



Republic of the Philippines  
**CENTRAL BOARD OF ASSESSMENT APPEALS**  
Manila

NATIONAL POWER CORPORATION,  
Petitioner-Appellant,

-versus-

**CBAA CASE NO. L-72**  
(LBAA Case No. 06-17)  
Province of Benguet

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.

X-----X

## **O R D E R**

Filed with this Board is petitioner-appellant NPC's Petition for Reconsideration dated September 21, 2011 to which Respondents-Appellees submitted their Comment/Opposition on November 10, 2011.

Movant alleges that on July 28, 2011, this Board rendered its Decision dismissing petitioner-appellant's appeal on ground that it was filed out of time; that appellant NPC lodged a Motion for Reconsideration before the LBAA which, according to this Board, did not stay the running of the period of prescription; that while the Rules of the CBAA do not specifically require appellant NPC to file a Motion for Reconsideration with the LBAA before it can

appeal to this Board, it is also not a prohibited pleading; that appellant NPC applied the provisions of the Rules of Court in supplementary capacity; that Sec. 3 of the Rules of Procedure of the CBAA provides for "Supplementary Application of the Rules of Court"; and that likewise, in Sec. 2 of said Rules, "it provides for a liberal construction of the Rules in order to promote these objectives and assist the parties in obtaining just, speedy and inexpensive determination of every action relative to the real property assessment and collection of realty tax pursuant to the Local Government Code and other related laws."

Movant further states that in the instant case, the dismissal was based solely on technical ground; that this runs counter to the very Rules of liberal interpretation it seeks to implement; that in the case of *Sarraza et al. vs. Banco Filipino Savings and Mortgage Bank (G.R. No. 143783, December 9, 2002, 393 SCRA 566)*, the Supreme Court held:

"x x x Court litigations are primarily for the search of truth and liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth. The dispensation of justice and the vindication of legitimate grievances should not be barred by technicalities";

that this is especially true in this case where hearing on the merits and ocular inspection were actually conducted; that in fact, in an effort to narrow down the issues, several conferences between the parties were held; that since there are only two (2) remaining issues to be resolved, namely: the taxability of the reservoir and the land where the machineries were located, the parties moved that they do away with further hearing and just submit simultaneous Memoranda; that prescription was never made an issue by the opposing party

as can be seen from its pleadings; and that even this Board has not considered the issue of prescription as it did not outrightly dismiss the appeal on ground of prescription but proceeded to conduct hearings, ocular inspection and subsequently ordered the parties to submit Simultaneous Memoranda on the two (2) remaining unresolved issues for its resolution.

Movant then prays that the said Decision be reconsidered and set aside and that the case be decided on the merits.

In their Comment/Opposition, respondents-appellees point out that the Order of the LBAA of the Province of Benguet dated July 28, 2006, which deferred the hearing on appellant's Petition was received by petitioner-appellant on August 9, 2006; that appellant had thirty (30) days or until September 9, 2006 to appeal the same to the CBAA pursuant to Sec. 229(c) of the LGC which provides that:

“Sec. 229. Action by the Local Board of Assessment Appeals. –

“xxx                    xxx                    xxx  
xxx                    xxx                    xxx

(c) xxx 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 Board, appeal to the CBAA, as herein provided**”;

that instead of filing an appeal directly with the CBAA, Petitioner-Appellant filed a Motion for Reconsideration with the LBAA on August 25, 2006; that the filing of the Motion for Reconsideration, however, did not toll the running of the 30-day period within which to appeal to the CBAA; that with appellant's failure to appeal the LBAA Order dated July 28, 2006, within the reglementary period,

said LBAA Order has now become final and executory; and that such being the case, said Order could not be appealed as appellant failed to comply with the mandatory rules under the Local Government Code.

Respondents-Appellees further argue that this Board did not err in dismissing the case on ground that the appeal was filed beyond the 30-day period for appellant to do so; that settled is the rule that the right to appeal is not a right but a mere statutory privilege; and that it must be exercised strictly in accordance with the provisions set by law (*Badillo vs. Tayag, 400 SCRA 494*).

Further, Respondents-Appellees stress that Petitioner-Appellant's contention that it relied and applied the provisions of the Rules of Court in suppletory capacity lacks merit; that the Rules of Court may be applied in suppletory character only where the Rules of Procedure are vague and unclear; that in this case, the Local Government Code is clear in giving the party adversely affected by the Decision of the LBAA, thirty (30) days within which to appeal to the Central Board of Assessment Appeals.

Respondents-Appellees also alleged that under Title Two of the Local Government Code on provisions regarding Real Property Taxation, timetables or period are specifically provided for taxpayers to exercise their rights; that this shows the urgency and importance of taxes, a recognition that it is the lifeblood of the Local Government Units; and thus, it is right and proper that the provisions of the Local Government Code must be strictly adhered to notwithstanding the application of the provisions of the Rules of Court in a suppletory character.

Lastly, Respondents-Appellees state that it is true this Board did not dismiss outright the appeal but proceeded to conduct conferences and even made an ocular inspection of the properties subject of this case; but as the Board clearly pointed out, this is to give way for the parties to come up with a possible amicable settlement pursuant to R.A. 9285.

Respondents-Appellees then pray that Petitioner-Appellant's Motion for Reconsideration be denied.

Petitioner-Appellant's Appeal/Petition for Review before this Board is against the Resolution of the Local Board of Assessment Appeals (LBAA) of the Province of Benguet "denying petitioner's Motion for Reconsideration in its Order dated August 9, 2006, ordering petitioner to pay first under protest the tax assessed before the Petition may be heard." Hence the question which needs resolution before this Board is "whether or not petitioner-appellant should pay first under protest the tax assessed before the Petition may be heard by the Local Board of Assessment Appeals of the Province of Benguet."

Amicable Settlement of cases is now mandated by R.A. 9285, 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, of April 2, 2004; E.O. No. 523 of April 7, 2006, "WHICH INSTITUTED THE USE OF ALTERNATIVE DISPUTE RESOLUTION IN THE EXECUTIVE DEPARTMENT OF GOVERNMENT," requiring "all departments, agencies, and government owned and-controlled corporations under the

Executive Branch of Government to promote the use of alternative modes of dispute resolution such as, but not limited to, mediation, conciliation , and arbitration as part of the practice in resolving disputes filed before them; encourage the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice, and declog dockets to attain higher efficiency in the bureaucracy”. Tasked to promote said ADR, this Board proposed and the parties acceded to enter into a Compromise Agreement.

While apprising this Board on the progress of the Compromise Agreement, the parties would discuss and present pieces of evidence on the merit.

Despite the effort expended however, the Compromise Agreement collapsed and failed. Finding therefore, that it was filed out of time, this Board dismissed the Appeal with the advice for petitioner-appellant “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.

The Appeal, as dismissed, is against the Resolution of the LBAA of Benguet denying Petitioner-Appellant’s Motion for Reconsideration to set aside Appellee Local Board’s Order, dated July 28, 2006 and a new one be made setting the case for hearing. Hence, “pursuant to Section 7, Rule V of the Rules of Procedure of the Local Board of Assessment Appeals, hearing of petitioner-appellant’s Appeal is x x x 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". Hence, "Petitioner-Appellant is advised to proceed under Section 206 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".

Sec. 206 provides:

*"Sec. 206. 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 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."*

Evidently, Petitioner-Appellant has done nothing to comply with the above-Sec. 206 hence said properties were subjected to real property tax under Par. 1 thereof. Petitioner-Appellant however, can still endeavor to drop such properties from the assessment roll by proving that they are tax-exempt under Paragraph 2 thereof.

The record shows that the Declaration and assessment of the present properties were made by Municipal Assessor Julito R. Luspian of Itogon, Benguet on May 17, 2000 and 22-Jan-03 and 26-Jan-04, respectively, pursuant to Sec. 204, R.A. 7160, the Local Government Code of 1991 (the Code). (See Annexes "1" to "10" of Respondents-appellees' Answer to Petitioner-

Appellant's Appeal before the Central Board of Assessment Appeals). Said

Sec. 204 reads:

*“Sec. 204. Declaration of Real Property by the Assessor. – When any person, natural or juridical, by whom real property is required to be declared under Section 202 hereof, refuses or fails for any reason to make such declaration within the time prescribed, the provincial, city or municipal assessor shall himself declare the property in the name of the defaulting owner, if known, or against an unknown owner, as the case may be, and shall assess the property for taxation in accordance with the provision of this Title. X x x.”*

As above mandated to “assess the property for taxation in accordance with the provisions of this Title, the Assessor concerned cannot just ignore the provisions, at least, of Sections 221 and 234 of the Local Government Code of 1991 (R.A. 7160) to wit:

*“Sec. 221. Date of Effectivity of Assessment or Reassessment. – All assessments or reassessments made after the first (1<sup>st</sup>) day of January of any year shall take effect on the first (1<sup>st</sup>) day of January of the succeeding year; *Provided, however,* That the reassessment of real property due to its partial or total destruction, or to a major change in its actual use, or to any great and sudden inflation or deflation of real property values, or *to the gross illegality of the assessment when made or to any other abnormal cause,* shall be made within ninety (90) days from the date any such cause or causes occurred, and shall take effect at the beginning of the quarter next following the reassessment.” (Underlining supplied).*

*“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 person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes; (Underlining supplied).

(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; (Underlining supplied).

(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.

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.”

As above-referred to “this Title” is “Title Two, REAL PROPERTY TAXATION” and covers Sections 197 to 283 of the Code. It shall also be deemed obligatory on the part of the Assessor concerned to comply with the other provisions, particularly on assessment, within said Title Two of the Code.

Forthrightly therefore, it is incumbent upon Petitioner-Appellant to settle first, with the assessor concerned, then comply with the Order of the Local Board of Assessment Appeals of Benguet so that Petitioner-Appellant’s Appeal thereto can be proceeded.

**IN VIEW THEREOF**, the Motion for Reconsideration is hereby denied.

SO ORDERED.

Manila, Philippines, February 23, 2012.

SIGNED  
**OFELIA A. MARQUEZ**  
Chairman

SIGNED  
**RAFAEL O. CORTES**  
Member

SIGNED  
**ROBERTO D. GEOTINA**  
Member

**I concur in the results only.** This case should have been dismissed and resolved years ago because the requirement for payment of the tax under Section 252 is absolute and jurisdictional in nature. For the previous Board to have even entertained the Appeal, and for this present Board to entertain the protest without prior payment or at least, security for it, is *ultra vires*. The ADR should have been concluded at the LBAA.