



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 29 November 2021 which reads as follows:

“G.R. No. 229428 (*Benguet Electric Cooperative (BENECO)*, represented by *Gerardo P. Versoza, General Manager v. The Municipality of La Trinidad, Benguet, and Wilma Lintan, Municipal Treasurer*). – Before the Court is a Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court seeking the reversal of the Decision² dated May 6, 2016 and the Resolution³ dated January 4, 2017 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1091. The assailed rulings affirmed the Decision⁴ dated June 7, 2013 and the Resolution⁵ dated October 9, 2013 of the CTA Special Second Division (CTA Division) in CTA AC No. 85.

The Antecedents

Benguet Electric Cooperative (BENECO) is the exclusive distributor of electric light and power service to Baguio City and the thirteen (13) municipalities of Benguet, pursuant to its franchise issued by the National Electrification Administration (NEA) on March 20,

¹ Denominated as Appeal by *Certiorari*; *rollo*, pp. 7-20.

² *Id.* at 22-37; penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotanco-Manalastas and Ma. Belen M. Ringpis-Liban, concurring, and Presiding Justice Roman G. Del Rosario, concurring and dissenting with opinion.

³ *Id.* at 50-55; penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Ma. Belen M. Ringpis-Liban, concurring, and Presiding Justice Roman G. Del Rosario, concurring and dissenting.

⁴ *Id.* at 138-160; penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova, concurring.

⁵ *Id.* at 162-164; penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova, concurring.

1978.⁶

On February 7, 2011, BENECO received from the Municipality of La Trinidad, Benguet (Municipality), three separate Notices of Assessment (NOAs) of Local Business Tax for the years 2006, 2007, and 2008. The total amount of taxes per year, inclusive of surcharges and interests, which were based on BENECO's gross receipts of the previous years immediately preceding the years of assessments, were as follows:⁷

Year Covered	Amount Assessed
2005	₱5,445,152.36
2006	5,987,235.13
2007	6,607,061.13
Total	₱18,039,448.62

In a letter dated February 21, 2011, BENECO protested the NOAs, arguing that, being a non-stock and non-profit cooperative, it is not engaged in business.⁸

On April 25, 2011, BENECO received from the Municipality three Amended NOAs pertaining to Local Business Tax for the years 2006, 2007, and 2008, with the same amounts of business taxes.⁹

In a letter dated May 5, 2011, BENECO protested the Amended NOAs, reiterating that it is not liable for business tax.¹⁰

On May 13, 2011, BENECO received a letter from the Municipality, denying its protest and reiterating their demand for payment of local business taxes, including interests and surcharges, for the years 2006, 2007, and 2008. The letter specifically stated that it serves as the Municipality's final demand against BENECO.

In a letter dated May 30, 2011, BENECO reiterated its position that it is not liable for local business taxes because its operations are not strictly construed as business as defined by law; and it stressed anew that it is a non-stock and non-profit cooperative.¹¹

⁶ *Id.* at 24.

⁷ *Id.* at 24-25.

⁸ *Id.* at 25.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

On June 21, 2011, BENEKO received a Notice of Seizure or Confiscation of its personal properties to the extent of ₱18,039,448.62,¹² representing BENEKO's unpaid local business taxes, inclusive of penalties, interests, and surcharges, for the years 2006, 2007, and 2008. The Notice of Seizure was accompanied by a Certification issued by Municipal Treasurer Wilma Lintan (Lintan) attesting to the fact that BENEKO has unpaid local business taxes, inclusive of penalties, in the amount of ₱18,039,448.62.¹³

The Municipality furnished BENEKO copies of the Notices of Garnishment and Warrant of Levy, which the former sent to BENEKO's depository banks: Banco De Oro (Abanao Branch, La Trinidad Branch, Session Road Branch, and Luneta Hill Branch), Metrobank, and the Development Bank of the Philippines, Baguio City.¹⁴

RTC Ruling

On August 9, 2011, BENEKO filed a Petition for Prohibition¹⁵ with Urgent Prayer for a Temporary Restraining Order (TRO) and a Writ of Preliminary Injunction (WPI) with Branch 62, Regional Trial Court (RTC) of La Trinidad, Benguet.¹⁶

On August 12, 2011, the RTC issued an Order stating that the Petition for Prohibition filed by BENEKO under Section 2, Rule 65 of the Rules of Court is not the proper remedy considering that there is a plain, speedy, and adequate remedy available to BENEKO under Section 195 of the Local Government Code (LGC).¹⁷ It gave BENEKO ten (10) days from notice to explain why the Petition for Prohibition should not be dismissed outright for lack of merit.¹⁸

On August 23, 2011, BENEKO filed a Compliance (On Why the Court Must Give Due Course To The Petition)¹⁹ with the RTC.

On August 31, 2011, the RTC issued an Order²⁰ dismissing the

¹² ₱18,039,448.63 on page 4 of CTA En Banc Decision.

¹³ *Id.*

¹⁴ *Id.* at 25-26.

¹⁵ *Id.* at 68-93.

¹⁶ *Id.* at 23, 26.

¹⁷ *Id.* at 26.

¹⁸ *Id.* at 26..

¹⁹ *Id.* at 94-102.

²⁰ *Id.* at 112-115; penned by Judge Danilo P. Camacho.

Petition for Prohibition²¹ on grounds that the collection of taxes cannot be stopped and enjoined through a writ of prohibition; that the proper remedy in this case is appeal under Section 195 of the LGC, which lapsed without BENECO having availed itself of it; that, with the failure of BENECO to appeal from the denial of the protest within the period provided in Section 195 of the LGC, the assessment became conclusive and unappealable; and that the Petition for Prohibition²² cannot be used as a substitute for the lost remedy of appeal.²³

BENECO filed a Motion for Reconsideration,²⁴ but the RTC denied it on December 15, 2011.²⁵

On January 17, 2012, BENECO filed with the CTA a Petition for Review²⁶ appealing the issuances of the RTC, specifically the Orders dated August 31, 2011 and December 15, 2011.²⁷

CTA Division Ruling

On June 7, 2013, the CTA Division rendered its Decision²⁸:

WHEREFORE, premises considered, the instant Petition for Review filed by Benguet Electric Cooperative (BENECO) is hereby DISMISSED. Accordingly, the Order dated August 31, 2011 and the Order dated December 15, 2011, rendered by the Regional Trial Court, Branch 62, La Trinidad, Benguet in Civil Case No. 11-CV-2756 entitled "BENGUET ELECTRIC COOPERATIVE, INC., represented by GERARDO P. VERZOSA [*sic*], General Manager vs. THE MUNICIPALITY OF LA TRINIDAD, BENGUET, and WILMA LINTAN, Municipal Treasurer, are hereby AFFIRMED.

SO ORDERED.²⁹

BENECO filed a motion for reconsideration, but on October 9, 2013, the CTA Division denied it for lack of merit.³⁰

²¹ *Id.* at 68-93.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 116-121.

²⁵ *Id.* at 122.

²⁶ *Id.* at 123-136.

²⁷ *Id.*

²⁸ *Id.* at 138-160.

²⁹ *Id.* at 159.

³⁰ *Id.* at 162-164.

CTA En Banc

BENECO thereafter filed a Petition for Review³¹ with the CTA *En Banc* insisting that it is not taxable pursuant to Section 35 of Presidential Decree (PD) No. 269,³² being a non-stock and non-profit organization, and that its filing of a Petition for Prohibition was proper.³³

On May 6, 2016, the CTA *En Banc* ruled as follows:³⁴

WHEREFORE, premises considered, the Petition for Review is hereby DENIED. Accordingly, the assailed Decision of the Court in Division dated June 7, 2013, and Resolution dated October 9, 2013 are hereby AFFIRMED.

SO ORDERED.³⁵

The CTA *En Banc* also denied BENECO's Motion for Reconsideration³⁶ in its Resolution³⁷ dated January 4, 2017.

Present Petition

BENECO is now before the Court arguing that:

The CTA En Banc Erred In Sustaining The Decision Of The CTA Division That The Petitioner Could Not File A Petition For Prohibition Before The RTC Since The Petitioner Failed To File A Timely Protest Pursuant To Sec. 195 Of The Local Government Code (LGC). But Sec. 195 Of The LGC is Applicable To Protests On The Correctness Of The Amount Of Tax Assessment. It Does Not Include Questions On The Legality Of The Assessment.³⁸

BENECO asserts that the CTA *En Banc* erred in sustaining the CTA Division and RTC rulings which held that BENECO could no longer assail the Municipality's denial of its protest on the assessment for business tax by way of petition for review because petitioner failed to

³¹ *Id.* at 165-181.

³² "Creating the 'National Electrification Administration' as a Corporation, Prescribing Its Powers and Activities, Appropriating the Necessary Funds Therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, the Organization, Promotion and Development of Electric Cooperatives to Attain the Said Objective, Prescribing Terms and Conditions for Their Operations, the Repeal of Republic Act No. 6038, and for Other Purposes," enacted August 6, 1973.

³³ *Rollo*, p. 29.

³⁴ *Id.* at 22-37.

³⁵ *Id.* at 36.

³⁶ *Id.* at 42-48.

³⁷ *Id.* at 50-55.

³⁸ *Id.* at 9.

appeal the denial to the RTC within 30 days following Section 195 of the Local Government Code.³⁹ According to BENECO, nothing is mentioned in Section 195 about a protest on the legality or validity of the tax assessment itself. Thus, there has to be a remedy to assail the legality of the tax assessment outside of Section 195. In BENECO's case, it availed itself of the remedy through a petition for review provided by Section 2 of Rule 65 of the Rules of Court. The remedy of prohibition is made more appropriate because the appeal, as mentioned in Section 195, is strictly not an appeal.⁴⁰

BENECO further contends that when an action is taken from the treasurer's denial of the taxpayer's protest to the court of competent jurisdiction, it is not considered as an appeal but an original action which could be filed even beyond the 30-day period under Section 195, especially so when what is being debated is the legality of the tax assessment, which is more indubitable than the amount of correct taxes to be paid.⁴¹

Petitioner furthermore asserts that Section 195 does not proscribe the remedy of prohibition when the issue raised is the very legality of the assessment. Neither will the petition for prohibition be denied when what is also sought to be annulled are matters external to the assessment for the correct amount of tax and where an appeal or any other plain, speedy, and adequate remedy are not available.⁴²

Finally, petitioner argues that the Petition for Prohibition⁴³ it filed before the RTC contained material allegations which the CTA *En Banc* failed to consider. These are: (a) the tax assessment and garnishment lacked statutory basis; (b) the notice of garnishment was prematurely issued; (c) respondents erred in basing its tax assessment on gross receipts; and (d) respondent's folly was that the tax assessment and notice of garnishment were based on the gross sales of petitioner, meaning the assessment was computed based on all the components of the bill including the "pass-through charges."⁴⁴

On the other hand, respondent Municipality, represented by its incumbent Mayor Romeo K. Salda and Municipal Treasurer Lintan, filed

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 11.

⁴¹ *Id.* at 13.

⁴² *Id.* at 14.

⁴³ *Id.* at 68-93.

⁴⁴ *Id.* at 15-16.

through counsel its Comment⁴⁵ arguing that BENECONs petition should not be given due course because: (1) there is no explanation why the “Appeal by *Certiorari* (Rule 45)” was served through registered mail and (2) the alleged legal issue raised by BENECON and the argument in support thereof have been extensively passed upon by the CTA *En Banc* and the RTC.⁴⁶

The Municipality argues that the issue raised by BENECON, which is whether the Municipality has a legal basis to assess the business tax against BENECON, has been resolved by the Court in *City of Iriga v. Camarines Sur III Electric Cooperative*⁴⁷ (*CASURECO III*). In *CASURECO III*, the Court ruled that tax privileges granted to electric cooperatives registered with NEA under PD 269 were validly withdrawn, and only those registered with the Cooperative Development Authority (CDA) under Republic Act No. (RA) 6938⁴⁸ may continue to enjoy the tax privileges under the Cooperative Code.⁴⁹

Issue

Whether BENECON can seek the issuance of a writ of prohibition to enjoin the Municipality from collecting the assessments which have become final and unappealable on account of BENECONs failure to appeal it with the RTC within the period prescribed under Section 195 of the LGC.

Our Ruling

The petition has no merit.

The issue being raised by BENECON before the Court is the same issue which it raised before the CTA *En Banc* and the CTA Division wherein the two tribunals had ruled to be without merit.

“[P]rohibition is a preventive remedy seeking that a judgment be rendered directing the defendant to desist from continuing with the commission of an act perceived to be illegal.”⁵⁰ It is resorted to when the proceedings of any tribunal are without or in excess of its jurisdiction,

⁴⁵ *Id.* at 205- 212.

⁴⁶ *Id.* at 205.

⁴⁷ 694 Phil. 378 (2012).

⁴⁸ “An Act to Ordain a Cooperative Code of the Philippines,” enacted on March 10, 1990.

⁴⁹ *Rollo*, pp. 209-210.

⁵⁰ *Zabal v. Duterte*, G.R. No. 238467, February 12, 2019, citing *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*, 716 Phil. 132, 145 (2013).

and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.⁵¹

Here, BENECO had 30 days from the receipt of the denial of its protest with the local treasurer within which to file an appeal with the RTC.

Section 195 of the LGC states:

Section 195. *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. *The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.* (Italics supplied.)

As correctly found by the CTA *En Banc*, records show that BENECO protested the NOAs and the Amended NOAs issued by the Municipality. BENECO, however, failed to file an appeal with the RTC within 30 days from receipt of the Municipality's letter dated May 13, 2011, which denied BENECO's protest with finality. Instead of going to the RTC on appeal, BENECO chose to write another letter dated May 30, 2011 to the Municipality, reiterating that it is not liable for local business tax as it is a non-stock and non-profit cooperative.⁵²

Considering that BENECO did not file any appeal with the RTC within the 30-day period provided under Section 195 of the LGC, the assessments for local business taxes for the years 2006, 2007, and 2008 became conclusive and unappealable.⁵³ Because the Municipality's decision on BENECO's protest could have been appealed before the

⁵¹ See Sec. 2, Rule 65 of the Rules of Court.

⁵² *Rollo*, p. 32.

⁵³ *Id.*

RTC within the period provided under Section 195 of the LGC, BENECO could not resort to the remedy of prohibition to question the legality of the assessment.

BENECO argues, however, that Section 195 is not applicable in the case because it is not just questioning the assessment: it is claiming that it is exempt from tax in the first place considering that it is a non-stock and non-profit cooperative.⁵⁴

The issue is not novel. It has already been passed upon by the Court in the *CASURECO III* case.⁵⁵

In that case, the Court noted that PD 269, which took effect on August 6, 1973, granted electric cooperatives registered with the NEA, several tax privileges, one of which is an exemption from the payment of “all national government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes.”⁵⁶

In 1990, however, RA 6938, otherwise known as the *Cooperative Code of the Philippines*, was passed into law. It provided that electric cooperatives registered with the NEA under PD 269 which opt not to register with the CDA shall not be entitled to the benefits and privileges under the law.⁵⁷

In 1992, the LGC took into effect and Section 193 thereof withdrew tax exemptions or incentives previously enjoyed by “all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions.”⁵⁸

In *Phil. Rural Electric Coop. Asso., Inc. v. DILG Secretary*,⁵⁹ the Court also pronounced that the tax privileges granted to electric cooperatives registered with the NEA under PD 269 were validly withdrawn and only those registered with the CDA under RA 6938 may

⁵⁴ *Id.* at 9.

⁵⁵ *City of Iriga v. Camarines Sur III Electric Cooperative, Inc. (CASURECO III)*, *supra* note 47.

⁵⁶ *Id.* at 387.

⁵⁷ *Id.* at 387-388.

⁵⁸ *Id.* at 388.

⁵⁹ 451 Phil. 683 (2003).

continue to enjoy the tax privileges under the Cooperative Code.⁶⁰

There is no question that the Municipality of La Trinidad has the power to impose local taxes. The power of local government units to impose and collect taxes comes from the Constitution itself which grants them “the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitation as the Congress may provide. The explicit constitutional grant of power to tax is consistent with the basic policy of local autonomy and decentralization of governance. With this power, local government units have the fiscal mechanisms to raise funds needed to deliver basic services to their constituents and break the culture of dependence on the national government.”⁶¹

As correctly held by the CTA Division⁶² and *En Banc*,⁶³ considering that BENECO operates within the Municipality of La Trinidad and considering further that tax privileges granted to electric cooperatives registered with NEA under PD 269 were validly withdrawn, BENECO is liable to pay local business tax to the Municipality, even if it is a non-stock and non-profit cooperative.

In closing, it is well to recall that “the power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations[;] hence, the dictum ‘taxes are the lifeblood of the government.’ For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption.”⁶⁴

Finding no error in the decision and resolution rendered by the CTA *En Banc*, which affirmed *in toto* the CTA Division ruling, the instant petition is hereby denied.

WHEREFORE, the petition is **DENIED** for lack of merit.

⁶⁰ *Id.* at 697.

⁶¹ *City of Iriga v. Camarines Sur III Electric Cooperative, Inc. (CASURECO III)*, *supra* note 47 at 389.

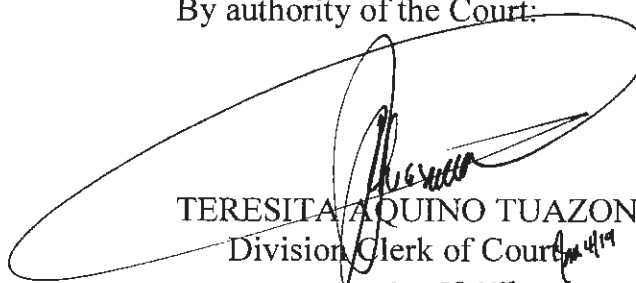
⁶² *Rollo*, pp. 156-158.

⁶³ *Id.* at 34-36.

⁶⁴ *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, 638 Phil. 334, 351 (2010).

SO ORDERED.” (HERNANDO, J., on official leave.)

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court
21 APR 2022

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