

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 10 June 2019 which reads as follows:

"G.R. No. 244450 (National Power Corporation v. Luzon Hydro Corporation, Banggay T. Alwis, Municipal Assessor, Manuel C. Bagayao, Municipal Treasurer of Bakun, Benguet, Erlinda Estepa, Provincial Assessor, and Mauricio B. Ambanloc, Provincial Treasurer of the Province of Benguet)

G.R. No. 244659 (Luzon Hydro Corporation v. Banggay T. Alwis, Municipal Assessor, Manuel C. Bagayao, Municipal Treasurer of Bakun, Benguet, Erlinda Estepa, Provincial Assessor, Mauricio B. Ambanloc, Provincial Treasurer of the Province of Benguet, and the National Power Corporation)

After a judicious study of the case, the Court resolves to **DENY** the instant consolidated petitions¹ and **AFFIRM** the May 22, 2018 Decision² and the January 24, 2019 Resolution³ of the Court of Tax Appeals *En Banc* (CTA *EB*) in CTA *EB* No. 1020 for failure of petitioners in both G.R. No. 244450 and G.R. No. 244659 to sufficiently show that the CTA *EB* committed any reversible error in upholding the real property tax (RPT) assessment against the Luzon Hydro Corporation (LHC)'s machineries in the Bakun AC Hydroelectric Plant.

As correctly ruled by the CTA *EB*, the subject machineries are neither exempt from RPT under Section 234 (c)⁴ of Republic Act No. 7160,⁵ otherwise known as the "Local Government Code of 1991,"⁶ nor can they be classified as "special,"⁷ subject to a ten percent (10%) assessment level, under Sections 216 and 218 (d).⁸ These provisions clearly require that the machineries be actually, directly, and exclusively used by a government owned or controlled corporation such as the National Power Corporation

¹ *Rollo* (G.R. No. 244450), pp. 10-28 and *rollo* (G.R. No. 244659), pp. 3-28.

² *Rollo* (G.R. No. 244659), pp. 36-53. Penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castafeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan, concurring.

³ *Id.* at 54-60.

⁴ Section 234. *Exemptions from real property tax.* — The following are exempted from payment of the real property tax:

x x x x

(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[.]

⁵ Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991," approved on October 10, 1991.

⁶ See *rollo* (G.R. No. 244659), pp. 43-44.

⁷ See *id.* at 47-49.

⁸ See Section 216 and 218 (d) of the LOCAL GOVERNMENT CODE OF 1991.

13/10

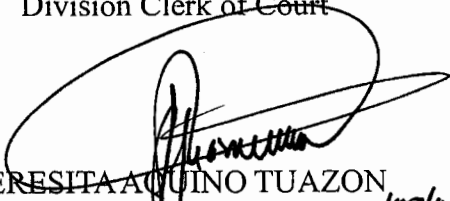
(NPC). However, LHC and NPC's own Power Purchase Agreement,⁹ and the provisions of Republic Act No. 7718,¹⁰ show that it is the former, a private corporation, who has actual use and ownership of the subject machineries until the transfer date. "It is an elementary rule in taxation that exemptions are strictly construed against the taxpayer and liberally in favor of the taxing authority. It is the taxpayer's duty to justify the exemption by words too plain to be mistaken and too categorical to be misinterpreted."¹¹ It bears stressing that the CTA's findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, the Court must presume that the CTA rendered a decision which is valid in every respect.¹²

SO ORDERED. (REYES, J., JR., J., on leave.)"

Very truly yours,

MARIA LOURDES C. PERFECTO
Division Clerk of Court

By:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

12 JUL 2019

⁹ Not attached to the *rollo* but was mentioned in the CTA *EB* Decision; *rollo* (G.R. No. 244659), p. 49. Pertinent portion of it reads:

Article 2.13. *Ownership of Power station.* From the effective Date until Transfer Date, the **Operator shall own** the Power station and **all the structures, fixtures, fittings, machinery and equipment on the Site or used in connection with the Project** which have been supplied by it or at its cost. (Emphases supplied)

¹⁰ Entitled "AN ACT AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NO. 6957, ENTITLED 'AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR OTHER PURPOSES,'" approved on May 5, 1994. Section 2 (b) thereof reads:

Section 2. *Definition of terms.* — The following terms used in this Act shall have the meanings stated below:

x x x x

(b) Build-operate-and-transfer — A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility over the fixed term during which it is allowed to charge facility users appropriate tools, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. **The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term** which shall not exceed fifty (50) years: *Provided*, That in case of an infrastructure or development facility whose operation requires a public utility franchise, the proponent must be Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission and owned up to at least sixty percent (60%) by Filipinos. (Emphasis supplied)

¹¹ *Radio Communications of the Philippines, Inc. v. Provincial Assessor of South Cotabato*, 495 Phil. 681, 691-692 (2005).

¹² See *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, 781 Phil. 816, 825 (2016).

-PAGE 3-

OFFICE OF THE SOLICITOR GENERAL (reg)

134 Amorsolo Street
1229 Legaspi Village
Makati City

PUNO & PUNO (reg)

Counsel for Respondent Luzon Hydro
Corporation (LHC)
12th Floor, East Tower
Philippine Stock Exchange Center
Exchange Road, Ortigas Center,
1605 Pasig City

BENGUET PROVINCIAL LEGAL OFFICE (reg)

Counsel for Respondent LGU Officials
3rd Floor, Provincial Capitol Building
Poblacion, La Trinidad, Benguet

COURT OF TAX APPEALS (reg)

National Government Center
Agham Road, 1104 Diliman
Quezon City
CTA EB No. 1020

JUDGMENT DIVISION (x)

Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)

LIBRARY SERVICES (x)

[For uploading pursuant to A.M. No. 12-7-1-SC]

OFFICE OF THE CHIEF ATTORNEY (x)

OFFICE OF THE REPORTER (x)

Supreme Court, Manila

Please notify the Court of any change in your address.

GR244450. 06/10/19(300)URES **74**