In the present case, the NPC's ownership of the plant will happen only **after** the lapse of the 25-year period; until such time arrives, the NPC's claim of ownership is merely contingent, i.e., dependent on whether the plant and its machineries exist at that time. Prior to this event, the NPC's real interest is only in the continued operation of the plant for the generation of electricity. This interest has not been shown to be adversely affected by the realty taxes imposed and is an interest that NPC can protect, not by claiming an exemption that is not due to Mirant, but by paying the taxes it (NPC) has assumed for Mirant under the ECA.”

“On liability for taxes, the NPC does indeed assumed responsibility for the taxes due on the power plant and its machineries, specifically, ‘all real estate taxes and assessments, rates and other charges in respect of the site, the buildings and improvements thereon and the [power plant].’ At first blush, this contractual provision would appear to make the NPC liable and give it standing to protest the assessment. The tax liability we refer to above, however, is the liability arising from law that the local government unit can rightfully and successfully enforce, not the contractual liability that is enforceable between the parties to a contract as discussed below. By law, the tax liability rests on Mirant based on its ownership, use, and possession of the plant and its machineries.”

LHC says that the Municipality and the Province are estopped from questioning the MOA and NPC's liability for the assessed real property taxes because the Mayor was a party to the Memorandum of Agreement (MOA).

The Memorandum of Agreement³ is a document made and entered into in Alilem, Ilocos Sur, by and among the Municipality of Alilem, represented by its Mayor, LHC and NPC. It does not show when it was signed by the parties thereto but it does show that it was acknowledged in Quezon City on November 18, 1998 before Notary Public May G. Saga-Aguilar.

Under the "A. RESPONSIBILITIES OF THE PARTIES" portion of the Memorandum of Agreement ("MOA"), it was stated that NPC shall "d. Comply with the Local Government Code and its implementing regulations on the payment of the following taxes: i. REALTY TAX . . ."

The "responsibilities" of the Municipality of Alilem under the MOA, as host of the project, consist only of assistance and support in every aspect of the project which requires such assistance and support from the municipality. Nowhere in the MOA did the Municipality of Alilem commit or agree to collect the subject realty taxes directly from NPC, instead of from LHC.

Therefore, the Municipality of Alilem, Ilocos Sur is not bound, by the terms of the MOA, to demand payment of the subject realty tax directly from NPC.

As the Supreme Court ruled in *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*, (*supra*), "The tax liability we refer to

³ Annex "B" to LHC's Petition for Review, CBAА Case No. L-96, Records, pp. 49-66, Folder 1.

above, however, is the liability arising from law that the local government unit can rightfully and successfully enforce, not the contractual liability that is enforceable between the parties to a contract . . .”

ISSUE NO. 4:

WHETHER LHC/NPC CAN PROPERLY BE MADE LIABLE FOR INTEREST, SURCHARGES AND PENALTIES.

LHC's Arguments:

Appellant LHC says that LHC/NPC cannot be made liable for the payment of interest, surcharges and penalties because LHC/NPC is (*sic*) not delinquent in the payment of the assessed real property taxes, thus:

1. There was actual payment by LHC/NPC of the assessed real property taxes, which payment was expressly accepted and agreed to by the Municipality and the Province. Paragraph 3 of the Compromise Agreement states:

“The public respondents accept the above mentioned amount as payment under protest and/or advance payment of the real property taxes covered under all Notices of Assessment subject to the instant case under the following conditions, to wit: (a) acceptance shall be without prejudice to the collection of a higher amount and, (b) it shall likewise be without prejudice to the issue of prompt payment and advance payment discounts, which shall be resolved in the main case.”

2. The issue of the imposition of interest, surcharges and penalties was never raised before the LBAA.

CBAA' Findings/Ruling

The LBAA quoted the provisions of Sections 167 and 168 of the LGC, as well as those of Section 255 of the same Code, in page 11 of the assailed resolution⁴.

⁴ Records, p. 46, Folder 1.

The provisions of Sections 167 and 168 of the LGC are applicable only to local taxes under “Local Government Taxation” (Title One, Book II of the LGC). “Real Property Taxation” is governed by the LGC’s provisions under Title Two of the same Book II of the Code. To demonstrate why Section 168, in particular, is applicable only to local taxation and has no effect on real property taxation, consider the following:

For late payment of local taxes, fees, and charges, Section 168 on Local Government Taxation calls for a twenty-five percent (25%) surcharge, and two percent (2%) interest per month until the local tax, fee, or charge due is fully paid, but in no case shall the interest exceed 6 months.

For late payment of the real property tax, Section 255 on Real Property Taxation calls for an interest at two percent (2%) per month until the real property tax due is fully paid, but in no case shall the interest exceed 6 months.

Surely, the real property tax due could not be subjected to a twenty-five percent (25%) surcharge and a two percent (2%) interest per month under Section 168 of the LGC and, at the same time, be subjected to another two percent (2%) per month under the provisions of Section 255.

It was improper for the LBAA to order LHC to pay interests, surcharges and penalties as supposedly provided under Section 167 or 168 because these Sections have no effect on real property taxation. Likewise, the LBAA did not have to order LHC to pay interest as provided for in Section 255 because interest charges automatically apply if the tax remains unpaid on its due date. In the same manner, discounts automatically apply for early/prompt payments as provided for in applicable laws.

WHEREFORE, in view of all the foregoing, the instant Appeals of Luzon Hydro Corporation and National Power Corporation are hereby DISMISSED for lack of merit.

SO ORDERED.

Manila, Philippines, September 26, 2012.

SIGNED
OFELIA A. MARQUEZ
Chairman

SIGNED
ROBERTO D. GEOTINA
Member

SIGNED
CAMILO L. MONTENEGRO
Member