



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

CITY TREASURER OF DAVAO CITY,
Respondent-Appellant,

-versus-

CBAA CASE NO. M – 29
Re: LBAA Case No. 05-07

THE LOCAL BOARD OF ASSESSMENT
APPEALS OF THE CITY OF DAVAO,
Appellee,

-and-

NATIONAL POWER CORPORATION,
Petitioner-Appellee.

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D E C I S I O N

This Appeal, received by this Board in Manila on October 15, 2008 via registered mail, is from the Resolution dated March 19, 2008 and subsequent Order dated August 26, 2008 by the Local Board of Assessment Appeals for the City of Davao LBAA Case No. 05-07.

It appears that Respondent-Appellant caused the collection of taxes on various real properties located within Davao City and owned by Petitioner-Appellee, National Power Corporation (“NPC” for brevity), for the period from 1985 to 2006 in the total amount of P68,468.17. NPC paid the said amount under protest, as shown by Official Receipt Nos. 0449751 to 0049765 issued by the Office of the City Treasurer on September 20, 2006. NPC claimed that it is not liable to pay for real property taxes, except those due from 2001 to 2006, on the grounds of exemption and prescription. NPC contends that prior to the effectivity of R.A. 7160, otherwise known as the Local Government Code of

1991, it was exempt from payment of the said taxes by virtue of Section 13 of its Charter, R.A. 6395, as amended. Therefore, NPC is not liable for realty taxes allegedly due from 1985 to 1991. Likewise, it assails the right of the City Treasurer to collect taxes for the years 1992 to 2000, on the ground of prescription for having been made beyond the five-year prescriptive period, as provided for under Section 270 of R.A. 7160.

In a resolution dated December 4, 2006, Respondent-Appellant City Treasurer denied the protest of NPC, holding that NPC is neither exempt from the payment of real property taxes due the city government for the years 1985 to 1991, nor is the City Treasurer barred by prescription to collect said taxes for the years 1992 to 2000. Thus, NPC appealed before the Local Board of Assessment Appeals (LBAA), assailing the said resolution on the same grounds of prescription and exemption.

In a comment to the appeal before the LBAA, Respondent-Appellant, by counsel, admitted that indeed, its right to collect taxes for the years 1992 to 2000 had already expired, considering that the collection was only made in 2006, which is beyond the five-year prescriptive period as provided for under Section 270 of R.A. 7160. On the other hand, Petitioner-Appellee also expressly admitted on appeal of its subsisting obligation to pay taxes for the years 2001 to 2006. Thus, what remains to be resolved is the main issue of whether or not petitioner-appellee NPC could be held liable to pay the accrued real property taxes due the City Government for the years 1985 to 1991.

On May 28, 2008, Respondent-Appellant received a copy of a Resolution issued by the LBAA on March 19, 2008, which Resolution reads as follows:

“Premises considered, the Board hereby resolves the instant appeal in favor of petitioner-appellant. Appellee City Treasurer of Davao is hereby ordered to refund the amount of tax paid for the periods 1985 to 1991 or be credited in favor of appellant’s tax obligation whether present or future.”

On June 27, 2008, Respondent-Appellant filed its motion for reconsideration and, on September 4, 2008, received a copy of the Order issued by the LBAA on August 26, 2008 denying said motion.

Hence, this appeal.

GROUND S RELIED UPON

1. WITH ALL DUE RESPECT, THE HONORABLE BOARD MAY HAVE ERRED IN HOLDING THAT PETITIONER-APPELLEE NATIONAL POWER CORPORATION IS EXEMPT FROM PAYMENT OF REALTY TAXES FOR THE PERIODS 1985 TO 1991, BY VIRTUE OF ITS CHARTER, R.A. 6395, AS AMENDED, CONSIDERING THAT THE LATTER IS DEEMED TO HAVE WAIVED THE SAME, WHEN IT FAILED TO SUBMIT WITHIN THIRTY (30) DAYS FROM THE DATE OF THE DECLARATION OF ITS REAL PROPERTIES SUFFICIENT PROOF OF EXEMPTION, SUCH AS ITS CORPORATE CHARTER, AS EXPLICITLY REQUIRED UNDER SECTION 9 OF P.D. 464, THE LAW GOVERNING REAL PROPERTY TAXATION PRIOR TO 1992;
2. WITH ALL DUE RESPECT, THE HONORABLE BOARD MAY HAVE ERRED IN HOLDING THAT THE RIGHT OF THE RESPONDENT-APPELLANT CITY TREASURER TO COLLECT THE TAXES DUE FOR THE PERIODS 1985 TO 1991 HAD LONG PRESCRIBED, WITH MISPLACED RELIANCE ON THE PRESCRIPTIVE PROVISION OF SECTION 194 OF R.A. 7160, WHICH IS NOT APPLICABLE TO REAL PROPERTY TAXATION;
3. WITH ALL DUE RESPECT, THE HONORABLE BOARD MAY HAVE ERRED IN HOLDING THAT THE OBLIGATION OF PETITIONER-APPELLEE TO PAY REALTY TAXES FOR THE PERIODS 1985 TO 1991, BEING AN OBLIGATION CREATED BY LAW, HAD LONG PRESCRIBED IN ACCORDANCE WITH ARTICLE 1144 OF THE NEW CIVIL CODE, CONSIDERING THAT, UNLESS OTHERWISE PROVIDED BY THE LAW ITSELF, THE RIGHT TO COLLECT TAXES IS IMPRESCRIPTIBLE (COMMISSION VS. AYALA SECURITIES CORP. L-29485, 21 NOVEMBER 1980).

STATEMENT OF THE ISSUES

- I. Whether or not Petitioner-Appellee National Power Corporation's real properties are exempt from payment of real property tax for the years 1985 to 1991 by virtue of its exemption privilege granted under its charter, even if, it failed to file sufficient documentary evidence in support of its claim, as required under Section 9 of P.D. 464, or the old Real Property Tax Code.
- II. Whether or not the right of the Respondent-Appellant City Treasurer to collect real property tax on the real properties owned by Petitioner-Appellee National Power Corporation for the years 1985 to 1991 had already prescribed in accordance with Section 194, Chapter VI, **Title II**, Book II of R.A. 7160, which provides that, taxes, fees and other charges

accruing prior to 1992 or before the effectivity of the law may be assessed within a period of three years from the date they became due.

All of the above-stated grounds and issues presented by Respondent-Appellant in this appeal could be stated in one issue, that is:

**WHETHER OR NOT PETITIONER-APPELLEE IS LIABLE TO PAY
REALTY TAXES FOR THE PERIOD FROM
1985 TO 1991**

While it is established that Petitioner-Appellee was, prior to the effectivity of R.A. 7160, exempt from payment of real property tax by virtue of its charter, R.A. 6395, particularly Section 13 thereof, it is likewise established that Petitioner-Appellee did not comply with the requirements of Section 9 of P.D. 464 (Real Property Tax Code) which states:

“Section 9. Proof of Exemption of Real Property from Taxation. – Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Code shall file with the provincial or city assessor within thirty days from the date of the declaration of real property sufficient documentary evidence in support of such claim, including corporate charters, titles or ownerships, articles of incorporation, by-laws, contracts, affidavits and 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 it shall be proven to be tax exempt the same shall be dropped from the roll of taxable properties.”

In its Resolution dated March 19, 2008, the Local Board of Assessment Appeals of the City of Davao stated, thus:

“Petitioner National Power Corporation is not liable to pay taxes for the periods 1985 to 1991 on two grounds: First, its charter which is Republic Act 6395, as amended, particularly section 13 thereof, states categorically that x x x “the corporation is hereby declared exempt (a) from the payment of **all** taxes and duties to the Republic of the Philippines, its provinces, cities, municipalities x x x **(b) from all x x x realty taxes to be paid to the x x x cities** x x x. The basis of NPC for tax exemption had been clearly spelled out in their protest filed before appellee City Treasurer. Thus, the position of appellee that there is a need to submit proof of such exemption bears no merit. The filing of the protest embodying the specific provision of law which clearly justifies the claim for tax exemption is more than enough evidence to support it. The City Treasurer could have taken judicial notice of the existence of the said law and which is more than sufficient requirement to show proof of tax exemption. It would be superfluous to reproduce a copy of all the provisions of the Charter when only a specific provision is needed to prove such claim. Moreover, the claim for tax exemption is not anchored on

section 9 of P.D. 464 but a specific provision of petitioner's charter, the governing law on the matter. Even on this score alone, appellant's cause must prosper.

“Secondly, the argument of the City Treasurer that prescription does not run against the right to collect the tax for lack of a clear provision prior to 1992 on the prescriptive period to collect real property tax bears no merit. It must be stressed that Section 194 of RA 7160 does not single out any specific tax, such as the real property tax nor does it provide that its application pertains only to the tax assessed and due after the effectivity of RA 7160. What is clear instead is the glaring proviso referring to **“taxes x x x which have accrued before the effectivity” of RA 7160**. Since the law does not make any distinction as regards the kind of tax, the cardinal rule on statutory construction must necessarily be applied, that is, it applies to all kinds of taxes and obviously, the tax on real estate is one of these. Applying therefore the provision of Section 194 of RA 7160, the right to collect the taxes due for the periods 1985 to 1991 had long prescribed. Furthermore, **We** agree with appellant-petitioner as to the application of Article 1144 of the New Civil Code as regards prescription of obligations created by law, such as the subject in the case at bar where appellee wanted to collect an obligation after more than fourteen (14) years.”

Respondent-Appellant City Treasurer argues: (a) that Petitioner-Appellee, though may be exempt by its Charter from payment of the realty tax, is still required to comply with the prescribed procedural requirement, otherwise the law would not have required corporate real property taxpayers to submit their corporate charters as proof of exemption, as explicitly provided under Section 9 of P.D. 464; (b) that contrary to the ruling of the LBAA, it is not incumbent upon the City Treasurer to take judicial notice of such exemption; that (c) that it is clear from the provision of Section 9 of P.D. 464 that the documentary evidence in support of such claim for exemption shall be filed within thirty (30) days from the date of the declaration of real property; Petitioner-Appellee should have submitted the proof of exemption in 1985, when it declared the subject real properties for realty tax purposes, and definitely not at the time of filing its protest on the tax assessment; (d) that as a consequence of the petitioner-appellee's failure to comply with the requirement under Section 9 of P.D. 464, the subject property was listed as taxable in the assessment roll, thus, being taxable, subject property of NPC should be subject to tax until NPC complies with the requirement under said Section 9 of P.D. 464; (e) that Section 194 of R.A. 7160 is not applicable to real property taxation

because the same is not embraced under the provisions of Title II, Chapters I to VII of R.A. 7160, which specifically governed real property taxation. Section 197, which is the preliminary section of Title II of R.A. 7160 governing real property taxation; (f) that the prescriptive period under Section 194 applies solely to business taxation falling under title I, where it belongs, and does not extend to real property taxation, which is embraced under the subsequent Title II thereof; (g) that with the inapplicability of Section 194 of R.A. 7160 to real property taxation, there is therefore no prescriptive provision to speak of governing realty taxes accruing prior to 1992. Hence, the said accrued realty taxes for the periods 1985 to 1991 had not prescribed yet, as held by the Supreme Court in the case of *Commissioner vs. Securities Corp.* (L-29485, November 21, 1980) that, “taxes are imprescriptible, unless otherwise provided by the tax law itself”; and (h) that the prescription of obligation created by law as provided for under Article 1144 of the New Civil Code does not find application to the subject at hand.

Petitioner-Appellee’s claim for exemption is principally anchored, not on PD 464, but on the express provision of its charter, R.A. 6395. In *National Power Corporation vs. Province of Lanao del Sur, et al.* (G.R. No. 96700, November 19, 1996), the Supreme Court stated, thus:

“The exemption is not only legally defensible, but also logically unassailable. The properties in question comprise the site of the entire Agus II Hydroelectric Power Plant Complex, which generates and supplies relatively cheap electricity to the island of Mindanao. These are government properties, wholly owned by petitioner and devoted directly and solely for public service and utilized in the implementation of the state policy of bringing about the total electrification of the country at the least cost to the public, through the development of power from all sources to meet the needs of industrial development and rural electrification. It can be noted, from R.A. 6395, PD 380 and PD 938, that petitioner’s non-profit character has been maintained throughout its existence, and that petitioner is mandated to devote all its returns from capital investment and excess revenues from operations to its expansion. On account thereof, and to enable petitioner to pay its indebtedness and obligations and in furtherance of the same policy on electrification and power generation, petitioner has always been exempted from taxes.

“At this juncture, we hasten to point out that the foregoing ruling is solely with respect to the purported realty tax liabilities of petitioner *for the period from June 14, 1984 to December 31, 1989*. We shall not, in this Decision, rule upon the effect (if any) of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, upon petitioner’s tax exempt status; we merely make mention of the fact that the exemption claimed by petitioner is partly based on PD 464 which, though repealed by the Local Government Code in its paragraph (c), Section 534, Title Four of Book IV, was still good law during the period the exemption was being claimed in the instant case.”

We note with great interest that the Supreme Court, in the above-quoted decision, made no mention of the provisions of Section 9, in relation to Section 40, both of the Real Property Tax Code (PD 464).

The Local Board said that Section 194 of RA 7160 applies to this case. However, Respondent-Appellant correctly stated that said Section 194 applies only to “Local Government Taxation” under Title One, Book II of RA 7160 and that the equivalent provision for collection of real property taxes under Title Two, Book II of RA 7160 is Section 270, which does not provide for prescriptive periods on collection of realty taxes accrued before the effectivity of RA 7160.

Granting for the sake of argument, that Petitioner-Appellee cannot enjoy its exemption granted under its charter because of its alleged failure to comply with the provisions of Section 9 of PD 464, still, Respondent-Appellant’s right to collect the realty taxes allegedly due from Petitioner-Appellee for the years 1985 through 1991 – after the lapse of more than fourteen (14) years – has already prescribed pursuant to the provisions of Article 1144 of the New Civil Code, which states, thus:

“Art. 1144. The following actions must be brought within ten years from the time the right to action accrues:

x x x

(2) Upon an obligation created by law;

x x x”

Respondent-Appellant says that Article 1144 of the New Civil Code does not find application to the subject at hand. We disagree. The New Civil Code is a general law which is resorted to when the special law, in this case, PD 464, is deficient.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The City Treasurer of Davao City is hereby ordered to refund to National Power Corporation (NPC) the amount the latter paid for realty taxes purportedly due for the years 1985 through 1991 or to credit the same against NPC's present or future tax obligations.

SO ORDERED.

Manila, Philippines, July 24, 2009.

(Signed)
CESAR S. GUTIERREZ
Chairman

(Signed)
ANGEL P. PALOMARES
Member

(Signed)
RAFAEL O. CORTES
Member