

Republic of the Philippines  
 Supreme Court  
 Manila

FIRST DIVISION

THE PROVINCE OF NUEVA VIZCAYA, PROVINCIAL  
 TREASURER OF NUEVA VIZCAYA, OFFICE OF THE  
 MUNICIPAL ASSESSOR AND TREASURER MUNICIPALITY  
 OF ALFONSO CASTANEDA PROVINCE OF NUEVA  
 VIZCAYA,

G.R. No. 241302

Present:

PERALTA, C.J.,  
 Chairperson,  
 CARANDANG,  
 ZALAMEDA,  
 GAERLAN,  
 J. LOPEZ,\* JJ.

Petitioners.

- versus -

CE CASECNAN WATER AND  
 ENERGY COMPANY, INC.,  
 Respondent.

NATIONAL IRRIGATION  
 ADMINISTRATION AND  
 DEPARTMENT OF FINANCE,  
 as Necessary Parties.

Promulgated:

FEB 01 2021

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DECISION

CARANDANG, J.:

This Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision<sup>2</sup> of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB Case No. 1381. The CTA *En Banc* affirmed

\* Designated as Additional Member.

<sup>1</sup> *Rollo*, pp. 3-35.

<sup>2</sup> *Id.* at 136-175.

with modifications the Decision<sup>3</sup> of the Central Board of Assessment Appeals (CBAA) and remanded the case to the CBAA for determination of the amount to be refunded to CE Casecnan Water and Energy Company, Inc. (CE Casecnan) taking into consideration the provisions of Executive Order (EO) No. 173 which reduces and condones real property taxes and interest/penalties assessed on the power generation facilities of independent power producers under build-operate-transfer contracts with government-owned and/or -controlled corporations.

### Facts of the Case

On November 13, 1994, CE Casecnan and the National Irrigation Administration (NIA) entered into a Build-Operate-Transfer (BOT) contract (the Project) whereby CE Casecnan agreed to deliver to Pantabangan Reservoir all water diverted from the Casecnan Watershed and all net electrical energy generated by the project.<sup>4</sup> On June 26, 1995, the parties executed an Amended and Restated Casecnan Project Agreement. Under the amended agreement, CE Casecnan shall, among others: (1) cause and be responsible for the financing, design, construction, completion, testing, commissioning, and operation of the Project; and (2) transport water from the Casecnan Watershed to the Pantabangan Reservoir and, in the process of such transport, generate electrical energy, which shall be accepted by NIA in exchange for fees in favor of CE Casecnan.<sup>5</sup>

The Project is a combined irrigation and hydroelectric power generation facility intended to harness the full potential of the Pantabangan Dam in Gapan, Nueva Ecija, by diverting waters from the rivers of Nueva Vizcaya to the Pantabangan Reservoir. The Project's power generation capacity supplements the energy supply to the Luzon grid and augments power generation in the existing Pantabangan and Masiway hydroelectric power plants in Nueva Ecija.<sup>6</sup>

On December 2, 2002, the Officer-In-Charge Provincial Assessor of Nueva Vizcaya requested from David Baldwin, President of CE Casecnan, duly certified and detailed estimates of the total infrastructure cost for the Casecnan dams and trans-basin tunnel, including buildings, machinery, road networks, bridges, and other structures within the Municipality of Alfonso Castañeda, Nueva Vizcaya, for the determination by the Provincial Assessor's Office of the amount of real property tax (RPT) due from CE Casecnan. CE Casecnan furnished the Provincial Assessor's Office the requested documents. On September 28, 2003, the Provincial Assessor's Office sent a letter to CE Casecnan informing it of the initial appraisal and assessment of the properties.<sup>7</sup>

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<sup>3</sup> Id. at 76-101.

<sup>4</sup> Id. at 138-139.

<sup>5</sup> Id. at 138-139.

<sup>6</sup> Id. at 139-140.

<sup>7</sup> Id. at 140.



On February 27, 2004, CE Casecnan received a letter from the Office of the Municipal Assessor and Treasurer of Castañeda, Nueva Vizcaya, requesting it to settle the RPT due for the years 2003 and 2004. CE Casecnan endorsed the letter to NIA because their agreement provides that all fees paid to the government shall be for the account of NIA. However, NIA did not give any instructions to CE Casecnan regarding the same and instead filed its Protest to the Local Board of Assessment Appeals (LBAA) of the Province of Nueva Vizcaya.<sup>8</sup>

On December 1, 2004, the LBAA denied the protest filed by NIA.<sup>9</sup>

Meanwhile, on February 1, 2005, the Office of the Provincial Treasurer of the Province of Nueva Vizcaya issued a Final Demand addressed to CE Casecnan for the payment of RPT in the amount of ₱229,680,604.27. CE Casecnan received another demand on May 5, 2005 for the total amount of ₱238,368,919.33 as RPT due for the years 2003, 2004, and 2005.<sup>10</sup>

For failure of NIA to respond to CE Casecnan, the latter paid the RPT delinquency in the aggregate amount of ₱250,734,306.98, under protest. CE Casecnan sent an invoice to NIA and demanded reimbursement of the amount paid invoking the provisions of their earlier Agreements.<sup>11</sup>

On August 23, 2005, CE Casecnan filed a Protest before the Provincial Treasurer requesting the review of the assessment made against it. CE Casecnan likewise asked the Provincial Treasurer to stop the RPT collection efforts against it and to refund the payment made under protest.<sup>12</sup> On October 15, 2005, the Provincial Treasurer dismissed the Protest filed by CE Casecnan. This prompted CE Casecnan to file an appeal to the LBAA.<sup>13</sup>

On October 20, 2006, the LBAA rendered a Decision<sup>14</sup> denying the appeal filed by CE Casecnan. The LBAA discussed the difference between the remedies filed by NIA and CE Casecnan. According to the LBAA, the earlier appeal filed by NIA questioning the assessment made by the Provincial Assessor's Office falls under Section 226 of Republic Act No. (R.A.) 7160 or the Local Government Code (LGC) while the appeal filed by CE Casecnan falls under Section 252 of the LGC when the taxpayer pays the tax due to the treasurer under protest. The LBAA reiterated its ruling that the assessment made by the Provincial Assessor's Office carries with it the presumption of regularity which NIA and CE Casecnan were not able to overturn.<sup>15</sup> The LBAA held that contrary to CE Casecnan's claim that it should be exempt from RPT under Section 234(c) of the LGC, the LBAA held that the said provision is not applicable. Section 234(c) provides that all machineries and

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<sup>8</sup> Id. at 142-143.

<sup>9</sup> Id. at 144.

<sup>10</sup> Id.

<sup>11</sup> Id. at 145.

<sup>12</sup> Id.

<sup>13</sup> Id. at 146.

<sup>14</sup> Id. at 65-75.

<sup>15</sup> Id. at 68-70.



equipment that are actually, directly and exclusively used by local water districts (LWD) and government-owned or -controlled corporations (GOCC) engaged in the supply and distribution of water and/or generation and transmission of electric power are exempt from RPT.<sup>16</sup> However, the LBAA concluded that in this case, the registered owner of the machineries and equipment in question is CE Casecnan, which is not a LWD or a GOCC. Hence, the provision is not applicable to it.<sup>17</sup> Aggrieved, CE Casecnan elevated the case to the CBAA.

### **Ruling of the CBAA**

The appeals separately filed by NIA and CE Casecnan were consolidated by the CBAA. The CBAA rendered its Decision<sup>18</sup> dated December 5, 2013 which dismissed both appeals. The CBAA agreed with the LBAA that the machineries and equipment are not exempt from RPT because Section 234 (c) cannot be made to apply in favor of either NIA or CE Casecnan. While the subject real properties are actually, directly, and exclusively used in the supply and distribution of water and/or generation and transmission of electric power, nevertheless, they are not used by an LWD nor a GOCC considering that CE Casecnan, the registered owner of the machineries and equipment, is not a GOCC or an LWD.<sup>19</sup> The CBAA likewise held that the assessment issued by the Provincial Assessor's Office against CE Casecnan has become final.<sup>20</sup>

NIA and CE Casecnan both moved for reconsideration. On August 21, 2015, the CBAA issued its Resolution<sup>21</sup> modifying its earlier decision and declaring null and void the assessments issued by the Provincial Assessor's Office against CE Casecnan for failure of the Province of Nueva Vizcaya to enact a tax ordinance for the years 2003 and 2004. Consequently, the CBAA declared as null and void the subsequent collection of RPT made by the Provincial Treasurer.<sup>22</sup> The CBAA gave merit to NIA's argument that there was no valid and legal tax ordinance which would support the assessments made by the local assessor. Hence, the Province of Nueva Vizcaya is bereft of any authority to impose RPT against CE Casecnan.<sup>23</sup>

CE Casecnan filed a petition for review to the Court of Tax Appeals *En Banc* mainly claiming that it is exempted from paying RPT under the LGC. CE Casecnan insisted that there was no valid tax ordinance not only for the years 2003 and 2004 but likewise for the year 2005. CE Casecnan wanted the CTA to direct the Provincial Treasurer of Nueva Vizcaya to return the amount of ₱250,734,306.98 it paid under protest. Lastly, CE Casecnan urged the CTA to apply the provisions of EO No. 173 which reduces and condones real

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<sup>16</sup> Id. at 71-73.

<sup>17</sup> Id. at 73-74.

<sup>18</sup> Id. at 76-101.

<sup>19</sup> Id. at 91.

<sup>20</sup> Id. at 99.

<sup>21</sup> Id. at 105-135.

<sup>22</sup> Id. at 133-134.

<sup>23</sup> Id. at 120.



property taxes and interest/penalties assessed on the power generation facilities of independent power producers under build-operate-transfer contracts with government-owned and/or -controlled corporations in its favor.<sup>24</sup>

### Ruling of the CTA

The CTA rendered its Decision<sup>25</sup> dated November 17, 2017 remanding the case to the CBAA for the purpose of determining the amount to be refunded to CE Casecnan.<sup>26</sup> The CTA concurred with the rulings of the LBAA and CBAA that the properties, machinery, and equipment subject of this case are not exempt from RPT.<sup>27</sup>

The CTA agreed with the CBAA that the assessments made by the local assessor against CE Casecnan was not supported by a valid and legal tax ordinance. The CTA noted that a witness for the Province of Nueva Vizcaya himself, the Assistant Provincial Assessor, admitted during his testimony in court that the Province has not enacted tax ordinances for the years 2003, 2004, and 2005.<sup>28</sup>

On reconsideration, the CTA modified its earlier decision but only to declare that the provisions of EO No. 173 should be applied in determining CE Casecnan's RPT liability.<sup>29</sup>

Aggrieved, the Province of Nueva Vizcaya filed its Petition for Review on *Certiorari*<sup>30</sup> dated August 28, 2018, questioning the CTA's application of the provisions of EO No. 173. According to the Province, EO No. 173 only applies to unpaid and existing taxes, fees, fines, and penalties. Since CE Casecnan has already paid its RPT liability, then the condonation of tax liability under EO No. 173 can no longer be applied in its favor.<sup>31</sup> The Province also insists that the tax assessments issued by the Provincial Assessor for the years 2003 to 2005 are valid.<sup>32</sup> According to the Province, Tax Ordinance No. 2000-003 can be used as basis for the assessments of properties for the years 2003 to 2005.<sup>33</sup> Lastly, the Province urges the Court to declare EO No. 173 as unconstitutional and violative of the principle of local autonomy.<sup>34</sup>

CE Casecnan filed its Comment<sup>35</sup> on November 23, 2018. It claims that: (1) EO No. 173 is applicable in this case; (2) it is entitled to a refund of the

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<sup>24</sup> Id. at 152.  
<sup>25</sup> Id. at 136-175.  
<sup>26</sup> Id. at 174.  
<sup>27</sup> Id. at 159.  
<sup>28</sup> Id. at 169-171.  
<sup>29</sup> Id. at 190.  
<sup>30</sup> Id. at 3-35.  
<sup>31</sup> Id. at 12.  
<sup>32</sup> Id. at 19.  
<sup>33</sup> Id. at 20.  
<sup>34</sup> Id. at 28.  
<sup>35</sup> Id. at 207-234.



alleged RPT it paid under protest; (3) the CTA was correct in ruling that there was no legal basis for the RPT assessments against it for the years 2003 to 2005; and (4) EO No. 173 is constitutional.<sup>36</sup>

In its Comment<sup>37</sup> dated December 6, 2018, NIA reiterates that the properties should be exempt from RPT.<sup>38</sup>

Lastly, the Department of Finance filed its Comment<sup>39</sup> dated March 3, 2020 concurring with the findings of the CTA that in the absence of the duly enacted tax ordinance, no RPT may be validly assessed.<sup>40</sup>

### The Court's Ruling

The CBAA and CTA *En Banc* incorrectly concluded that the assessment issued by the Provincial Assessor against CE Casecan for the years 2003 to 2005 is null and void because no valid and legal tax ordinance exists to support the same.

Local governments are vested with the power to create their own sources of revenue. Article X, Section 5 of the 1987 Constitution provides that:

Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

One of the taxes which a local government unit may levy is real property tax. The base of the RPT, or the assessment level, is defined as the "percentage applied to the fair market value of the property to determine its taxable value."<sup>41</sup> In other words, to compute the assessed value or the taxable value of a real property, the fair market value should be multiplied to the assessment level. The local government units can legislate the assessment levels through an ordinance but subject to the maximum levels provided by Section 218 of the LGC.

Pursuant to the power of the local government units to fix the assessment level and adopt a schedule of fair market values, the Province of Nueva Vizcaya enacted Tax Ordinance No. 99-002 adopting the 1999 Schedule of Fair Market Values for the different classes of real properties in Nueva Vizcaya and Tax Ordinance No. 2000-003 fixing the assessment levels for the years 2000 to 2002. While the said tax ordinances are specifically for the years 2000 to 2002 only, the failure of the Province to update its schedule

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<sup>36</sup> Id. at 208-209.

<sup>37</sup> Id. at 277-287.

<sup>38</sup> Id. at 284-285.

<sup>39</sup> Id. at 302-320.

<sup>40</sup> Id. at 307.

<sup>41</sup> Section 199(g) of the Local Government Code.



of fair market values and assessment levels will not prevent it from levying RPT using as basis the existing assessment levels and schedule of fair market value.

The ruling of the CTA *En Banc* invalidating the assessment of the RPT in the absence of an ordinance fixing the assessment levels and fair market values is dangerous and it is tantamount to curtailing the power of local governments to levy RPT. The prescription under Section 219 of the LGC for local governments to undertake a general revision of real property assessments within two years after the effectivity of the LGC and every three years thereafter is only to make sure that the schedule of fair market values and assessment levels capture the true economic realities in the community where the property is located taking into consideration inflation and other economic indicators.

Hence, the assessment of RPT against CE Casecan was valid.

Be that as it may, the provisions of EO No. 173 which reduces and condones real property taxes and interest/penalties assessed on the power generation facilities of independent power producers under build-operate-transfer contracts with government-owned and/or -controlled corporations is applicable in this case. The pertinent provisions of EO No. 173 are reproduced below:

WHEREAS, under Section 234 of Republic Act No. 7160 (Local Government Code of 1991), Government-Owned and/or -Controlled Corporations (GOCCs) engaged in the generation and transmission of electricity enjoy a number of exemptions/privileges with respect to real property taxes, including an assessment level of 10% on all its lands, buildings, machineries and other improvements (Sections 216 and 218), as well as an exemption for all machinery and equipment that are actually, directly and exclusively used in the generation and transmission of electric power and machinery and equipment used for pollution control and environmental protection;

WHEREAS, various Local Government Units (LGUs) have taken the position that Independent Power Producers (IPPs) operating within their territories which are not GOCCs are not entitled to the exemptions/privileges of GOCCs with respect to real property taxes on their property, machinery and equipment used in the generation and distribution of electric power, and have threatened enforcement action against the IPPs, including the levy and sale at public auction of the affected properties;

WHEREAS, the payment of said real property taxes by the affected IPPs, some of which obligation have been contractually assumed by the GOCCs and carries the full faith of the National Government, threatens the financial stability of the GOCCs, the government's fiscal consolidation efforts, and the stability of energy prices;



WHEREAS, the forcible collection of the subject real property taxes by the LGUs concerned will trigger massive direct liabilities on the part of National Power Corporation/Power Sector Assets and Liabilities Management Corporation and other affected GOCCs, may increase the cost of electricity, and may trigger further cross-defaults and significant economic losses across all sectors;

WHEREAS, under Section 277 of Republic Act No. 7160, "the President of the Philippines may, when public interest so requires, condone or reduce the real property tax and interest for any year in any province or city or a municipality within the Metropolitan Manila area"; and

WHEREAS, Article VII, Section 17 of the Philippine Constitution provides that the President shall have control of all the executive departments, bureaus, and offices.

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

**SECTION 1. Reduction and Condonation. All liabilities for real property tax on property, machinery and equipment** (including any special levies accruing to the Special Education Fund) **actually and directly used by IPPs for the production of electricity under Build-Operate-Transfer contracts** (whether denominated Power Purchase Agreements, Energy Conversion Agreements or other contractual agreements) with GOCCs, assessed by LGUs and other entities authorized to impose real property tax, **for all years up to 2014**, are hereby **reduced to an amount equivalent to the tax due if computed based on an assessment level of fifteen percent (15%) of the fair market value of said property, machinery and equipment depreciated at the rate of two percent (2%) per annum, less any amounts already paid by the IPPs**. All fines, penalties and interests on such deficiency real property tax liabilities are also hereby condoned and the concerned IPPs are relieved from payment thereof.

x x x x (Emphasis supplied)

In this case, it is undisputed that CE Casecan is an independent power producer (IPP) that entered into a build-operate-transfer contract with NIA, a GOCC. Hence, the provisions of EO No. 173 should be applied in its favor. The Province of Nueva Vizcaya's claim that EO No. 173 can only be applied to existing tax liabilities, and not to those that are paid, as in this case, is unmeritorious. EO No. 173 does not distinguish between outstanding liabilities and those that had been paid at the time the executive order became effective. Section 1 of EO No. 173 is clear that the reduced amount of RPT under the executive order should be deducted from whatever is paid by the IPP. Hence, the CTA *En Banc* correctly remanded the case to the CBAA for



the computation of the amount to be refunded to CE Casecnan, if any, taking into consideration the provisions of EO No. 173.

Lastly, the Province of Nueva Vizcaya for the first time in its petition for review before this Court questions the constitutionality of EO No. 173. However, it is settled that the Court may exercise its power of judicial review only when, among others, the question of constitutionality of a statute or executive order is raised at the earliest opportunity. The earliest opportunity to raise a constitutional issue is in the pleadings before a competent court that can resolve the same, such that, if it was not raised in the pleadings before a competent court, it cannot be considered at the trial, and, if not considered in the trial, it cannot be considered on appeal.<sup>42</sup> Here, the competent court that should resolve the constitutionality of EO No. 173 is the CTA pursuant to *Banco De Oro v. Republic*.<sup>43</sup> Having been filed belatedly, the Court cannot consider the question of constitutionality in this late stage of the case.

**WHEREFORE**, the Petition for Review on *Certiorari* is **PARTIALLY GRANTED** in so far as to declare that the assessment issued by the Provincial Assessor's Office of the Province of Nueva Vizcaya against CE Casecnan Water and Energy Company, Inc. for the years 2003 to 2005 as valid. The Decision dated November 17, 2017 and the Resolution dated July 31, 2018 of the Court of Tax Appeals in C.T.A EB Case No. 1381 are **AFFIRMED with MODIFICATIONS**. Accordingly, this case is **REMANDED** to the Central Board of Assessment Appeals to determine the amount to be refunded to CE Casecnan Water and Energy Company, Inc., if any, taking into consideration the provisions of Executive Order No. 173.

**SO ORDERED.”**

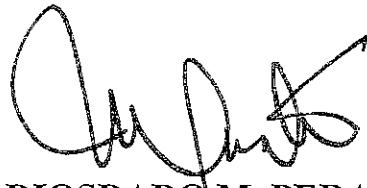
  
**ROSMARIE D. CARANDANG**  
*Associate Justice*

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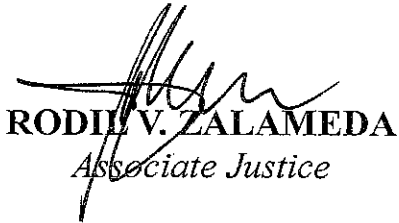
<sup>42</sup> *Estarija v. Ranada*, 525 Phil. 718, 729-730 (2006), citing *Matibag v. Benipayo*, 429 Phil. 554 (2002).

<sup>43</sup> G.R. No. 198756 (Resolution), August 16, 2016.

**WE CONCUR:**



**DIOSDADO M. PERALTA**  
*Chief Justice*



**RODIL V. ZALAMEDA**  
*Associate Justice*



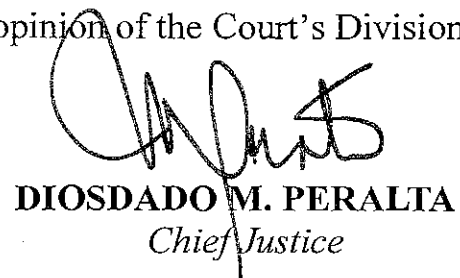
**SAMUEL H. GAERLAN**  
*Associate Justice*



**JHOSEP N. LOPEZ**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
*Chief Justice*