Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

NATIONAL POWER CORPORATION,
Petitioner-Appellant,

-versus-

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

-and-

THE PROVINCIAL TREASURER OF BENGUET, THE PROVINCIAL ASSESSOR OF BENGUET, THE MUNICIPAL TREASURER OF ITOGON, BENGUET AND THE MUNICIPAL ASSESSOR OF ITOGON, BENGUET,
Respondents-Appellees.
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CBAA CASE NO. L-72
(LBAA Case No. 06-17)
Province of Benguet

D E C I S I O N

This is an Appeal/Petition for Review by Petitioner-Appellant National Power Corporation (NAPOCOR) from the denial of its Motion for Reconsideration dated October 3, 2006 relative to the Order of the Local Board of Assessment Appeals (LBAA) of the Province of Benguet dated July 28, 2006, as follows:

> "Therefore, pursuant to Sec. 7, Rule V of the Rules of Procedure of the Local Board of Assessment Appeals, the hearing of Petitioner's Appeal is hereby DEFERRED until the corresponding taxes due on the real properties subject of the appeal shall have been paid under protest or the Petitioner shall have given surety bond x x x."

Petitioner-Appellant filed its Appeal to the CBAA on November 22, 2006. Petitioner-Appellant asserts that "payment under protest is not a condition *sine qua non* before the herein Petition may be entertained, thus:

> "Payment of tax under protest contemplated under Sec. 252 of R.A. No. 7160 is necessary where the question is the reasonableness of the amount assessed. Hence, if a taxpayer disputes the reasonableness of the increase in a real estate tax assessment, he is required to 'first pay the tax' under protest. However, where the petitioners are questioning the very authority and power of the assessor to impose the assessment, and of the treasurer to collect the tax, these are not questions merely of amounts of the increase in the tax but attacks on the validity of any increase. (Ursal , Phil. Law on Local Government Taxation, pages 368-369 citing Alejandro Ty vs. Trampe, et al. G.R. No. 11777 Dec. 1, 1995)"

Records disclose that Petitioner-Appellant is a government owned and controlled corporation created pursuant to Republic Act 6395 and the owner of the Binga Hydro Electric Power Plant at Itogon, Benguet.

Sometime in May 2000 the Municipal Assessor of Itogon, Benguet caused the assessment and issuance of Tax Declarations on the properties owned by Petitioner-Appellant, situated in NPC's Binga Hydro Electric Power Plant at Itogon, Benguet, viz:

Tax Declaration No.	Classification
99-006-01448	Home Economics Building
99-006-01457	Nursery School
99-006-01458	Elem. School Building
99-006-01505	Power House
99-006-01505	Industrial Road
99-006-01516(N)	High School Building
99-007-02221	Equipment/Structure
99-008-01509	Machineries/Equipments

On March 17, 2006, petitioner formally received a demand letter dated February 16, 2006 from the OIC-Provincial Treasurer, Imelda I. Macanes, regarding petitioner's alleged tax delinquency in the amount of SIXTY TWO MILLION SIX HUNDRED FORTY-FIVE THOUSAND SIX HUNDRED SIXTY-EIGHT AND 80/100 PESOS (₱62,645,668.80), including alleged penalties.

Petitioner-Appellant claims that the "huge assessment is due to the so-called "escape revision" which is made retroactive to 1994 up to the present, and the x x x properties of petitioner x x x such as the reservoir, machineries and equipments which are actually, directly and exclusively used x x x in the

generation and transmission of electricity and the school buildings are being assessed for taxation when the law clearly, categorically and unequivocally provided for their exemption."

This Board scheduled a hearing and met with the parties on January 31, 2007.

The desirability of forging a Compromise Agreement was emphasized at this Board's initial session on January 31, 2007. As the parties were amenable thereto, the same was intensely pursued.

Pursuant to R.A. 9285 of April 2, 2004, viz: "AN ACT TO INSTITUTIONALIZE THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN THE PHILIPPINES AND TO ESTABLISH THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION, AND FOR OTHER PURPOSES", Executive Order (E.O.) No. 523, signed by the President on April 7, 2006 "WHICH INSTITUTED THE USE OF ALTERNATIVE DISPUTE RESOLUTION IN THE EXECUTIVE DEPARTMENT OF GOVERNMENT", and the permeating policy of the Supreme Court on Amicable Settlement of Cases, this Board dwelt mainly on the adoption of a Compromise Agreement as it conducted its first session of the case at hand as scheduled, on January 31, 2007.

Both parties opted to abide by it and agreed to meet at the Provincial Capitol of Benguet on March 14, 2007 for the purpose.

The timetable to finalize the Compromise Agreement was set at April 18, 2007. A lot more time however, was needed for its negotiation than the envisioned April 18, 2007 schedule. This Board therefore gave the parties such amplitude of time to be able to achieve the intended Amicable Settlement.

In the meantime, however, that the Compromise Agreement was being negotiated, the parties endeavored to present evidence on the merit. This Board conducted an ocular inspection of petitioner-appellant's assessed premises on January 30 and 31, 2008, as requested, apropos, to meet the rest of the party, and enhance the negotiations for a Compromise Agreement. Despite our efforts, however, as shown by the Board's settings on April 3, July 3 and August 28, 2008 and the prolonged negotiations between the parties, no Compromise Agreement was reached.

On August 28, 2008, the parties were granted their request to reset the hearing on September 10, 2008. At the hearing on September 10, 2008 however, the parties manifested their intention to file their respective Memoranda and would submit the case for Resolution, signaling that the Compromise Agreement has already failed.

Petitioner-Appellant's ground (assignment of error) is as follows:

> "THE LBAA COMMITTED GRAVE AND PALPABLE ERROR IN HOLDING THAT PETITIONER/APPELLANT SHOULD FIRST PAY THE TAX AS ASSESSED BEFORE THE PETITION WILL BE HEARD ON THE MERITS."

Utmost in this case is the jurisdictional issue of PRESCRIPTION. And this Board has not proceeded with it, as it was confronted with the reality of a possible Compromise Agreement.

Petitioner-Appellant maintains that it filed its appeal on time, averring that it received the assailed Resolution (the Resolution denying the Motion for Reconsideration) on October 17, 2006 so that thirty (30) days from October 17,

2006, within which to file its appeal with the CBAA is or should be on or before November 16, 2006.

Petitioner-Appellant cited Section 229(c) of R.A. 7160 on the timeliness of its appeal. The provision reads:

> "Sec. 229. Action by the Local Board of Assessment Appeals. –
>
> (c) x x x. The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory."

Petitioner-Appellant failed to realize that the period of prescription starts from receipt of the Order of the LBAA which deferred the hearing on the petitioner-appellant's Petition. By its own admission, said Order was "received by petitioner on August 9, 2006,"hence the period of appeal to the CBAA should have prescribed thirty (30) days thereafter, or to be exact, on September 8, 2006.

The provision does not require petitioner-appellant to file a Motion for Reconsideration. But if it does, it files the same at its own risk as the Motion for Reconsideration does not stay the period of prescription.

To repeat therefore, Petitioner-Appellant has thirty (30) days from August 9, 2006 or not later than September 8, 2006 within which to appeal to the Central Board of Assessment Appeals (CBAA). Clearly timeliness has been considerably breached when the herein Appeal reached this Board on November 22, 2006, seventy-five (75) days, way beyond the September 8, 2006 deadline.

IN VIEW THEREOF, the instant appeal is hereby dismissed for having been filed out of time. Petitioner-Appellant is advised to proceed under Section

206 of R.A. 7160 (the Local Government Code of 1991) and take the necessary steps in support of its claim for exemption to be dropped from the assessment roll.

SO ORDERED.

Manila, Philippines, July 28, 2011.

(Signed)
OFELIA A. MARQUEZ
Chairman

(Signed)
RAFAEL O. CORTES
Member

(Signed)
ROBERTO D. GEOTINA
Member