

FIRST DIVISION

[G.R. No. 241302, February 01, 2021]

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, PETITIONERS. VS. CE CASECNAN WATER AND ENERGY COMPANY, INC., RESPONDENT.

NATIONAL IRRIGATION ADMINISTRATION AND DEPARTMENT OF FINANCE, AS NECESSARY PARTIES.

DECISION

CARANDANG, J.:

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision^[2] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB Case No. 1381. The CTA *En Banc* affirmed with modifications the Decision^[3] 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.^[4] 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.^[5]

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.^[6]

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 Castaneda, 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.^[7]

On February 27, 2004, CE Casecnan received a letter from the Office of the Municipal Assessor and Treasurer of Castaneda, 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.^[8]

On December 1, 2004, the LBAA denied the protest filed by NIA.^[9]

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 P229,680,604.27. CE Casecnan received another demand on May 5, 2005 for the total amount of P238,368,919.33 as RPT due for the years 2003, 2004, and 2005.^[10]

For failure of NIA to respond to CE Casecnan, the latter paid the RPT delinquency in the aggregate amount of P250,734,306.98, under protest. CE Casecnan sent an invoice to NIA and demanded reimbursement of the amount paid invoking the provisions of their earlier Agreements.^[11]

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.^[12] 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.^[13]

On October 20, 2006, the LBAA rendered a Decision^[14] 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.^[15] 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 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.^[16] 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.^[17] 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^[18] 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.^[19] The CBAA likewise held that the assessment issued by the Provincial Assessor's Office against CE Casecnan has become final.^[20]

NIA and CE Casecnan both moved for reconsideration. On August 21, 2015, the CBAA issued its Resolution^[21] 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.^[22] 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.^[23]

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 P250,734,306.98 it paid under protest. Lastly, CE Casecnan urged the CTA to apply the provisions of EO No. 173 which reduces and condones real 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.^[24]

Ruling of the CTA

The CTA rendered its Decision^[25] dated November 17, 2017 remanding the case to the CBAA for the purpose of determining the amount to be refunded to CE Casecnan.^[26] 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.^[27]

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.^[28]

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.^[29]

Aggrieved, the Province of Nueva Vizcaya filed its Petition for Review on *Certiorari*^[30] 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.^[31] The Province also insists that the tax assessments issued by the Provincial Assessor for the years 2003 to 2005 are valid.^[32] 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.^[33] Lastly, the Province urges the Court to declare EO No. 173 as unconstitutional and violative of the principle of local autonomy.^[34]

CE Casecnan filed its Comment^[35] 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 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.^[36]

In its Comment^[37] dated December 6, 2018, NIA reiterates that the properties should be exempt from RPT.^[38]

Lastly, the Department of Finance filed its Comment^[39] 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.^[40]

The Court's Ruling

The CBAA and CTA *En Banc* incorrectly concluded that the assessment issued by the Provincial Assessor against CE Casecnan 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."^[41] 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 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 cmailing 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